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Walter Velez v. Miami-Dade County Police Dept.

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

CHIEF JUSTICE: THE NEXT CASE ON THE MORNING'S CALENDAR IS V ELEZ VE RSUS MIAMI-DADE COUNT Y PO LICE DEPARTMENT , OTHERWISE KN OWN AS " SHOW ME THE MONEY" !

MAY IT PLEASE THE COURT. PAUL MORRIS ON BEHALF OF THE PETITIONER , WA LTER VE LEZ. IN THIS CASE , THE THIRD DISTRICT CERTIFIED CONFLICT WITH THE DECI SIONS OF THE FOURTH IN BARUCH AND JOHN LOUIE , S AYS THAT THE PERSON AT THE TIME OF PROCEDURE , HAVE STANDING AT AN ADVERSARIAL PROCEEDING , TO CHALLENGE THE PROCEDURE, WITHOUT SHOWING A PROPRIETARY INTEREST IN THE PROPERTY. THIS CASE , OF COURSE , INVOLVES STATUT ORY CONSTRUCTION OF THE FORFEITURE STATUTE , AND OUR POSITION IS THAT THE CERTIFIED QUESTION SHOULD BE ANSWERED IN THE AFFIRMATIVE , FOR SE VERAL REASONS. FIRST , BASED U PON THE PLAINLANGUAGE OF THE STATUTE , SECOND, THE RE QUIRED ST RICT CONSTRUCTION THAT MUST BE AFFORDED THE FLORIDA FORFEITURE STATUTE, AND FINALLY , THE REQUIREMENT THAT PROCED URAL DUE PROCESS OF LAW , MUST BE AFF ORDED PERSONS AT THE VERY BEGINNING STAGES OF THE FORFEITURE ACT , IN THIS CASE THE FIRST OF THE TWO STAGES , THE ADVERSARIAL PRELIMINARY HEARING.

LET ME AS K YOU AQUESTION. IF WE GO BAC K TO THE REAL PROPERTY CASE, IF SAYS IN ALL FOR FEITURE CASES , DUE PROCESS UNDER THE FLORIDA STA TUTE , IS, SHALL BE SE RVED ON ALL PERSONS WH O HAVE A L EGAL INTEREST IN THE SUBJECT PROPERTY .

YES, YOUR HONOR.

AND THEN IT SAYS IN PERSONAL PROP ERTY FORF EITURE A CTS, SINCE NOT ICE MUST ADVISE INTERESTED PARTIESTHAT THEY HAVE A RIGHT T O AN ADVERSARIAL PRELIMINARY HEARING.

YES, SIR.

SO IS IT YOUR POSITION THAT, EVEN PEOPLE WHO HAVE NO LE GAL INTEREST , BE IT OWNERSHIP , ANY COLORABLE OWNERSHIP , POSSESSORY OR LIEN HOLDER INTEREST IN THEPROPERTY, SHOULD HAVE STANDING TO PARTICIPATE IN THE PRELIMINARY HEARING?

NO, YOUR HONOR. OUR POSITION IS THAT , IN RESPONSE TO THAT LANGUAGE F ROM REAL PROPERTY , THE LEGISLATURE G AVE STAN DING TO PERSONS ENTITLED TO NOTICE AND DEFINED WHAT THOSE PERSONS ARE , AND THE LEGAL INTEREST THAT GIVES A PERSON ENTITLED TO NOTICE, A STANDING TO REQUEST AND OBTAIN AN AD VERSARIAL PRELIMINARY HEARING , WHI CHIS THE INTEREST MR. VEL EZ HAS , IS THAT OF A PERSON IN POSSESSION AFTER PROPERTY ATTHE TIME IT IS SEIZED.

AND THE LANGUAGE SAYS THAT A PERSON ENTITLED TO NOTICE IS A PERSON IN POSSESSION OF THE PROPERTY . SO YOU ARE JUST GOING ON THE PLAIN LANGUAGE OF THE STATUTE.

THAT'S CORREC T, YOUR H ONOR.

IT DOES N'T NECESSARILYMEAN, THEN, THAT THEY HAVE, THEN THEY HAV E A RIGHT TO NOTICE O F THE ADV ERSARIAL PRELIMINARY HEARING , BU T, THEN, DO THEY , DOES THAT NECESSARILY

GIVE RISE TO THEIR BEING ABLE TO PARTICIPATE BEYOND THAT, IF THERE IS N'T A PROPRIETARY INTEREST ESTABLISHED?

YES. WE SUBMIT THAT THAT IS A LOGICAL CONSTRUCTION OF THE STATUTE, BUT IT IS, ALSO, THE STRICT CONSTRUCTION OF THE STATUTE. WE MUST, IF THERE IS AN AMBIGUITY HERE. IT MUST BE CONSTRUED AGAINST THE SEIZING AGENCY, AND HERE THE LEGISLATURE HAS CLEARLY

CAN YOU CLARIFY BECAUSE ARE SAYING. ARE YOU SAYING THEY ARE ENTITLED TO PARTICIPATE IN THE FORFEITURE PROCEEDING?

NO. ENTITLED TO PARTICIPATE AT THE ADVERSARIAL PRELIMINARY HEARING.

BUT THAT DOESN'T NECESSARILY GIVE THEM STANDING TO PARTICIPATE IN THE FORFEITURE.

THAT'S CORRECT.

BECAUSE, THEN, THAT IS EXTENDED TO A CLAIMANT.

CORRECT.

SO THEY ARE NOT THE SAME, AND EXPLAIN IN TERMS OF THE STATUTORY SCHEME, WHY THAT IS NOT ONLY, YOU SAY, CONSISTENT WITH THE PLAIN LANGUAGE BUT CONSISTENT WITH THE PURPOSE OF HOW THIS PROCEEDS ALONG. THIS GUY, YOUR CLIENT, IS IN, I MEAN, HE IS IN THE VEHICLE, AND THIS MONEY IS SEIZED. HE SAYS IT IS NOT HIS, BUT PRESUMABLY, RIGHT, DIDN'T HE SAY THAT?

THAT IS AN ALLEGATION MADE IN THE COMPLAINT, WHICH FOR THE PURPOSES OF OUR ARGUMENT, IT DOESN'T MATTER WHETHER IT CAN BE ESTABLISHED OR NOT IN AN ADVERSARIAL SETTING.

ALL RIGHT. SO, THEN, WHAT IS THE REASON THAT YOU CAN END UP SAYING YOU CAN PARTICIPATE IN ONE BUT WOULDN'T HAVE STANDING TO PARTICIPATE IN THE OTHER?

BECAUSE THE LEGISLATURE, IN RESPONSE TO REAL PROPERTY, AND IN REAL PROPERTY THIS COURT EXPLAINED THE TWO STAGES OF THE FORFEITURE PROCEEDING. THE LEGISLATURE CLEARLY DREW A DISTINCTION BETWEEN THE TWO DIFFERENT TYPES OF STANDING NEEDED FOR THOSE TWO STAGES.

