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Crescent Miami Center, LLC v. Florida Department of Revenue

CHIEF JUSTICE: WE HAVE THE LAST CASE . CRESCENT MIAMI CENTER VERSUS FLORIDA DEPARTMENT OF REVENUE.MR. GOLDBERG. GOOD MORNING. MAY IT PLEASE THE COURT. FRED GOLDBERG ON BE HALF OF PETITIONER CRESCENT MIAMICENTER. IN THIS CASE , THE GRANT OR CRESCENT REALTY , TRANSFERRED CERTAIN REAL PROPERTY TO ITS WHOLLY OWNED SUBSIDIARY MIAMI CENTER.

CAN YOU GIVE US A LITTLE PRIMER ON TRANSACTIONS INVOLVING REAL PROPERTY, IN TERMS OF WHEN THERE IS A SALE AND WHEN THERE IS A GIFT AND WHAT OTHER KINDS OF TRANSACTIONS THERE ARE, AND LEADING UP TO WHAT YOU BELIEVE TO BE THE INTENT BEHIND THE STATUTORY SCHEME THAT CALLS FOR DOC STAMPS ON TRANSACTIONS BUT COULD YOU START WITH WHAT KINDS OF TRANSACTIONS ARE THERE OUT THERE IN THE WORLD , AND THEN LET'S TALK ABOUT WHAT KIND OF COVERED BY THE DOC STAMP LAW. WOULD YOU MIND ADDRESSING IT THAT WAY.

SURE. I WOULD BE GLAD TO. YOUR HONOR, THE DEPARTMENT OF REVENUE 'S POSITION IN THIS CASE IS THAT THERE ARE TWO TYPES OF TRANSACTIONS. THERE ARE GIFTS, WHICH ARE NOT TAXABLE , AND THERE ARE PURCHASES , WHICH ARE ALL, EVE AND EVERYONE , TAXABLE , UNLESS THEY FALL WITHIN AN EXPRESS EXEMPTION OR EXCEPTION WITHIN THE TAXING STATUTE . OUR CONTENTION IS THAT THAT IS NOT IN ALIGNMENT WITH THE EXPRESS LANGUAGE OF SECTION 201.02.

COME BACK AND TELL ME, AGAIN , WHAT KINDS OF TRANSACTIONS ARE THERE. WHAT IS ON THE RAINBOW OUT THERE, OR DO WE START OVER HERE? DO WE HAVE GIFTS , AND OVER HERE, DO WE HAVE A STRICT HANDS-OFF SALE , YOU KNOW , BETWEEN TWO PARTIES , AND WHAT HAVE WE GOT IN THE MIDDLE?

I WOULD SUPPOSE, YOUR HONOR, THAT ON ONE END OF THE SPECTRUM , THAT WOULD BE THE GIFT FOR LOVE AND AFFECTION, SUCH AS WAS DEALT WITH BY THIS COURT IN , I BELIEVE , CULBREATH VERSUS REED . ON THE FAR END OF THE SPECTRUM IN THE OTHER DIRECTION, WOULD BE THE STANDARD TRANSACTION. CASH.

PURCHASE AND SALE AGREEMENT.

YES. AND SOME WHERE IN THE MIDDLE WOULD BE A SITUATION SUCH AS WE HAVE HERE , WHERE WE HAVE PROPERTY TRANSFERRED FROM A PARENT CORPORATION TO A SUBSIDIARY , PARENT BUSINESS ENTITY TO A SUBSIDIARY .

NO DOC STAMPS ON GIFTS?

THERE ARE NO DOC STAMPS ON GIFTS, YOUR HONOR. THAT IS EXPRESSED WITHIN THE REGULATIONS OF THE DEPARTMENT OF REVENUE.

BUT ISN'T JUST TAKING THE FIRST SENTENCE OF THE STATUTE , IT IS PRETTY ALL ENCOMPASSING, IS IT NOT? IT SAYS , ON DEEDS , STRULTS , OR WRITING - - INSTRUMENTS, OR WRITING WHEREBY ANY LANDS , TENEMENTS OR ANY OTHER PROPERTY OR ANY INTEREST THEREIN SHALL BE GRANTED OR TRANSFERRED OR OTHERWISE CONVEYED, I MEAN THAT, IS VERY

BROAD, CORRECT? I MEAN, ANY TRANSFER FOR VALUE.

YOUR HONOR, IT IS THE REMAINDER OF THAT SENTENCE WHICH HAS GIVEN RISE TO MUCH OF THE CASE LAW WHICH HAS BEEN GENERATED BY THIS AND THE LOWER COURTS, AND THE REMAINDER OF THAT SENTENCE IS THAT THE TAX IS, THE PURCHASER OR OTHER PERSON BY HIS OR HER DIRECTION ON EACH \$100 OF THE PORTION BEFORE \$100 OF THE CONSIDERATION, THERE FOR THE TAX SHALL BE 70 CENTS. THE COURT HAS UNIFORMLY IN THE PAST, INTERPRETED THIS STATUTE AS REQUIRING, BOTH, THAT THERE BE A PURCHASER AND THAT THERE BE CONSIDERATION PAID AS A PREREQUISITE TO ANY TAX BEING DUE. THE COURT HELD THAT WAY IN DUVORY VERSUS GAY AND PALMER VERSUS GREEN AND THE DEPARTMENT OF REVENUE

SO YOUR POSITION IS, AS I UNDERSTAND, IS THAT, EVEN THOUGH THERE WAS THIS AMENDMENT IN 1990, THAT SEEMED TO ATTEMPT TO CLARIFY THE CONSIDERATION PORTION OF THIS, THAT THERE, STILL, IS NO DEFINITION EXPRESSLY IN THE STATUTE, OF THE WORD "PURCHASER". IS THAT SIMPLY PUT, WHERE YOU ARE?

YES. IN PART, YOUR HONOR.

AND THAT YOU HAVE TO GO BACK TO DAMERIA, IN ORDER TO GET TO PURCHASER.

YES. EVEN THE STATUTE DOES NOT CONTAIN A DEFINITION OF EVEN THE WORD CONSIDERATION. IT GIVES EXAMPLES OF WHAT IT CONSTITUTES CONSIDERATION, BUT IT DOES NOT SAY WHAT CONSIDERATION IS.

WHAT WAS THE INTENT BEHIND THE 1990 AMENDMENT TO THIS STATUTE?

