Douglas K. Raborn v. Deborah C. Menotte

SC06-2461

THE NEXT CASE ON OUR CALENDAR IS RABORN.
MAY IT PLEASE THE COURT I'M JOHN BERANEK AND I'M HERE TODAY REPRESENTING THE RABORN FAMILY; THE RA BORNS ARE PRESENT IN THE COURTROOM AND ALSO PRESENT IN THE COURTROOM ARE COUNSEL FOR MR. GOLDMAN AND MR. LITTLE WHO ARE AVAILABLE TO ANSWER ANY QUESTIONS IF THE COURT HAS ANY. WE'RE HERE ON CERTIFIED QUESTION FROM THE 11th CIRCUIT COURT OF APPEALS. THE 11th CIRCUIT WROTE A FAIRLY EXTENSIVE OPINION SETTING OUT THE QUESTIONS BY THE COURT WHICH THEY CONCLUDE THERE'S A LACK OF CLEAR FLORIDA PRECEDENT FROM THIS COURT ON. WE DO THINK THAT THE 11th CIRCUIT'S OPINION MAKES IT FAIRLY OBVIOUS AS TO THOUSAND THIS COURT THINKS THIS CASE SHOULD TURN OUT, BUT OF COURSE THEY DID NOT RULE ON THOSE ISSUES.
I HAVE A QUESTION. WHICH IS SO THIS ISEN AN ISSUE OF STATUTORY CONSTRUCTION.
YES, MA'AM.
AND I WAS NOT -- BECAUSE I NEVER DID REAL ESTATE LAW AND NOT FAMILIAR WITH THE STATUTE. AND THE WAY YOU INTERPRET THE STATUTE I WAS EXPECTING THAT I WOULD READ THE STATUTE AND THERE WOULD BE IN SECTION ONE EXCEPTION 2, 3 AND 4. IS -- AND YOU KNOW I STILL MAY AGREE WHERE YOU ARE COMING FROM. WOULD YOU AGREE THIS STATUTE IS A LITTLE -- WRITTEN A LITTLE -- USING -- IN A CONFUSE!!ING MANNER? I'M TRYING TO BE NICE ABOUT IT.
JUSTICE PARIENTE, ABSOLUTELY. AS YES -- WE KNOW THIS IS AN OLD STATUTE AND EVEN AS JUDGE HURLEY IS POINTED OUT IT'S WRITTEN IN THE NEGATIVE.
HOW OLD THIS STAT YOUTH?
50 YEARS OR MORE.
NOT THAT OLD.
GO, WAY, WAY BACK. I COULDN'T BELIEVE MR. VAKA COULD HAVE ARGUED A CASE HERE 17 YEARS AGO. I KNOW WE JUST HAD JUST GOTTEN OUT OF LAW SCHOOL SHORTLY BEFORE THEN. IN ANY EVENT, JUSTICE PARIENTE, CERTAINLY IS STATUTE IS SOMEWHAT CONFUSING.
BUT IT'S CLEAR IN THIS WAY, IF THERE WERE BENEFITS NAMED IN THE DEED YOU WOULDN'T BE HERE.
CORRECT. AND IF THEY THE NATURE AND PURPOSES OF THE TRUST ARE SET FORTH YOU WOULDN'T BE HERE.
CORRECT.
SO ARE WE HERE SOLELY TO LOOK AT THE LANGUAGE UNLESS THE CONTRARY INTENTION SHALL APPEAR IN THE DEED OR CONVEYANCE THAT THIS ALSO ONE OF THOSE THIRD OF THE FOUR THINGS THAT COULD BE --
WE THINK THAT THIS -- SET OUT BOAT THE NATURE AND PURPOSE. THAT THE NATURE AND PURPOSE IS INCLUDED IN THIS DEED.
WELL IF THAT WAS SO WOULD THEY REALLY BE CERTIFYING THE QUESTIONS? BECAUSE THAT'S PRETTY CLEAR THAT, THAT'S NUMBER 2 AND I THOUGHT IT REALLY THE ISSUE WAS IS INTENT A -- ANOTHER ONE OF THE EXCEPTIONS TO THIS STATUTE.
BECAUSE -- NO. HOWEVER, THE 11th CIRCUIT DID SAY IT WAS OUR CONTENTION THAT THE NATURE AND PURPOSE WAS WITHIN THE DEED. THAT WOULDN'T BE STATUTORY QUESTION THAT WOULD BE APPLYING A DEED AND SOMETHING IN THE FEDERAL DISTRICT COURT AND THEN ASKING THIS COURT WHAT WE THOUGHT WHETHER THAT DEED SAID IT OR NOT. THAT SEEMS LIKE A REALLY --
WITHOUT QUESTION, JUSTICE PARIENTE THE 11th CIRCUIT IS CONCERNED WITH INTENT. AND THE

