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Jackson-Shaw Co. v. Jacksonville Aviation Authority

SC07-2235

THE NEXT CASE ON THE COURT'S
AGENDA IS JACKSON-SHAH COMPANY
VERSUS JACKSONVILLE AVIATION
AUTHORITY.

>> MAY IT PLEASE THE COURT.

GOOD MORNING.

I'M JOHN MILLS OF MILLS, CREED,
AND GOUDY ON BEHALF OF JACKSON
SHAH COMPANY.

WITH ME AT COUNSEL IS MICHAEL
TANNER.

>> MR.^MILLS, BEFORIOBEGIN I
WONDER IF YOU ALL HAVE
DISCUSSED OR CONSIDERED WHETHER
INDEED THIS IS THE TRADITIONAL
APPROPRIATE QUESTION TO BE
CERTIFIED.

FROM THE CIRCUIT COURT OF
APPEALS.

WHERE THEY ARE SAYING WE DON'T
KNOW WHAT THE LAW OF FLORIDA IS
AND WOULD YOU JUST GIVE US A
STATEMENT OF THE LAW OF FLORIDA
SO WE CAN APPLY IT TO OUR CASE.

SEEMS TO TAKE THAT SECOND STEP
TOO.

DECIDE THE CASE FOR US.

YOU KNOW, THE LAW OF FLORIDA IS
SET OUT IN THE CONSTITUTION OR
WHATEVER AND WOULD YOU PLEASE
APPLY THE LAW OF FLORIDA TO THE
FACTUAL QUESTION THAT WE HAVE
BEFORE US, AND WE, WE GET A
NUMBER OF CERTIFIED QUESTIONS
FROM THE CIRCUIT COURT OF
APPEALS BUT THIS ONE SEEMS TO
COME THE CLOSEST TO RESOLVING
THE CASE AS OPPOSED TO JUST
GIVING A CLARIFICATION OR
STATEMENT OF THE LAW OF
FLORIDA.

DO YOU HAVE A VIEW OF THAT.

>> I DO AND MY VIEW IS
CONSISTENT WITH WHAT YOU'RE

EXPRESSING.

WE DID NOT ASK FOR
CERTIFICATION.

IN FACT A YEAR AGO TODAY WE
ARGUED THIS CASE IN THE 11th
CIRCUIT AND THE QUESTION CAME
UP SHOULD WE CERTIFY THIS
AND MY RESPONSE WAS NO YOU
SHOULDN'T THE BANNON AND WEST
PALM BEACH CASES SAID IF IT'S A
LEASE WITH FINANCIAL
RESPONSIBILITIES IT'S
PROHIBITED.

AND THAT'S WHAT WE HAVE.

>> THERE YOUR POSITION THAT
THERE'S CONTROLLING PRECEDENT
BUT IT'S A MISAPPLICATION BY
THE DISTRICT COURT.

>> IT IS NOW I DID FOLLOW UP
THAT UP IF YOU HAVE ANY DOUBT
IF THAT LANGUAGE DOESN'T SEEM
CLEAR ENOUGH TO YOU THEN YOU
CAN CERTIFY IT.

>> BUT THE DISTURBING THING IS
THAT AT THE END OF -- FIRST OF
ALL, THERE'S -- NOT IN YOUR
FAVOR BUT WHAT I CONSIDER A
VERY COMPREHENSIVE
WELL-WRITTEN, WELL-REASONED
OPINION AFTER A FOUR-DAY TRIAL
BY THE FEDERAL DISTRICT COURT
JUDGE THAT SEEMS TO HAVE GONE
INTO WHETHER THERE IS INCURRING
EVENT AND WHETHER THERE'S A
MONETARY OBLIGATION BUT THEN
THE 11th CIRCUIT AT THE END
SAYS THERE'S A QUESTION OF
WHETHER THEY INCURRED A
MONETARY OBLIGATION.

THAT SEEMS TO ME THAT THEY'RE
NOT EVEN ASKING JUST SORT OF
DOVETAILING ON WHAT YOU'VE
SAID.

THAT WOULD BE US REVIEWING
JUDGE CORGON'S ORDER TO DECIDE
WHETHER UNDER THE FACTS OF THIS
CASE IT WAS A MONETARY
OBLIGATION OR NOT.

WHERE --

>> I THINK YOU'RE
MISINTERPRETING BOTH THE
LANGUAGE OF THE DISTRICT JUDGE
AND THE 11th CIRCUIT WHEN THEY
ARE TALKING ABOUT WAS THERE A

FINANCIAL OBLIGATION.

THERE WAS A VERY DETAILED ORDER AND WE ACCEPT EVERY FINDING OF FACT IN THAT ORDER AND THE FINDINGS OF FACT WERE INCLUDED THAT THE JACKSONVILLE AVIATION AUTHORITY IS GIVING 328 ACRES OF LAND FOR NOTHING INITIALLY. THEY MAY GET ZERO OUT OF THIS.

>> BUT THAT WAS ALREADY LITIGATED AND YOU'RE JUST SAYING YOU'RE A COMPETITIVE THAT WANTED THIS PROPERTY AND YOU DON'T LIKE THIS DEAL.

>> NO I AM SAYING -- I AM SAYING THAT THAT FACT, THE FACT THAT THEY HAVE CONTRACTUALLY BOUND THEMSELVES TO BUILD A \$750,000 ROAD.

>> DIDN'T THEY ALREADY HAVE TO DO THAT?

>> NO, THEY DID NOT.

THEY HAD BUDGETED IT TO DO IT ANYWAY, BUT THEY HAD NO CONTRACTUAL OBLIGATION.

IF THE COST OF JET FUEL SOARED AS IT HAS, AND THEY DECIDED THEY NEEDED TO MAKE CONCESSIONS TO THE AIRLINES TO KEEP AIRPORTS FLOWING.

BUT NOW THEY HAVE CONTRACTUALLY BOUND THEMSELVES TO PUT MONEY INTO THIS PROJECT.

>> HAS THIS COURT DECIDED A CASE ON THIS CONSTITUTIONAL PROVISION?

>> THE COURT HAS DECIDED TWO CASES THAT INVOLVE LEASES BUT THEY WERE STRAIGHT LEASES WITH FIXED RENT, AND IN BOTH CASES, THE COURT MADE CLEAR IF THERE WAS AN ADDITIONAL FINANCIAL OBLIGATION, ANY KIND OF AN OBLIGATION ON BEHALF OF THE LEASER, THAT WOULD VIOLATE THE CONSTITUTION OR AT LEAST POTENTIALLY RAISE THE PUBLIC PARAMOUNT PURPOSE REQUIREMENT.

>> WHAT HAPPENS IF [INAUDIBLE]

AVIATION AUTHORITY --.

>> WELL, THEY CAN BE SUED.

THEY DON'T HAVE ANY -- THE, THERE IS PROTECTION FOR THE,

FOR MAJESTIC IN THAT THE ONLY
THING THEY CAN BE SUED FOR THE
VALUE OF THEIR INTEREST IN THE
PROPERTY.

WHICH COULD BE, COULD BE
NOTHING.

IF THEY'RE IN DEFAULT.

>> DOESN'T THAT MEAN THE
LEASE -- [INAUDIBLE]

>> NO I DON'T KNOW IF YOU COULD
GET SPECIFIC PERFORMANCE BUT I
THINK THEY COULD GET A MONEY
JUDGMENT FOR \$750,000 AND BUILD
THE ROAD THEMSELVES.

THERE'S CERTAINLY NOTHING TO
SUGGEST THEY COULD NOT.