YOUR HONOR, THE LEGISLATURE IS PRESUMED TO HAVE KNOWN AND ADOPTED PRIOR JUDICIAL DECISIONS INTERPRETING EXISTING STATUTES, WHEN IT AMENDS A STATUTE. THIS COURT HELD, IN THAT FASHION, IN HOLLYWOOD VERSUS LOMBARDI IN, FOUR YEARS AGO. THE AMENDMENT, ITSELF, EVIDENCED A HIGH DEGREE OF FAMILIARITY WITH THIS COURT'S CASE LAW. THE AMENDMENT ADDED TO SECTION 201.02 SUBSECTION 1, TWO SENTENCES. AND THEY READ, FOR PURPOSES OF THIS SECTION, CONSIDERATION INCLUDES BUT IS NOT LIMITED TO, MONEY PAID OR AGREED TO BE PAID, THE DISCHARGE OF AN OBLIGATION, THE AMOUNT OF ANY MORTGAGE, PURCHASE MONEY MORTGAGE LIEN OR OTHER ENCUMBRANCE, WHETHER OR NOT THE UNDERLYING INDEBTEDNESS IS ASSUMED. NOW, THAT AFFECTS THIS COURT'S DECISION IN DAMERIA. IN DEMARIA THE SITUATION WAS THAT A PIECE OF PROPERTY WAS TRANSFERRED BY AN OWNED BY A WHOLLY OWNED BUSINESS ENTITY.

AND THEY ONLY GOT, I UNDERSTAND, BUT WHAT DO YOU, WHAT IS YOUR POSITION ON WHAT THE LEGISLATURE WAS INTENDING TO DO, BY THE TOTAL LANGUAGE THAT WAS PUT IN THE STATUTE, BY THAT AMENDMENT?

THE LEGISLATURE, BY ADDING THESE TWO SENTENCES, WAS INTENDING TO CLARIFY THE LANGUAGE IN LIGHT OF THE VARIOUS OPINIONS WHICH HAVE BEEN ISSUED BY THIS AND OTHER COURTS.

BUT WHAT SITUATION THAT WASN'T COVERED BEFORE, BECAUSE THEY REFER IN THE LEGISLATIVE HISTORY, TO LOOP HOLES, SO NOT LOOPHOLES, SO YOU ARE SAYING IT DIDN'T PLUG UP EVERYTHING, SO THAT EVERYTHING OTHER THAN A GIFT IS TAXABLE, BUT WHERE DID IT MOVE THE LAW TO? WHAT IS COVERED AFTER 1990, THAT WASN'T COVERED BEFORE?

THAT IS FOUND IN THE SECOND SENTENCE OF THE AMENDMENT TO SUBSECTION 1. IF THE CONSIDERATION PAID OR GIVEN IN EXCHANGE FOR REAL PROPERTY OR ANY INTEREST THERE IN INCLUDES PROPERTY OTHER THAN MONEY, THEN IT GIVES RISE TO THIS PRESUMPTION. THAT

SENTENCE ADDRESSES THIS COURT'S HOLDING IN DEVORE VERSUS GAY, IN WHICH THE GRANTEE PROMISED FUTURE RENTS TO THE GRANTOR.

WOULD THAT INCLUDE STOCK ?

IT WOULD . IT WOULD INCLUDE STOCK, IF THE GRANTOR RECEIVED SOMETHING WHICH IT DID NOT OWN BEFORE .

WOULD IT INCLUDE INFLATED VALUE OF STOCK?

IT WOULD DEPEND UPON THE CIRCUMSTANCES.

HELP ME , NOW , WITH , WE ARE ON THE SPECTRUM , AND YOU SAY IT IS NOT A GIFT .

YES, YOU ARE .

AND SO WE NOW ARE TRYING TO FIGURE OUT WHAT IT IS, IN TERMS OF APPLYING THE STATUTE THERE . AND SO WE HAVE CONVEYANCE OF THIS REAL ESTATE FROM ONE CORPORATION TO ANOTHER CORPORATION, IS THAT CORRECT?

THAT IS AN IN ESSENCE CORRECT.

AND NOW THE OWNERS OF THE CORPORATION THAT CONVEYED IT, ARE THEY, ALSO, THE OWNERS OF STOCK IN THE CORPORATION THAT THEY CONVEYED IT TO?

YES , YOUR HONOR. CRESCENT MIAMI CENTER IS A WHOLLY -OWNED SUBSIDIARY OF THE GRANTOR.

SO BY CONVEYING THIS PROPERTY TO THE SECOND CORPORATION , HAVEN'T THEY INCREASED THE STOCK VALUE IN THE SECOND CORPORATION , AND THEREFORE THEIR INTEREST IN THAT CORPORATION?

YOUR HONOR , THAT QUESTION ADDRESSES A FINE LINE ACCOUNTING DISTINCTION WHICH THE DEPARTMENT OF REVENUE IS ATTEMPTING TO DRAW HERE. BEFORE THE TRANSACTION , THE GRANTOR OWNED PROPERTY AND INTERESTS IN THE GRANTEE ERX THE LLC. AND AFTER THE TRANSACTION, THE GRANTOR OWNED THE LLC WITH THE PROPERTY IN IT , BEFORE AND AFTER THE TRANSACTION. THE GRANTOR HAD THE SAME BALL OF ASSETS AS IT HAD AFTERWARD.

SO IT IS YOUR POSITION THAT THERE CAN BE FREE MOVEMENT OF ASSETS , WITHIN WHOLLY -OWNED CORPORATIONS , SUBSIDIARIES , WHATSOEVER , AS LONG AS THE SAME STOCKHOLDERS ARE INVOLVED , AND WITHOUT ANY TAX CONSEQUENCES .

I WOULD NOT SAY WITHOUT TAX CONSEQUENCES. THERE MAY BE INCOME TAX CAPITAL GAIN CONSEQUENCES , BUT WITH RESPECT TO THE DOCUMENTARY STAMP TAX , YES , THAT IS OUR POSITION. OUR POSITION IS THAT, UNDER THAT CIRCUMSTANCE , THERE IS NEITHER A PURCHASER NOR CONSIDERATION, ASSUMING , OF COURSE, THAT, AS HERE , THE TRANSACTION DID NOT INVOLVE A CONVEYANCE OF PROPERTY SUBJECT TO A MORTGAGE OR DID NOT INVOLVE ANY ASSUMPTION OF THAT

WOULD YOUR, IF YOU WERE IN THE SITUATION IN THE FIRST DISTRICT CASE , WHERE THERE WAS A SLIGHT DIFFERENCE IN OWNERSHIP , ONE-HALF OF ONE PERCENT , WOULD THAT MAKE A DIFFERENCE ?

YES, YOUR HONOR.

THE WHOLE TRANSACTION.

IT WOULD MAKE

WHY IS THAT?

YOUR HONOR , IN THE MUBEN-LAMAR CASE , THE SITUATION WAS THAT THE GRANTTEE WAS NOT THE SAME AS THE GRANTOR , THAT AS THE GRANTOR , THAT LAMAR HAD INTEREST IN THE GRANTEE, HAD PAID FOR ITS PARTNERSHIP INTEREST, AND THAT PARTNERSHIP INTEREST CONSTITUTES INTENTIONAL

WHERE DO YOU FIND THAT DISTINCTION IN THE LANGUAGE OF THE STATUTE?

