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Rick Barnett v. Florida Dept. of Management Services

SC06-1224

FINAL

CASE THIS MORNING ON OUR CAL
END DARE IS BARNETT VERSUS
FLORIDA DEPARTMENT
MANAGEMENT \$\$!!!!.

>> READY?

>>.

>> MAY IT PLEASE THE COURT.

MY NAME IS LARRY LEVY I
REPRESENT THE AE PELLANT
HERE TODAY A PETITIONER WE
ARE HERE FROM THE CERTIFIED
QUESTION FROM THE
DISDISTRICT COURT OF APPEAL
I WOULD LIKE TO RESERVE 3
MINUTES FOR REBUTTAL.

>> LET ME BRIEFLY --

HISTORICAL HOW WE GOT HERE.

>> WE ARE VERY FAMILIAR WITH
HOW WE GOT HERE.

MY FIRST QUESTION TO YOU IS
IS IT THE YOUR POSITION THAT
THERE IS NO CONCEPT OF
EQUITABLE OWNERSHIP WHEN
LOOKING AT WHETHER PROPERTY
14 BE IMMUNE FROM AD VALOREM
TAXATION OR DO YOU AGREE
THAT THAT THAT SOMEONE OTHER
THAN THE LEGAL TITLEHOLDER,
CAN BE THE EXIT WERE BELIEVE
OWNER OF THE PROPERTI,AND IF
IT IS THE STATE, WOULD BE
IMMUNE FROM TAXATION?

>> TOND YOUR QUESTION
CORRECTLY WE DO NOT AGREE
THE STATE IS EQUITABLE
OWNER.

>> NO I -- DO YOU AGREE WITH
THAT CONCEPT THAT IS THAT
THERE THAT IT IS NOT -- WHO
THE LEGAL OWNER THAT LEGAL
TITLE OWNER IS THE END OF
THE INQUIRY, THAT THERE --

>> YES, MA'AM I AGREE WITH
THAT.

>> OKAY YOU AGREE THEN THAT

IS THEN THE QUESTION OF THE
EQUITABLE OWNERSHIP IS WHERE
THE FACTS ARE STIPULATED, IS
A QUESTION OF LAW?

>> WHERE FACTS WOULD HAVE
BEEN STIPULATED THE IT WOULD
HAVE BEEN A PRIMARILY A
QUESTION OF LAW WHICH WOULD
HAVE TO LOOK TO THE FACTS
AND THE STATUTORY FRAMEWORK
FROM WHENCE IT CAME.

>> ALL RIGHT.

AND MY QUESTION IS TO
WHETHER WE SHOULD BE
ANSWERING THIS CERTIFIED
QUESTION, IS THAT YOUR
ARGUMENT SEEMS TO BE THIS
CASE IS IN HARTSFIELD
BECAUSE OF THE TERMS OF THE
LEASE PURCHASING AGREEMENT,
CERTAIN ASPECTS OF THE STAT
WHY IF A -- STATUTE IF A
CASE-BY-CASE BASES WHY WHY
SHOO WE ANSWER IT IN THIS
CASE?

WHAT GUIDANCE WERE WE BE
GIVING FOR OTHER CASES IF IT
IS UNIQUE TO THIS CASE?

>> WELL, I THINK SOMETIME IT
IS A CASE-BY-CASE BASIS BUT
OF YOU THE WAY THE FIRST
DISTRICT COURT EVOLVED SAYS
HART FIELD CONTROLS THIS,
THEREFORE IT SAYS THIS IS
THE SAME AS HARTSFIELD.

AND WE DON'T THINK THAT IS
THE SAME AS HARTSFIELD, AND
YOU HAVE A DIFFERENT
STATUTORY 23R5178 WORK ON
THAT HAVE AN HARTSFIELD.

>> SO KAY SO REALLY THEN WE
HAVE TO BE GUIDED BY THE
FRAMEWORK HERE, OF THE
STATUTE ABOUT, ALSO IT SEEMS
TO ME LOOKING AT THE
BENEFITS AND BURDENS, WHO
HAVE HAS THE BENEFITS AND
BURDENS OF OWNERSHIP, THAT
GOES BACK TO LOOKING
PRIMARILY, AT THE LEASE
PURCHASE AGREEMENT.

WOULD YOU AGREE WITH THAT
THAT THAT IS HOW WE WOULD
DETERMINE WHO HAS THE

BENEFITS --

>> NOT ONLY LEASE PURCHASE AGREEMENT IT SHOULD HAVE MANAGEMENT AGREEMENT, AND THE STATUTORY FRAMEWORK THAT GAVE RISE TO IT 957 WHICH WERE DIFFERENT FROM UNDER 233, # 43.

>> IF YOU WANT TO CONTINUE THAT I DIDN'T MEAN BUT WE KNOW THE PROCEDURAL HISTORY SO IF YOU WANT TO GO INTO YOUR SUBSTANTIVE ARGUMENT.

>> ALL RIGHTY VERY BRIEFLY THE LAW PASSED THE PRIVTATION LAW PASSED IN 3 PROPERTY WAS TAXED 93, # 4, 95, 9 #\$\$, 97, THE ADVERTISE -- STATE FIRST TIME STATE TOOK OOKZ FILEDSUIT IN 97 THAT CASE WAS DISPISSSED, WITH -- DISMISSED WITH LEAVE TO AMEND DID NOT AMEND THAT COMPLAINT WAS ULTIMATELY WOUND UP, THEY TOOK APPEAL FROM THAT THE FIRST DISTRICT COURT THE STATE --DITION MISED THAT APPEAL 98, THE PROPERTY CAS ASSESSED NO -- THEN 99, WHICH IS ONE WE ARE DEALING WITH HERE AND THE YEAR SUBSEQUENT TO THAT, 2004.

I POINT THIS OUT BECAUSE I DON'T THINK THERE WAS WHY WE ARE IN -- 99 LAWSUIT STILL HANGING IN TWOIR I THINK POSSIBLY, SOME -- I SAY SOME QUESTION WHEN OR NOT WHAT POSITION THE STATE WAS GOING TO TAKE, BE THAT AS IT MAY.

>> SEEMS TO ME THAT YOUR ARGUING A LACHZ ARGUMENT I'M LATCHEES DOES PTD APPLY I WANT TO POINT FOURLT HISTORY THAT IS ALL.

THERE ARE TWO ISSUES, HERE, ONE, THE FIRST DISTRICT COURT COURT SAYS HARTSFIELD CONTROLLEDING SECONDLY, IT DEALT WITH THE STATUTE 957 AND THAT GENERAL 957 ALTHOUGH IT WAS DIFFERENT FROM THE STATUTE WHICH WAS

IN THE HARTSFIELD CASE IS
STILL -- CONTROLLED BY
HARTSFIELD CASE, WE DIFFER
WITH BOTH THOSE OPINIONS
BOTH THOSE CONCLUSIONS, THE
HARTSFIELD CASE, CAME UP
UNDER A STATUTE WHICH WAS
STETTING UP FOR SETTING UP
FOR I CALL IT DORMITORY
HOUSING FOR THE STUDENTS AT
-- ANY PLACE FOR THAT MATTER
AND ALL OF YOU KNOW WHERE IT
IS AT WEST HE OPENS COLA
STREET.

WEST PENSACOLA STREET THAT
CASE HAD SPECIFIC EXEMPTION
EVERYTHING IS GOING TO BE
EXEMPT THE PROPERTY IS GOING
TO BE EXCEPT WHATEVER IS
DOWN OUT THERE IS GOING TO
BE EXEMPT IT STARTS OUT WITH
THE WITH THE HOUSING
AUTHORITY!!\$\$!!!!!!!!!!!!!!!
AUTHORITY, ACQUIRING THE
PROPERTY.

THE I -- NOW, ON THAT I KNOW
YOU MAKE POINT OF THAT IN
YOUR BRIEF.

>> I DO.

>> THAT IS THAT THE CLEARLY
-- THE HOUSING AUTHORITY,
AND HOUSING AUTHORITY IS
CONSIDERED THE STATE, THEN
WE DON'T HAVE EQUITABLE
OWNERSHIP ISSUE THERE IS
NOTHING IN THE HARTSFIELD
OPINION THAT WOULD INDICATE
THAT THE OWNERS -- OWNERSHIP
WAS WITH A ENTITY A STATE
CONTROLLED ENTITY.

YOU WOULDN'T HAVE TO GO INTO
HE CAN WHAT IS BELIEVE
OWNERSHIP IF THAT WERE THE
CASE.

AND IN FACT IT SEEMS THAT IT
IS THE OPPOSITE FROM THE
FACT, SO -- DON'T WE HAVE TO
GO BEHIND THE HARTSFIELD
OPINION TO COME UP WITH A
CONCLUSION, THAT SOMEONE
THAT THE LESSOR IN THAT CASE
WASN'T THE ACTUAL
TITLEHOLDER!!\$\$!!!!!!!!!!!!!!!
TITLEHOLDER?

