Pro-Art Dental Lab, Inc. V. V-Strategic Group LLC

SC07-1397

>> ALL RISE.
>> GOOD AFTERNOON.
THE FLORIDA SUPREME COURT IS
BACK IN SESSION.
PLEASE BE SEATED.
THE CASE WILL BE DECIDED BY THE
SIX OF US AND IF NECESSARY WE
WOULD CALL IN ACCORDING TO OUR
INTERNAL OPERATING PROCEDURES
ANOTHER JUDGE FROM THE DISTRICT
COURT OF APPEALS.
OKAY?
MAY IT PLEASE THE COURT. MY NAME
IS DAVID CHARLOTTE.
WITH ME AT THE COUNSEL TABLE IS
MY CO-COUNSEL ERIC JACOBS OF THE
PRO-ART DENTAL LAB.
WE ARE HERE TODAY ON AN ISSUE
THAT WAS CERTIFIED AS BEING IN
CONFLICT WITH THE FIFTH
DISTRICT, BY THE FOURTH
DISTRICT, THE CASE BEING IN
CONFLICT WITH -- AND THE
QUESTION IS WHETHER OR NOT THE
PROVISION OF STATUTORY SUMMARY
PROCEDURE CHAPTER 51 IS TO BE
RECONCILED WITH THE 1.500C
DEALING WITH THE ENTRY TO BE
FALSE.
>> JUST AT THE OUTSET, AND THIS
IS NOT REALLY THE CONFLICT
ISSUE, BUT WERE YOU EVER
AFFORDED THE OPPORTUNITY TO
DISCUSS THAT THE PAPERS ATTACHED
WERE NOT ATTACHED TO THE
CONTRACT, THAT THERE WAS NO
COMPLIANCE WITH THE STATUTE AND
THAT ANY OF THOSE THINGS WERE
EVER DISCUSSED AT ANY LEVEL?
>> WE NEVER GOT THAT CHANCE.
>> BECAUSE IT IS NOW, THE BRIEF
IS NOW UNDER THE PROCEDURAL RULE
AND I WAS WONDERING, WHAT
DIFFERENCE DOES IT MAKE IN A
CASE THAT DOES NOT STATE A CAUSE

OF ACTION?
DOES THAT GIVE ANY RELIEF AT ALL
TO THE PREVAILING PART?
>> WHAT HAPPENS IS, WHEN THE

DEFAULT IS ENTERED THE STANDING
BEING ADMITTED BASICALLY.
>> THAT IS INCLUDING A LETTER,IF
IT IS NOT A CONTRACT.
THAT IS ALL THAT IS DEFENDED AND
NOTHING ELSE, SO WHY DID THIS
NEVER DID DISCUSSED?
>> WHAT HAPPENED WAS THE DEFAULT
FINAL JUDGMENT WAS THERE AFTER
ENTRY AND AFTER A FEW DAYS
POSSESSION WAS TAKEN FROM MY
CLIENT.
>> YOU JUST GO RIGHT TO THE
PROCEDURE, THE CONFLICT ISSUE.
>> THAT IS THE REAL PROBLEM IN
THIS CASE IS THAT THIS IS A
FORFEITURE OF AN INTEREST IN
REAL PROPERTY AND UNDER --
>> IS THIS CASE MOOT?
IF YOU PREVAILED, WHAT IS THE
RELIEF THAT YOU OBTAINED?
>> RIGHT TO POSSESSION.
AND ALL OF THE CORRESPONDING
RIGHTS THAT GO ALONG WITH THAT.
>> BUT IS THE PERMANENT EVEN
THERE ANY MORE?
AS I UNDERSTAND IT,THEY WERE
GOING TO DO SOME REDEVELOPMENT
OR SOMETHING OF THIS PROPERTY
AND THAT IS WHY THEY WERE TRYING
TO GET ALL THE TENANTS OUT, AND
SO YOUR CLIENT, HOW LONG HAS IT
BEEN THERE?
>> IT HAS BEEN THERE SINCE APRIL
OF 2006, ALMOST TWO YEARS.
>> AND SO, YOU KNOW, CAN THEY
GET BACK WHAT THEY HAD TWO YEARS
AGO?
>> THEY HAD A RIGHT TO
POSSESSION.
UNLESS THE FINAL JUDGMENT IS
OVERTURNED THEY NO LONGER HAVE
THE RIGHT TO POSSESSION.
THEY CAN'T MOVE BACK INTO THE
PREMISES BECAUSE IT DOES NO
LONGER EXIST.
THE QUESTION IS, EVEN IF YOU
PREVAIL ARE THE PREMISES EVEN
THERE ANY MORE TO REGAIN

POSSESSION?

>> I THINK THAT IS OUTSIDE OF THE RECORD. IF YOU WANT ME TO GO INTO I CAN.
>> I'M JUST WONDERING IF THE CASE IS MOOT?
>> IT IS NOT MOOT BECAUSE IT HAS VERY IMPORTANT LEGAL RIGHTS THAT STEM FROM THE RIGHT TO POSSESSION TO WHICH PARTICULARLY THE FACT THAT MY CLIENT WOULD HAVE BEEN UNLAWFULLY DISPOSSESSED OF PROMISES THAT SHE HAD BEEN IN FOR SIX YEARS UNDER A LEASE THAT SHE'D BEEN MAKING PAYMENTS ON AND WITHOUT ANY SIGNATURE, WITHOUT ANY AGREEMENT.
>> I DON'T WANT TO GET INTO A HOLE BEVY OF ISSUES THAT WE CAN'T RESOLVE TODAY.
>> THE ANSWER IS NOT MOOT.
>> EVEN WITH REGARD TO THE ALLEGED SUBSEQUENT -- THAT IS WAS THERE, DOES THE RECORD SHOW US WHETHER THERE WAS EVER TENDER OF THE ALLEGED PRICE FOR BUYING OUT THE TENANT'S INTEREST IN THE LEASE?
DOES IT SHOW US ANYTHING ABOUT THAT, IN OTHER WORDS WAS THERE A CASHIERS CHECK OR SOMETHING ATTACHED TO THE PETITION?
>> NO THERE WAS NOT.
>> IN OTHER WORDS WHAT DOES THE RECORD SHOW US ABOUT THAT?
>> THE RECORD SHOWS THAT IN THE COMPLAINT REFERENCE IS MADE TO THE FACT THAT A TENDER WAS PLACED IN THE COURT REGISTRY OF $95,000.
NOW MIND YOU THE RECORD REFLECTS THAT IN RESPONSE TO THE LETTER OF FORMER COUNSEL FOR PRO-ART, MY CLIENT SAYING WE CONSIDER SETTLING ON THIS BASIS, THAT WAS SENT IN AUGUST.
A SUPPLEMENTAL FILING WAS FILED TO SHOW THE ACCEPTANCE IN OCTOBER AND INSTEAD OF DIVIDING THE MONEY IN THE ATTORNEYS TRUST