THIS IS A CONTRACTUAL AGREEMENT
TO DO THAT AND THE POINT I WAS
TRY TO MAKE TO YOU, JUSTICE
PARIENTE IS THAT THE FINDINGS
OF FACT ARE THAT THESE THREE
THINGS ARE REQUIRED BY THIS
AGREEMENT.

YOU PUT THE LAND, BANK THE LAND
AWAY FOR UP TO 15 YEARS.

YOU BUILT A \$750,000 ROAD AND
THEY OFFERED UP 1.8 MILLION
WORTH OF OTHER PROPERTY TO
OFFSET AS WETLANDS MITIGATION.

THE LEAGUE QUESTION THAT THE
JUDGE QUESTIONED THAT IS NOT
THE KIND OF FINANCIAL
OBLIGATION THIS COURT WAS
TALKING ABOUT.

THE 11th CIRCUIT SAID THAT'S
NOT CLEAR TO US.

AND MY ARGUMENT IS THAT IT IS.

>> THERE'S TWO PARTS.

THERE'S THE JOINT OWNER PART.
JACKSONVILLE AVIATION AUTHORITY
IS THE OWNER OF THIS PROPERTY,
AND THEY ARE THE LEASER.
THE TENANT.

CORRECT?

>> THERE IS A LANDLORD AND
MAJESTIC IS THE TENANT.

>> YOU SEE -- SO LET ME MAKE
SURE BECAUSE THAT'S PART OF IT
I THOUGHT SO JOINT OWNER
ISSUE OF JOINT OWNER IS NOT
BEFORE US.

>> NO IT ABSOLUTELY IS BEFORE
YOU, YOUR HONOR.

WE ARE NOT SAYING THEIR JOINT

OWNERS OF THE PROPERTY PER SE.
THEY DO HAVE SOME RIGHTS IN
COMMON IN THE PROPERTY.
THEY ARE JOINT OWNERS OF THE
BUSINESS OF THE PROFITS.
THEY SPLIT THE PROFITS.
THERE IS A REVENUE STREAM THAT
COMES OUT OF THIS PROPERTY.
>> WHAT'S THEIR OBLIGATION WITH
THE REVENUES?

DO THEY HAVE -- IF THERE'S
LOSSES DO THEY HAVE TO
CONTRIBUTE TO THE LOSSES?

>> OUT OF THE REVENUE 100%,
50%.

EVERY DOLLAR THAT IS SPENT BY
MAJESTIC REDUCES THE RENT DOWN
TO THE --

>> THAT'S NOT -- THEY ARE NOT
INCURRING DEBT THROUGH THIS.
THEY ARE NOT GOING TO HAVE TO
-- IF THERE'S A LOSS THEY GET
NO LESS OR LESS RENT ISN'T THAT
WHAT JUDGE CORGON FOUND.

>> THAT IS CORRECT AND OUR
POSITION IS THAT THAT IS A
LOSS.

IT IS NOT A LOSS, IF THEY GO
SOUTH, THE AVIATION AUTHORITY
DOESN'T HAVE TO COME OUT OF
POCKET AND PAY MONEY.
IT IS ALREADY PAID THE
EQUIVALENT OF MONEY.
IT IS PUTTING VALUABLE PROPERTY
THAT IT COULD BE EARNING INCOME
OFF OF IT AND IT IS EARNING NO
INCOME OFF OF IT AT ALL FOR THE
FIRST FIVE YEARS.

>> NOW WHEN YOU SAY THAT IT
SEEMS TO ME THAT YOU ARE
LOOKING AT AND JUDGE -- IT'S
NOT BEFORE US WHETHER THIS WAS
IN THE CHARTER WHETHER THIS
SHOULD'VE BEEN OUT TO BID.
WHETHER IT'S A GOOD DEAL OR
NOT.

>> I AM NOT SAYING THAT,
JUSTICE PARIENTE.
WHAT I AM SAYING IS THAT WHEN
THEY DO THAT, THEY ARE
INVESTING PUBLIC RESOURCES.
INTO THIS PROJECT.
THAT'S PART OF THE EQUATION.
THEY ARE PUTTING -- THEY HAVE

UNDER TAKEN A FINANCIAL
OBLIGATION TO HELP THIS GO
ALONG.

>> IF FOR EXAMPLE, SOMEBODY
GOES AHEAD AND THEY LEASE
PROPERTY AND CAN SOMEONE MAKE
THE ARGUMENT, OH, THERE
SHOULD'VE BEEN SOMEBODY ELSE
THEY COULD'VE GOTEN A HIGHER
RENT?

IS THAT NOW GOING TO BE
UNCONSTITUTIONAL THAT EVERY
DECISION MADE BY A GOVERNMENTAL
ENTITY AS TO WHAT THE RENT IS
GOING TO BE CHALLENGED UNDER
THIS CONSTITUTIONAL PROVISION?

>> NO, I THINK UNLESS THE RENT
WERE NOMINAL OR ZERO LENT THERE
WOULD NOT BE AN ARGUMENT IF
THERE WAS A FIXED RENT
COMPONENT BECAUSE THAT IS JUST
LIKE SELLING THE PROPERTY THEY
HAVE THE RIGHT TO SELL THE
PROPERTY AND WHATEVER PRICE WE
CAN'T COME IN AND SAY WELL THAT
WAS TOO CHEAP A PRICE.

IF THEY GIVE THE PROPERTY AWAY,
WHERE THEY ARE AIDING, THEY ARE
USING PUBLIC FUNDS AND PUBLIC
PROPERTY TO AID A PRIVATE
CORPORATION, AND IT'S NOT AN
ARMS LENGTH TRANSACTION ACTION
WHERE THERE IS A PURCHASE OR
LEASE, THAT'S WHEN THIS
CONSTITUTIONAL PROVISION IS
TRIGGERED THEY ARE HELPING THIS
DEVELOPMENT AND THEY ARE
PUTTING THEIR INVESTMENT AT
RISK.

THEY ARE GOING TO GET BETWEEN
ZERO DOLLARS AND, JUST UNDER A
BILLION DOLLARS OVER 65 YEARS.

AND WHETHER IT'S ZERO, A
BILLION, OR SOMEWHERE IN
BETWEEN, DEPENDS ENTIRELY ON
ONE THING, AND THAT IS
MAJESTIC'S PROFITABILITY.

>> JUSTICE ANSTEAD HAS A
QUESTION.

>> SORRY.

>> GOING BACK TO YOU'RE LEADING
WITH THE, THE BUILDING OF THE
ROAD, \$750,000.

HOW IS THAT ANY DIFFERENT FROM ANY LANDLORD MAKING IMPROVEMENTS TO PROPERTY? BEFORE OR LEASING THE PROPERTY TO THE LESSEE.

>> I THINK IF THAT'S ALL YOU HAD IN THIS CASE AND YOU HAD FIXED RENT ON THE BACK END, IT WOULD BE NO DIFFERENT BUT THE POINT IS HERE THE AVIATION AUTHORITY IS PUTTING ITS RESOURCES IN EXCHANGE FOR PROFITS.

THE PROFITS.

THE PROFITS YOU HAVE GOT TO HAVE BOTH AND THAT'S THE VERY IMPORTANT POINT.

I REALLY WANT TO STRESS IS THAT THE RETURN ON THE INVESTMENT WHEN A LANDLORD PUTS MONEY INTO HIS PROPERTY OF THE LEASE THAT IS AN INVESTMENT.

HE IS HOPING TO MAKE MONEY COMING OUT OF IT.

IF IT'S FIXED RENT COMING BACK, THAT'S MORE LIKE AN ARM'S LENGTH PROVISION.

ONCE YOU ARE PARTICIPATING IN THE PROFITS NOW YOUR RETURN IS NOT FIXED IT IS NOT SOMETHING YOU HAVE NEGOTIATED AND YOUR RETURN DEPENDS ON THE SUCCESS OF THE PRIVATE VENTURE.

