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David J. Levine v. Janice Hirshon

SC07-1079

THE NEXT CASE ON OUR
CALENDAR THIS MORNING IS
LEVINE VERSUS HIRSHON,
MR. PELZER.

>> GOOD MORNING MR. CHIEF
JUSTICE MAY IT PLEASE THE
COURT JACK PELZER HERE
REPRESENTING THE LEVINE
BROTHERS BEFORE THE COURT
WHETHER THE COURT SHOULD
RETREAT RECEDE FROM DECISION.
WARTELS EITHER CASES LEVEL
ABROGATED BY COOPERATIVE ACT
OR CONTEMPORARY TO A MORE
THAN ENLIGHTENED POLICY OF
THAT HAS BEEN DEVELOPED
SINCE.

>> AND YOU APPROPRIATELY
CONCEDE THAT IF WE APPLY
WARTELS, THEN YOU
ESSENTIALLY LOSE.

>> YES, YOUR HONOR.

>> SO WHAT -- CHANGES IN THE
STATUTE ARE YOU RELYING ON,
TO CLAIM THAT IT CHANGED THE
HOLDING IN WARTELS AND THAT
NOW A COOPERATIVE IS REAL
PROPERTY WHEN IT WASN'T
BEFORE?

>> UNDER THE OLD CHAPTER
711, WHICH GOVERNED
COOPERATIVES AND CO-OPS
CO-OPS WERE NOT DEFINED TO
BE A FORM OF OWNERSHIP OF
REAL PROPERTY, CONDOMINIUMS
WERE DEFINED TO BE
A FORM OF OWNERSHIP OF REAL
PROPERTY, BUT, THERE WAS
GLARING SILENCE, IN PART,
TWO GOVERNING CO-OPS
ON THAT POINT AND SO --
DECLARATION A
FORM OF REAL PROPERTY WAS ABSENT
IN WARTELS DOES EXIST
UNDER 719, CHAPTER 719102
GIVES THE SAME RECOGNITION

TO CO-OPS IT HAD PREVIOUSLY
GIVEN UNDER CHAPTER 71120
CONDOMINIUMS A FORM OF
OWNERSHIP OF REAL PROPERTY

>> CAN I -- MAYBE IT IS A
SILLY QUESTION, BUT UNDER
OUR CONSTITUTIONAL SCHEME,
WE TALK ABOUT HOMESTEADS,
WHAT THOSE ARE, CAN THE
LEGISLATURE FOR EXAMPLE SAY,
AN AUTOMOBILE IS AN INTEREST
IN REAL ESTATE -- CREATE A
STATUTE FOR IT, SAYING YOU
KNOW THAT IS -- THAT IS REAL
ESTATE.

>> UNDER THE CONSTITUTION
INSTITUTIONAL CONCEPT OF
WHAT HOMESTEAD IS.

>> AN AUTOMOBILE YOUR HONOR
WOULD BE A DIFFICULT --
EXAMPLE, TO MAKE THAT
HOMESTEAD IS ALWAYS BEEN
CONSIDERED IN THE
CONSTITUTION CONSIDERS A
HOMESTEAD A PERMANENT
PRIMARY RESIDENCE, AND IT WOULD BE
DIFFICULT TO CONCEIVE OR TO
CONSIDER AN AUTOMOBILE, ACT
PERMANENT PRIMARY --

>> SO THE LEGISLATURE CAN'T
DO JUST ANYTHING.

>> CANNOT DO JUST ANYTHING.

>> OKAY.

>> BUT WE DO IN FACT SEE IN
THE CONTEXT OF EXEMPTIONS
FROM FOR SALES THE
LEGISLATURE DETERMINED
HOUSEBOATS THAT ARE MOORED
PERMANENTLY MOORED CAN
BE DEEMED HOMESTEAD.

>> THE CO-OP WAS CONVERTED
TO CONDOMINIUM MAYBE I CAN
SEE WHAT YOUR -- BECAUSE,
YOU ACTUALLY REALLY HAVE
CHANGED.

>> BUT TELL EXPLAIN TO
US HOW REALLY, THESE CHANGES
IN THE STATUTE HAVE REALLY
CHANGED ANYTHING WITH
REFERENCE TO CO-OPS I'M
HAVING SOME DIFFICULTY,
SEEING SUBSTANTIVE CHANGE IN
TERMS OF THE OWNERSHIP OF A
CO-OP BEING ANY DIFFERENT

THAN THE OWNERSHIP OF A
CO-OP WAS AT THE TIME WE
PREVIOUSLY CONSIDERED THE
ISSUE SO HELP OUT HELPING US
ON THE SUBSTANTIVE FRONT
TO SHOW THAT -- NOW THE WAY
THAT CO-OPS ARE DEFINED, IS
REALLY SUBSTANTIVELY
DIFFERENT,-- YOUR POINT --
>> YES, YOUR HONOR EXACTLY
RIGHT 719 DID LEFT THE FORM
OF COOPERATIVE AS THE SAME
CORPORATION OWNS THE
BUILDING, LEASES THE
SUBSTANCE CHANGED HAS BEEN
DEEMED TO BE A FORM OF
OWNERSHIP OF REAL PROPERTY
IF YOU LOOK AT SUBSECTION
1038, IN 1977 VERSION THE
FIRST VERSION OF THE CO-OP
ACT, IT SAID THIS CO-OP IS DEFINED
TO BE A FORM OF
OWNERSHIP OF IMPROVED REAL
PROPERTY.

>> DOESN'T SAY WHO OWNS THAT
REAL PROPERTY THE, IT
DOESN'T SAY, THAT THE UNIT
OWNER OWNS THE REAL PROPERTY
IT SAYS THAT -- IT IS THE
ASSOCIATION THAT OWNS THE
REAL PROPERTY, AND IT
CONTINUES SAYS OWNERSHIP IS
EVIDENCED BY AN OWNERSHIP
INTEREST IN THE ASSOCIATION
AND A LEASE OR OTHER -- OF
TITLE OR POSSESSION GRANTED
BY THE ASSOCIATION, AS THE
OWNER OF ALL THE COOPERATIVE
PROPERTY GRANTING A TITLE
THE TITLE SPEAKING OF TITLE IN
REAL ESTATE THAT ARE GRANTED
TO THE INDIVIDUAL UNITS
OWNERS ITS IN CONJUNCTION
WITH CO-OP DIFFICULTIES THAT
ARE -- TITLE THAT ARE OWNED
BY THE UNIT OWNERS, THAT IS
WHAT THAT --

>> THAT IS THE DEFINITION IN
SECTION 7191038, IN WHAT WAY
DOES IT DIFFER FROM
DEFINITION OF COOPERATIVE IN
CHAPTER 711 AT THE TIME THAT
WE DECIDED WARTELS?

>> NO SUGGESTINGS OF TITLE

TO REAL PROPERTY IN THAT
PART TWO OF CHAPTER 711
THERE WAS NO SUGGESTION IN THAT
OLD PART TWO ANY OF THESE
UNIT OWNERS OWNED ANYTHING
OUR THAN LEASE RIGHTS.

>> YOU ARE NOT SUGGESTING THAT
WARTELS WAS WRONGLY DECIDED?
IN OTHER WORDS, THAT YOU
KNOW, I MIGHT ARGUE SAY
LISTEN, SOMEBODY IS IN A
CO-OP, OR THEY ARE IN A
CONDOMINIUM, FROM THE -- FOR
THE PURPOSES OF WHAT
HOMESTEAD WAS DESIGNED TO DO
PROTECT YOUR HOME THEY ARE
NOT DIFFERENT THESE ARE
DIFFERENCES THAT EITHER
PEOPLE -- THE PARTICULARLY
DEVELOPER CHOOSES BUT YOU
ARE NOT SAYING THAT WARTELS
IS WRONGLY DECIDED?

YOU ARE SAYING ONLY THAT THE
INTERVENING CHANGE IN THE
STATUTE CHANGED THE NATURE
OF COOPERATIVE OWNERSHIP.

