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Vincent P. Cravero v. LLP Mortgage Ltd.

THEY ARE NOT HE EVEN CLAIMING THE IMMUNITY OF THE FEDERAL GOVERNMENT.

THEY ARE CLAIMING THE IMMUNITY OF WHATEVER NONEXISTENT STATUTE O F LIMITATIONS.I MEAN, THE IDEA IS THAT , ASI AM READING THE BRIEFS, THAT SECTION 24.15 IS WHAT YOU LOOK TO , AND THAT , FORMORTGAGES , WOULD GIVE NO STATUTE OF LIMITATIONS.

YES. THAT

IT I S DIFFERENT THAN A N IMMUNITY , I GUESS. IT IS TO SAY, WELL , IF , LETME ASK YOU THIS WAY, IF THE SMALL BUSINESS ASSOCIATION , THAT IS WHO YOUR CLIENTS , THAT IS WHO THEY GOT THE LOAN FROM , RIGHT , THE SBA?

THE SBA , YES, MA'AM.

ALL RIGHT. AND THAT WAS FOR , THAT WAS IN 1992 , AND THEY GAVE GUARANTEES AND THEY GAVE A MORTGAGE, AND I KNOW THEREIS AN ISSUE A S TO ACCELERATION AS WELL , BUT IF THE SBA TRIED TO FORECLOSEON THE MORTGAGE , IN THE SAME YEAR THAT THE AS I KNOW' CLOSED , WOULD AS THE ASSIGNEE CLOSED , WOULD THAT BE BARRED BY STATUTE O F LIMITATIONS?

IT I S NOT CLEAR.

BUT THAT , OF COURSE , THAT WOULD BE ANOTHER ISSUE , AS TO WHETHER YOU CAN STILL GET SOME BENEFIT, IF THERE IS IN STATUTE OF LIMITATIONS , YOU KNOW, BUT THAT , BUT THE QUESTION WE ARE REALLY DEALING WITH , IS, DOES , SHOULD THE ASSIGNEE STAND IN THE SHOES AND RECEIVE WHATEVER BENEFIT THE ASSIGNOR WOULD RECEIVE , IF WE GET PAST THAT , THERE IS A CONFLICT, IS THAT CORRECT?

YES.

AND HERE THE CONTRACT ACTUALLY SAYS IT WOULD B E PURSUANT TO FEDERAL LAW.

YES. THE FEDERAL LAW , AFTER MYERS , SAYS THAT THERE IS NO COMMON LAW AND THE LEFT CIRCUIT CASE UNDER LEMOTT

BUT THAT WOULD REALLY BE UNDER CONFLICT , WHICH IS THAT ASSUMING AGAIN , IT WASTHE SMALL BUSINESS ASSOCIATION ADMINISTRATION , WHAT WOULD BE THE ISSUE ? WHATEVER SHOES THAT THE , THERE WOULD BE , THAT DOES LPP GET THAT BENEFIT, CORRECT?THAT IS THE ONLY, THAT ISTHE ISSUE BEFORE US. AS TO WHAT THE BENEFIT IS , I MEAN, THAT IS BEYOND WHAT WE SHOULD HAVE TO DECIDE .

WELL , I WOULDN'T HAVE THOUGHT SO, BUT CERTAINLY ONE OF THE CRITICAL ISSUES, AND THE ONE THIS COURT HAS FOCUSED ON, IS THE QUESTION OF WHETHER THEY GET THE EXACT SAME BENEFIT, AND THE ANSWER FOR A VARIETY OF REASONS, IS, NO , THEY DON'T GET THE EXACT SAME BENEFIT , AND THEY ARE NOT ENTITLED TO THE IMMUNITY. THEY ARE NOT ENTITLED TO WHARF YOU WANT TO SAY WHATEVER YOU WANT TO SAY , THE EXTENDED STATUTE OF LIMITATIONS .

WHEN ALL THESE DOCUMENTS WERE ASSIGNED T O LPP , BECAUSE THE NOTES AND THE GUARANTEE WERE - - GUARANTY WERE ALREADY BARRED BY THE FEDERAL STATUTE OF LIMITATIONS , THAT THERE WAS A SIGN THAT SOMETHING HAD NO VALUE.

THAT'S CORRECT.

AND THAT WOULD BE, I MEAN , IN TERMS OF THE LOGIC OF THAT, I GUESS, AND THE POLICY OF IT , IT WOULD MEAN THAT THE FEDERAL GOVERNMENT WOULD REALLY HAVE TO KEEP ALL OF ITS PAPER, BECAUSE IF THEY WERE TO TRANSFER IT , IT WOULD BE TRANSFERRED , I MEAN , THEY WOULDN'T BE ABLE TO TRANSFER IT BE, BECAUSE THEY WOULD BE TRANSFERRING THINGTHAT IS ARE WORTHLESS.

THAT IS EXACTLY THE SAME ARGUMENT THAT THE THIRD CIRCUIT RECENTLY MADE IN THE UMLIC VERSUS MATH ICE CASE, AND HERE THE MATHIAS CASE, AND HERE IS THE PROBLEM WITH THAT, WHEN THE THIRD CIRCUITTALKED ABOUT THE FEDERAL GOVERNMENT WOULD WANT TO MONETIZE THESE ASSETS, IT DIDN'T TAKE INTO ACCOUNT WHAT CONGRESS SAID WHEN THE STATUTE WAS PASSED THAT IS INVOLVED. CONGRESS SPECIFICALLY ADDRESSED THESE ISSUES , AND CONGRESS SAID , I WILL READ IT, IT I S BRIEF, IT IS ONLY RIGHT THAT THE LAW SHOULD PROVIDE A PERIOD OF TIME WITHIN WHICH THE GOVERNMENT MUST BRING SUIT ON CLAIMS , JUST AS IT NOW DOES AS TO CLAIMS OF PRIVATE INDIVIDUALS. THE COMMITTEE AGREES THAT THE EQUALITY OF TREATMENT IN THIS REGARD PROVIDED BY THIS BILL, IS REQUIRED BY MODERN STANDARDS OF FAIRNESS AND EQUITY.

BUT THAT , AGAIN , AND I DON'T WANT TO DIVERT YOUFROM IT, THAT I S THE NEXT ISSUE , IS IF THEY STAND IN THE SHOES, THEN WHAT IS THE EXTENT OF WHAT THEY GOT , BASED ON WHAT THE FEDERAL GOVERNMENT WOULD GET, AND I SORT OF FOUND IT STRANGE TO THINK THAT THE FEDERAL GOVERNMENT WOULD HAVE NO LIMITATION IN WHICH TO BRING A FORECLOSURE ACTION AND CAN BRING IT IN.

YEARS OR 10 ON YEARS , BUT I DON'T SEE US, REALLY , THE THRESHOLD ISSUE IS DO THEYGET WHATEVER THE FEDERAL GOVERNMENT GOT, AND THE FEDERAL GOVERNMENT WOULDHAVE HAD TO FORECLOSE, THEN , FIVE YEARS AND THEY ARE AT TWO.

