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Rotemi Realty, Inc. V. Act Realty Co.

WE WILL CALL THE LAST CASE FOR THIS MORNING, WHICH IS ROTINI REALTY VER SUS ACT REALTY. ,LET'S WAIT UN TIL HE S I TS DOWN AND GO AHEAD.

MAY IT PLEASE THE COURT. SHELTON ROSENTHOL.

MR. ROSENTHAL , I UNDERSTAND THAT YOU ARE GRACIOUSLY GI VING U P FIVE MINUTES OF YOUR ORAL ARGUMENT TIME, TO MR. SORENSON. > > I AM , YOUR HONOR.

AND THE RED LIGHT WILL COME ON . IS THAT CORRECT? WHEN THAT OCCURS. I AM GOING TO ASK YOU, THEN, TO MINDFUL, BE CAUSE EV ER Y MINUTE THAT YOU EX PEND WILL BE TAKEN OFF OF HIS.

I WILL DO IT. I REPRESENT THE PETITIONER S , ROTEMI REALTY , AND IN THIS CASE, THIS IS HERE O N A DISCRETIONARY REVI EW , BASED UPON A CONFLICT BETWEEN THE THIRD DISTRICT COURT O F APPEALS 'S OPINION IN THE CITY OF HIALEAH GARDENS V ERSUS J OHN ADAMS , AND THE SUPREME COURT 'S OP INION IN THE ROBERT AND COMPANY CASE. THE FAC TS OF THIS CASE ARE RELATIVELY SI MPLE, AND I THINK IF YOU READ THE DIS SENT IN THE CASE , THE FACTS WERE LAID OUT IN INTRICATE DE TAIL BY JUDGE COPE . VERY SIM PLY STATED , DADE COU NTY OR DADE COUNTY SCHOOL BOARD WAS INTER ESTED IN BUILDING A SC HOOL IN A CERTAIN LO CATION . FIFTH ACRES WAS WHAT THEY WERE INTERE STED IN. IT WAS IN AN U-SHAPE. THEY WERE NEGOTIATING WITH THE OWNE R OF THE 50 ACRES TO BUY THAT PARTICULAR U-SHAPED TRACT. THE BRO KER THAT I REPR ESENT HAPPENED TO , BY FORTUITOUS CIRCUMSTANCES , SE E IT ON THE MAP AND ASK WHETHER OR NOT THE SCHOOL BOARD WOULD BE INT ERESTED IN PURCHASING THE TEN ACRES THAT WERE IN THE CENTER, AND THEY SAID YES, SO SHE WENT BACK , BEING VERY ENTERPRISING, AND CONTACTED THE OWNER , AND DREW UP AN AGREEMENT THAT ACTUALLY SAID , IF I SELL THIS PRO PERTY , THIS TEN ACRES TO THE SCHOOL BOARD , WOULD YOU PAY M E A COMMISSION. THE OWNER SAID I WILL .

WILL YOU GO RIGHT TO THE ARGUMENT OF WHETHER THIS CONFLICTS WITH ROBERT AND COMPANY AND WHAT THE P U BLIC POLICY IMPLICATIONS ARE OF ALLOW ING THE CONTRACT.

THE CITY OF HIALEAH G ARDENS CASE , UPON WHICH THE THIRD DISTRICT COURT RE LIED , THE ESSENTIAL FINDING OF THAT CASE SAYS IT IS THIS . ALTHOUGH IT MAY BE NECESSARY , IT I S BETW EEN PR IVATE PARTY TO A CONT INGENT FEE CONT RACT INVOLVING PRI VATE MONIES FOR THE DEFENSE OF INVALIDITY TO BE RAISED, I F THE CONT ENTION CON TRACT IS WITH A PUBLIC ENTITY , AND INV OLVES A RAID ON THE PUBLIC TREASURY, IT SHOULD BE THE DUTY OF THE COURT AT ANY LEVEL, TO RAI SETHE INVALID ITY OF THE KRAT ON ITS OWN MOTION OF THE CONTRACT ON ITS OWN MOTION, TO PROTECT THE INTE REST OF THE PUBLIC. THE ROBERT AND COMP ANY CASE , SAYS SOMETHING THAT IS EXACTLY DIFFERENT. THE ROBERT AND COMPANY CASE SAID THIS , THAT FI RST OF ALL , IF THE INVA LIDITY OF THE CONTRACT IS NOT RAISED IN THE PL EADING STAGE AS AN AFFIRMATIVE DEFENSE , IT IS WAIVED. THAT IS THE FIRST ISSUE OF THE FIRST CONFLI CT. IN THE ROBERT CASE , NOBODY EVER RAISED INVALID ITY OF CONTRACT, AND THIS WAS A CONTRACT BETWEEN AN INDIVIDUAL AND A GOVERNMENTAL AGENCY. NOBODY RAISED IT , AND A COURT

THE THIRD DISTRICT IN THIS CASE SAID THAT THE CONTRACT WAS INVALID ON ITS FACE , COR RECT?

THEY FOUND IT TO BE INVALID ON ITS FACE .

SO , AND DO N'T THE CASES SAY THAT, WHERE A CONTRACT IS INVALID ON ITS FACE , THAT THAT ISSUE COULD BE RAISED SUA SP ONTE BY THE COURT ?

IF YOU WANT TO AC CEPT THAT RA TIONALE , THEN YOU HAVE TO GO TO THE NEXT ISSUE.

I UNDERSTAND. WHETHER THAT WAS A CORRECTDECISION IS ONE THING, BUT IT SEEMS TO ME WHAT THE THIRD DISTRICT SAID WAS THIS CONTRACT IS N'T VALID ON ITS FACE, AND THAT DETERMINATION CAN BE RAISED SUA SPONTE.

YES. IF YOU FIND IT TO BE INVALID ON ITS FACE .

SO, THEN , THE WAIVER ISS UE, REALLY , IS MERGED INTO THE ISSUE ON THE MERITS , WHETHER IT RELIEVES INVALID ON ITS FACE .

CORRECT.

SO AT LE AST WE HAVE JURISDICTION TO DETERMINE THAT.