QUESTION IS DID THIS DEED SHOW A CONTRARY INTENT TO A FEE SIMPLE.
YOU ARE ALSO SAYING THE NATURE AND PURPOSE THAT YOU WERE SUCCESSFUL AT THE FEDERAL DISTRICT LEVEL.
CORRECT. I WAS NOT SUCCESSFUL ON THAT. AND AS YOU HAVE ALREADY POINTED OUT IF YOU TACK ON THE WORDS "AS TRUSTEE" BEHIND THE NAME OF A TKPWRAOPBTEE IN A DEED AND!!!!!! AND -- GRANTEE IN A DEED AND DON'T SAY ANYTHING ELSE WHATSOEVER IN THAT DEED CONCERNING THE TRUST, THEN THAT PERSON GETS THE PROPERTY IN FEE SIMPLE.
COULD YOU JUST -- PLEASE, I'VE HERE'S THE RECITATION OF WHAT WAS INTENDED. EXPLAIN IN A REAL-LIFE SCENARIO WHAT WOULD BE -- WHAT THE STATUTE IS GETTING AT.
I THINK OPPOSE!!ING COUNSEL WILL TELL YOU UNDER THE OLD ARUBEL CASE IT'S DESIGNED TO PREVENT SECRET TRUSTS. AND I'M NOT SURE I REALLY GRASP THAT. THE OLD ARUNDEL IS CASE WHERE SOMEONE CONVEYED PROPERTY TO A PERSON MR. SHULTZ AS TRUSTEE. FACT, THERE WAS NO TRUST. IT DIDN'T EXIST.
THAT SEEMS MORE OF AN EVIL THEN. BECAUSE I DON'T -- THAT'S WHY I DIDN'T UNDERSTAND WHAT THE SECRET TRUST WERE ABOUT. BECAUSE IF THE REAL PROPERTY SECTION IS CORRECT MOST PEOPLE DON'T RECORD THEIR TRUST.
CORRECT. AND THEY WANT THE WHOLE WORLD LOOKING AT THE TRUST.
I MEAN, TRUST DOCUMENTS ARE USUALLY CONFIDENTIAL DOCUMENTS THEY ARE NOT RECORDED. BUT THE QUESTION IN THIS CASE IN THIS ONE IS SIMPLY WHETHER THIS DEED AND YOU KNOW THERE IT IS IT'S AT -- IT'S AT TAB NO. 15 OF THE RECORD EXCERPTS AND OF COURSE I HAVE TAKEN MY COPY AND EVERYTHING THAT RELATES TO THE CONCERNS OF TRUST I'VE TAKEN IT --
CAN YOU EXPLAIN WHAT IN THE DEED ESTABLISHES A CONTRARY INTENT?
AND -- YES, SIR. THE TOP -- THE IT TOOL SAYS "CONVEYANCE DEED TO TRUSTEE UNDER TRUST AGREEMENT." THAT IS THE FIRST THING.
NOW WE'RE TALKING ABOUT A PERSON WHO GOES TO PUBLIC RECORDS IN PALM BEACH COUNTY AND READS THIS DEED. INTERESTINGLY ENOUGH THE TRUST IN BANKRUPTCY SAID PEOPLE ARE NOT REQUIRED TO READ THE WHOLE THING. I DON'T KNOW WHERE THEY COME UP WITH THAT. THAT'S UNSUPPORTED POSITION. BUT THAT'S WHERE THEIR BRIEF SAYS ON PAGE 15. IN ANY EVENT THE TITLE SAYS "CONVEYANCE DEED TO TRUST DEED UNDER TRUST AGREEMENT." THEN THEN SAID SUBTLERS DATED JANUARY 25th, 1991, THE COUNTY OF PALM BEACH AND THE STATE OF FLORIDA CONSIDERATION FOR $10 CONVEYS AND WARRENTS UNTO DOUGLAS RABORN UNDER TRUTHIES AS THE TRUST AGREEMENT DATED JANUARY 25. 1991. AFTER THE PROPERTY DESCRIPTION THE HOLD THE REAL ESTATE UPON THE TRUST AND FOR THE USE AND PURPOSES HERE N AND IN SAID TRUST AGREEMENT SET FORTH. THAT LANGUAGE IN AND OF ITSELF IF YOU ARE A LAWYER OR IF YOU ARE JUST JOHN DOEOFF THE STREET AND YOU READ THAT MUCH OF THE DEED YOU THINK THERE MUST BE A TRUST. AND THAT THIS IS INTENDED TO BE A CONVEYANCE TO THE TRUST. BECAUSE THAT'S WHAT IT SAYS REPEATEDLY. AND THROUGHOUT THE REST OF THIS DEED THERE IS A LOT MORE LANGUAGE CONCERNING THE TRUST AND THE QUESTION IS DOES THIS DEED HONEST ITS FACE GIVE THE MESSAGE THAT THIS IS A CONVEYANCE IN TRUST. AND AS THE 11th CIRCUIT SAID AND I'M QUOTE!!ING IF UNDER STATE LAW THE RECORDED DEED EVIDENCED THE INTENT OF THE GRANTORS TO CONVEY THE PROPERTY IN TRUST TO THE BANKRUPTCY TRUSTEE CAN HAVE NO RIGHT AS A VIP.
IT SOUNDS LIKE IT'S A LEADING -- WHEN I READ THIS 11 BGT CIRCUIT QUESTION IT SOUNDS LIKE A LEADING CERTIFIED QUESTION.
WITHOUT QUESTION. IT'S -- SIT A LEADING QUESTION. THE QUESTION THEY HAVE ASKED THIS COURT, THEY HAVE CONVEYED HOW THEY THINK THIS CASE OUGHT TO TURN OUT. YES.
THEN WE GO BACK TO THAT IT REALLY -- OBVIOUSLY THE LANGUAGE IN THE DEED IS WHAT IT IS. WHICH OF COURSE IS STILL LAWYER-LIKE. ARFAST AS THERE UNDER AND HERE UNDER AND WHATEVER. WHAT IS WE GO BACK TO THEN WHY WHAT'S THE CONTRARY ARGUMENT HERE, BUT WHY THIS STATUTE IS NOT PRETTY CLEAR UNLESS IT SAID CONTRARY INTENTION FACE THE DEED?
WELL, WHAT JUDGE HURLEY AND THE CONTRARY ARGUMENT IS JUDGE HURLLY'S ARGUMENT. JUDGE HURLLY SAID UNDER HIS AMPLYFY!!ICATION THEORY AND HE USES THAT WORD. HE SAID