I AM ASKING YOU TO EXPLAIN, WHETHER THE LEGISLATURE EXPLAINED IT IN ANYTHING IN THE HISTORY, JUST GIVE ME THE REASON, THE POLICY REASON, WHY IT MAKES SENSE, TO HAVE TWO DIFFERENT TYPES OF STANDING.

WELL, FORFEITURE HAS ALWAYS BEEN DEEMED A HARSH PENALTY, A MARSH REMEDY, AND I THINK THERE IS A RATIONALE BEHIND DEFINING PERSON ENTITLED TO NOTICE IN A LESS STRINGENT REQUIREMENT OF STANDING, WHEN PROPERTY, PERSONAL PROPERTY IS SEIZED FROM THAT PERSON'S POSSESSION. THAT SHOULD BE ENOUGH, AND IS ENOUGH UNDER THE STATUTE, TO TRIGGER THE SEIZING AGENCY'S BURDEN TO PROVE PROBABLE CAUSE FOR A CONTINUED RESTRAINT ON THAT PROPERTY.

LET'S ASSUME THAT, AT THE ADVERSARIAL PRELIMINARY HEARING OR PROBABLE CAUSE HEARING, THAT THERE WAS AN UNREBUTTED SHOWING THAT THERE HAD BEEN, BOTH, AN ABANDONMENT OF THE PROPERTY, AND TESTIMONY SUCH AS THE DEFENDANT OR CLAIMANT OR POSSESSOR OR HOWEVER OR POSSESOR OR HOWEVER - - OR POSSESSOR YOUR CLIENT POSSESSOR OR YOUR CLIENT, HAD STATED THIS PROPERTY, YOU CAN HAVE IT, I DON'T KNOW HOW IT GOT THERE. KEEP IT. AN UNREBUTTED SHOWING OF SOMETHING LIKE THAT, AND THE

TRIAL COURT CONCLUDED , WHAT WOULD BE THE POSITION OF YOUR CLIENT AFTER TWO PARTS, AFTER THE CONCLUSION OF ESTABLISHMENT OF PROBABLE CAUSE, WHAT WOULD BE THE STANDING OF YOUR CLIENT AT THE MERITS HEARING OR WHATEVER WE WANT TO CALL IT?

I THINK AT THAT POINT THERE WOULD BE A FINDING BY THE TRIAL JUDGE THAT THE CC MET ITS BURDEN OF PROBABLE CAUSE AT THE ADVERSARIAL PRELIMINARY HEARING, WHICH IS THE ONLY ISSUE THERE, AND THEN IN ORDER FOR MY CLIENT TO PARTICIPATE IN THE FORFEITURE HEARING , A PROPRIETARY OR OWNERSHIP INTEREST IN THE PROPERTY WOULD , FIRST , HAVE TO BE ESTABLISHED. HE HAS TO BE AFFORDED THAT OPPORTUNITY, AND IF HE CAN'T MEET IT , OR IF HE IS JUST GOING TO RELY UPON THE UNREBUTTED SHOWING THAT OCCURRED AT THE ADVERSARIAL PRELIMINARY HEARING, HE HAS NO STANDING AT THE FORFEITURE HEARING.

SO HOW WOULD HE GO ABOUT DOING THAT? ARE YOU SAYING THAT HE WOULD MAKE A CLAIM SUBSEQUENT TO THAT ? AND THEN ATTEMPT TO ASSUME OR ESTABLISH STANDING ?

YES. AFTER THE ADVERSARIAL PRELIMINARY HEARING FINDING AGAINST HIM ON PROBABLE CAUSE , HE WOULD, THEN , BEAR THE BURDEN OF SHOWING STANDING IN AN OWNERSHIP INTEREST, AS A CLAIMANT AND THE

HOW, ALL RIGHT AS A CLAIMANT

HOW, ALL RIGHT , GO ABOUT HOW WOULD HE RECEIVE NOTICE, IF WE SAID THESE ARE TWO SEPARATE ISSUES , WHERE IS HE ENTITLED TO NOTICE, THEN , OF THE MERITS HEARING?

AFTER THE ADVERSARIAL, WELL, IN TERMS OF PROCEDURE, AFTER THE ADVERSARIAL PRELIMINARY HEARING, THEN THE FORFEITURE HEARING WOULD BE SET.

WELL , THAT IS WHAT, SO YOU ARE SAYING HE IS ENTITLED TO BOTH, THOUGH , THAT HE IS ENTITLED TO NOTICE OF THE ADVERSARIAL PROBABLE CAUSE DETERMINATION , AND HE IS ENTITLED TO NOTICE OF WHAT I AM CALLING THE MERITS .

HE WOULD CERTAINLY BE ENTITLED TO NOTICE OF SECOND STAGE

I HAVE DIFFICULTY IN RESPONSE TO YOUR ANSWERS TO THE QUESTION THAT JUSTICE PARIENTE ASKED YOU.

I AM SORRY.

WHERE YOU SEEM TO SUGGEST, NO , YOU ARE ONLY TALKING ABOUT ENTITLEMENT TO NOTICE AT THE PROBABLE CAUSE DETERMINATION THAT YOU ARE NOT TALKING ABOUT WHETHER YOUR CLIENT WAS ENTITLED TO NOTICE OF MERITS HEARING.

I AM SORRY IF I CONFUSED THE COURT. OUR POSITION IS THAT THE SOLE VIOLATION OF THE STATUTE IN THIS CASE , WAS THE FAILURE TO HOLD AN ADVERSARIAL PRELIMINARY HEARING , AND THE RESULT , AS A RESULT OF THAT FAILURE , UNDER THE DeGREGORIO DECISION AND MANY OTHER DECISIONS OF VARIOUS DISTRICT COURSE OF APPEAL , BECAUSE OF THAT VIOLATION, MY CLIENT IS ENTITLED TO RETURN OF THE PROPERTY , WITHOUT US EVER GETTING TO THE SECOND STAGE OF THE FORFEITURE ACT , NAMELY THE OWNERSHIP FORFEITURE HEARING.

SO YOUR POSITION IS THAT YOU COULD HAVE A CLIENT WHO HAD NO PROVEN INTEREST IN THE PROPERTY. IN FACT , IT COULD BE A CRIMINAL INTEREST OR A STRAW MAN SET UP , COULD COME TO THE HEARING , ATTACK PROBABLE CAUSE AND HAVE THE PROPERTY RETURNED TO THEM.

NO, YOUR HONOR. MY CLIENT HAS A PROVEN UNDISPUTED , CONCEDED INTEREST IN THE

PROPERTY.

WHAT IS THAT?

POSSESION.

WHAT IS THE PROOF?

POSSESSION. HE IS A PERSON ENTITLED TO NOTICE AS DEFINED BY THE STATUTE.

BUT ONLY BY THE STATUTE. YOU ARE NOT RELYING ON A CONSTITUTIONAL RIGHT OR ANY OTHER RIGHT. YOU ARE JUST RELYING ON THE LANGUAGE OF THE DEFINITION OF WHO IS ENTITLED TO NOTICE.