>> WELL, THE ACTUAL
TITLEHOLDER WAS A NONPROFIT
ENTITY CREATED BY THE
AUTHORITY, TO SOLELY
FACILITATE THE FINANCING.
>> WELL THAT IS AND THAT IS
WHAT HAPPENED HERE.
>> AND THEN BLEJDZ NOT TAX!!\$\$!!!!
TAXES, NO TWEAKS PLEDGED IN
HARTSFIELD THEY PLEDGED THE
RENTS THAT WERE COLLECTED
FROM THE LETTERS AND
SERVICES!!\$\$!!!!!!!!!!!!!!
SERVICES, CAFETERIA THE FOOD
THAT IS PLEDGED TO RETIRE
THE COP'S.
>> YOU GO BACK.
>> COULD YOU GO BACK AND
ANSWER THE QUESTION THAT --
>> I'M TRYING TO GET WHAT
THE QUESTION IS FOR SURE.
>> THE QUESTION, I THOUGHT
YOU WERE SAYING THAT THE
DISTINCTION WITH HAR--
HARTSFIELD WAS THAT THE
NONPROFIT ENTITY DIDN'T HOLD
THE LEGAL TITLE IN THAT
CASE.
>> IT DID HOLD ILLEGAL
TITLE.
>> IS NOT THAT THE SAME AS
IN THIS CASE, THAT IS, THAT
WE ARE DEALING WITH A
NONPROFIT.
>> I DID.
>> CORPORATION THAT CREATED
SO HE WILLY TO FACILITATE
THE FINANCING AN ACQUISITION
THE MONIES PASSED THROUGH
FROM THE LEGISLATIVE
APPROPRIATION TO THIS IS NOT
ONLY NOT -- TO THROUGH THE
LESSOR, WHO RECEIVES NO
BENEFITS OF THIS OWNERSHIP
IT GOES RIGHT THROUGH TO THE
TRUSTEE WHO HAS FACILITATED
THE FINANCING, THEY AT THE
END OF THE DAY, THEY HAVE TO
GIVE OVER THE PROPERTY, TO
THE STATE FOR NO CAUSE --
FOR NO COST,AND THE LEASE
SPECIFICALLY STATES THAT THE
STATE THE -- PREVIOUSLY THE
COMMISSION, HAS TO ASSUMES

ALL RISK OF LOSS?
HAS TO MAINTAIN IT?
I I MEAN IN OTHER WORDS WHAT
DOES THAT LEGAL TITLE HOLDER
HAVE AS FAR AS BENEFITS OR
BURDENS OF OWNERSHIP?
>> NOT IN HARTSFIELD THERE
WAS NO MONEY --
>> NO MONEY APPROPRIATED IN
HARTSFIELD AT ALL.
>> NO.
BUT --
>> THIS CASE OF YOU MONEY
APPROPRIATED FROM --
>> TELL ME THE LEGAL
TITLEHOLDER!!\$\$!!!!!!!!!!!!!!!!!!!!
TITLEHOLDER,WHAT BENEFITS OR
BURDENS OF OWNERSHIP DO THEY
HAVE?
THEY HOLD THEY HOLD LEGAL
TITLE WHAT BURDENS DO THEY
HAVE WHAT BENEFITS OF
OWNERSHIP!!\$\$!!!!!!!!!!!!!!!!!!!!
OWNERSHIP?
>> THEY ARE THERE SOLELY TO
FACILITATE FINANCING.
>> SO THEY ARE NOT THEY
CAN'T SO THEY ARE NOT THE
THEY ARE THE LEGAL TITLE
HOLDEVER BUT THEY ARE NOT.
>> THEY HOLD LEGAL TIERT
SNOOEL BUT NOT THE EQUITABLE
TITLE HOLDER.
>> NO MA'AM.
>> WHO IS HE CAN WHAT IS
BELIEVE TITLE --
>> THE ORANGE -- THE
ORIGINAL CONTRACTOR IN
HARTSFIELD WOULD BE 240R9.
>> JUDGE IRVIN SEEMS TO DO
VERY GOOD JOB IN HIS OPINION
DEBUNKING THE POSSIBILITY
THAT THEY ARE -- THE LEGAL
HE CAN WHAT IS BELIEVE TITLE
HOLDER BECAUSE AND, AGAIN,
NOW WE GO BACK TO SOMETHING
THAT I'M HAVING TROUBLE
WITH, IS TO IF WE WERE TO
GET BACK INTO YOUR ARGUMENT
THAT IT IS REALLY THE
CONTRACTOR THAT IS LEGAL I
MEAN EQUITABLE TITLE HOLDER
SEEMS WE ARE GETTING INTO A
VERY FACT SPECIFIC

SITUATION, AND I DON'T KNOW WHY WE WOULD BE ANSWERING THAT QUESTION.

IN A CASE WHERE WE ARE TRYING TO SORT OF PUT AN END TO THIS TYPE OF LITIGATION. FOR THE FUTURE.

I I MEAN THAT ISES WHY WE WOULD BE TAKING THE CASE --

>> CAN I GIVE THEM DIFFERENCES THAT I SEE.

>> SURE.

>> THE DIFFERENCES THAT I SEE ASIDE FROM VERY STATUTORY FRAME WORK FRAMEWORK WHERE YOU START FROM THE PRIVATE NONPROFIT ENTITY!!\$\$!!!!!!!!!!!!!!

ENTITY, STARTING OUT THREE PEOPLE FROM MINNESOTA. THE WASN'T CREATED BY THE OWNER WASN'T CREATED BY THE STATE THAT IS THE CONTRACTOR.

CORRECTION -- COOF AMERICA DID THAT TO FACILITY THE FINANCING!!\$\$!!!!!!!!!!!!!! FINANCING.

YOU HAVE A STATUTE AND 957, THAT SAYS THE PURPOSE OF THE PROOFRIZATION COMMISSION IS TO OVERSEE THE CONSTRUCTION OF PRIVATE -- FACILITES -- YOU DIDN'T HAVE THAT IN -- IN HARTSFIELD.

YOU HAD SOMETHING TOTALLY DIFFERENT.

YOU HAD A SITUATION THAT WAS DIFFERENT.

>> BUT IN --

>> BUT IN --

>> -- IN THE HOUSING

AUTHORITY, YOU WEREN'T ARGUING THAT THE CONTRACTOR WHO BUILT THE APARTMENTS OUT THERE WAS SOMEHOW THE OWNER -- BENEFICIAL OWN NESH THAT IS NOT THAT SAME ARGUMENT YOU ARE MAKING HERE?

>> NO.

NO, I'M NOT.

>> THE CORRECTIONAL -- APPROPRIATION OF AMERICA WAS THE CONTRACTOR WHO BUILT

IMPROVEMENTS ON THE
PROPERTY; CORRECT?

>> THEY WERE THE ONES 957
THAT GOT THE BID, WHICH
ALLOWED THEM SALES TAXES
THEY HAD TO PAY ON MATERIALS
TO BUILD IT WILL, AND FOR AD
VALOREM TAXES THAT WOULD BE
PAID UNDER 9577 -- 95707 IN
THE STATUTE.

>> ANSWER MY QUESTION, WHAT
INCIDENT OF OWNERSHIP
EQUITABLE OR OTHERWISE DOES
THE CORRECTIONAL KORMS --
CORPORATION OF AMERICA HAVE
TO THIS PROPERTY.

>> WE THINK THEY HAVE
EQUITABLE OWNERSHIP STILL IF
YOU CONVEY IF YOU OWN LAND,
YOU ASSIGN THE LAND TITLE TO
THE LAND TO SIGN LEGAL --
LEGAL TITLE FOR FINANCING
PURPOSES ONLY TO THIS
MINNESOTA NONPROFIT ENTITY
YOU STILL HAVE HE CAN WHAT
IS BELIEVE OWNERSHIP THE
STATE COMES IN AS A LESSEE.
SO YOU HAVE, YOUR OWNERSHIP,
BEGINNING IN PRIVATE, WITH
THE STATE COMING IN, AS A
LESSEE AND COMING UP WITH
MANAGEMENT AGREEMENT TO SIGN
WITH CCA OF AMERICA.

>> WHAT PRIVATE --
ORGANIZATIONS, OWNS THIS
PROPERTY?

>> I'M SORRY?

>> WHAT PRIVATE PROFIT,
AGAIN EXPLAIN TO ME
SPECIFICALLY, WHAT OWNERSHIP
OR EQUITABLE INTEREST THE
CORPORATION CORRECTIONAL
CORPORATION HAS IN THIS
PROPERTY?

>> THEY HAD AN OBLIGATION TO
BUILD IMPROVEMENTS THEY HAVE
OBLIGATION TO BASICALLY RUN
THE PRISON.

>> AND OWNED THE LAND
ORIGINALLY IT BOUGHT THE
LAVENLTD CCA ACQUIRED THE
LAND ON WHICH THIS WAS TO BE
BUILT.

THEN ASSIGNED TITLE TO THE

MINNESOTA NONPROFIT
CORPORATION!!\$\$!!!!!!!!!!!!!!!!!!!!
CORPORATION.

>> IS THAT IN STIPULATED
FACTS?

>> INTO THE FACTS?

>> YEAH.

>> I DON'T SEE.

>> YES, MA'AM THAT WAS ON.