YOU SEE, THEIR ARGUMENT IN THE THIRD DISTRICT COURTCASE, THE CITY OF HIALEAH GARDENS , SAID , ONE , IF IT IS A CONTINGENT CONTRACT WITH A PUBLIC E NTITY, THE CO NTRACT IN THIS CASE WASN'T WITH A PUBLIC EN TITY. NUMBER TWO, IT SAID IT INV OLVES A RAID ON PUBLIC M ONEY. IT DIDN'T INVOLVE A RAID ON PUBLIC MONEY , BECAUSE THE SCHOOL BOARD AL READY PAID THE SAME EXACT AMOUNT TO THE MONEYER OF THE 50 ACRES THAT THEY PAID TO THE OWNER OF THE TEN ACRES . SO NO NE OF THE FACTORS WERE THERE ANYWAY, BUT ASSUMING THAT THE COURT IS CORRECTTHAT THIS WAS SOMETHING THAT COULD BE RAISED SUA SPONTE , THEN YOU HAVE TO GO INTO THE N EXT ISSUE , WHICH APP EARS IN THE ROBERT AND COMPANY CASE , THAT SAYS THAT YOU HAVE TO SHOW THAT THERE WAS SOME FAVORS G IVEN , SOME REASON F OR THIS CONTRACT TO OFF END PUBLIC PO LICY. AND IN THE ROBERT AND COMPANY CASE, THEY FOUND THAT THERE WAS NO EVIDENCE, NO TESTIMONY , THAT THIS IN ANY WAY OFFENDED PUBLIC POLICY . AND NOW WE GO BACK TO THE CASE THAT I AM HERE ON , ANDWE FIND THAT THE COURT MAKESA RU LING , BASED UPON A CASE THAT HAS N O APPL ICATION TO THE FACTS OF T HE CASE BEFORE THE COURT! I MEAN , THE FACTS ARE AS DIFFERENT AS NIGHT IS FR OM D AY. IT HAD NOTHING TO DO WITH IT. AND IF YOU READ JUDGE COPE'S DISSENT , I THINK HE SO UPS UP VERY CERTAINLY , AND HE GOES THROUGH EV ERY FACTOR , THAT THESE BRO KERS HAD NOTHING TO DO WITH THE SCHOOL BOARD REACHING THIS DECISION. IN FACT , ONE OF THE ARGUMENTS MADE BY THE RESPONDENTS IN T HIS CASE , WERE THAT THE BROKERS WERE IN EFFECTURAL . IN EFFECTULE. THEY DIDN'T DO ANYTHING AND THEREFORE DON'T PAY HIM ANY MONEY B E CAUSE THEY WEREN'T THE PRO CURING CA USE. SO YOU CAN'T JUSTIFY , I CAN'T JUSTIFY WHERE THE COURT WENT.

LE T ME ASK YOU THIS.

YES.

AS I UNDERSTOOD A PART, THE ISSUE HERE, REALLY , IS YOU SAID THERE IS NO PUBLIC POLICY REASON WHY THIS CONTRACT COULD NOT GO INTO EFFECT.

S H OULD NOT B E DECLARED INVALID.

AND ONE OF THE ISSUES HERE IS WHETHER OR NOT , UNDER A STAT UTE PASSED BY THE STATE , SAYS YOU CAN NOT HAVE THESE CONTIN GENCY CONTRACTS IN SITUATIONS WHERE YOU ARE T R YING TO PROCURE OR SO LICIT BUSINESS FROM THE GOVERNMENT.NOW , IN THIS CASE YOU WORKED, YOUR CLIENT WAS TRY ING TO SELL PROPERTY TO THE GOVERNMENT, SO DOES THAT

STATUTE INVENT SOME KIND OF PUBLIC POLICY AGAINST CONTINGENCY FEE CONTRACTS IN THIS SITUATION?

NO, BECAUSE THAT STATUTE, RESPECTFULLY, YOUR HONOR, THAT STATUTE WAS DESIGNED SPECIFICALLY FOR CONTRACTORS, SURVEYORS, AND SPECIFICALLY IT STATES THAT.

I KNOW THE CONTRACT HAS SPECIFIC ITEMS INDICATED IN ENGINEERING SURVEYING, THINGS LIKE THAT.

THE STATUTE HAS THAT, QHE YE.

I AM SURE THE STATUTE HAS THAT, YES.

I AM SORRY. THE STATUTE HAS THAT IN THERE. BUT THE REASON TO TRANSLATE THAT INTO WHETHER OR NOT YOU SHOULD NOT HAVE CONTINGENCY FEE CONTRACTS IN THE PROCURING OR INVOLVING OF GOVERNMENT ENTITIES IN OTHER SITUATIONS?

ISN'T EVERY BROKER'S CONTRACT A CONTINGENCY FEE CONTRACT? ISN'T EVERY LAWYER'S CONTRACT A CONTINGENT FEE CONTRACT? OR MOST. IF THE CITY CAME TO ME AND SAID I HAVE A PIECE OF PROPERTY. I WANT TO SELL IT. YOU ARE A REAL ESTATE BROKER. I WILL PAY YOU 10 PERCENT OR I WILL GIVE YOU 10,000. THAT DOESN'T VIOLATE THE PUBLIC TRUST. NOW, THE REAL ESTATE BROKER WORKS ON A CONTINGENT FEE CONTRACT. I THINK WHAT YOU ARE TRYING TO CHANGE THIS TO, IF THEY WOULD HAVE SAID YOU ARE GOING TO PAY ME 10 PERCENT IF I SELL THE PROPERTY TO THE SCHOOL BOARD. THAT WOULD HAVE BEEN FINE. BECAUSE YOU ARE GOING TO SAY IT IS NOT CONTINGENT. IT WAS CONTINGENT ON SUCCESS. HERE THE ONLY DIFFERENCE IS IT SAID, IF YOU GET ME A MILLION DOLLARS, WHATEVER YOU GET OVER THAT, YOU WILL KEEP. THAT IS CONTINGENT, ALSO.

BUT ISN'T THAT, NOW, GOING BACK TO THE QUESTION OF, THAT JUSTICE CAN'T ASKED, ABOUT THE ISSUE, FIRST OF ALL, WHETHER IT COULD HAVE BEEN PROPERLY RAISED BY THE THIRD DISTRICT SUASPONTE, WOULDN'T THAT, TO THE EXTENT THAT THEY SAY IF IT IS OVER \$1 MILLION, THEY GET TO RETAIN WHATEVER IT IS AS

OVER THE MILLION.

OVER A MILLION.

I DON'T THINK THAT IS INVALID ON ITS FACE, NO.

BUT DOESN'T THAT SORT OF GO BACK TO THE ISSUE THAT, THE HIGHER THE AMOUNT IS, THE, THERE IS A GREATER INCENTIVE, I GUESS, TO GET A GREATER AMOUNT, WHICH THE MORE THAT THE ENTITY PAYS, THE LESS MONEY AVAILABLE TO THE PUBLIC. SO THAT IS DIFFERENT THAN JUST SAYING I AM GOING TO TAKE 3 PERCENT OR WHATEVER, OFF OF WHATEVER AMOUNT IS OBTAINED IN SALE, BUT ISN'T IT THAT THEY ARE RELATING IT TO THE FACT THAT THIS IS OVER, THIS IS LOOKING TO GET A HIGHER PRICE? AND

YES, BUT THEY DON'T SET THE PRICE. IT IS THE SCHOOL BOARD WHO SETS THE PRICE, BASED UPON AN APPRAISAL AND A MEETING OF THE SCHOOL BOARD. SO WHETHER THEY TOLD THE SCHOOL BOARD, I WANT 7 MILLION FOR THIS PROPERTY, THEY ARE GOING TO GET WHATEVER THE SCHOOL BOARD FEELS MAY BE REASONABLE, AND THE PROOF OF THE SITUATION OR THE FACT IS THAT THEY PAID THE 10 ACRES, THE EXACT SAME AMOUNT THAT THEY PAID THE 50 ACRES AND THAT THE 10 ACRES HAD NOTHING TO DO WITH IT, BUT ON ITS FACE WHAT YOU SEEM TO BE SAYING IS THAT, IF ANYBODY SAYS I AM GOING TO GET A COMMISSION OF ANYTHING OVER A MILLION, BECOMES INVALID.

AND, AGAIN , THE CONTRACT WAS WITH , WHAT YOU ARE SAY ING IS THAT IT IS THE SELLER THAT WAS PAYING THIS.