>> ACTUALLY YOUR HONOR THAT WOULD
BE MY SECOND ARGUMENT,
BECAUSE, I WILL EVEN IF THE
COURT WERE TO FIND 719 DID
NOT WORK A CHANGE IN THE
SUBSTANCE OF WHAT CO-OPS ARE
I WOULD URGE THE COURT TO DO
WHAT IT DID IN REALTY CASES
TAKE A LOOK BACK AND SAY,
YOU KNOW, BASED ON THE
CERTIFIED QUESTIONS FROM
THIRD DISTRICT DO WE WANT TO
CONTINUE THIS, THIS IS
REAL POLICY OF DIFFERENCE.

>> I GUESS THE ISSUE IS
BECAUSE, AS JUSTICE LEWIS IS
MENTIONING DEALING WITH
CONSTITUTION NOT DEALING
WITH WHAT WE THINK WOULD
MAKE BETTER SENSE WHICH IS
THAT YOU KNOW, A CO-OP OR A
CONDO, I MEAN -- FOR US
PEOPLE OH, AS ARE
NONLAWYERS NOT SURE WHAT THE
DIFFERENCES ARE, THAT THEY
LIVE IN AND OWN, SO WHAT IS
IT ABOUT WARTELS IN TERMS OF
HOW IT ANALYZED COOPERATIVE

OWNERSHIP, THAT IS -- WAS
IN ERROR IN INTERPRETING THAT
TYPE OF OWNERSHIP AS IT
APPLIES TO THAT
CONSTITUTIONAL PROVISION IN --
>> ON THAT YOUR HONOR, OF
COURSE, I'M MOVING TO I THINK
THE SECOND POINT BUT --
>> BECAUSE I GUESS -- BY
MAYBE SOME QUESTIONS I'M NOT
SURE I -- CAN KNOW THE
STATUTE ITSELF CHANGED THE
NATURE OF THE OWNERSHIP.
>> WELL I'D LIKE TO COME BACK
TO THAT THEN BUT I WILL
ANSWER YOUR QUESTION NOW.
THAT THIS COURT SHOULD USE
THE SAME ANALYSIS THAT THE
FIFTH DISTRICT USED IN
SOUTHERN -- STILLWELL CASE
THE COURT SAID THERE IS NO
REASON WHY THIS APARTMENT,
SHOULD BE EXEMPT FROM FOR
SELL A IF IT HADN'T -- BEEN
RECORDED AS CONDOMINIUM
SUBJECT FOR WHO ARE STILL -- IF
IT HAPPENS TO BE RECORDED AS
COOPERATIVE MAKES NO
DIFFERENCE TO UNIT OWNERS.
>> IT DOES MAKE A DIFFERENCE
AS FAR AS THE STATUTES
CONCERNED THAT DEFINES A
CONDOMINIUM, BECAUSE A
CONDOMINIUM IS -- WHAT YOU
OWN WHEN YOU OWN A
CONDOMINIUM IS WHAT IS
WITHIN THE FOUR WALLS OF YOUR
APARTMENT.
AND AN UNDIVIDED INTEREST IN
THE COMMON ELEMENTS,
CORRECT?
>> THAT IS -- BY VIRTUE OF
BEING A MEMBER OF THE
ASSOCIATION.
>> RIGHT.
>> THAT IS CORRECT.
>> AND THE STATUTE DEFINES
THE CONDOMINIUM PROPERTY
MEANS THE LANDS SO IN OTHER
WORDS, A CONDOMINIUM, COMMON
ELEMENT INCLUDES THE REAL
PROPERTY THAT IS IN IT, AND
WHICH THE CONDOMINIUM OWNER
OWNS UNDIVIDED INTEREST?

THE ONLY DIFFERENCE THERE
BETWEEN A CO-OP AND
CONDOMINIUM YOUR HONOR IS
THAT THE CONDOMINIUM OWNER
OWNS BY VIRTUAL OF BEING A MEMBER IN
AN ASSOCIATION THE CO-OP OWNER
ALSO OWNS --

>> HE OWNS BY
VIRTUE OF THE FACT STATUTE
DEFINES CONDOMINIUM PROPERTY
AS INCLUDING AN UNDIVIDED
INTEREST IN THE COMMON
ELEMENTS, WHICH IS DEFINED
AS CONDOMINIUM PROPERTY OF A
PROPRIETY.

>> WHEREAS, A COOPERATIVE
APARTMENT THE LAND ITSELF IS OWNED
BY THE CORPORATION.

>> THAT IS CORRECT.

>> AND SO THAT SEEMS TO BE
THE REASON THAT THE COURTS
HAVE IN HISTORICALLY, IN
FLORIDA, RECOGNIZED THAT YOU
HAVE HOMESTEAD IN A
CONDOMINIUM UNIT, BUT DON'T
YOU HAVE HOMESTEAD IN A
CO-OP
UNIT?

>> BUT -- THE -- THE --

>> CO-OP OWNER ALSO OWNS
THAT CO-OP COMMON PROPERTY
BY VIRTUE OF THE OWNERSHIP
STOCK IN THE CORPORATION,
THAT IN TURN OWNS THE
PROPERTY.

I SUGGEST TO YOU THAT --
REALLY IS NOT -- THAT
SIGNIFICANTS OF A
DIFFERENCE, YOU HAVE A
CONDOMINIUM WHICH HAS BEEN
DESCRIBED IN THE -- AS
PLATTING AIR SUBDIVIDING
AIR YOU HAVE GOT LITERALLY
-- PEWS OF AIR SURROUNDED BY
BUILDING THE UNIT OWNER HAS
NO LEGAL TITLE TO THE LAND,
OR TO THE CENTRAL ELEMENTS
OF THE BUILDING THAT DEFINE
OUTSIDE LIMITS OF THE CUBE
OF AIR THAT THE CONDOMINIUM
OWNER OWNS.

AND THAT IS NO DIFFERENT
THAN IN A CO-OP SITUATION,
WHERE THE CORPORATION AGAIN

OWNS THE LAND OWNS THE
BUILDING OWNS THE WALLS
THAT DEFINE CUBE OF AIR THEY
HAVE THE RIGHT TO OCCUPY AND
THAT -- THE UNIT THAT THEY
OWN.

>> A COOPERATIVE -- I JUST
WANT TO JUST MEASURE -- HELP
ME THAT IF -- MENTION IF THE
OPENINGS THE IDEAS WHAT YOU
ARE SAYING IS IDEA OF COMMON
ELEMENTS HAS NOTHING TO DO
WITH THE PURPOSE FOR WHICH
THE HOMESTEAD EXEMPTION IS
CREATED WHICH IS IS SOMEBODY
TO BE ABLE TO LIVE IN A HOME
FOR SALE OR OTHER PROTECTION
WHERE IS IT THEN, THAT THAT
THE DISTINCTION THEN IS NOT
BECAUSE YOU OWN THIS
UNDIVIDED INTEREST IN SOME
OTHER PROPERTY THAT REALLY,
CONSTITUTION DOESN'T CARE
ABOUT, BUT THAT IT IS YOUR
HOME.

BUT HOW DOES SO GOING BACK
TO IT, HOW DO YOU -- BUT YOU
HAVE TO LINK IT TO REAL
PROPERTY, IN ORDER FOR IT TO
BECOME A HOMESTEAD?