>> CCA WAS THE ORANGE I
THOUGHT WAITS.

>> ORIGINAL.

>> I THOUGHT IT WAS OWNED BY
THE PANAMA CITY PORT
AUTHORITY!!\$\$!!!!!!!!!!!!!!!!!!!!
AUTHORITY.

>> IT WAS ORIGINALLY OWNED
BY THE PANAMA CITY PORT
AUTHORITY.

>> TRANSFERRED TITLE TO THE
FINANCE CORPORATION.

>> NO MA'AM SOLD TO SOLD TO
THE CCA, THEY ASSIGNED TITLE
TO THE FINANCE CORPORATION?

THAT IS BECAUSE IT IS NOT IN
JUDGE IRVIN'S OPINION I

DON'T RECALL SEEING IT IN
STIPULATED FACTS, ARE YOU

SAYING IT IS IN WHERE IS
THAT YOU COULD GIVE US A

RECORD CITE?

FOR WHERE IT SHOWS THAT THEY
ACTUALLY WERE THE OWNERS OF
THIS PROPERTY.

>> I CAN NOT POINT TO A
REFERENCE HE SIDE BAR NOW.

>> IT IS CRITICAL, YOU SAY
IT IS CRITICAL.

>> I CAN GO BACK LOOK FIND
IT.

>> MAYBE ON REBUTTAL.

>> THAT IS EXACTLY HOW IT
HAPPENED, LATER THE MAKEUP
OF THE NONPROFIT ENTITY WAS
CHANGED.

SOME THREE, FOUR YEARS LATER
BUT NOT THAT THE TIME THAT
IS HOW IT STARTED OUT.

>> WHEN YOU HAVE -- YOU HAVE
THE STATE IT IS A STATE A
LESS!!\$\$!!!!!!

LESSEE, THEN THE STATE MAY
BE A LESSEE AND NOT PAY ANY
TAXES THEY WOULD BE SUBJECT

TO TAXES BECAUSE OF YOU ALL
OF THE PROPERTY ALL OVER THE
COUNTY THAT IS OWNED BY
PRIVATE ENTITIES LEASED TO
THE STATE.

AND THAT SITUATION, WHO GETS
THE BENEFITS OF USING IT'S
WELL THE STATE USES IT YOU
FIND ATTORNEYS, OFFICES AT
YOU ALONG THE TRUCK ROUTE
YOU FIND COUNTY OPERATED ALL
OVER THE STATE.

USED BY THE STATE IS NOT
ALONE.

HERE YOU HAVE ACTUAL USE BY
PRIVATE ENTITY CCA OPERATING
AND MAINTAINING THE PRISON
JUST -- JUST LIKE # 57 SAID
TO BEGIN WITH.

IF THEY DIDN'T THINK ABOUT
AD VALOREM TAXES BEING MADE
WHY WAS 9570 24R7?

IT SAYS WHEN YOU ARE GOING
TO MAKE A BID YOU'VE GOT BE
ABLE TO BID THAT YOU CAN DO
THIS 7% CHEAPER THAN ANY
STATE PRISON.

AND IN CALCULATE\$\$!!!!ING THE 7%
AUDITOR GENERAL HAS TO DO
THAT CERTIFY THAT YOU ARE
10% LOWER -- THE STATE WOULD
CHARGE PER IN MATE FOR THE
SAME TYPE THING IT WILL SAYS
BUT WE ARE -- PRIVATE ENTITY
IF YOU BUILD A PRISON YOU
GOT TO PAY TAXES ON YOUR
MATERIALS!!\$\$!!!!!!!!!!!!!!!
MATERIALS.

EVERY --

>> THAT WOULD BE THE I THINK
THAT WE ARE THAT WOULD BE
SECOND PART OF YOUR
ARGUMENT.

>> SECOND PART OF THE
ARGUMENT?

IF WE AGREE IF WE AGREE
THERE I THEY ARE NOT
EQUITABLE OWNER WE DON'T
EVEN GET INTO WHEN ESTATE
INTEND!!\$\$!!!!!!!!!!!!!!!

INTENDED FOR TO IT BE EXEMPT
OR NONEXEMPT BUT IF WE AGREE
THAT THEY ARE THE IF WE
AGREE WITH THE -- THAT THE

HE CAN WHAT IS BELIEVE OWNER
WE LOOK AT THE STATUTORY
SCHEME BUT IN OUR RECENT
DECISION IN CAISSON WE SAID
THAT THE WAIVER, OR THE
INTENT TO TAX HAS TO BE
CLEAR, AND UNEQUIVOCAL.
>> THAT IS A DIFFERENT
ISSUE, IF ISOLATE IT LIKE
THAT, I DON'T THINK YOU CAN
ISOLATE THAT PART FROM THE
STAT -- STAT I DON'T THINK
YOU CAN ISOLATE THAT FROM
THE FACT THAT IF THEY WERE
EQUITABLE OWNER, WHY WASN'T
THERE A REFERENDUM REQUIRED?
IF YOU ARE GOING TO USE
STATE DOLLARS TO REPAY STATE
DEBT IF IT WAS EQUITABLE
OWNER AT THE BEGINNING, WHY
DIDN'T YOU HAVE A
REFERENDUM?
IF IT WAS IN 2007 THAT
WAY?
THERE WAS NO REFERENDUM.
BECAUSE.
>> YOUR POSITION WOULD.
>> BECAUSE IT IS A LEASE.
>> SO YOUR POSITION WOULD BE
THEY HAVE TO BE A STATEWIDE
REFERENDUM FOR THE
APPROPRIATION OF THESE FUNDS
TO PAY THIS LEASE FOR THIS
FACILITY.
>> IF IT -- IF IT WAS THE
EQUITABLE OWNER IF IT IS A
LESSEE THEY DON'T HAVE TO.
>> WHO AT THE END OF THE
CONTRACT PERIOD, WHO IS
GOING TO OWN THE LAND?
>> AT THE END OF THE
CONTRACT AT THE END OF THE
CONTRACT PERIOD, ASSUMING
THAT THE CONTRACT GOES
THROUGH THE STATE THEN ONE
WILL GO OVER TO THE STATE --
BUT IF THE CONTRACT DOESN'T
GET TO THE END THEIR
ARGUMENT IS IT REMAINS A
LEASE.
>> FINISH THAT IF THE
CONTRACT DOESN'T GO TO THE
END THEN WHAT?
>> IT DOES NOT GO TO THE

END, THEN THE STATE WALKS OFF, BECAUSE THEY SAY IT IS A LEASE ALL DURING THAT TIME PERIOD AND YOU ARE NOT THE EQUITABLE OWNER.

>> WHO OWNS THE PROPERTY THEN IF THE CONTRACT IS NOT COMPLETED, WHO OWNS THE PROPERTY?

>> IF IT IS NOT COMPLETED, IT WOULD GO THEN ASSUMING THAT THE STATE SAYS WE ARE THROUGH, IT IS GOING TO GO BACK TO THE TO THE -- MORE THAN LIKELY BONDHOLDERS THE COP HOLDERS, IT WOULD GO BACK THROUGH THE TRUSTEE, ALWAYS -- MORTGAGE ON THIS PROPERTY BY THE WAY IT WOULD BE MORTGAGED EXECUTED OFF SOLD OFF, AND, I GUESS, CONVERTED TO APARTMENT HOUSE WHAT!!\$\$!!!!!!
WHATEVER.

>> BUT THAT -- THEN I DON'T QUITE UNDERSTAND YOUR ARGUMENT THAT THE CORPORATION THE CONTRACTING CORPORATION ACTUALLY HAS TITLE TO THE PROPERTY.

>> HAD LEGAL TITLE I MEAN HE CAN WHICH IS BELIEVE, I THINK!!\$\$!!!!!!
THINK.

>> WELL ILLEGAL TITLE.

>> YOU SAID THAT -- LEGAL TITLE, YOU SAID THE PROPERTY SOLD FROM PAN AMA CITY PORT AUTHORITY TO THIS CORPORATION!!\$\$!!!!!!!!!!!!!!!!!!!!
CORPORATION, AND THEN WHAT DOES THE CORPORATION DO WITH IT.

>> THE CORPORATION ASSIGNED THE TITLE TO IT TO THE TRUSTEES RATHER TO THE -- NONPRIVATE ENTITY WHICH, IN TURN, EXECUTED THE DOCUMENTS NECESSITIES --ES IN -- NECESSARY FOR THE TRUSTEE, COP PAYMENTS ON THE LOAN ASSIGNED BUT HOLDS A LEGAL TITLE SUBJECT TO ALL THE TRUSTEE AGREEMENTS, WHICH

FOR THE ALL OF THE
INDENTURES OF THE PROPERTY
FOR CONSTRUCTION OF THE
PRISON!!\$\$!!!!!!!!!!!!
PRISON.

>> SO THEN HOW DO -- I
GUESS.

>> THAT IS --

>> THAT IS HOW IT HE IS
DONE.

>> A CORPORATION THE
CONTRACTING CORPORATION TO
BE THE EQUITABLE OWNER?

>> THEY NEVER LOST IT.

THEY STILL THEY HAVE THE
PROPERTY.