SINCE THE STAT KWROEUT SAYS BASICALLY!!!!!!!!!!!!!!!!! BASICALLY -- STATUTE SAYS I'M SUPPOSED TO DISREGARD THE WORD "TRUSTEE" AFTER THE NAME OF THE GRANTEE. AND SINCE THE WORD "TRUSTEE" OUGHT TO CONVEY TO PEOPLE THAT THERE'S A TRUST IF I'M SUPPOSED TO DISREGARD THE WORD "TRUSTEE" I SHOULD DISREGARD EVERYTHING ELSE IN THE DEED CONCERNING THE TRUST AS MERE AMPLIFICATION. I THOUGHT THAT THE ARGUMENT REALLY WAS MADE THAT THIS LANGUAGE AMPLIFY!!IES THE TERM BOTH THE LEGAL AND BENEFICIAL INTEREST OF THE REAL ESTATE CONVEYED. THAT THE -- UNLESS THERE'S A CONTRARY INTENT SHOWN IN THE DEED THAT THERE WAS -- THEY WANT IT TO CONVEY REAL PROPERTY IN FEE SIMPLE. NOT WHETHER THERE'S A CONTRARY INTENT THAT THIS THERE WAS A CLAUSE.
JUST QUINCE I'M NOT SURE I GOT THAT.
WELL THE SENTENCE BEFORE THIS CLAUSE TALKS ABOUT SON SRAEU AND GRANT AND ENCUMBER THE LEGAL AND BENEFICIAL INTEREST IN THE REAL ESTATE VON KAY -- CONVEYED. THAT, THAT NEXT CLAUSE ACTUALLY MODIFIES JUST THAT SENTENCE.
JUSTICE QUINCE I THINK YOU ARE GETTING TO THE LAST ANTICEDENT ARGUMENT THE ARGUMENT THEY HAVE IN THEIR BRIEF WHICH INTERESTINGLY ENOUGH THIS CASE HAS BEEN APPEALED TO JUDGE HURLEY TWICE AND THE 11th CIRCUIT ONCE AND THIS IS FIRST TIME WE'VE SEEN THIS LAST ANTICEDENT ARGUMENT. IT'S NEVER BEEN MADE BEFORE. AND CLEARLY THE 11th CIRCUIT THINKS CONTRARY INTENT IS ONE OF THE FOUR ELEMENTS IN THE STATUTE AND EVEN IF -- BUT EVEN IF YOU GO DOWN THIS LAST ANTICEDENT ROAD, IF THE!!!!!! THE -- IF THEY -- IF THEY SAY, WELL, THAT REALLY MODIFIES THE ABILITY OF THE TRUSTEE TO SELL THE PROPERTY, THAT'S WHAT IT MODIFIES, AND THE TRUSTEE CAN'T SELL THE PROPERTY, THAT DOESN'T TURN IT INTO A FEE SIMPLE CONVEYANCE. JUST -- I MEAN THERE'S NO LOGICAL CONNECTION. AND WE SAY AS THE 11th CIRCUIT SAID THAT THIS IS ONE OF THE FOUR ELEMENTS AND FLORIDA CASE LAW. ARE YOU SAYING YOU CANNOT!!!!!!!!!!! CANNOTLOGICALLY READ THAT CLAUSE JUST TO AMPLIFY THAT INITIAL SENTENCE BECAUSE OTHERWISE YOU ARE STILL NOT GETTING -- CORRECT. OTHERWISE YOU ARE STILL NOT GETTING THE FEE SIMPLE. PLUS IT SIMPLY MAKES NO SENSE IF YOU -- IF A PERSON DRAFTS A DEED AND I WITH WISH THEY HAD IN THIS CASE. I WISH THEY HAD JUST SAID "AND WE REALLY MEAN TO CONVEY IN TRUST." IF THEY HAD JUST TACKED ON THAT SENTENCE. THAT'S REALLY WHAT WE MEAN. WE WANT TO CONVEY IN TRUST. IF THEY HAD PUT THAT IN THERE, I WOULDN'T MAKE ANY SENSE TO SAY THAT'S A CONVEYANCE IN FEE SIMPLE. PEOPLE CAN DRAFT DEEDS AS THEY WISH TO AND IT'S ONLY WHEN THEY DRAFT WHAT I REFERRED TO REPEATEDLY AS A MERE TRUSTEE DEED, THAT IS THE OLD-FASHIONED CUSTOM LIKE HAPPENED IN ARUNDEL WHERE THERE IS NO TRUST. AND YOU JUST CONVEY PROPERTY AND YOU SAY A CONVEYS TO B AS TRUSTEE. AND THEN GOES ON WITH THE REST OF THE DEED AND NEVER SAYS ANOTHER WORD ABOUT A TRUST. THE FLORIDA LEGISLATURE LONG AGO SAID, WE WILL SAY THAT'S A FEE SIMPLE.
WHAT WAS THE REASON -- I THINK JUSTICE PARIENTE ASKED ABOUT AND I WANT YOU TO CLARIFY THE REASON BEHIND THAT.
I WISH I COULD TELL YOU, YOU KNOW, PRECISELY. BUT I THINK AND I'VE ARGUED IN THE BRIEF THAT THE REASON WAS BECAUSE IN CONVEYANCES WHERE THERE WAS REALLY NO TRUST IN EXISTENCE, THEY JUST DECIDED TO TURN IT INTO A FEE SIMPLE.
BUT I WOULDN'T -- IF YOU SAID ASK TRUTHEE AND IT WASN'T CLEAR IN THE PUBLIC RECORD THPBD -- THEN THE THIRD PARTY ALL IT SAID WAS JOE SMITH ASK TRUTHEE AND THERE WAS A SEQUENCE CONVEYANCE THEN IT WOULD BE CERTAIN WHETHER OR NOT THAT --
THAT'S CERTAINLY TRUE. AND THIS STATUTE MAKES THAT KIND OF MERE TRUSTEE DEED INTO A FEE SIMPLE.
THAT SOLVES THE PROBLEM.
IT SOLVES THE PROBLEM.
BY THE MERE TRUSTEE LANGUAGE.
THAT'S EXACTLY WHAT YOUR!!!!!!!! YOUR -- THIS COURT ARUNDEL CASE HELD. IT SAID IF YOU JUST CONVEY TO SHULTZ AS TRUSTEE AND DON'T SAY ANYTHING ELSE ABOUT THE DEED OR DON'T SAY ANYTHING ABOUT THE TRUST, THEN SHULTZ GET A FEE SIMPLE. HOWEVER, ARUNDEL ALSO SAID, HOWEVER, EQUITY WILL ENFORCE INEQUITABLE TRUST AND FORCE THE PROPERTY TO BE CONVEYED TO THE REAL OWNER. SO I MEAN THAT'S WHAT THE STATUTE WAS PROBABLY