THE FEDERAL GOVERNMENT IS NOT ALLOWED TO HAVE AN UNLIMITED FORECLOSURE PERIOD , WHEN THE FEDERAL GOVERNMENT IS ACTING FOR A PRIVATE BENEFIT.IN THE CASE OF

BUT WHEN THEY GAVE THIS LOAN, WERE THEY ACTING FOR A PRIVATE BENEFIT ? IT WAS A SBA LOAN AFTER HURRICANE ANDREW , THAT, ANDARE YOU SAYING THAT WAS A PRIVATE FWINT LOAN?

THE COURTS WOULD LOOK TO THE QUESTION OF WHAT THE ASSIGNEE IS

WOULD YOU NOW DEGREE THAT WE ARE GETTING SO FAR BEYOND THE ISSUE, THEN , WHERE IS THE CONFLICT.I WOULD GO BACK TO THAT , IF WE ARE GOING TO GET INTO NOW YOU ARE SAYING THAT WE REALLY HAVE TO DECIDE WHAT THE FEDERAL GOVERNMENT WOULD HAVE GOTTEN IN THIS SITUATION. WHERE IS THE CONFLICT WITH LOVEY ON THAT ISSUE?

WELL , LOVEY IS ONLY ONE OF THE THREE BASES FOR CONFLICT HERE, AND EVEN IF THIS COURT WERE TO DETERMINE THAT LOVEY WAS NOT A SUFFICIENT BASIS FOR CONFLICT, THE OTHER TWO BASES FOR CONFLICT ARE ABSOLUTELY CLEAR. THE MORTGAGE CASE WHICH REQUIRES A PREEMPTION ANALYSIS BEFORE DETERMINING WHETHER A FEDERAL STATUTETRUMPS A STATE STATUTE OF LIMITATIONS , THE ANALYSIS THERE IS TAKEN FROM THE FEDERAL CASE , THE , IT WAS TAKEN FROM A FEDERAL CASE, AND SAYS THAT IN ORDER TO DETERMINE WHETHER THERE IS A PREEMPTION OF A STATESTATUTE , YOU FIRST HAVE TO LOOK T O WHETHER CERTAIN FEDERAL REQUIREMENTS AREMET.

IS THAT JUST ANOTHER WAY OF ASKING THE SAME QUESTION,WHICH IS WHETHER THE STATUTE OR LACK OF STATUTE OF LIMITATIONS CAN BE ASSIGNED TO THE PRIVATE PARTY. ISN'T THAT JUST ANOTHER WAIVE ASKING THE QUESTION, BECAUSE IF IT CAN'T BE ASSIGNED, THEN THE STATESTATUTE OF LIMITATION APPLIES.IF IT CAN BE AS LINED - - ASSIGNED, THEN IT DOESN'TAPPLY. IT IS REALLY NOT A PREEMPTION ANALYSIS AT ALL.

WELL , I BELIEVE IT IS A PREEMPTION ANALYSIS.I BELIEVE YOU HAVE TO LOOK EXACTLY TO THE QUESTION OFWHETHER THERE IS A FEDERAL STATUTE THAT SPECIFICALLY IS DIRECTED TO PREEMPT HERE , AND , AGAIN , MELVIN AND MYERSSAYS THAT , IF THERE IS NOT , MELVIN AND MYERS REPRESENT THE STANDARD OF THE UNITED STATES SUPREME COURT CASESTHAT SAYS THERE IS NO FEDERAL COMMON LAW , AND IT SPECIFICALLY SAYS IN THAT CASE, IF THERE IS NO STATUTE OF LIMITATIONS , THAT YOU HAVE TO LOOK TO THE STATESTATUTE OF LIMITATIONS.

YOUR ARGUMENT IS THAT FLORIDA LAW APPLIES HERE.

YES. AND UNDER FLORIDA LAW, ISN'TIT PRETTY CLEAR THAT THE ASSIGNEE STANDS IN THE SHOES OF THE AS I KNOW O R ? OF THE ASSIGNOR, THAT IS THE GENERAL LAW.

RIGHT.

AND WHAT EXCEPTIONS HAVE WE MADE AS TO THE TYPE OF SHOES THAT THE ASSIGNOR WAS WEARING AND THERE IS CERTAIN TYPES THAT HE DOESN'T STAND IN .

WELL , THERE

IN OTHER WORDS, WHAT EXCEPTIONS ARE THERE TO THAT RULE, HAVE WE MADE?

THERE IS THIS PUBLIC -PRIVATEDISTINCTION THAT IS CRITICAL HERE.

HAVE WE MADE THAT PUBLIC-PRIVATE DISTINCTION? YOU ARE SAYING THAT NOW FLORIDA LAW APPLIES, SO UNDER FLORIDA LAW, HAVE W E MADE A PUBLIC/PRIVATE DISTINCTION IN WHICH CERTAIN THINGS CAN BE ASSIGNED OR NOT?

NO, SIR , I AM NOT AWARE OF IT.

LET ME ASK YOU THIS , A FEW MINUTES AGO, I THOUGHT I HEARD YOU SAY SOMETHING TO THE EFFECT THAT I GUESS IN YOUR PREEMPTION ARGUMENT , THAT THE FEDERAL GOVERNMENT IS NOT EXEMPT FROM THE STATESTATUTE OF LIMITATIONS. DIHEAR YOU SAY THAT?

YES . DID I HEAR YOU SAY THAT?

YES. MANY CASES SAY THAT .

THEN THE UNITED STATES VERSUS SUMMERLIN , WHICHCLEARLY SAYS THAT, HAS BEEN OVERRULED BY WHAT?

IT HAS NOT BEEN OVERRULED.IT IS LIMITED INSERT SITUATIONS AND IN ONE PARTICULAR SITUATION ON ALL FOURS WHICH WE HAVE HERE , IS THE SITUATION IN WHICH THE FEDERAL GOVERNMENT IS GOING TO OR WHETHER THE RIGHT , DOESN'T MATTER WHO IT IS, THE RIGHT IS GOING TO BE ENFORCED FOR A PRIVATE BENEFIT VERSUS A PUBLIC BENEFIT.

WHO HAS SAID THAT?

THE MOST RECENT AND CLEAR ES VERSION , WAS IN THE UNITED STATES AND CLEAREST VERSION , WAS IN THE UNITED STATES VERSUS CALIFORNIA CASE.

WHAT STATE WAS THAT ? WHAT COURT WAS THAT?

THE UNITED STATES SUPREME COURT.AND THAT IDEA WAS PICKED UP IN U.S. VERSUS GISELLE AND ALSO AN U.S. SUPREME COURT CASE I N 1997.

YOU SAID , AGAIN , IF THEY ARE ACTING IN A PRIVATE CAPACITY. IF THE GOVERNMENT IS ACTING IN A PRIVATE CAPACITY, THEN THE GOVERNMENT DOES NOT HAVE THAT IMMUNITY FROM THE STATE STATUTE OF LIMITATIONS .