IF I OWN PIECE OF PROPERTY,
AND I CONVEY LEGAL TITLE TO
SOMEBODY FOR FINANCING
PURPOSES ONLY IT IS
PRESUMABLY I KEPT HE CAN
WHAT IS BELIEVE!!\$\$!!!!!!!!!!!!!! I KEPT HE CAN IT
WERIBLE!!\$\$!!!!!!!!!!!!!!

WERIBLE, YOUR FIRST QUESTION

WHAT IS HAPPENS AT END OF
THE CONTRACT IF IT GOES TO,
THE MIDDLE -- OUR POSITION
IS IF IT IS AT THE END 69

CONTRACT, AND OPTION TO
PURCHASE IS THEY COULD GET
IT FOR A DOLLAR IF IT GOES
IN THE MIDDLE THE STATE
WALKS AWAY, BECAUSE ONLY A
LEASE REMEDIES THERE ARE FOR
A LEASE, THE \$\$STATE'S

POSITION IS IT IS A LEASE,
IF A DEFAULT IN THE MIDDLE
OF THE CONTRACT BUT
EQUITABLE OWNERSHIP AT THE
END OF THE OUR POSITION IS
YOU CAN'T HAVE IT BOTH WAYS
IF EQUITABLE OWNERSHIP FROM
THE BEGINNING, THEN IT IF
THE STATE OWNED IT IS GOING
TO USE STATE MONEY TO PAY
FOR THE CONSTRUCTION OF IT.
THERE SHOULD HAVE BEEN A
BOND AGREEMENT A BOND --

>> REBUTTAL.

>> YES, SIR.

>> RESERVE THE REST OF MY
TIME.

>> OKAY.,,

>> GOOD MORNING MY NAME IS

ROBERT REID WITH BRIAN
MILLER OLIVER HAVE ON BEHALF
OF STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT
SERVICES!!\$\$!!!!!!!!!!!!!!
SERVICES.
WITHED ME IS MICHAEL DAVIS,
COCOUNSEL IN OUR FIRM.

>> HE CAU EXPLAIN TO THE CAN
YOU EXPLAIN TO ME LEASE
PURCHASE AGREEMENT WHAT THE
PROVINGS ARE IN THE LEASE
PURCHASE AGREEMENT AND HOW
THAT MAKES THE STATE THE
EQUITABLE OWNER, WHEN IT IS
A LESSEE UNTIL THE VERY END
OF THE CONTRACT?

>> CERTAINLY, THE RELEASE
AGREEMENT LEASE PURCHASE
AGREEMENT!!\$\$!!!!!!!!!!!!!!IS
A FINANCING MECHANISM.
BASICALLY!!\$\$!!!!!!!!!!!!!!
BASICALLY, RENT TO OWN.
A COLLOQUIAL SENSE THE
FORMAT WAS APPROVED,
ENDORSED RECOGNIZED HOWEVER
YOU WANT TO SAY IT BY HE BY
THIS COURT IN THE
CONSOLIDATED SARASOTA COUNTY
CASES!!\$\$!!!!!!!!!!
CASES, WHICH ARE THREE
CONSOLIDATED SCHOOLBOARD
CASES!!\$\$!!!!!!!!!!
CASES, THAT RECOGNIZE, THIS
AS A VALUE IRD FINANCING.
MECHANISM!!\$\$!!!!!!!!!!!!!!
MECHANISM.

NOW, WHAT HAPPENS WITH A
LEASE PURCHASE FINANCING TO
HAVE A LEASE, YOU HAVE TO
SEPARATE LEGAL TITLE AND
HAVE SO YOU CAN HAVE THE
LESSOR, AND A LESSEE.
YOU HAVE TO DO THAT FOR AT
LEAST -- FOR A LEASE PURPOSE
THE PURPOSE -- LEASE
PURCHASE AGREEMENT, AND ALL
THE STRUCTURES IS BASICALLY
TITLED TO TITLE TO THE
PROPERTY IS PLACED IN OR
CONTROL OVER SOMETIMES
THROUGH A LONG TERM GROUND
RELEASE, IN A NONTYPICALLY A

NONPROFIT ENTITY THAT IS A SHELL.

FOR BANKRUPTCY PURPOSES IS CREATED THERE, SOLELY TO BE THE LESSOR, IN THIS SITUATION.

TO PROVIDE THAT LEGAL FICTION OF SEPARATION SO YOU CAN HAVE A LEASE.

THE LESSEE IN THIS CASE THE STATE OF FLORIDA UNDER THAT LEASE THEN UNDERTAKES BASICALLY, TWO OBLIGATIONS, ONE OBLIGATION IS TO CARE AND MAINTAIN THE PROPERTY. WHAT EF IS NECESSARY ON THE PROPERTY ITSELF.

AND, SECONDLY, TO MAKE LEASE PAYMENTS.

THOSE LEASE PAYMENTS LOOK AND ACT EXACTLY LIKE A BOND AMORTIZATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!

AMORTIZATION, THEY HAVE THEY ARE SPECIFIED OUT OF EACH LEASE PAYMENT, THERE IS A PRINCIPAL PORTION, AND AN INTEREST PORTION.

THE SUM OF THE PRINCIPAL PORTION ADDS UP TO THE AMOUNT OF CAPITAL RAISED THROUGH THE SALE USUALLY CERTIFICATES OF

PARTICIPATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! PARTICIPATION.

THAT CAPITAL IS THEN USED TO TYPICALLY TO EITHER ACQUIRE THE PROPERTY ANDOR -- AND/OR BUILD IMPROVEMENTS ON THAT NOT PROPERTY.

>> JUST ON THAT ONE IS THAT IN THE RECORD IN TRYING TO DISTINGUISH THIS FROM QUOTE A NORMAL LEASE, WHERE YOU ARE NOT LEASING YOU ARE THE AMOUNT OF THE PAYMENT, IS -- NOT.

>> HE RIGHT.

>> HOW IS -- WHERE IS THAT IN THE RECORD THAT THE AMOUNT OF THE PAYMENTS REALLY NOT WHAT WOULD BE, IN A TYPICAL LEASE?

>> THOSE ARE ACTUALLY SCHEDULES TO THE LEASE

PAYMENT AGREEMENT THE ORANGE
ONE IN 1994.

THEN 2001 A REFIE.

>> HOW THEY WERE CALCULATED
THAT IS, THAT IT IS SIMILAR.

>> CALCULATED.

>> YOU MADE A STATEMENT,
THAT THEY WERE AMORTIZED
LIKE --

>> THIS -- BECAUSE JUSTICE
-- CANTERO WAS ASKING ABOUT
THE LEASE I FELT YOU ARE
GOING OUTSIDE THE LEASE TO
SAY SOMETHING I JUST WANT TO
UNDERSTAND.

>> NO.

THIS IS IN THE LEASE THIS IS
PART OF THE LEASE --

>> BUT YOUR INTERPRETATION
IS TO THE AMOUNTS BEING NOT
AMOUNTS THAT ARE TYPICAL
LESSEE WOULD PAY.

THAT THERE ARE MORE TYPICAL
OF WHAT WOULD BE PAID IN A
BOND FINANCING ARRANGEMENT?

>> EXACTLY.

YES.

AND --

>> BUT -- ACTUALLY, THAT WE
APPENDIX AAND TO OUR BRIEF
ACTUALLY SETS FORTH THE TWO
PAYMENT SCHEDULES.

>> THAT IS THE ARGUMENT YOU
ARE SAYING THIS IS NOT AN
OPERATING LEASE --

>> CORRECT.

>> THE MAIN DIFFERENCE IN AN
OPERATING LEASE AND IT IS
NOTICE FACT MOST EXERCISING
LEASES!!\$\$!!!!!!!!!!

LEASES, FOR EXAMPLE DO IN
FACT IMPOSE OR OFTEN IMPOSE
VARIOUS BURDENS ON THE LESS!!\$\$!!!!!!
LESSEE.

YOU KNOW IF YOU CAUSE WASTE
YOU REPAIR IT, NORMAL WEAR
AND TEAR, YOU MAY HAVE TO
PAY YOUR OWN INSURANCE COST
YOUR OWN WHATEVER, THAT MAY
BE THERE.

BUT AT THE END OF THAT LEASE
TERM, IN A STRAIGHT
COMMERCIAL LEASE, STRAIGHT
OPERATING LEASE, OKAY, THE

TENET DOESN'T OBTAIN ANY
BENEFIT INTO THE PROPERTY
THEY HAVE NO CLAIM TO THE
PROPERTY.

IN FACT, THOSE LEASES
BASICALLY, TYPICALLY, STAY
-- SAY THAT IF YOU ARE EVER
ASKED TO YOU AGREE TO
PROVIDE AN ESTOPPEL BACK TO
THE LANDLORD THAT YOU HAVE
NO INTEREST -- TOO SO LET ME
ASK YOU THIS, A COUPLE OF
QUESTIONS, THAT CAME UP.

IN YOUR OPPONENTS'S
PRESENTATION!!\$\$!!!!!!!!!!!!!!!!!!!!
PRESENTATION.