ACCOUNT, AS WAS REQUESTED IN A

LETTER IN AUGUST, MONEY WAS
LATER DEPOSITED IN THE COURT
REGISTRY.
THAT IS WHAT THE RECORD SHOWS.
>> THERE ARE SO MANY LITTLE
ISSUES IT SEEMS TO ME FLOATING
AROUND IN THIS CASE, SO WAS
THERE EVEN AN OFFER OR AN
ACCEPTANCE OR WAS THERE REALLY A
COUNTEROFFER BEING MADE IN THIS
SITUATION?
>> CERTAINLY THAT IS WHAT
PRO-ART CONTENDS, THAT OFFER HAD
LAPSED AND THE SUBSEQUENT
"ACCEPTANCE" WAS NOT AN
ACCEPTANCE OF ANY OFFER THEN
PENDING.
>> WHY WOULD IT HAVE LAPSED?
>> IT LAPSED BECAUSE THIS WOULD
BE OUTSIDE THE RECORD.
>> LET ME REFER TO CHAPTER 51.
>> THAT IS WHAT WE ARE HERE
ABOUT.
>> HOW DO YOU SEE THAT IT IS TO
OPERATE IN SO MUCH, INSOFAR AS
IT APPEARS THAT THE LEGISLATURE
WAS SAYING THAT THIS SHOULD BE A
VERY QUICK TYPE OF PROCEDURE, AS
OPPOSED TO GOING THROUGH THE
NATURAL PROCEDURE OR THE
PROCEDURE THAT NOW IS IN THE
RULES OF PROCEDURE.
>> WE FULLY AGREE THAT THE
LEGISLATIVE INTENT WAS TO
EXPEDITE THE TIME WITHIN WHICH
AN ANSWER WAS TO BE FILED.
WE KNOW THAT UNDER THE RULES,
AS IN 20 DAYS THE SUMMARY
PROCEDURE SHORTENED THAT TO FIVE
DAYS AND THAT IS PART OF THE
CONSTITUTIONALLY VALID
DELEGATION OF AUTHORITY UNDER
1.011, TO A SUMMARY OF
PROCEDURES STATUTE.
IT DEALS WITH THE SHORTENING OF
THE TIME.
IT DOESN'T DEAL WITH THE
CONSEQUENCES OF WHAT HAPPENS
WHEN SOMETHING IS FILED ON TIME
AND THAT IS OUR WHOLE CONTENTION
HERE.
THE WAY THE FOURTH DISTRICT
CONSTRUED 51.011 WAS TO ADDED
LANGUAGE THAT DID NOT OTHERWISE

APPEAR IN THAT STATUTE.
TO SAY WHAT THE CONSEQUENCE OF HAVING AN UNTIMELY ENDS ARE FILED.
>> HERE YOU FILE TIMELY SOMETHING CALLED A MOTION TO POSSESS.
>> CORRECT.
>> THEN WHEN YOU WENT TO THE HEARING ON THIS INSTEAD OF GIVING THE DEFAULT, THE JUDGE GAVE YOU EXTRA TIME YOU DID NOT REALLY ASK FOR, EXTENSION OF TIME TO FILE AN ANSWER.
IS THAT THE WAY THE FACTS TURN OUT?
>> THE FACTS WERE THAT THE MOTION TO DISMISS WAS DENIED BUT IT WAS FILED.
>> IT WAS FILED TIMELY WITHIN FIVE DAYS.
IT IS DIFFICULT TO DETERMINE BECAUSE YOU STATE DIFFERENT DAYS WHEN THE SERVICE AND MOTION WAS FILED, BUT IT WAS FILED TIMELY?
>> CORRECT.
AND AT THAT POINT IN TIME IT WAS FILED BY PRIOR COUNSEL AND COUNSEL HAD COME AND TO ARGUE THE POINT AND THE COURT INTENDED MOTION FOR THE FAULT WAS MADE DURING THE MOTION TO DISMISS?
>> AND THE TRIAL JUDGE.
>> THE TRIAL JUDGE DID NOT GRANT DEFAULT THEN AS SHE COULD HAVE WELL DONE, AND IF SHE DID WE WOULD NOT BE HERE, BUT SHE DID NOT GRANT THE DEFAULT AT THAT POINT AND SAID I'M GOING TO SET THE HEARING FOR THE FOLLOWING MONDAY AND WE WILL DEAL WITH THE DEFAULT AT THAT POINT.
>> IS IT YOUR POSITION THAT CHAPTER 51, BEING A MOTION PRACTICE AS OPPOSED TO ALL OF THESE MATTERS SET UP IN AN ANSWER.
>> CHAPTER 51 CLEARLY SAYS THAT ALL THESE MATTERS SHOULD BE SET UP IN AN ANSWER BUT DOES IN FACT MENTION ANY MOTIONS, FOR EXAMPLE.
[INAUDIBLE]
SO IT DOES NOT PRECLUDE THE

FILING OF A MOTION, BUT A
MOTION.
>> IT DOES RELIEVE THE
OBLIGATION OF THE FOLLOWING
INSERT?
>> IT DOES NOT.
IT DOES NOT TELL THE TIME EITHER
AND THAT IS WHAT IT SAYS AND WE
AGREE WITH THAT, SO THERE IS NO
PREJUDICE TO A POINT OF LOOKING
TO MOVE THE CASE QUICKLY, IF AN
ANSWER IS FILED SIX DAYS OR
SEVEN DAYS BECAUSE THE COURT ON
THE FIFTH DAY OR ON THE SIXTH
DAY CAN ENTER A DEFAULT IF THAT
IS REQUESTED.
>> LET ME SEE IF I UNDERSTAND
IT, IT DOES APPEAR CHAPTER 51
SAYS THAT UNLESS OTHERWISE
INSTRUCTED OR PROVIDED THAT THE
RULE OF CIVIL PROCEDURE APPLIES.
IS THAT CORRECT?
>> ABSOLUTELY.
>> AND THEN RULES OF CIVIL
PROCEDURE SAY THAT UNLESS
DIVIDED OTHERWISE IN A SPECIAL
PROCEDURE, THAT THESE RULES
APPLY TO ALL SPECIAL STATUTORY
PROCEDURES.
>> THAT IS CORRECT ALSO.
>> SO IF WE IGNORE EVERYTHING
ELSE AND LOOK AT THE PURE WORDS,
THOSE WORDS WOULD SAY IT IS A
GAP IN 51, THAT IS FILLED BY THE
PROCEDURES.
>> IN FACT THAT IS HOW THE
STATUTES HAVE BEEN INTERPRETED,
FOR EXAMPLE IN THE BARRY VERSUS
CLEMENT CASE THE QUESTION WAS
HOW YOU COMPUTE FIVE DAYS, DO
YOU COUNT INTERMEDIATE SATURDAYS
AND SUNDAYS, AND WHAT THE COURT
DID WAS TO SAY WE WILL LOOK TO
THE RULES AS TO HOW YOU
DETERMINE THE EXPIRATION OF TIME
AND APPLY IT TO CHAPTER 51, SO
YES YOU WOULD DO THAT.
>> WHAT IF THIS, THOUGH, EXTENDS
BEYOND THE FIVE DAYS?
THIS IS SUPPOSED TO BE OVER IN
FIVE DAYS TO DO SO.
>> THE FIVE DAYS TO DO SOMETHING
IS THE TIME THAT WAS SHORTENED
BY CHAPTER 51.

