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District Board of Trustees v. Don R. Morgan

CHIEF JUSTICE: I WILL CALL THE NEXT CASE, WHICH IS THE DISTRICT BOARD OF TRUSTEES VERSUS MORGAN, AND WHILE THE ATTORNEYS ARE APPROACHING THE PODIUM, I WOULD LIKE TO RECOGNIZE THE TEEN COURT REPRESENTING NASSAU AND DUVAL COUNTIES, AND THEY ARE ACCOMPANIED BY THEIR TEACHER, MR. JIM MATTHIAS. NICE TO SEE YOU AND ALL OF THE MEMBERS OF THE TEEN COURT, AND WE, SO MUCH, APPRECIATE YOUR BEING INVOLVED IN THIS WORTHWHILE PROGRAM AND, ALSO, VISITING THE COURT TODAY. GOOD MORNING.

GOOD MORNING.

MAY IT PLEASE THE COURT. MY NAME IS DAVID WILLIS OF THE LAW FIRM OF RUMBERGER, KIRK AND CALDWELL. TOGETHER WITH MY PARTNER, WENDY MOMACHA WE REPRESENT THE DISTRICT BOARD OF TRUSTEES OF THE STATE JOHNS RIVER COMMUNITY COLLEGE. THIS CASE IS BEFORE THE COURT ON A CONFLICT CERTIFIED BY THE 5TH DISTRICT COURT OF APPEALS. THE DISTRICT COURT OF TRUSTEES IS SEEKING REVERSAL OF A FINAL JUDGMENT IN FAVOR OF THE RESPONDENT, DON R. MORGAN, DOING BUSINESS AS MORGAN-STRESING --

LET ME GET THE FACTS OUT HERE SO WE CAN SCRUTINIZE EXACTLY WHAT WE ARE TALKING ABOUT. THAT IS THAT THIS WAS AN ARCHITECTURAL CONTRACT FOR SOMEWHAT OVER A MILLION DOLLARS, CORRECT?

YES, SIR.

AND THE ARCHITECTS THAT AGREED AND WERE PART OF THE ARCHITECTURAL CONTRACT WERE BOTH LICENSED ARCHITECTS?

YES, SIR.

AND AT THE TIME THAT THEY ENTERED INTO THIS CONTRACT, THEY WERE GOING TO ENTER INTO A PARTNERSHIP, CORRECT?

THERE IS CONTENTIONS, THAT'S PART OF THE ALLEGATIONS THAT THEY WERE GOING TO ENTER INTO A PARTNERSHIP. THEY HAD, IN FACT, PRACTICED UNDER THE NAME MORGAN-STRESING ASSOCIATES FOR QUITE A FEW YEARS PRIOR TO ENTERING INTO THIS CONTRACT.

RIGHT.

AND MR. ^STRESING TESTIFIED THAT HE THOUGHT THAT THEY WERE, IN FACT, A PARTNERSHIP AND HAD BEEN FOR A NUMBER OF YEARS PRIOR TO BIDDING ON THIS PARTICULAR WORK TO THE COLLEGE.

BUT IN THE FINAL THROES OF THIS THING, THE ARCHITECTS PERFORMED -- THE LICENSED ARCHITECTS PERFORMED SERVICES FOR THE COLLEGE FOR WHICH THEY WERE INITIALLY PAID \$400,000. THEN THEY GOT INTO THIS DISPUTE ABOUT THE CERTIFICATE OF AUTHORIZATION, AND THE LAWSUIT WENT FORWARD AND IT WAS FINALLY DETERMINED THAT WHAT THE COLLEGE INCURRED IN ADDITIONAL EXPENSES AFTER THEY TERMINATED THE ARCHITECT FOR \$61,000 AND THAT THE COLLEGE STILL OWED THE ARCHITECT \$400,000 FOR SERVICES RENDERED.

IF I MAY ADDRESS THE ISSUE OF THE DAMAGES, YOUR HONOR, WHAT WAS DETERMINED WAS THAT THE COLLEGE SPENT \$61,000 MORE THAN WHAT IT WOULD HAVE SPENT. THE TOTAL AMOUNT THAT THE COLLEGE SPENT WAS ACTUALLY SEVERAL HUNDRED THOUSAND DOLLARS WAS CLOSER TO \$900,000. THE JURY DETERMINED THAT, NO, SOME OF THAT WAS NOT REASONABLE OR WAS IN EXCESS OF WHAT WAS REQUIRED OF THE ARCHITECTURAL CONTRACT. BUT IT WAS -- BUT THE COLLEGE SPENT ALMOST \$500,000 REASONABLY IN THE JURY'S DETERMINATION BUT THE ONLY THING THAT THE COLLEGE WOULD BE ENTITLED TO RECOVER WOULD BE THE EXCESS. IN OTHER WORDS, THIS IS THE VERY TYPICAL SITUATION --

BUT WHAT I'M HAVING A HARD TIME WITH AS I BELIEVE JUDGE MONACO'S OPINION HAS A HARD TIME WITH IS THAT THESE ARCHITECTS PERFORMED THESE SERVICES, WHICH WERE EVALUATED BY THE JURY AS PART OF THIS CONTRACT FOR WHICH THE COLLEGE GOT \$400,000 OF SERVICES FOR WHICH THE COLLEGE HAD REFUSED TO PAY, AND NOW THE COLLEGE IS SAYING THEY OUGHT NOT TO HAVE TO PAY IT BECAUSE THE CONTRACT WAS VOID. IS THAT IN ESSENCE?

THAT IS CORRECT, YOUR HONOR. THERE ARE -- WE ACTUALLY HAVE THREE POINTS IN THIS CASE. FIRST OF ALL, THE LEGISLATURE HAS DETERMINED THAT THESE ARCHITECTS SHOULD NEVER HAVE ENTERED INTO THIS CONTRACT TO START WITH. SECOND, THEY --

CHIEF JUSTICE: JUST ON THAT, WHAT IS THE REASON FOR THE LEGISLATIVE DECISION THAT THERE MUST BE THE CERTIFICATE OF AUTHORIZATION? IS THERE A -- WHAT'S THE POLICY? WHO IS IT TO PROTECT?

THE POLICY OF THIS IS TO PROTECT AND ASSURE THAT THOSE WHO ARE OFFERING ARCHITECTURAL SERVICES EITHER THROUGH A CORPORATION, A PARTNERSHIP OR UNDER A FICTITIOUS NAME, AN INDIVIDUAL OPERATING UNDER A FICTITIOUS NAME, THAT ONLY THOSE WHO ARE PROPERLY LICENSED ARE, IN FACT, OFFERING THOSE SERVICES TO THE PUBLIC.

BUT THESE ARCHITECTS WERE LICENSED?

THAT IS TRUE, BUT THE REGULATORY SCHEME THAT THE LEGISLATURE HAS ESTABLISHED REQUIRES THAT THE BOARD OF ARCHITECTURE REVIEW THAT APPLICATION, THAT BUSINESS ARRANGEMENT IN ADVANCE OF THE OFFERING OF THE SERVICES. WHAT WE HAVE HERE --

FOR WHAT PURPOSE?

TO ASSURE THAT THERE IS -- THAT THE PUBLIC IS PROTECTED AND THAT THEY ARE RECEIVING PROPER LEGAL OR IN THIS CASE ARCHITECTURAL SERVICES.