LET ME BE CLEAR. THE UNITED STATES VERSUS CALIFORNIA SAYS THAT . GISELLE SAYS THAT, WHEN THE RIGHT IS ASSIGNED TO A PRIVATE INDIVIDUAL , THE PRIVATE INDIVIDUAL THEN HAS TO LOOK TO THE STATE STATUTEOF LIMITATIONS .

CHIEF JUSTICE: JUSTICE LEWIS.

I WANT TO MAKE SURE, IF YOU ARE FINISHED DISCUSSING THIS DECISION , WE ARE HERE ON A REVIEWING CONFLICT FROM A SUMMARY JUDGMENT . THE SUMMARY FINAL JUDGMENT.

YES.

AND IN FACTUAL STATEMENTS , THERE ARE SOME STATEMENTS MADE IN THE BRIEFS THAT YOUDON'T APPEAR TO CONTRADICT , AND THAT IS WITH REGARD TO THE STATUS OF THE MORTGAGE AND WHAT IT RELATES TO , WHETHER THAT IS A COLLATERAL TO SUPPORT THE GUARANTEE OR THE COLLATERAL TO SUPPORTTHE CORPORATE NOTES, AND THE ISSUE OF ACCELERATION AND WHEN THAT, IN FACT , OCCURRED. ARE THERE FACT ISSUES THAT ARE SWIRLING AROUND, IN ADDITION TO THIS OTHER LEGAL ISSUE?

THERE IS ONLY ONE FACT ISSUE THAT IS SWIRLING AROUND, AND I T WASN'T RAISED UNTIL THIS APPEAL BY THE RESPONDENT. IT WAS NEVER RAISED BEFORE, BECAUSE IT WAS TRIED BY AGREEMENT AND THE FOURTH DCA FOUND IT, AND THAT IS THAT THE MORTGAGE HAD BEEN ACCELERATED IN 1995 , AT THESAME TIME THAT THE NOTE, THE NOTES AND THE GUARANTEES WERE, EXCUSE ME, YEAH, THE NOTES AND THE GUARANTEES WERE ACCELERATED. THAT WAS THE AGREEMENT. THAT IS HOW IT WAS TRIED. THAT IS WHY THERE WASN'T WAS

IT IS NOT HOW IT WAS TRIED. THERE WAS A A FINAL SUMMARY JUDGMENT.

THAT IS HOW IT WAS HEARDBY THE COURT. THERE IS NO DISAGREEMENT WITH THAT BY THE LLP AT THE TRIAL COURT LEVEL. THERE IS NO DISAGREEMENT WITH THAT AT THE FOURTH DCALEVEL.

I THOUGHT THEY SAID THEY RAISED THOSE ALTERNATIVEGROUNDS BEFORE THE TRIALCOURT , THE ISSUE THAT THE MORTGAGE DIDN'T ACCELERATE , SIMPLY BECAUSE THE NOTE HAD BEEN ACCELERATED , BECAUSETHE MORTGAGE WAS TIED TO THE GUARANY OR A SEPARATE INSTRUMENT. THAT WAS TO THE GUARANTYY OR A SEPARATE INSTRUMENT.THAT WAS NOT ONE OF THEIR ASSERTION S?

I D O NOT RECALL THAT BEING ASSERTION . I AM SURE COUNSEL WILL TELL YOU IF I DON'T RECOLLECT THAT AND SHE, DOES BUT I DON'T RECOLLECT THAT AS BEING ONE OF THEIR ASSERTIONS, AND THE FOURTH DCA , WHICH WOULD HAVE REVERSED ON THE GROUNDS THAT IT WASN'T FIT FOR JUDGMENT , INSTEAD FOUND THAT IT HAD, IN FACT , BEEN ACCELERATED .

I GUESS I AM STILL , ASSUMING WE GET TO THESE ISSUES , WHAT I AM TROUBLEDABOUT IS , I GUESS TWO THINGS , IS THAT IT SEEMS THAT IT IS, ON ONE HAND, GOOD POLICY THAT , WHEN SOMETHING LIKE ALOAN, WHICH I S BEING MADE AND ARGUABLY IT IS A , WHEN THE FEDERAL

GOVERNMENT IS MAKING, IT THEY ARE MAKING IT FOR A PUBLIC BENEFIT, TO HELP A BUSINESS THAT MIGHT OTHERWISE FLOUNDER OR GO OUT OF BUSINESS AND THEN CAUSE HARDSHIP, YOU KNOW , ANDCERTAINLY IN A POST HURRICANE ANDREW OR DISASTER SITUATION , AND THAT YOU OUGHT TO ENCOURAGE , YOU KNOW,THAT THAT SHOULD HAVE MARKET ABILITY , AS FAR AS BEING ABLE TO ASSIGN IT , AND ON THE OTHER HAND THE IDEA OF BEING IT IS AN OPEN ENDED LIABILITY , DOESN'T SEEM THAT THAT WOULD BE SOMETHING THAT IS NOT ANTICIPATED . HOWEVER , WE GET TO THE POINTTHAT, WHEN YOUR CLIENTS MADE THESE AGREEMENTS , THEY ARE PRESUMED TO KNOW THE LAW , AND THE LAW IS THAT THE FEDERAL GOVERNMENT COULD HAVE FOREVER TO FORECLOSE ON THEIR PROPERTY , THEN WHERE IS THE UNFAIRNESS FROM YOUR CLIENT'S POINT OF VIEW , AND I AM TRYING , BECAUSE I THINKTHERE IS SOME POLICY THAT GOES INTO THIS , AS WELL A S TRYING TO , YOU KNOW, WHETHER THERE IS A CLEAR-CUT ANSWER.COULD YOU ANSWER THAT FORME.

YES. IT IS UNFAIR, BECAUSE WE ALL UNDERSTAND THAT THERE NEEDSTO BE CERTAINTY IN THESE. MY CLIENT, IN FACT , WELL , IT IS NOT IN THE RECORD , SO I WON'T ELUCIDATE THAT , BUT I THINK IT IS FAIR TO SAY THATTHEY WOULD HAVE HAD NO THOUGHT REGARDING THE EFFECT OF THE MORTGAGES, AND THEY CERTAINLY WOULD HAVE THOUGHT THAT, IF YOU COULDN'T SUE UNDER A GUARANTY , THEN ANY COLLATERAL FOR THE GUARANTY

IF THE SBA COULD HAVE FORECLOSE ODD THIS MORTGAGE IN 2001 , JUST LIKE LLP TRIED , THAT IS IT , WHERE IS THEY ARE GETTING THAT YOUR CLIENT GOT THE BENEFIT OF THE BARGAIN.WHAT IS UNFAIR OF THAT, STANDING IN THE SHOES , IN OTHER WORDS, WHERE DO THEY

WHAT IS UNFAIR , UNFAIR - -

WHAT YOU THINK IS UNFAIR IS THAT THE FEDERAL GOVERNMENT SHOULDN'T BE ONLYTO SUE I N SHOULDN'T BE ABLE TO SUE IN PERPETUITY.