>> CORRECT, YOUR HONOR, AND
THAT IS EXACTLY WHAT THIS
COURT DID IN THE -- CASE IN
CONNECTION WITH PROPERTY TAX
HOMESTEAD EXEMPTION, WHERE
THIS COURT SAID THAT THE
LEGISLATURE HAD THE POWER TO
DECLARE IN EFFECT, THAT
CO-OPS AND CONDOS WERE REAL
PROPERTY FOR THE PURPOSES OF
APPLYING THE CONSTITUTION.
NOW THE PROBLEM IN AMMERMAN
THE 1968 CONSTITUTION THAT
INCLUDED THE EXPRESS
AUTHORIZATION TO DO THIS WAS
NOT OPERATIVE UNTIL SIX DAYS
TO LATE FOR 1969 TAX YEAR
THIS COURT WAS CONSTRUING
THE 1885 CONSTITUTION WITH
THIS IS LIMITATION OF
HOMESTEAD TO REAL PROPERTY,
AND ASKING THE QUESTION DID
THAT CONSTITUTIONAL
PROVISION AUTHORIZE THE

LEGISLATURE TO SAY CONDOS
AND CO-OPS ARE NOW REAL
PROPERTY FOR THE PURPOSES OF
DETERMINING WHETHER THEY ARE
ENTITLED TO TAX EXEMPTION
FROM HOMESTEAD.

I'M A LITTLE BIT REMINDED
NOT TO BE FLIPPANT OF
DOROTHY GALE AND
RUBY SLIPPERS TRYING TO GET
BACK TO KANSAS THE
LEGISLATURE WAS WAITING FOR
THE CONSTITUTIONAL AMENDMENT
TO GIVE IT THE HELP THE
POWER THE AUTHORITY, TO PASS
THE STATUTE TO DECLARE
CONDOS AND CO-OPS REAL
PROPERTY.

>> LET THE ME ASK YOU THIS
IS -- ARE COOPERATIVES
TAXED?

>> YES PAY AD VALOREM TAXES.

>> YES THEY DO.

>> AND WHO PAYS THE AD
VALOREM TAX.

>> THE INDIVIDUAL UNIT
OWNERS.

>> EACH UNIT IS TAXED.

>> YES, THEY ARE.

>> INDIVIDUALLY, SO AD
VALOREM TAXES ARE PAID ON
REAL PROPERTY.

>> THAT IS
CORRECT, YOUR HONOR.

>> SO UNDER THE STATUTE, I
THINK 719.1, 14, TALKS ABOUT
THE SEPARATE TAXATION OF
EACH PARTICULAR PARCEL OR
UNIT.

>> YES.

>> RIGHT SO DOES THAT HELP
YOUR ARGUMENT THAT THIS IS
REAL PROPERTY OR NOT?

>> YES, IT DOES YOUR HONOR
IN FACT IT -- SHOWS THAT
THIS WAS THE WHOLE SCHEME OF
719.

WAS TO MAKE THIS THESE
CONDOMINIUM UNITS TREATED
LIKE REAL PROPERTY TREATED
REALLY ESSENTIALLY AS THEIR
COUNTERPART CONDOMINIUM
UNITS ARE FOR ALL PURPOSES,
AND TO GET BACK TO WHAT THE

THIS COURT SAID IN AMMERMAN
THE LEGISLATURE ALWAYS HAD
POWER DO IT UNDER 1885
CONSTITUTION, DIDN'T NEED TO
WAIT FOR THE 19 --
CONSTITUTION TO FRONT

>> TAKEN TOGETHER CONSTITUTE
IMMUNITY OF TITLE.
THEN IS DECLARED BY THE
LEGISLATURE TO BE A FORM OF
OWNERSHIP OF REAL PROPERTY, AND
SO THAT'S DIFFERENT FROM JUST
LIKE I SAY CREATING A WILDCAT
COOPERATIVE SO TO SPEAK AND
JUST CREATING A CORPORATION AND
GRANTING A LEASE.
IF THAT WOULD NOT BE WITHIN THE
CONFINES OF CHAPTER 719 AND
THEREFORE WOULD NOT CONSTITUTE
AN OWNERSHIP INTEREST IN REAL
PROPERTY.

>> SO HOW DOES A COOPERATIVE
ACTUALLY DIFFER FROM AN
APARTMENT?
I MEAN, THEY'RE BOTH LEASES,
AND THIS, AND THIS CHAPTER
QUITE FRANKLY USES LEASE AND
LESSOR AND RENT AND THOSE KINDS
OF THINGS AND SO, IT REALLY
BRINGS TO MY MIND, HOW REALLY
IS THIS DIFFERENT FROM AN
APARTMENT?

>> THE DIFFERENCE IS BECAUSE
THE, THE LESSOR IN A
COOPERATIVE CONTEXT IS THE
CORPORATION THAT IS OWNED BY
THE LESSEES.

>> OKAY SO BECAUSE THE, THE
LESSEE IS A OWNER HE IS LEASING
TO HIS HIMSELF.

>> WITH ALL THE RIGHTS UNDER
719 AS WELL AS ALL THE
RESTRICTIONS ON 719, WHICH IS
WHY YOU HAVE TO TAKE ALL THE
DOCUMENTS TOGETHER BEFORE YOU
HAVE WHAT THE LEGISLATURE, IT
WAS DECLARED TO BE AN OWNERSHIP
OF REAL PROPERTY.

>> YOU ARE MOVING INTO YOUR
REBUTTAL, JUST AS REMINDER, SO
YOU HAVE YOUR TIME IF YOU WANT
TO USE IT.

>> BEFORE YOU SIT DOWN, I'D

LIKE TO FOLLOW-UP ON A QUESTION I ASKED YOU EARLIER, AND I ASKED YOU ABOUT THE DIFFERENCE BETWEEN THE CURRENT STATUTE AND THE STATUTE IN EFFECT AT THE TIME OF WARTELS, AND YOU SAID THE STATUTE AT THAT TIME DIDN'T TALK ABOUT LEASES OR MUNIMENTS OF TITLE OR POSSESSION.

I AM READING FROM 711421975, WHICH DEFINES COOPERATIVE AS THAT FORM OF OWNERSHIP OF IMPROVED PROPERTY UNDER WHICH UNITS ARE SUBJECT TO OWNERSHIP BY ONE OR MORE OWNERS WHICH OWNERSHIP IS EVIDENCED BY A LEASE OR OTHER MUNIMENT OF TITLE OR POSSESSION GRANTED BY THE ASSOCIATION AS THE OWNER OF THE COOPERATIVE PROPERTY.

>> THE CRITICAL DISTINCTION IS THE LACK OF THE WORD REAL.

>> THAT IS THE DIFFERENT FROM YOUR ANSWER BEFORE.

THE DIFFERENCE IN THE STATUTES THAT'S SIGNIFICANT ENOUGH TO RECEIVE FROM WARTELS IS THE INSERTION OF THE WORD REAL BETWEEN IMPROVED AND PROPERTY.

>> THE ANSWER TO THAT IS YES, YOUR HONOR, BUT WHAT WE WERE SPEAKING OF BEFORE IS WHAT DO THEY HAVE TITLE TO -- UNDER 711, WHAT DID THE MUNIMENTS OF TITLE REFER TO, AND IT WAS JUST TO THE, YOU KNOW, THE BUILDING OR THE IMPROVEMENT BECAUSE THAT'S WHAT 711 SAID WAS THE IMPROVEMENT.

>> BUT BOTH TALK ABOUT LEASES. AND BOTH TALK ABOUT MUNIMENTS OF TITLE OR POSSESSION GRANTED BY THE ASSOCIATION AS THE OWNER OF THE COOPERATIVE PROPERTY.

>> RIGHT, AND UNDER 711, THAT TITLE WAS JUST TO THE IMPROVEMENT OR TO THE COOPERATIVE CORPORATION ITSELF. NOW IT'S DEFINED TO BE REAL PROPERTY, AND YES, THE ADDITION OF THAT ONE WORD REAL CREATED THE WATERSHED.

>> WHAT OTHER KIND OF IMPROVED PROPERTY CAN THERE BE BUT REAL

PROPERTY?

ISN'T -- ISN'T THE, THE NATURAL
MEANING OF IMPROVED PROPERTY
MEANING REAL PROPERTY?

>> NO, YOUR HONOR.

>> WHEN PEOPLE TALK ABOUT
IMPROVED PROPERTY.

>> IN 711 IT WAS OWNERSHIP OF
THE BUILDING, AND IT CAN BE
POSSIBLE TO HAVE A SEPARATE
OWNERTION OF THE BUILDING FROM
THE UNDERLYING REAL ESTATE AND
LONG-TERM LEASES OF BUILDINGS
AND LAND.