CORRECT.

IF ANYBODY LOST , IT WAS THE SELLER NOT THE SCHOOL.

RIGHT AND THAT IS WHAT THE WHOLE CASE WAS ABOUT.

BUT ISN'T THERE CONCERN , CUSTOM IS A 5 PERCENT COMMISSION, IT IS CUSTOM IN THE AREA FOR COMMERCIAL VERSUS RESIDENTIAL COMMISSIONS OR WHATEVER AND THE APPRAISED AMOUNTS OF PROPERTY, BUT IF YOU DO IT THIS WAY , I SN'T THERE AT LEAST SOME CONCERN THAT IT MIGHT LEAD TO CORRUPTING SCHOOL BOARD MEMBERS OR WHATEVER, AS A N INCENTIVE TO MAKE MORE MONEY , AS OPPOSED TO, A GAIN , THE TYPICAL SITUATION , THERE ARE STANDARDS IN COMMERCIAL.

YES, BUT THERE ARE A LOT OF REAL ESTATE CONTRACTS THAT SAY I WANT A MILLION NET. I DON'T CARE WHAT YOU GET . I MEAN , THERE ARE CONTRACTS OF THAT NATURE.

YOU HAVE , YOU ARE INTO MR . SORENSON 'S TIME.

I AM SAVE MY TIME FOR REBUTTAL IF I HAVE SOME .

CHIEF JUSTICE: YOU HAVE TIME FOR REBUTTAL. THIS IS ONLY GOING ON FOR HIS PORTION . AND YOU ARE HERE AS AMICUS.

YES, MA 'AM . HANG SORENSON ON BEHALF OF TRUD EVENINGS CREST COMMERCIAL REAL PRUDENTIAL CREST COMMERCIAL REAL ESTATE. PRUDENTIAL IS INTERESTED BECAUSE THEY SELL A LOT OF PROPERTY TO THE STATE GOVERNMENT AND FEDERAL GOVERNMENT AND LEASE OUT A TREMENDOUS AMOUNT OF PROPERTY TO THE FEDERAL AND STATE GOVERNMENT ON A YEARLY BASIS. THE REASON THAT I AM HERE IS TO MAINLY DISCUSS THE CONCERNS, ACTUALLY THE CONCERN OF CHIEF JUSTICE PARIENTE, WAS THE HIGHER THE AMOUNT, THE HIGHER THE COMMISSION ON A NET LISTING AGREEMENT.

I WOULD LIKE FOR YOU TO DISCUSS THE LANGUAGE OF THE THIRD DISTRICT , WHICH CERTAINLY THIS COURT HAS TO RESPECT, IS VERY STRONG IN THIS CASE.

YES, IT IS.

AND JUDGE LEVI WROTE THAT THE AND JUDGE LEVY WROTE THAT, QUICKLY THAT , THE CONTRACTED ISSUE IN TRANSCRIPT OF PROCEEDINGS BELOW WILL QUICKLY REALIZE WHAT TOOK PLACE HERE IS VILE I HAVE OF AND REPUGNANT TO THE IS VIOLATIVE OF AND REPUGNANT TO THE REPUBLIC OF THIS STATE. WHY SHOULD THIS COURT NOT TAKE THAT TO BE CORRECT , THAT IF IT IS REPUGNANT THAT THERE IS GOING TO BE A PRICE PAID FOR THE AMOUNT MORE THAN WHAT THE OWNER WOULD ACCEPT AS REAL VALUE OF THE PROPERTY.

YES. NET LISTING AGREEMENTS LIKE THE ONE IN THIS CASE ARE VERY COMMON PLACE IN THE INDUSTRY. THEY ARE NOT USED IN EVERY TRANSACTION, OF COURSE, THE TYPICAL COMMERCIAL LISTING AGREEMENT , FOR EXAMPLE , WOULD BE 10 PERCENT ON A SALE OR MAYBE 6-TO-8 PERCENT ON A COBROKER.

WHAT IS THE MARKET VALUE THAT WE RECOGNIZE OF A PIECE OF PROPERTY IS WHAT A WILLING BUYER WILL PAY TO A WILLING SELLER.

CORRECT. CORRECT. WELL , THERE WAS A RISK IN THIS CASE , BECAUSE THE BROKERAGE , LET'S

ASSUME THAT THE PROPERTY IN THIS CASE SOLD AT JUST BARELY A FEW DOLLARS OVER A MILLION. THE BROKERAGE WOULD HAVE WALKED AWAY FROM THE TRANSACTION WITH LITERALLY NOTHING. THAT IS WHY, IN A NET LISTING AGREEMENT, IT IS SORT OF A HIGHER RISK, HIGHER REWARD SCENARIO FOR THE BROKER.

WHAT I UNDERSTAND IS BEING SAID HERE AND WHAT I AM CONCERNED ABOUT WITH THE REALTOR, WITH THE REALTY PROFESSION IN THIS SITUATION, IS HERE WE HAVE GOT PUBLIC MONEY.

CORRECT.

AND WE HAVE GOT A SITUATION IN WHICH THE MARKET VALUE OF THIS PROPERTY IS SET NOT ON THE BASIS OF WHAT A WILLING BUYER AND WILLING SELLER WILL PAY BUT WHAT CAN BE LOBBIED THROUGH THE GOVERNMENTAL BODY, AND THE EXCESS IS GOING TO GO TO PAY SOME REALTOR WHICH IN ESSENCE IS SOME LOBBYIST.

YES. THE FEDERAL JUST ADDRESSED THAT ISSUE IN THE NATIONAL BROKER CONTRACT THAT I FILED WITH THIS COURT IN A REQUEST FOR JUDICIAL NOTICE. WHAT FEDERAL GOVERNMENT DID WAS, THEY RECOGNIZED THAT, ACCORDING TO INDUSTRY STANDARD, THAT BROKERS ARE TRADITIONALLY PAID BY THE SELLER, EITHER IN A SALES TRANSACTION OR A LEASE - - BY THE SELLER, EITHER IN A SALES TRANSACTION OR A LEASING TRANSACTION. GOVERNMENTAL SERVICES USED TO PAY BROKERS FROM 1997 TO JUST LAST WEEK, APRIL 1 OF 2005, BUT NOW UNDER THE NATIONAL BROKERS CONTRACT, TRAMMELL CROW BEING ONE OF THE FOUR BROKERS THAT WAS AWARDED THAT NATIONAL BROKERS CONTRACT, HAS BEEN EXPRESSLY ACKNOWLEDGED BY THE FEDERAL GOVERNMENT TO BE ALLOWED TO PARTICIPATE IN RECEIVING COMMISSIONS IN CONNECTION WITH FEDERAL GOVERNMENT LEASES, AND SINCE THE GSA HAS AN ALMOST \$4 BILLION A YEAR LEASING PROGRAM, THEY SUPERVISE THE I.R.S., THEY SUPERVISE ALL ENTITIES OF FEDERAL GOVERNMENT.

DO THEY PERMIT NET LISTING AGREEMENTS?