THERE ARE CASES THAT SAY IT CAN'T AND THE UNITED STATES VERSUS CAPITAL COURT , A FIFTH CIRCUIT CASE AND IN THAT SITUATION DENIED A FORECLOSURE TO THE SBA , BECAUSE OF THE DELAY OF ENFORCING AFTER THE TEXASSTATUTE OF LIMITATIONS . THE SAME EXACT SITUATION AS WE HAVE HERE , OTHER THAN THE FACT THAT THAT WAS A DIRECT MORTGAGE, INSTEAD OF THIS IS A MORTGAGE OF GUARANTYY . I AM PAST MY TIME. I APPRECIATE YOUR HONORS. THANK YOU.

GOOD MORNING. MY NAME IS BETH COLEMAN ANDI AM HERE ON BEHALF O F LLP MORTGAGE LTD .

YOU DO AGREE THAT IT IS LLP.

THE GOVERNMENT NO LONGER ENJOYS , THE BASIS HERE , ENJOYS THIS IMMUNITY FROM THE STATE STATUTE OF LIMITATIONS.DO YOU AGREE WITH THAT?

NO. THE CASES HOLD CONSISTENTLY THAT, AS IN HE WILL ADORE ADD-, THE LEFT CIRCUIT IN AS IN ELDORADO , THE ELEVENTH CIRCUIT I N ELDORADO HELD THAT THERE IS TIME TO HOLD A CLOSER ACTION . I HAVE HEARD NOTHING TODAYTO SUGGEST THAT ANYTHING HASCHANGED IN THAT LAW.

HE HAS SUGGESTED THAT THERE IS A UNITED STATES SUPREME COURT CASE THAT SAYS THE OPPOSITE.

WHAT I HEARD THIS MORNING WAS MELVINY SOMEHOW CHANGESTHAT, BUT THE CASES THAT THE PETITIONERS HAVE CITED HAVEN'T ARISEN IN THIS CONTEXT. THEY HAVEN'T ARISEN IN A LOAN CONTEXT AND DISCUSSEDTHIS ISSUE.

WHAT ABOUT THE FIFTH CIRCUIT CASE THAT YOUR OPPONENT JUST REFERRED TO , WHICH DIRECTLY INVOLVED THE.

WHICH CASE IS THAT? I AM SORRY.

WHERE THE TEXAS STATUTEOF LIMITATIONS APPARENTLY EXPIRED AND THE SBA WAS ESTOPPED FROM FORECLOSURE, ONCE THE LIMITATIONS PERIOD SET OUT IN THE TEXAS STATESTATUTE , HAD PASSED.

I A M AFRAID I AM NOT ENTIRELY SURE WHICH CASE IS BEING REFERRED TO THERE , BUT

WHY DON'T WE BRIEF COUNSEL . IS THAT CASE IN YOUR JURISDICTION?

I AM AFRAID I DIDN'T REVIEW THAT INDICATES, YOURHONOR. THE CASES, AGAIN , ARE THAT CASE, YOUR HONOR. THE CASES , AGAIN , ARE CONSISTENT AS ELDORADO SAID , EVERY COURT ADDRESSING THIS ISSUE HAS FOUND THAT THE FEDERAL GOVERNMENT HAS AN UNLIMITED PERIOD OF TIME TO FORECLOSE.THAT EITHER COMES FROM THE FACT THAT 24.15- C SAYS THAT NOTHING I N 24.15-A AFFECTS THE RIGHT TO OBTAIN TITLE TO PROPERTY OR BECAUSE THE GOVERNMENT SIMM UNION FROM STATUTES OF IMPLEMENTATION UNLESS CONGRESS HAS SPECIFICALLY PROVIDEOTHERWISE. CONGRESS HASN'T SPECIFICALLY PROVIDED OTHERWISE, SO THEY CAN BRING THE ACTION AT ANY TIME.

LET ME ASK YOU, IS THERE SOME EQUITABLE PRINCIPLE THAT WOULD LIMIT TO SOMETHING LESS THAN AD INFINITUM , THE ABILITY TO FORECLOSE ON A MORTGAGE ? HAVE THEIR BEEN CASES THAT SAY WHERE THE UNDERLYING PROPERTY HAS CHANGED HANDS , CERTAINLY YOU CAN'T FORECLOSE ON A MORTGAGE ATTHAT TIME , REGARDLESS OF THE STATUTE OF LIMIT AGENCIES ISSUE.

WELL, I HAVEN'T SEEN CASES THAT HAVE LIMITED IT IN THAT CONTEXT. I MEAN, I WOULD , MORTGAGE FORECLOSURE ACTIONS ARE EQUITABLE PROCEEDINGS , PRESUMABLY IF THERE WAS SOME TYPE OF LACHES ARGUMENT , THAT MIGHT ARISE , IF THE PROPERTY CHANGED HANDS, SOMETIMES THAT CAUSES THE LOAN TO ACCELERATE , IN AND OF ITSELF . BUT THAT IS NOT THESITUATION THAT WE HAVE HERE.

HOW DOES I T MAKE SENSE, FROM JUST A PRACTICAL STANDPOINT , THAT IF THE FEDERAL GOVERNMENT ASSIGNS TO A PRIVATE INDIVIDUAL , A N IN DEBTEDNESS , AND THAT THE PRIVATE INDIVIDUAL WOULDN'T BE SUBJECT T O THE SAME LIMITATIONS A S IF THE SAVINGS AND LOAN I N ORLANDO HAD ASSIGNED THE SAME INDEBTEDNESS. HOW DOES THAT MAKE SENSE IF WE ARE DEALING WITH TWO PRIVATE INDIVIDUALS THAT ARE HOLDING THE MORTGAGE AT THAT TIME.

WELL , AGAIN , THE REASON THAT THE CASES HAVE HELD THAT AN ASSIGN EE GETS A LONGER PAYMENT IN CONNECTION WITH SUING ON A SHORTER NOTE AS OPPOSED TO SIX YEARS , THE STATE STATUTE OF LIMITATIONS , THE CASE IS BASED ON THE GENERAL PROPOSITION THAT THE ASSIGNEE STANDS IN THE ASSIGNOR'S SHOES. THAT IS THE CASE LAW THAT WE HAVE.

DON'T THOSE POLICIES GO OUT THE WINDOW , ONCE THIS IS OWNED BY A PRIVATE ENTITY? THIS I S NOW AN ASSET OF A PRIVATE ENTITY , AND SO WHY SHOULDN'T THAT PRIVATE ENTITY BE TREATED JUST LIKE ANY OTHER PRIVATE ENTITY, WITH REFERENCE TO THE LAWS REGULATING, YOU KNOW , WHEN THEY CAN BRING AN ACTION AND THAT KIND OF THING , BECAUSE THE PUBLIC POLICY OF ALLOWING THE FEDERAL GOVERNMENT , NOW , TO BRING THAT AT ANY TIME , I S A WHOLE DIFFERENT MATTER, BUT WHAT POLICY, ONCE IT IS I N PRIVATE HANDS , WOULD SUPPORT HAVING A PRIVATE ENTITY , NOW , HAVING THIS ADVANTAGE OVER ALL OTHER PRIVATE ENTITIES. WHAT POLICY WOULD SUPPORT IT?