THE CONSEQUENCE OF WHAT HAPPENED
WHEN YOU DON'T DO THAT COULD
HAVE BEEN WRITTEN INTO CHAPTER
51 BY THE LEGISLATURE IF THEY SO
CHOSE.
OUR CONTENTION IS, IF THEY DID
IT WOULD BE AN IMPERMISSIBLE
ENCROACHMENT ON THE RULEMAKING
AUTHORITY OF THIS COURT BUT
NEVERTHELESS WE COULD SAY AT
THAT POINT LATER THEY DIDN'T DO
IT AND THAT IS THE DISTINCTION
WHEN YOU LOOK AT SOME OF THE
CASES CITED BY COUNSEL, THAT THE
CASES THEY CITE PARTICULARLY IN
THE MECHANICS' LIEN CASES DEAL
WITH STATUTES THAT TELL THE
COURT WHAT TO DO WHEN THE THING
THAT SHOULD HAVE BEEN DONE WAS
NOT DONE WITHIN THE TIME
SPECIFIED.
FOR EXAMPLE IN THE -- SITUATION
713.21 THAT SAYS YOU SHALL ENTER
DEFAULT, YOU SHALL FILE
JUDGEMENT, SO IN THOSE CASES
IT'S SPECIFICALLY DEALING WITH
THE CONSEQUENCE OF NOT DOING
WHAT YOU WERE SUPPOSED TO HAVE
DONE.
>> WHERE IS THE ISSUE OF WHETHER
THE COUNTY COURT HAS SUBJECT
MATTER OF JURISDICTION?
>> WELL.
>> WAS THAT RAISED IN THE
DISTRICT COURT?
>> IT WAS RAISED EVERYWHERE AND
I WOULD RAISE IT AGAIN UNDER
REVIEW WITH THIS COURT.
>> YOU DID NOT RAISE IT IN YOUR
BRIEFS TO THIS COURT.
>> WE DID NOT BUT WE HAVE ALWAYS
CONTENDED THAT WAS THE REASON MY
PRIOR COUNSEL MOVED TO DISMISS
IN EVERY LEVEL OF APPELLATE
REVIEW.
THE ARGUMENT WAS DISMISSED OR
RULED AGAINST.
>> BREAK ME OUT INTO THE TIMING
EXACTLY.
APPARENTLY THE TRIAL JUDGE, THE
PLEADING WAS LABELED -- TREATED
AS IF IT WERE AN EVICTION.
>> YES.
>> AND THEN FOUND THAT THERE WAS

JURISDICTION ON THE EVICTION.
>> THE TRIAL JUDGE FOUND THE LANDLORD PROCEEDING, FOUND THAT FOR THAT REASON CHAPTER 51 WAS APPROPRIATE AND DENIED THE MOTIONS ON THAT BASIS.
>> BUT THE TRIAL JUDGE ORDERED THE CLERK TO DISPERSE THE REGISTRY TO YOUR CLIENT?
>> INTERESTINGLY ENOUGH, THE PROPERTY WAS LOCATED IN BROWARD COUNTY, BUT THE FUNDS WERE DEPOSITED IN THE CIRCUIT COURT REGISTRY IN DADE COUNTY SO THERE WAS NO COINCIDENCE BETWEEN THE TWO.
>> IN OTHER WORDS THERE WAS NO AUTHORITY OF THE COURT TO ORDER A CLERK IN ANOTHER CIRCUIT.
>> THAT'S RIGHT.
>> LET'S GO BACK, AND GOING TO THE RECORD I CAN SEE THAT THE COUNTY COURT JUDGE ACTUALLY RULED, STATING THE REASON BUT DENIED THE MOTION TO DISMISS.
AM I MISSING SOMETHING?
WAS THERE A DIRECT RULING BY THE COUNTY COURT JUDGE THAT THIS IS WHATEVER, FICTION OR ONE WITHIN THAT JURISDICTIONAL -- OR WAS IT JUST DENIED?
>> I DON'T RECALL A SPECIFIC RULING.
IT WAS COLLOQUY AND I BELIEVE THE COURT GAVE SOME THOUGHTS ABOUT THE ARGUMENT BUT I DON'T BELIEVE THERE WAS A RULING ANNOUNCED FORMALLY ON THE RECORD.
>> OKAY.
>> SO IT IS OUR CONTENTION HERE THAT WHEN YOU LOOK TO THE PLAIN LANGUAGE OF SECTION 51, AS JUDGE LEWIS POINTED OUT, THE PREAMBLE TO 51 SAYING YOU HAVE TO LOOK BACK, AND WHEN WE LOOK AT THE PROVISIONS OF 1.500 DEALING WITH DEFAULTS AND WHETHER OR NOT IT IS APPROPRIATE TO ENTER A DEFAULT ONCE AN ANSWER HAS BEEN FILED, THE ISSUE BECOMES VERY CLEAR THAT HAVE THE COURT ENTERED A DEFAULT AT THE FIRST HEARING, IT MIGHT HAVE BEEN

APPROPRIATE.
BUT, SINCE ADDITIONAL TIME WAS GIVEN AND WE HAVE FILED AN ANSWER THAT VERY SAME DAY AFTER THE HEARING, THEREAFTER THE DEFAULT WAS NOT APPROPRIATE.
AND IF WE LOOK AT THE RULING BY THE FOURTH DISTRICT, THE FOURTH DISTRICT'S RULING IN ESSENCE WEAVES IN LANGUAGE TO 51.011.
IT DOES NOT NOW EXIST.
>> I FIND IT PERPLEXING THAT THE FOURTH DISTRICT DID NOT DISCUSS THE ISSUE OF THE COUNTY COURTS OF JURISDICTION AND ALL THE OTHER ANCILLARY ISSUES IN THIS CASE, BASED -- THEY SIMPLY DISCUSSED THE ISSUE 51.011.
>> WE FOUND IT EQUALLY PERPLEXING. I CAN'T ANSWER WHY THEY DIDN'T, IT IS YOUR ARGUMENT.
>> THANK YOU YOUR HONOR.
I WOULD LIKE TO DO THAT.
>> GOOD AFTERNOON, MR. CHIEF JUSTICE AND JUSTICES OF THE COURT.
>> PULL THE MICROPHONE DOWN.
THERE YOU GO.
>> MY NAME IS CRAIG BARNETT, MY COLLEAGUE IS -- AND WE ARE HERE ON BEHALF OF THE RESPONDENTS, THE V-STRATEGIC GROUP.
I WOULD LIKE TO TOUCH UPON A CRUCIAL ELEMENT OF CHAPTER 51 THAT HAS NOT BEEN TOUCHED ON, WHICH IS THE PROVISION.
WE MUST DISAGREE WITH COUNSEL THAT IT WAS NOT SHORTENED, THE TIME PERIOD, FOR FILING YOUR DEFENSE FROM 20 DAYS TO FIVE DAYS BECAUSE TO DO THAT WOULD BE TO IGNORE THE LATTER LANGUAGE, THE LANGUAGE THAT WAS FOCUSED ON BY THE CIRCUIT COURT SITTING IN THE APPELLATE DIVISION.
>> IF YOU GO TO WHAT I CONSIDER TO BE, WHAT APPEARS TO BE LIKE AN ELEPHANT IN THE ROOM AND THAT IS THROUGHOUT THESE PROCEEDINGS, YOU CHARACTERIZED THEM AS A PETITION FOR EJECTMENT AND I SEE ON VIRTUALLY ALL OF YOUR PLEADINGS THAT THEIR STYLE OF