THAT IS PRECISELY WHY THIS CONSTITUTIONAL PROVISION WAS PUT INTO THE CONSTITUTION OVER 100 YEARS AGO.

>> THE CONSTITUTIONAL PROVISION DOES SPEAK IN TERMS OF BEING A JOINT OWNER.

DOESN'T TALK ABOUT BEING JOINT VENCHERS AND OTHER, ALL OF THE MULTITUDE OF WAYS THAT CREATIVE MINDS HAVE FOR WORKING AND SO YOU, I'M NOT SURE WHAT YOUR FINAL ANSWER TO JUSTICE PARIENTE'S QUESTION WAS, WHEN YOU ACKNOWLEDGED THAT THEY WEREN'T A JOINT OWNER BUT THEN YOU SAID THAT'S NOT THE END OF THE QUESTION.

HELP ME.

>> THEY ARE NOT A JOINT OWNER OF THE PROPERTY AND THEY'RE NOT

A JOINT OWNER OF THE CORPORATION.

THEY ARE A JOINT OWNER OF THE REVENUE STREAM.

THAT IS OUR ARGUMENT.

>> SOWHERE IN THE CONSTITUTIONAL PROVISION IS THERE A PROHIBITION OF THEM BEING INTITLED JOINTLY TO A VENTURE STREAM IN A VENTURE LIKE THIS.

>> THE CONSTITUTION FORBIDS THEM FROM DOING THIS.

>> WHAT IS THE SPECIFIC LANGUAGE, IS IT THE JOINT OWNER LANGUAGE?

>> YES, I THINK IT IS THE JOINT OWNER LANGUAGE.

THEY CAN'T BE A JOINTOWNER WITH A ENTERPRISE IN ANYTHING.

>> REALLY SEEMS TO BE YOUR ARGUMENT --

[INAUDIBLE]

IT SEEMS TO ME THOUGH THAT --

[INAUDIBLE]

[INAUDIBLE]

IS GOING TO GET A PERCENTAGE OF, OF REVENUES.

AND THE BUSINESS DOESN'T THRIVE, THEY GET NOTHING.

BUT THAT DOESN'T MAKE THEM A JOINT VENTURE.

EVEN THOUGH THEIR RENT'S GOING TO BE DETERMINED SOMETHING BY THE FLOW OF REVENUE.

SO THAT'S WHAT TROUBLES ME.

>> IT DOESN'T MAKE THEM A JOINT VENTURE BUT WHEN IT'S A GOVERNMENT ENTITY TVIOLATES THIS CONSTITUTIONAL PROVISION BECAUSE THE PURPOSE OF THE CONSTITUTIONAL PROVISION, AND IN THE DADE COUNTY PUBLIC CONSTRUCTION BOARD THEY SAY WE ARE NOT GOING TO LOOK AT JUST IS IT A STOCKHOLDER OR NOT WE ARE GOING TO LOOK AT THE CHARACTER OF THE RELATIONSHIP.

>> YOU WOULD SAY YOUR BOTTOM LINE IS THAT A GOVERNMENTAL ENTITY COULD NEVER ENTER INTO A GROSS REVENUE OR A PERCENTAGE OF REVENUE TYPE LEASE

ARRANGEMENT BECAUSE THAT'S ALWAYS SUBJECT TO BEING ZERO DEPENDING ON UPON THE MATHEMATICAL CALCULATIONS IT SEEMS.

>> I THINK THAT'S ABSOLUTELY CORRECT.

>> THAT'S WHATS YOUR RISAYING?

>> I THINK THAT'S CORRECT.

IT'S WORSE HERE BECAUSE WE ARE TALKING ABOUT NET REVENUES AS OPPOSED TO GROSS REVENUES.

>> DOESN'T THIS ALSO HAVE A BASE LUMP SUM OR FLAT FEE?

>> SURE, IT HAS A --

>> IT'S JUST NOT ENOUGH.

>> IT'S ONE-16th OF HOW --

HERE'S HOW, LET ME CAST IT IN MAYBE A DIFFERENT LIGHT SO YOU CAN SEE THE LOSS OF THE JACKSONVILLE AVIATION AUTHORITY.

YOU READ THEIR BRIEF.

THEY SAY WE AGREED TO THIS, WHICH WE DON'T THEY SAY THIS IS AN AGREEMENT WHEREBY THEY WILL MAKE \$900 MILLION OVER 65 YEARS.

THAT'S WHAT THEY ANTICIPATE.

THAT'S WHAT THE PRO FORMA.

THAT'S WHY THEY DID THIS BECAUSE THEY WANT TO MAKE \$900 MILLION OVER THE TERM OF THIS LEASE.

THEY'RE NOT GOING TO.

UNLESS IT IS FULLY PROFITABLE TO ALL THE OPTIMISTIC EXPECTATIONS OF THE PRIVATE DEVELOPER.

SO EVERY MISTAKE OR MISCALCULATION BY MAJESTIC, ANYTHING FROM THE PRIVATE MARKET THAT AFFECTS IT, THEY GET A BAD INTEREST RATE, THEY MAKE A WRONG DECISION, THEY HIRE A BAD CONTRACTOR, THEY CAN'T LEASE IT UP, ANY OF THOSE THINGS THAT HAPPEN, THAT \$900 MILLION THAT THE JACKSONVILLE AVIATION AUTHORITY IS COUNTING ON GETTING OUT OF THIS --

>> GOVERNMENT LIKE EVERYBODY ELSE IS ENTITLED TO ENTER INTO A BAD DEAL.

WE, WE DON'T SUPERVISE THE DEALS THAT THEY MAKE.

>> IT'S NOT THAT IT'S A BAD DEAL.

>> THEY CAN ENTER INTO, YOU KNOW, THERE'S ANOTHER ANSWER TO THAT SOMEPLACE ELSE.

BUT SO I'M NOT -- HAVING TROUBLE WITH YOU CRITIQUING THIS.

>> I DON'T --

>> MAYBE AN ABSOLUTELY PERFECT CRITIQUE OF, YOU KNOW, OF WHAT THEY'RE DOING AND DOWN THE ROAD, HEADS MAY ROLL OR UNFORTUNATELY MAYBE HEADS WON'T ROLL BUT THAT, THAT'S NOT REALLY A, AN ISSUE THAT THE CONSTITUTION'S CONCERNED WITH.

>> IT IS AND IT ISN'T.

MAKING A BAD DEAL IS NOT. MAKING A DEAL WHERE YOU ARE PUTTING PUBLIC PROPERTY AT RISK IN A PRIVATE ENTITY, AND PRIVATE ENTERPRISE, IS EXACTLY WHAT THE CONSTITUTION FORBIDS.

>> EVERY TIME GOVERNMENT LEASES PROPERTY AND BUYS IN TO THE, THE, THE PRIVATE DEVELOPERS CONCEPT OF, OH,, YOU KNOW, WHAT A WONDERFUL THING.

IT'S --

>> IT'S NOT AGREEING TO ANY RISK THERE.

IT'S AGREEING TO RECEIVE RENT.

>> HOW DO YOU DISTINGUISH THIS.

>> YOU DISTINGUISH IT THIS WAY, JUSTICE ANSTEAD.

IF IT'S A FIXED RENT YOUR AGREEMENT IS YOU GUYS ARE GOING TO PAY ME THIS AMOUNT OF MONEY AND I KNOW I AM GOING TO HAVE T. NOW THEY CAN BREACH THE AGREEMENT.

THERE'S RISK IN ANY AGREEMENT JUST LIKE WHEN YOU SELL.

THERE'S RISK THAT THEY ARE NOT GOING TO CLOSE.