NO, THEY DO NOT. THERE IS NO PROHIBITION AGAINST NET LISTING AGREEMENTS, TO LISTING AGREEMENTS, IN READING ALL OF THE NATIONAL BROKER PROHIBITIONS, THERE IS NO PROHIBITION ON NET LISTING AGREEMENTS. HOWEVER, TRAMMELL CROW, ONE OF THE NET LISTING BROKERS TO THE CONTRACT, WOULD BE IN A NATIONAL PHASE. THEY WOULDN'T HAVE THE LISTING. COLORADO YEARS AGO, FOR EXAMPLE, THE PURPOSE OF THIS COLLIER SORNLID, FOR EXAMPLE, THE ARNOLD, FOR EXAMPLE, THE PURPOSE

CHIEF JUSTICE: YOU ARE TAKING UP HIS RE BUTTAL.

HE IS PRIMARY COUNSEL AND I WILL LET HIM GO AHEAD AND RESERVE HIS TIME.

MAY IT PLEASE THE COURT. MANUAL ALVAREZ ON BEHALF OF THE RESPONDENTS IN THIS CASE ACT REALTY.

WOULD HE HAVE TO HOLD IN YOUR FAVOR BY HOLDING FOR ROBERT AND COMPANY?

LET ME ADDRESS ROBERT AND COMPANY BECAUSE SPECIFICALLY ITS STATUS IS SOMEWHAT MYSTERIOUS.

WOULD WE HAVE TO RECEDE FROM IT?

I THINK ASSUMING THAT ROBERT AND COMPANY WERE STILL A VALID DECISION, AND THAT WAS UNAFFECTED BY THE PASSAGE OF THE STATUTE BY LEGISLATURE IN 1973, THEN, YES, YOU WOULD HAVE TO RECEDE, I BELIEVE, UNLESS THIS COURT DECIDED THIS CASE ON THE

NARROWER ISSUE OF WHETHER OR NOT THESE BROKERS , REALLY , AS OPPOSING COUNSEL SEEMED TO CONCEDE , HAD ANYTHING , REALLY, TO DO WITH PROCURING THE SALE.

WELL, THE TRIAL COURTHELD THAT THEY DID. RIGHT?

WELL , THE DISSENT DID.

NOT. I AM SAYING THE TRIAL COURT HELD THAT THEY DID.

YES .

THE MAJORITY IN THE THIRD DISTRICT DIDN'T ADDRESS THE ISSUE, BECAUSE THEY JUST HELD THAT IT WAS INVALID ON ITS FACE .

CORRECT.

SO THE ANSWER IS THAT WE W OULD HAVE TO RECEDE FR OM ROBERT AND COMPANY.

IF THE, IF THIS COURT CONCLUDES THAT CONTINUES FEE ARRANGEMENTS WITH RES PECT TO SALES OF REAL ESTA TE TO THE GOVERNMENT, ARE ANALOGOUS TO LOBBYIST AGREEMENTS OR LOBBYIST CONTRACTS, WHICH REQUIRE ONLY FLAT FEES , THEN I BELIEVE THIS COURT WOULD HAVE TO RECEDE FROM ROBERT AND COMPANY.

NOW, YOU SAID THAT IT IS DUBIOUS GO OD LAW BECAUSE OF THE SUBSEQUENT PA SSAGE OF THE STATUTE , BUT THAT STATUTE 287. 055 , THEY PROHIBIT ONLY SPECIFIC CONTINGENT CONTRACTS , AND DID NOT BAN ALL CONTINGENCY CONTRACTS WITH THE GOVERNMENT. SO TO ME , THAT IS, THE FACT THAT THEY P ICKED OUT C ERTAIN CONTRACTS BUT NOT ACROSS THE BOARD BAN , INDICATES THAT,AT LEAST FROM THE LEGISLATIVE PUBLIC PO LICY , THAT THEY WERE NOT INT ENDING TO OUTLAW ALL CONTINGENT I CONTRACTS AND CONT ANCY CONTRACTS AND WHAT I S YOUR CONTINGENCY CONTRACTS, AND WHAT IS YOUR RESP ONSE TO THAT , AS AFFECTS THESTATUTE?

MY RESPONSE TO THAT IS AS FOLLOWS. THE BROKERS ' CASE COMPLETELY RISES AND FALSE ON THE STATUS OR VALI DITY OF ROBERT AND COMPANY. THE STATUTE , 287.055 , SPECIFICALLY PROHIB ITED AND OUT LIED LAUD , THE PR ECISE AND OUT LAWED THE PRECISE CONTRACTUAL AGREEMENT THAT EXISTS THAT THIS COURT'S PREDECESSOR AUTHORIZED IN THE 194 0s IN ROBERT AND COMPANY. N OW, TO MY KNOWLEDGE , I DON'T KNOW IF THE ISSUE OF WHETHER REAL ESTATE CONTINGENCY FEE ARRANG EMENTSWITH RESP ECT TO SALES OF PROPERTY TO GOVERNMENT HAS EVER EVEN BEEN BEFORE THE LEGISLATURE , BASED UPON THE GENTLEMAN REPRES ENTING THE BROKERAGE FORM , OBVIOUSLY THE GOVERNMENT HAS BROKERAGE FI RM, OBVIOUSLY THE GOVERNMENT HAS SET UP SOME SORT OF SUPERVISORY STRUCTURE BY WHICH THAT CAN BE DO NE. TO MY KNOWLEDGE , FLORIDA DOESN'T HAVE THAT.

WHERE IS THE GOVERNMENT? WHERE IS THE SC HOOL BOAR D?

WELL , THE SCHOOL BOARD

WHERE IS THE EN TITY THAT LOGICALLY WOULD BE COMPLAINING HERE AND ASSERTING SOME PUBLIC POLICY. WHERE ARE THEY?

YOU MEAN PHYSICALLY , YOURHONOR?

NO.WHERE ARE THEY IN THIS DIS PUTE?

WELL , THEIR CONCERN IS TWOFOLD.FIR ST OF ALL

I MEAN, ARE THEY IN THIS CASE?

AM ICUS , THEY ARE , YOURHONOR , THEY FILED A N AMICUS BRIEF. THEIR CONCERN IS TWOFOLD. THEY BELIEVE THAT IN THIS CASE, BECAUSE FIRST OF ALL THIS IS NOT AN ORDINARY CONTINGENCY FEE AGREEMENT. THIS WAS BASICALLY WHATEVER YOU GET IN EXCESS OF \$1 MILLION , WHETHER IT BE IF YOU GOT \$2 MILLION THE BROKER WOULD SIMPLY POCKET THE EXTRA MILLION, THEY BELIEVE THAT IN THIS CASE IT ARTIFICIALLY INFLATED THE COST OF THIS PROPERTY TO THE SCHOOL BOARD , FIRST OF ALL.

BUT WHAT HOW DOES THARING UNIT S QUARE WITH HOW DOES THAT ARGUMENT SQUARE WITH THE FACT THAT THE BROKERS REALLY WERE NOT THE ONES AS I UNDERSTAND IT, WHO ACTUALLY NEGOTIATED THEAMOUNT THAT THE SCHOOL BOARD WAS GOING TO PAY. THEY NEGOTIATED THE SCHOOL BOARD BUYING THE PROPERTY AND THEN THEY , AN OTHER PARTY SORT OF TOOK OVER THE NEGOTIATIONS FOR HOW MUCH WAS ACTUALLY GOING TO BE PAID, AND SO THE PEOPLE WITH THE TEN-ACRE PROPERTY ENDED UP GETTING THE SAME PER SQUARE ACRE OR WHATEVER IT WAS , FOR , AS THE OTHER PARTY DID.