HOW IS THAT POLICY VIOLATED IN THIS INSTANCE?

BECAUSE THE BOARD OF ARCHITECTURE WAS DEPRIVED OF ITS ABILITY TO REVIEW THAT IN ADVANCE. THE LEGISLATURE HAS SAID THAT THAT NEEDS TO BE DONE IN ADVANCE OF EVEN OFFERING THE SERVICES. THE COURT COMES ALONG AFTER THE FACT AND SAYS, WELL, IF YOU -- YOU KNOW, WE THINK THESE GUYS WERE LICENSED. WE THINK THEY COULD HAVE MAYBE GOTTEN THEIR CERTIFICATE OF AUTHORIZATION, BUT, IN FACT, KEEP IN MIND THAT MORGAN-STRESING ASSOCIATES ACTUALLY SUBMITTED AN APPLICATION FOR A CERTIFICATE OF AUTHORIZATION AND THAT APPLICATION WAS REJECTED BY THE BOARD OF ARCHITECTURE.

LET ME ASK YOU THIS: IN THE CASE THAT YOU ARE RELYING ON FOR JURISDICTION IN THIS COURT, THE -- THAT'S THE O'KON CASE, CORRECT?

YES, SIR.

ONE OF THE ARCHITECTS THERE WAS UNLICENSED, CORRECT?

THERE IS A READING OF THAT OPINION SHOWS THAT THERE WAS A QUESTION AS TO WHAT THE ROLE WAS OF THE UNLICENSED ARCHITECT.

ONE OF THE ARCHITECTS WAS UNLICENSED?

ONE OF THE INDIVIDUALS INVOLVED WAS UNLICENSED, YES, SIR.

AND THE ENTITY THAT SIGNED THAT CONTRACT WAS A CORPORATION, CORRECT?

YES, SIR.

SO THAT'S DISTINGUISHED FROM THIS CASE, IS IT NOT, BECAUSE BOTH OF THESE ARCHITECTS WERE LICENSED, AND YOU WOULD AGREE THAT AS FAR AS LIABILITY IS CONCERNED TO THIRD PARTIES THAT THE FACT THAT THERE IS A CORPORATION INVOLVED AS OPPOSED TO A PARTNERSHIP IS GREATLY DIFFERENT?

I WOULD RESPECTFULLY DISAGREE, YOUR HONOR. THIS COURT IN THE MIRANCES DECISION HELD THAT ENGINEERS FOR INSTANCE ARE NOT SHIELDED FROM PERSONAL LIABILITY MERELY BECAUSE THEY ARE OPERATING IN A CORPORATION. I WOULD RESPECTFULLY SUGGEST THAT THE SAME THING IS ALSO TRUE AND THAT THE PROVISIONS, SIMILAR PROVISIONS ARE CONTAINED IN THE ARCHITECTURAL STATUTE THAT REGARDLESS OF THE ENTITY IN WHICH YOU ARE PRACTICING THOSE WHO ARE RENDERING THE PROFESSIONAL SERVICES REMAIN LIABLE FOR THOSE PROFESSIONAL SERVICES.

BUT, OF COURSE, HERE AGAIN NOW GOING BACK TO THE PURPOSE IS TO PROTECT THE PUBLIC. THERE WAS A COUNTERCLAIM THAT YOU BROUGHT THAT YOU HAD THAT THE ARCHITECTS HAD OBTAINED THE CONTRACT BY FRAUD. NOW, IS THE FRAUD THAT THEY WERE -- HAD THE CERTIFICATE AND THEY SHOULDN'T, WAS THAT THE FRAUD?

THE FRAUD WAS THAT THEY WERE, IN FACT, A PARTNERSHIP WHEN THEY WERE NOT.

CHIEF JUSTICE: SO ISN'T THAT VERDICT FOR \$61,000, DOESN'T THAT VINDICATE THAT DAMAGE AND THEN YOU HAD -- THE COLLEGE HAD A CHOICE WHEN THEY KNEW THAT THEY WERE LICENSED BUT NOT AUTHORIZED TO HAVE RESCINDED THE CONTRACT, AND THAT GOES BACK, AND INSTEAD THEY WENT AHEAD AND HAD THE CONTRACT PERFORMED AND I THINK THAT'S WHAT THIS ISN'T AN ISSUE OF WHETHER THERE SHOULDN'T BE ANY EFFECT. IT IS WHETHER IT IS VOID OR VOIDABLE, AND BY THE FACT OF THIS CASE YOUR CLIENTS ESSENTIALLY RATIFIED THE CONTRACT BY CONTINUING IN ACCEPTING THE ARCHITECTURAL SERVICES.

OUR POSITION --

IS THAT CORRECT THAT THEY DID THAT?

THEY HAD TO MITIGATE THEIR DAMAGES, YOUR HONOR. AT THAT POINT THE COLLEGE WAS NOT CERTAIN WHICH WAY TO GO. IT ACTUALLY WENT OUT AND SOUGHT THE OPINION OF AN INDEPENDENT ARCHITECTURAL FIRM THAT SAID SHOULD WE CONTINUE TO TRY TO WORK WITH THESE PLANS OR SHOULD WE SCRAP THEM ENTIRELY. THEY CLEARLY HAVE A DUTY TO MITIGATE.

YOU GOT THE PLANS LONG AFTER YOU DISCOVERED THAT THE ARCHITECTS WERE NOT INCORPORATED OR DIDN'T HAVE A CERTIFICATE OF AUTHORITY, CORRECT?

NO, SIR. THE COLLEGE LEARNED IN APPROXIMATELY JUNE 1 OF 2000 THAT THERE WAS A LICENSE ISSUE. THAT IS, THAT THE ARCHITECTS WERE NOT PROPERLY LICENSED AND DID NOT HAVE THE

CERTIFICATE OF AUTHORIZATION.

ISN'T THERE A DIFFERENCE BETWEEN LICENSURE AND CERTIFICATION, THOUGH? I THINK WE HAVE TO ADMIT UNDER THE STATUTE THERE IS A DIFFERENCE BETWEEN LICENSURE AND CERTIFICATION OF AUTHORITY.

I WOULD RESPECTFULLY DISAGREE, UNDER 455 WHICH IS THE GENERAL STATUTE GOVERNING ALL PROFESSIONAL LICENSES THE LEGISLATURE HAS DEFINED A LICENSE TO INCLUDE CERTIFICATES OF AUTHORIZATION, LICENSES, ANY OTHER PERMIT THAT IS ISSUED BY THE DEPARTMENT OF REGULATION.

CHAPTER 41 DEFINES THEM EXPLICITLY AS SEPARATE.

481 SAYS THERE IS A CERTIFICATE OF REGISTRATION THAT IS ISSUED TO NATURAL PERSONS AND A CERTIFICATE OF AUTHORIZATION THAT IS ISSUED TO PARTNERSHIPS, CORPORATIONS AND THOSE PRACTICING IN A -- UNDER A FICTITIOUS NAME.