>> YOU'RE SAYING --

>> THEY CAN ONLY ENTER INTO FIXED RENT DEALS?

THAT IS THAT THE AMOUNT OR CONTINGENCY OF THE RENT CAN'T DEPEND ON THE SUCCESS OF THE

VENCHER?

>> THAT IS MY ARGUMENT
ABSOLUTELY.

>> OKAY.

AND THAT'S THE NET -- THAT IS
YOUR NET ARGUMENT, IS THAT
RIGHT.

>> WELL, HOW ABOUT ENAN
AIRPORT?

>> GO AHEAD.

>> IS THERE A CASE THAT YOU'RE
RELYING ON FOR THAT
PROPOSITION.

>> WELL, I RELY ON THE PURPOSE
BEHIND THE CONSTITUTION AS THIS
COURT HAS SAID IN BANNON AND IN
THE WEST PALM CASE AND IN BOTH
OF THOSE CASES THEY SAID THE
PURPOSE IS TO AVOID PUTTING THE
MONEY INTO THE MARKET.

>> IS WHAT YOUR ARGUMENT IS IS
THAT THE DISTRICT COURT,
MISAPPLIED BANNON?

>> YES.

DIDN'T APPLY BANNON.

I MEAN, WELL, IT MISAPPLIED IT
TO THE EXTENT --

>> BECAUSE BANNON S IN YOUR
VIEW, SUBTLE PRECEDENT ON THIS
ISSUE.

THAT'S WHAT I UNDERSTAND THIS
CASE TO BE ABOUT AND I WANT TO
UNDERSTAND --

>> I'M NOT TRYING TO UNDO
BANNON.

I THINK IF IT'S FIXED RENT THAT
IS, THAT IS AN ARM'S LENGTH
TRANSACTION.

WE ARE NOT PARTICIPATING IN THE
SUCCESS OF YOUR BUSINESS.

IT'S TRUE IF THEIR BUSINESS
FAILS AND THEY DON'T PAY THE
RENT, IT'S GONE SOUTH, BUT YOU
HAVE A LEGAL REMEDY THERE.
HERE YOU HAVE AN AGREEMENT WHERE
IF THEY DON'T PAY THE RENT YOU
EXPECT, YOU CAN'T SUE THEM.
THAT WAS YOUR AGREEMENT.
YOU AGREED TO ASSUME THE RISK
THAT IT WAS GOING TO BE
SUBSTANTIALLY LESS THAN \$900
MILLION.

IF IT'S THE FIXED RENT COMPONENT

HERE, THE 1380, IF YOU MULTIPLY THAT OUT FOR ALL OF THE PROPERTY OVER 65 YEARS, THAT'S \$300 MILLION DOLLARS, SO OVER HALF A BILLION IS AT RISK AND IS AT RISK DEPENDING ON THE PROFITABILITY OF THIS ENTERPRISE.

>> BUT JUDGE CORRIGAN DISAGREED WITH YOUR ANALYSIS.

>> HE'S WRONG.

>> BECAUSE HE WAS APPLYING WHAT HE CONSIDERED TO BE THE PRECEDENT, CORRECT?

>> HE WAS APPLYING JOINT VENTURE LAW ON THE QUESTION.

AND JOINT VENTURE LAW REQUIRES A SHOWING OF CONTROL AMONG OTHER THINGS.

THERE IS VERY LITTLE CONTROL --

>> AND HE SPECIFICALLY DISTINGUISHED ON THIS POINT, THE BANNON DECISION, SO IT REALLY BOILS DOWN TO WHETHER HE WAS RIGHT OR WRONG ON THE APPLICATION OF BANNON.

>> YES, SIR.

>> LET ME FOLLOW THROUGH WITH THE QUESTION WITH REGARD TO THIS FIXED RENT AND PERCENTAGE OF REVENUES.

LET'S MOVE THIS INSIDE THE JACKSONVILLE AIRPORT FACILITY, AND YOU'VE GOT TWO GROUPS THAT ARE LOOKING TO PUT A RESTAURANT IN.

ONE'S GOING TO GIVE YOU FIXED DOLLARS, THE OTHER IS NOT SURE WHAT THEY'RE GOING TO DO, AND IT'S AN XYZ RESTAURANT, MAYBE IT'S GOING TO SUCCEED, BUT THEY'RE SAYING AFTER WE GET TO A CERTAIN POINT WHERE WE GET TO OUR COST OF BUILDING OUT THE SPACE, THAT WE'RE GOING TO GIVE YOU 25 PERCENT OF ALL REVENUES. THAT WOULD BE ILLEGAL, THEN, BECAUSE YOU'RE NOT ALLOWING IT TO BE BASED UPON A PERCENTAGE OF WHAT HAPPENS ON THE PROPERTY, THAT IT MUST BE FIXED.

>> THAT IS UNCONSTITUTIONAL BECAUSE THE AIRPORT AUTHORITY WOULD BE PARTICIPATING IN --

>> YOU'RE LETTING ESSENTIALLY THE PROPERTY STAND AS CREDIT FOR THE VENTURE ITSELF.

I MEAN, THAT'S THE BOTTOM LINE WE SEPARATE THROUGH THIS STUFF.

>> YEAH.

I THINK THAT'S THE BOTTOM LINE.

I THINK THAT THE MOST IMPORTANT FACT IN THIS CASE IS THAT THEY ARE PUTTING RESOURCES AT RISK, AND THE RETURN THEY WILL GET ON THOSE RESOURCES DEPENDS ENTIRELY ON THE MANAGEMENT.

IF YOU LOOK BACK TO BAILEY WHEN THE COURT FIRST ADDRESSED THIS AMENDMENT, I QUOTE THIS IN MY BRIEF.

THEY SAY THEY BECAME OWNERS OR OTHERWISE INVOLVED IN PRIVATE ENTERPRISE.

IT WAS RAILROADS, BANKS, AND OTHER COMMERCIAL INSTITUTIONS. MANY OF THESE INSTITUTIONS WERE POORLY MANAGED AND EITHER FAILED OR BECAME HEAVILY INVOLVED, AND AS A RESULT THE STATE, COUNTIES, AND CITIES INTERESTED IN THEM BECAME RESPONSIBLE FOR THEIR DEBTS AND OTHER OBLIGATIONS. SO HERE THEY'RE NOT BECOMING RESPONSIBLE FOR PAYING THE DEBTS DIRECTLY, BUT THOSE DEBTS COME RIGHT OUT OF ITS RENT.

AND A VERY IMPORTANT THING, AND MAYBE I DIDN'T MAKE THIS STRONG ENOUGH EMPHASIS IN MY BRIEF, BUT THEY HAVE THE RIGHT UNDER THIS AGREEMENT, MAJESTIC DOES, TO PLEDGE ITS INTEREST, ITS LEASE-HOLD INTEREST WHICH IS ONE OF THE STICKS THAT THE JACKSONVILLE AVIATION AUTHORITY SOLD TO THEM.

MAJESTIC CAN THEN TAKE THAT LEASE-HOLD INTEREST, PLEDGE IT TO A CREDITOR, AND IF THEY DEFAULT ON THEIR LOAN TO THAT CREDITOR, THE CREDITOR CAN FORECLOSE, AND NOW JACKSONVILLE AVIATION AUTHORITY ITS OBLIGATIONS TO PROVIDE ITS LAND ARE NO LONGER TO MAJESTIC, THEY ARE TO WHOEVER BUYS IT AT A FORECLOSURE SALE.

AND NOT ONLY THAT, THE COST OF RENT IS ABATED TO THE MINIMUM RENT.

YOU GET NO REVENUE RENT DURING THOSE PROCEEDINGS, AND AFTER THAT WHOEVER BUYS IT GETS TO RECOUP ALL THEIR COLLECTION COSTS.