>> CERTAINLY.

>> IN TERMS OF -- I
UNDERSTAND YOU ARE SAYING
THAT THE LEASE PAYMENTS ARE
REALLY PAYING THIEF
BONDHOLDERS!!\$\$!!!!!!!!!!!!!!!!!!!!
BONDHOLDERS.

>> ABSOLUTELY.

>> UNDER THIS SCHEME.
BUT HE HAS POSED THE
QUESTION, AS TO WHEN OR NOT
YOUR TRIALING TO HAVING --
YOU ARE TRYING HIT BOTH WAYS
AND THAT IS THAT IF WE END
UP HERE AT THE BONDHOLDERS
ARE REALLY THE ONES, THAT
ARE FINANCING THE PURCHASE,
OF THIS PROPERTY, IS THAT --
ARE YOU SAYING BOND HOLDERS!!\$\$!!!!!!!!!!!!
HOLDERS --

>> THE BONDS ARE WHAT IS
USED, TO FINANCE THEN HOW IS
IT THAT IN THE IF THERE IS A
DEFAULT IN THE MIDDLE OF
THIS, THEN, THE PROPERTY IS
NOT GOING TO THE STATE, THE
PROPERTY IS GOING TO GO YOU
KNOW, TO NOT -- NOT THE LESS!!\$\$!!!!!!
LESSOR I'M NOT SURE WHO THE
PROPERTY IS GOING TO GO TO.

>> ACTUALLY.

>> -- IT IS NOT THE STATE.

>> AND, THEREFORE, THAT THE
ONLY TIME THE STATE REALLY,
IS GOING TO ACQUIRE THE
PROPERTY AND THEREFORE, IT
DOESN'T HAVE A IF I
UNDERSTAND HIS ARGUMENT

CORRECTLY, IF THE ONLY TIME
THE STATE IS GOING TO
ACQUIRE IT IS AT THE END,
THEN HOW CAN THE STATE OWN
IT NOW?

IN OTHER WORDS, IF WE HAVE
PRIVATE BONDHOLDERS, THAT
ARE FINANCING THIS AND THEN
GENERICALLY!!\$\$!!!!!!!!!!!!!!!!!!!!
GENERICALLY, IF WE ARE GOING
TO CALL THIS REALLY A
PRIVATE PRISON, I MEAN THAT
IS WHAT THE WHOLE TITLE OF
THIS THING IS, IS A PRIVATE
CORRECTIONAL FACILITY OR
PRIVATE PRISON, THEN HOW --
ISN'T IN EFFECT, THE
ARGUMENT HERE THE STATE
REALLY IS TRYING TO HAVE IT
BOTH WAYS?

NO, WE DON'T OWN IT NOW.
OKAY.

BUT YET, AND THIS DEAL, WE
ARE GOING TO IMMUNIZE THE
OWNERS!!\$\$!!!!!!!!!!!!

OWNERS, FROM THINK AATION,
AND TAXATION TO ELIMINATE
THAT WAS ONE OF THE BURDENS
OF A PERFECT PRIVATIZATION
SCHEME.

I'M HAVING DIFFICULTY WITH
THE QUESTION THAT HE POSES.
OF HAVING IT BOTH WAYS, THAT
IS, THAT SOMETHING GOES
WRONG IN THE MIDDLE OF THIS,
SURELY THIS PROPERTY IS
GOING TO BE USED TO PAY OFF
THOSE BONDHOLDERS, THOSE
PRIVATE BONDHOLDERS, SO HOW
IS IT THAT YOU ARE NOT
TRYING TO HAVE IT BOTH WAYS?

>> THAT IS AN EXCELLENT
QUESTION LET ME IEND -- KIND
OF ANSWER THAT.

IT MAY SEEM A LITTLE
CIRCUITOUS AT FIRST BUT --

>> YOU CAN DO -- A PREDICATE
IF --

>> I -- I UNDERSTAND -- I
UNDERSTAND WHAT YOU ARE
ASKING THAT THAT PROPERTY IS
GOING TO BE USED TO PAY OFF
THE BONDHOLDERS; RIGHT?

.

>> RIGHT.

>> THERE IS -- GOING TO THE BEGINNING OF THE LEASE, WE WHEN THE STATE ENTERS INTO IT IN THIS CASE MY MEMORY SERVES ME RIGHT IT WAS JUNE 23, 1994.

STATE ENTERED INTO THE FINANCING ALL THE DOCUMENTS WERE DATED THAT DAY. OF THE CAPITAL MARKETS THROUGH INVESTORS BOUGHT THE CERTIFICATES, OF PARTICIPATION FUNDED THE TRUST OF THE LAND WAS ACQUIRED, AND THE CONSTRUCT!!\$\$!!!!!!!!!!!!!!!!!!!! CONSTRUCTION OF THE PRISON COMMENCED!!\$\$!!!!!!!!!!!!!!!!!!!! COMMENCED.

OKAY.

ALL OF THAT WAS UNDER THE OBLIGATION REALLY OF THE THROUGH THE OBLIGATIONS OF THE STATE TO MAKE THE LEASE PAYMENT.

NOW, AS THIS COURT RECOGNIZED GOING BACK TO THE SARASOTA CONSOLIDATED SCHOOL BOARD CASES THAT THAT IS A VALID FINANCIAL OBLIGATION OF THE STATE.

IS IT A STATE BOND?

NO.

WHY NOT?

BECAUSE OF THE RIGHT OF THE STATE JUST AS THE SCHOOL BOARDSED THAT THE EXACT SAME RIGHT TO ON IN PROEMENT AND GO WE -- NONAPPROPRIATE AND GO WE DOFRNLT NEED THIS PRISON ANYMORE AND WALK AWAY FROM IT THE PENALTY TO THE STATE THAT IS IMPOSED AS PARTLY OF THE FINANCING, FOR DOING THAT IS THEY THEN MUST GIVE UP POSSESSION OF THE PRISON.

>> HOW IS THE STATE EQUITABLE OWNER THEN?

>> THE STATE IS THE EQUITABLE OWNER BECAUSE NOT ONLY UNDER THAT LEASE DOES IT TAKE ON ALL OF THE BENEFITS AND BURDENS OF

OWNERSHIP -- THAT IS WHAT IS I'M TRYING TO FIGURE OUT IN MY ORANGE QUESTION, WHAT -- ORIGINAL QUESTION WHAT BURDENS BENEFITS OF OWNERSHIP DO THEY HAVE IF ALL THEY HAVE IS A LEASE AND FROM READING THE SCHEDULE A, THEY HAVE TO MAKE 42 PAYMENTS, UP TO PAYMENT 41, IF THEY DON'T MAKE THE NEXT PAYMENT, THEY GET ZERO, THEY HAVE NOTHING AS FAR AS PROPERTY OWNERSHIP. SO HOW AS TO 41 OF 42 PAYMENTS ON THE LEASE UP TO AUGUST 1ST OF 2015, HOW IS THE LEASEQ DIFFERENT FROM ANY OTHER LEASE?

>> WELL, THE, THE LEASE IS DIFFERENT IN, I WOULD SUBMIT IN TWO WAYS. NUMBER ONE, THE LEASE IS, DESIGNED FROM DAY ONE TO BE A FINANCING LEASE. A CAPITAL LEASE. THIS IS RECOGNIZED, BY THE, STATE OF FLORIDA IN ITS RULES.

THE AUDITOR GENERAL RULES. >> BUT IN TERMS OF LEGALLY WHAT WE'RE TALKING ABOUT, IT HAS TO BE DIFFERENT IN THAT, IT GIVES THE STATE, SOME BENEFITS AND BURDENS OF OWNERSHIP THAT OTHER LEASES DON'T.

NOT BECAUSE THE PURPOSES ARE DIFFERENT OR BECAUSE THE LANGUAGE OF THE LEASE IS DIFFERENT OR ANYTHING BUT THE DIFFERENCE HAS TO BE, THAT THIS LEASE, GIVES THE STATE, SOME OF THE BENEFITS AND BURDENS OF OWNERSHIP THAT ORDINARY LEASES DON'T.

>> WELL, I WILL, I'M TRYING TO GET TO THAT ANSWER BUT I WILL ALSO SAY IT'S ALMOST IDENTALLY TO THE LEASE THAT WAS IN HARTSFIELD, WHICH HAD COURT SAID, PRESENTED IT. IT WAS ALSO VIRTUALLY IDENTICAL TO THE LEASE IN

THE FORD CASE, BREVARD COUNTY COURTHOUSE WHICH THIS COURT ADOPTED.

>> WE APPROVE, SEE HARTSFIELD.

ASSUMING -- HUMOR ME HERE IN THE ARGUMENT, SAY WHAT ARE THE BURDENS IN THIS LEASE, BURDENS AND BENEFITS OF OWNERSHIP?

>> IS THAT PART OF YOUR ANSWER, JUST TO ANSWER HIS QUESTION?

>> I'M TRYING TO GET TO THAT.

>> PLEASE GO THROUGH THAT AND JUSTICE WELLS HAS A QUESTION AND WE'LL GO BACK TO JUSTICE CANTERO IF YOU DON'T HAVE A COMPLETE ANSWER.