CHIEF JUSTICE: MR. WILLIS, I HAVE TO AGAIN IN COMMON TERMS UNDERSTAND THIS. I'M A, YOU KNOW, I SOLICIT BIDS AND I WANT ARCHITECTS THAT ARE LICENSED. WHAT DOES IT MATTER TO ME IF I HAVE TWO ARCHITECTS THAT ARE BOTH LICENSED OR TWO ARCHITECTS THAT ARE BOTH LICENSED AND THEY ARE A PARTNERSHIP, WHERE IS, AGAIN, I APPRECIATE THAT THERE IS -- THE LEGISLATURE HAS SOME INTEREST IN WANTING TO MAKE SURE THAT BUSINESS RELATIONSHIPS WHEN THEY EXIST THAT THERE IS SOME STAMP OF APPROVAL, BUT AGAIN I'M TRYING TO SEE WHERE THE TRUE HARM IS TO THE PUBLIC IF IT IS I MEAN IN ANY OTHER SITUATION SOMEBODY IS, YOU KNOW, THEY ARE LIABLE AS INDIVIDUALS, YOU KNOW, A PARTNERSHIP IS TWO PEOPLE DOING BUSINESS AS PARTNERSHIPS, AND THEY ARE NOT EVEN A CORPORATION. WHAT IS THE, YOU KNOW, AND IN A REAL SPECIFIC WAY AS OPPOSED TO A LICENSE THAT NOW IF I AM NOT DEALING WITH A LICENSED ARCHITECT NOW I HAVE TO ME A DIFFERENT ISSUE. SOMEBODY THAT'S NOT CERTIFIED TO BE APPROPRIATELY QUALIFIED.

I WOULD POINT OUT TO THE PURPOSE BEHIND THE STATUTE, AND THIS PARTICULAR STATUTE, IS TO MINIMIZE AFTER ALL THE LEGISLATURE CAN NEVER GUARANTEE THAT THERE WILL NEVER BE A HARM BUT IT IS DESIGNED TO MINIMIZE HARM OR RISK TO THE PUBLIC THAT SERVICES WILL BE PROVIDED BY THOSE WHO ARE NOT LICENSED AND PROPERLY QUALIFIED.

I GUESS WE ARE GOING AROUND A CIRCLE. I'M DEALING WITH TWO PEOPLE WHO ARE BOTH LICENSED OR I AM DEALING WITH A PARTNERSHIP OF TWO PEOPLE THAT ARE BOTH LICENSED. WHAT IS THE -- AND I GUESS ARCHITECTURAL PLANS. WHY DOES IT MATTER TO ME IF THEY ARE IN A PARTNERSHIP OR TWO PEOPLE JUST BOTH WORKING TOGETHER?

WELL, FIRST OF ALL THE COLLEGE WANTED TWO PARTNERS WORKING HAND IN HAND TOGETHER, AND THEY WERE NOT GETTING THAT.

THAT'S WHY YOU BROUGHT A CLAIM FOR FRAUD AND THE JURY GAVE YOU DAMAGES FOR THAT, RIGHT?

REMEMBER ALSO THAT THE LEGISLATURE HAS ALSO SAID THAT AN INDIVIDUAL WHO ALREADY HAS A REGISTRATION TO PRACTICE ARCHITECTURE IF THEY ARE DOING BUSINESS UNDER A FICTITIOUS NAME, MUST TAKE THAT ADDITIONAL STEP AND GO BACK TO THE DEPARTMENT OF ARCHITECTURE AND SEEK THE CERTIFICATE OF AUTHORIZATION BEFORE THEY GO OUT TO THE PUBLIC UNDER THAT FICTITIOUS NAME AND OFFER SERVICES.

YOU SAID IN YOUR ANSWER TO JUSTICE PARIENTE'S QUESTION THAT THE COLLEGE WAS NOT -- THEY WANTED THESE TWO ARCHITECTS WORKING TOGETHER, AND THAT THEY WERE NOT GETTING THAT.

YES, SIR.

HELP ME. YOU NEED TO EXPLAIN THAT TO ME. WHERE WAS THERE ANY EVIDENCE THAT THEY WERE NOT GETTING THESE TWO ARCHITECTS WORKING TOGETHER?

AT THE TRIAL, THE COLLEGE REPRESENTATIVE TESTIFIED THAT IN THE FALL OF 1999 THEY NOTICED THAT PAUL STRESING'S ROLE WAS DIMINISHING, AND WAS -- HE WAS BECOMING LESS AND LESS INVOLVED. THIS WAS OF PARTICULAR CONCERN BECAUSE MR.^STRESING HAD THE KEY CREDENTIALS THAT THE COLLEGE WAS LOOKING FOR.

WITHOUT MR.^STRESING THEY WOULD NOT HAVE EVEN MADE THE FIRST CUT.

WASN'T MR.^STRESING ON THE CONTRACT?

MR.^STRESING DID SIGN THE CONTRACT, YES.

SO THEY HAD A CONTRACT WITH HIM AND THEY COULD ENFORCE THAT CONTRACT?

THEY HAD A CONTRACT WITH WHAT THEY UNDERSTOOD TO BE A PARTNERSHIP OF MORGAN-STRESING ASSOCIATES. MR.^MORGAN NOW COMES ALONG AND SAYS, NO, YOU IN FACT DID NOT HAVE A CONTRACT WITH MORGAN-STRESING ASSOCIATES, A PARTNERSHIP, YOU HAD A CONTRACT WITH DON R. MORGAN DOING BUSINESS AS MORGAN-STRESING ASSOCIATES. THEREIN LIES PART OF OUR FRAUD.

I FAIL TO UNDERSTAND HOW THAT RELIEVES MR.^STRESING OF RESPONSIBILITY UNDER THE CONTRACT.

IT DOESN'T RELIEVE HIM OF RESPONSIBILITY UNDER THE CONTRACT. BUT THEY WOULD NOT --

LET ME ASK THIS: THE STATUTE THAT YOU ARE RELYING ON THAT GIVES YOU THE AUTHORITY, DOES NOT HAVE A SPECIFIC PROVISION WHICH SAYS THAT ANY CONTRACT ENTERED INTO WITHOUT IT IS UNEVEN FORCEABLE?

THAT IS CORRECT.

NOW, BUT EVEN IF THESE PEOPLE WHO PROVIDED THESE SERVICES, THESE ARCHITECTS COULD NOT RECOVER ON THE CONTRACT, WHY COULDN'T THEY RECOVER ON QUANTUM MERIT?

BECAUSE OF SOVEREIGN IMMUNITY.

THAT'S WHAT THIS IS ABOUT IS WHETHER THERE IS SOVEREIGN IMMUNITY.

THERE WAS -- A QUANTUM MERIOT COUNT WAS PLED. WE MOVED FOR DISMISSAL OF THAT. THEY AGREED THAT QUANTUM MERIOT BARRED THAT RECOVERY AND WITHDREW THAT COUNT.

JUSTICE CANTERO HAS A QUESTION.

I WOULD LIKE YOU TO GIVE YOU AN OPPORTUNITY TO ACTUALLY ANSWER MY QUESTION WHICH WAS DIDN'T THE DISTRICT KNOW ABOUT THE FACT THAT THE ARCHITECTS DID NOT HAVE A CERTIFICATE OF AUTHORITY LONG BEFORE THEY GOT THE PLANS AND YOU WERE ANSWERING MY QUESTION. YOU SAID THAT THEY FOUND OUT IN JUNE OF 2000.