LET ME ADDRESS YOUR HONOR'S CONCERN. FIRST OF ALL , I THINK THAT THE CONDUCT OF THE BROKERS IN THIS CASE IS PART OF THE CONCERN THAT THE THIRD DCAHAS AND THE SCHOOL BOARD HAS, BECAUSE THE BROKERS IN THIS CASE , IS THEY HAVE A RELATIONSHIP WITH OFFICIALS INSIDE OF THE SCHOOL BOARD. NOW , SOME HOW THEY LEARNED THAT THE SCHOOL BOARD WAS ALREADY WELL INTO A PROCESS OF PURCHASING THIS PROPERTY. THE PROPERTY WAS NEVER INTRODUCED TO THE SCHOOL BOARD BY THESE BROKERS. IT WAS INTRODUCED

WERE THEY IN THE PROCESS OF PURCHASING IT OR WERE THEY JUST LOOKING AT PROPERTY AT THAT POINT?

THEY WERE IN THE PROCESS OF PURCHASING IT, BECAUSE ONE OF THE OFFICIALS IN THE ACQUISITION DEPARTMENT DECEMBER TESTIFIED THAT, ON JANUARY 19 OF 1999, TWO DAYS BEFORE THE BROKERS APPROACHED MY CLIENT, THE SCHOOL BOARD HAD ALREADY ORDERED AN APPRAISAL AND THERE HAD BEEN A MEMORANDUM OF LAW , A MEMORANDUM A FEW MONTHS BEFORE THAT , AS KING THE ACQUISITION DEPARTMENT TO START LOOKING INTO PURCHASING THIS PROPERTY. NOW, MISS WILBUR BUTTER MISS WILBUR, WHO WAS IN CHARGE OF THE DEPARTMENT'S ACQUISITION , SAID THAT THEY DID NOT ORDER APPRAISALS UNLESS THEY WERE GOING TO MAKE AN OFFER AND SEEK TO BUY THE PROPERTY BECAUSE THE APPRAISAL IS EXPENSIVE.

JUSTICE CANTERO HAS A QUESTION.

I AM SORRY . ANOTHER STATUTE IS INTERESTING BECAUSE IT DOESN'T PROHIBIT FEES. IT PROHIBITS CONTINGENCY FEES PAID TO AN OUTSIDER. THE FEE CONTINGENT ON OBTAINING A CONTRACT FOR ARCHITECTURAL SERVICES OR THINKING S LIKE THAT. OR THINGS LIKE. THAT I DON'T SAY THAT , IN THE INDUSTRY IT IS COMMON TO PEOPLE TO PAY A CONTINGENCY FEE TO GET AN ARCHITECTURAL CONTRACT WITH THE GOVERNMENT. ON THE OTHER HAND , USING THAT STATUTE IN REAL ESTATE TRANSACTIONS, SEEMS TO TOTALLY CHANGE THE , WHAT THE TRADITION , WHAT THE CUSTOM IS, FOR REAL ESTATE BROKERAGE AGREEMENTS. I DON'T SEE ANY WHERE , WHERE BROKERAGE AGREEMENTS ARE SIMPLY MADE ON A FLAT FEE BASIS , REGARDLESS OF WHETHER A CONTRACT IS ACTUALLY EXECUTED, AND BEFORE WE DETERMINE THAT THAT IS AGAINST PUBLIC POLICY ON ITS FACE , DON'T WE AT LEAST HAVE TO MAKE SURE THAT IT IS NOT GOING TO HINDER THE PURCHASE AND SALE , EITHER BY THE GOVERNMENT OR FROM THE GOVERNMENT, OF REAL ESTATE?

WELL , I THINK THAT THE PROBLEM IS THAT THE COURT UNDERSTOOD THIS, AND I THINK , AND I THINK IT IS A PROPER ANALOGY, THAT A BROKER IN THIS PARTICULAR CONTEXT IS REALLY

ACTING AS A LOBBYIST .

WHAT EVIDENCE IS THERE THAT THE REAL ESTATE BROKERS IN THIS CASE AND SPECIFICALLY THE ONES FOR ROTEMI , WERE ACTUALLY ENGAGED AS LOBBYISTS?

WELL , IN THIS CASE

AND IT IS MY UNDERSTANDING THAT THE LOBBYING THE SCHOOL BOARD IS NOT ILLEGAL , AND IN FACT , THERE WAS A LOBBYIST APPOINTED, AND THERE IS NO ALLEGATION IN THIS CASE THAT THE \$20,000 FEE FOR THAT LOBBYIST HAD TO BE FORFEITED, SO APPARENTLY THERE IS NOTHING PER SE ILLEGAL IN LOBBYING THE SCHOOL BOARD.

NO , IT ISN'T, BUT IT IS ILLEGAL IF YOU PAY THE LOBBYIST AT CONTINGENCY FEE. ONE OF MY MAIN CONTENTIONS IS THAT WHAT THESE BROKERS DID IS THAT THEY USED INSIDE INFORMATION , KNOWLEDGE THAT THEY KNEW THAT THE SCHOOL BOARD WAS ALREADY INTERESTED IN THIS PROPERTY AND WAS TAKING STEPS TO PURCHASE IT THEY APPROACHED MY CLIENT , THEY INTERJECTED THEMSELVES INTO THIS PROCESS.

THAT SEEMS TO BE AN ARGUMENT FOR DETERMINATION IN THIS PARTICULAR CASE THAT , THERE WAS SOME KIND OF CORRUPTION. BUT WHAT THE THIRD DISTRICT HELD IS THAT THESE KIND OF CONTRACTS ARE INVALID ON THEIR FACE, AND SO YOU DON'T EVEN NEED TO GO BEHIND THE CONTRACT TO THE FACTS OF THE PARTICULAR CASE. WHAT ROBERT AND COMPANY SAID WAS , YOU DO NEED TO GO BEHIND THE CONTRACT, AND IT MAY BE IN PARTICULAR CASES THAT CORRUPTION WAS INVOLVED, BUT THERE WAS NO ALLEGATION OF THAT IN THIS CASE.

BUT THE ANOMALY OF THE ROBERT AND COMPANY DECISION IN MY VIEW , IS THAT IF YOU LOOK AT ROBERT AND COMPANY VERSUS ABOUT 150 YEARS OF CASE LAW, INCLUDING A 1906 DECISION BY OLLIVER WENDELL HOLMES THAT - - HOLMES THAT DEALT WITH A DECISION LIKE THIS ONE IS THAT IT IS DIFFICULT TO PROVE IN THESE TYPES OF CASES , CORRUPTION , AND IN FACT IF YOU CAN PROVE CORRUPTION, THE STATEMENT ATTORNEYS OFFICE WOULD PROSECUTE.

YOU JUST MADE A CASE TO ME AS TO WHY CORRUPTION WAS THE SITUATION IN THIS CASE. YOU IDENTIFIED IT BY FACT. YOU MIGHT NOT HAVE PROVED IT.

I THINK IN THIS CASE THERE MIGHT HAVE BEEN SOME SORT OF ILLICIT CONDUCTOR CONDUCT THAT IS NOT QUITE AS ETHICAL AS THEY WOULD LIKE.