ACTION FOR REJECTION, AND NOW WE HAVE THE COUNTY COURT FOLLOWED BY THE DISTRICT COURT OF APPEAL SAYING NO, IT DID NOT REALLY MEAN WHATEVER AND I AM HAVING SOME DIFFICULTY GETTING PAST THAT OBSTACLE, SINCE CLEARLY THE COUNTY COURT HAS NO JURISDICTION IN AN EJECTMENT ACTIONS SO HOW YOU AVOID THE CONSEQUENCES OF FILING A PETITION FOR EJECT MEANT IN THE COUNTY COURT?
>> THE ANALYSIS FOR THAT, AND IT WAS SENSIBLY ARGUED IN A COUNTY COURT AND IS A CRITICAL FEATURE IN BOTH THE CIRCUIT COURT APPELLATE DIVISION OPINION AS WELL AS THE INITIAL OPINION OF FOURTH DISTRICT COURT OF APPEAL. IF YOU GO BEYOND THE TITLE, WHAT CHAPTER 34 TALKED ABOUT IS THAT THE COUNTY COURT.
>> WHERE IS IT SETTLED THAT YOU GO BEYOND, IF YOU FILE A COMPLAINT? ORDINARILY COURTS ARE SUPPOSED TO TAKE IT FOR WHAT IT SAYS THAT IT IS.
I AM HAVING A LITTLE DIFFICULTY GOING TO THIS SORT OF EQUITABLE RULE THAT SAYS WE ARE NOT GOING TO HOLD SOMETHING AGAINST SOMEBODY IF THEY ALLEGE THE SUBSTANCE OF SOMETHING.
WHEN A PARTY GOES INTO COURT AND ASKS FOR RELIEF AND THEY STYLE AN EJECTMENT AND THAT IS WHAT THEY ASK FOR, I AM HAVING DIFFICULTY WITH THE COURT INTERVENING ON BEHALF OF THAT PARTY.
SAYING, THAT IS NOT REALLY WHAT THEY ARE SEEKING.
WHAT CASE HOLDS THAT?
>> YOUR HONOR IT WAS THE CASE -- AND I APOLOGIZE -- THE CASE IS A DIRECT --
>> YOU AGREE, DO YOU NOT, THAT THE COUNTY COURT HAS NO JURISDICTION IN AN EJECTMENT ACTION?
>> IF THIS WERE --
>> THAT IS A FAIRLY SIMPLE QUESTION.
WOULD YOU AGREE THE COUNTY COURT

HAD NO JURISDICTION IN AN EJECTMENT ACTION.
>> THIS PETITION WAS FILED.
>> THE DELEGATION HOWEVER, WHICH IS WHAT THE COUNTY COURT JUDGE WAS EXAMINED BY BOTH THE CIRCUIT APPELLATE DIVISION IN THE FOURTH DISTRICT, WHEN YOU LOOK AT THE ALLEGATIONS AS FAR AS POSSESSION.
>> I THINK THE BOTHERSOME PART IS THAT YOU STYLED IT, OR WHOEVER DRAFTED IT, STYLED IT AS THE COMPLAINT FOR EJECTMENT, AND THEN THE PLAINTIFF, ATTEMPTING TO TAKE ADVANTAGE OF THIS SUMMARY PROCEEDING AND THE LAWYER FOR THE DEFENSE, IT SEEMS TO BE THE REASONABLE THING, HE RAISES THE QUESTION AS SOON AS HE CAN AS TO THE FACT THAT THE COUNTY COURT DOES NOT HAVE JURISDICTION FOR AN EJECTMENT, AND THEN THE THING PROCEEDS ON THE BASIS THAT THE COUNTY COURT IS GOING TO ASSUME JURISDICTION ON SOME OTHER BASES BUT NOT GIVE THEM AN OPPORTUNITY TO RAISE A DEFENSE TO THE OTHER BASIS, NOW HOW CAN THAT POSSIBLY WORK?
A PROCEDURE THAT SHOULD BE SANCTIONED BY THE COURT.
>> YOUR HONOR MY RESPONSE TO THAT WOULD BE THAT THE ALLEGATIONS OF THE COMPLAINT ALLEGING THE CAUSE OF ACTION TO RECOVER REAL PROPERTY WITHIN THE LANDLORDS CONTEXT.
>> WOULDN'T THE APPROPRIATE THING BE TO GIVE ME AN OPPORTUNITY TO AMEND MY COMPLAINT OR MY PETITION BECAUSE I GOOFED, AND I ADMIT THAT I STYLED IT AS AN EJECTMENT ACTION AND OF COURSE THAT IS EXACTLY WHAT YOU ARE ATTEMPTING TO DO, IS THAT NOT CORRECT?
IN OTHER WORDS YOU WERE ATTEMPTING TO EJECT THIS TENANT FROM YOUR PREMISES, IS THAT RIGHT?
>> WE WERE ATTEMPTING TO RECOVER POSSESSION.
>> YOU WERE TRYING TO GET THEM

OUT, WERE YOU NOT?
WE USUALLY CALL THAT EJECTMENT OR EVICTION.
DID YOU AT ANY TIME ASK TO AMEND THE PETITION?
>> NO YOUR HONOR AND THE REASON WE DIDN'T, WHICH IS THE REASON WE ARE BEFORE THE COUNTY COURT, WAS THAT THE ALLEGATIONS OF THE COMPLAINT NEEDED THE CAUSE OF ACTION TO RECOVER.
>> YOU ALSO SOUGHT DAMAGES AND ALL OF A SUDDEN AT THE HEARING, OKAY WE WILL JUST DROP THAT AND THEY HAVE NO NOTICE.
IS THAT A FAIR STATEMENT?
IS THAT A CORRECT STATEMENT?
>> YOUR HONOR, I DON'T BELIEVE THAT IS CORRECT.
WE WERE SEEKING POSSESSION.
>> I AM LOOKING AT THE COMPLAINT AND IT SAYS WHEREFORE PLAINTIFF'S DEMAND FOR POSSESSION OF PROPERTY IN DAMAGES AGAINST -- AND IT IS REAL ESTATE 101 THAT IF YOU DENOMINATE THE COMPLAINT EJECTMENT YOU SEEK TO EJECT AND DAMAGES BUT THAT IS NOT A PROCEDURE FOR IMMEDIATE REMOVAL OF THE TENANT AND PARTICULARLY WHEN YOU ATTACH TO THE LETTERS AND NOT THE LEASE AGREEMENT BY WHICH THE PARTY OCCUPIES THE PROPERTY.
AND I AM SORRY, BUT THIS IS WHERE THE MOST TROUBLESOME CASES I'VE SEEN, THE ABUSE OF THE PROCESS, FOR THE TENANT IN THIS CASE, BECAUSE THE OTHER JUSTICES ARE SAYING IT'S TITLED EJECTMENT.
THE CORPORATION HAS TO BE REPRESENTED BY COUNSEL AND THERE ARE DIFFERENT WAYS TO GET ACCESS TO PROPERTY, IT WAS UP TO YOU TO NOMINATE THE COMPLAINTANT, YOU REQUEST POSSESSION OF THE PROPERTY AND DAMAGES.
A HEARING IS SET ON THE MOTION TO DISMISS.
IT IS YOUR OBLIGATION TO PUT YOUR OPPONENT ON NOTICE OF WHAT REMEDIES YOU ARE SEEKING.