THAT THERE WAS A LICENSE PROBLEM. THEY IMMEDIATELY SUSPENDED PAYMENTS UNTIL THE ISSUE COULD BE SORTED OUT. MR.^MORGAN WAS OUT OF THE COUNTRY IN ALASKA IN JULY. THE BOARD TERMINATED THE CONTRACT IN AUGUST, AND THEN RECEIVED THE PLANS ACTUALLY

THE PLANS WERE DELIVERED IN JULY AND IT WAS THE COMPUTER FILES THAT WERE LATER DELIVERED IN, I BELIEVE, SEPTEMBER OF 2000.

HAD THE COMPANY REQUESTED THE COMPUTER FILES, YOU DIDN'T INFORM THE ARCHITECTS THAT YOU FELT THAT THEY HAD FRAUDULENTLY INDUCED YOU INTO THE CONTRACT, YOU DIDN'T TELL THEM YOU WERE TERMINATING THEM BECAUSE THEY DIDN'T HAVE A CERTIFICATE OF AUTHORITY. YOU SAID WE WOULD LIKE TO TAKE A LOOK AT THE PLANS TO SEE WHAT YOU HAVE GOT?

NO, SIR. THE CONTRACT HAD ALREADY BEEN TERMINATED BY THE BOARD IN THE AUGUST 2000 MEETING. IT WAS VERY CLEAR REVIEWING THOSE MINUTES THAT BOTH THE ISSUE OF THE FRAUD AND THE ISSUE OF NONLICENSURE WERE CRITICAL TO THAT DECISION.

WASN'T THERE A DISCUSSION, THOUGH, AT THAT -- DURING THAT TIME PERIOD ABOUT ONE OF THE THINGS YOU HAVE SAID IS THAT ONE OF THE PARTNERS WAS NOT ACTUALLY PERFORMING. DURING THAT DISCUSSION, WASN'T THERE SOME TALK ABOUT THEM ENTERING INTO SEPARATE LICENSES AND THAT MR.^MORGAN AND MR.^STRESING WOULD BOTH AGREE TO DO YOUR WORK, YOU KNOW, ON SEPARATE CONTRACTS? SO WHY WASN'T THAT SORT OF AGREEABLE TO THE PARTIES IF YOU WERE REALLY INTERESTED IN MAKING SURE THAT MR.^STRESING CONTINUED TO WORK ON YOUR PROJECT?

IT WAS IMPORTANT THAT THE COLLEGE HAD TWO ARCHITECTS THAT WERE WORKING TOGETHER. REVIEWING THAT AGREEMENT, IT RECOGNIZES OR THAT PROPOSED CHANGE, MR.^MORGAN AND MR.^STRESING ACKNOWLEDGED THAT THE COLLEGE WAS UNDER NO LEGAL OR MORAL OBLIGATION TO CHANGE THE ARRANGEMENT THAT THEY HAD BARGAINED FOR. THEY HAD ASKED FOR TWO PEOPLE WORKING HAND IN HAND, AND THEY WEREN'T GETTING THAT, AND THEY WERE NOT COMFORTABLE THAT THIS ARRANGEMENT WHERE THEY WERE GOING TO BE IN SEPARATE OFFICES, SEPARATE INDIVIDUALS WAS GOING TO GIVE THEM THAT INTANGIBLE THAT THEY HAD BARGAINED FOR.

WE HAVE -- I THINK YOU ARE INTO REBUTTAL.

I AM VERY MUCH INTO MY REBUTTAL.

WHY WOULD FLORIDA LAW NOT ACCOMMODATE DIFFERING RESULTS IF YOU HAVE ON ONE HAND ARCHITECTS WHO ARE NOT, IN FACT, LICENSED INDIVIDUALLY IN FLORIDA, AND ON THE OTHER HAND A SITUATION INVOLVING ALL ARCHITECTS WHO ARE, IN FACT, ALL LICENSED IN FLORIDA? WHY WOULD FLORIDA LAW NOT ACCOMMODATE DIFFERING RESULTS UNDER THOSE TWO DIFFERENT SITUATIONS?

BECAUSE THE LEGISLATURE HAS SET UP A REGULATORY SCHEME, AND HAS DEEMED IT THAT THE BOARD OF ARCHITECTURE NEEDS TO REVIEW THOSE ARRANGEMENTS IN ADVANCE OF THE OFFERING OF THOSE SERVICES AND IT HAS ALWAYS BEEN THE POLICY OF THE COURTS THAT WHEN THE LEGISLATURE SAYS THAT YOU NEED TO ADHERE TO THIS PROCEDURE BEFORE ENGAGING IN A PARTICULAR BUSINESS OR PROFESSION AND YOU DON'T DO THAT, THEY WILL NOT ENFORCE THE CONTRACT. IT IS NOT TO BE LOOKED AT AFTER THE FACT. NO MATTER HOW QUALIFIED AN INDIVIDUAL IS, YOU STILL HAVE TO ADHERE TO THOSE PROCEDURES TO BECOME PROPERLY LICENSED OR CERTIFICATED.

THANK YOU, MR.^WILLIS, FOR ANSWERING MY QUESTIONS. SAVE THE HALF A MINUTE FOR REBUTTAL. MR.^ROBERTSON?

GOOD MORNING. MAY IT PLEASE THE COURT, MY NAME IS PETER ROBERTSON ALONG WITH T. J. FRASIER.

AND I THINK AS YOU HEAR FROM THE QUESTIONS WE SEEM TO BE GOING BETWEEN THE FACTS OF THIS CASE AND THEN THE LAW, AND MAYBE YOU WANT TO FIRST ADDRESS THE LAW THAT THERE IS A STATUTE OUT THERE THAT SAYS THAT THEY SHOULD HAVE THIS CERTIFICATE OF AUTHORITY.

THAT'S CORRECT.

AND ALLOW PEOPLE JUST TO VIOLATE THE LAW AND HAVE NO EFFECT DOESN'T SEEM TO BE THAT WE WOULD BE EFFECT WAITING LEGISLATIVE -- EFFECUATING LEGISLATIVE INTENT. SO IF YOU WANT TO GO TO THE STATUTE AND THEN THE FACTS WE HAVE BEEN STRUGGLING WITH THIS MORNING.

YES, YOUR HONOR. THE STATUTORY CONSTRUCTION BEGINS WITH THE FACT THAT AT EVERY LEVEL THAT THIS HAS BEEN EXAMINED AT THE TRIAL COURT LEVEL ON MULTIPLE OCCASIONS AND AT THE 5TH DISTRICT COURT OF APPEAL LEVEL AND IN THE BRIEFS, IT HAS BEEN POINTED OUT TO THE APPELLANT REPEATEDLY THAT THE STATUTE THEY ARE TRAVELING UNDER IS NOT A LICENSING STATUTE, AND I THINK THAT'S THE FIRST POINT. I THINK THAT THE PURPOSE OF THE STATUTE IS STATED --

BUT YOU AGREE THAT THE LAW IS AND PERHAPS SHOULD BE THAT IF IT IS A LICENSING REQUIREMENT THAT CONTRACTS ENTERED INTO WITHOUT THE PARTY FULFILLING THAT LICENSING REQUIREMENT ARE VOID UNDER FLORIDA LAW?