CORRECT, WHICH CONFERS, OUR POSITION IS THE DEFINITION OF PERSON ENTITLED TO NOTICE BY THE LEGISLATURE, CONFERS STANDING UPON MY CLIENT, IN THE FIRST STAGE OF THE FORFEITURE PROCEEDING, WHICH IS THE ADVERSARIAL PRELIMINARY HEARING.

SO LET ME, I DON'T MEAN TO GET TOO RIDICULOUS. USE A HYPOTHETICAL. LET'S SAY YOUR CLIENT WAS A BANK ROBBER, STOLE \$100,000, IS RUNNING DOWN THE STREET, GETS CAUGHT, POLICE OFFICERS STEAL IT. FOR SOME REASON, YOUR POSITION IS THIS GIVES HIM, HE IS ENTITLED TO NOTICE AND APPEAR AND TO PARTS EIGHT IN THIS PARTICIPATE IN THIS ADVERSARIAL HEARING, AND IF NOBODY SHOWS UP AND THE STATE DOESN'T PROVE PROBABLE CAUSE, THEN THE STATE HAS TO TURN THE \$100,000 OVER TO THAT PERSON.

AS IN THAT CASE, THERE ARE ALLEGATION DOLLARS MADE IN A FORFEITURE COMPLAINT, AND UNDER THE STATUTE AND UNDER THE POLICY OF FORFEITURE OF THE STATE, A SEIZING AGENCY IS NOT ALLOWED TO SIMPLY EX PARTE, TAKE PROPERTY, PERSONAL PROPERTY FROM A PERSON'S POSSESSION, WITHOUT HAVING TO FOLLOW CERTAIN PROCEDURES THEREAFTER, UNDER THE STATUTE. IN EXTREME EXAMPLES, IT IS GOING TO BE VERY SIMPLE.

IS THE ONLY ISSUE THAT WE HAVE, THEN, THE ENTITLEMENT TO NOTICE AT THE PROBABLE CAUSE HEARING? IS THAT

NO, NO, YOUR HONOR, MY CLIENT WAS GIVEN NOTICE, AND IN RESPONSE TO THAT NOTICE HE REQUESTED AN ADVERSARIAL PRELIMINARY HEARING, BUT WAS INCORRECTLY NOT AFFORDED ONE. HE WAS NOT ALLOWED TO PARTICIPATE AT ALL. IN OTHER WORDS THERE WAS NO ADVERSARIAL STAGE OF THE HEARING, NO FIRST STAGE CONDUCTED, AND THAT WAS IN CLEAR VIOLATION OF THE STATUTE.

CHIEF JUSTICE: JUSTICE CAN'T HAS A QUESTION.

THAT IS OKAY. JUSTICE CAN'T HAS A QUESTION.

FROM MY REVIEW OF THE INFORMATION, THE COURT DID FIND PROBABLE CAUSE AND A HEARING WAS ADEQUATELY HELD. I AM REFERRING TO YOUR ARGUMENT THAT, IF WE FIND IN YOUR FAVOR, THAT WE SIMPLY HAVE TO GIVE BACK THE MONEY TO YOUR CLIENT. IT SEEMS TO ME THAT THE REMEDY WOULD BE TO HOLD THE PROBABLE CAUSE HEARING IN WHICH YOUR CLIENT COULD PARTICIPATE, NOT SIMPLY TO GIVE YOUR CLIENT BACK THE MONEY.

I THINK THE COURT'S DECISION IN DeGREGORIO ANSWERS THAT IF YOU ARE GOING TO GIVE THE SEIZING AGENCY A SECOND CHANCE, THEN YOU ARE RENDERING THE STATUTE'S REQUIREMENTS ILLUSION OR DEADLINES AND ILLUSORY. DEADLINES AND HEARINGS AREN'T STRICT REQUIREMENTS OF THE STATUTE.

LET ME ASK YOU THIS , THERE ARE CASES IN WHICH THE PERSON IN POSSESSION OF THE DOCUMENT SIGNS A DOCUMENT AND SAYS THIS ISN'T MY PROPERTY. THAT PERSON , ACCORDING TO YOU , WOULD BE ENTITLED TO PARTICIPATE IN THE HEARING. WOULD THAT PERSON BE ENTITLED TO PARTICIPATE IN THE HEARING , IF THE STATE PRESENTS THIS DOCUMENT SAYING THIS PERSON DISCLAIMED OWNERSHIP, EVEN THOUGH THE PERSON HAD POSSESSION, DISCLAIMED OWNERSHIP OF THE PROPERTY AND SAID IT IS NOT MINE. I DON'T KNOW HOW IT GOT INTO MY SUIT CASE . CLEARLY IT GOT THERE, SO I POSSESSED IT, BUT I DON'T KNOW HOW IT GOT THERE AND IT IS NOT MINE AND I HAVE NO CLAIM TO IT , WOULD THAT PERSON BE ALLOWED TO PARTICIPATE IN THE HEARING?

IF THE PERSONAL PROPERTY HAD BEEN SEIZED FROM THE POSSESSION OF THAT PERSON , THAT PERSON ABSOLUTELY HAS THE RIGHT TO NOTICE AND THE OPPORTUNITY TO BE HEARD AT THE ADVERSARIAL PRELIMINARY HEARING. WHETHER THE SEIZING AGENCY IS GOING TO BE ABLE TO SATISFY ITS BURDEN AND WHETHER THOSE FACTS AS ALLEGED ARE GOING TO BE TRUE, THAT IS WHAT AN ADVERSARIAL PROCESS IS ALL ABOUT.

SO WE WOULD HAVE TO DISAPPROVE ALL OF THOSE CASES THAT SAY , IN ORDER TO SHOW SOME KIND OF INTEREST, THE CASES THAT SAY THAT YOU DISCLAIMED OWNERSHIP IN THIS DOCUMENT, THEN, YOU ARE NOT ALLOWED TO PARTICIPATE. WE WOULD HAVE TO DISAPPROVE OF THOSE CASES.

NO , YOUR HONOR , BECAUSE OWNERSHIP IS NOT AT ISSUE AT THE ADVERSARIAL PRELIMINARY HEARING. OWNERSHIP IS ONLY AT ISSUE AT THE SECOND STAGE OF THE FORFEITURE PROCEEDING. WHAT WE HAVE HERE IS A WHOLESAL DENIAL OF DUE PROCESS. AT THE FIRST STAGE, WHERE OWNERSHIP INTEREST IS NOT AT ISSUE.

I NOT, AGAIN, IN RESPONSE TO JUSTICE BELL'S QUESTION, YOU SAID THIS IS NOT AN ISSUE OF DUE PROCESS. YOU SAID THIS IS AN ISSUE OF THE PLAIN LANGUAGE OF THE STATUTE.