AGAIN, IT IS NOT THAT IT IS LOOKING TO HAVE SOME SORT OF ADVANTAGE OVERALL

OTHERPRIVATE ENTITIES , OTHER THAN WHAT I T BARGAINED FOR WHEN IT BOUGHT THE LOANS FROM THE FEDERAL GOVERNMENT.

IT DOES HAVE ADVANTAGE OVERALL OTHER PRIVATE ENTITIES, IF IT HAS THIS ENDLESS RIGHT.I AM TRYING TO FIND THE POLICY THAT WOULD SUPPORT ANY HOLDING LIKE THAT.

WELL , THE SBA LOAN , PURSUANT T O THE CODE OF FEDERAL REGULATIONS THAT AUTHORIZE THE SBA TO MAKE THESE LOANS, SPECIFICALLY SAYS THEY ARE AUTHORIZING AUTHORIZED AND EXECUTED UNDER A FEDERAL PROGRAM TO ACHIEVE NATIONAL PURPOSES, SO MAKING THE LOAN IS A PUBLIC PURPOSE. OBVIOUSLY COLLECTING ON THE LOAN HAS TOO BE A PUBLIC PURPOSE .

LET ME FOLLOW-UP WITH WHAT JUSTICE ANSTEAD IS SAYING, IS THAT YOU HAVE, IT SEEMS THAT THE FEDERAL GOVERNMENT THAT KNOWS HOW TO PASS STATUTES , THAT THIS WOULD BE , YOU WOULD WANT THIS UNIFORM AROUND ALL 5 0 STATES, RIGHT, THAT WE DON'TWANT THE SBA SAYING WHEN THEY ASSIGN IT IN VIRG, ONETHING IS GOING TO HAP IN VIRGINIA, ONE THING IS GOING TO HAPPEN BUT IN FLORIDA , SOMETHING ELSE.IT WOULD SEEM THAT WHAT IS IMPORTANT WITH THIS, IS WHETHER, AND I DON'T KNOW WHY THE SBA ASSIGNED IT. I DON'T KNOW IF THAT IS A REGULAR THING THEY DO OR IF THEY DO IT , YOU KNOW, AND HERE AGAIN, I A M ASSUMING YOUR CLIENT'S AUDIT HAD MARKET ABILITY OR WOULDN'T HAVE PURCHASED IT AND WOULD HAVE TO SUE THE FEDERALGOVERNMENT, THAT THEY WOULD HAVE TO EXPLICITLY STATETHAT THE ASSIGNMENTS OF OBLIGATION WOULD BE SUBJECTTO THE SAME STATUTE O F LIMITATION, AND THAT IS WHERE THE QUESTION OF THE PREEMPTION ARGUMENT THAT MR. GOLDEN I S MAKING , SHOULDN'T THE FEDERAL GOVERNMENT HAVE TO MAKE IT EXPLICIT THAT THEIR LONGER OR NONEXISTENT STATUTE OF LIMITATIONS WOULD APPLY , WHEN THERE IS AN ASSIGNMENT FOR US T O RECOGNIZE THAT, RATHER THAN THE STATE STATUTE OF LIMITATIONS?

WELL, NO , AND THAT IS NOT WHAT THE CASE LAW SAYS , THAT , CONGRESS IS PRESUMED TO KNOWWHAT THE LAW IS , WHEN IT PASSED 24.15. IT DECIDEDED THAT IT DID NOT WANT TO PLACE A LIMITATION ON MORTGAGE FORECLOSURE ACTIONS AS OPPOSED TO THE SHORTER TIME

OR , NOW , THAT IS FOR THE FEDERAL GOVERNMENT.

FOR THE FEDERAL GOVERNMENT.

NOW I AM TALKING ABOUT THIS IDEA THAT, FOR WHATEVER REASON THEY DECIDE THEY AREGETTING OUT OF THE LOAN BUSINESS, THEY DON'T REALLY CARE, YOU KNOW , THEY TRANSFERRED IT T O YOUR CLIENT FOR A DOLLAR, YOUKNOW, THEY REALLY JUST WEREN'T EVEN GOING TO WORRY ABOUT COLLECTING IT , SO THE TAXPAYERS AREN'T GOING TO GET THEIR MONEY BACK . NOW , WE G O BACK , THE ONLY PERSON THAT IS GOING TO BENEFIT FROM GETTING MORE THAN A DOLLAR , I S A PLIFT ENTITY , AND A PRIVATE ENTITY. WHY , UNDER THOSE CIRCUMSTANCES, SHOULDN'T THE, IF THERE ISING IF TO BE PREEMPTION, WHY IF THEREIS GOING TO BE PREEMPTION , WHY SHOULDN'T THAT BE EXPLICIT?

BECAUSE THE CASE LAW HAS BEEN UNIFORM UP UNTIL NOW.

IT IS REALLY HARD WHEN YOU ARE TALKING TO THE HIGHEST COURT IN THE STATE ABOUT CASE LAW, AND WE ARE ALL , THERE IS A CASE OUT OF VIRGINIA, WHICH I AM NOT SURE ANYONE CITED , LONG VERSUS WHEELER , ARE YOUFAMILIAR WITH THAT FROM THE VIRGINIA STATE SUPREME COURT?

YES, YOUR HONOR.

DIDN'T IT NOT SAY THAT WHEN THERE WAS A SBA ASSIGNED ASSIGNEE , THAT IT WAS NOT GOING TO GIVE THE ASSIGNEE THE IMMUNITY OF THE FEDERAL GOVERNMENT?

YES.

THAT HIS CASE LAW .

THAT IS A MINORITY .

IS THERE SOME REASON WHY YOU HAVE NOT CITED THAT CASETO US?

THAT IS NOT A CASE

I MEAN , ISN'T THAT A CASE VIRTUALLY RIGHT ON POINT?

IT WASN'T RAISED BY THE PETITIONERS.IF THERE WAS A THREE-JUDGE DISSENT, IT IS A MINORITY VIEW.

YOU KNOW , WE HAVE ENOUGH DIFFICULTY DECIDING THESE CASES WHEN WE ARE FULLYINFORMED ABOUT THE RELEVANT LAW OUT THERE , AND THERE IS AN ETHICAL REQUIREMENT THAT COUNSEL, IF THEY KNOW A BALLPARK LAW THAT WOULD ASSIST THE COURT , THOSE CASES BE CITED TO THE COURT, BECAUSE WE ARE SIMPLY TRYING TO DEVELOP POLICY FOR THESTATE OF FLORIDA, YOU KNOW , THAT IS A S CLOTHES TO BEING CORRECT AS WE CAN , SO THAT IS AS CLOSE TO BEING CORRECT AS WE CAN, SO I WOULD ADMONISH YOU PLEASE , THAT WHEN YOU FIND ADECISION THAT APPEARS TO BE IN ONE WAY O R THE OTHER , TO PLEASE CITE IT TO THE COURT .