THE, THE, THE DIFFERING
OWNERSHIPS.

>> RIGHT, BUT THEY ARE NOT
TALKING ABOUT PERSONAL
PROPERTY.

WHEN THEY TALKED ABOUT
COOPERATIVE BEFORE IN 711, THEY
WEREN'T TALKING ABOUT PERSONAL
PROPERTY.

THEY WERE TALKING ABOUT REAL
PROPERTY.

>> WELL, IN EFFECT IT WAS
PERSONAL PROPERTY, YOUR HONOR,
BECAUSE WHAT IT WAS WAS THE
LEASEHOLDER RIGHT, WHICH IS
PERSONAL PROPERTY, AND THAT'S
WHAT THE TITLE WAS.

TO.

>> THERE'S ALWAYS A DEBATE
ABOUT THE USE OF LEGISLATIVE
HISTORY, BUT TELL WHAT YOU HAVE
IN THE WAY OF ANY INTENTION IN
THE LEGISLATURE CHANGES IN THIS
STATUTE TO BRING THE
COOPERATIVE FORM OF PROPERTY
OWNERSHIP WITHIN THE HOMESTEAD
PROTECTIONS.

>> I HAVE NOT REVIEWED THAT,
YOUR HONOR, I HAVE NOT BROUGHT
THAT BEFORE THE COURT OR MADE
IT A PART OF THE RECORD.

I THINK WE FIND THE LEGISLATIVE
INTENT HERE FROM THE
LEGISLATION ITSELF, AND BY THAT
INSERTION, NOT ONLY OF THE WORD
REAL, BUT ALSO IN SUBSECTION
102, THE EXPRESSED DECLARATION
THAT THIS IS A FORM OF --

>> SO YOU ARE MAKING NO
CONTENTION THAT THERE IS

LEGISLATIVE HISTORY OR SOMETHING, THAT LEGISLATURE, THAT ONE OF THE THINGS THAT WAS DONE WAS SPECIFICALLY IN ORDER TO BRING CO-OPERATIVE FORM OF OWNERSHIP WITHIN THE HOMESTEAD PROVISIONS.

>> WELL, FRANKLY, YOUR HONOR, AT THE TIME, AT THE TIME THE COOPERATIVE ACT WAS BEING DEBATED IN THE LEGISLATURE WAS BEFORE WARTELS WAS DECIDED. SO, MY SUBPOSITION IS THAT WAS PROBABLY NOT A SPECIFIC CONSIDERATION.

>> I AM NOT TALKING ABOUT PRIOR.

I AM TALKING ABOUT THE CHANGES THAT YOU SUGGEST HAVE THIS EFFECT.

>> THOSE CHANGES WERE ADOPTED PRIOR TO THE ANNOUNCEMENT OF THE DECISION IN WARTELS.

WARTELS IS ONE OF THE THOSE BRIDGE CASES WHERE THE FACTS OCCURRED PRIOR TO THE STATUTE, BUT THE OPINION WASN'T ANNOUNCED UNTIL AFTERWARD, SO WE FIND ANY CITATION TO WARTELS ANYWHERE IN THE LEGISLATIVE HISTORY.

FOR THOSE REASONS, WE ASK THAT YOU REVERSE THE DECISION TO THE THIRD DISTRICT AND DIRECT IT REMANDED AND THE PETITIONS REINSTATED.

>> MR. CHIEF JUSTICES, JUSTICES OF THE FLORIDA SUPREME COURT, MAY IT PLEASE THE FLORIDA SUPREME COURT, I'M JAY LEVY REPRESENTING THE RESPONDENT IN THIS CASE.

>> COULD YOU POINT, DO ME A FAVOR, IF YOU WOULD.

>> YES, YOUR HONOR.

>> WE NORMALLY, IF A WORD IS USED LIKE HOMESTEAD, IN THE CONSTITUTION, WE TEND TO SAY, WELL WE OUGHT TO INTERPRET THAT PROVISION --

>> HOMESTEAD?

>> YOU KNOW, GIVE IT THE SAME MEAN FIGURE IT'S USED NO MATTER WHERE IT'S USED, SO I GO FIRST

TO THE ONE THAT IN AMERMAN, AND THE ONE WE HAVE TODAY, SECTION 6, ARTICLE VII SECTION 6.

WHERE IS IT THAT WE LOOK TO THE DEFINITION OF HOMESTEAD IN ARTICLE VII SECTION 6 FOR THE ALLOWS FOR A COOPERATIVE APARTMENT TO BE SUBJECT TO THE EXEMPTION FROM CERTAIN AMOUNT OF AD VALOREM TAXES?

>> IF I RECALL, THERE IS AN EXPRESS DISCUSSION IN ARTICLE VII SECTION 6 AND EXPRESSED WORDING THEREIN THAT TALKS ABOUT COOPERATIVE APARTMENTS AND THE -- IT SAYS OR INDIRECTLY BY STOCK OWNERSHIP OR MEMBERSHIP REPRESENTING THE OWNER OR MEMBER OF PROPRIETARY INTEREST IN A COOPERATION OLDING A FEE OR LEASE IN EXCESS OF 90 YEARS.

>> THE REAL ESTATE MAY BE HELD BY LEGAL EQUITABLE TITLE OR AS A CONDOMINIUM OR INDIRECT -- THEY DON'T USE THE WORD COOPERATIVE.

>> WELL, THAT MUST BE THE MEANING OF WHAT THAT WORD IS BUT THAT LANGUAGE OR THE DEFINITION.

>> BUT IT STILL RELATES TO -- IT'S GOT TO BE -- YOU'VE GOT TO HOLD AN INTEREST IN REAL ESTATE.

>> CORRECT.

>> SO NOW WE'VE GOT THAT -- SO IT'S RIGHT UNDER SECTION A THAT YOU WOULD SAY THAT.

>> WELL,.

>> I AM NOT SO SURE IT TALKS ABOUT AN INTEREST IN REAL ESTATE, THIS INTEREST, AN INDIRECT STOCK OWNERSHIP DOES QUALIFY FOR THE TAX EXEMPTION AND, AND TO FOLLOW -- YOUR HONOR, JUSTICE QUINCE'S QUESTION, THAT'S WHY THEY'RE TAXED AD VALOREM.

>> WELL, READ IT, BECAUSE THAT'S NOT HOW I'M READING SECTION A.

>> IT DOES SAY REAL ESTATE.

>> REAL ESTATE MAY BE HELD BY.

>> LEGAL OR EQUITY BY THE
TITLES JOINTLY IN COMMON OR
CONDOMINIUM INDIRECTLY.
THAT WOULD BE INDIRECT REAL
ESTATE OWNERSHIP.

>> BUT INTEREST, YOU'RE SAYING
BY THAT STATEMENT IN THE
CONSTITUTION, IT INCLUDES THOSE
WHO OWN INDIRECTLY AN INTEREST
IN REAL ESTATE.

>> YES, THAT'S -- THAT
DISTINCTION IS CARRIED OVER
FROM THE 1885 CONSTITUTION.

>> ALL RIGHT.

BUT YOU AGREE THAT REALLY FOR
THE PROTECTION OF HOMESTEAD,
WHICH IS A PLACE I'M LIVING.
WHETHER I HAVE AN INTEREST IN A
SWIMMING POOL OR THE GARDENS IS
NOT REALLY, THE FOCUS OF
HOMESTEAD.

THE HOMESTEAD IS REALLY FOCUSED
ON A PLACE THAT YOU CAN CALL
HOME THAT NO ONE CAN TAKE FROM
YOU, RIGHT?

THAT'S REALLY WHAT THE WHOLE
NOTION OF HOMESTEAD HAS BEEN.
IT'S NOT TO GIVE PEOPLE THAT
OWN REAL PROPERTY SOME TAX
RELIEF.

IT'S PEOPLE THAT HAVE HOMES
HAVE TAX RELIEF.