THE DISTINCTION IS SIMPLY IN TERMS OF WHETHER THERE IS A PURCHASER AND WHETHER THERE IS CONSIDERATION. IN THE CASE OF MUBEN-LAMAR , THERE IS A PURCHASER AND THERE IS CONSIDERATION , BECAUSE WHAT THE GRANTOR RECEIVES IS INTEREST , IS DIFFERENT FROM WHAT IT HAD BEFORE THE TRANSACTION. IT GOT SOMETHING , THE GRANTOR GOT SOMETHING IT DIDN'T HAVE BEFORE. IT GOT AN INTEREST IN A PARTNERSHIP, WHICH INVOLVED A PARTNER SEPARATE AND APART, A THIRD PARTY THAT HAD NO INTEREST PRIOR TO THE TRANSACTION , TO THE REAL PROPERTY.

WHAT I AM BOTHERED BY , IS WHAT MISCHIEF CAN COME ABOUT HERE, IN ALL OF THESE VARIOUS ENTITIES AND TRANSACTIONS . AND IT WOULD SEEM TO ME, THAT FOLLOWING THE LOGIC OF YOUR POSITION , THAT IF I OWNED A PIECE OF PROPERTY AND WAS INTERESTED IN BRINGING INTO THE OWNERSHIP OF THE PROPERTY , JUSTICE LEWIS AND JUSTICE CANTERO , AND I TRANSFERRED IT DIRECTLY TO THEM AND THEY PURCHASED IT, THEN I WOULD HAVE TO PAY DOC STAMPS.

THAT'S CORRECT.

BUT IF I TRANSFERRED IT TO A CORPORATION AND THEN THEY BOUGHT SHARES IN THE CORPORATION , I WOULDN'T HAVE TO PAY DOC STAMPS. IS THAT RIGHT?

YOU WOULD HAVE TO PAY THE MINIMUM DOC STAMP TAX.

OF 70 CENTS.

YES, YOUR HONOR .

NOW , THAT SEEMS TO ME THAT COULDN'T BE WHAT THE LEGISLATURE INTENDED.

IT IS WHAT THE LEGISLATURE WROTE INTO THE STATUTE HOWEVER . IN THE SITUATION WHICH YOU HAVE JUST POSTED , THE POSITION , THE DOCUMENTARY STAMP TAX THAT , LIABILITY WOULD INCUR ON A SUBSEQUENT TRANSFER, FROM , OF THE PROPERTY BY YOUR SELF AND YOUR FELLOW JUSTICES, TO SOME OTHER THIRD PARTY .

LET ME DRAW ANOTHER FACTUAL SITUATION THAT IS SIMILAR BUT A LITTLE BIT DIFFERENT , THAN IS WE HAVE A CORPORATE SITUATION IN WHICH JUSTICE WELLS AND I OWN STOCK , AND IT IS AN EXISTING CORPORATE ENTITY , AND WE TRANSFER OUR PROPERTY , PROPERTY WE BOTH OWNED , INTO THAT NEW CORPORATION , UNDER YOUR THEORY THERE WOULD BE NO TRANSFER, CORRECT?

THAT IS CORRECT.

IF WE HAD AN EXISTING CORPORATION BUT JUSTICE WELLS AND I DID NOT HAVE STOCK AND WE TRANSFERRED THE PROPERTY INTO THE CORPORATION AND THEN OBTAIN STOCK , THEN IN

CONSIDERATION, WOULD WE NOT RECEIVE THE STOCK BACK? AND THAT WOULD BE THE CONSIDERATION. THE STOCK FOR THE TRANSFER OF THE PROPERTY.

IF I UNDERSTAND THE HYPOTHETICAL, YOUR HONOR, THE PROPERTY IS TRANSFERRED TO A CORPORATION WHICH YOUR HONOR DID NOT POSSESS AN OWNERSHIP INTEREST.

RIGHT. NEITHER ONE OF US POSSESSED AN OWNERSHIP. WE HAVE A CORPORATE ENTITY. WE DON'T HAVE STOCKHOLDERS INITIALLY.

IN THAT CASE, THERE WOULD BE CONSIDERATION.

THERE WOULD BE CONSIDERATION. SO THE SAME TRANSACTION JUST STRUCTURED DIFFERENTLY, AND THAT IS GETTING BACK TO, I THINK, JUSTICE WELLS'S POINT, IS THAT THE MANNER IN WHICH IT IS STRUCTURED DOES CHANGE, WHETHER THERE IS CONSIDERATION OR NOT, THEN.

YES.

CHIEF JUSTICE: JUSTICE QUINCE.

I UNDERSTOOD PART OF YOUR ARGUMENT WAS THAT THERE SHOULDN'T BE ANY DOC STAMPS HERE BECAUSE, REALLY, THE SAME PERSON OWNS EXACTLY WHAT HE HAD BEFORE AND AFTER THE TRANSACTION. CORRECT?

THAT'S CORRECT.

BUT AS I UNDERSTOOD THIS CASE, THAT THIS TRACT OF LAND WAS CONVEYED TO TRANSFER TO CMS BY CRESCENT, CORRECT?

CRESCENT MIAMI CENTER, YES.

AND CRESCENT IS LIKE A REAL ESTATE, IT IS CRESCENT REAL ESTATE GROUP, IS THAT WHAT THIS IS?

YES.

SO THEY TRANSFER THE LAND TO CMS, WHICH WAS SOME KIND OF CENTER, MEDICAL CENTER, CRESCENT MEDICAL CENTER OR SOMETHING?

NO. CRESCENT MIAMI CENTER.

BUT CRESCENT MIAMI CENTER HAD BEEN, WAS IN ESSENCE, GIVEN TO CRESCENT FUNDING, CORRECT, OR WAS TRANSFERRED TO CRESCENT FUNDING. WHICH IS ANOTHER CORPORATION. WHICH IS NOT JUST OWNED BY CRESCENT BUT IS OWNED BY SOME OTHER GROUP CALLED CRESCENT, LET'S SEE, CRE. SO I AM TRYING TO GET HERE.

CRESCENT REAL ESTATE MANAGEMENT. I AM SORRY, YOUR HONOR.

SO IT SEEMS TO ME THAT WHAT WE END UP HAVING HERE, IS THAT THE PROPERTY NOT JUST WENT BACK TO CRESCENT BUT WENT BACK TO CRESCENT, WHICH I CONSIDER CRESCENT TO BE CRESCENT REAL ESTATE GROUP, BUT CRESCENT REAL ESTATE GROUP AND ANOTHER CRESCENT GROUP. NOW, ALL OF THESE, ALL, OWNED BY ONE INDIVIDUAL?