IT IS BOTH , YOUR HONOR , BECAUSE AS A RESULT , MY CLIENT WAS DENIED A MEANINGFUL OPPORTUNITY TO BE HEARD AFTER HE REQUESTED AN ADVERSARIAL PRELIMINARY HEARING , AND THE STATUTE GIVES HIM THE ABSOLUTE RIGHT TO THAT HEARING.

IF WE GO BACK TO REAL PROPERTY, IT SAYS THE PURPOSE OF THE STRICT CONSTRUCTION AND EVERYTHING , IS YOU BALANCE THE STATE INTEREST VERSUS AN INDIVIDUAL INTEREST, BUT IT SAYS ONE OF THE THINGS YOU CONSIDER IS THE NATURE OF THE PARTY AND THE SUBJECT OF THE RIGHT BEING INFRINGED UPON, AND BASICALLY WHAT YOU ARE SAYING IS THE STATUTE SAYS THAT A PERSON IN MERE POSSESSION IS ENTITLED TO THE RIGHT TO NOTICE OF THE HEARING , THAT THAT AFFORDS THE PERSON NOT ONLY THE RIGHT TO A HEARING BUT SATISFIES THAT PORTION OF THE DUE PROCESS PRONG , THAT THERE IS A RIGHT TO THE PROPERTY BEING INFRINGED ON. LET ME MAKE IT REAL SIMPLE. IF YOUR REAL SIMPLE. IF YOUR PERSON HAS NO RIGHT OR CLAIM IN THE PROPERTY AND CANNOT SHOW THAT AS A PRELIMINARY MATTER, WHAT DUE PROCESS RIGHT IS BEING INFRINGED UPON?

THE RIGHT TO BE HEARD AT THE FIRST STAGE OF THE FORFEITURE PROCEEDING , THE FIRST OF THE TWO STAGES. REAL PROPERTY SAYS THAT MY CLIENT HAS A RIGHT TO BE HEARD AT THE ADVERSARIAL PRELIMINARY HEARING. THAT IS A DUE PROCESS RIGHT , AND THE RIGHT THERE IS NOT MY CLIENT'S BURDEN TO SHOW OWNERSHIP AT THAT RIGHT. IT IS THE SEIZING AGENCY'S BURDEN TO JUSTIFY THE TAKING OF THE PROPERTY FROM HIS PERSONAL POSSESSION, WITH A SHOWING OF PROBABLE CAUSE. IF THAT IS DONE, THEN WE GO , THEN AND ONLY THEN , DO WE PROCEED TO THE SECOND STAGE , WHICH WOULD REQUIRE A SHOWING BY MY CLIENT , OF A PROPRIETARY INTEREST IN THE PROPERTY, IN ORDER TO DEFEAT FORFEITURE, BUT WE DON'T GET TO THAT SECOND STAGE , UNLESS THE TO THAT SECOND STAGE , UNLESS THE DEPARTMENT IN THIS CASE MEETS ITS BURDEN AT THE FIRST STAGE , WHICH IT DIDN'T, BECAUSE

THE DEPARTMENT ARGUED THAT MY CLIENT SHOULD HAVE NO RIGHT AT ALL TO AN ADVERSARIAL PRELIMINARY HEARING, AND THAT

JUST TO GET THE PROCEDURE CORRECT, THE COMPLAINT ISN'T FILED UNTIL AFTER THE PROBABLE CAUSE HEARING, CORRECT?

IN THIS CASE THE COMPLAINT WAS FILED, I THINK IT WAS FILED BEFORE THE ADVERSARIAL PRELIMINARY HEARING, BUT IT DOESN'T HAVE TO BE. ANOTHER STATUTE REQUIRES ONLY THAT IT BE FILED AFTER, EVEN THOUGH

IT CAN BE FILED, AS LONG AS IT IS PROMPTLY FILED WITHIN THE 45-DAY DEADLINE, THAT IS THE DeGREGORIO CASE, AND IF THAT IS VIOLATED, DeGREGORIO HOLDS THE PROPERTY IS RETURNED.

WELL, THE DIFFERENCE IS IN DeGREGORIO, THERE WAS NO COMPLAINT FILED WITHIN 45 DAYS. HERE THERE WAS A HEARING HELD WITHIN 30 DAYS. THE DIFFERENCE IS YOUR CLIENT WASN'T ALLOWED TO PARTICIPATE, SO I DON'T SEE THOSE TWO AS NECESSARILY CO-EXTENSIVE.

I THINK THEY BOTH INVOLVE SIGNIFICANT VIOLATIONS OF THE STATUTE. IN THE HEARING THAT WAS HELD, QUOTE/UNQUOTE HEARING IN THIS CASE WAS NOT AN ADVERSARIAL HEARING. IT WAS AN EXPARTE HEARING.

YOU WOULD AGREE THAT THE QUESTION CERTIFIED HERE IS ONE ONLY OF STANDING. CORRECT?

YES. AS TO THE ADVERSARIAL PRELIMINARY HEARING.

AND SO THAT IS WHAT WE HAVE TAKEN JURISDICTION.

YES, YOUR HONOR, AND OUR POSITION IS THAT THE FOURTH DISTRICT IS CORRECT ON THE ANSWER TO THIS QUESTION IN BARUCH AND JOHN LOU'. JOHN LOUIE.

MAY IT PLEASE THE COURT. ROBERT FIALLO AND ROBERT CIDADE FOR THE MIAMI POLICE DEPARTMENT. WHAT IS TAKEN HERE IS AN ACTION DEALING WITH PERSONAL PROPERTY. REAL PROPERTY DEALT WITH REAL PROPERTY, AND ACTUALLY THIS COURT EVEN STATED IN REAL PROPERTY, THAT IT IS CLEAR THAT REAL AND PERSONAL PROPERTY ARE SUBSTANTIALLY DIFFERENT, BOTH IN THE INTERESTS OF THE PARTIES INVOLVED AND THE ABILITY OF THE LIENHOLDERS TO DISPOSE OF THE INTEREST. THEREFORE

WHAT ABOUT THE STATUTE?

YOUR HONOR, THE STATUTE DOES NOT ESTABLISH TWO LEVELS OF STANDING, WHICH I BELIEVE IS NOT WHAT THIS COURT ATTEMPTED TO DO IN REAL PROPERTY.

DOESN'T THE PLAIN LANGUAGE OF THE STATUTE SUPPORT HIS POSITION?

NO, YOUR HONOR, IT DOESN'T. THE STATUTE SAYS THAT THE PERSON WITH A STANDING POSITION IS ENTITLED TO A RIGHT TO DUE PROCESS AND A RIGHT TO A HEARING. THAT IS WHAT THE PROCESS ESTABLISHES.

WHY ARE YOU GOING TO HAVE A STATUTORY SCHEME THAT MANDATES, REQUIRES, AS YOU CAN SEE NOTICE TO SOMEONE, IF IT IS NOT NOTICE FOR A REASON. IS IT JUST NOTICE NEECE THE ABSTRACT?