IF YOU DON'T -- YES, YOUR HONOR. IF YOU DON'T -- IN ALL OF THE CASES THAT ARE CITED INTERESTINGLY ENOUGH BY THE APPELLANT ARE THE LAWYER DIDN'T HAVE A LICENSE, THE DOCTOR DIDN'T HAVE A LICENSE, THE ARCHITECT DIDN'T HAVE A LICENSE. THIS IS A VERY DIFFERENT STATUTE. THE PURPOSE OF THE STATUTE IS NOT ONLY TO PROTECT THE PUBLIC, BUT IT IS TO IDENTIFY WHO THE PUBLIC IS DEALING WITH. WE ARE TALKING ABOUT THE CERTIFICATION. SO THAT IF YOU ARE DEALING WITH A CORPORATION AS IN THE O'KON CASE, WELL, O'KON, WHAT DOES THAT MEAN? O'KON WAS A CORPORATION FROM GEORGIA. THERE IS A KEY --

SO YOU ARE SAYING, THOUGH, THAT THE STATUTE REQUIRING THE CERTIFICATE OF AUTHORIZATION DOES, IN FACT, ADD SOMETHING MORE TO THE PUBLIC THAN THE MERE LICENSE THAT EACH INDIVIDUAL HAS?

IT DOES. I AGREE.

AND SO IF IT DOES AND THEY ARE THERE TO PROTECT THE PUBLIC THEN WHY THE FAILURE TO COMPLY WITH THE STATUTE SHOULDN'T RENDER THE CONTRACT THIS ENTITY ENTERS INTO AS VOID?

IT DOESN'T VOID THE CONTRACT. IT MAKES THE CONTRACT VOIDABLE. I'D LIKE TO QUOTE FROM THE 2ND APPENDIX WE GAVE THE COURT AT TAB 17. THERE IS A VERY INTERESTING EXAMINATION THERE BY MYSELF AT THE TRIAL WITH THE CORPORATE COUNSEL FOR THE COMMUNITY COLLEGE, MISS MELISSA MILLER, AND QUESTION: YOU ARE AN ATTORNEY? THAT'S CORRECT. GENERAL COUNSEL FOR THE COLLEGE. YOU HAVE NO OBJECTION TO THEM BOTH BEING NAMED AS ARCHITECTS? NOW, THIS IS WE ARE TALKING ABOUT THIS MODIFICATION AGREEMENT OF BOTH THE ARCHITECTS SIGNED. AND VERY INTERESTING ANSWER: THEY WERE ALREADY NAMED AS ARCHITECTS ON THE CONTRACT. NOW, THIS IS THE CORPORATE COUNSEL FROM THE COMMUNITY COLLEGE, AND WHEN I GO ON TO ASK HER IN THE NEXT COUPLE OF PAGES, I SAY THEY ARE BOTH FULLY LICENSED? CORRECT, YES. SO IF ALL YOU DID TO SOLVE THIS PROBLEM WAS DRAW A LINE THROUGH THE CONTRACT AND INSTEAD OF SAYING MORGAN -- MORGAN-STRESING.

BUT THAT NAME WAS ON THE CONTRACT?

MORGAN-STRESING ASSOCIATES WAS ON THE CONTRACT, YES, YOUR HONOR.

SO THAT'S THE ENTITY THAT NEEDED THE CERTIFICATE?

THAT'S CORRECT, YOUR HONOR.

SO IT COMES BACK TO WITHOUT THAT, THAT ENTITY COULD NOT HAVE ENTERED INTO THE CONTRACT, RIGHT?

THEY COULD ENTER INTO THE CONTRACT AND THERE IS SOME CONFUSION AS TO WHETHER, BECAUSE THEY TOOK THE POSITION AT THE TRIAL THAT THEY WERE BOTH INDIVIDUALLY ON THE HOOK. THEY HAD BOTH SIGNED THE CONTRACT. SO IT SAYS MORGAN-STRESING ASSOCIATES, AND THEN RIGHT UNDER IT ON THE CONTRACT IT SAYS DON R. MORGAN, HE SIGNED, PAUL STRESING, HE SIGNED.

THE PLANS THAT WERE SEALED, DID BOTH SEAL THEM?

WERE THE PLANS SEALED? YES, YOUR HONOR.

AND DID BOTH ARCHITECTS, MY POINT IS DID BOTH ARCHITECTS SEAL THEM?

I'M PRETTY SURE THEY ARE. THE REASON I SAY THAT IS THAT WITH THESE TWO ARCHITECTS THE WAY THEY DIVIDED UP THE WORK THEY DID IS THAT MR.^STRESING DID THE DESIGN ASPECT OF IT, AND MR.^MORGAN DID THE CONSTRUCTION DOCUMENT ASPECT OF IT. I KNOW FOR A FACT THAT MR.^MORGAN SIGNED AND SEALED THE CONSTRUCTION DOCUMENTS, AND SO I WOULD ASSUME THAT IT WENT BOTH WAYS.

SOMEHOW I DON'T FEEL LIKE WE GOT PAST THE FIRST ISSUE, WHICH IS WE ARE DOING PRETTY WELL. YOU ARE SAYING IT IS NOT A LICENSING STATUTE SO FIRST WE HAVE TO DECIDE AND YOU CONCEDED IF IT WAS A LICENSING STATUTE THEN THOSE CONTRACTS ARE VOID UNDER THE POLICY THAT THE COURTS HAVE SAID THAT NOW THIS IS NOT INSTEAD OF A LICENSING STATUTE IT IS A WHAT STATUTE, WHAT TYPE OF STATUTE IS IT?

IT IS THE FIRST PART OF THAT STATUTE, YOUR HONOR, WHICH IS --

WHAT ARE WE GOING TO CALL IT?

481, IT IS, I THINK IT IS 213. AND WHAT IT SAYS IS IN ORDER TO PRACTICE ARCHITECTURE.

BUT IN OTHER WORDS WHY IS -- YOU ARE WRITING THE FIRST PARAGRAPH OF THIS OPINION AND IT SAYS WE AGREE THAT STATUTES THAT ARE LICENSING STATUTES THAT CONTRACT ENTERED INTO BY INDIVIDUALS WHO ARE NOT LICENSED ARE VOID BECAUSE SUCH AND SUCH. THIS IS NOT A LICENSING STATUTE. THEREFORE, IT IS ONLY VOIDABLE BECAUSE. WHAT IS THE -- FROM THE -- WHAT INTERESTS ARE BEING VINDICATED BY LICENSING VERSUS HOW YOU ARE DOING BUSINESS THAT CALLS FOR TWO DIFFERENT RULES OF LAW?

I THINK THERE ARE TWO REASONS. I THINK THE FIRST REASON IS AS THE COURT WAS QUESTIONING EARLIER SAYING THAT THERE IS A DIFFERENT LEVEL HERE. ON THE ONE HAND YOU HAVE A LICENSED ARCHITECT, YOU HAVE TWO INDIVIDUALS THAT ARE LICENSED ARCHITECTS, AND WHAT THEY DIDN'T DO WAS GET THIS \$70 CERTIFICATE OF AUTHORIZATION, WHICH THEY WERE ENTITLED TO BECAUSE THEY WERE LICENSED ARCHITECTS. SO I THINK IT IS A VERY MINOR HARM. SO IF THERE IS A PROBLEM WITH A CONTRACT AND A PROBLEM --

WERE THEY TURNED DOWN? YOUR O OPPONENT SAYS THEY APPLIED FOR ONE AND DIDN'T GET IT. WHY DIDN'T THEY?