INTENDED FOR IN THE BEGINNING. AND THUS IF I'VE NOT SURE I'VE ANSWERED --
CAN YOU SPEAK TO THE RELIANCE OF HOW THE PRACTICE OF LAW IN RESPONSE TO THE STATUTE. YOU UNDERSTAND -- [INAUDIBLE]
YES, SIR. THE FLORIDA PRACTICE HAS BEEN FOR THE LAST 50 YEARS -- IF ALL YOU HAD TO DO IS IDENTIFY THE TRUST IN THE DEED, THAT'S ALL YOU HAVE TO DO. YOU HAVE A TRUST IDENTIFIER. AND THE CASE LAW TEXT AND TREATUSES ALL SAY THAT. THERE'S A TRUST WHERE THE NEED DID NOT IDENTIFY THE TRUST, IT WAS A FEE SIMPLE. WE HAVE NOT -- NO ARGUMENT WITH THAT. IF THIS DEED HAD PRESIDENT IDENTIFIED THE TRUST IT WOULD HAVE BEEN A FEE SIMPLE. I DID HAVE FIVE MINUTES FOR REBUTTAL.
YOU ARE AT FIVE MINUTES. YOU'RE RIGHT NOW AT FIVE MINUTES.
YOUR TIMING IS PERFECT. THE -- JUST THAT THE TEXT ADMINISTRATION OF TRUST IN FLORIDA SAYS THAT UNDER 69.07 A CONVEYANCE OF REAL PROPERTY TO A PERSON AS TRUSTEE WITHOUT A TRUST DATE OR WITHOUT A TRUST IDENTIFIER IS PRESUMED TO BE CREATE!!ING A FEE SIMPLE. BUT IN CONTRARY IS ALSO TRUE. IF YOU DO HAVE A TRUST IDENTIFIER AND THAT'S BEEN THE LAW IN FLORIDA FOR A LONG, LONG TIME. IN ADDITION, AFTER RABORN WON THE FLORIDA LEGISLATURE SAID RABORN WON WHICH WAS NOT A FINAL DECISION. IT'S ABSOLUTELY WRONG. THEY STEPPED IN, PASSED A FLY STATUTE IN THE MIDDLE OF THIS LITIGATION.
THAT'S -- I THINK YOU'RE IN THE REBUTTAL. THAT'S A WHOLE OTHER CAN OF WORMS THAT THE LEGISLATURE IS IN THE MIDDLE OF ONGOING LEGISLATION.
AND THAT IS INDEED --
IF WE RULE IN YOUR FAVOR ON THE FIRST ISSUE -- 82 YOU DON'T HAVE TO GET THAT.
YOU'RE WELL INTO YOUR REBUTTAL. BUT WE DO SAY THAT, THAT THIS STATUTE CORRECTLY APPLIES TO THIS CASE. THEY ARGUE THAT THIS STATUE APPLIES TO EVERY OTHER DEED IN THE STATE OF FLORIDA THIS IN THE HISTORY OF THE WORLD BUT NOT TO THE RABORN CASE.
THANK YOU. GOOD MORNING MAY IT PLEASE THE COURT I'M JACK PELZER REPRESENTING THE TRUSTEE AND ALL THE CREDITOR MR. RABORN WHO REALLY STAND TO GAIN OR LOSE AS A RESULT OF THIS DECISION TODAY. THE FIRST QUESTION THAT'S BEFORE THIS COURT IS WHETHER THERE'S SUCH A CATCH-ALL EXCEPTION IN THE 679.07 --
JUST BEFORE YOU GET INTO THAT YOU SAID -- [INAUDIBLE] I UNDERSTAND THAT. BUT IS THERE ANY INDICATION AND THE FACT THAT YOU DEVELOPED THAT THERE WAS SUBTERFUGE THAT HE WAS ABOUT TO GO INTO BANKRUPTCY TO GET AROUND THE BANKRUPTCY LAWS THAT THERE WAS ANYTHING ILLEGITIMATE ABOUT THE UNDERLYING TRUST AGREEMENT AND THE GRANTORS INTENTION TO CONVEY THE TRUST -- THE COURT AND TRUST.
NO, YOUR HONOR. THERE IS NONE. AND I DOESN'T MATTER. BECAUSE --
IT WOULD MATTER TO ME. BECAUSE THAT'S SORT OF AGAIN A PUBLIC POLICY ISSUE. YOU PUT TOGETHER AS TO WHETHER SOMEONE PUTS A DEED IN A CERTAIN WAY ESRAEUDS SOME TRUE SOME TRUE RESPONSIBILITY UNDER THE LAW. IT MATTERS TO ME.
WELL, YOUR HONOR THE DISCUSSION OF SECRET TRUST BARELY MEANS TRUST THAT NOBODY KNOWS ABOUT. AN UNRECORDED TRUST EVEN IF EXIST IS LIKE THAT. IT'S A SECRET TRUST BECAUSE NOBODY KNOWS ABOUT IT. IT'S NOT TO SAY IT'S A NEFAROUS TRUST OR CREATED FOR A NFFAROUS. IT'S TO AID IN REAL ESTATE CONVEYANCE. SO THAT PEOPLE CAN TAKE TITLE FROM TRUSTEES AND NOT HAVE TO WORD -- WORRY ABOUT WHAT THE UNRECORDED TRUST SAID ABOUT THE TRUSTEE'S POWER.
GIVEN THAT -- READING THE!!!!!! THE -- HOW WOULD A REASONABLE THIRD PARTY NOT UNDERSTAND THAT THIS CONVEYANCE WAS WHAT IT SAYS? CONVEYANCE TO TRUSTEES UNDER TRUST AGREEMENT GRANTEES ARE NOT CALLED GRANTEES.
THOSE ARE THE GRANTORS ACTUALLY.
GRANTORS. THEY ARE CALLED SETTLERS NOT GRANTORS. THIS IS SPECIFICALLY DESIGNED DOCUMENT REFERRING TO THE GRANTORS AS SETTLER AND IT REFERS TO THE GRANTEE AS A TRUSTEE. NOT A NORMAL GRANTEE AND IT SAID AS STATED EARLIER THAT THEY BE HELD UPON THE TRUST AND FOR THE USES AND PURPOSES THERE ANY. -- THEREIN HOW DOES THAT PUT THE WORLD ON NOTICE THAT TRUSTEE TO HOLD A PROPERTY AND THE LEGAL TITLE?
A REASONABLE THIRD PARTY HAS READ THIS DEED AND CONSTRUED IT DIDN'T GIVE NOTICE UNDER THIS STATUTE THAT THERE WAS AN ACTUAL TRUST AND THAT WOULD BE JUDGE HURLLY.

HE CONCLUDED THAT WE HAVE THE DIFFERENT THINGS IN THE DEED THAT SAID AS TRUSTEES. HE MAKES OTHER REFERENCES TO THE TRUST. I THINK THE WAY I WOULD EXPLAIN THE HOW MANY TIMES CAN YOU ADD ZERO TO SOMETHING, HOW MANY TIMES MUST YOU ADD ZERO TO SOMETHING BEFORE YOU HAVE SOMETHING?

BUT THE DEED ALSO SAYS SETTLERS ARE AFTER NAME!!ING THE PEOPLE IT SAID SETTLERS UNDER THE RABORN FOREIGN TRUST AGREEMENT DATED JANUARY 25th, 1991, I MEAN, ISN'T THAT IDEN FIRE!!ING THAT THERE IS A -- IDENTIFY THAT THERE IS A SPECIFIC TRUST DOCUMENT?