WE'LL WORK THROUGH THIS.

>> I'M TRYING TO GET AROUND THAT.

BASICALLY AS PART OF THE FINANCING THE UNDERLYING REAL ESTATE IS STANDING SOMEWHAT AS INDIRECT SECURITY FOR THE CERTIFICATE HOLDERS.

ALTHOUGH THERE IS A BOND INSURER IN THE WAY WHO ACTUALLY PAYS THOSE CERTIFICATE HOLDERS AND THE BOND INSURER STEPS IN THERE. THE -- IF AND WHEN THE STATE, DECIDES TO WALK AWAY FROM THE LEASE, IT LOSES POE TESTING OF THE PRISON, AT THAT TIME THE TRUSTEE, AT THE DIRECTION THE BOND INSURER HAS THE RIGHT TO TAKE OVER POSSESSION OF THE FACILITY AND, USE IT, TO, FOR WHATEVER TO TRY AND RECOVER TO PAY BACK IN THIS CASE, MBIA, WHO IS THE BOND IN YOU ARE CHER IN THIS PARTICULAR CASE -- INSURER. ONCE MBIA IS PAID BACK ANY RESIDUAL IN THE TRUST ESTATE IS DISTRIBUTED TO THE STATE. ANY ACCUMULATED EQUITY STAYS WITH THE STATE WHICH IS VERY

DIFFERENT THAN A ORDINARY
LEASE SITUATION.

THE STATE IS IN FACT
BUILDING UP EQUITY THROUGH
THIS TRANSACTION.

>> THAT GOES TO SCHEDULE A,
THE PRINCIPAL PORTION?

>> YES, CORRECT.

AND BASICALLY IN THE
CONCLUDING PAYMENT COLUMN,
EXCUSE ME.

HAVE A LITTLE BIT OF A COLD,
BABY SITTING MY
GRANDDAUGHTER THIS NEW
YEAR'S.

THE CONCLUDING PAYMENT IS
BASICALLY DESCENDING SUM OF
THE OUTSTANDING PRINCIPAL
PORTIONS OF THE, RENT
PAYMENT.

THE STATE COULD AT ANY TIME,
PREPAY THIS LEASE BY MAKING
THE SUM OF THEIR PRINCIPAL
PAYMENTS.

AND THE FINANCING'S OVER.

>> MY ONLY -- YOU SAID THAT
THE STATE IN FACT, IS
AACCUMULATING EQUITY.

>> YES.

>> IN PROPERTY.

EXPLAIN THAT TO ME AGAIN.

HOW THE STATE IS BUILDING UP
EQUITY IN THIS?

>> WHEN THIS LEASE IS
COUPLED WITH A TRUST
INDENTURE, REMEMBER THE WAY
IT'S SET UP --

>> LET'S ASSUME, AND, IN
2012 OR WHATEVER, THAT THE
STATE WALKS AWAY FROM THIS.

AND NOW, THE, THE PROPERTY
IS GOING TO BE OCCUPIED,
THEY'RE GOING TO TAKE
POSSESSION, AND, WHETHER
IT'S THE BOND INSURANCE
COMPANY OR THE BOND, THAT
DOESN'T REALLY MAKE ANY
DIFFERENCE, OKAY? ARE YOU
SAYING THAT IF THE PROPERTY
IS DISPOSED OF AT THAT TIME
OR THAT SOMETHING HAPPENS
THEN, AND THE STATE, IS
GOING TO GET SOME CASH
PAYMENT OUT OF THAT?

>> TO THE EXTENT, THE RECOVERY, FROM THAT, PROPERTY, IS IN EXCES OF THE AMOUNT OWED TO THE CERTIFICATE HOLDERS, THAT EXCESS BELONGS TO THE STATE.

>> EVEN IF IT'S OPERATED AT SOME OTHER KIND OF FACILITY?

>> YES.

>> AT THE END WHETHER IT'S FORECLOSURE ON IT OR WHATEVER THEY WILL GET MONEY.

JUSTICE WELLS HAD A QUESTION TO FOLLOW.

>> I'VE GOT REALLY TWO QUESTIONS, THAT ARE RELATED. IN THAT IN HARTSFIELD WE WERE DEALING WITH A TAX EXEMPTION, CORRECT?

>> CORRECT.

>> IN THIS CASE WE'RE DEALING WITH TAX IMMUNITY, IS THAT CORRECT?

>> CORRECT.

>> THEY'RE A DIFFERENCE?

>> YES.

>> OKAY.

DOES THAT MAKE A DIFFERENCE IN THIS CASE?

>> NO.

>> WHY NOT?

>> IN HARTSFIELD THE EXEMPTION ELIGIBILITY OF THE PROPERTY FOR EXEMPTION UNDER 243 WAS NEVER AN ISSUE.

>> RIGHT.

>> IT WAS STIPULATED FACT IN THIS COURT'S DECISION, THAT WAS NOT THE ISSUE.

IT WAS WHETHER THE LEON COUNTY --

>> IN THIS CASE, IN THIS CASE, THE VERY FACT OF TAX IMMUNITY, GOING BACK TO DICKINSON REVOLVES STRICTLY AROUND THE CONCEPT THAT THE STATE IS THE OWNER OF THE PROPERTY CORRECT?

>> YES.

IN THIS CASE --

>> DOESN'T IT MAKE SOMEWHAT OF A SHAM OUT OFED IDEA THAT'S BEEN PROMOTED,

PRIVATIZATION TO SAY, THAT
REGARDLESS, WE'RE, THIS IS A
PRIVATIZING THE PRISON
SYSTEM, BUT WE'RE GOING TO
GIVE TO THE PROPERTY THE
SAME IMMUNITY AS IF THE
STATE STILL OWNED IT
THROUGHOUT THE WHOLE PERIOD?
ISN'T THAT SOMEWHAT
INCONGRUENT?

>> ONLY, IF YOU DISTORT AND
MISUNDERSTAND THE CONCEPT OF
WHAT WAS BEING PRIVATIZED
HERE.

>> BUT THAT'S, YOUR ARGUMENT
AS I UNDERSTAND, IS THAT
THIS, SHOULD BE TREATED THE
SAME AS, BECAUSE IT'S THE
SAME FINANCING ARRANGEMENT
THAT WAS UNDER CONSIDERATION
AS TO WHETHER IT HAD TO GO
TO REFERENDUM IN THE
SARASOTA COUNTY CASE.
AND MY, MY PROPOSITION IS,
THAT REALLY, THE FINANCING
AGREEMENT DOESN'T HAVE
ANYTHING TO DO WITH TAX
IMMUNITY.

AS WE HAVE DEFINED IT IN THE
CAPE CANAVERAL CASE AND IN
DICKINSON.

IT HAS TO DO WITH A MUCH
MORE BASIC THING THAT THE
COUNTIES SHOULD NOT BE ABLE
TO TAX THE STATE.

AND, THAT'S, THAT'S WHAT'S
BOTHERING ME.

>> I'M SORRY, THE COUNTIES, --
LET ME STEP BACK A MINUTE.
IT IS, PARAMOUNT TO THIS
CASE THAT THE STATE IS THE
OWNER, IS THE EQUITABLE
OWNER DURING THE FINANCING
OF THE PRISON FACILITY.

AS THE OWNER, IT IS STATE
PROPERTY.

STATE PROPERTY IS IMMUNE,
PERIOD.

THAT IS WELL-SETTLED LAW.

NOW, THE WHAT WAS BEING
PRIVATIZED HERE WAS NOT THE
PRISON.

THESE ARE STATE PRISONERS.

THESE ARE ASSIGNED BY THE

DEPARTMENT OF CORRECTIONS.
THEY ARE SUPERVISED BY THE
STATE.

THE STATE ENTERS INTO A
CONTRACT, A MANAGEMENT
CONTRACT WITH A PRIVATE
VENDOR, THAT IS SUBJECT TO
RENEWAL, AT LEAST EVERY FIVE
YEARS AND, UNDER WHICH THE
STATE AT ANY TIME FOR ANY
REASON CAN KICK OUT THE
PRIVATE VENDOR, FROM THE
OPERATION AND BRING IN THE
DEPARTMENT OF CORRECTIONS.
OR A DIFFERENT PRIVATE
VENDOR.

THE STATE HAS THAT CONTROL.
IT'S JUST LIKE A YARD
SERVICE.

YOU KNOW, THAT PERSON --
>> WHAT IS BEING PRIVATIZED?
THE FINANCING?

>> THE OPERATION IS BEING
PRIVATIZED.

>> BUT THE, THE ISSUE I
THINK, AND IT IT GOES BACK
HOW MUCH YOU ACCEPT ALONG
THE WAY WHAT WE DID IN
SARASOTA COUNTY IS THAT,
YOUR ARGUMENT IS THAT THIS
WHOLE LEASE PURCHASE
ARRANGEMENT WAS SET UP,
REALLY IN ORDER TO GET
AROUND THE STATE HAVING TO
GO THROUGH CONSTITUTIONAL
REQUIREMENTS, SO TO ALLOW
THIS TO BE FINANCED
PRIVATELY EVEN THOUGH THE
STATE IS, QUOTE, IN ESSENCE
THE OWNER.