I AM SORRY , YOUR HONOR , AND I DID BECOME AWARE O F THAT CASE RECENTLY, AND, AGAIN , IT WAS DECIDED IN A SMALL MINORITY AND WE BELIEVE IT WAS NOT CORRECTLY DECIDED.

WHY IF , AFTER THE FEDERAL GOVERNMENT HAS RECEIVED THEIR LUCRE OR WHATEVER , THAT IS THAT THEY HAVE GOTTEN SOMETHING, WHAT INTEREST REMAINS , AS FAR AS THE FEDERAL GOVERNMENT IS CONCERNED , IN HAVING THIS OPEN ENDED LIMITATION PERIOD FOR A PRIVATE ENTITY?

WELL , THE REALITY OF THESE LOANITION SITUATIONS , IS THAT THESE LOAN SITUATIONS, IS THAT ONE OF THE WAYS THE GOVERNMENT COLLECTS AND RECOUPS THOSE LOAN PROCEEDS THAT IT LENT FOR PUBLIC PURPOSES, IS TOSELL THEM ON THE SECONDARY MARKET. IF THESE LOANS HAVE NO VALUE IN ANYONE 'S HANDS OTHER THAN THE SBA, THAT I S GOING TO DRY UP. NOW THE SBA IS IN THE BUSINESS OF COLLECTING LOANS, INSTEAD OF SERVING

THEY ONLY HAVE , IT DEPENDS WHEN, IN THE PROCESS , THEY ARE ASSIGNED. IF THEY ARE ASSIGNED IT IMMEDIATELY, THEN THEY HAVE GOT FIVE OR SIX YEARS. NOW , THIS ONE IS , I DON'T KNOW, I GUESS I T SAID IT IS SOMETHING THAT IT IS A MATTER IF WE DECIDE AGAINST YOU, THAT BETWEEN YOU AND THE FEDERAL GOVERNMENT , AS TO WHETHER THEY ASSIGNED YOU SOMETHING UNDER FALSE PRETENSES, BUT I DON'T THINK THAT SHOULD BE , I MEAN , THE FACT, I MEAN SOME STATES HAVE A 20-YEAR STATUTE OF LIMITATIONS LIKE VIRGI KNOW YEAH DID. TO LIKE VIRGINIA DID. TO SAY THAT YOUR CLIENT COULD HAVE WAITED FOR 50 YEARS, WHICH IS WHAT YOU ARE SAYING IS SUBJECT EQUITY, TO FORECLOSE ON THIS , THAT YOU NEED A CLEARER STATEMENTFROM THE FEDERAL GOVERNMENT THAT THEY INTENDED THEIR ASSIGNEE'S TO ENJOY WHATEVER THIS ELUSIVE STATUTE OF LIMITATIONS IS FOR THE FEDERAL GOVERNMENT.

WELL , AGAIN , IT IS A MATTER O F LOOKING WHAT EVERYONE BARGAINED FOR TO BEGIN WITH, AND MANY OF YOU HAVE RAISED THIS ISSUE TO BEGIN W YOU ARE ASKING TO TO BEGIN WITH. YOU ARE ASKING TO CHANGE THERULE, WHICH IS THAT THE ASSIGNEE STAND I N THE ASSIGNOR'S SHOES AND GUESSWHAT THE ASSIGNOR HAD , AND THIS WOULD GIVE THE CRAVERO 'S MORE

THAN WHAT THEY BARGAINED FOR.

THEY GET EVERYTHING UNDER THE CONTRACT, BUT THE STATUTE OF LIMIT AGENCIES ISSUE IS EXTERNAL TO THE CONTRACT, AND I DON'T THINK THERE WAS STATUTE OF LIMITATIONS ISSUE IS EXTERNAL TO THE CONTRACT , AND I DON'T THINK THERE IS ANYTHING THERE THAT WAS TO APPLY , AND THIS WAS TO APPLYTO THE FEDERAL GOVERNMENT. I DON'T THINK THERE IS ANYTHING THAT SAYS IT WAS PERSONAL TO THEM AS OPPOSED TO HERE , THE INSTRUMENT BEING ASSIGNED , JUST GOES ALONG WITH THE ASSIGNMENT.

WELL , A LIMITATION PERIOD REALLY IS INCIDENT TO THE INSTRUMENT THAT IT GOES ALONG WITH. IT DOESN'T, THERE ISN'T MUCH TO SAY ABOUT A LIMITATION PERIOD , UNLESS YOU ARE BRINGING AN ACTION T O ENFORCE THE INSTRUMENT , AND WHILE YOU MAY SAY THAT IMMUNITY IS PERSONAL TO THE GOVERNMENT , LPP ISN'T ASKING FOR THE ENTIRE CLOAK OF SOVEREIGN IMMUNITY BE PASSED TO IT. IT IS ONLY ASKING THAT IT GET THAT LIMITED RIGHT THAT THE GOVERNMENT HAD , WHICH I S THE RIGHT TO FORECLOSE AT ANY TIME, AND THAT THAT PASSED, AND THERE I S NOTHING PERSONAL ABOUT. THAT I MEAN, ONCE THIS THING GOT ASSIGNED , THE ONLY DIFFERENCE TO THE ONLY GORES IS WHO THEY TO THE OBLIGORS IS WHO THEY WROTE THE CHECK TO.

IS THERE ANY SUGGESTION THAT THE LIMITATION SHOULD START RUNNING UPON THEASSIGNMENT. THAT IS THAT , ONCE THE ASSIGNMENT IS MADE TO A PRIVATE ENTITY, THAT NOW THE PRIVATE ENTITY NOW , IS DIFFERENT CLOCK STARTS RUNNING, ONCE IT IS IN THEHAND OF THE PRIVATE ENTITY. ANY AUTHORITIES THAT TALKABOUT THAT?

NO, NOT THAT I AM AWARE OF, YOUR HONOR.

WHY WOULDN'T THAT BE A POSSIBLE ALTERNATIVE HERE ?

THAT IT STARTS RUNNING , AS SOON AS THE ASSIGNEE GETS IT?

IN OTHER WORDS AS SOON AS IT I S CON VERBT VERT ED CONVERTED INTO PRIVATE HANDS. EYE GUESS THAT IS SOMETHINGTHAT CONGRESS COULD DECIDE TO DO OR THE STATE LEGISLATURE POSSIBLY, BUT , AGAIN - - .

I GUESS THAT IS SOMETHING THAT THE CONGRESS COULDDECIDE TO DO OR THE STATE LEGISLATURE POSSIBLY, BUT , AGAIN. LPP IS ONLY TRYING TO GET WHAT IT BARGAINED FOR, WHICH IS WHAT THE GOVERNMENT HAD, WHICH IS AN EXTENDED LIMITATIONS PERIOD.