>> SO YOUR BASIC PREMISE, THE BOTTOM LINE IS IT'S A TOTAL STRAW MAN ARGUMENT ABOUT JOINT VENTURES REALLY.

YOU LOOK AT THE FINANCIAL STRUCTURE OF THIS, AND THERE'S NOTHING LESS THAN GOVERNMENT PROPERTY BEING USED TO SUBSIDIZE THE PROFITABILITY OF THE DEVELOPER.

>> THAT'S RIGHT.

>> -- HAVE TO ACCEPT THAT.

>> THAT WAS THE TEST, THEN THIS COURT'S OPINIONS IN BANNON WOULD HAVE BEEN DIFFERENT. THEY WOULD HAVE NEVER HAD TO SAY THERE'S NO FINANCIAL OBLIGATION. YOU'D SAY YOU'RE NOT JOINT OWNERS, YOU'RE A LESSOR AND A LESSEE.

THAT'S DIFFERENT.

BUT IF THERE WERE A FINANCIAL OBLIGATION, I THINK THE NEXT STEP IS ARE YOU PUTTING IT AT RISK?

>> AND WITH THAT, YOU HAVE USED ALL OF YOUR TIME.

>> THANK YOU.

>> I'LL GIVE YOU A MINUTE FOR REBUTTAL.

>> THANK YOU VERY MUCH, I'D APPRECIATE IT.

>> GOOD MORNING.

>> GOOD MORNING.

CINDY LAQUIDARA ON BEHALF OF THE JACKSONVILLE --

>> WHY IS YOUR --

>> YES.

>> YOUR OPPONENT SAYS ESSENTIALLY YOU CAN'T USE PERCENTAGE OF REVENUE, PROFIT-TYPE DEALS IN DEALING WITH GOVERNMENT PROPERTY ON A LEASE-TYPE SITUATION. WHY IS HE WRONG ON THAT?

>> HE'S WRONG -- THANK YOU,
MR. JUSTICE.

HE'S WRONG BECAUSE WE'RE HERE
ONLY ABOUT ARTICLE 7, SECTION 10
OF THE FLORIDA CONSTITUTION.
AND IT WAS APTLY QUOTED BY
OPPOSING COUNSEL, AND THAT'S
CORRECT.

THE LAW, THE PASSAGE OF ARTICLE
7, SECTION 10 WAS TO PREVENT US
NOT FROM MAKING BAD, STUPID
DECISIONS, BUT THAT WE COULD,
CAN'T DO THAT UNDER
CONSTITUTIONAL LAW.

WHAT WE CAN DO IS PREVENT A
GOVERNMENT AGENCY FROM TAKING
ITS MONEY AND ITS RIGHTS AND
OBLIGATIONS, ITS GOOD CREDIT AND
PUTTING IT AT RISK TO PAY THE
DEBTS OF OTHERS.

AND IF ONE READS BAILEY
CAREFULLY, IF ONE READS BANNON,
IF ONE READS DADE, THEN WHAT
THIS COURT HAS CONSISTENTLY
LOOKED FOR IS WHETHER THE
GOVERNMENT PAYS NOT JUST ITS OWN
DEBT -- IT CAN MAKE MONEY, IT
CAN LOSE MONEY ON ITS PUBLIC
INTERESTS -- IS IT DOING IT FOR
SOMEBODY ELSE?

>> IS IT YOUR POSITION --

>> -- AN ELECTRIC BILL OF A
PRIVATE ENTITY.

NO, IT'S NOT.

>> IS IT YOUR POSITION --

>> YES.

>> SO YOUR POSITION IS THERE'S
SETTLED PRECEDENT THAT CONTROLS
THIS ISSUE?

>> ABSOLUTELY.

I READ BANNON TO DIRECTLY
ADDRESS THIS ISSUE, AND WHEN THE
COURT --

>> LET ME ASK YOU THIS
QUESTION --

>> YES, SIR.

>> -- THAT JUSTICE ANSTEAD
STARTED OFF WITH.

WHY SHOULD THIS COURT DECIDE
THIS CASE?

WHERE THE CONSTITUTION
SPECIFICALLY SAYS THAT WE ONLY
HAVE JURISDICTION TO DECIDE
ISSUES CERTIFIED BY THE UNITED

STATES SUPREME COURT OR THE
CIRCUIT COURT OF APPEAL, FEDERAL
CIRCUIT COURT OF APPEALS IN IT'S
A QUESTION THAT IS DECISIVE ON
THE CASE HAVING TO DO WITH
UNSETTLED PRECEDENT.

>> YES, MR. JUSTICE.

I HAVE, AS DID OPPOSING COUNSEL,
WE BOTH ARGUED CERTIFICATION.
THE UNDERSTANDING THAT I HAVE
AND THE REASON THAT WE'RE HERE
TODAY IS IF THIS COURT DOES SEE
A QUESTION IN APPLYING BANNON TO
A PARTICIPATING GROUND LEASE, IT
WOULD, COULD DEFINITELY
RESOLVE THE ISSUE.
REGARDLESS OF WHAT THE FLORIDA,
THE 11TH CIRCUIT STATED, IT
COULD WREAK HAVOC AMONG PUBLIC
GOVERNMENT CONTRACTING IF IT
INTERPRETED WHAT IT THOUGHT TO
BE BANNON.

>> LET ME ASK YOU THIS --

>> THAT'S THE BEST I CAN DO ON
THE CERTIFICATION.

>> YOUR OPPONENT'S ARGUMENT, TO
ME, SEEMS TO BREAK DOWN TO THIS:
THE GOVERNMENT HERE, THE
JACKSONVILLE AVIATION AUTHORITY
HERE, ONLY GETS ANY RENT OR
WHATEVER YOU WANT TO CALL IT
AFTER THIS PRIVATE ENTITY HAS
PAID ITS DEBT SERVICE, HAS PAID
THAT ELECTRICITY THAT YOU WERE
TALKING ABOUT, AND DONE ALL OF
THIS.

AND SO, IN ESSENCE, THE
GOVERNMENTAL ENTITY IS, IN FACT,
PAYING THE DEBTS OF THIS PRIVATE
CORPORATION.

>> MADAM CHIEF JUSTICE, IT IS,
IT ISN'T PAYING SOMEONE ELSE'S
DEBT.

IT HAS PLACED --

>> BUT DON'T YOU THINK THERE'S A
DIFFERENCE IN, OKAY, I ENTER
INTO AN AGREEMENT WITH YOU, AND
YOU'RE GOING TO PAY ME WHATEVER,
A SET AMOUNT OF MONEY FOR MY
PROPERTY?

YOU'RE LEASING MY PROPERTY,
YOU'RE GOING TO PAY ME A SET

AMOUNT OF MONEY AS OPPOSED TO YOU'RE GOING TO LEASE MY PROPERTY, AND I ONLY GET ANYTHING IF YOU HAVE SOME PROFIT.

>> IRONICALLY, THIS WAS DONE BY THE AIRPORT WHICH IS PART OF THE REASON IT'S FRUSTRATING TO THEM, IT WAS DONE BY THE AIRPORT TO AVOID THE RISK.

AS MR. CLARK TESTIFIED, AS JUDGE CORRIGAN SO FOUND THEY DID NOT WANT TO PUT THE \$8-\$12 MILLION -- PARDON ME, THAT'S MR. ROSSI'S TESTIMONY.

\$8-\$12 MILLION DOLLARS OF INFRASTRUCTURE NECESSARY TO THEN ENTER INTO THE TYPE OF LEASE THAT JACKSON-SHAW WAS OFFERING. JACKSON-SHAW SAID BUILD OUT THAT INFRASTRUCTURE, SPEND THE PUBLIC MONEY TO BUILD AN INFRASTRUCTURE, AND THEN WE'LL PAY YOU \$28,000 FOR 70 ACRES. WELL, DO THE MATH, AND IT'S AWFULLY FAVORABLE TO US.