AND THAT THAT IS SOMETHING
THAT WAS ALREADY APPROVED BY
THIS COURT BACK IN SARASOTA
COUNTY.

SO IT'S NOT ANYTHING --
BECAUSE WHEN WE HEAR SHAMS
AND SHELL, HEAR SHELLS, WE
THINK OF SOMETHING THAT IS
BEING DONE TO GET AROUND
SOMETHING BUT, YOU'RE SAYING
THAT THE FINANCING OF THIS,
SOMETHING THAT HAS BEEN
APPROVED BY THIS COURT FOR,
SINCE THE SARASOTA COUNTY

CASES?

>> AT LEAST.

THAT WAS, PROBABLY THE
CLEAREST EXPRESSION OF
APPROVAL OF FINANCING
MECHANISM.

>> BECAUSE YOU WILL RUN OUT
OF TIME HERE.

>> YES I AM.

>> DID THE CCA OWN THIS
PROPERTY AT SOME POINT?

>> NO.

THE RECORD SHOWS THAT THE
PORT AUTHORITY -- MAY BE
SLIGHTLY CONFUSING THAT ONE
POINT IN TIME I BELIEVE
THERE'S TESTIMONY DURING THE
TRIAL THAT, CCA, AT ONE TIME
HELD AN OPTION TO ACQUIRE
THE LAND.

BUT THE ACTUAL, BOTH
STIPULATED FACTS, THE RECORD
TITLE DEMONSTRATES THAT THE,
FEE SIMPLE TITLE TRANSFERRED
DIRECTLY FROM THE PANAMA
CITY PORT AUTHORITY TO THE
NONPROFIT LESSOR.

>> I STILL LIKE YOU TO GO
BACK, IF IT'S OKAY JUST THIS,
I KNOW --

>> JUSTICE WELLS HAS A
QUESTION.

WE'LL GET THIS HAMMERED OUT.

>> I WANT TO GET BACK TO
WHAT JUSTICE CANTERO WAS
ASKING ABOUT, I THINK THAT
IN ORDER TO GET TO BENEFITS
AND BURDENS THE WAY I GOT TO
IT WAS TO SAY, WELL THIS
SHELL CORPORATION HAD NONE
OF BENEFITS OR BURDENS.

SO THEREFORE SOMEONE ELSE
HAS TO BE THE OWNER.

THAT'S REALLY WAY I'VE BEEN
THINKING ABOUT IT.

BUT, I'M NOT SURE YOU
FINISHED IN TERMS OF THE
ACTUAL LEASE AGREEMENT TO
SHOW THAT UNLIKE A OPERATING
LEASE, THAT THE LESSOR HAS
NO OBLIGATIONS UNDER THIS
LEASE.

I MEAN IF THAT'S -- IF YOU
COULD MAYBE ELABORATE ON

THAT ASPECT OF THE LEASE OR EXPLAIN, IS THAT THE CASE OR NOT THE CASE?

THAT THE -- UNDER NORMAL SITUATION, TALLAHASSEE, PRIVATE ENTITIES LEASING PROPERTY TO THE STATE, THE LESSOR HAS -- THEY OWN IT. THEY'RE GOING TO GET IT BACK AT END OF THE LEASE. THEY HAVE GOT PROBABLY SOME MAINTENANCE RESPONSIBILITIES, WHATEVER.

DOES THIS LESSOR, UNDER THIS LEASE, HAVE, OBLIGATIONS?

>> ABSOLUTELY NONE.

IN FACT, THE LEASE GOES STATES VERY CLEARLY IF IN FACT YOU TRY AND MAKE THE LESSOR RESPONSIBLE FOR SOMETHING THEY CAN ONLY BE RESPONSIBLE -- MAKE A PAYMENT FOR SOMETHING, SOLELY FROM FUNDS GIVEN TO THEM BY THE LESSEE, THE STATE OF FLORIDA.

>> SO IT'S A FUNDING MECHANISM THAT FLOWS THROUGH THE LESSOR SO THE PAYMENTS ON THE BONDS CAN BE PAID?

>> 100% OF THE OBLIGATIONS OF MAINTENANCE, IN COMMERCIAL LEASE SITUATION THE COMMERCIAL LESSOR OUT THERE, IF ROOF LEAKS YOU CALL THE LANDLORD, MY ROOF IS LEAKING.

IN THIS SITUATION, THE CORRECTION, I'M SORRY THE, CORRECTIONAL PRIVATIZATION COMMISSION, NOW THE DEPARTMENT OF MANAGEMENT SERVICES HAS ONE PERSON TO CALL IF THE ROOF'S LEAKING, THEMSELVES.

THEY'RE RESPONSIBLE FOR IT. NOW THEY HAVE ENTERED INTO A CONTRACT AS PART OF THE MANAGEMENT CONTRACT WITH A PRIVATE VENDOR WHERE THEY HAVE SHIFTED THAT TO THEM. WE'LL PAY YOU TO GO FIX THE, BUT THE MONEY COMES FROM THE STATE.

>> FOR THE AD VALOREM TAXATION IF THIS COURT WERE TO FIND THAT THE PROPERTY, BECAUSE IT'S OWNED BY SOMEONE OTHER THAN THE STATE IS SUBJECT TO AD VALOREM TAXATION IS THE LEGISLATURE, THE STATE THAT WILL PAY THE AD HAVE LORE RECOMMEND TAXATION?

>> YES.

>> AND THAT'S CLEAR UNDER THE LEASE.

>> YES.

>> DID YOU HAVE AN OPPORTUNITY TO ADDRESS THE REFERENDUM ISSUE TO THE EXTENT YOU WANTED TO ADDRESS THAT?

SEEMS AS THOUGH WE'RE DEALING WITH FINANCING INSTRUMENTS AS THINGS WE MAY HAVE GONE TO LAW SCHOOL ABOUT, LEASES THOSE THINGS HAVE CERTAINLY MORPHED OVER THE YEARS INTO SOMETHING QUITE DIFFERENT.

THAT'S WHAT WE'RE LOOKING AT.

>> THESE ARE FINANCIAL INSTRUMENTS --

>> HAVE YOU HAD THE OPPORTUNITY TO RESPOND TO THAT?

>> I WOULD TAKE A QUICK OPPORTUNITY TO RESPOND. BASICALLY THE ARGUMENTS THAT HAVE BEEN PROFFERED ARE REALLY BASED ON THE DISSENTING OPINION IN THE SARASOTA COUNTY CASES THAT WAS DEALING REALLY WITH THE LOCAL BONDS RESTRICTION IN THE FLORIDA CONSTITUTION WHICH, JUST A CORRECT CITE. ARTICLE, SECTION 1.

ARTICLE 7, SECTION 11 IS THE STATE BOND SECOND QUARTER SHUN.

IT PUTS VARIOUS LIMITATIONS ON STATE BONDS.

IT DOESN'T DEFINE WHAT A STATE BOND S THIS COURT IN AT LEAST TWO INSTANCES HAS

CITED, PROVIDED A
DEFINITIONAL PARAMETER FOR
STATE BONDS.
THAT IS A DEBT WHERE HOLDERS
CAN BASICALLY FORCE THE
TAXING POWER OF THE STATE TO
PAY THE BONDS.
EITHER PAY US THE REVENUE
YOU PLEDGED OR LEVY A TAX.
FULL FAITH AND CREDIT.
THAT'S THE, YOU KNOW PURPOSE
BEHIND THE STATE BOND.
THAT'S WHAT'S RESTRICTED BY
ARTICLE 7, SECTION 11 OF THE
CONSTITUTION.

IN THIS SITUATION WITH THE
LEASE AGREEMENT, WITH THE
ABILITY TO NONAPPROPRIATE,
LEAVING THE CAPITAL MARKETS
IN ESSENCE THE INVESTORS
WITH, LEASE REMEDIES RATHER
THAN BOND REMEDIES, SAME
DISTINCTION, THESE WERE NOT
SUBJECT TO THE, SAME REASON
THEY'RE NOT SUBJECT TO THE
REFERENDUM REQUIREMENTS ON
LOCAL BONDS FOR PLEDGING AD
HAVE LORE RECOMMEND TAXES
UNDER SECTION 12 THEY'RE NOT
STATE BONDS UNDER LIMITATION
TO SECTION 11.

>> THANK YOU VERY MUCH.
MR. SMITH WE'LL GIVE YOU
EQUAL TIME.

>> QUICKLY LIKE TO ASK THE
COURT TO AFFIRM THE DECISION
AND ANSWER THE QUESTION IN
THE NEGATIVE.

>> OKAY.

>> SARASOTA FIRST VERY
BRIEFLY.

SARASOTA HELD THAT IT IS A
LEASE AND THEREFORE THE BOND
REQUIREMENTS ARE NOT,
PERTINENT ARE NOT VIOLATED.

IF IT WAS A LEASE IN
SARASOTA BECAUSE OF THE SAME
THINGS WHAT HE JUST GOT
THROUGH SAYING WHY ISN'T IT
A LEASE HERE?