YOU ARE SAYING THAT THE LAW IS 100 PERCENT CLEARTHAT, HAD THE SBA SOUGHT TO FORECLOSE AT THE SAME EXACT TIME, THAT THEY WOULD HAVE GOTTEN THE BENEFIT OF THE UNLIMITED STATUTE OF LIMITATIONS , THAT THE CASE LAW IS UNIFORMLY , NOT THAT THERE IS A MAJORITY AND MINORITY VIEW , THAT UNIFORMLY CRYSTAL CLEAR THAT THE SBA COULD HAVE FORECLOSED AT ANY TIME, SUBJECT TO EQUITABLE DEFENSES.

I THINK THAT IS THE CASE. THE CASE LAW THAT HAS BEEN CITED TO SAY THAT SOMEHOWTHE REASON THE SBA COULDN'T DO THAT IS BECAUSE IT WAS A PRIVATE PURPOSE , BECAUSE IS THE SBA WAS BECAUSE THE SBA WAS JUST TRYING TO COLLECT MONEY OR SOMETHING LIKE THAT , THE CASES THAT WERE CITED IN THE BRIEF , ARE NOT CASES THAT ARISE IN THE LOAN CONTRACT.THEY ARE CASES THAT ARE COMPLETELY DIFFERENT CIRCUMSTANCES , WHERE THE PARTICULAR RIGHT THAT THE GOVERNMENT WAS PURSUING , WAS FOUND TO BE A PRIVATE RIGHT AND NOT A PUBLIC RIGHT , WHEREAS COLLECTING PUBLIC FUNDS THAT WERE LOANS TO THE PUBLIC

I GUESS HOW DO WE KNOW, DON'T WE HAVE TO ENGAGE IN A PREEMPTION ANALYSIS, TO UNDERSTAND WHETHER THE FEDERAL GOVERNMENT INTENDED FOR THIS LONGER STATUTE OF

LIMITATIONS TO APPLY AND NOT , IN ALL SITUATIONS , REGARDLESS OF WHAT THE STATE STATUTE OF LIMITATIONS

I DON'T THINK SO.FIRST OF ALL , AGAIN, THE WAY THE CASES HAVE VIEWED THE ISSUE , I S THE LAW IS CLEAR THAT THE GOVERNMENT HAS AN UNLIMITED PERIOD OF TIME TO FORECLOSE.WHAT THE LAW IS NOT CLEAR ON OR WHAT THE LAW , THE STATUTE DOESN'T EXPRESSLY ADDRESS , IS WHAT HAPPENS WHEN IT IS ASSIGNED, AND SO TO DETERMINE WHAT HAPPENS WHEN IT IS ASSIGNED, YOU LOOK TO STATE LAW, AND STATE LAW PRETTY UNIFORMLY SAYS AN ASSIGNEE STANDS IN AN ASSIGNOR'S SHOES, AND AS JUSTICE CANTERO STATES, YOU PRETTY MUCH GET TO THE SAME PLACE IF YOU APPLY A PREEMPTION ARGUMENT.

HOW DO YOU GET TO LOVEY?

THAT IS SORT OF THE DANGER OF TAKING THESE UNRELATED STATEMENTS OUT OF ISOLATED CASES. LOVEY AROSE IN A DIFFERENT CONTEXT, AND, AGAIN, IT ALSO LEFT OPEN THE POSSIBILITYTHAT, IF THE ASSIGNMENT IS TO A PRIVATE AS I G O KNEE BUT IT IS - - ASSIGNEE BUT IT IS FOR A PUBLIC PURPOSE , THEN THAT IMMUNITY PASSES , BUT

YOU DON'T THINK THERE IS A CONFLICT.

I DON'T THINK IT IS A CONFLICT. IT IS A FIRST DCA OPINION. IT AROSE 40 YEARS AGO IN A DIFFERENT CONTEXT. HASN'T BEEN FOLLOWED BY ANY FLORIDA COURT FOR THAT PARTICULAR PROPOSITION , AND THEN THE LATER CASES , LIKE THE KATO CASE , COMES OUT AND TALKS ABOUT THE LATERSITUATION, WHERE YOU HAVE ASSIGNMENT AND AGREES THAT THE ASSIGNEE GETS THE GOVERNMENT'S LONGER LIMITATION PERIOD ON THE ASSIGNMENT . AND, AGAIN, YOU HAVE GOT THE SITUATION WHERE THE NOTE IS BEING IN THE ASSIGNEE'S HANDS , SUBJECT TO THE FEDERAL LIMITATION PERIOD. THE MORTGAGE THAT FOLLOWS SHOULD ALSO BE SUBJECT TO THE FEDERAL LIMITATION PERIOD. WE WOULD ALSO ASK THE COURT TO AFFIRM UNITY FOUND, THAT THE STATE STATUTE O F LIMITATIONS APPLIED. WE WOULD ASK THAT JUDGE KLEIN 'S DECISION BELOW , BE AFFIRMED, BECAUSE THE ACTION WAS TIMELY BROUGHT , AND WE HAVE SET THAT OUT I N OURBRIEF. THESE ARE SEPARATE INSTRUMENTS.YES, THEY WERE ALL ENTERED INTO AT THE SAME TIME AS PART OF THE SAME TRANSACTION, BUT THEY ARE S EPARATE INSTRUMENTS, THEY INVOLVE SEPARATE ENTITIES .

WAS THAT ARGUMENT MADE TOTHE DISTRICT COURT?

YES, IT WAS.

BUT THE DISTRICT COURT NEVER DISCUSSES IT IN THEIR OPINION, DO THEY?

NO , THEY DON'T, BUT IT HAS BEEN FULLY BRIEFED HERE AND IT WOULD BE DISPOSITIVE.

AND YOU ALSO RAISED THAT AT THE PLEADING STAGE IN THETRIAL COURT?

THE TRIAL COURT , I THINK THE WAY THE ARGUMENT WASPRESENTED IN THE TRIAL COURT, WAS EVEN IF THE ACTION ONTHE NOTE I S TIME-BARRED , YOU CAN STILL BRING THE FORECLOSURE ACTION , AND THE JUDGE SORT OF REJECTED THAT ARGUMENT.

WAS THE ARGUMENT MADE THAT THE MORTGAGE HAD NEVER BEEN ACCELERATED , ONLY THENOTE HAD BEEN , AND THAT THE MORTGAGE WAS ASSOCIATED WITH THE GUARANTY NOT THE NOTE?

THE ARGUNIFORM WAS MADE. IT PROBABLY THE ARGUMENT WAS MADE. IT PROBABLY WASN'T MADE EXACTLY SAME WAY A S IT IS MADE HERE BEFORE THE FOURTH DCA , BUT IT WAS ARGUED THAT IT WAS TIME-BARRED.

I F THE FOURTH DISTRICT CONCLUDED THAT IT WAS NOT PRESERVED , WAS IT ARGUED BEFORE THE TRIAL COURT.