ON EVERYTHING THAT I'VE SEEN IN THIS RECORD, IT WAS REASONABLY UNDERSTOOD WHAT THEY WERE FACING WAS NOT A EJECTMENT ACTION BECAUSE YOU WERE SEEKING POSSESSION IN DAMAGES SO THEY SAID, WRONG COURT.
WE NEED TO GO TO THE CIRCUIT COURT AND YOU TURN AROUND AND A COUNTY JUDGE ON HIS OR HER OWN, CHANGES THE CAUSE OF ACTION AND CUTS THEM OFF.
FUNDAMENTAL JUSTICE, I THINK THAT IS WHAT YOU ARE HEARING ALL OF US SAY, WHERE'S THE FUNDAMENTAL JUSTICE HERE?
[INAUDIBLE]
PROCEDURES ORDINARILY RESERVED FOR HOLDOVER TENANTS OF A LEASE AND THE FURTHER COMPLICATION HERE APPEARS THAT VIS-A-VIS WHERE JURISDICTION IS, WHAT I CAN TELL YOU OR ATTEMPTING TO ENFORCE A CONTRACT, THAT IS YOU ALL ARE CLAIMING THAT REGARDLESS OF THE LEASE AND EVERYTHING, THAT YOU ENTERED INTO A NEW AGREEMENT AND YOU ATTACHED THAT I BELIEVE TO THE PETITION FOR A JUDGMENT.
HOW DO YOU FILE AN ACTION TO ENFORCE THE CONTRACT LIKE THAT IN THE COUNTY COURT?
THAT IS, ISN'T THAT ALSO SOMETHING THAT IS RESERVED FOR CIRCUIT COURT JURISDICTION, ESPECIALLY WHEN WE LOOK AT THE AMOUNT THAT IS INVOLVED AND THE FACT THAT IT IS GOING TO SUPERSEDE ANY LEASE THAT WAS ENTERED INTO, SO DON'T YOU HAVE AN ADDITIONAL PROBLEM HERE, THAT THE CAUSE OF ACTION IS NOT FOR THE TENANT AT THE END OF THE LEASE, BUT THIS IS A CAUSE OF ACTION TO ENFORCE A CONTRACT.
AM I CORRECT?
>> THIS CAUSE OF ACTION WAS TO RECOVER REAL PROPERTY PURSUANT TO AN AGREEMENT POST ENTERING END TO TERMINATE.
>> DO YOU AGREE IT WAS TO ENFORCE WHAT YOU CLAIM TO BE A CONTRACT, IS THAT RIGHT?

>> THIS IS TO RECOVER THE ASPECT.
>> THERE WAS NO SHOWING HERE, NOT EVEN ANY CLAIM IN MY READING THAT THE TENANT WAS IN VIOLATION OF THE LEASE.
I THOUGHT THE ONLY CLAIM WAS THAT THE TENANT WAS IN VIOLATION OF THIS NEW CONTRACT.
IS THAT RIGHT OR NOT?
>> NO YOUR HONOR.
>> THERE WAS A CLAIM THAT THEY WERE IN VIOLATION OF THE LEASE?
>> OUR POSITION WAS NOT THAT THERE WAS A VIOLATION OF THE LEASE, BUT WHAT WE ARE SAYING IS IF THE PARTIES HAD AGREED TO MOVE THE TERMINATION DATE, THE END DATE OF THE LEASE FROM THE DAY HE WAS ORIGINALLY SET FORTH TO AN EARLIER DATE.
>> THIS IS THE CONTRACT.
>> BUT WHAT IT DOES, THAT WAS A MODIFICATION OF THE LEASE AND THAT --
>> HOW DID YOU COME TO HAVE TO PAY THEM OVER $90,000?
WEREN'T YOU BUYING OUT THE LEASE?
>> YES, WE WERE.
>> THE LEASE IS A DIFFERENT THING AND THEM HOLDING OVER FROM SOME PROVISION OF THE LEASE.
>> YOUR HONOR, WE ARE NOT CONTENDING THAT THIS WAS A PURE HOLDOVER.
WHAT OUR POSITION WAS, WAS FOR THE CONSIDERATION WE HAD MADE, WHICH WAS TENDERED INTO THE COURT'S REGISTRY IN DADE COUNTY.
>> HELP ME WITH THE PROPOSITION, JUST THE STARTING POINT.
A SUMMARY PROCEDURE IN THIS FIVE DAYS, WHATEVER IT ATTEMPTED TO FIT THE SITUATION LIKE THIS.
>> THE SUMMARY PROCEDURE IS INTENDED TO DEAL WITH ISSUES OF RESTORING POSSESSION.
THE SUMMARY PROCEDURE FOR EXAMPLE YOUR HONOR IS ALSO FOR OTHER TENANT DEFAULT.
THE TENANT DEFAULTS, YOU ARE ENTITLED TO PURSUE SUMMARY PROCEDURE.

>> YOU ARE NOT CLAIMING ANY DEFAULTS.
SO FAR AS I CAN SEE FROM YOUR ALLEGATION, THIS IS A TENANT THAT IS IN THERE THAT IS PAYING THEIR RENT, AND THAT YOU SIMPLY WERE TRYING TO NEGOTIATE WITH THEM BECAUSE YOU WERE GOING TO DO SOMETHING ELSE WITH THE PROPERTY.
YOU NEGOTIATED AND YOU ALLEGE HERE THAT YOU ENTERED INTO A NEW AGREEMENT, ISN'T THAT CORRECT?
>> AN AGREEMENT TO MODIFY THE TERMS OF THE LEASE.
>> WHERE IS THERE ANY AUTHORITY TO USE THIS SUMMARY PROCEDURE TO ENFORCE AN AGREEMENT LIKE THAT?
>> YOUR HONOR, WE WOULD PLACE THE POSITION ON IT THAT THE AUTHORITY IS IN THE 51.011, WHICH IS, ALLOWS -- I APOLOGIZE, IN CHAPTER 83 WHICH PROVIDES FOR USE OF SUMMARY PROCEDURES AND ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY.
>> IF I ENTER INTO A CONTRACT TO BUY SOMEBODY'S PROPERTY AND I GIVE THEM THE DEPOSIT, SIGN ALL THE PAPERS, CAN I GO IN TO COUNTY COURT AND HAVE THEM OUSTED FROM THEIR PROPERTY AND ENFORCE THAT REAL ESTATE CONTRACT?
>> ABSOLUTELY NOT YOUR HONOR BUT YOUR HYPOTHETICAL DOES NOT INVOLVE THE LANDLORD TENANT RELATIONSHIP.
THE CRITICAL ISSUE HERE IS IF THIS WAS TO RECOVER POSSESSION OF REAL PREMISES WITHIN THE CONTEXT OF THE LANDLORD TENANT RELATIONSHIP.
>> JUST AS WELL I WOULD LIKE TO ASK A QUESTION ABOUT CHAPTER 51 AND THE CONFLICT ISSUE BECAUSE YOU ARE RUNNING OUT OF TIME AND I WOULD LIKE YOU TO BE ABLE TO RESPOND TO THE CONFLICT ISSUE.
WHY IS IT CROCKER CORRECT IN THAT THE STATUTE IS NOT DESIGNED TO OVERWHELM THE RULES OF PROCEDURE.
IN FACT IT SPECIFICALLY SAYS

THAT RULES OF PROCEDURE APPLIED TO THIS SECTION EXCEPT WHEN A SECTION OR STATUTE PROVIDES A DIFFERENT PROCEDURE.
IT DOES NOT SEEM TO BE A PROCEDURE IN THE STATUTE THAT THERE IS AN AUTOMATIC DEFAULT IF THERE IS NO ANSWER FILED WITHIN THE FIVE DAYS, SO WHY WOULDN'T THE RULE THAT OTHERWISE APPLIES, WHICH IS, IF YOU DO ANSWER BEFORE THE FALL THIS ENTERED, AND THE DEFAULT CANNOT BE ANSWERED, WHY CAN'T THE TO EXIST TOGETHER?
>> THE REASON FOR THAT YOUR HONOR IS RULE 1.500C, WHICH IS WHY THE DEFENDANTS HAVE HUNG THEIR HAT ON SAYING WE BEGIN UNDER THE WIRE SO LONG AS THE -- IS INCONSISTENT WITH SECTION ONE AND WE FOCUSED ON THE FIVE DAYS BUT THE LANGUAGE THAT CAN BE RECONCILED IS THAT NO OTHER PLEADINGS ARE PERMITTED.
THAT LANGUAGE, THAT STATUTORY LANGUAGE, NO OTHER PLEADINGS ARE PERMITTED.
>> I AM TALKING ABOUT WINDOW. THIS IS THE PREDICATE IN THE QUESTION.
>> I APOLOGIZE.
>> YOU SAID YOU FILED AN ANSWER, LET'S SAY YOU DID NOT FILE IT IN FIVE DAYS BUT FILED THAT ON THE SEVENTH DAY, THEN WHY ISN'T THAT SUFFICIENT?
WHY DOES THE 1.500C APPLY?
WHAT IS IN CHAPTER 51 THAT WOULD PROHIBIT THAT?
>> CHAPTER 51 AND SUB1 SAYS IF YOU -- THE FIRST ASPECT IS THAT ALL THE FENCES NEED TO BE RAISED, ALL THE FENCES OF LAW OR FACT SHALL BE RAISED IN AN ANSWER WHICH SHALL BE FILED WITHIN FIVE DAYS.
AS THE JUDGE POINTS OUT THE STATUTE REFLECTS A MANDATORY LANGUAGE.
THE SECOND PART OF THAT IS THAT NO OTHER PLEADINGS ARE PERMITTED.
WHAT YOU ARE SUGGESTING IS, IF I