THEY HAD A TECHNICAL PROBLEM WITH IT WHEN THEY TURNED IT IN AND IF YOU LOOK AT THE AGREEMENT THAT THEY HAVE WHEN THEY WENT BACK TO THE COLLEGE IN JUNE AND I MIGHT POINT OUT TO THE COURT THAT --

WE ARE GETTING BACK ON TRACK SO YOU ARE SAYING IT IS A MINOR HARM BUT WHAT IF IN THE LICENSING SITUATION SOMEONE JUST HADN'T PAID THEIR \$25 FEE FOR RENEWAL AND THEY WERE REALLY LICENSED BUT THEY JUST DIDN'T COMPLY, YOU WOULD SAY, WELL, THAT'S JUST TECHNICAL BUT WE HAVE A LAW -- A RULE THAT SAYS IT WOULD BE VOID?

NO, BUT THEY ARE NOT PAYING THE RENEWAL FEE. THEY WOULD NOT BE LICENSED AT THAT POINT IN TIME. IT IS JUST AS IF I DIDN'T RENEW MY DRIVER'S LICENSE. I WOULDN'T HAVE A DRIVER'S LICENSE.

THAT'S TECHNICAL.

I UNDERSTAND, AND YET IF YOU LOOK AT WHAT THE 5TH DCA DID IN THEIR ANALYSIS WHEN THEY WENT THROUGH THEIR ANALYSIS THEY TALKED ABOUT THIS.

BUT DON'T WE -- ISN'T THIS A SITUATION IN WHICH YOU, AT THE PLEADING STAGE, AGREED THAT YOU COULDN'T -- YOU HAD TO HAVE THE CONTRACT IN ORDER TO ENFORCE IT, BECAUSE THIS WAS SOVEREIGN IMMUNITY. IF IT WAS NOT, IF YOU WERE DEALING WITH SOMEONE THAT WASN'T A STATE ENTITY THEN YOU COULD HAVE SUED ON QUANTUM MERIOT AND COLLECTED YOUR FEES?

IF THAT'S THE WAY IT TURNED OUT YOU COULD HAVE SUED IN THE ALTERNATIVE.

SO WHAT YOU NEEDED TO DO WAS HAVE A BASIS UPON WHICH TO GET AROUND THE SOVEREIGN IMMUNITY, AND BUT THE STATE ALSO HAS A REQUIREMENT THAT THERE BE THIS CERTIFICATE OF AUTHORIZATION, SO DOESN'T THAT MAKE IT A DIFFERENT SITUATION WHEN YOU ARE DEALING WITH THE STATE IN ORDER TO GET AROUND SOVEREIGN IMMUNITY, DON'T YOU HAVE TO FOLLOW THE STATE STATUTES?

YES, YOUR HONOR. I THINK YOU HAVE TO FOLLOW THE STATE STATUTES.

BUT YOU DIDN'T FOLLOW THE STATE STATUTES AS FAR AS THE CERTIFICATE OF AUTHORIZATION?

YES, AND THEN THE QUESTION BECOMES WHAT IS THE EFFECT OF THAT. DOES IT VOID THE CONTRACT?

WHY IS IT THE FACT THAT YOU DON'T GET AROUND SOVEREIGN IMMUNITY?

THAT IS A DIFFERENT QUESTION AND I THINK THE SOVEREIGN IMMUNITY QUESTION ON QUANTUM MARRIOTT AND THIS HAS TO DO WITH CONSTRUCTION CONTRACTS IS THAT THEY DO NOT WANT STATE ENTITIES ENTERING INTO THE CONTRACT.

BUT WHAT I AM TRYING TO GET INTO IS THE PUBLIC POLICY PART OF WHETHER THIS CERTIFICATE OF AUTHORIZATION PROVISION IN THE STATUTE, FROM A PUBLIC POLICY STANDPOINT HAS TO BE ENFORCED BECAUSE WE HAVE SAID SEVERAL TIMES THAT THE REASON THAT WE MAKE LICENSURE OR OTHER FOLLOWING STATUTORY REQUIREMENTS OR CONSTITUTIONAL REQUIREMENTS VOID IS BECAUSE OF THE PUBLIC POLICY BEHIND THOSE PROVISIONS AND IN THE PUBLIC POLICY BEHIND THE SOVEREIGN IMMUNITY ARE THE CONTRACTS THAT YOU HAVE TO FOLLOW WHAT THE STATE SET OUT AS FAR AS THE STATUTE IS CONCERNED IN ORDER TO

ENFORCE THE WITHDRAWAL OF SOVEREIGN IMMUNITY AGAINST THE STATE; ISN'T THAT THE PUBLIC POLICY?

YES, YOUR HONOR, AND I THINK THERE IS TWO VERY IMPORTANT POINTS HERE. NUMBER ONE, IT IS NOT IN THE STATUTE. IN 481 IT DOESN'T SAY IF YOU DON'T DO THIS THE CONTRACT IS VOID AND VOIDABLE. IT DOESN'T SAY ANYTHING.

WELL, DOES IT SAY IF A LICENSING STATUTE?

NO, IT DOESN'T.

SO THAT'S BEEN READ IN AS A REQUIREMENT.

IT DOESN'T SAY THAT IN ANY OF THE LICENSING STATUTES.

IT SEEMS LIKE WE ARE ALL BEING, YOU KNOW, WHAT JUDGE MONACO SAYS VOIDING THE CONTRACT AFTER HUNDREDS OF THOUSANDS OF DOLLARS WAS PERFORMED JUST DOES NOT PASS THE SMELL TEST. WELL, THAT'S NOT HOW WE CAN BE WRITING LAWS BY SAYING BECAUSE OF THE FACTS OF THIS CASE WE ARE SYMPATHETIC AND I AM STILL NOT SURE I'VE HEARD YET A COGENT POLICY REASON FOR SIGNIFICANT STATUTES.

I THINK IT GOES TO 489 AND IN 489 WHICH IS A PARALLEL CONTRACT THAT DEALS WITH CONTRACTORS, THEY WROTE THIS OUT AFTER THEY HAD WRITTEN IT IN. THE LEGISLATURE SAID IN 2003, IN 2002 THEY SAID IF YOU DON'T HAVE A QBE, WHICH IS A CERTIFICATION THAT CONTRACT IS VOID AS A MATTER OF LAW AND THAT LASTS ONE YEAR AND THE LEGISLATURE COMES BACK IN 2003 AND SAYS THAT'S A BAD LAW. WE ARE TAKING THAT OUT AND THEY SPECIFICALLY SAY NOW WHEN THEY SAY UNDER THE STATUTE A BUSINESS ORGANIZATION SHALL NOT BE CONSIDERED UNLICENSED FOR FAILING TO HAVE A CERTIFICATE OF AUTHORITY. THAT'S IN THE CONTRACTING STATUTE, WHICH IS PERFECTLY PARALLEL TO THE ARCHITECT STATUTE. SO I THINK THAT IS EXTREMELY STRONG POLICY REASONING THAT THE LEGISLATURE HAS ENUNCIATED IN EXACTLY THE SAME AREA.

WHAT HAPPENS IN THE LAW IF SOMEBODY IS -- THERE WAS NO CERTIFICATE OF AUTHORIZATION STATUTE, AND YOU ARE ENTERING INTO A CONTRACT AS BEING A PARTNERSHIP AND YOU ARE NOT A PARTNERSHIP.

THE PARTNERS -- UNDER THE LAW? THE PARTNERS ARE INDIVIDUALLY LIABLE IS MY UNDERSTANDING OF THE LAW.