AND IF THERE IS A TRUST DOCUMENT THAT'S FINE, YOUR HONOR. THE POINT IT IT DIDN'T MEET SPECIFIC CRITERIA OF THE STATUTE. OR STATE THE NATURE AND PURPOSE OF THE RUST. IT DIDN'T DO THOSE THINGS.

ONE OF THE CRY TEAR ANYWAY THE STATUTE UNLESS A CONTRARY INTENTION SHALL APPEAR INDEED. DOESN'T THAT PROVIDE THE CONTRARY INTENTION DEED, AND DOESN'T THAT PROVIDE THE CONTRARY INTENTION?

ACTUALLY, YOUR HONOR, MY FIRST ANSWER IS, NO, THAT CATCHALL REALLY DOES NOT EXIST IN THE STATUTE. YOU WILL NEVER SEE ANY REFERENCE TO THIS CATCHALL EXCEPTION. WHAT YOU WILL SEE IS REPEATEDLY --

WELL, IT'S THERE THOUGH. WHETHER IT'S BEEN REFERRED TO OR NOT --

THERE ARE NUMEROUS CASES, AS I SAID, THAT PURPORT TO RESITE RESITE -- RECITE AND DO NOT MENTION THE CATCHALL, AND I WOULD DISAGREE WITH ANY ARGUMENT THAT THIS CATCHALL DOES EXIST BECAUSE IF YOU LOOK AT THE LANGUAGE OF THE STATUTE, I THINK JUSTICE QUINCE AVERT TODAY THIS EARLIER, REFERS BACK TO THE FULL POWER AND AUTHORITY CLAUSE THAT IMMEDIATELY PRESEEDS IT. THE REASON FOR THAT IS VERY IMPORTANT. WE'RE NOT CONVEYING TO A TRUS TREE, THE GRANTOR WOULD HAVE THE POWER TO RESTRICT THAT FULL POWER AND AUTHORITY TO CONVEY MORTGAGE. THEY WOULD HAVE THAT POWER. IF WE DIDN'T HAVE, UNLESS A CONTRARY INTENTION SHALL APPEAR LANGUAGE IN HERE, THAN WE WOULD TAKE AWAY THAT POWER TO FLYNN.

AGAIN, YOUR ARGUMENT HERE IS THAT YOU WOULD BE ALLOWED UNDER THIS STATUTE TO NOT JUST THEN CONVERT THIS INTO A FEE SIMPLE BUT ACTUALLY THEN SAY YOU COULD ACTUALLY LIMIT THE POWER OF THE TRUSTEE TO ENCUMBER THE REAL ESTATE?

SAY, FOR EXAMPLE, I'M GOING TO CONVEY THIS PROPERTY TO YOU BUT YOU CANNOT SUBDIVIDE PROPERTY INTO LOTS LESS THAN ONE ACRE.

SO IT WOULDN'T CREATE CLEAR -- THEN YOU WOULD HAVE SOMETHING WHERE THE INTENT OF THE STATUTE IS TO ALLOW LESS THAN CLEAR, I MEAN, BECAUSE THAT THEN CREATES A RESTRICTION ON THE CONVEYANCE, WHAT YOU'RE --

LOOK, LET ME BE PERFECTLY CLEAR WHAT THE GRANTEE HAD. SAY, FOR EXAMPLE, YOU CAN'T SUBDIVIDE UNDER AN ACRE.

NOW, LET ME ASK YOU THIS, WHERE IS, AND, YOU KNOW, CERTAINLY YOU CAN MAKE THIS ARGUMENT HERE, BUT IS MR. BERANEK CORRECT THAT THAT WAS NOT THE BASIS THAT JUDGE HURLEY DECIDED THIS CASE ON?

ACTUALLY, YOUR HONOR, THE VERY FIRST TIME YOU'LL EVER SEE THIS CONTRARY INTENT -- WHAT WAS JUDGE HURLEY THINKING? WAS IT THE LITIGATION BASICALLY ON WHETHER THE NATURE AND PURPOSES OF THE TRUST WERE INCLUDED IN THE DEED?

THAT'S CORRECT, YOUR HONOR. ALL THE ARGUMENT WAS ABOUT SAYING WHETHER RABORN FARM TRUST OR FAMILY TRUST AND GIVING A DATE, AND THAT WAS SUFFICIENT. AND OF COURSE THAT'S THE SECTION THAT WENT BACK TO THE LEGISLATURE AFTER RABORN WON AND GOT THEIR LEGISLATION DONE TO ADD TO THE STATUTE. THAT'S WHAT THE LEGISLATION WAS ABOUT UP UNTIL THAT POINT.

LET ME ASK, THE PURPOSE AS I READ THE FLORIDA CONSTITUTION FOR THIS COURT TO BE INVOLVED IN A CERTIFIED QUESTION IS TO CLEAR UP SOME MATTER OF FLORIDA LAW, WHICH IS UNCERTAIN. AND THAT WOULD NECESSARILY HAVE TO DO, IN THIS CASE, WITH A CONSTRUCTION OF THE STATUTE, RIGHT? AND WHAT IS THE CONSTRUCTION OF THE STATUTE THAT'S IN DOUBT HERE AS OPPOSED TO THE APPLICATION OF THE STATUTE TO THE DEED?

EVEN IF YOU CONSTRUE THE STATUTE THE WAY THAT THE PETITIONERS HERE WOULD LIKE YOU TO CONSTRUE IT, IT'S STILL A QUESTION OF HOW COYOU APPLY THIS CONSTRUCTION TO THIS