I DON'T THINK THAT IT WAS ARGUED, AND , AGAIN , PART OF THE BASIS FOR OVERTURNING, THE BASIS THAT WAS ARGUED FOR OVERTURNING THE SUMMARY JUDGMENT , IS IF THE LOWER COURT MADE A DECISION ABOUT WHEN THE MORTGAGE WAS ACCELERATED, AND FOR SOME REASON, IT SUGGESTED THAT IT WAS AGREED OR TRIED BY CONSENT THAT, THE MORTGAGE WAS ACCELERATED. THAT WAS NEVER THE CASE. THERE WERE SOME ADMISSIONS THAT HAD NOT BEEN ANSWERED , AND THERE WAS AN AGREEMENT THAT THE NOTE HAD BEEN ACCELERATED , BUT THERE ARE DEMAND LETTERS THAT WERE SENT TO THE CORPORATE BORROW ER THAT SAID W E ARE ACCELERATING THE NOTE. THEY DIDN'T MENTION THEMORTGAGE. SO THERE WASN'T A N ADMISSION.THERE WAS AN ARGUMENT THAT THE MORTGAGE HAD NOT BEEN ACCELERATED AND WAS NOT BARRED, SIMPLY BECAUSE THE NOTE ACTION WAS BARRED .

ONCE THE FOURTH DCA HELD THAT THE SBA COULD ASSIGN , AND YOUR CLIENT STOOD IN THESHOES OF THE SBA FOR STATUTE OF LIMITATIONS PURPOSES , THESE OTHER ISSUES BECAME MOOT.

THEY DID, BUT , AGAIN, IT IS AN ALTERNATIVE BASIS TO AFFIRM THE REVERSAL OF SUMMARY JUDGMENT BELOW.

I UNDERSTAND. I AM JUST SAYING THAT IS A REASON WHY THE FOURTH DCA WOULD NOT DISCUSS IT , BECAUSE IT IS NOT AN ISSUE. IF YOU COULD ASSIGN THE NOTES AND MORTGAGES IN THE FIRST PLACE.

CORRECT. CORRECT. NO LONGER

AND CERTAINLY IT IS NOTAN ISSUE OF CONFLICT HERE. I MEAN, WE DON'T NEED TO REACH THAT ISSUE EITHER , RIGHT?

RIGHT . UNLESS IT IS JUST AN ALTERNATIVE BASIS TO AFFIRM THE FOURTH DCA BELOW. WE ASK THE COURT TO AFFIRM THE FOURTH DCA'S OPINION, IF THERE I S NOTHING FURTHER.

CHIEF JUSTICE: THANK YOU. HOW MANY MINUTES?

AS WE ARE DISCUSSING THE POLICY , THAT IS INVOLVED HERE, WOULDN'T YOU AGREETHAT THE SBA LOAN IS A FORM THAT THE GOVERNMENTAL ALLOWS BUSINESSES TO FORM LOANS AT LESSER INTEREST RATES THAN IF YOU GO OUT INTO THE OPEN MARKET.

I AM NOT SURE THE TERM SUBSIDY, OTHER THAN LOWER INTEREST RATES.

ISN'T THAT GENERALLY WHAT THE SBA DOES IS ADVANCE S LOANS AT LESSER INTEREST RATES TO ENCOURAGE SMALL BUSINESS. ISN'T THAT THE WHOLE PURPOSE OF THE SBA?

THESE TWO PARTICULAR LOANS WERE DONE FOR A DIFFERENT PURPOSE. THAT IS THEY WERE RIGHT ON THE HEELS OF HURRICANE ANDREW AND FEMA CAME IN.

FEMA DOES THE SAME THING, DOES IT NOT? IT COMES IN AT LOWER INTEREST RATES THAN THE PUBLIC MARKET. ISN'T THAT REALLY HOW THESE THINGS OPERATE?

GENERALLY SPEAKING, THAT IS MY UNDERSTANDING.

AND THAT IS WHAT WE MUST DEAL WITH WITH POLICY, IS IT NOT? GENERALLY SPEAKING, THESEARE WAYS TO HELP , TO HELP SOMEONE THAT IS IN NEED OF A LOAN.

VEERS OF COURSE .

> THAT IS DAMAGED , WHETHER THROUGH FEMA OR WHATEVER.

OF COURSE.

AND I ASSUME IT IS NOT ALSO A POLICY THAT GOVERNMENT AGENCIES ATTEMPTTO WORK WITH , THOSE LOAN RESIP YANTS THAT MAY BE STRUGGLING TO RESIPIANTS THAT MAY BE STRUGGLING TO MAKE REPAYMENTS , IS THAT NOTALSO THE POLICY?

THAT IS NOT STATED BUT THAT IS THE POLICY .

SO IF THIS, IN THE STRUCTURE THAT WE ARE TALKING ABOUT IS GRANTING LOW -INTEREST LOANS AND TRYING TO REHABILITATE BUT IT JUST DOESN'T WORK, ANDTHAT TIME PERIOD HAPPENS TO GO BEYOND A STATE STATUTE OF LIMITATIONS PERIOD, THEN THOSE BECOME WORTH LESS IN THE HANDS OF INDIVIDUALS, CORRECT?

ONLY IF THEY ARE ACCELERATED . ACCELERATION IS THE POINT HERE. WE ARE NOT TALKING ABOUT ONGOING

BEGIN, YOU ARE ENCOURAGING THE FEDERAL GOVERNMENT TO START ACCELERATED AND THEN TRANSFERRING AND PUTTING THIS IN THE HANDS OF PEOPLE THAT ARE NOT PARTIES TO IT , AND GETTING OUT OF THE REHABILITATION KIND OF CONCEPT , SO AS A POLICY, SO IT IS , WE WOULD B E ENCOURAGING THE GOVERNMENT TO BE TURNING THESE OVER , ACCELERATE THEM , GET THEM IN THE HANDS OF THE PUBLIC AND LET'S GET THEM IN LITIGATION. THAT WOULD BE WHAT WE WOULD BE.

YOUR HONOR, THE POLICY ISSET FORTH BY CONGRESS.THERE IS NO SPECULATIONABOUT IT. CONGRESS SPECIFICALLY SAID THAT IT I S THEIR INTENTION TO MAKE THE FEDERAL GOVERNMENT REDUCE THE AMOUNT OF TIME THAT I T HAS WITH THESE LOANS, TO TIME THAT PRIVATE INDIVIDUALS V THE POLICY IS NOT THE OTHER WAY. THE POLICY IS NOT TO LET A PRIVATE INDIVIDUAL HAVE AN EXPANDED PERIOD OF TIME. CONGRESS SPECIFICALLY SAID, THAT THE POLICY IS TO MAKE THE FEDERAL GOVERNMENT REDUCE ITS TIME TO A WHAT PRIVATE INDIVIDUALS HAVE.

THANK, MR . GOLDEN.THANK TO BOTH PARTIES .