>> WITH NO DISRESPECT YOUR
HONOR, I THINK IT INDICATES
HOMESTEAD IS NOT DEFINED BUT
THAT COURT IS ALWAYS
TRADITIONALLY UNDER THAT
SECTION CONSTRUED AS AN
INTEREST IN REAL ESTATE.

>> WELL, THAT'S -- I GUESS --
YOU KNEW WHERE -- YOU KNEW
WHERE I WAS GOING WITH THIS
BECAUSE I WAS -- I'M LIKE
LOOKING AT THE CLEAN SLATE AND
I'M JUST LOOKING AT THE
PROVISIONS OF THE CONSTITUTION,
AND I KNOW THAT ORDINARILY IF
THE SAME TERM IS USED AS
DIFFERENT PROVISION, WE
INTERPRET IT THE SAME WAY,
ESPECIALLY CONSIDERING WHAT
THE FIFTH DISTRICT SAID ABOUT
MY GOODNESS, IF WE ARE GOING TO
GIVE PEOPLE THE TAX RELIEF ON

WHERE THEY LIVE, WE CERTAINLY WANT TO PROTECT THEIR PLACE THAT THEY LIVE FROM FOR SALE AND FROM OTHER THINGS. ISN'T THAT A LOGICAL CONSISTENT POLICY THAT WOULD ALLOW US TO INTERPRET THESE PROVISIONS IN PARI MATERIA.

>> EXCEPT THAT EVERY CASE THAT HAS CONSTRUED THE TWO PROVISIONS HAS HELD THEY ARE HELD WITH DIFFERENT SOURCES AND MEAN DIFFERENT THINGS IN DIFFERENT APPLICATIONS.

IF WE LOOK AT AMERMAN BECAUSE I DISAGREE ABOUT WHAT I HEARD THIS MORNING IN AMERMAN.

TO GO DEFINE THIS FOR US, EVEN IN ARTICLE, I BELIEVE EVEN IN ARTICLE VII SECTION 6 THAT DEFERENCE IS CARRIED OVER BUT AMERMAN, IF YOU GO AND LOOK AT WARTELS FOR A SECOND, IN THE WARTELS DECISION WHEN THE, WHEN THE COURT TALKS ABOUT AMERMAN, IT SAYS, THE COURT COULDN'T CLOSE.

>> COULD YOU JUST, JUST FOLLOWING UP ON IT, ONCE WE LOOKED AT THE ONE ON AD VALOREM TAXES.

NOW GO TO ARTICLE 10 SECTION 4.

>> YES, YOUR HONOR.

>> TELL ME WHERE HOMESTEAD IS DEFINED.

>> IT'S NOT.

HOMESTEAD IS NOT DEFINED.

>> SO WHY ISN'T THEN, BECAUSE OF BECAUSE OF REASONING OF THE FIFTH DISTRICT LOGICALLY, BECAUSE OF TAX SAVINGS IS THE IDEA THAT THE PLACE YOU LIVE SHOULD BE EXEMPT FROM FORCED SALE, AND THAT THEREFORE IT REALLY DOESN'T MATTER AS LONG AS IT IS YOUR PERMANENT RESIDENCE THAT YOU OWN AND YOU DECLARE IT AND YOU HAVE -- YOU CAN DECLARE IT AS YOU SAID AS A HOMESTEAD UNDER ARTICLE 7 SECTION 6, THAT IS YOU CAN DECLARE YOUR CONDOMINIUM AS THEIR HOMESTEAD. YOUR COOPERATIVE.

THAT IF YOU'VE DECLARED IT AS YOUR HOMESTEAD UNDER ARTICLE VII SECTION 6, AND ARTICLE 10 DOESN'T DEFINE IT, WHY ISN'T IT, WHY ISN'T IT LOGICAL TO READ IT IN PARI MATERIA TO TAKE WHATEVER DEFINITION IS IN THAT ARTICLE AND READ IT INTO THIS? I JUST AM NOT SEEING THE REASON WHY WE WOULDN'T EXTEND IT TO COOPERATIVE?

>> WELL, THE SOUTHERN WALLS DECISION INDICATES RELYING ON I THINK THE DEAN DECISION OUT OF THE BANKRUPTCY COURT IN THE SOUTHERN DISTRICT OF FLORIDA.

>> I'M ASKING YOU, LET'S JUST BLANK SLATE.

I'M LOOKING AT THIS, WE'VE MANY TIMES HAVE LOOKED AT CONSTITUTIONAL PROVISIONS ON CLEAN SLATES.

CLEAN SLATE, TELL ME, WHAT IS IT THAT SAYS THAT A HOMESTEAD HAS TO MEAN THAT THE OWNER OF THAT PLACE THAT IS THEIR PERMANENT HOME HAS TO ALSO OWN AN INTEREST IN SOME OTHER, SOME CONNECTED REAL PROPERTY.

>> THERE IS NOTHING IN THE CONSTITUTION IN ARTICLE 10 SECTION 4 THAT SAYS THAT.

THIS COURT INDICATED IN WARTELS AND IN SEVERAL OTHER DECISIONS THAT THE DEFINITION OF THAT IS THAT, HAS ALWAYS BEEN FROM THE MILTON CASE, FROM THE CASE I THINK THE NAME OF THE CASES WHICH ARE CITED IN MY BRIEF, WHICH IT MUST BE AN INTEREST IN REALTY, AND SO THE QUESTION BECOMES IS THE HOMESTEAD -- IS THE COOPERATIVE AN INTEREST IN REALTY?

WE WOULD SUGGEST TO THE COURT THAT UNDER TRADITIONAL LAW, IT IS NOT AND WHAT THE LEGISLATURE DID IN ARTICLE -- WHAT THE PEOPLE OF THE STATE OF FLORIDA DID, IN ARTICLE VII SECTION 6 WHICH THEY COULD'VE DONE IN ARTICLE 10 SECTION 4 BUT THEY DID NOT IS TO CREATE AN EXCEPTION TO THE, TO THAT

REQUIREMENT WITH REGARD TO AD VALOREM TAXATION.

I DON'T BELIEVE WE SHOULD BE READING THE CONSTITUTION IN PARI MATERIA IT IS AN ENABLING DOCUMENT THAT ALLOWS THE GOVERNMENTAL FUNCTIONS TO WORK AND IT MUST BE SPECIFIC.

IF THERE IS TO BE A CHANGE IN THE CONSTITUTION AS YOUR HONOR SUGGESTS, THAT WOULD BE LEFT TO THE PEOPLE TO DO.

>> IN WARTELS, WASN'T THE DISTINCTION THAT IN ARTICLE VII SECTION 6, THE CONSTITUTION SPECIFICALLY INCLUDES A DEFINITION OF HOMESTEAD FOR PURPOSES OF AD VALOREM TAXATION THAT WOULD INCLUDE COOPERATIVES.

>> OFF THE TOP OF MY HEAD, THEY DISCUSSED THE, THE 1968 VERSION OF THE CONSTITUTION, AND I BELIEVE IT IS MENTIONED IN WARTELS, BUT IT DIDN'T LEAD THIS COURT TO, TO REACH A DIFFERENT DECISION, AND JUDGE, IF YOU COULD EXPLORE WHAT YOU HAD ASKED --

>> I MEAN, IT'S A FRIENDLY QUESTION.

>> IT IS, AND I AM TRYING TO ANSWER IT THIS WAY.

>> DIDN'T WAR TELLS SAY WELL THAT'S VERY SPECIFIC DEFINITION IN THAT OTHER PROVISION.

>> CORRECT, AND THAT'S THE POINT THAT I AM TRYING TO MAKE BUT I WANTED TO GO BACK TO YOUR ORIGINAL QUESTION AND MY GOOD FRIEND BECAUSE THERE ARE SEVERAL OTHER PROVISIONS OF 711 WHEN YOU LINE THEM UP SIDE BY SIDE WHICH SUGGESTIONS THEY HAD A MUCH BETTER ALREADY TO MAKE UNDER CHAPTER 711 THAT IT SHOULD'VE BEEN CONTINUED -- BUT WARTELS REJECTED THAT.