DEED. I AGREE WITH YOUR HONOR THERE.
THAT WOULD ALWAYS BE THE CASE, WOULDN'T IT? YOU DON'T DECIDES THESE THINGS IN A TOTAL VACUUM. THAT'S A PREDICATE FOR CREATING THE CERTIFIED QUESTION.
CERTAINLY WE HAVE TO HAVE A QUESTION OF, YES, YOUR HONOR.
UNLESS THE CONTRARY INTENTION SHALL APPEAR IS THE FOURTH EXCEPTION, IS THAT HOW YOU READ THE CERTIFIED QUESTION?
I THINK OF TO ANSWER THAT QUESTION BEFORE YOU CAN ANSWER WHAT THE COURT ASKED IS APPLY THIS DEED TO THAT EXCEPTION AND TELL US WHETHER IT APPLIES.
JUSTICE?
WELL, I'LL -- WHAT I'M -- GIVE ME YOUR CONSTRUCTION OF THE STATUTE. THAT YOU BELIEVE THAT WE SHOULD WRITE INTO FLORIDA LAW AND ANSWER THIS QUESTION?
I THINK THE CONSTRUCTION OF THE STATUTE IS EXACTLY AS IT WAS SUMMARIZED IN THE -- CASE, THE MEADOWS CASE, THE GRAMMAR CASE WHERE THEY SAID YOU HAVE THESE SAFE HARBORS FROM THE TRUSTEE LANGUAGE, THAT IS STATE THE BENEFICIARIES OR STATE THE NATURE OF THE TRUST. AND THEY SAY THOSE ARE YOUR SAFE HARBORS. THEY DON'T MAKE ANY REFERENCE TO ANY CATCHALL THAT WOULD, FRANKLY, BECOME AN EXCEPTION THAT WOULD CONSUME THE RULE AND ALL OF ITS EXCEPTIONS.
REALLY WHAT THIS IS FOR AS WE STAND BACK FROM IT, THIS IS A STATUTE THAT IS TO ENHANCE MARKETABILITY.
RIGHT.
AND THAT ONE CAN ACCEPT THE TITLE WITHOUT HAVING TO JUMP AROUND AND TRY TO INVESTIGATE AND FIND OUT WHO THE BENEFICIARIES ARE AND THOSE KINDS OF THINGS.
HOWEVER, YOU DO HAVE THE LAST PROVISION, I MEAN, WE JUST IGNORE?
NO, YOUR HONOR, I THINK YOU READ IT TO MODIFY THE FULL POWER AND AUTHORITY CLAUSE THAT IMMEDIATELY PRECREEDS IT, AND NOT TO BE THE FIRST FLORIDA COURT TO SAY THIS CREATES EXCEPTION.
LET'S GO TO WHAT THE PRACTICE IS. WILL YOU AGREE OR DISAGREE THAT PRACTICE DOCUMENTS, CLE TRAINING, ANY TRAINING, ANY REAL ESTATE OR TRUST LAWYER GETS IN THE STATE OF FLORIDA IS CONTRARY TO THE POSITION YOU'RE TAKING?
I WOULD SAY, YOUR HONOR, THAT UP UNTIL 2004 WHEN THEY WENT BACK TO THE LEGISLATURE AND GOT THIS LANGUAGE ADDED ALL THOSE PEOPLE WERE SOMEWHAT MISTAKEN. AND I CAN SYMPATHIZE WITH THEIR ANGST BECAUSE I WAS A TRIAL LAWYER BACK WHEN THE COURT'S DECISION CAME DOWN AND TOLD ME ALL MY ASSUMPTIONS HAD BEEN WRONG ALL THOSE YEARS. WELL, ALL THOSE ASSUMPTIONS HAVE BEEN WRONG ALL THESE YEARS PRIOR TO THE 2004 AMENDMENT WERE JUST WRONG.
I KNOW THAT YOU HAVE A CONTRARY READING OF THAT PARTICULAR CLAUSE THAT MODIFIES THE -- [INAUDIBLE] BUT CAN'T THE STATUTE BE REASONABLY READ IN THE MANNER THAT MR. BERANEK IS SUGGESTING HERE?
HE'D ESSENTIALLY HAVE TO TAKE ALL THE VARIOUS CLAUSES AND REARRANGE THEM --
WHY WOULD YOU HAVE TO REARRANGE THEM?
WELL, BECAUSE YOU'D HAVE TO PUT THE MODIFIER BACK IN BEHIND THE ANTISEE DEPARTMENT, BUT I WOULD SUGGEST YOU SHOULDN'T DO THAT FOR TWO REASONS. ONE IS THAT WOULD MAKE THE EXCEPTION SWALLOW THE RULE. BECAUSE VIRTUALLY EVERYTHING DEED THAT SAYS AS TRUSTEE SPREADS CONTRARY DISSENT.
WELL, I MEAN, IF THE ONLY LANGUAGE IS AS A TRUSTEE, I MEAN, I THINK EVEN MR. BERANEK AGREES THAT WOULD THEN SAY A FEE SIMPLE. BUT IF THE CONVEYANCE GOES BEYOND JUST SAYING TO JOE BLOW AS TRUSTEE AND HAS SOME OTHER LANGUAGE ABOUT THE TRUST IN IT, THAT'S WHEN THAT CLAUSE WOULD COME INTO EFFECT.
I WOULD TAKE EVEN MR. BERANEK'S EXAMPLE AS TRUSTEE AND REALLY MEAN IT. YOU HAVEN'T REALLY ADDED ANYTHING TO THE AS TRUSTEE LANGUAGE.
WELL, MAYBE NOT IN THAT EXAMPLE, BUT IN THIS EXAMPLE YOU'VE IDENTIFIED THAT THERE IS, IN FACT, A TRUST, AND THE DATE OF THAT PARTICULAR TRUST. YOU'VE SAID THAT THE TRUSTEE HAS TO USE THE PROPERTY IN A MANNER THAT THE TRUST INSTRUMENT SAYS, AND I'M JUST HERE AT A LOSS AS TO WHY THIS LANGUAGE REALLY CANNOT BE INTERPRETED TO -- IN THE