NO, YOUR HONOR.

FOLLOW IS IT JUST NOTICE IN THE ABSTRACT?

NO , YOUR HONOR.

FOLLOW THROUGH WITH THE STATUTE. T ELL ME WH AT YOU ARE SAYING.

THE DUE PROCESS IN THE STATUTE IS NOTICE TO BE HEARD. SINCE THIS IS AN IN RIM ACTION AND THE PERSON MAY NOT NECESS ARILY BE THE MAY NOT NECESSARILY BE THE OWNER, THAT IS WHY THE PERSON MUST SHOW A REASONABLE INFERENCE TO CONTEST PROBABLE CAUSE.

THE NOTICE CONCEPT UNDER THE STATUTE IS TO GIVE WHOEVER HAD POSSESSION OF IT NOTICE, SO THEY CAN LET THE REAL OWNER KNOW WHAT IS GOING ON, TO COME IN.

RIGHT, OR IN FACT I F THEY ARE THE REAL OWNER , THEN THEY KNOW TO COME IN AND THAT RIGHT EXISTS.

THE L AW DOESN'T ALLOW THE STATE JUST TO ARBITRARILY TAKE PROPERTY FROM THE POSSESSION OF WH OEVER HAS POSSESSION OF I T AND THEN FORFEIT THAT PROPERTY , DOES IT?

NO.

ALL THAT THIS , OUR EARLIER DECISION SOME YEARS AGO AND THIS STATUTORYSCHEME DOES, IS SORT OF FOLLOW ALONG AND IT MAY WORK OUT IN ONE CASE AND IT MAY NOT WORK OUT IN ANOTHER CASE, THE OLD AD AGE ABOUT POSSESSION IS NINE TENTHS OF THE LAW OR WHATEVER. SO I AM HAVING DIFFICULTY H OW IT WOULD MAKE ANY SE NSE TO REQUIRE NOTICE, REALLY , SORT OF JUSTICE LE WIS 'S QUESTION , BUT NOT HAVING THAT PERSON PARTICIPATE. WE CAN HAVE MA NY VARIATIONS. WE CAN HAVE THE BA NK ROBBER, YOU KNOW, SOMEBODY OBVIOUSLY THAT WA NTS TO SAY THAT , IDON'T HAVE ANYTHING TO DO WITH ALL THAT CASH , BE CAUSE THEY ARE OBVIOUSLY FEARFUL OF THE CRIMINAL SANCTIONS THAT MAY FOLLOW FROM DOING THAT, AND THE STATE MAY BE ABLE TO SUCCESSFULLY IN THAT CASE EVEN TUALY FORFEIT THAT PROPERTY BECAUSE THEY HAVE REALLY GOT SOMEBODY, BUT WE , ALSO, MAY HAVE SI TUATIONS WHERE THE , THERE IS AN EXPENSIVE FUR CO AT THERE , AND THE PERSON SAYS , WELL , THAT IS NOT MINE , AND THE STATE TAKES POSSESSION OF IT , UNDER , AND THEN CONSTRUE ING THAT THAT IS NOT MINE , MEANING, WELL , JUST LIKE THE BANK ROBBER, BUT ALL THAT PERSON WAS SAYING , IS IT IS MY WIFE 'S! BUT HE DIDN'T SAY THAT, YOU KNOW, AT THAT TIME , AND THESE HEARINGS SHOULD SORT ALL OF THAT OUT, SHO UL D IT NOT, BUT I N ITIALLY , THE POSSESSOR OF PROPERTY HAS SUBSTANINGTS RIGHTS, AND THE STATE CAN SUBSTANTIAL RIGHTS, AND THE STATE CANNOT JUST ARB ITRARILY TAKE FROM THAT POSS ESSOR , THE PROPERTY , AND ISN'T THAT WHAT THIS WHOLE SCHEME IS ABOUT?

THAT IS NOT OCCURRING, YOUR HONOR, THAT IS NOT WHAT IS OCCURRING. AGAIN , THE STATUTE IS CLEAR , IN THAT IT SAYS , LO OK , YOU HAVE A R IGH T TO NOTICE , AND THERE IS A RIGHT TO A HEARING, BUT SINCE THIS IS AN IN RIM ACTION AND IT IS PERSONAL PROPERTY AND THE POSSESS ER MAY NOTNECESSARILY BE THE OWNER OR HAVE LE GAL INTEREST. THEREFORE YOU HAVE TO COME FORWARD WITH SOMETHING TO SHOW THAT YOU HAVE THE STANDING, WH ICH THEN GO ES TO THE STANDING QUESTION.

WE REALLY ARE STRUGGLING WITH THIS.IF WE ARE GOI NG TO HAVE A HEARING, AND THIS PERSON WHO IS GIVEN THE NOTICE, HAS THE ACT UAL RIGHT TO REQUEST THEHEARING , C O RRECT?

THAT'S CORRECT.

THAT PERSON REQUESTS A HEARING.THE HEARING HAS TO BE SET WITHIN A SPECIFIC TIME , AND THEN WHAT , WH AT DO YOU SAY TAKES PLAC E AT THAT HEARING, IF THE PERSON WHO IS GIVENTHE NOTICE , HAS NO RIGHT TO DO ANYTHI NG AT THE HEARING?

THEY DO HAVE THE RIGHT , BUT BEIN G THAT IT IS , AG AIN

WHAT, THEY DO HAVE THE RIGHT FOR WHAT THEN?

THEY DO HAVE A RIGHT TO CONTEST PROBABLE CAUSE , ANDTHE THIRD , LET ME B E CLE AR

I G UESS THAT IS WHAT WE WERE ALL T RYING TO GET AT , IS THE PERSON WHO GETS THE NOTICE, DOES IN FACT , H AV E THE RIGHT TO COME TO THAT HEARING AND CONTEST THE PROBABLE CAUSE!

YES. THEY DO, I F THEY E STABLISH IN THIS CASE , AND THE LINE OF CASES FROM THE THIRD DISTRICT COURT OF APPEAL F ROM MUNYOS TO THE CASE AT BAR , TA LK ABOUT CURRENCY.

YOU SAY THEY HAVE A RIGHT TO COME TO THE COURT ANDTALK WITH B CURRENCY. WHERE IS THAT ACT ION?

I THINK THAT IS IN THE BRIEF.WE HAVE THAT RIGHT TO ACTION. WHEN THE INTERVENOR COMES TO COURT , THEY HAVE - -

WHY ISN'T THE POSSESSOR , WHY ISN'T THERE A SUFFICIENT REQUIRING OF THE STATE TO SHOW THAT THEY HAD LEGALCAUSE TO SEIZE THAT FURCOAT?

IN THIS PARTIC ULAR CASE AT BAR WITH THE F ACTS HERE, THE PERSON IN POSSESSION SAID IT IS NOT MY M ONEY, BUT NOT MY M ONEY.