AND YOUR POSITION HERE IS THAT THESE ARCHITECTS ARE INDIVIDUALLY LICENSED?

ABSOLUTELY, YES.

AND YOUR POSITION IS ALSO THAT THE CONTRACT IS VOIDABLE AT THE OPTION OF THE DISTRICT EXCEPT THEY DIDN'T EXERCISE THAT OPTION. THEY RATIFIED IT?

THEY RATIFIED THE CONTRACT AND WE HAVE GIVEN YOU EVIDENCE BY THE WAY THAT -- BUT AT TAB 6 IN OUR SUPPLEMENT YOU WILL SEE AN EXCERPT FROM A MEETING. NOW, THEY FIND OUT JUNE 1ST, AND HERE WE ARE ON JULY 6TH AND WHO IS AT THE MEETING? DON MORGAN, PAUL STRESING, THE TWO ARCHITECTS, DR. ^LOTT WHO IS THE PRESIDENT OR THE VICE-PRESIDENT, I'M SORRY, AND MELISSA MILLER AND A BUNCH OF OTHER PEOPLE AND WHAT DOES MR. ^MORGAN SAY AT THAT MEETING IN JULY? HE IS NOT IN ALASKA FISHING. HE SAYS DON MORGAN STATED THE 100% DOCUMENTS WILL BE E-MAILED OUT TOMORROW. THAT'S WHAT HE SAYS AT THE MEETING AND THIS IS THEIR MEETING MINUTES BY THE WAY. AND THEN THEY DON'T TERMINATE HIM FOR ANOTHER MONTH AND THEN IN SEPTEMBER THEY TURN AROUND AND SAY, LISTEN, WE

HAVE YOUR PLANS, BUT WHAT WE REALLY WANT ARE THE COMPUTER DISKS. WE WANT THE ACTUAL FILE DISKS SO THE NEW ARCHITECT DOESN'T HAVE TO REDRAW THE PLANS. AND THOSE WERE TURNED OVER TO THEM, TOO, AND THERE WAS ACTUALLY SUBSEQUENT WORK DONE BY MR.^MORGAN AFTER THAT POINT AND THAT WAS LONG AFTER THEY FOUND OUT ABOUT THIS ISSUE.

AND I THINK YOUR POSITION IS ALSO THERE ARE ADMINISTRATIVE REMEDIES AGAINST THE ARCHITECTS FOR ENTERING INTO A CONTRACT WITHOUT THE CERTIFICATE OF AUTHORITY?

THAT'S CORRECT. DBPR HAS THE JURISDICTION AND THE ENTERING THING IS THEY HAD DVPR LISTED AS A WITNESS. THEY WERE GOING TO COME IN AND TESTIFY AND THEN THEY NEVER TESTIFIED AND ONE OF THE THINGS WE SAID IN THE BRIEF IS WE DON'T THINK THEY HAVE A PRIVATE CAUSE OF ACTION. WE THINK DBPR IS ONE THAT DEALS WITH NOT HAVING A CERTIFICATE. YOU MAKE A COMPLAINT TO THEM.

WHAT WAS THE BASIS FOR THE RECOVERY BY THEM OF THE \$61,000?

WELL, WHAT HAPPENED, YOUR HONOR, WAS THE -- THEY BROUGHT IN ANOTHER ARCHITECT AND MR.^WILLIS IS CORRECT, I CAN'T REMEMBER HOW MUCH THEY SPENT. LET'S SAY IT WAS A MILLION DOLLARS AND THEN THEY SPENT MORE MONEY THAN THAT. WHAT CAME OUT AT TRIAL WAS WHEN THEY BROUGHT THE NEW ARCHITECTS IN THEY CHANGED PLANS. THEY UPGRADED THEM. THEY ENHANCED THEM AND THEY SUED US FOR THAT AND THE JURY SAID, NO, WE ARE GOING TO GIVE YOU \$61,000 WHICH THEY DETERMINED WAS NECESSARY TO COMPLETE THE PLANS TO TAKE THEM TO 100%. THERE WAS SOME FIRE EXIT ISSUES AND MINOR THINGS LIKE THAT.

WELL --^.

THAT'S WHERE THEY GOT THE MONEY.

WHAT I AM HAVING A HARD TIME UNDERSTANDING IS THE CONNECTION BETWEEN A FRAUD IN THE INDUCEMENT CLAIM, WHICH IS A TORT CLAIM, AND THE RECOVERY OF THE \$61,000. HOW DOES THAT CAUSE RELATED?

I'M SORRY. I CAN EXPLAIN THAT. THEY FIND OUT ABOUT THE FACT THERE IS NO PARTNERSHIP IN DECEMBER, OKAY, AND YOU TERMINATE THEM IN AUGUST SO THEY KNOW ABOUT THAT FOR ABOUT NINE MONTHS AND THEY TELL THEM KEEP WORKING, KEEP WORKING AND KEEP PAYING, AND WHAT JUDGE HEDSTROM SAID IN ACCORDANCE WITH MAZZONI FARMS, THEY SAID YOU HAVE TWO CHOICES YOU CAN EITHER RATIFY THE CONTRACT AND SUE FOR DAMAGES OR YOU CAN DECLARE THE CONTRACT VOID AND HE SAID IN THIS PARTICULAR CASE THEY HAVE SUED YOU FOR BREACH OF CONTRACT, THEY'VE RATIFIED THE CONTRACT AND THEY ARE ENTITLED TO DAMAGES AND THOSE WERE THE DAMAGES, THE \$61,000 THAT THE JURY FOUND THEY WERE ENTITLED TO UNDER THAT THEORY.

SO DID THE JUDGE FIND AS A MATTER OF LAW THAT THE DISTRICTS HAD RATIFIED THE CONTRACT OR WAS THAT A JURY ISSUE?

YES. I BELIEVE THAT HE DID. I MEAN HE MADE THE STATEMENT THAT THE CONTRACT, HE SAYS, YOU KNOW, YOU'VE RATIFIED THE CONTRACT, AND YOU HAVE ASKED THEM TO CONTINUE TO PERFORM AFTER YOU DISCOVER.

BUT AND HE IS DOING THAT BASED ON MAZZONI, BUT ISN'T THERE A PROBLEM AS MR.^WILLIS SAID, BECAUSE YOU ALSO HAVE AN OBLIGATION TO MITIGATE YOUR DAMAGES, SO THEY WERE SORT OF PUT BY YOUR CLIENT'S FRAUD OR DECEIT IN NOT BEING, YOU KNOW, A TRUE PARTNERSHIP THEY REALLY WERE FACED WITH, YOU KNOW, WHAT WERE THEY SUPPOSED TO DO?