ALL OF THEM OWNED BY THE SAME ENTITY, THE GRANTOR.

IS THAT THE SAME INDIVIDUAL? ARE THERE OTHER INDIVIDUALS THAT ARE INVOLVED IN CRE?

WELL

BECAUSE WHEN I LOOK BACK TO ALL OF THESE TRANSFERS , IT LOOKS LIKE THERE ARE TWO ENTITIES HERE WHO NOW HAVE THIS PROPERTY, AS OPPOSED TO ONE ENTITY THAT HAD IT AT THE BEGINNING. AM I NOT CORRECT OR AM I CONFUSING COMPANIES?

FOR WHAT EVER REASON NOT CLEAR FROM THE RECORD, CRESCENT TRANSFERRED ITS INTERESTS INC ESTENT MIAMI CENTER , TO - INTERESTS INC ESTENT MIAMI CENTER, TO CRESCENT FUNDING , AND ULTIMATELY THOSE ENTITIES , WHICH ARE WHOLLY-OWNED SUBSIDIARIES OF CRESCENT , ENDED UP OWNING CRESCENT MIAMI CENTER, AT THE TIME OF THE REAL ESTATE TRANSFER.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL , IF YOU WOULD LIKE TO SAVE SOME TIME.

YES, I WOULD. THANK YOU. YOUR HONOR.

GOOD MORNING. MAY IT PLEASE THE COURT . MY NAME IS CHARLES CATANZARO. I AM AN ASSISTANT ATTORNEY GENERAL. I REPRESENT THE RESPONDENT , THE FLORIDA DEPT REVENUE . THIS CASE IS ABOUT THE RESPONSIBILITIES THAT FOLLOW FROM DOING BUSINESS THROUGH A SEPARATE LEGAL ENTITY. UNITED STATE SUPREME COURT OBSERVED , IN MOLINE PROPERTIES, ACCUSING TO DO BUSINESS THROUGH A CORPORATION REQUIRES THE ACCEPTANCE OF TAX DISADVANTAGES FROM THE FLORIDA FIRST DISTRICT COURT OF APPEALS

LET ME ASK YOU THIS . NOW , WOULD YOU SAY THAT , IF THIS TRANSACTION HAD OCCURRED PRIOR TO 1990 , THAT OUR TWO CASES , PALMER AND DEMARIO CASE, THAT UNDER THOSE CASES THERE WOULDN'T BE ANY DOC STAMPS OWED?

THAT IS PROBABLY CORRECT.

OKAY. NOW , WHAT IN THE 1990 AMENDMENT CHANGED THAT?

THE

WHAT SPECIFIC LANGUAGE? ANOTHER SPECIFIC LANGUAGE WAS CONSIDERATION AND WILL INCLUDE THE , WILL BE VALUED AGAINST THE FAIR MARKET VALUE OF , THE STATUTE CREATED THE PRESUMPTION THAT, IF THE CONSIDERATION ISN'T REFLECTED ON THE FACE OF THE DEED, THEN IT WILL BE VALUED WITH RESPECT TO THE FAIR MARKET VALUE YET THE PROPERTY DEED. NOW , THE REASON WHY PALMER FLORIDA WAS CORRECT , WAS , AND I THINK IN DEVORE FROM 1999 , THE HOLDING WAS THE CONSIDERATION IN THIS CASE WAS NOT REASONABLY DETERMINEABLE, AND THE REASON THAT THE CONSIDERATION WAS NOT REASONABLY DETERMINEABLE , WAS THAT THE STATUTE DID NOT PROVIDE THE MEANS OR THE CRITERIA OR THE STANDARD BY WHICH TO MEASURE THAT CONSIDERATION. THE AMENDMENT SPECIFICALLY CLOSED WHAT HAD BACK LOOPHOLE, BECAUSE IN THE PAST , DEEDS WOULD HAVE BEEN CONVEYED BETWEEN A THIRD PARTY AND THEN , AS BUSINESS BECAME MORE SOPHISTICATED , TIERED ORGANIZATIONS WERE CREATED , AND DEEDS, WELL , ANY KIND OF BUSINESS WAS DONE BETWEEN THESE TIERED ORGANIZATIONS WITH THE SAME OWNERS.

WHAT DO YOU MAKE OF THE LANGUAGE, THOUGH , IN DEMARIA , IN WHICH, THE ESSENCE OF THAT CASE , ON THE \$25,000 EQUITY IN REAL PROPERTY , WAS EXEMPTED FROM DOC STAMP TAXATION , BECAUSE THERE WAS A MERE CHANGE IN THE FORM OF THE STOCKHOLDERS ' EQUITY IN THE CORPORATION.

THAT GETS RIGHT TO THE HEART OF THE MATTER , SIR . WITH ALL DUE RESPECT TO THE COURT IN DEMARIA, THAT STATEMENT IS ERROR. THE

WELL , WAS THAT ERROR CORRECTED BY THE 1990 AMENDMENT?

NO . NO. IT GOES WITHIN THE CHARACTERIZATION OF WHAT IS EQUITY . ON A BALANCE SHEET , A CORPORATION HAS ITS ASSETS , AND THOSE ARE INDIVIDUALLY IDENTIFIED ITEMS OF PROPERTY. EQUITY IN A CORPORATION , ISN'T INDIVIDUATED. IT IS JUST A GROSS NUMBER THAT REPRESENTS THE DIFFERENCE BETWEEN THE VALUE OF THE ASSETS AND THE LIABILITY OF THE COMPANY . FOR EXAMPLE , A VERY SIMPLE EXAMPLE, A CORPORATION, IF ITS BALANCE SHEET SHOWS ASSETS WORTH 100 AND ON THE RIGHT SIDE OF BALANCE SHEET IT WILL SHOW LIABILITIES OF 40. YOU TAKE 100 ON THE ASSET SIDE. SUBTRACT 40 FROM THE LIABILITY SIDE. YOU HAVE OWNERS EQUITY , WHICH IS 60. IT IS JUST A DOLLAR FIGURE.

BUT IT SEEMS TO ME THAT WHAT THAT OPINION IS REFERRING TO , THERE , IS WHEN IT IS CITING TO GREEN , BACK TO , I HAVE BEEN REFERRING TO EARLIER , IS THE FINAL SENTENCE IN THAT CASE , IT SAYS IT WAS MERE BOOK TRANSACTION AND WAS IN NO SENSE A SALE TO A PURCHASER . NOW , WASN'T THAT WHAT THE DEMARIO LINE WAS FOLLOWING? I MEAN , IT WAS TRYING TO MAKE THIS , THIS DISTINCTION THAT, WHERE ALL THIS IS , IS A CHANGE ON THE BOOKS THAT THAT IS NOT WHAT DOC STAMPS , IT INTERPRETED, THIS COURT INTERPRETED DOC STAMPS IS INTENT INTENDED TO COVER. ISN'T THAT IS INTENDED TO COVER. ISN'T THAT RIGHT? ISN'T THAT WHAT THE COURT .