BUT THAT IS WHY YOU HAVE HEARINGS . THAT IS WHY YOU DO THIS. WHY SHOULDN'T THE STATE INITIALLY HAVE THE BU RDEN AT SUCH PROCEEDING, TO DEMONSTRATE THAT THEY HADLEGAL CAUSE TO TAKE THAT FUR COAT? ARE YOU SAYING, NO , THE STATE DOESN'T HAVE ANY REQUIREMENT TO DO T HAT?

YES, WE DO . WE HAVE THAT REQUIREMENT , AND THAT IS WHY THE STATUTEGOES ON TO SAY THAT THESWORN AFFIDAVIT WI LL BE , AN D THE PETITION WILL BE REVIEWED BY THE COURT, AND THE COURT WILL MAKE A DETERMINATION , BUT LET'S SAY IN AN EXPA RTE SITUATION , WE DON'T COME IN AND FILE ACOMPLAINT AND AUTOMATICALLY WE GET PROBABLE CAUSE AND WE ARE ABLE TO HOLD THE MONEYAND CONTINUE WITH THE FORFEITURE ACTION .

TO AN SWER JUSTICE ANS TEAD 'S QUESTION ABOUT THE FUR COAT , MY UNDERSTANDING, CORRECT ME WHERE I AM W RONG , IS THAT THE POSSESSOR OF THE FUR COAT WOULD B E ENTITLED TO HAVE NOTICE, REQUEST THEHEARING , COME TO THE HEARING , AND WHAT THE CASE LAW IS SAYING IS , THE POSSESS ER OF THE FUR COAT, LET'S SAY TWO PEOPLE SHOW UP AT THE HEARING AND SAY IT IS MY COAT. NO , IT IS MY COAT. THAT THE JUDGE WOULD PUT SOMEBODY UNDER O ATH OR AN ATTORNEY COULD AP PEAR WITH ASWORN AFFIDAVIT , AND SOMEBODY JUST HAVE TO CLAIMA COLORABLE INTEREST IN THAT FUR COAT , TO PARTICIPATE AT THE HEARING S THAT WHAT CASE LAW IS SAYING OUT OF THETHIRD?

YES , YOUR HONOR.

SO SOMEBODY COULD COME TO COURT AND SAY THAT IS MY FUR COAT. THAT IS ALL THEY HAVE TO SAY.

YES.

WHAT IF A PERSON COMES IN AND SAYS THIS IS NOT MY FUR COAT BUT THIS FUR COAT BELONGS TO MY FRIEND, AND IDON'T KNOW WHERE HE IS AT THIS MO MENT. HE HAS BEEN GIVEN NOTICE. HE REQUES TED THE HEARING ANDIT WAS IN HIS POSSESSION , BUT NOW YOU ARE SAYING HE

CAN'T DO ANYTHING BEYOND THAT, BECAUSE HE HAS ACKNOWLEDGED THAT THIS COAT WAS IN MY POSSESSION BUT IT REALLY BELONG TO SAY A FRIEND OF MINE.

NO, THAT IS NOT OWNERSHIP. WHAT WE ARE TALKING ABOUT, THAT PERSON, I WOULD INTERPRET UNDER THE CASE LAW TO SAY THAT THAT PERSON HAS STANDING TO CONTEST BECAUSE THEY HAVE AN INTEREST IN THE COAT. THEY RECEIVED THE COAT FROM THE OWNER, AND LET'S SAY IN THAT SCENARIO THAT THE FUR COAT WAS BEING GIVEN TO GO TO A SPECIAL EVENT AND THE OWNER LENT IT TO THE PERSON TO GO TO THE SPECIAL EVENT.

ONLY THOSE PEOPLE WHO SAY I HAVE, YOU GOT IT FROM MY POSSESSION BUT I DON'T KNOW WHO HAD IT, I DON'T KNOW WHO OWNS IT, I DON'T KNOW ANYTHING AT ALL ABOUT IT, THEY HAVE NO STANDING, EVEN THOUGH THEY REQUESTED NO STANDING, EVEN THOUGH THEY REQUESTED THE HEARING.

I THINK IT IS FACT SPECIFIC, YOUR HONOR, AND I WOULD SAY WHAT IT BOILS DOWN TO IS THAT POSSESSION HAS TO ALSO BE LINKED TO AN OWNERSHIP INTEREST OR AN INTEREST IN IT LEGALLY, EVEN AS, PERHAPS, A BAILEE OR SOMETHING TO THAT EFFECT. THERE ARE SITUATIONS LIKE WE DISCUSSED HERE WITH THE COAT, THAT THE OWNER OF THE COAT MAY HAVE LEGITIMATELY GIVEN THE COAT TO SOMEONE TO USE, AND THEN IF THE COAT IS SEIZED AND THE OWNER IS NOT AVAILABLE, ARGUABLY, THE PERSON IN POSSESSION OF THE COAT HAS AN INTEREST IN THE COAT. IT WAS LENT TO THEM.

OBVIOUSLY BECAUSE YOU ARE SAYING THAT AT THE TIME THAT WHOEVER WAS AROUND THE PROPERTY AT THE TIME IT WAS SEIZED, MUST AT LEAST COME IN AND SAY, YES, I POSSESSED IT. YOU SEEM ALMOST TO BE CHALLENGING WHETHER THIS PARTY POSSESSED BECAUSE IT IS IN THE BACKSEAT AND DECLINED ANY KNOWLEDGE OF IT. I DON'T KNOW HOW IT GOT THERE. I DON'T IS THAT WHAT YOU ARE ARGUING?

NO. NO.

YOU ARE SAYING IF THEY COME IN AND ACKNOWLEDGE POSSESSION, THEY SEEM TO HAVE STANDING.

PERHAPS I DIDN'T MAKE MYSELF UNDERSTOOD. I APOLOGIZE. THE ACT OF POSSESSION DOESN'T NECESSARILY MEAN THAT THEY HAVE A LEGAL INTEREST OR THEY ARE THE OWNER. AS WE HAVE BEEN DISCUSSING IN THE HYPOTHETICALS, I DON'T BELIEVE THAT THIS COURT IN REAL PROPERTY, INTENDED TO ESTABLISH TWO LEVELS OF STANDING TO CONTEST A FORFEITURE. AN ADVERSARIAL PRELIMINARY HEARING IS A PROCEDURE IN FORFEITURE, AND THE CASE-IN-CHIEF IF IT GOES TO TRIAL, IS THE PROCEEDING IN FORFEITURE. THEY ARE ALL THE SAME. AND IT SEEMS.