UNDERSTAND CORRECTLY, IF THEY
WERE TO MAKE THAT ONE PLEADING
BUT MAKE IT TWO DAYS LATER, THEN
1.500C APPLIES IN OUR POSITION
WOULD BE UNDER THE STATUTORY
BEEN ADOPTED, IT SHOULDN'T
ALTHOUGH BEING A HARSH RESULT,
WE HAVE REPEATEDLY DEALT WITH
SITUATIONS WHERE SIMILAR TYPES
TIMEFRAMES SET BY THE
LEGISLATURE HAVE NOT GIVEN WAY
TO THE FLEXIBILITY IN CASES
INVOLVING --
>> UNDER THIS CASE, WHY THEN, IT
SEEMS TO ME THAT BECAUSE YOU
FILED THIS EJECTMENT AND THERE
WAS, WHETHER THE COURT DID IT OR
YOU DID IT, THERE WAS AN
AMENDMENT THAT CHANGED THIS FROM
A EJECTMENT ACTION TO A LANDLORD
TENANT ACTION, WHY DIDN'T THE
FIVE DAYS START THEN?
>> YOUR HONOR.
>> IF WE ACCEPT THE APPELLATE
ARGUMENT THAT THIS WAS IN FACT A
EJECTMENT ACTION AND THERE WAS
AN AMENDMENT, THEN SHOULDN'T THE
FIVE DAYS HAVE STARTED ONCE THAT
ACTION WAS AMENDED?
>> YOUR HONOR, UNDER THAT
SCENARIO, WE STILL WOULD SAY
THAT THE FIVE DAYS, THIS IS
PROCEEDING AS A SUMMARY
PROCEDURE.
[INAUDIBLE]
>> WHICH ALSO SAID EJECTMENT,
RIGHT?
>> JUST OUT OF CURIOSITY, WHY
WAS THE $95,000 DEPOSITED IN
DADE COUNTY?
>> BECAUSE THERE WAS AN ACTION
PREVIOUSLY ON THE ENFORCEMENT OF
THE CONTRACT, THE CONSEQUENCE OF
DAMAGES FLOWING FROM THEIR
REFUSAL TO LEAVE WHEN THEY WERE
SUPPOSED TO.
THAT HAS BEEN FILED IN
MIAMI-DADE COUNTY.
WHAT WE ARE PURSUING HERE IN
BROWARD COUNTY WAS RECOVERY OF
THE PREMISES.
>> WHERE DOES THAT STAND?
>> I WAS NOT THE COUNSEL IN THAT
CASE.

>> THAT WAS GOING ON IN DADE COUNTY AND YOU ARE IN BROWARD COUNTY.
>> THAT IS RECOVERING THE PREMISES.
THE POLICY OF ONE POINT IN THE TRANSCRIPT SAID ARE YOU LOOKING FOR DAMAGES AND ALTHOUGH YES, THERE CLEARLY WAS A STATEMENT FOR DAMAGES AND WE MADE IT VERY CLEAR WE WERE NOT FOR SUING THEM.
>> IT WAS ONLY AT THAT HEARING.
>> YES YOUR HONOR.
>> LET ME ASK YOU, SECTION 83.21, WHICH CONCERNS REMOVAL OF THE TENANT, STATE SPECIFIC THINGS THAT A COMPLAINT NEEDS TO ALLEGE WHEN YOU ARE TRYING TO REMOVE UNDER SECTION 51.001 AND IT SAYS THAT IF THE COMPLAINTS STATE THE FACTS WHICH AUTHORIZE REMOVAL DESCRIBING THE PREMISES AND THE PROPER COUNTY AND IS ENTITLED TO THE SUMMARY PROCEDURE PROVIDED IN 510011.
IT SEEMS TO ME THAT IF YOU ARE GOING TO UTILIZE THE SUMMARY PROCEDURE, THAT NOT ONLY WOULD JUSTICE REQUIRE, BUT WHAT THE STATUTE REQUIRES IS THAT THE COMPLAINT IDENTIFIES THAT YOU ARE PROCEEDING UNDER SECTION 51.011.
SO IF THE COMPLAINT DOES NOT SAY THAT, AS OTHERS SAID SAID, DON'T YOU AT LEAST HAVE TO AMEND THE COMPLAINT TO STATE THAT BEFORE THE SECTION 51.011 PROCEDURES CAN BE INVOKED?
>> YOUR HONOR, OUR POSITION HAS BEEN THAT BY VIRTUE OF THE -- AS WELL AS THE ALLEGATION OF THE COMPLAINT, ALTHOUGH NOT SPECIFYING OUT, AND WE WILL CONTINUE TO DOMINATE THE ALLEGATION PROCEEDING UNDER CHAPTER 51, HOWEVER WE DID NOT SPECIFY ALL THE FILINGS OF CHAPTER 83 AND WE DID IDENTIFY THE PROPERTY, IDENTIFY AND WHY WE ARE ENTITLED TO RECOVER THIS PROPERTY UNDER THE LEASE.
>> WHEN YOU DENOMINATED THE

COMPLAINT, YOU ONLY HAVE ONE COUNT AND THIS COUNT ONE EJECTMENT, YOU SEEM TO BE TELLING THE PUBLIC THAT SPECIFICALLY YOU ARE NOT PROCEEDING UNDER CHAPTER ONE, YOU ARE PROCEEDING UNDER EJECTMENT AND EVEN THOUGH YOU ARE ENTITLED TO PROCEED AFTER -- THE U.S. TO AMEND THE COMPLAINT TO PUT THE DEFENDANT, THE COURT, THE PUBLIC, EVERYBODY ON NOTICE THAT IS WHY YOU ARE PROCEEDING AND THESE, AS YOU SAY HARSH MEASURES ON PROCEDURES, ARE NOW GOING TO BE INVOKED.
>> YOUR HONOR, AGAIN OUR POSITION WOULD BE THAT. [INAUDIBLE]
WE DID PUT THE DEFENDANT AS WELL AS THE COURT, BECAUSE THE COURT KNEW WHERE WE WERE GOING ON NOTICE OF THIS BECAUSE THE ALLEGATIONS OF THE COMPLAINT WERE THAT OF RECOVERY OF REAL PROPERTY AND A LANDLORD TENANT CONTRACT.
LET ME MAKE IT CLEAR, WHEN YOU RECEIVE THE MOTION TO DISMISS FROM OPPOSING COUNSEL, THIS RECORD WILL SHOW THAT YOU REPRESENT, YOU RECEIVE THAT MOTION AND YOU SAID YOU DON'T UNDERSTAND, WE ARE NOT PROCEEDING UNDER A JUDGEMENT.
WHAT WE ARE PROCEEDING UNDER IS 51 SO THAT THE TIME COUNSEL SHOWED UP TO THE HEARING, COUNSEL WAS AWARE OF WHAT YOU TOLD THE COURT?
IS THERE ANYTHING IN THE RECORD THAT SHOWS THAT?
>> I DON'T BELIEVE THERE'S ANYTHING IN THE RECORD BUT I CAN'T MAKE THAT REPRESENTATION IN COURT.
>> THERE'S NOTHING THE COURT WAS MADE AWARE OF THAT BEFORE COUNSEL SHOWED UP AT THAT HEARING THAT HE WAS FACING NOT A MOTION FROM YOU BUT A MOTION FROM THE COURT TO AMEND THE COMPLAINT?
>> YOUR HONOR IN ACTUALITY THE