NO, SIR. RESPECTFULLY, FIRST I WOULD SUBMIT THAT IN PALMER FLORIDA, WHERE THEY USE THE TERM "MERE BOOK TRANSACTION", THERE ARE TWO- WAYS TO LOOK AT THAT PHRASE , AND I AM NOT BEING GLIB, BECAUSE THEY ARE ANTI-THETICAL. EVERYTHING IS A TRANSACTION. EVERY TIME ONE DOES BUSINESS , THE ECONOMIC BUSINESS EVENT IS GOING TO BE REFLECTED ON THE BOOKS. I THINK THE BETTER ANSWER , BEGIN THAT YOU BILK WITH , THE BETTER THAT UBIQUITY , THE BETTER THING IS THERE IS NO SUCH THING AS A BOOK TRANSACTION.

BUT WHEN WE SAY BOOK TRANSACTION , DON'T WE MEAN IT DOESN'T INVOLVE ANY OUTSIDE ENTITY. IT IS JUST AN ACCOUNTING AND OFFER? THAT IS WHAT WE MEAN BY BOOK TRANSACTION.

JUSTICE CANTERO , I DON'T KNOW WHAT THE WORD BOOK TRANSACTION MEANS. I WOULD SAY THAT IT IS BEING PROFFERED AS A LEGAL TERM OF ART THAT HAS NO BASIS IN THE LAW, AND LET ME , PLEASE , PROVIDE TWO EXAMPLES . WHEN I SAY THE WORD , THE LEGAL TERM OF ART , EVERYONE WILL UNDERSTAND MURDER . YOU SEE THAT WORD. YOU KNOW THERE HAS BEEN AN UNLAWFUL TAKING OF A HUMAN LIFE, AND THAT TAKING WAS DONE WITH INTENT. YOU HEAR THE WORD NEGLIGENCE, YOU KNOW THERE WAS DUTY, BREACH, CAUSE , INJURY. YOU HEAR THE WORD BOOK TRANSACTION , AND YOU GET INTO A VERY VAGUE , IT IS PRESENTED

LET'S BE A LITTLE MORE AND TRY TO GET OURSELVES DOWN TO WHAT WE HAVE HERE. IF WE HAVE PEOPLE THAT DECIDE THAT THEY ARE GOING TO FORM A BUSINESS ENTITY AND THEY MAKE A DECISION AT THE OUTSET TO DO THIS, WHAT WE ARE GOING TO DO IS FORM NOT ONE BUT TWO , AND NOW WE ARE GOING TO CAPITALIZE THESE TWO CORP RELATIONS, AND THEY OWN THESE TWO CORPORATIONS, AND THEY OWN SOME REAL ESTATE, AND THEY MAKE DECISION THAT WE ARE GOING TO PUT THE REAL ESTATE , ALL , IN CORPORATION A , ALL RIGHT

YES.

AND " B " , NOW , REALLY HAS VIRTUALLY NO CAPITALIZATION. WHATEVER THE MINIMUM IS THAT THEY HAVE TO DO, IN ORDER TO CREATE IT , PERHAPS , BUT , AND SO THEY ARE SAYING , WELL , NOW WE MADE A BUSINESS DECISION THAT IT PROBABLY WOULD BE BETTER FOR THE REAL ESTATE THAT WE USED TO CAPITALIZE " A " SHOULD BE OWNED BY " B " . THE SAME OWNER OR OWNERS OF " A " AND " B " AND ALL OF THE STOCK AND EVERYTHING , AND SO THEY MOVE THE REAL PROPERTY FROM CORPORATION A TO CORPORATION B.

OKAY. YES.

FOR THEIR , NOW , THE CORPORATE LAWS ALLOW THEM TO FORM TWO CORPORATIONS LIKE THAT , AND NOW , WHY SHOULD THAT TRANSACTION BE TAXED , BECAUSE IT IS WHOLLY WITHIN THESE TWO CORPORATE ENTITY THAT THEY ARE ALLOWED TO CREATE , AND IT , REALLY , AFFECTS NO ONE OUTSIDE THE PEOPLE THAT OWNED THE STOCK IN THE TWO CORPORATIONS , REALLY , ARE IN THE SAME PLACE THEY WERE BEFORE, IN TERMS OF EQUITY OR INTEREST OR WHATEVER , THE VALUE , SO WHY SHOULD THE VALUE, SO WHY SHOULD THAT TRANSACTION HAVE TO PAY DOC STAMPS ? BECAUSE I WOULD ASSUME YOU WOULD SAY IT DOES.

YES.

OKAY. THEN WHY

DEFINITELY.TWO REASONS.

WHY SHOULD THAT TRANSACTION HAVE TO PAY DOCSTAMPS, IF THEY SAID, WE MADE A MISTAKE IN OUR BUSINESS JUDGMENT, ABOUT HAVING IT IN CORPORATION A , AND WE REALLY WANT TO MOVE IT TO CORPORATION B. IT WILL SUIT OUR PURPOSES BETTER . NOW , WHY SHOULD THAT TRANSACTION BE SUBJECT TO DOC STAMPS BECAUSE IT IS WHOLLY WITHIN THESE TWO ENTITIES AND ONLY AFFECT THE PERSONS THAT OWN EVERYTHING IN BOTH ENTITIES , ANYWAY , ALL RIGHT , SO I AM TRYING TO SET UP A SIMPLE EXAMPLE OF , PERHAPS , WHAT IS A BOOK TRANSACTION OR WHATEVER, OR AT LEAST THE WAY THAT IT HAS BEEN TALKED ABOUT , BUT WHY SHOULD THAT TRANSACTION , BECAUSE AS WE ORDINARILY UNDERSTAND COMMERCIAL TRANSACTIONS OUT THERE , IN REALIZING , PERHAPS, IT IS NOT THE MODEL OF THE PURCHASE AND SALE AGREEMENT FROM TWO TOTAL STRANGERS , YOU KNOW, THAT ONE GIVES \$100,000 FOR TEN ACRES OR SOMETHING, WHY SHOULD THAT TRANSACTION BE SUBJECT TO DOC STAMPS?

SIR , IMPLICIT , THE ANSWER IS IMPLICIT IN THE QUESTION. HIS HONOR MADE THE STATEMENT THEY ARE NOT TWO DIFFERENT PEOPLE. ON THE CONTRARY , THEY ARE EXACTLY TWO DIFFERENT PEOPLE. CORPORATIONS, THE LAW RESPECTS THEM AS COMPLETELY SEPARATE LEGAL ENTITIES, ONE FROM THE OTHER. THAT TRANSACTION WHERE CORPORATION A TRANSFERRED PROPERTY TO CORPORATION B , IS THE SAME AS IF I WERE TRANSFERRING PROPERTY TO MY SUPERVISOR.