YOUR HONOR HAD MADE REFERENCE TO 71142 PAREN 8 LINES UP AGAINST 7031312.

I WOULD LIKE TO CORRECT ONE THING YOUR HONOR SAID.

THE AMENDMENT DID NOT ADD THE

WORD REAL.

IT SUBSTITUTED THE WORD REAL IN LIEU OF IMPROVED.

SO THAT'S THE ONLY CORRECTION BUT YOU NEED TO LOOK AT THE DEFINITION OF RESIDENTIAL COOPERATIVE.

711.42 16 A COOPERATIVE UNIT ANY OF WHICH INTENDED FOR USE AS A PRIVATE RESIDENCE DOMICILE OR HOMESTEAD RIGHT IN THE STATUTE BUT YET THIS COURT WITH THAT WORDING IN THE STATUTE HELD THAT A COOPERATIVE WAS NOT TO BE CONSIDERED REAL PROPERTY FOR PURPOSES OF HOMESTEAD.

THAT LINES UP AGAINST 71910321, WHICH REPRESENT ADCOMPLETELY DIFFERENT, A CHANGE TO DROP THE WORD HOMESTEAD AND NOW IT JUST TALKS ABOUT FOR USE AS A PRIVATE RESIDENCE DOMICILE OR HOMESTEAD.

THE OTHER WORD IS UNIT AND MR. PELZNER SAID THERE WAS NO DEFINITION OF UNIT UNDER THE FORMER COOPERATIVE STATUTE 711. THE THAT IS NOT CORRECT. THE WORD UNIT IS DEFINED IN 7114219.

THE PART OF COOPERATIVE PROPERTY WHICH IS SUBJECT TO PRIVATE OWNERSHIP TYING THE CONCEPT UNDER FORMER STATUTE THE 1975 STATUTE PART 2 OF CHAPTER 711 OF THE UNIT TO PRIVATE OWNERSHIP.

YET THIS COURT CONSTRUING THAT STATUTE IN WARTELS NEVERTHELESS CONCLUDED THAT JUST AS THE THIRD DISTRICT HAD CONCLUDED IN THAT CASE BELOW, THAT, THAT IT IS PERSONALTY BECAUSE IT'S NOTHING MORE THAN A STOCK INTEREST.

WE'VE POINTED OUT TO THIS COURT IN OUR BRIEF THAT THERE ARE SEVERAL OTHER -- MANY OTHER JURISDICTIONS THAT ALSO HAVE A SIMILAR DEFINITION AND WE HAVE CITED TWO, I BELIEVE THE TWO SHORT CASE OUT OF NEW YORK AND OTHER NEW YORK AUTHORITY INDICATE THAT THIS IS A

SECURITIES OFFERING THAT HAS TO BE SATISFIED IN A COOPERATIVE. THEREBY FURTHER INDICATING THAT IT'S A NATURE OF PERSONALTY BUT GOING BACK, IT IS MY OPINION --

>> DID THE COOPERATIVE OWNERS PAY PERSONAL PROPERTY TAX?

>> I HONESTLY DON'T KNOW THE ANSWER TO THAT QUESTION.

>> WELL, YOU ARE SAYING IT IS PERSONALTY AS OPPOSED TO REALTY, AND THEY PAY AD VALOREM TAX.

>> WELL, THAT COMES OUT OF ARTICLE VII SECTION 6 IF YOU ALLOW THE EXEMPTION FOR ARTICLE VII SECTION 6 THAT MUST MEAN THAT THE AUTHORITY TO TAX THEM AD VALOREM --

>> WELL, MY QUESTION, THE REASON I'M ASKING THE QUESTION IS BECAUSE IT SEEMS TO ME THAT IF YOU ARE PAYING AD VALOREM TAXES, YOU ARE PAYING REALTY. IF, IF, IF A COOPERATIVE IS PERSONAL PROPERTY, THEN YOU SHOULD BE PAYING PERSONAL PROPERTY TAX.

AND SO I'M HAVING A HARD TIME NOT IN FACT READING THE FACT THAT A COOPERATIVE YOU CAN CENTER HOMESTEAD EXEMPTION ON A COOPERATIVE AND YOU PAY AD VALOREM TAXES ON, ON A COOPERATIVE AND YET NOW WE'RE SAYING FOR PURPOSES OF, OF WHETHER OR NOT IT'S EXEMPT FROM FOR SALE, WE'RE SAYING IT'S PERSONALTY.

>> WELL, TWO POINTS ON THAT, JUSTICE QUINCE, IF I PAY MAY. FIRST, THAT DISTINCTION WAS AROUND WHEN WARTELS WAS DECIDED AND NEVERTHELESS THE COURT --

>> MAYBE WARTELS WAS WRONG.

>> I DON'T THINK IT WAS, BUT TO GO TO THE SECOND POINT, TO GO TO THE SECOND POINT THE AUTHORITY OF AD VALOREM TAXES COMES OUT OF 7. CONCEPT DISTRIBUTION COMES OUT OF ARTICLE 10 AND AS I POINTED OUT AND I UNDERSTAND THERE MAY

BE SOME DISAGREEMENT FROM THE BENCH AT THIS POINT BUT AS I UNDERSTAND SINCE THEY COME FROM TWO DIFFERENT SOURCES THEY MEAN TWO DIFFERENT THINGS AND THAT'S JUST THE WAY THE CONSTITUTION.

>> LET ME ASK YOU A QUESTION BACK TO THIS.

>> YES, YOUR HONOR.

>> AND IT'S, IT PROBABLY JUST REFLECTS MY IGNORANCE AGAIN ABOUT COOPERATIVE OWNERSHIP, AND I AM TRYING TO GET IT BECAUSE I PUT DOWN YOU KNOW, THEY ARE NOT -- CO-OPS ARE NOT INTEREST IN REAL PROPERTY AND THAT'S NOT SUBJECT TO HOME FED YOU MUST OWN AN INTEREST IN LAND, BUT ISN'T THE HOME THAT'S PROTECTED SO JUST GOING BACK TO WHAT YOU ARE SAYING THAT IF YOU LOOK AT THE COOPERATIVE FORM OF OWNERSHIP, EVEN AS TO THE PLACE THE PERSON LIVES, WHICH IS THE HOME, THAT THEY DON'T OWN THE HOME, THEY ONLY OWN INTEREST IN STOCK.

>> THERE ARE THREE ELEMENTS TO A COOPERATIVE FORM OF OWNERSHIP.

>> OKAY.

>> THE FIRST IS THAT YOU GET STOCK.

THE SECOND IS THAT IN ADDITION TO THE STOCK, YOU GET A LEASE.

>> BUT YOU DON'T RECORD -- THERE'S NO LIKE, THERE'S NO TITLE THAT'S RECORDED WHEN YOU SELL IT, THERE'S NO CHAIN OF TITLE? NONE OF THAT.

>> WE ARE WAY BEYOND HOW WE BRIEFED THIS CASE BUT MY UNDERSTANDING IS THAT THE TITLE -- THAT WAS THE THIRD ELEMENT, THE TITLE VEST IN THE UNDERLYING COOPERATIVE CORPORATION OR ASSOCIATION AND THAT'S WHERE THE CHAIN OF TITLE COMES IN.

IT'S THE CORPORATION THAT IS RECORD OWNER AND OWNS THE PROPERTY.

>> AND THE OWNS, SO THAT YOU DON'T EVEN OWN YOUR APARTMENT.

>> THAT IS CORRECT.

YOU DO NOT OWN YOUR APARTMENT.

>> ALL RIGHT.

>> YOU HAVE A LEASE.

IN THIS CASE, I BELIEVE HE HAD
A LIFETIME LEASE.

>> ALL RIGHT.