MANNER THAT THE PETITIONERS SUGGEST.
I WOULD HAVE TO SAY TO YOUR HONOR THAT THOSE AMPLIFICATIONS DON'T ADD ANYTHING TO THE CONVEYANCE BEYOND WHAT WAS DONE IN THE GRAMMAR CASES. AND THE COURT IN THOSE CASES DIDN'T SAY THOSE TRUST IDENTIFIERS ARE SUFFICIENT.
LET'S GO BACK TO THE PURPOSES BEHIND THE STATUTE. IF THE PURPOSE BEHIND THE STATUTE IS TO INCREASE THE MARKETABILITY OF TRUSTEE DEEDS AND MAKE SURE THAT THE IN A SUBSEQUENT CONVEYANCE THAT PEOPLE RECEIVING THE PROPERTY ARE COMFORTABLE THAT THE TRUSTEE HAS THE AUTHORITY DO CONVEY THE PROPERTY, DOESN'T THE IDENTIFICATION OF THE TRUST AND THE DATE SUFFICIENTLY APPRISE SUBSEQUENT BUYERS THAT THE TRUST EXISTS AND WHAT THE TRUST NAME IS TO THAT THEY CAN BE SURE ON CONVEYANCE THAT THE BENEFICIARIES OF THE TRUST AGREE TO THE CONVEYANCE? ISN'T THAT SUFFICIENT?
ACTUALLY, YOUR HONOR, THAT WOULD BE LEADING US INTO THE VERY EVIL OF THIS STATUTE WAS DESIGNED TO AVOID, BUT TO GO INTO AND RESEARCH ALL OF THE TRUST INSTRUMENTS -- ALL THEY HAVE TO DO IS TELL THE GRANTOR, THE TRUSTEE, PROVE THAT YOU HAVE AUTHORITY. SHOW ME THE AFFIDAVIT FROM THE BENEFICIARY THAT YOU HAVE AUTHORITY TO GRANT THIS. WE KNOW WHAT THE TRUST IS, SO SHOW ME THE TRUST, SHOW ME THE DOCUMENTS, SHOW ME THE AFFIDAVIT FROM THE BENEFICIARIES, THAT'S ALL THEY HAVE TO DO.
IF WE DID THAT, YOU WOULD CLOG UP THE MARKETABILITY OF TITLE BECAUSE THEN THE TITLE INSURE OR, THE PERSON TAKING TITLE WOULD HAVE TO HAVE A CONCLUSIVE OPINION THAT THERE'S NOT SOME UNKNOWN BENEFICIARY OUT THERE THAT HASN'T BEEN DISCLOSED OR THE HEIR OF SOME BENEFICIARY --
ISN'T THAT EXACTLY WHAT'S DONE DAY IN AND DAY OUT IN DOCUMENTS LIKE THIS OF RECORD WHERE YOU KNOW WHO THE TRUSTEE, YOU KNOW THE DATE OF THE TRUST, AND YOU SEE THAT AND YOU SAY PROVIDE ME THAT INFORMATION. THAT'S DONE DAY IN AND DAY OUT IN REAL ESTATE CONVEYANCES ACROSS THE STATE AND HAS BEEN FOR DECADES.
THAT, NOW THAT WE HAVE THE STATUTE THAT IN 2004 THAT SPECIFIES THAT THOSE ARE TRUSTS, TRUSTEE DEEDS OF A REAL TRUST AND NOT OF A FEE SIMPLE TITLE, THEY HAVE TO DO THAT.
I'M SAYING BEFORE THE AMENDMENT IN 2004 IF THERE WAS IDENTIFICATION, SUFFICIENT IDENTIFICATION OF THE TRUST, THE DATE OF THE TRUST IN THIS CASE AND EVEN MORE IN THIS CONVEYANCE, THAT'S BEEN THE NORM AND THE PRACTICE.
I WOULD SUGGEST TO YOUR HONOR THAT SIMPLY PUTTING THE NAME AND THE DATE OF THE TRUST PRIOR TO 2004 WOULD HAVE STILL CONVEYED FEE SIMPLE TITLE IN THE RESIDENT CASE DID NOT RELY ON THE FACT THAT THE TRUST WAS NAMED AND DATED. THEY COULD HAVE STOPPED THERE. THEY HAD TO LOOK AT THE FACT THAT THE NATURE AND PURPOSE OF THE TRUST WAS ALSO STATED IN THE DEED, AND THAT'S WHAT TOOK IT OUT OF THE STATUTE. NOT THE NAME OR DATE OF THE TRUST.
SO AGAIN AFTER 2004 EVEN THOUGH YOU SAID NOW ALL THEY DO IS REFERENCE THE TRUST AGREEMENT THAT'S GOING TO REALLY SCREW UP MARKETABILITY, THAT'S NOW WHAT THE LEGISLATURE HAS DONE, CORRECT?
THE SECTION ASKED THEM TO DO, AND THAT'S WHAT THEY ASKED THEM TO DO.
WELL, IT'S RARE THEY DO WHAT LAWYERS ASK THEM TO DO. MY QUESTION GOES TO THE ISSUE, TOO, WHICH IS WHETHER A MATTER OF LAW ISSUE 2 AS FAR AS THE CERTIFIED QUESTION THE STATUTORY AMENDMENT APPLIES RETROACTIVELY TO THIS DEED. LET'S LEAVE ASIDE THE ISSUE WITH THE CONSTITUTIONAL QUESTION OF VESTED RIGHTS FIRST, BUT WHETHER THEY WERE TRYING TO CLARIFY WHAT EXISTED FOR 50 YEARS OR NOT, IT COULDN'T BE CLEARER THAT THEIR INTENT WAS FOR THERE TO BE RETROACTIVE APPLICATION. WHY DOESN'T IT RETROACTIVELY APPLY TO THIS DEED?
I DO WANT TO GET BACK TO THE QUESTION. I THINK THE MOST EFFICIENT ANSWER TO THE QUESTION OF RETROACTIVITY.
FIRST THEY ASKED US ONLY TO ANSWER DOES IT RETROACTIVELY APPLY, AND THAT'S A CERTIFIED QUESTION. THEY SEEM TO THINK THEY'LL DEAL WITH THE VESTED RIGHTS ISSUE.
IF IT'S A QUESTION OF FEDERAL LAW, AND I THINK FLORIDA LAW ANSWERS IT WELL ENOUGH. THAT MAY BE AN ISSUE --
DO YOU AGREE THAT ASIDE FROM THE CONSTITUTIONAL QUESTION THAT IT'S THE CLEAR INTENT