SO LET'S GO BACK. YOUR RULE WOULD BE THAT NOT ALL CONTINGENT BROKER COMMISSION, CONTRACTS , ARE ILLEGAL , BUT ONLY THOSE THAT ARE , I GUESS , NET LISTING AGREEMENTS?

WELL , IS THAT

THAT IS AN INTERESTING QUESTION, YOUR HONOR. I DON'T KNOW IF THE COURT , THE COURT COULD CERTAINLY FIRST OF ALL DECIDE THIS CASE SO RELY ON THE DETERMINATION THAT THESE BROKERS DIDN'T PROCURE THIS CONTRACT. ARE

WE ARE HERE BECAUSE THERE IS A CONFLICT. THIS COURT IS NOT GOING TO DO THAT. JURISDICTION, DISCHARGE, MONEY GOING TO THE SCHOOL BOARD DOESN'T HELP YOUR CLIENT, SO THE QUESTION IS , IS THAT , SEE , MY PROBLEM IS THAT YOU , YOUR CLIENT , DID NOT RAISE THE ILLEGALITY OF THE CONTRACT THAT THEY ENTERED INTO , IN THE TRIAL COURT.

CORRECT .

SO THAT USUALLY WOULD MEAN IT IS WAIVED , UNLESS IT IS VOID OR ILLEGAL ON ITS FACE .

CORRECT.

RIGHT? SO WHAT IS YOUR RESPONSE TO THAT?

MY RESPONSE IS THAT IT IS ILLEGAL ON ITS FACE .

SO THEREFORE THE RULE WOULD BE, BECAUSE IT IS A NET LISTING THAT IT IS ILLEGAL ON ITS FACE OR BECAUSE ANY BROKER 'S CONTRACT, UNLESS THERE IS A FLAT FEE , IS LEGAL ON ITS IS ILLEGAL ON ITS FACE ?

IN ALL CANDOR , I BELIEVE THAT THE THIRD DISTRICT'S POSITION IS THAT THESE TYPES OF BROKERAGE AGREEMENTS INVOLVING SALES OF LAND TO GOVERNMENTAL ENTITIES ARE BASICALLY ANALOGOUS TO LOBBYING AGREEMENTS , AND WE HAVE STATUTORY LAW THAT PREVENTS LOBBYISTS FROM BEING PAID LOBBIES FROM BEING PAID ANYTHING BUT A FLAT FEE.

WHAT ABOUT THE PROPERTY OWNER GIVES AN EXCLUSIVE LISTING TO A PARTICULAR REALTOR? WHAT DOES THE GOVERNMENT DO?

WELL , I THINK THAT ONE COULD ENTER INTO A AGREEMENT WITH A REALTOR , WHO COULD NEGOTIATE THE SALE AND CHARGE A FLAT FEE IF IT IS TO A GOVERNMENTAL ENTITY.

WHAT DOES A GOVERNMENT DO IN THE SITUATION I HAVE JUST DESCRIBED , THE OWNER OF THE PROPERTY HAS GIVEN AN EXCLUSIVE LISTING TO A PARTICULAR REALTOR. NOW , DOES THAT MEAN THAT THE GOVERNMENT, THAT THEY CAN'T DEAL WITH ANY PROPERTY WHERE THE PROPERTY OWNER IS GIVEN AN EX-CLUSIVE LISTING. IS THAT YOUR ANSWER?

WELL , I DON'T HAVE AN ANSWER TO THAT QUESTION, YOUR HONOR. HONESTLY THAT IS A PROBLEM.

AND IT IS OF A MAJOR CONCERN TO ME , THAT , AGAIN , WHETHER THE SCHOOL BOARD FILED AN AMICUS, THAT WE HAVE GOT A SUBSTANTIAL QUESTION THAT AFFECTS CONTRACTS THROUGHOUT STATE THAT WE JUST COME OUT WITH A DECISION, ALTHOUGH THE ISSUE WAS NOT RAISED EXPLICITLY , WOULD HAVE RENDERED THAT WHOLE REAL ESTATE CONTRACT ILLEGAL , BECAUSE IT WAS A CONTINGENT CONTRACT , AND THAT WE DON'T REALLY HAVE ANYTHING TO GUIDE US ON THIS , OTHER THAN THAT WE HAVE ROBERTS, WHICH IS A LAW, CASE, AND THEN WE HAVE GOT STATUTORY LANGUAGE THAT WOULDN'T PER SE , EXCLUDE THIS CONTRACT.

WELL , I THINK THE PROBLEM, IT IS A PROBLEM , AND I THINK THAT THE LARGER POLICY ISSUE , IS ONE OF PROTECTING PUBLIC MONIES AND PROTECTING THE TRANSPARENTS AND THE INTEGRITY OF THE PROCESS THE TRANSPERSONS I AND THE INTEGRITY OF THE TRANSPARENCY AND THE INTEGRITY OF THE PROCESS AND WHAT HAPPENED IN THIS CASE IS THIS UNDERSCORES A CASE WHERE THINGS DID NOT PROCEED IN A TRANSPARENT WAY , AND IT PROBABLY DID INFLATE THE COST OF THIS LAND TRANSACTION.

BUT IF WE ARE TALKING ABOUT TRANSPARENCY , WOULDN'T WE, THEN , BE ADDRESSING AS PATTERN OF PUBLIC POLLS AS A MATTER OF PUBLIC POLICY , SOMETHING SUCH AS RIDGE STRITIONS OR REGISTRATIONS OR SOMETHING OF THAT NATURE , THAT A RULING THAT AN ENTIRE CATEGORY OF CONTRACTS ARE HILL LEGAL?

WELL , ARE ILLEGAL?

WELL , I THINK WHAT YOUR HONOR IS ASKING FOR IS LEGISLATIVE ACTION . BUT I THINK THAT , UNDER THE CIRCUMSTANCES OF THIS CASE , CERTAINLY A CONTRACT WOULD DEVELOP THAT THE BROKER AS OPPOSED TO OPPOSING COUNSEL, REALLY, DID VERY LITTLE TO SIMPLY

POCKET ANYTHING IN EXCESS OF WHATEVER , BEYONDWHAT THE SELLER WAS WILLINGTO AC CEPT FOR HIS PROPERTY, IS CLEA RLY IMPROPER AND CLEARLY SHOULD BE AGAINST P UBLIC POLI CY.

BUT YOU KNEW THAT. IN OTHER WORDS , WHO IS THERE WITH YOUR COMPANY THAT ENT ERS INTO THIS CONTRACT , T HEY ARE POED OR UPSET BECAUSE PO 'E D OR UPSET BECAUSE THEY FOUND OUT THAT THIS WAS IN THE WORKS AND THEY DIDN'T REALLY NEED ANY BROKER, AND THAT IS PROB ABLY WHAT THIS CASE IS ABOUT AS OPPOSED TO PUBLIC POLICY IS YOUR COMPANY WAS PROBABLY SAYING THIS IS NOT A GOOD DEAL FOR US TO MAKE UNDE R THE CIRCUMSTAN CES , AND THE TRIAL COURT FO UND AGAINSTYOU ON THAT.