AS MR. CLARK TESTIFIED, WE DON'T WANT TO BE IN THE BUSINESS OF SPENDING THE LIMITED DOLLARS WE HAVE TO RUN, OPERATE, AND SECURE AN AIRPORT.

>> SO WHAT HAPPENS HERE IS --

>> WE COULD HAVE NOTHING.

>> -- IF YOU CARRY IT OUT TO ITS EXTREME, THEY HAVE, WHAT, A 35-YEAR LEASE ON THIS PROPERTY?

>> THEY HAVE, IT COULD GO AS HIGH AS 80 YEARS --

>> OKAY.

>> NOW, THERE IS A FIXED RENT ON THIS.

>> IF THIS BUSINESS NEVER MAKES A PROFIT, THEN WHAT WE HAVE IS THEY HAVE USED THIS PROPERTY FOR ALL OF THOSE YEARS --

>> NO.

>> -- AND THE JACKSONVILLE AVIATION AUTHORITY GETS NOTHING.

>> NO.

MADAM JUSTICE, A COUPLE OF FACTORS.

FIRST OF ALL, THERE IS NOTHING IN THE CONSTITUTION REQUIRING THE JACKSONVILLE AVIATION

AUTHORITY TO MAKE A PROFIT.

>> WELL --

>> THE PROHIBITION --

>> BUT ISN'T THIS ABOUT USING
\$10 MILLION WORTH OF GOVERNMENT
LAND THAT SOMEBODY ELSE GETS TO
USE, AND WHAT DOES THE
GOVERNMENT GET OUT OF IT?

>> THE SAME DOLLAR THAT PERHAPS
IN 19, I THINK IT WAS 56, THAT
THE CITY OF, I BELIEVE IT WAS
TAMPA, GAVE YOU.

>> BUT WAIT, LET'S JUST GO BACK
TO THIS BECAUSE -- EXCUSE ME.
BECAUSE I THINK YOUR VOICE WAS
DROPPING.

>> I'M SORRY.

>> THERE'S PRECEDENT FROM THIS
COURT THAT DEFINES THE CREDIT OF
WHAT THE CREDIT OF THE STATE
SHALL NOT BE PLEDGED OR LOANED.
WE'RE TALKING NOW ABOUT CREDIT
OF THE STATE, AND WE HAVE SAID
REPEATEDLY THAT THE CREDIT OF
THE STATE IS, REQUIRES A NEW
FINANCIAL LIABILITY TO THE STATE
OF THE SUBDIVISION OR THE
LENDING MEANS THE ASSUMPTION BY
THE PUBLIC BODY OF SOME DEGREE
OF DIRECT OR INDIRECT OBLIGATION
TO PAY A DEBT OF THE THIRD
PARTY.

>> CORRECT.

>> THAT'S THE, THAT'S, WE'VE
SAID THAT AS RECENTLY AS STATE
V. OSCEOLA COUNTY.

>> CORRECT.

AND WE ARE NOT OWNING THE
BUILDINGS.

THAT IS THEIR DEBT AND THEIR
MONEY.

THEY'RE BORROWING MONEY BUILDING
A BUILDING.

WE ARE OWNING REAL PROPERTY.
IF WE ARE GET -- IF A GOVERNMENT
AGENCY MUST BE GUARANTEED A
PROFIT IN ORDER TO DO A DEAL,
THEN I DON'T KNOW HOW ANYBODY
OPERATES THAT WAY.

>> WELL, WAIT A SECOND, LET'S
JUST GO BACK OVER THIS NOW.
IS IT TRUE -- DO WE KNOW WHETHER

LEASES THROUGHOUT THE STATE OF FLORIDA, ARE THEY ALL FIXED-RENT LEASES?

>> WE HAVE NO IDEA.

THAT EVIDENCE WAS NOT PRESENTED AT TRIAL.

WE DO HAVE THE EVIDENCE OF THE JACKSONVILLE AVIATION AUTHORITY, ITS BOARD OF DIRECTORS, AND THE JACKSON-SHAW PEOPLE PUTTING UP ALTERNATIVE WAYS OF FINANCING CONSTRUCTION.

ONE OF WHICH REQUIRES THE AIRPORT TO SPEND ITS MONEY AND PUT IT AT RISK.

IF IT SPENDS ITS MONEY AND THEN NOBODY CAME OR WE GOT \$28,000 FOR THE FIRST ACRES AND WE SPENT \$12 MILLION, NOW THERE'S A RISK.

THERE'S CREDIT, THERE'S BONDS, THERE'S MONEY.

THERE ARE NO BONDS HERE, THERE'S NO MONEY.

WE HAVE LAND THAT'S BEEN SITTING THERE FOR 40 YEARS, AND OUR RISK IS IT WILL SIT THERE FOR ANOTHER NUMBER OF YEARS, AND IT DEPENDS ON THE AUCTION UP TO --

>> BUT THEY ARE OBLIGATED TO EXTEND THAT ROAD, TO SPEND \$750,000 AT A VERY MINIMUM --

>> TO BUILD --

>> TO BUILD THIS ROAD ADDITION, CORRECT.

>> TO BUILD A PUBLIC ROAD, YES.

>> BUT THEY'RE NOT OBLIGATED OTHERWISE TO BUILD THIS ROAD EXCEPT FOR THIS AGREEMENT THAT THEY HAVE --

>> CORRECT.

THEY'RE NOT, BUT THEY ARE BUILDING A PUBLIC ROAD, AND IT WOULD BE CERTAINLY A WATERSHED OPINION FOR THIS COURT TO DETERMINE THAT A PUBLIC AGENCY CANNOT OBLIGATE ITSELF TO BUILD A PUBLIC ROAD.

THE ENTIRE FDOT FAIR-SHARE LAW IS DESIGNED FOR THE FDOT TO SAY I'LL BUILD X PART OF THE ROAD, YOU BUILD Y PART OF THE ROAD. THAT'S BEEN PART OF THE LAW OF THE STATE OF FLORIDA FOR A DECADE.

SO I CAN'T ANTICIPATE THAT THIS COURT LOOKING AT EACH OBLIGATION OF A PUBLIC AGENCY TO BUILD A PUBLIC ROAD AND SAYING, WELL, GEE, SHOULD THEY OR NOT, AND THAT WOULD BE THE ONLY STANDARD ONE COULD APPLY IF I WANTED TO QUESTION --

>> WELL, IT'S NOT A MATTER OF WHETHER THEY SHOULD BUILD IT OR NOT.

WE'RE LOOKING AT THIS IN THE CONTEXT OF WHETHER OR NOT -- AT LEAST I'M LOOKING AT IT IN THE CONTEXT OF WHETHER OR NOT THIS GOVERNMENTAL ENTITY IS EXPENDING MONEY, EXPENDING THE RESOURCES OF THE STATE, MONEY AND THE LAND, AND FOR WHAT?

>> ONE DOES NOT EXPEND THE LAND UNDER THE DECISIONS --

>> NO.

I DON'T MEAN LITERALLY SPEND THE LAND, I MEAN LETTING SOMEONE ELSE USE, LETTING A PRIVATE ENTITY USE PUBLIC LAND.

AND WHAT IS THE GOVERNMENT GETTING IN RETURN?

THAT'S MY BASIC QUESTION.

>> OKAY.

>> WHAT IS THE GOVERNMENT GETTING IN RETURN FOR BUILDING THIS ROAD AND LETTING SOMEONE USE THE LAND?