THAT DOESN'T SEEM TO BE WHAT THE STATUTE SAYS. A PLAIN READING OF THE STATUTE, SEEMS TO MEAN THAT THEY DID INTEND A TWO-STEP PROCESS. ANOTHER ADVERSARIAL HEARING IS TO DETERMINE IF THE PROPERTY, PERSONAL PROPERTY CAN CONTINUE TO BE HELD, UNTIL THE FINAL FORFEITURE, AND I DON'T SEE THOSE AS SEPARATE, YOUR HONOR. AND I DON'T READ THE STATUTE AS SUCH. IT IS CLEAR IN ITS LANGUAGE THAT WHAT IT IS SAYING IS DUE PROCESS, AS THIS COURT STATED IN REAL PROPERTY, SAYS, YOU MUST GIVE NOTICE AND THE OPPORTUNITY TO BE HEARD. AND IF YOU GIVE THAT, BEING THAT IT IS AN IN REM ACTION AND DEPENDING ON THE AN IN REM ACTION AND DEPENDING ON THE CIRCUMSTANCES, YOU MAY NOT KNOW WHAT THE INTEREST IS, THAT THE PERSON WITH STANDING BE REQUIRED TO COME IN AT THE PRELIMINARY ADVERSARIAL HEARING AND CHALLENGE THE FORFEITURE AND SHOULD SHOW THAT I HAVE A LEGAL OWNERSHIP INTEREST.

WHAT I HEARD THAT YOUR, YOUR OPPONENT HAD? THEY GOT NOTICE. WHERE WAS THE OPPORTUNITY TO BE HEARD?

THE OPPORTUNITY TO BE HEARD WAS THAT THE HEARING WAS HELD.

BUT THEY WEREN'T HEARD.

BECAUSE ACCORDING TO THE PLAIN LANGUAGE OF THE STATUTE, THOSE ARE THE TWO THINGS THAT ARE GUARANTEED, AND THAT IS WHAT THIS COURT, I BELIEVE, ADDRESSED.

YOU JUST SAID BEFORE THAT IT REQUIRES NOTICE AND AN OPPORTUNITY TO BE HEARD. IF THAT IS WHAT IS REQUIRED, WOULD YOU CONCEDE WHICH YOU CONCEDE, WHERE WAS THE OPPORTUNITY TO BE HEARD? NOT THE OPPORTUNITY TO HEAR. THE OPPORTUNITY TO BE HEARD.

BUT, YOUR HONOR, THE OPPORTUNITY TO BE HEARD IS, A GAIN, REVOLVES AROUND WHAT THEIR INTEREST IS IN THE IN REM ACTION IS IN THE PROPERTY. AND THEN THAT IS WHY IN OUR BRIEF WE ANALYZED INFORMATION INTERVENTION, WHERE THE COURT COMES IN AND SAYS I HAVE AN INTEREST IN THE PROPERTY AND THIS IS MY INTEREST AND THE COURT MAKES THAT DETERMINATION.

IS THERE ANY OTHER STATUTE THAT YOU CAN CITE TO US OR ANY OTHER PROCEEDING IN FLORIDA LAW, WHERE SOMEONE HAS THE RIGHT TO NOTICE AFTER PROCEEDING BUT NO RIGHT TO PARTICIPATE IN THE PROCEEDING?

NO. I DON'T, YOUR HONOR.

SO THIS WOULD BE UNIQUE IN FLORIDA LAW.

I DON'T BELIEVE THAT IT IS UNIQUE, IF WE LOOK AT IT

IF THERE IS NO OTHER FLORIDA LAW, THEN IT IS UNIQUE.

IN TERMS OF STANDING. STANDING IS A THRESHOLD ISSUE, YOUR HONOR.

HOW ABOUT THE FEDERAL FORFEITURE LAW?

THE FEDERAL FORFEITURE LAWS UPHOLD THAT A PERSON HAS TO SHOW A SWORN INTEREST, AND IT IS USUALLY DONE BY AFFIDAVIT. THERE IS A PROVISION IN SOME OF THE FEDERAL FORFEITURE LAWS. THERE IS THE CRIMINAL AND THE CIVIL FORFEITURE, BUT THEY CAN APPEAR BY AFFIDAVIT, WHICH SAYS THIS IS MY LEGAL INTEREST IN THIS PROPERTY THAT IS BEING SEIZED AND FORFEITED, AND, A GAIN, I JUST WOULD REMIND THE COURT THAT WHAT IS IMPORTANT HERE IS THAT THIS IS AN IN REM ACTION AND IT IS AGAINST THE PROPERTY, AND IT IS NOT LIKE TIGHTSEED PROPERTY. IT IS NOT LIKE WHAT OCCURRED IN REAL PROPERTY.

SO DO YOU THINK, THEN, IS THE REASON FOR THE STATUTE IN REFERRING IN THE PROBABLE CAUSE PORTION OF PERSONS ENTITLED TO NOTICE, WHEREAS THE FORFEITURE PORTION OF IT, REFERS TO CLAIMANTS, AND THOSE TWO TERMS HAVING DIFFERENT MEANINGS?

BECAUSE I BELIEVE THAT THE DUE PROCESS CONCERN THAT THE PORTION THAT SAYS A PERSON ENTITLED TO NOTICE AND THAT THERE IS A RIGHT TO A HEARING, DEALS WITH JUST THAT. WITH NOTICE, AND THE OPPORTUNITY TO BE HEARD.

BUT IT SEEMS TO ME THAT YOUR ARGUMENT CONVERTS THE PERSON ENTITLED TO NOTICE, INTO HAVING TO PROVE THAT HE IS A CLAIMANT AT THIS STAGE, WHERE THERE IS NOTHING IN THE STATUTE THAT SAYS YOU HAVE TO BE A CLAIMANT IN ORDER TO PARTICIPATE IN THAT PROBABLE CAUSE PROCEEDING.

A GAIN, THE STATUTE, OUR ARGUMENT ADDRESSES THE DUE PROCESS CONCERNS OF NOTICE

AND THAT THERE IS AN OPPORTUNITY TO BE HEARD AND AN ADVERSARIAL PRELIMINARY HEARING CAN BE REQUESTED.

BUT LET'S , YOU KNOW , LOOKING OVER THE STATUTE AGAIN, IT IS NOT ONLY THAT THERE IS A DISTINCTION MADE BETWEEN A CLAIMANT AND A PERSON ENTITLED TO NOTICE UNDER THE DEFINITIONAL SECTION, BUT , THEN WHEN YOU GO TO 703.2-A , IT SAYS SPECIFICALLY, THAT PERSONAL PROPERTY MAY BE SEIZED AT THE TIME OF THE VIOLATION OR SUBSEQUENT TO THE VIOLATION, IF THE PERSON ENTITLED TO NOTICE, WHICH WE AGREE IS A PERSON IN POSSESSION , IS NOTIFIED AT THE TIME OF SEIZURE OR BY CERTIFIED MAIL , RETURN RECEIPT REQUESTED , THAT THERE IS A RIGHT TO AN ADVERSARIAL PRELIMINARY HEARING AFTER THE SEIZURE , TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT SUCH PROPERTY HAS BEEN OR IS BEING USED IN VIOLATION OF THE FLORIDA CONTRABAND ACT. I SEE NOWHERE IN THAT WHOLE SECTION, THAT THERE IS ANY REQUIREMENT , AND I THINK THIS IS WHAT YOU GO BACK TO , AT LEAST IT IS NOT THE CONSTITUTIONAL ARGUMENT BUT THE CLEAR STATUTORY INTENT IS THAT THE PURPOSE OF THE ADVERSARIAL HEARING IS TO ESTABLISH WHETHER THE STATE HAS THE RIGHT TO SEIZE , WHETHER THE GOVERNMENTAL AGENCY HAS THE RIGHT TO SEIZE THE PROPERTY, AND NOWHERE DOES IT SAY THAT THE ADVERSARIAL PRELIMINARY HEARING IS TO ESTABLISH IF THE PERSON IS A CLAIMANT , SO EVEN IF WE THOUGHT, AND WE WERE IN OUR RULE-MAKING POSITION , THAT WE THOUGHT THAT WOULD BE A GOOD THING TO DO , I THINK WE WOULD BE IN VIOLATION OF WHAT THE STATUTE REQUIRES , AND SO GOING BACK TO STATUTORY CONSTRUCTION , WHERE DO YOU READ WHAT YOU HAVE BEEN ARGUING DURING YOUR 20 MINUTES HERE , THAT IT APPEARS THAT THERE HAS TO BE SOME ADDITIONAL ESTABLISHMENT , BEFORE THEY CAN PARTICIPATE IN THE ADVERSARIAL PRELIMINARY HEARING?