CAN I ASK YOU JUST A QUESTION? I MEAN , CERTAINLY THE STATEMENT THAT YOU JUST MADE IS CORRECT, BUT THAT IS NOT THE WAY THE STATUTE IS WORDED, IS IT? THIS HAS BEEN GOING ON -.

YES, IT IS .

NO. IT WORDED IN TERMS OF PURCHASER. IT WORDED IN TERMS OF CONSIDERATION. IT IS NOT WORDED THAT ANY TRANSFER OF ANY INTEREST IN PROPERTY , SHALL PAY DOC STAMP EQUAL TO ITS FAIR MARKET VALUE. WHY COULDN'T THE LEGISLATURE SIMPLY DO THAT IF YOU WANT TO TAX IT ON ANY TRANSFER , YOU CAN SAY SO, BUT THIS IS IN TERMS OF PURCHASER , CONSIDERATION , AND THOSE KINDS OF THINGS, AND THAT IS WHAT TROUBLES ME IS THAT YOUR STATEMENT IS ABSOLUTELY TRUE. THEY ARE SEPARATE LEGAL ENTITIES, BUT THE STATUTE DOESN'T SAY THAT. IT IS ALWAYS PURCHASER AND CONSIDERATION.

I BEG TO DIFFER WITH THAT , AND WHEN YOU HAVE PURCHASER AND CONSIDERATION, THOSE ARE WORDS THAT CONNOTE THE COMMERCIAL TRANSACTION, TO DISTINGUISH IT BETWEEN , TO DISTINGUISH IT FROM A GIFT.

JUSTICE BELL HAS A QUESTION.

SO WHERE IS THE DEFINITION FOR PURCHASER. IS IT JUST , IS IT THE DIFFERENCE IN THE LEGAL

ENTITIES? BECAUSE IT DOESN'T SAY GRANTOR/GRANTEE. THE STATUTE DOESN'T DEFINE PURCHASER. ISN'T THAT WHERE THE KEY PROBLEM IS?

I CAN'T THINK OF THE CASE THAT WE HAVE CITED BUT THERE IS A CASE. ALL TERMS IN THE STATUTE DON'T HAVE TO BE DEFINED. IF A TERM ISN'T DEFINED, IT DOESN'T RENDER THE STATUTE USELESS. IN THE DEMARIA CASE, YOU CANNOT SEPARATE THE TWO WHEN YOU HAVE ONE FROM THE OTHER.

SO IN YOUR DEFINITION OF MR. AND MRS. SCHWARTZ OWN A GROCERY STORE AND THEY ARE ADVISED BY THEIR TAX COUNSELOR TO FORM A CHAPTER S CORPORATION, FEDERAL GOVERNMENT CHANGES THE CHAPTER S LAW AND FOR OTHER REASONS THEY DECIDE TO UNDO THAT TRANSACTION, SOMEWHAT LIKE JUSTICE ANSTEAD WAS ASKING, BUT MOM AND POP OWN A GROCERY STORE. THEY FORM A CHAPTER S CORPORATION AND CONVEY THE PROPERTY TO THAT CORPORATION. IT IS YOUR POSITION THAT DOC STAMPS WOULD BE DUE ON THE FAIR MARKET VALUE?

THEY OWNED THE PROPERTY IN THEIR OWN NAMES?

YEAH. THEY OWNED THEIR OWN GROCERY STORE IN THEIR OWN NAMES, AS HUSBAND AND WIFE, AND THEY ASSIGNED IT TO THE CORPORATION.

YES.

AND THEN THEY TRY UNDO THAT TRANSACTION LATER AND CONVEY IT BACK TO THEMSELVES AS HUSBAND AND WIFE, THEN THEY WOULD PAY DOC STAMPS AGAIN.

NO.

ONCE THE CONSIDERATION

NO. YOUR HONOR, I WOULD THINK, IN THAT SITUATION, THE HYPOTHETICAL CONTAINS A NUMBER OF FACTS THAT RAISE THE SPECTER OF ERROR, OF, WELL, WE WILL JUST GO WITH ERROR.

WHY AREN'T THEY DIFFERENT PURCHASERS? FOR CONSIDERATION.

I AM SORRY.

YOU IN THE DIFFERENCE. I AM SORRY?

I DON'T UNDERSTAND THE DIFFERENCE.

YOU SATISFIED IF THEY MADE A MISTAKE.

NOT A MISTAKE. THE LAW CHANGED FOR FEDERAL TAX PURPOSES AND THEY DECIDE TO CONVEY IT BACK TO THEMSELVES. MY POINT IS, ARE THEY TRULY PURCHASERS? BY YOUR DEFINITION, IT SEEMS THAT THEY WOULD BE.

IF THEY CONVEYED PROPERTY TO THE CORPORATION, THEN ON DAY ONE, THEY HAD OWNED REAL PROPERTY. ON DAY TWO, THEY OWNED STOCK IN A CORPORATION. THE CHARACTER OF THE ASSET CHANGED COMPLETELY. YEAH. THEY ARE PURCHASERS. NOW, ONE VERY IMPORTANT THING, SIR, YOU MENTIONED SUBS CORPORATIONS. I AM GETTING AN IDEA THAT, IN THE BACK OF HIS HONOR'S MIND, THE ISSUE OF BEING A TAX CONDUIT, HAS SOME SORT OF A BEARING ON THIS. NOW, THAT IS WHAT WAS ARGUED IN COMMITTEE IN CONNECTICUT, AND THE CONNECTICUT COURT DIDN'T REACH THAT AND THIS SUGGESTS THE DEPARTMENT'S

POSITION.

BUT IN THIS CASE THAT , IS ALL WE LL AND GO OD A BOUT SUBCHAPTER S CORPORATIONS , BUT IN THIS CASE, VERY SIMPLY, WHO IS THE PURCHASER , AND WHAT IS THE CONSIDERATION?

CRESCENT MIAMI PURCHASED THE PROPERTY BY RAISING THE VALUE OF THE ASSETS FROM, IT DOESN'T MATTER IF IT WAS \$1 MILLION ON DAY ONE TO \$2 MILLION ON DAY TWO OR FROM ZERO ON DAY ONE TO \$1 MILLION ON DAY TWO. CRESCENT OWNED THE REAL PROPERTY. THAT WAS THE ONLY PERSON ON DAY ONE THAT COULD HAVE DEEDED THE REAL PROPERTY TO ANYONE ELSE. ON DAY TWO

WHAT DID THEY GET IN EXCHANGE, THEN, FOR THE PURCHASE?

MORE VALUABLE AND TANGIBLE PERSONAL PROPERTY.