>> AS TESTIFIED TO BY MR. CLARK, IT IS GETTING A DEVELOPMENT, AND THERE'S NO REASON TO ASSUME THAT THE LARGEST PRIVATELY-HELD INDUSTRIAL WAREHOUSE DEVELOPER WHO, AS ALSO TESTIFIED BY MR. CLARK, HAS DONE THIS IN SEVERAL AIRPORTS IS GOING TO FAIL, THAT THEY'RE NOT GOING TO MAKE ANY MONEY ON THIS.

IF THEY DO TAKE PROPERTY, IF WE DO, IF THEY DO EXERCISE AN OPTION AND, BY THE WAY, WE DON'T BUILD A ROAD, IT'S TIME WE BUILT IT PRIOR TO TIME THEY HAVE TO EXERCISE AN OPTION, SO IT'S TIED IN WITH -- BUT THAT'S A BUSINESS POINT AS OPPOSED TO A CONSTITUTIONAL POINT.

THEY, SO THE JACKSONVILLE

AVIATION AUTHORITY GETS AT A MINIMUM IF MAJESTIC FOR SOME REASON IS UNABLE TO PERFORM ON THIS SALE, \$1350 AN ACRE.

NOW, OPPOSING COUNSEL HAS SAID THAT'S NOT ENOUGH.

THIS COURT, AGAIN, IS NOT GOING TO EVALUATE HOW MUCH MONEY IS --

>> ARE WE SLIPPING NOW INTO WHETHER IT SERVES -- IF THEY'RE NOT PLEDGING CREDIT, THE TRANSACTION NEED ONLY SERVE A PUBLIC PURPOSE.

>> CORRECT.

>> AND JUDGE CORRIGAN MADE FINDINGS AS TO WHY THIS WAS A PUBLIC PURPOSE, AND I DIDN'T THINK THAT WAS ONE OF THE CERTIFIED QUESTIONS.

>> I DON'T BELIEVE --

>> BUT YOU THINK THAT, I MEAN, BECAUSE IT SAYS HE SPECIFICALLY FINDS THAT THE EXTENSION OF THIS ROAD SERVES A PUBLIC PURPOSE. THE AUTHORITY HAD PREVIOUSLY BUDGETED THE ROAD IMPROVEMENT AS A PLANNED CAPITAL PROJECT IN ACCORDANCE WITH ITS POWER, AND IT WILL RETAIN OWNERSHIP. THAT WAS A FINDING OF FACT.

>> YES.

WE THINK THAT --

>> WOULD YOU RESPOND TO YOUR OPPONENT'S STATEMENT THAT THE LEASE-HOLD INTEREST HERE WILL BE EXPOSED --

>> CERTAINLY.

>> -- TO CREDITORS OF THE PRIVATE ENTITY?

>> CERTAINLY.

IN COMMERCIAL LAW THIS IS A BENEFIT, NOT A DETRIMENT. AS TESTIFIED TO BY HIS EXPERT, MR. CANTRELL, TYPICALLY WHAT THE MORTGAGE LENDER WANTS IF YOU'RE GOING TO BUILD A LARGE DEVELOPMENT, THERE'S A LENDER. WHAT THE LENDER WANTS IS TO BE ABLE TO FORECLOSE ON THE LAND TO TAKE A SUPERIOR POSITION TO THE PROPERTY OWNER ON THIS PARTICIPATING GROUND LEASE. THAT WAS NOT PROVIDED IN THIS. TO THE, TO THE AIRPORT'S

ADVANTAGE, AGAIN, THIS IS A BUSINESS POINT AND UNDER CHAPTER 315 LEFT AT THE DISCRETION OF THE BOARD.

BUT IT IS FOR THE MORTGAGE LENDER TO BE ABLE TO COME IN IN DEFAULT AND RUN THE BUSINESS, THAT IS WHAT A BORROWER WANTS.

>> WHAT DOES THE AIRPORT AUTHORITY GET IF THAT HAPPENS?

>> THE, AGAIN, THE NET RENTALS AFTER THESE ADDITIONAL COSTS. THE AIRPORT AUTHORITY DOESN'T RUN WAREHOUSES.

MR. CLARK TESTIFIED THEY TRIED TO DO THAT, THEY TRIED TO SPEC A WAREHOUSE.

SO WHAT WOULD HAPPEN UNDER THIS ANTICIPATED SITUATION IS IF MAJESTIC WERE TO FAIL AND TO GO INTO FORECLOSURE WITH ITS LENDER RATHER THAN THE AIRPORT HAVING TO FIND SOMEBODY TO RUN AND TRY TO MAKE A PROFIT WHO'S MOTIVATED FOR THE PROFIT, THE LENDER, THE LENDER COMES IN AND OPERATES THEIR PROJECT.

AND IN ORDER TO OBTAIN FINANCING FOR THIS, THIS IS A STANDARD PROVISION.

THE LAND, AS HELD BY JUDGE CORRIGAN, THE LAND REMAINS THIS VACANT LAND WHICH TODAY IS MAKING NOTHING.

IT'S STILL VACANT --

>> IS IT STILL VACANT?

I MEAN --

>> YES.

>> SO NOTHING'S HAPPENED?

>> NO.

NO.

IT'S STILL VACANT LAND, AND HE'S TRYING TO TAKE A VACANT, A PIECE OF VACANT LAND OUT OF 4,000-6,000 ACRES AND TO PUT IT IN A MECHANISM TO CREATE JOBS AND WAREHOUSE AND POTENTIAL INCOME TO SUPPLEMENT THE MERCURIAL APPROACH OF CONGRESS FOR FUNDING AIRPORTS WITHOUT GOING OUT OF POCKET WITH THIS.

>> IF IT'S STILL VACANT AND MAJESTIC ISN'T A PARTY TO THIS LAWSUIT, YOU KNOW, WITH THE

DOWNTURN IN THE MARKET, YOU KNOW, WHAT WOULD HAPPEN? CAN MAJESTIC GET OUT OF THIS DEAL AND THEN JACKSON-SHAW'S FREE TO NEGOTIATE WHATEVER THEY WANT?

>> THERE ARE A NUMBER OF YEARS THAT MAJESTIC HAS TO DETERMINE WHEN TO COMMENCE THE MARKET. THEY'RE THE EXPERT.

WE KNOW WHEN THEY BELIEVE THEY CAN MAKE MONEY, THEY'LL COME. AND THERE'S A PERIOD OF TIME, A NUMBER OF YEARS --

>> IT COULD BE UP TO NINE YEARS, CORRECT?

>> AND THEN THERE'S ONE ADDITIONAL YEAR BEFORE WE GO OUT AND RENT ON THAT.

SO THAT ADDITIONAL YEAR TO THE PRESENT 40 COULD GO.

IF THE MARKET, AGAIN, IS NOT READY, WE'RE LEAVING IT TO THE EXPERTS TO DETERMINE WHEN THE MARKET IS READY RATHER THAN SPENDING MILLIONS BUILDING OUT AN INFRASTRUCTURE AND GETTING A LITTLE BIT OF RENT AND THEN HAVING THE MARKET STOP FOR A NUMBER OF YEARS.

IT'S ACTUALLY RISK-AVERSE. SO UNDER ARTICLE 7, SECTION 10, THERE IS NO LENDING OF CREDIT FOR THE BENEFIT OF THE THIRD PARTY.

THERE IS NO RISK AS WAS STATED IN BAILEY THAT THE GOVERNMENT ENTITIES WERE TAKING BEFORE OBLIGATING ITSELF TO PAY DEBTS INCURRED BY RAILROADS AND OTHER ENTITIES ON MATTERS UNRELATED TO THE TAXPAYERS.