IF IT'S A LEASE HERE THEN
YOU WOULDN'T HAVE TO HAVE
ARTICLE, ARTICLE 7 SECTION
11 POTENTIAL PROBLEM.

>> LET ME ASK YOU A QUESTION
HERE.

IF THE STATE WERE TO SAY WE
DON'T NEED THIS PRISON
ANYMORE WE'RE GOING TO CLOSE
UP AND LEAVE.

WHAT RECOURSE WOULD THE
BONDHOLDERS OR THE COP
HOLDERS HERE HAVE AGAINST
THE STATE?

>> THEY HAVE NONE AGAINST
THE STATE.

YOU JUST VIOLATED THE LEASE.
YOU'RE OUT OF THE LEASE.

AND I THINK THERE IS ONE
REQUIREMENT HAS TO BE UP TO
A GIVEN POINT IN TIME.

END OF THAT YEAR YOU ABOUT
THE STATE WALKS AWAY FREE
BECAUSE, THEY SAY, IT IS A
LEASE.

WE DON'T HAVE ANY OWNERSHIP
INTEREST IN IT SO YOU DON'T
HAVE TO FORECLOSE.

THE BONDHOLDERS WOULD COME
IN THEN.

JUST LIKE I SAID AND HE
SAID.

>> HIS ARGUMENT IS, ONCE THE
BONDHOLDERS HAVE BEEN
SATISFIED, THAT, WHATEVER'S
LEFT THE EQUITABLE, EQUITY
LEFT AFTER THAT DOES BELONG
TO THE STATE WHETHER IT GOES
TO THE END OR TERMINATED IN
THE MIDDLE AND YOU DISPUTE
THAT.

>> I'D HAVE TO READ THE
LEASE AGAIN BUT A LOT OF
LEASES HAVE SIMILAR
PROVISIONS IF A LESSEE STAYS
IN THERE LONG PERIOD OF TIME
HE WILL GET SOME INTEREST
TENDERED.

IF YOU LOOK TO SARASOTA YOU
WILL FIND THE PAYMENTS THERE
ARE ALSO, I'M GOING TO SAY
STRUCK TOURED TO BE ABLE TO
PAY OFF THE DEBT.

THAT'S WHAT YOU'RE DOING
HERE.

YOU'RE PAYING OFF THE DEBT
IN A SECURITY TO US FASHION.
THAT'S EXACTLY WHAT IT IS.

SUPPOSE INSTEAD OF INVENTED
FINANCING USED HERE CCA
DECIDED TO USE CONVENTIONAL
FINANCING?
WENT OUT FOUND THE PROPERTY,
BUILT THE PRISON ON IT AND
LEASED IT TO THE STATE AND
THEN LEASED OPERATING IT AS
A PRISON FOR THE STATE
LOOKING OUT FOR PRISONERS.
AND STANDING BEFORE YOU SAY
THIS OUGHT TO BE EXEMPT
BECAUSE WE'RE HOUSING
PRISONERS.
AND WE'RE LOOKING OUT FOR
THEM JUST LIKE THEY DO HERE.
THIS 957 APPLIES TO BOTH
SITUATIONS.
NOTHING IN 957 IS LIMITED TO
THE LEASE PURCHASE
AGREEMENT.
HE COULD HAVE GOT OTHER
FINANCING.
957 SAYS THAT ONE, IT SAYS
THE CONTRACTOR MUST GET ALL
FINANCING.
HE MUST PROVIDE FOR ALL THE
CONSTRUCTION MATERIALS.
MUST BE ACCORDING TO THE
SPECS FOR GOOD PRISONS AND
ALL THAT.
IT'S GOT TO BE DONE
ACCORDING TO CERTAIN
TIMETABLE READY TO GO AND
HOUSE CERTAIN TYPE PRISONERS.
NOW IT DOESN'T SAY YOU HAVE
TO USE THIS FINANCING.
957 LEAVES IT UP TO THE, YOU
KNOW TO THE BIDDER.
VERY CLEAR.
THE BIDDER, MUST DO THE
FINANCING.
HE MUST DO EVERYTHING
CONNECTED WITH IT.
HERE, BECAUSE THE LEASE
PURCHASE FINANCING WAS USED
THE STATE SAYS, WE REALLY
OWN IT ALTHOUGH WE HAVE NO
COMMITMENT TO STAY IF WE
WANT TO GET OUT.
WE CAN WALK OUT ANY TIME WE
WANT TO.
AND IT'S A LEASE.
IF THAT HAD BEEN THE CASE

HERE, WHEN THIS COURT LOOKED AT SARASOTA, YOU WOULD HAVE HAD TO LOOK AT IT DIFFERENTLY.

IN SARASOTA YOU SAID THIS IS A LEASE.

JUSTIN McDONALD HAD A LONG DISSENT SAYING THE SECURITYOUS TO GO AROUND AT THAT TIME, COUNTY MONEY TO BUILD SCHOOLS AND NOT HAVE TO GO THROUGH THE BOND REQUIREMENT.

IT'S EXACTLY.

IF IT IS NOT EQUITABLE OWNED, IMMUNITY DOESN'T COME.

IF YOU HAVE TO REACH, IN IF IT IS A LEASE AND STATE SAYS IT IS A LEASE ALL THE WAY UP, UNTIL THE END WHERE WE WOULD CAN BECOME THE OWNERS BUT WE THINK WE REALLY COULD HAVE BEEN, WE'RE THE EQUITABLE OWNERS ALL THE WAY THROUGH THE LEASE, THIS IS SORT OF A CHAMELEON AND YOU SHOULD THEREFORE EXEMPT US.

THAT'S VERY SECURTOUS.

957 DID NOT RESTRICT MECHANISMS FOR CONSTRUCTION OF PRISONS.

>> LET ME ASK YOU --

>> YES.

>> I WANT TO ASK YOUR OPPONENT THIS.

I'M NOT SURE SURE IF YOU KNOW THE ANSWER BUT MAYBE YOU DO.

IF IN NORMAL PROCESS IF THE STATE WANTS TO BUILD A PRISON MANAGE THE PRISON ITSELF HOW DOES IT FINANCE THAT?

HOW DOES THAT GET DONE?

>> THE STATE ITSELF DOING IT?

>> YES.

>> IT COULD DO IT THROUGH BOND VALIDATION OR PRISON COMMITMENT.

>> WITHOUT HAVING, DOES IT HAVE TO DO IT THROUGH A BOND OR -- OR DO IT THROUGH A

REFERENDUM?

>> I WOULD THINK YOU HAVE TO -- IF YOU'RE GOING TO USE STATE DOLLARS ON CONSTRUCTION OF STATE FACILITIES --

>> I HAVEN'T SEEN A REFERENDUM ON A PRISON IN YEARS.

SO MY QUESTION IS, HOW DO THEY PRACTICALLY GO ABOUT DOING IT WITHOUT REQUIRING A REFERENDUM?

>> THEY WOULD HAVE TO DO ONE.

YOU WOULD HAVE TO HAVE ARTICLE 7, SECTION 11.

>> WE BUILT A LOT OF PRISONS LAST 20 YEARS I DON'T REMEMBER EVER VOTING FOR OR AGAINST ANY REFERENDUM.

>> THE STATE HAS OTHER WAYS DEALING WITH THINGS BOND OPINIONS ARTICLE 7, SECTION 11.

BUT IT DOES AUTHORIZE DEBT.

>> LEGISLATURE CAN APPROPRIATE, LEGISLATURE HAVE APPROPRIATE FUNDS. THE LEGISLATURE CAN APPROPRIATE FUNDS IN DEPARTMENT OF CORRECTIONS BUDGET CAN IT NOT?

>> SURE.

EXACTLY WHAT THEY DO. THEY DO A LOT OF EXTENSIONS THAT WAY.

YES, SIR?

>> I WAS JUST, BUILD A PRISON SAME WAY THEY BUILD A COURT.

>> I DO URGE THE COURT TO GO BACK AND ANALYZE THE STATUTE.

THE STATUTE SAYS YOU'RE GOING TO BUILD PRIVATE PRISONS HAVE TO BE BUILT BY THE BIDDER.

HE HAS GOT TO PAY FOR THEM. THE DESIGN HAS TO BE APPROVED AND HE IS GOING TO BE GIVEN CREDIT IN CALCULATING HIS 7% BECAUSE HE'S GOT TO PAY SALES TAX.

IF THE STATE BUILDS PRISONS
OR EXTENDS THEY DON'T HAVE
TO PAY SALES TAX ON
MATERIAL.

AND AD HAVE LORE IMTAXES.
VALORUM.

THOSE ARE COVERED IN 957.
WHY.

>> YOU'VE BEEN AFFORD THE
SAME AMOUNT OF TIME AS YOUR
OPPONENTS.

THANK YOU FOR AT TIMES
APPEARED TO BE A LITTLE
COMPLEX ARGUMENT I THINK YOU
ENLIGHTENED US BOTH OF YOU
ENLIGHTENED US VERY, VERY
WELL.

THANK YOU VERY MUCH.
WE'LL STAND IN RECESS UNTIL
8:30 TOMORROW MORNING.

>> PLEASE RISE.