MOTION TO DISMISS, IT LACKED JURISDICTION AND THIS WAS NOT PROPER FOR A -- EJECTMENT.
>> THERE ARE TWO GROUNDS, ONE THAT WAS EJECTMENT, THE COURT DID NOT HAVE JURISDICTION ON IT AND NUMBER TWO A FIVE DAY PROCEDURE, THE FIVE DAY PROCEEDING, THOSE WERE THE TWO. AND THE MOTION TO DISMISS.
>> I BELIEVE SO.
>> JUST ONE LAST QUESTION.
IF WE JUST CLOSE OUR EYES AND HOLD OUR NOSE AND SAY THIS IS IN DEFAULT, IT'S OKAY, HOW CAN YOU GIVE A DEFAULT ON A LETTER FROM A LAWYER THAT IS NOT SIGNED BY A CLIENT WHEN IT GOES WITH AN INTEREST IN LAND, AND HOW CAN IT BE ONE THAT SHOWS ON ITS FACE THAT THIS DEAL SAYS YOU GIVE US $95,000, PUT IN MY LAWYERS TRUST ACCOUNT, THAT NEVER HAPPENED BUT WE WANT TO CHANGE TERMS.
EVEN IF YOU ENTER A DEFAULT, DOESN'T FLORIDA LAW SAY YOU ONLY GET A DEFAULT WHEN YOU INVALIDLY FLED AND IF THERE IS A DOCUMENT YOU ATTACH DON'T SHOW YOU ARE ENTITLED TO RELIEF, YOUR DEFAULT IS A MEANINGLESS NOTHING.
>> YOUR HONOR, THE ALLEGATIONS OF THE COMPLAINTS SHOW, WHICH IS WHAT WE HAVE IN THE RECORD, IT IS THAT THERE WAS THIS AGREEMENT WHICH IS REFLECTED ALSO IN THE LETTER.
>> IS THAT FROM A LAWYER?
>> THE LAWYER.
>> THERE IS NO SIGNATURE OF A PARTY.
>> THE LAWYER CONVEYED ON BEHALF OF HIS CLIENT A COUNTEROFFER TO AN ORIGINAL OFFER.
IF WE WERE TO, AND I KNOW THIS HAS NOT BEEN RAISED AND CERTAINLY NOT BEFORE THE COURT BUT THE ISSUE THERE WAS WHETHER A LAWYER WHO CAN ASSIGN HIS CLIENT AND IF EVERY SETTLEMENT OFFER.
>> SETTLEMENT OFFER?
THAT IS NOT A SETTLEMENT OFFER, IT IS A CONTRACTUAL

NEGOTIATIONS.
>> THEY SENT A LETTER BACK SAYING WE WILL TAKE 90,000.
>> NOT THEY, A LAWYER SIGNED IT. YOU ARE MISSING THE WHOLE POINT. BEFORE YOU SIT DOWN, I WOULD LIKE TO, BECAUSE DID YOU SAY THERE WAS A DIFFERENT ACTION ENDING IN DADE COUNTY THAT WAS FILED BEFORE OR AFTER THIS ACTION?
>> I BELIEVE IT WAS FILED PRIOR TO THE ACTION IN DADE COUNTY.
>> WHAT WAS THE ACTION IN DADE COUNTY?
>> THAT WAS THE REASON CONTRACT ACTION.
>> WHAT CONTRACT?
>> THE TERMINATION AGREEMENT. THE LETTER AGREEMENT.
>> WHAT YOU DID WAS YOU BIFURCATED THE ACTION BECAUSE YOU FILED AN ACTION FOR EJECTMENT AND BROWARD COUNTY AND YOU INADVERTENTLY ALLEGED DAMAGES BUT THEN YOU WENT TO STRIKE THAT AT THE HEARING AND THEN YOU FILED A COMPLAINT FOR DAMAGES IN THE CIRCUIT COURT IN DADE COUNTY.
>> YES.
WHAT WE WANTED TO DO WAS RECOVER POSSESSIONS UNDER THE SUMMARY PROCEDURE IN BROWARD COUNTY WHERE THE PROPERTY WAS LOCATED.
>> WHAT WAS THE STATUS OF THE BREACH OF CONTRACT ACTION AT THE TIME YOU FILE FOR EJECTMENT EM BROWARD?
>> BOTH ACTIONS HAVE BEEN AMENDED FAIRLY CLOSE IN TIME.
>> SO THE ACTION IN DADE WAS NOT AN ISSUE YET?
CERTAINLY NOT RESOLVED?
>> NO.
>> HOW DID YOU DEPOSIT THE MONEY IN THE REGISTRY, DID YOU GIVE IT TO THE CLERK?
AT THE SAME TIME AN ACTION WAS FILED?
THE COMPLAINT SAYS THE MONEY HAD ALREADY BEEN DEPOSITED.
>> WHEN THE MIAMI DADE ACTION WAS FILED, TO SATISFY THE TENDER

BECAUSE THE TENDER HAD BEEN
REFUSED BY COUNSEL FOR THE
TENANT, WHEN THEY FILE THAT
ACTION TO SATISFY THE TENDER
REQUIREMENT.
>> WHAT OF THE CIRCUIT COURT IN
DADE COUNTY AND THAT RULING
THERE WAS NO BREACH OF CONTRACT
AND THERE WAS NO ENFORCEABLE
CONTRACT AND THAT THEY STILL
HELD POSSESSION UNDER THE LEASE?
I AM HAVING TROUBLE WITH UNTIL
YOU RESOLVE THAT ACTION, WHETHER
YOU HAVE THE RIGHT TO IMMEDIATE
POSSESSION?
>> YOUR HONOR, THE -- COULD NOT
HAVE BEEN BEFORE THE COURT.
>> I'M NOT SAYING THE COUNT WAS
BEFORE THE COURT.
I AM SAYING YOUR WRITING IN
POSSESSION -- UPON A COURT
FINDING THAT ALLEGED CONTRACT
WAS ENFORCEABLE.
DID IT NOT?
>> YES IT DID.
>> HOW DO YOU GET A COUNTY COURT
IN ONE COUNTY RULING ON THAT
ISSUE WHAT YOU HAVE A PENDING
ACTION ON THAT SAME ISSUE IN THE
CIRCUIT COURT IN ANOTHER COUNTY?
>> YOUR HONOR, THE COUNTY, AND
THAT IS THE PROBLEM WE HAD THAT
WAS CREATED BY THEIR FAILURE TO
ASSERT.
HAD THEY ASSERTED THE DEFENSE
SAID THERE WAS NO TERMINATION
AGREEMENT THIS MAY HAVE BEEN A
VERY DIFFERENT SITUATION.
THE COURT DID NOT HAVE
JURISDICTION.
THE COURT REJECTED THAT
CONTENTION AND THEN LEFT WITH
NOTHING ELSE, SHOULD HAVE
DEFAULTED INSTANTLY.
>> THEY DID FILE AN ANSWER AND
THE JUDGE SAID AT THAT HEARING,
YOU NEED TO FILE SOMETHING.
THEY FILED AN ANSWER, THEY FILED
AN ANSWER AND THE ANSWER SAID
THERE'S NO TERMINATION
AGREEMENT, AS FAR AS ANYTHING
HERE.
ARE YOU SAYING THAT IS NOT IN
THIS RECORD?