YES BUT AGAIN , IN DISCUSSING THE LARGER POLICY CONCE RN, I THINK THIS CASE ILLUSTRATE HOW THE PROCESS CAN BE KRUBT ED CORRUPTED. I F YOU HAVE INDIVIDUALS WITH SPECIAL RELATIONSHIPS WITH OFFICIALS WITHIN PARTICULAR PUBLIC AGEN CIES WHO CAN USE THAT INFORMATION , WHICH IS IN ES SENCE LIKE IN SIDER TRADING AND G AIN AN ADVANTAGE TO THE DETRIMENTOF THE PUBLIC.

WHAT I AM HAVING TROUBLE WITH, THAT SO UND SO M UCH TO ME LIKE A LEGISLATIVE ARGUMENT, AS OP POSED TO THIS COURT CRAFTING ITS DECISION AS TO WHETHER , YOU KNO W, A GAIN, THIS IS THE NO RM WITH MOST GOVERN MENTAL ENTI TIES . THERE HAS BEEN SUPPLEMENTAL AUTHORITIES FILED ABOU T HOW THE FEDERAL GOVERNMENT DOES IT. TO ME , THAT IS CLASSIC LEGISLATIVE DECISION-MAKING , NOT OUR COMMON LAW DECISION-MAKING , WHICH SEE MSTO HAVE BEEN, YOU KNOW , CONTROLLED BY ROBERTS.

BUT THE COMMON LAW , CERTAINLY THERE IS COMMON LAW , DECISIONAL LAW , REGARDING CONTRACT S THAT ARE AGAINST PUBLIC POLICY. I DON'T SE E THAT, I HONESTLY DON'T THINK THAT THIS COURT NEED FOLLOW ROBERTS , BECAUSEI THINK ROBERTS, THE FACT OF THE STATUTES SPECIFICALLY DISAGREE WITH THE FACTUAL SCENARIO OF ROBERTS, I THINK , RENDERS THE STATUS OF ROBERTS QUITE QUESTIONABLE.

LE T ME COME BACK TO THEQUESTION THAT YOU SA ID YOU COULDN'T ANSWER FOR ME, ANDI AM HAVING DIFFICULTY , AGAIN , WITH THE CHANGING N ATURE OF THIS, QUOTE , CONTINGENCY FEE BAR , IF THE PROPERTY OWNER HAS AN EXCLUSIVE LISTING WITH A PARTICULAR REALTOR, AND THAT REALTOR IS DEALING WITH A PRIVATE ENTITY , A TELEPHONE COMPANY OR SOMETHING, ABOUT TRYING TO SELL THAT PROPERTY THERE , AND I ASSUME THAT YOU WOULD AGREE THERE WOULD BE NO QU ESTION AS TO THE LEGALITY OF THE EXCL USIVE LISTING AGREEMENT.

OF COURSE . BETWEEN PR IVATE PARTIES.

WE ARE T ALKING , NOW , ABOUT THE FACT THAT , WHETHER OR NOT THE EXCLUSIVE LISTING AGREEMENT IS GOING TO BE TERMED VOID OR ILLEGAL ON FAITHS , IS GOING TO BE ON ITS FACE , I S GOING TO BE DETERMINED BY WHO THE PURCHASER OF THE PROPERTY IS , AND S O WE START OUT WITH A PERFECTLY V ALID , OBVIOUSLYEXCLUSIVE LISTING AGREEMENT , BUT IF THE GOVERNMENT G ETS INTERESTED IN THE PROPERTY , NOW , YOU THROW IN THIS THING THAT, WELL, YOU KNOW, WHAT ARE YOU GOING TO DO , S O WHAT IS A REALTOR GOING TO DO, NOW , THAT THE SCHOOL BOARD COMES OVER AND SA YS DON'T SELL IT TO THE TELEPHONE COMPANY , BECAUSE THAT IS RIGHT NEXT TO THE PROPERTY THAT WE ARE GOING TO PU T A SCHOOL ON , AND WE WOULD LIKE TO HAVE M ORE SP ACE , YOU KNOW, TO PUT APPROPRIATE , SO, YOU KNOW , IS THE REALTOR NOW , TO THROW UP THEIR HA NDS AND SAYI AM SO RRY . THERE IS A SUPREME COURT CASE THAT SAYS NOW THE EXCLUSIVE LISTING AGREEMENTHAS BEEN RE NDERED ILLEGAL, WHEN YOU START ANY OF ING AROUND THIS PROPERTY. START SNIFFING AROUND THIS PROPERTY.

JUDGE, I THINK THERE IS A REASONABLE DISTINCTION THAT CAN BE MA DE AND AN ANALYSIS THAT CAN FIT THAT SCENARIO INTO ONE THAT EXIST. WHEN YOU HAVE A SELLER THAT HAS A

LONG STANDING RELATIONSHIP OR A PREEXISTENT RELATIONSHIP WITH A REALTOR, THAT IS VERY DIFFERENT, AND THEN TRULY THE SELLING PROPERTY IS GOVERNED, THAT IS DIFFERENT FROM THE KIND OF PREDATORY PRACTICE THAT THE BROKERS ENGAGED IN IN THIS CASE, WHERE THEY SIMPLY INTERJECTED THEMSELVES.

THAT IS A CASE-BY-CASE ANALYSIS, NOW, AND THAT BRINGS ME BACK TO THE ISSUE THAT YOU, I OUGHT THOUGHT, WERE ARGUING FOR IT IS ILLEGAL ON ITS FACE. UNDER THAT CIRCUMSTANCE, YOU JUST ADMITTED THAT, IF THEY HAD HAD A LONG STANDING RELATIONSHIP AND SO THEY EARNED THEIR FEE, THAT IT WOULDN'T BE ILLEGAL ON ITS FACE.

THAT

ISN'T THAT WHAT, BY ADMITTING THAT THERE IS A CIRCUMSTANCE WHERE IT WOULD BE PERFECTLY FINE, AND THEN ALL OF US THING, HOW DID THAT BROKER GET THAT 3 PERCENT? THEY HAD NOTHING. BUT IF THEY HAD WORKED REALLY HARD, AND HAD EARNED IT SO TO SPEAK, YOU ARE SAYING, WELL, THEN, IT THAT MIGHT BE DIFFERENT, SO THAT SHOULD HAVE BEEN RAISED IN THE TRIAL COURT.

IF I MAY EXPLAIN MY ADMISSION, I THINK THAT IT IS POSSIBLE FOR THIS COURT TO CRAFT A RULE OF LAW THAT WOULD ALLOW FOR AN EXCEPTION BUT CERTAINLY WOULD, ALSO, FIND THAT, IN THESE TYPES OF CIRCUMSTANCES, AS WE SEE IN THIS CASE, THERE IS A PROBLEM, THERE IS A PUBLIC POLICY BAR TO THESE TYPES OF CONTRACTS, WHEN YOU HAVE THIS KIND OF UNDERLYING BEHAVIOR.

I ASK YOU BEFORE WHERE WAS THE SCHOOL BOARD, AND WHY AREN'T THEY HERE, WHY ARE YOU HERE?

WHY AM I HERE?

DON'T YOU REPRESENT THIS ROTEMI, THE OWNER OF THE PROPERTY?

YES, YOUR HONOR.

RIGHT. SO WHAT IS YOUR INTEREST IN THIS?