EXCUSE ME?

MORE VALUABLE TANGIBLE PERSONAL PROPERTY.

BUT IF THEY ARE THE ONES THAT ARE CONVEYING THE PROPERTY , I AM ASKING YOU WHAT DID THEY GET IN EXCHANGE FOR THE PROPERTY?

THAT'S IT . EXCHANGE OF PROPERTY. BECAUSE ON DAY TWO , FOLLOWSTHE EXCHANGE , IF THAT PROPERTY WERE TO BE DEED AGAIN , THEN CRESCENT COULD NOT EXECUTE THE DEED. IT COULD ONLY BE EXECUTED BY CRESCENT MIAMI , A SEPARATE LEGAL ENTITY .

CHIEF JUSTICE: JUSTICE BELL, DID YOU WANT TO FINISH WITH YOUR LINE OF QUESTIONING?
JUSTICE CANTERO.

I THINK WE ARE ALL TRYING TO ASK THE QUESTION THROUGH DIFFERENT ANGLES. LET ME ASK YOU FROM THIS ANGLE ON THIS SIDE. LET'S SAY THAT I OWN A COMPANY CALLED RGC INC. , AND I OWN A LOT OF DIFFERENT ASSETS. I OWN ENTERTAINMENT AND BUSINESSES AND SOME REAL ESTATE, AND I SAID I AM GOING TO CREATE SUBSIDIARIES. I AM GOING TO CREATE RGC ENTERTAINMENT , RGC REAL ESTATE AND RGC BUSINESS. WHOLLY - OWNED SUBSIDIARIES OF RGC INC.. AND I DO SO AND SIX MONTHS LATER TRANSFER MY BUSINESS PROPERTIES TO RGC BUSINESS AND ALL OF MY REAL ESTATE HOLDINGS TO RGC REAL ESTATE. ARE THOSE TANGIBLE ASSETS?

I DON'T KNOW ABOUT THE OTHER ONES, BUT THE ONES GOING TO RGC REAL ESTATE WOULD BE.

WHY IS THAT?

BECAUSE PREVIOUSLY YOU OWN REAL PROPERTY.

WHAT IS THE CONSIDERATION?

THE VALUE, THE INCREASE IN THE VALUE OF THE STOCK. IT WENT FROM ZERO TO THE INCREASE IN THE VALUE OF STOCK. IT WENT FROM ZERO TO \$1 MILLION. THAT IS THE CONSIDERATION. IT HAPPENS AS A NECESSARY CONSEQUENCE .

SO YOUR POSITION IS ANY TRANSFER OF ANY ASSET FROM ANY ENTITY TO ANY OTHER ENTITY IS SUBJECT TO DOC STAMPS.

NO.NO.

THERE WILL ALWAYS BE AN INCREASE IN OWNERSHIP.

NO. YOUR HONOR SAID ANY ASSET. NO. THE DOC STAMP APPLIES TO TRANSFERS OF INTERESTS IN REAL PROPERTY.

OKAY. THEN I STAND CORRECTED. ANY TRANSFER OF REAL ESTATE FROM ANY ENTITY TO ANY OTHER ENTITY, WOULD, THEN, BE SUBJECT TO DOC STAMPS.

IF IT IS A COMMERCIAL TRANSACTION, YES.

SO OTHER THAN A GIFT, I MEAN, GOING BACK TO THE DEPARTMENT'S POSITION IS FAIRLY ABSOLUTE, WHICH IS THAT, UNLESS IT IS A GIFT, IF IT A TRANSFER OF REAL ESTATE, IT IS SUBJECT TO DOC STAMPS.

SO MY QUESTION IS

EXEMPTIONS, YES.

WHY DOESN'T THE STATUTE JUST SAY SIMPLY IN TERLSES OF ANY TRANSFER OF REAL PROPERTY. IT IS VERY SIMPLE. IT WOULDN'T TAKE TWO LONG SENTENCES. IT WOULD TAKE ONE SIMPLE ONE. IT SAYS ANY TRANSFER SUBJECT TO DOC STAMPS.

SUBJECT TO MORE WORDS. THAT IS THE PROBLEM. ANOTHER TAXES ON DEEDS WITH INTEREST IN REAL PROPERTY SHALL BE.

CAN CORPORATIONS MAKE GIFTS, ONE TO THE OTHER?

NO. WELL, I DON'T WANT TO BE THAT ABSOLUTE. MICROSOFT, SURE, MICROSOFT COULD MAKE A GIFT TO THE RED CROSS, OF REAL PROPERTY.

BUT IT CAN'T MAKE A GIFT FROM ONE CORPORATE ENTITY TO ANOTHER CORPORATE ENTITY THAT IS WHOLLY OWNED BY THE SAME STOCKHOLDERS?

NO. THAT IS A LEGAL POSSIBILITY. IT HAS NO BASIS IN FEDERAL GIFT TAX OR IN STATE TAX.

I AM NOT TALKING, IN OTHER WORDS, IS IT AN ILLEGAL TRANSACTION?

NO. IT WOULDN'T BE ILLEGAL.

CORPORATION A DECIDES TO GIVE A PARCEL OF REAL PROPERTY TO CORPORATION B.

IT WOULDN'T BE ILLEGAL. THEY COULD DO THE DEED. HOWEVER, THAT DEED WOULD BE SUBJECT TO TAX.

AND SO GIFTS ARE SUBJECT TO THE TAX, TOO.

A GIFT FOLLOWS, THERE ARE CERTAIN CRITERIA BY WHICH A GIFT MIGHT BE, BY WHICH A TRANSFER IS CONSIDERED A GIFT, THROUGH DISINTERESTED, LOVE AND AFFECTION.

WHERE DO THOSE FACTORS COME FROM? CASE LAW?

DUBERSTEIN.

FROM THE DEPARTMENT OF REVENUE? WHERE DO THEY COME FROM?

COMES FROM THE FEDERAL GIFT TAX.

NO W YOU ARE TALKING ABOUT FEDERAL GIFT TAX LAW , RIGHT? YOU ARE NOT TALKING ABOUT THE POWER OF THE STATE OF FLORIDA OR THE STATUT ORY SCHEME OF THE STATE OF FLORIDA , WITH RE FERENCE TO DOC STAMPS . O KAY. SO A G IF T CANNOT BE MADE FROM A PARENT CORPORATION TO A SUBSIDIARY IN FLORIDA , WITHOUT INCUR ING DOC STAMPS.

THERE IS NO SUCH THING AS A GIFT, SIR, BECAUS E IF A CORPORATION MAKES IT TO ANOTHER CORPORATION, THE N THE ONE'S ASSETS, THEN , WOULD , I WOULD GUESS , WOULD BE A CONTRIBUTION TO CAPITAL , AND THE ONE WOULD GET MORE VALUABLE STOCK AS A RESULT OF IT.