WELL, WHAT THEY WERE SUPPOSED TO DO, IF THEY WANTED TO TERMINATE THE CONTRACT BACK IN DECEMBER AND NOT HAVE MORGAN AND STRESING COMPLETE THESE PLANS AND SPEND ANOTHER HALF A MILLION DOLLARS DOING THE WORK THEN THEY WOULD DO THAT AND THEY HIRE ANOTHER ARCHITECT. I MEAN, THEY ARGUED THAT BUT NOBODY BOUGHT THAT AND THE JURY DIDN'T BUY THAT AND THE JUDGE DIDN'T BUY IT, EITHER, THAT THEY DID THIS TO MITIGATE THEIR DAMAGES BECAUSE AT THE TIME THEY GOT THOSE PLANS, OUR EXPERT TESTIFIED THEY WERE 95% COMPLETE. I MEAN, THEY WERE -- THEY HAD BEEN SENT TO THE DEPARTMENT OF EDUCATION, DOE, FOR COMMENTS, AND -- YES, DOE FOR COMMENTS ON HOW THE PLANS HAD BEEN DONE. SO I MEAN, YES, THEY HAVE TO MITIGATE THEIR DAMAGES BUT I DON'T THINK ANYTHING THEY DID DID THAT. WE ARE THE ONES THAT MITIGATED THEIR DAMAGES BECAUSE IF YOU SEE THE LETTERS WE ASKED THEM WHEN THEY GAVE THEM THE PLOT FILES WE SAID OUR ARCHITECTS ARE RESPONSIBLE LEGALLY FOR THESE PLANS. PLEASE DO NOT MODIFY THESE PLANS.

LET ME ASK YOU THIS.

THEY DID IT ANYWAY.

THE 5TH DISTRICT'S OPINION SAYS IT APPEARS THAT THE BOARD OF TRUSTEES HAD KNOWLEDGE AS EARLY AS DECEMBER OF 1999 THAT MORGAN AND STRESING WERE NOT PARTNERS AND A CERTIFICATE HAD NOT BEEN OBTAINED. WAS THERE A DETERMINATION BY THE TRIAL JUDGE THAT SUPPORTED THAT?

NO, AND I AGREE WITH MR. ^WILLIS. THAT'S A MISTAKE IN THE 5TH DCA OPINION FACTUALLY. THEY KNEW AS EARLY AS DECEMBER THERE WAS NO PARTNERSHIP. THEY DID NOT FIND OUT ABOUT THE CERTIFICATE OF AUTHORITY UNTIL THE 1ST OF JUNE AND THEY FOUND OUT ABOUT THAT BECAUSE WE TOLD THEM.

THANK YOU FOR THAT.

BUT THAT'S A FACTUAL --

LET ME ASK THE SAME QUESTION I ASKED TO YOUR OPPONENTS HERE. DO YOU SEE THAT FLORIDA LAW WOULD ACCOMMODATE DIFFERING RESULTS UNDER THIS STATUTE IF YOU HAVE ARCHITECTS PERFORMING SERVICES WHO ARE NOT LICENSED INDIVIDUALLY IN FLORIDA AND THOSE THAT ARE SUCH AS YOUR CASE?

YOU KNOW, YOUR HONOR, I'M SORRY I'M SOMEWHAT CONFUSED BY YOUR QUESTION.

DO YOU BELIEVE THAT YOU CAN HAVE DIFFERENT RESULTS UNDER THIS STATUTE THAT YOU REFER TO AS A CERTIFICATE STATUTE FOR THOSE THAT INVOLVE INDIVIDUALS, ARCHITECTS, NOT LICENSED UNDER FLORIDA LAW, AS OPPOSED TO THE SAME FACTS BUT THE ARCHITECTS ARE LICENSED UNDER FLORIDA LAW, THAT THE RESULT WOULD BE DIFFERENT UNDER THOSE TWO SCENARIOS?

YES.

OR MUST THE LAW BE THE SAME?

I THINK THE RESULT WOULD BE DIFFERENT BECAUSE IN YOUR SCENARIO WHERE THE ARCHITECT IS UNLICENSED, THAT'S A REQUIREMENT TO GET THE CERTIFICATION. SO IF YOU ARE UNLICENSED TO BEGIN WITH, YOU DON'T GET THE CERTIFICATION. ON THE OTHER HAND, YOU CAN GET THE CERTIFICATION IF YOU ARE LICENSED SO, YES, THERE WOULD ABSOLUTELY.

SO THERE WOULD BE A WAY FOR FOREIGN ARCHITECTS THAT ATTEMPT TO PRACTICE WITHOUT OBTAINING --

YES, BUT IT WOULD NOT BE VOID BECAUSE OF THE CERTIFICATION PROBLEM. IT WOULD BE VOID BECAUSE THEY DON'T HAVE A LICENSE IN FLORIDA.

CHIEF JUSTICE: THANK YOU VERY MUCH FOR ANSWERING OUR QUESTIONS. REBUTTAL?

MR. WILLIS, COULD YOU ADDRESS THE PUBLIC POLICY ISSUE AS YOUR COUNSEL DID IN 489.128 THE LEGISLATURE SPECIFICALLY ADDRESSES THE ISSUE AS TO CONTRACTORS, BUT THEY HAVEN'T DONE IT AS TO ARCHITECTS?

YES, YOUR HONOR, IN THE CASE OF WOOD VERSUS BLACK, 1952, THIS COURT FIRST ENUNCIATED THAT CONTRACTORS WHO ARE UNLICENSED THEIR CONTRACTS ARE VOID AND UNEVEN FORCEABLE AT LAW. IT WASN'T UNTIL 1990 THAT THE LEGISLATURE CAME ALONG AND ADOPTED THE STATUTE THAT'S REFERENCED AND SAID NOT ONLY ARE THOSE CONTRACTS UNENFORCEABLE AT LAW BUT THEY ARE ALSO UNENFORCEABLE IN EQUITY AS WELL. THERE WERE A NUMBER OF DECISIONS THAT CAME ALONG AFTER THE FACT THAT THE LEGISLATURE HAS TWEAKED THE CONTRACTOR STATUTE EVER SINCE. ONE OF THE QUESTIONS IN THIS MOST RECENT AMENDMENT, THERE WERE QUESTIONS AS TO WHETHER THE DEPARTMENT, THE CONSTRUCTION LICENSING BOARD WAS, IN FACT, ACTUALLY ISSUING CERTIFICATES OF AUTHORIZATION OR CERTIFICATES OF AUTHORITY AS THEY ARE CALLED UNDER THAT STATUTE IN CERTAIN INSTANCES. THERE ARE DIFFERENT LICENSING SCHEMES FOR CONTRACTORS AND ARCHITECTS. THEY ARE SIMILAR BUT THEY ARE DIFFERENT, AND TO TRY TO PUT ONE INTO THE OTHER WHEN THE LEGISLATURE HAS NOT --

THE LEGISLATURE DID SAY FAILURE TO HAVE A LICENSE IS VOID. FAILURE TO BE -- HAVE THE CERTIFICATE IS NOT THE SAME.

AND THE 5TH DCA IN ANOTHER CASE CALLED PROMULTORY SAID BUT FOR THAT EXPRESS LANGUAGE, THE CONTRACT WOULD HAVE BEEN VOID, AND IT WAS MADE RETROACTIVE WAS THE ONLY REASON.

WE WOULD LIKE YOU TO, BUT YOU HAVE USED UP YOUR TIME. THE COURT THANKS YOU BOTH FOR YOUR TIME FOR BEING RESPONSIVE TO OUR QUESTIONS AND WE WILL TAKE THE MATTER UNDER ADVISEMENT. THE COURT IS GOING TO TAKE ONLY A FIVE-MINUTE RECESS AND THEN WE WILL CALL THE NEXT CASE. THANK YOU.

THE MARSHAL: PLEASE RISE.

CHIEF JUSTICE: AND I WILL MEET WITH THE TEEN COURT PEOPLE DURING THAT BREAK.