I READ IT LAST NIGHT.
>> RESPECTFULLY YOUR HONOR THERE IS NOTHING WITHIN THE RECORD -- GIVEN THEM LEAVE TO FILE ANYTHING.
>> SOMEBODY SAID, I'M GOING TO LET YOU FILE SOMETHING.
DID THEY NOT FILE AN ANSWER IN THIS CASE?
>> THEY DID FILE AN ANSWER BUT THEY SHE DID NOT GRANT THEM LEAVE.
>> THEY SAID THEY WERE GOING TO FILE SOMETHING SHE SAID I AM NOT SURE OF THAT IS GOING TO WORK OR NOT.
YOU CAN GO AHEAD AND FILE WHERE YOU WANT.
I KNOW IT WILL HAVE LEGAL SIGNIFICANCE BECAUSE BE EXACTLY IN SHE WAS CORRECT IN THAT UNDER CHAPTER 51, SHE DID NOT HAVE ANY LEGAL EVIDENCE BECAUSE THE LANGUAGE IS CLEAR, NO OTHER PROCEEDINGS ARE PERMITTED.
I KNOW THAT IS NOT OVER THAT TIME, WHAT I WOULD LIKE TO DO IS ADDRESS THE ISSUE ON THE CERTIFIED QUESTION JUST VERY BRIEFLY.
>> ONE MINUTE.
GO AHEAD.
>> THE STATUTORY SCHEME THAT WE HAVE ADOPTED THAT IS REFLECTING COUNTLESS CASES WHETHER THEY BE IN THE COUNTY CASES, CASES INVOLVING SPECIFIC RULES RELATING TO HEARSAY IN CERTAIN CONTEXTS, THE CASE THAT WE CITED ALL TALK ABOUT THE RULES OF CIVIL PROCEDURE APPLYING WHERE THERE IS A SPECIFIC CONFLICT WITH A SPECIAL STATUTORY PROCEEDING.
THIS IS A SPECIAL STATUTORY PROCEEDING.
THE SPECIAL STATUTORY PROCEEDING HERE IS ALL THE DEFENSES IN FIVE DAYS AND NO OTHER READINGS ARE PERMITTED.
THAT WOULD SPECIFICALLY OVERCOME THE GENERAL OF 1.500 WHICH SAYS THAT ANY PARTY MAY LEAD BEFORE DEFAULT THE SENATOR.

AS THE POINT -- COURT POINTED
OUT THOSE ANSWERED REFLECTED,
THE RULES TO APPLY.
FOR EXAMPLE COMPUTATION OF TIME.
AND WE ARE IN FACT THE WHAT
WOULD CAUSE THE THE FAULTIER
BECAUSE SUBC DOES NOT MEAN SUBB
IS NOT PRECEDED BY STATUTE AND
SUBC SAYS THAT A DEFAULT MAY BE
ENTERED WHEN THE PARTY HAS
OTHERWISE THEY'LL DO PLEAD OR
OTHERWISE DEFEND.
THE ONLY DEFENSE THAT HAS BEEN
ASSERTED HAD BEEN REJECTED.
THERE IS NOTHING LEFT FOR THE
COURT TO DO BUT TO ENTER DEFAULT
SO ON THE PROCEDURAL ISSUE WHICH
HAD BEEN BEFORE THE COURT, THE
DEFINING OF THE -- IN THE SUB1
CASE IS CONSISTENT WITH BOTH THE
RULE, CONSISTENT WITH ALL THE
CASES WE HAD DEALING WITH
STATUTORY PROCEEDINGS AND WHAT
WE WOULD ASK IS THAT THE COURT
AFFIRMED ON THIS CONFLICT ISSUE,
AFFIRMED THE DECISION OF THE
FOURTH DISTRICT COURT OF APPEAL
AND OVERRULE THE DECISION.
THANK YOU YOUR HONOR.
>> THANK YOU.
>> THE LAST STATEMENT, IF THE
COURT LOOKS AT CASES THE COUNCIL
CITED YOU WILL SEE THAT IN EACH
OF THOSE CASES THE STATUTORY
SCHEME THAT IS BEING DEALT WITH
ALL SAYS THAT THE COURT SHOULD
DO SOMETHING AS A CONSEQUENCE OF
THE FAILURE TO A TIMELY PLEAD.
EVEN IN THE NEW YORK CASE IT
TALKS ABOUT THE STATUE, WITHIN
FIVE DAYS FROM THE DATE OF
SERVICE, THE JUDGE RENDERED
JUDGMENT IN FAVOR OF THE
PETITION.
AS MANY OF THE JUSTICES HAVE
ALREADY RECOGNIZED, THE
COMPLAINT THAT WAS FILED,
DESPITE BEING -- ALSO DID NOT
EVEN ATTACH THE LEASE AGREEMENT,
SO THE ARGUMENT WAS MADE, THIS
IS AN ACTION THAT IS FOUND IN
LANDLORD TENANT, ASIDE FROM THE
ALLEGATIONS THAT IT SHOULD HAVE
BEEN THERE, THE LEASE AGREEMENT

ITSELF WAS NOT EVEN ATTACHED.
NOW, THEY CLAIM IN COUNSEL, WHETHER WE ADMITTED THAT TO PROCEEDINGS WERE GOING ON SIDE BY SIDE, NO DETERMINATION IN THE PROCEEDING FILED IN DADE COUNTY AT THAT POINT HAD BEEN MADE THAT THIS LEASE WAS VALIDLY TERMINATED SO THE RESULT OF THIS IS MY CLIENT GETS SERVED WITH A FIVE DAY SUMMONS AND WITHIN 30 DAYS SHE LOSES POSSESSION OF THE PROMISES.
AS IT STANDS NOW, SHE HAS NO CLAIM FOR POSSESSION AND THE CONSEQUENT HERE IS THAT THIS JUST -- INJUSTICES NOT RIGHTED, SHE HAS LOST EVERYTHING.
THIS IS AFTER BEING IN THE PREMISES FOR OVER SIX YEARS.
>> THE ISSUE YOU HAVE RAISED BEFORE US IS A CHAPTER 51 ISSUE AND THE CONFLICT BETWEEN THIS CASE AND CROCKER.
YOU HAVE NOT RAISED MOST OF THE ISSUES WE HAVE TALKED ABOUT.
>> THAT WAS THE ISSUE THAT WAS CERTIFIED AS BEING IN CONFLICT AND WE DO NOT BELIEVE THE ISSUE IS BEFORE THIS COURT, ALTHOUGH WE DID AT EVERY OTHER APPELLATE LEVEL.
>> THAT IS CORRECT.
>> SO WE WOULD ASK THAT THIS COURT REVERSE THE DECISION OF THE FOURTH DISTRICT ON A REVIEW BASIS.
EITHER DISMISS IT OR SEND IT BACK TO THE TRIAL COURT FOR PROCEEDINGS.
THANK YOU VERY MUCH.
>> WE WILL TAKE THIS UNDER ADVISEMENT AND WE WILL STAND IN RECESS UNTIL TOMORROW MORNING.
>> ALL RISE.
THE COURT STANDS IN RECESS.