SO IT I S THE I N FLATION IN THE STOCK VALUE THAT OCCURS.

YES.

EVEN THO UGH IT IS THE SAME PEOP LE.

YES. BECAUSE IT IS NOT THE SAME

THE ASSETS, THEY DON'T HAVE ANY INFLATED VALUE. RIGHT? THEY HAVE LOST OVER H ERE.

NO. THEY HAVEN'T LOST ANYTHING.

IF CORPORATION A

YES.

TRANSFERS IT TO CORPORATION B, PRESUMABLY THERE IS STOCK IN CORPORATION A THAT HAS GONE DOWN, NOW. ALL RIGHT. BECAUSE THEY DON'T HONE OWEN THAT REAL ESTATE THAT THEY THEY DON'T OWN THAT REAL ESTATE THAT THEY HAD BEFORE , RIGHT? YOU JUST SAID THAT CORPORATION B , ITS STOCK HAS BEEN INFL ATED BECAUSE IT G ETS THE REAL ESTATE , BUT CORPORATION

NO. NO. NO. NO. NO. CORPORATION A 'S STOCK IN B IS INCREASED. CORPORATION B ON , IT SHOWS ON ITS BA LANCE SH EE T ITS ASSETS ARE INCREASED.

BUT THE COMMON OWNERS , THEY HAVE LOST

THEY HAVEN'T LOST ANYTHING. THAT IS THE PO INT IN A COMMERCIAL TRANSACTION, IS NET WORTH DOES NOT CHANGE. WHEREAS IN A GIFT , IT DOES CHANGE .

IF IT DOESN'T CHAN GE, WHERE IS THERE A COMMERCIAL TRANSACTION?

THE CHANGE IN THE PROPERTY .

WITH OUR HELP , YOU HAVE USED UP YOUR T IME , AND TH ANK YOU VERY MUCH.

THANK YOU VERY MUCH .

CHIEF JUSTICE: MR. GOLDBERG. THREE AND-A-HALF MINUTES.

WOULD YOU COME BACK AND ADDRESS , JUSTICE WELLS'S INQUIRIES , ABOUT THE CON CERN S THAT, REALLY , EVEN THOUGH THE SPECTER OUT THERE IS PERHAPS NOT DEFINEABLE BY THIS PA NEL, THAT THERE , R EALLY , IS A CONCERN WITH REFERENCE TO AVOID ING DOC STAMPS , WHEN THEY SHOULD BE IMPOSED BY THE ABILITY OF USING THE CORPORATE FORM , AND THAT THERE IS A GENUINE CONCERN THERE, AND WOULD YOU , COULD YOU GIVE US SOME REASSURANCE AS TO WHY THAT WOULD NOT O C CUR , IF WE APPROVE TAX OR DOC STAMPS THROUGH

TRANSACTIONS LIKE THIS.

I WILL DO SO , YOUR HONOR , AND IN FA CT I INTENDED TO BEGIN WITH THAT SPECIFIC P OINT . YES . THERE IS A SITUATION BASED UPON THE STATUTE , WHICH WILL RESULT INSE RT TRANSACTIONS GOING UNTAXED. AND THAT IS THE FUNCTION OF THE MANNER IN WHICH THE LEGISLATURE HAS WRITTEN THE STATUTE . AND I UNDERSTAND THEDEPARTMENT OF RE VENUE DOESN'T LIKE THE POTENTIAL RESULT, BUT THE DEPARTMENT OF REVENUE'S REMEDY IS TO GO BACK TO THE LEGISLATURE ANDTO ASK THE LEGISLATURE TO CHANGE THE STATUTE , TO READ JUST AS MR . JUSTICE LE WIS AND MR . JUSTICE CAN TERO SUGGESTED , AND IT COULD BE ONE SENTENCE LONG. ALL DEEDS ARE TAXABLE , UNLESS THEY ARE GIFTS . BUT THE STATUTE DOESN'T SAY THAT. THE STATUTE RE QUIRES CONSIDERATION , AND THE STATUTE REQU IRES THERE BE A PURCHASER .

CHIEF JUSTICE: AND SO EXPLAIN , A GAIN , WHEN THE LOOPHOLES THAT WERE INTENDED TO BE PLUGGED UP IN THE 19 90 AMENDMENT CO VERED , IN WHAT SITUATION, THAT , IF IT W ASN'T INTEND ED TO COVER THIS TYPE OF SITUATION?

YES, YOUR HONOR . IT ADD RESSES THE SITUATIONWHICH , FOR EXAMPLE , APPEARED IN DE VORE VERSUS GAY , WHICH WAS THE CASE OF THIS COURT , IN WHICH THE CONSIDERATION, I F THERE WAS ANY , WOULD HAVE BEEN A PROMISE TO PAY FU TURE RENT. IT ADDRES SES THE SITUATION WHERE

DID IT OVERRULE THAT CASE?

YES. BECAUSE THERE WAS CONSIDERATION THERE. DEVORE VERSUS GAY'S CONCERNIS THAT IT WAS NONMONETARYIN NATURE.

YOU ARE SAY ING THAT IS AS TO THE SECOND SENTENCE IN THERE. THE FIRST SEN TENCE , DID IT OVERRULE DEMARIA?

NO. THE FIRST SENTENCE , AS A MATTER OF FACT , MIRRORS DEMARIA.IN A SENSE , IT IS COMPLETELY UNNECESSARY , BECAUSE THAT IS THE WAY THIS COURT HAD ALREADY INTERPRETED THESTATUTE.

IT CODIFIED DEMARIA AS TO MORTGAGES.

YES , YOUR HONOR. OTHER SITUATIONS IN W HICH THAT SECOND SENTENCE WOULD ADDRESS , WOULD BE FOR EXAMPLE , A TRANSFER OF REAL PROPERTY IN EXCHANGE FOR AN INTEREST IN INTELLECTUAL PROPERTY OR A TRANSFER OF REAL PROPERTY IN EXCHANGE FOR SERV ICES. THOSE ARE ALL SITUATIONS WHERE THERE IS NONMONETARY CONSIDERATION, BUT THAT IS NOT THE SITUATION WHIC H WE HAVE HERE. AND THE SITUATION WHICH WE HAVE HERE , IF IT IS TO BE REMEDIED TO THE DEPARTMENT OF REVE NU E 'S SATISFACTION, THAT REM EDY MUST COME FROM THE LEGISLATURE.

CHIEF JUSTICE: THANK YOU VERY MUC H. THANK YOU TO BOTH PARTIES FOR AN INFORMATIVE ORAL ARGUMENT AND BEING RESPONSIBLE TO OUR QUESTIONS , AND WITH THAT THE COURT IS IN RE CESS.

MARS HAL: PLEASE RISE.