I THINK THAT IS IN THE DEFINITIONAL PORTION, YOUR HONOR. CLEARLY WHY WOULD THEY ESTABLISH TWO TYPES OF PERSONS? A PERSON ENTITLED TO NOTICE AND A CLAIMANT. A PERSON ENTITLED TO NOTICE IN ORDER TO SATISFY DUE PROCESS, IS GIVEN NOTICE , AND IS TOLD THAT THERE IS OPPORTUNITY TO APPEAR AND TO CONTEST THE FORFEITURE , BUT BEING , AGAIN , AN IN REM ACTION, THE COURT HAS TO HAVE THE REQUIREMENT OF STANDING, TO SHOW THAT THE PERSON IN FRONT OF THE COURT IS THE ONE THAT CAN CONTEST! I WOULD ASK , IF THERE ARE NO OTHER QUESTIONS, I WOULD ASK THAT THE COURT AFFIRM THE THIRD DISTRICT COURT OF APPEAL . THEIR APPROACH IS CONSISTENT WITH DUE PROCESS, WITH THE STATUTE , AND WITH THE BALANCING TEST THAT THIS COURT SET OUT IN REAL PROPERTY. THANK YOU.

CHIEF JUSTICE: THANK YOU .

NOWHERE IN THE STATUTE , IS MORE REQUIRED THAN MERE POSSESSION IN ORDER TO OBTAIN AN ADVERSARIAL - -

MR . MORRIS, IT SEEMS WHAT COUNSEL IS SAYING I'M READING BETWEEN THE LINES THAT IT IS IN REM. IT SEEMS MORE THAT WE ARE DEALING WITH A THING AND WE REALLY HAVE NO IDEA WHO HAS REAL INTEREST IN THIS THING , AND WE HAVE TO GIVE SOMEBODY NOTICE, SO WE GIVE THE PERSON WHO HAD POSSESSION OF IT NOTICE, BUT THE WHOLE STATUTE SEEMS TO BE SAYING , CONTEMPLATES THAT YOU STILL NEED TO HAVE AN INTEREST IN IT NOT JUST BE IN POSSESSION OF IT , TO GET INVOLVED IN THE DOGFIGHT ABOUT IT.

NOT THIS STATUTE.

I AM SAYING THAT SEEMS TO BE WHAT HE IS SAYING.

AGAIN, I THINK WHAT THE DEPARTMENT IS DOING IS REWRITING THE STATUTE , AND I CAN'T SAY IT ANY BETTER THAN THE FOURTH DISTRICT SAID IT IN BARUCH, AND THAT IS THAT THE LEGISLATURE'S 1992 AMENDMENTS TO THE FORFEITURE ACT, ADDED TO THE DEFINITION OF CLAIMANTS , PERSONS ENTITLED TO NOTICE , ADVERSARIAL PRELIMINARY HEARING AND FORFEITURE PROCEEDING. THESE DEFINITIONS SHAPED THE STANDING REQUIREMENTS FOR THE

TWO STAGES OF A FORFEITURE PROCEEDING, WITHIN THE CONSTITUTIONAL PARAMETERS OF DUE PROCESS, AND RIGHT ON THE MONEY, THEY SAID IN THE NEXT PARAGRAPH, THE RECIPIENT OF A STATUTORY NOTICE, IS ENTITLED TO REQUEST AN ADVERSARIAL PRELIMINARY HEARING, SUBJECT TO THE LATER REQUIREMENT THAT, AT THE HEARING, HE DEMONSTRATES THAT HE COMES WITHIN THE STATUTORY DEFINITION OF A PERSON ENTITLED TO NOTICE. IT IS CONCEDED HERE BY THE DEPARTMENT, THAT MR. VELEZ COMES WITHIN THE STATUTORY DEFINITION OF A PERSON ENTITLED TO NOTICE, EVEN UNDER THE FEDERAL FORFEITURE ACT. MR. VELEZ HAS ARTICLE I II STANDING, BECAUSE HE WAS AT THE VERY LEAST, IN CONSTRUCTIVE POSSESSION OF THE SUIT CONSTRUCTIVE POSSESSION OF THE SUITCASE THAT HE SAID WAS HIS.

DOES ANYONE ELSE HAVE STATUTORY STANDING TO BECOME INVOLVED IN THE CASE?

UNDER THE FACTS OF THIS CASE, NO, WE HAVE ONLY ONE PERSON WHO HAS FILED ANY CLAIM, WHO HAS REQUESTED AN ADVERSARIAL PRELIMINARY HEARING AND WHO HAS MADE AN APPEARANCE, ONLY ONE PERSON, SO WE DON'T HAVE THAT DISPUTE HERE. AS THE PERSON WITH NOTICE, THAT IS THE END OF THE BALLGAME WITH REGARD TO WHO CAN PARTICIPATE, UNLESS SOMEONE COMES IN, IF SOMEONE COMES IN AND SAYS THAT IS MY PROPERTY.

WELL, THE PERSON ENTITLED TO NOTICE MEANS ANY OWNER, ENTITY, BONA FIDE LIEN HOLDER OR PERSON IN POSSESSION OF THE PROPERTY, SO ANY OF THOSE PEOPLE

IT DOES PULL IN THAT CONCEPT.

YES. IT DOES PULL IN ALL OF THOSE PEOPLE BY DEFINITION, AND MR. VELEZ IS CONCEDEEDLY ONE OF THEM. THANK YOU.

CHIEF JUSTICE: THE COURT WILL BE IN RECESS UNTIL 3:30 THIS AFTERNOON, WHEN IT WILL BE IN CEREMONIAL SESSION FOR OUR PRO BONO CEREMONY.

MARSHAL: PLEASE RISE.