WELL, WE BELIEVE THAT THIS CONTRACT SHOULD NOT HAVE BEEN ENFORCED.

I MEAN, WHAT ARE YOU GOING TO GET OUT OF THIS, IF THE THIRD DISTRICT HAS SAID THAT THE MONEY OUGHT TO GO BACK TO THE SCHOOL BOARD, THE COMMISSION PART OF IT OUGHT TO GO, SO WHAT IS YOUR CLIENT'S INTEREST IN THIS?

WELL, YOUR HONOR, FIRST OF ALL IN MY BRIEF, I DRAFTED THE ISSUE OF THE COURT'S GRANTING OF THE MONIES TO THE SCHOOL BOARD.

SO YOUR INTEREST IN THIS IS THAT YOU WANT THAT MONEY.

THAT IS MY CLIENT'S INTEREST.

ISN'T THERE SORT OF A PROBLEM HERE, OF SOMEBODY THAT WANTS THAT MONEY AND COMING HERE TRYING TO CONVINCING THIS COURT FOR THAT MONEY, AND YOU ARE COMING HERE UNDER THE SHIELD OF SAYING, WE ARE HERE FOR PUBLIC POLICY, TO PREVENT THE SCHOOL BOARD FROM PAYING MORE MONEY FOR THIS, BUT WE WANT THAT MONEY, AND THEREFORE THE NET EFFECT OF THIS IS GOING TO BE THAT THE SCHOOL BOARD STILL PAID THAT FULL PRICE, AND THEY DIDN'T GET A REFUND, SO I AM HAVING SOME DIFFICULTY WITH YOUR, YOU CARRYING THE SHIELD OF THIS, QUOTE, DEFENDER OF THE PUBLIC MORALS, HERE, ISN'T THERE A PROBLEM

M?

WELL , YOUR HONOR , IN DEFENSE OF MY CLIENTS , I THINK MY CLIENTS WERE BASICALLY DUPED BY A SET OF BROKERS THAT INDICATED THEY COULD GENERATE AN INTEREST , WHEN THEY KNEW IT WAS A PREEXISTING INTEREST TO BUY THE PROPERTY.

HERE WE ARE CIR CLING BACK, NOT THE ISSUE THAT WE HAVE HERE , ABOUT WHETHER OR NOT THIS IS V OID UNDER PUBLIC POLICY.

THANK YOU. THANK YOU , YOUR HONORS .

CHIEF JUSTICE: THANK YOU. REBUTTAL. BEFORE YOU GET UP IN REBUTTAL, I WANTED TO WELCOME A GROUP THAT JUST ENTERED. THE BACK OF THE ROOM , THE STUDENTS AND THEIR MENTORS OF THE 500 ROLE MO DELS OF EXCELLENCE PROJECT FROM M IAMI, AND AS I UNDER IT , THESE ARE MIDST AND HIGH SCHOOL ST UDENTS , WHO THESE ARE MIDDLE AND HIGH SCHOOL STUDENTS WHO SE RV E UNDER VOLUNTEER MENTORS IN SOUTH FLOR IDA AND ARE HERE TODAY VISITING THE CAPITOL , AND WE ARE VERY PLEASED TO HAVE YOU ESCORTED BY WILTON ROBINSON. THANK YOU FOR BEING HERE AND WE HOPE THAT YOU HAVE FOUND YOUR TRIP TO TALLAHASSEE TO BE WORTHWHILE AND KEEP UP THE GR EAT WORK .

THANK YOU. MAY IT PLEASE THE COURT. J UDGE ANST EAD , THE ANSWER TO YOUR QU ESTION, THAT COUNSEL COULDN'T ANSWER , IS VERY SIMPLE. THE ANSWER IS THAT A GOVERNMENT BODY CANNOT DEAL WITH A PROPERTY OWNER THAT HAS A REAL ES TATE BROKER , AND IF THAT IS THE CASE , IF THEY HAVE SOME PLANNING T O BUY THESE PROPERTIES AND THE ONE IN THE MIDDLE STANDS IN THE WAY WAS STOPPING PROGRESS, BECAUSE ON ITS FACE, ANY CONTINGENT AGREEMENT WOULD BE INV ALID , ACCORDING TO COUNSEL. COUNSEL, ALSO , SAYS THAT YOU CAN CRAFT A DECISION HERE , WHEREBY

YOU ARE NOT SAYING THE LEGISLATURE COULDN'T DO THAT.

WELL, WHAT HE I S SAYING IS

THE LEGISLATURE COULD OBVIOUSLY

I AGREE BU T HE IS SAYING YOU CAN CRAFT SOME KIND OF DECISION THAT SAYS A CONTINGENT FEE CONTRACT IS GOOD IN ONE IN STANCE BUT BAD IN ONE INSTANCE. HOW DO YOU THAT , I DON'T KNOW, BUT BE THAT AS IT MAY .

I GUESS THE LEGISLATURE COULD SET THE PERCENTAGE OF FEE THAT IS GOING TO BE PAID IN SUCH A REAL ESTATE TRANSACTION, JUST LIKE THEY SET THE PERCENTAGE WHAT HAVE A LAWYER IS GOING TO RECOVER IN A SOVEREIGN IMMUNITY CLAIM.

I AGREE WITH YOU, AND IT IS NOT UP TO THE COURT TO DO THAT. IT IS UP TO THE LEGISLATURE. THE WEXLER CASE SAID THE SAME THING AS THE ROBERT CASE. NO DIFFEREN CE. THE OTHER CASE THAT WAS CITED IN THE BRI EF WAS A CASE DECIDED BY THE DISTRICT , THE UN ITED STAT ES, I THINK , DISTRICT COURT , OR THE SUPREME COURT , WHERE WHERE THE GOVERNMENT WANTED A N AGENT FOR LISTING FOR LEASING GOVERNMENT PROPERTY. AND THE COURT SAID YOU CAN'T GET A CONTINGENCY FEE FOR LEASING GOVERNMENT PROPERTY. THE ONLY DIFFERENCE IN THAT CASE WAS THAT THEY SAID THERE WAS AN EXCEPTION , THAT YOU COULD GET THE FEE IF THERE WERE A REAL ESTATE BROKER, SO THERE IS A EXCEPTION , AND REAL ESTATE BROKER'S COMMISSIONS , I DON'T BELIEVE , HAVE ANYTHING TO DO WITH THE STAT UTE THAT WAS EN ACTED BY THE LEGISLATURE , AND IF THEY WANT TO ENACT ONE THAT SAYS CONTINGENT FEES FOR GOVERNMENTAL AG ENCIES ARE ILLEGAL ON ITS FACE , THEN I THINK THE LEGISLATURE WOULD HAVE TO DO IT. OTHERWISE, I WOULD U RG E THIS COURT TO FO LLOW ROBERT AND FOLLOW WEXLER , W H ICH ARE WELL-REASONED DECISI ONS , AND MAKE YOU

SHOW SOMETHING , SOMEWHERE , THAT PE OPLE WERE U SING ILLEGAL METHODS OR PAYOFFS OR BRIBES. THANK YOU , YOUR HONOR .

CHIEF JUSTICE: THANK YOU VERY MUC H. THE COURT WILL BE IN RE CESS UNTIL NINE O'CL OCK TOMORROW MORNING ,,

MARSH AL: PLEASE R ISE.