SO, IN THIS STATE, WE HAVE,
HAVE WE RECOGNIZED THAT SOMEONE
OWNS A MOBILE HOME FOR EXAMPLE,
EVEN THOUGH THERE IS NOT
ANYTHING THEY DON'T OWN THE
PROPERTY UNDER IT, CAN A MOBILE
HOME S THAT SUBJECT TO
HOMESTEAD.

>> MY RECOLLECTION IS THERE ARE
CASES DEALING WITH THAT CONCEPT
UNDER THE EXEMPTION OF FORCED
SALE BUT NOT FOR CONSENT AND
DEVICE.

NOT PROVISION.

>> NOW WE HAVEN'T REALLY TALKED
ABOUT THAT.

ARE YOU, SUBSCRIBING TO THE,
AND I DON'T KNOW, THAT IT WOULD
BE DIRECTLY RELEVANT HERE BUT I
GUESS IT WOULD BE RELEVANT TO
THE CONFLICT ISSUE, THAT THE
DEFINITION OF HOMESTEAD CAN BE
FOR FORCE SALED THAN FOR
DISSENT AND DIVIDE EVEN THOUGH
IT'S WIN NOW THE SAME
CONSTITUTIONAL PROVISION.

>> I'D HAVE TO BE CANDID AND
SAY THAT THAT'S A VERY
DIFFICULT QUESTION, BUT I WOULD
ANSWER IT THIS WAY: ^THERE ARE
MANY CASES DEALING WITH LIFE
ESTATES, DEALING WITH ALL SORTS
OF OTHER, OTHER WAYS THAT WE
HOLD TITLE.

WHERE THE COURT HAS RECOGNIZED
THAT IT'S EXEMPT FROM FORCED
SALE.

NEVERTHELESS, IT WOULD NOT COME
UNDER DISSENT AND DEVICE.

SO AS THE LAW HAS EVOLVED IN
THIS AREA IT HAS RECOGNIZED
THAT THEY ARE TREATED
DIFFERENTLY.

>> SO ARE YOU SAYING WE DON'T
HAVE TO ANSWER THE QUESTION AS
TO WHETHER WE WOULD INTERPRET
HOMESTEAD DIFFERENTLY FOR
FORCED SALE IN THIS CASE.

>> I THINK THE FIFTH DISTRICT
DREW A DISTINCTION BETWEEN THE
TWO.

THIS COURT CAN LIVE WITH THAT
DISTINCTION TINATION AND YOU
DON'T NEED THE REACH THE
CONFLICT QUESTION TODAY.
THAT IS MY POSITION.
ON THAT POINT.

WHY DON'T WE -- I GUESS THIS IS
FRIENDLY TO YOU, WHY DON'T WE
DISCHARGE.

>>> IT ALWAYS MAKES PEOPLE
SMILE THAT MAYBE HAVE TO WRITE
THE OPINION, YOU KNOW, SAY.

>> WELL IT IS, IT IS, IT IS THE
QUICKEST WAY, BUT I WOULD URGE
THE COURT ALL OF YOU, I WOULD
URGE, YOU NEED TO LINE.

>> IT'S NOT THAT IT'S THE
QUICKEST WAY.

IT'S THAT I'VE GOT PROBLEMS
WITH WARTELS BUT I ALSO RESPECT
PRECEDENT AND THEREFORE AND I'M
PROBABLY MORE CONCERNED ABOUT
IT IN THE CONTEXT OF FORCED
SALE THAN I WOULD BE IN THE
CONTEXT OF WHETHER HE COULD
GIVE HIS OWNERSHIP TO HIS
LONGTIME PARTER OR WHETHER THE
KIDS HAVE AN INTEREST.

>> WELL I CERTAINLY DIDN'T MEAN
TO BE FLIPPANT WITH YOUR HONOR,
BUT I THINK MY POINT IS THAT
YOU HAVE TO LOOK AT WHAT THE
STATUTE WAS WHEN WARTELS WAS
DECIDED, AND IF YOU COMPARE 711
WITH 718, THEY HAVE A MUCH
BETTER ARGUMENT UNDER THE
VERBIAGE OF 711.

>> I JUST CAN'T REACH AN
INTELLECTUALLY HONEST WAY TO
SAY THAT IT CAN BE INTERPRETED
DIFFERENTLY WITHIN THE SAME
CONSTITUTIONAL PROVISION, SO IF
I WERE WRITING THIS OPINION,
I'D HAVE PROBLEMS SAYING IT'S
DIFFERENT FOR FORCED SALE THAN
IT IS FOR DEVICE AND DISSENT.

>> WELL THEN WE WOULD HAVE TO
GO BACK AND LOOK AT THE CASE, I
THINK OUT OF THE THIRD DISTRICT
WHERE THEY HELD A HOUSE VOTE
WAS NOT SUBJECT TO FORCED SALE

BUT OF COURSE THERE IS NO WAY THAT A HOUSE BOAT COULD BE SUBJECT TO DEVICE AND DISSENT. IT'S NOT AN INTEREST IN REAL PROPERTY BUT YOU KNOW THEY HAVE DRAWN THOSE KINDS OF DISTINCTIONS BECAUSE THE BROAD PUBLIC POLICY TO PROTECT THE DEBTOR AGAINST FORCED SALE AND I WOULD RATIONALIZE IT TO YOUR HONOR THAT WAY THAT PUBLIC POLICY I LEARNED FIVE MONTHS UP AGO THAT PUBLIC POLICY IS SO STRONG THAT IT IS VERY DIFFICULT TO COME AROUND EXCEPT FOR THOSE THREE EXCEPTIONS, MORTGAGES, CONSTRUCTION LIENS, AND I APOLOGIZE, I FORGET THE OTHER ONE, BUT YOUR HONOR, LECTURED ME THAT DAY ON HOW STRONG THAT PUBLIC POLICY EXEMPTION IS WITH REGARD TO A FORCED SALE.

>> I'M SURE WE JUST WERE QUESTIONING AND ANSWERING --
>> I DIDN'T MEAN IT ANY OTHER WAY.

[LAUGHTER]

BUT I HAVE LEARNED A LOT ABOUT FORCED SALES.

BUT I DIDN'T MEAN TO SUGGEST IT ANY OTHER WAY POINT IS THAT THERE'S A DIFFERENT POLICY THAT GOES INTO IT.

THAT'S WHAT SOUTHERN WALLS NOTED.

THAT'S WHAT THE BANKRUPTCY JUDGE NOTED IN THE UNDERLYING CASE SO I WOULD SUGGEST TO THE COURT THAT YOU CAN HARMONIZE IT THAT WAY.

>> SO ARE YOU, ARE YOU ARGUING THEN THAT OR SURGING THAT THERE'S NO -- SUGGESTING THAT THERE'S NO CONFLICT BETWEEN THIS CASE AND SOUTHERN WALLS.

>> YES, YOUR HONOR, AND I HAVE POINTED THAT OUT IN THE JURISDICTIONAL BRIEF EARLY ON THAT I FELT THAT THERE WAS NO CONFLICT.

THERE WERE TWO ENTIRELY SEPARATE SECTIONS WITH TWO ENTIRELY SEPARATE POLICIES.

>> ALL'S A CERTIFIED CONFLICT,
THOUGH.

>> WELL, AND I UNDERSTAND THAT.
AND THAT'S ONE POINT I WISH TO
MAKE.

THERE PAN ERROR IN
MR. PELZNER'S BRIEF WHICH IS
FOUND ALSO IN THE THIRD
DISTRICT DECISION WHICH MAY BE
KEY TO THE REVOLUTION OF THIS
CASE.

ON PAGE 9 OF THE OPINION, JUDGE
SHEPPERED POINTS OUT AND CITES
TO SOMETHING 719.03 A OF THE
COOPERATIVE ACT, FIRST OF ALL,
THERE IS NO 719103 A BUT MORE
IMPORTANT THAN THAT THE ACTUAL
VERBIAGE HE IS CITING IS OUT OF
CHAPTER 711 GOING BACK TO THE
75 ACT WHICH WAS WITH WARTLES
AND I THINK THAT THIS IS FATAL.
TO THE, TO THE, TO THE EFFICACY
OF THE UNDERLYING OPINION WHERE
HE GIVES CREDENCE TO THE
ARGUMENT BEING ADVANCED BEFORE
THE COURT.