IS RETROACTIVITY?
CLEARLY THE INTENT IS RETROACTTIVITY. THEY SAY THAT WHEN THEY SAY IT'S CLAIRE PHIING --

WELL, LET'S, IT CLEARLY SAYS RETROACTIVELY APPLIED.
YES.
NOW THE QUESTION OF THE VESTED RIGHTS, ARE YOU SAYING THE BANKRUPTCY TRUSTEE HAD A VESTED RIGHT TO TAKE THIS PROPERTY INTO THE BANKRUPTCY ESTATE AS OF BEFORE THE DATE OF THE STATUTE, IS THAT THE VESTED RIGHT?
THAT'S RIGHT. AS OF THE DATE OF FILING THE PETITION IN BANKRUPTCY UNDER SECTION 541 OF THE BANKRUPTCY CODE ALL PROPERTY OF THE TEN TO HAVE BAMS BANKRUPTCY -- IT SIMPLY BECOMES AND IS ASSUMED AS A MATTER OF LAW BECOMES THE BANKRUPTCY ESTATE. SO THAT IS WHEN ANY RIGHTS IN THE TRUSTEE VESTED LONG BEFORE THIS ISSUE EVEN AROSE AND CERTAINLY LONG BEFORE THE LEGISLATURE PASSED THIS.
JUST AS IF THEY HAD SOLD THE PROPERTY OR ON THAT DATE?
YES, YOUR HONOR.
AND WE COULD COME BACK LATER AND SAY WE DIDN'T HAVE THE AUTHORITY TO SELL IT. SO THEN IT REALLY DOES COME DOWN TO THE QUESTION OF THE STATUTE AND THIS RETROACTIVITY COULD CREATE SOME REAL PROBLEMS IN OTHER CASES IF WE START DOING THAT. SO IT REALLY COMES DOWN TO WHETHER THERE WAS A VALID TRANSFER AS A FEE SIMPLE HOLDER ON THE DATE IT HAPPENED.
RIGHT.
SO THEN IT REALLY DOES COME DOWN TO THAT STATUTE TO TRY TO CONSTRUE IT SOME OTHER WAY GETS INVOLVED THE QUESTION OF VESTED --
THAT'S RIGHT, YOUR HONOR. AND UNLESS THERE ARE ANY OTHER QUESTIONS, I WOULD ASK THE COURT TO ANSWER BOTH THE CERTIFIED QUESTIONS IN THE NEGATIVE. THANK YOU.
CESSION, YOU DID. YOU'VE GOT THREE AND A HALF ACTUALLY.
FIRST OF ALL, THERE'S ABSOLUTELY NO QUESTION --
YOUR MICROPHONE.
THERE'S NO QUESTION WHATSOEVER THAT THERE'S NOTHING NEFARIOUS OR DISHONEST ABOUT THIS TRANSACTION. THEY HAVE CONCEDED FROM DAY ONE THAT IT WAS THE INTENT OF THE GRANTORS AND THEIR CHILDREN AND EVERYBODY CONCERNED THAT THIS WAS GOING TO BE A CONVEYANCE IN TRUST OF THE FAMILY OR FARM PROPERTY. AND THE BANKRUPTCY JUST HAS NOTHING TO DO WITH THAT. HE SAYS THAT THERE'S NEVER BEEN A CASE EVER MENTIONING THE CONTRARY INTENT PROVISION OF THE STATUTE, AND HE CITES FOR THAT ONE HARBOR. ONE HARBOR VERSUS HAYES PROPERTY. HE OBVIOUSLY DIDN'T QUITE READ IT CORRECTLY. THAT CASE SAY IT IS STATUTE PRESENTS SECRET TRUST THAT IMPEDE THE EXCHANGE OF MARKETABLE TITLE BY -- IN THE TRUSTEE UNLESS A CONTRARY INTENT APPEARS IN THE DEED OR CONVEYANCE. AND CLEARLY, CONTRARY INTENT HAS BEEN MENTIONED IN FLORIDA CASES. THERE ARE ALSO SOME CASES OUT THERE WHERE IT'S NOT MENTIONED. THE SOLE CASE BY A BANKRUPTCY JUDGE THAT JUDGE HURLEY RELIED UPON DOESN'T MENTION CONTRARY INTENT.
AND IS THAT BECAUSE THAT PHRASE WAS INSERTED --
OH, NO. THAT PHRASE HAS BEEN IN THIS STATUTE --
FOREVER?
FOREVER. OR AT LEAST BEFORE 17 YEARS AGO. REALLY THIS IS THE ONE ASPECT OF THE STATUTE THAT DOES NOT FIT INTO THE NORMAL REAL ESTATE RECORDING KIND OF MENTALITY WHICH IS YOU TELL US WHO THE PEOPLE ARE, DISCLOSE THE FOLKS, RECORD YOUR TRUST, AND APPROACH IT IN THAT FASHION. I MEAN, THAT'S REALLY WHAT THIS IS. HOWEVER, THE FLORIDA LEGTURE SHOULD SAY -- LEGISLATURE NO MATTER WHAT YOU SAY IN A DEED ABOUT YOUR INTENT, IT DOESN'T COUNT.
BUT I THINK YOU'VE BEEN USING IT AS A TRUST IDENTIFIER. WELL, THAT'S SOMETHING CLEAR WHICH IS IT IDENTIFIES A TRUST BY DATE OR NAME OR THE NATURE AND PURPOSE. THE PROBLEM, REALLY, AND I'M THINKING AGAIN I DON'T HAVE A REAL ESTATE HAT ON, BUT IF YOU REALLY HAVE IN A STATUTE IF THE INTENT WAS TO SAY EVERYBODY IN A TRANSACTION NOW HAS TO READ A DEED AND DECIDE WHETHER THE CONTRARY INTENT IS IN THERE OR NOT BASED

ON THE CIRCUMSTANCES OF THE INDIVIDUAL DEED, I SUSPECT THE TITLE COMPANIES AND REAL ESTATE LAWYERS THAT WOULD SORT OF, THAT WOULD BE MORE THAN THEY'D WANT TO BE DOING BECAUSE THAT MEANS IT COULD BE SUSCEPTIBLE TO DIFFERING INTERPRETATIONS. ISN'T THAT A PROBLEM?

I THINK THAT CAN BE A PROBLEM OR COULD BE A PROBLEM, BUT IN THIS CASE WITH THIS DEED IT'S NOT A PROBLEM. IT JUST ISN'T BECAUSE THIS DEED SO CLEARLY STATES THAT THE INTEPTION INTETION TO CONVEY IN TRUST, AND THAT'S ALL THERE IS TO IT. JUDGE HURLEY SAID ALL OF THAT LANGUAGE IS TRUMPED, AND THE INTENT -- AS JUDGE HURLEY SAID, THE INTENT OF THE GRANTORS IS ENTIRELY I'LL. THAT IS FOR IRRELEVANT. THAT IS WHAT HE SAID EXPRESSLY, AND THE 11TH CIRCUIT NOTED THAT CONCLUSION. THAT IS CONTRARY TO FLORIDA LAW OVERWHELMINGLY. THE INTENT OF THE GRANTOR IS THE ABSOLUTELY IMPORTANT.

MR. BERANEK, WITH OUR ASSISTANCE YOU HAVE GONE WELL BEYOND YOUR TIME, AND WE THANK YOU BOTH FOR ENLIGHTENING US ON THIS ISSUE. COURT WILL TAKE ITS MORNING RECESS.