AND THAT, IN THIS INSTANCE, IT'S MERELY VACANT PROPERTY PLACED IN A PUBLIC ROAD.

AND IF WE CAN'T HAVE VACANT PROPERTY IN A PUBLIC ROAD UNDER ARTICLE 7, SECTION 10, THEN THAT WOULD BE A SIGNIFICANT CHANGE IN THE PRECEDENT OF THIS COURT WHICH HAS FOUND IF THERE'S A PUBLIC PURPOSE, THE LEASE TERMS ARE UP TO THE GOVERNMENT ENTITY, AND THE LENDING OF CREDIT IS FOR

A THIRD PARTY FOR A PRIVATE BENEFIT AND ACTUAL RISK TAKING. AND A GREAT EXAMPLE, IF I MAY GO TO IT, IS POE FOR THE TAMPA FOOTBALL STADIUM.

MONEY WAS BORROWED BY A PUBLIC ENTITY, THE TSA, OVER \$100 MILLION BORROWED.

AND THAT WAS DETERMINED TO ACTUALLY BE FOR A PARAMOUNT PURPOSE.

BUT THEY BORROWED THE FUNDS, AND IF THE RENTALS, IF THE ADMISSION TICKETS, IF THE MATTERS PLEDGED TO THOSE BONDS WEREN'T PAID, THEN THAT TSA WAS RESPONSIBLE FOR THE DEBT.

IN HERE IF THESE BILLS AREN'T PAID AS FOUND BY JUDGE CORRIGAN AFTER FOUR DAYS OF TESTIMONY, THEN WE HAVE OUR LAND.

THE SAME VACANT LAND THAT'S NOT MAKING MONEY TODAY WE STILL HAVE.

THAT DOES NOT PLACE THE TAXPAYERS AT RISK.

THE ONLY THING THE TAXPAYERS ARE AT RISK FOR TODAY IS NOT MAKING ENOUGH MONEY.

SAYING IS IT \$900 MILLION, IS IT \$300 MILLION UNDER THE FIXED RENT, AND THAT'S THE IMPORTANT POINT THAT WAS ADDRESSED, THERE IS FIXED RENT.

IT TOTALS \$300 MILLION --

>> AND HOW'S THAT FIXED RENT PAID?

>> IT IS PAID BASED ON, IT'S THE -- IT'S A TAKEDOWN OF 100,000 SQUARE FEET AT A TIME.

THEY PAY EITHER THE LOWER OF THE \$1350, I BELIEVE IT IS, OR THE NET PROCEEDS.

SO, I'M SORRY, THE HIGHER OF THE TWO.

SO THE MINIMUM RENT IS THE FIXED RENT.

IT DOES TOTAL UP TO \$300 MILLION, AND SO THERE IS IF THE COURT WERE TO FIND THAT WE HAVE LENT OUR CREDIT OR, I GUESS, UNDER THIS A JOINT OWNER BECAUSE WE WOULDN'T BE MAKING AS MUCH MONEY, IT WOULD PLACE THE COURT

IN THE SEAT OF DECIDING IS \$1350
ENOUGH?
IS THE 8,500 ENOUGH UNDER THE
DEAL JACKSON-SHAW TESTIFIED TO?
WHAT IS THAT MONTHLY INCOME?
AND AT WHAT POINT IN THE JOB
MARKET, IS IT FIVE YEARS FOR AN
OPTION?
IS IT ONE YEAR FOR AN OPTION?
THESE ARE NOT WITHIN THE PURVIEW
OF ARTICLE 7, SECTION 10.

>> WE THANK YOU VERY MUCH FOR
YOUR ARGUMENT.
>> THANK YOU.
>> MR. MILLS, YOU HAVE ONE
MOMENT, ONE MINUTE, AND LET ME
ASK YOU THIS: WHAT ABOUT HER
ARGUMENT THAT THERE IS REALLY A
MINIMUM RENT HERE, AND SO WHAT
YOUR ARGUMENT REALLY BREAKS DOWN
TO IS YOU THINK THAT'S NOT
ENOUGH?
>> NO, IT ISN'T.
IF THAT WERE THE FIXED RENT, IF
IT WERE 1380, WE WOULDN'T HAVE A
CASE.
THEY SOLD THIS, THEY DID THIS
BECAUSE THEY WANT TO GET 900
MILLION.
BUT IF THEY GOT A BAD DEAL AND
IT WAS FIXED RENT, WE COULD NOT
COME IN AND SAY THAT'S NOT
ENOUGH.
ONLY MAYBE IF IT WAS ZERO, WE
WOULDN'T HAVE A PROBLEM.
>> WHERE IS THIS MONEY THAT
SHE'S TALKING ABOUT?
IF YOU SAY THAT'S NOT MINIMUM
RENT, WHAT IS IT?
>> NO, IT IS MINIMUM RENT.
IF THAT'S ALL THEY WERE GETTING
AND THAT'S THE DEAL, THEY'RE NOT
EXPOSING THEMSELVES TO RISK.
HERE THEY'RE EXPECTING TO GET
MORE THAN THAT.
NOBODY IN A SANE MIND WOULD SAY
THAT 1380 WAS A GOOD DEAL.
THEY WOULD NEVER HAVE DONE IT IF
THAT'S WHAT THE RENT WAS FOR.
THAT'S THE KIND OF BAD BUSINESS
DECISION THAT A COURT CAN'T
SECOND GUESS.
THE PEOPLE CAN --

>> BUT IF THEY ARE OBLIGATED TO PAY THAT, WHY ISN'T THAT A FIXED-RENT AMOUNT WHETHER IT'S A GOOD DEAL OR A BAD DEAL?

>> IT IS A MINIMUM RENT, IT IS VARIABLE RENT.

THE AMOUNT OF RENT DEPENDS ENTIRELY ON THE SUCCESS OF THE VENTURE.

IT DOES HAVE A FLOOR.

THE FLOOR ONLY KICKS IN AFTER TEN YEARS, SO IT'S ALL AT RISK.

THEY CAN GET ZERO IF MAJESTIC HAS THEM BUILD THE ROADS, BUILD THE WETLANDS, DO EVERYTHING AND ON THE NINTH YEAR, THE 350TH DAY, THEY GET ZERO.

>> OF COURSE [INAUDIBLE]

>> THEY DO, BUT THEY HAVE OTHER PEOPLE WHO WANT TO RENT IT.

>> AREN'T THEY JUST TRYING TO MAKE A DEAL WHERE THEY CAN MAKE MONEY AND GENERATE REVENUE?

>> I'M NOT SAYING IT'S A BAD IDEA FOR THEM TO DO IT.

IN OTHER STATES PARTICIPATING GROUND LEASES HAPPEN ALL THE TIME.

THEY DON'T HAVE A CONSTITUTION OF THE STATE PUTTING FUNDS AT RISK.

IT'S THAT RISK THAT IS KEY HERE.

>> IF YOU WOULD GIVE US YOUR CONCLUDING STATEMENT, YOU'VE USED UP YOUR MINUTE.

>> IN THE CONSTITUTION IN THIS PROVISION IT TELLS YOU THERE'S ONE WAY THEY CAN SHARE IN RENT, THAT'S AIRPORT BONDS WHERE THE MONEY COMES OUT OF THE REVENUE. THERE'S A SPECIFIC EXCEPTION FOR THAT.

WE ASK THAT YOU ANSWER, REPHRASE THE CERTIFIED QUESTION AS WE SUGGESTED, AND ANSWER IT AS WE'VE ASKED.

THANK YOU.

>> THANK YOU VERY MUCH.

THANK BOTH OF YOU FOR YOUR ARGUMENTS.

THE COURT WILL BE IN RECESS FOR TEN MINUTES.

>> PLEASE RISE.