THE LANGUAGE ON PAGE 13 WHERE
HE QUOTES THE STATUTEUTE.

>> I THINK WE HAVE DIFFERENT
PAGES.

>> IT'S PAGE 9, IT'S PAGE 9 OF
THE OPINION.

>> DO YOU KNOW WHAT PAGE IT IS
IN THE SOUTHERN 2nd?

>> NO, YOUR HONOR, I ONLY HAVE
THE, THE -- BUT IF YOU, IT'S
THE PARAGRAPH RIGHT BEFORE
ALTHOUGH THE BROTHER'S ARGUMENT
IS INTRIGUING.

>> ALL RIGHT.

>> AND IF YOU GO UP TWO
SENTENCE SAID THEY FURTHER
POINT OUT SECTION 719103 A, BUT
OVERLOOKING THAT, WHEN HE
QUOTES IT IS THAT FORM OF
OWNERSHIP OF IMPROVED REAL
PROPERTY THAT'S THE 711
DEFINITION.

THAT'S NOT EVEN THE 1976
COOPERATIVE ACT DEFINITION SO
HE IS USING WHAT THIS COURT
ALREADY CONSTRUED IN WARTELS AS
BEING AN INTEREST IN PERSONALTY
TO, TO SUPPORT HIS ARGUMENT.

THAT'S SIMPLY INCORRECT.

>> ALTHOUGH HE MAY BE QUOTING FROM THE 7191038 AT THE TIME THAT IT WAS ENACTED 30 YEARS AGO, WHICH LATER ADDED SUBSECTIONS AND IT TURN UNDER TO 12, AT THAT TIME IT MIGHT'VE SAID IMPROVED REAL PROPERTY BACK IN 1975 OR 76 WHEN IT WAS ENACTED.

>> I AM QUOTING HOW IT EXISTED TODAY.

I GRANT YOU THAT.

I GRANT YOU THAT BUT THE REMAINING VERBIAGE IS MORE TOWARDS THERE WERE OTHER CHANGES TOO.

FOR EXAMPLE, IT TALKS ABOUT WHERE OWNERSHIP IS INTERESTED IN OWNERSHIP INTEREST.

THAT'S NOT 719 SO I WOULD SUGGEST THE LANGUAGE HE'S RELYING ON IS EXACTLY WHAT THIS COURT RELIED ON IN 718.

I KNOW I'M OVER MY TIME, YOUR HONOR.

AND APOLOGIZE.

WE WOULD RESPECTFULLY REQUEST THAT THIS COURT RULE THAT WARTELS IS STILL GOOD LAW.

THAT THIS DUE COURT DISCHARGE THE CONFLICT AND THIS COURT FIND THAT, AND AFFIRM THE DECISION BELOW.

THANK YOU FOR YOUR TIME.

>> REBUTTAL?

>> LET ME FIRST SEE THE POINT YOU JUST RAISED JUSTICE CANTERO YOU ARE ABSOLUTELY CORRECT. THE TYPOGRAPHICAL ERROR WAS IN SAYING A INSTEAD OF EIGHT BUT IF YOU READ THE TEXT OF THAT THAT IS EXACTLY WHAT 1038 SAID IN THE VERSION OF 1977 VERSION OF 719.

I READ THAT LAST NIGHT BECAUSE I WAS CONCERNED MYSELF ABOUT THE TYPOGRAPHICAL ERROR BUT THE OTHER QUESTION YOU ASKED MY FRIEND MR. LEVY REGARDING THE INTERRELATIONSHIP BETWEEN THE CONSTITUTIONAL AUTHORIZATION FOR HOMESTEAD TAX EXEMPTION IN THE STATUTE, WHAT THIS COURT

SAID IN AMERMAN WAS THAT THAT SPECIFIC CONSTITUTIONAL AUTHORIZATION TO MAKE THAT DECLARATION WAS NOT EVEN NECESSARY.

IT JUST SAID DOROTHY KALE GETTING BACK TO KANSAS WITH THE RUBY SLIPPERS SHE ALREADY HAD ON HER FEET.

THE 1885 CONSTITUTION GAVE THEM THE RIGHT TO DEFINE THE WORDS REAL PROPERTY TO INCLUDE CONDOMINIUMS AND CO-OPS. JUSTICE PARIENTE YOU ASKED QUESTIONS ABOUT HOW CO-OPS ARE TRANSFERRED.

IN FACT, CO-OPS WHEN THEY'RE TRANSFERRED ARE REQUIRED TO RECORD THE LEASE AND OTHER DOCUMENTS.

THEY PAY TAX --

>> WHERE ARE THEY RECORDED?

>> IN PUBLIC RECORDS JUST LIKE A DEED AND IN FACT, CO-OPERS ARE USUALLY UPSET ABOUT THAT BECAUSE THEY HAVE TO PAY FOR A LOT MORE PAGES TO RECORD A LEASE THAN THEY DO A DEED.

>> AND ARE THEY TREATED, AGAIN, REAL PROPERTY TAXES ARE PAID.

>> YES.

>> DO THEY PAY PERSONAL PROPERTY TAX ALSO ON THEIR STOCK OWNERSHIP?

>> WELL, CENTRALLY, TO THE STATE OF FLORIDA, AND THROUGH THE DEPARTMENT OF REVENUE, I BELIEVE THAT THEY DO LIKE ANY OTHER INTANGIBLES TAX WHEN THERE IS AN INTANGIBLES TAX, BUT THE TAX THAT IS PAID ON THE COOPERATIVE IS PAID TO THE LOCAL, LOCAL PROPERTY APPRAISERS AND THEY'RE ASSESSED

>> SO THEY ARE, THEY ARE ON THE ROLL.

>> THEY ARE ON THE TAX ROLL JUST LIKE ANYTHING ELSE.

IF YOU LOOKED THEM UP ON THE TAX ROLL, YOU WOULDN'T BE ABLE TO TELL THEM FROM A CONDOMINIUM.

>> BUT BASICALLY COMING BACK FROM YOUR POSITION IS THAT

EITHER WE HAVE TO FIND THAT
WARTELS IS NO LONGER GOOD LAW
BECAUSE A CHANGE IS IN THE
STATUTE OR WE HAVE TO RECEDE
FROM WARTELS.

>> THAT'S CORRECT, YOUR HONOR.

>> AND IN FACT, THERE HAS BEEN
A CONSTITUTIONAL REVISION SINCE
WARTELS, WHICH IS SILENT AS TO
ANY DISAGREEMENT WITH WARTELS,
CORRECT?

>> I BELIEVE THAT'S CORRECT,
YOUR HONOR.

>> THANK YOU.

>> I REALIZE I AM OVER MY TIME
BUT I WOULD LIKE TO GET ONE
MORE POINT.

YOUR QUESTION JUSTICE PARIENTE
TO MY FRIEND REGARDING THE
POLICY REASONS AND WHY SHOULD
THE CO-OP BE TREATED ANY
DIFFERENT THAN A CONDOMINIUM
APARTMENT.

THERE HAS BEEN NO STATEMENT OF
ANY RAA POLICY REASON WHY A
CONDOMINIUM UNIT SHOULD BE
TREATED ANY DIFFERENTLY THAN
THE CO-OP UNIT NEXT DOOR.

ALL THAT'S BEEN SUGGESTED
LEGAL DISTINCTIONS THAT MAKE NO
DIFFERENCE TO THE FAMILIES THAT
ARE PROTECTED BY THESE
CONSTITUTIONAL PROVISIONS.

FOR THOSE REASONS WE ASK YOU
REVERSE.

>> THANK YOU VERY MUCH FOR A
VERY INTERESTING ARGUMENT.
YOU DID A WONDERFUL JOB, AND WE
WILL TAKE IT UNDER ADVISEMENT.
THANK YOU VERY MUCH.