

We now go to the fourth and final case on today's docket, which is MIA consulting group versus haciendas villas Inc..

>> May it please the court.

Brian Stack on behalf of the petitioner, MIA consulting.

The issue before the court is an exceedingly narrow one.

The third District Court of Appeals determined and the face of at least five decisions in this court not to apply the venue rule which was first articulated in the Croker case and reiterated on at least five occasions subsequently by the court, and the third District's reasoning was simply stated to be that because of the claim of the plaintiff and the circuit court action had not asserted or because the claim was not for liquidated damages as opposed to one liquidated damage.

The venue rule articulated in Croker was inapplicable. That was the sum and substance of the basis of the courts reversal of the trial court's order denying an unsworn motion to change venue.

A motion to dismiss for the purpose of changing the venue.

The third District then went on and applied to cases which in our respectful opinion are inapplicable to the facts here, because there is no suggestion in the underlying complaint that the plaintiff had failed to perform the services which were the subject of the services agreement.

The essence of the complaint in the trial court were or that the defendant had breached the contract and fail to pay the plaintiff money due under the contract.

>> How could there be money do  
if the very agreement was that  
if you help me do this I will  
agree to employ you.

There wasn't any contract  
entered at that point.

>> The parties had already  
agreed to the contract.

Recall that the plaintiffs  
plaintiff's obligation was to  
prepare and submit a contract, a  
grant application.

>> But the breach of the  
contract -- the breach of the  
agreement is not to employ the  
person.

>> That is correct.

>> So they were going to employ  
them in Tampa.

>> No.

In part in Tampa but in part in  
Miami to provide two different  
kinds of services.

The HUD grant application was  
designed to convert a living

facility into an adult living  
facility regulated by the state.

The HUD grant was going to be  
used to convert that facility  
and in fact my client prepared  
to grant application, submitted  
it in the federal government  
awarded the grand.

>> Are you suggesting that the  
employment agreement, following  
your compensation, was already  
agreed upon and was already  
needing a signature or didn't  
have a signature?

What was the nature of that?

>> It was contained within the  
grant application.

It had been agreed to a  
negotiated and was contained  
within a grant application.

>> And that was filed as part of  
the complaint?

>> No comment wasn't.

>> Wasn't filed as part of  
anything in connection with the

venue?

>> It was not in that failing  
which the respondent contends  
falls at the feet of the  
plaintiff --

>> I think you may have a  
problem with that.

You have the burden of  
demonstrating somehow that venue  
is appropriate.

>> No we do not.

This court has held that the  
plaintiff never has had erred  
and to establish venue by  
pleading or proof that when it  
defended challenges you -- it is  
the dependence obligation to  
pleaded and prove it.

When a defendant elects to  
challenge venue the burden is on  
that particular party to file a  
sworn pleading with the court  
and to raise the factual issue  
that they think is dispositive  
of the venue determination.

What the defended in this case did out of the box is filed a two-page motion to dismiss for lack of venue.

It argued that the services contract, the services to be provided by the plaintiff were going to be in Hillsborough County but that wasn't the just of the lawsuit.

There was no complaint about the quality of any services.

It's just that the claim was the defendant failed to pay the money that was due under the agreement.

>> How much money was due under the agreement?

How much was due?

>> The grant application shows there was a sum due for what were called implementation services, \$120,000.

>> That was the grant itself?

>> No.

After the grant was awarded my  
client was --

>> There was a line in there  
that says management.

>> That is correct.

>> That was wasn't a contract?

>> No, it wasn't.

>> Where is that in the record.

>> It is not in the a record

Your Honor but this falls in a  
not being the record lies --

>> You are alleging -- if  
someone asked you, the trial  
court is only looking at what is  
before it.

It can't look at something that  
is not before it.

If you felt like there was a  
claim for money due, \$120,000  
which, in mean if you are  
looking for millions, that is a  
good start.

Why wouldn't that count as one  
of your complaints?

They owe \$120,000 in liquidated

damages and they haven't paid a.

>> It does not need to be a part of the complaint.

The complaint simply needed to allege a simple statement of claim for breach of contract.

>> But it caused all of us to understand this as a case for a breach of an agreement to enter into a contract.

And that is what I see this as -- not as a breach but as a breach of an agreement, a promise, if you do this for me, I am going to then employ you down the road.

>> It is not really that it is being done -- .

>> It is the contingent compensation.

If we can get you the grant --

>> Correct and it was successful undeniably.

>> Of course the issue is whether the defendant in this

case happens to be a nonprofit  
defendant from Tampa, right?

No question about that.

>> I don't dispute it --

>> So the issue, where is this  
cause of action approved?

You are saying it approved where  
payment was going to be made on  
a contract that had not come  
into existence.

UNDENIABLY.

AND AGAIN, WE'RE NOT TALKING  
ABOUT THE MERITS IF YOU CAN  
SUE THEM.

THE ISSUE IS IF THE  
DEFENDANT IN THAT THIS CASE  
HAPPENED TO BE A NONPROFIT  
DEPARTMENT FROM TAMPA,  
RIGHT?

THERE'S NO QUESTION ABOUT  
THAT.

>> THERE'S NOTHING ON THE  
RECORD ABOUT THAT POINT, BUT  
I DON'T DISPUTE IT.

>> SO WHERE DID THIS CAUSE  
OF ACTION ACURE.  
AND YOU'RE SAYING IT WAS  
WHERE PAYMENT WAS GOING TO  
BE MADE ON A CONTRACT THAT  
HAD NOT YET COME INTO  
EXISTENCE.

>> BUT THERE WAS A CONTRACT.  
IT REQUIRED MY CLIENT TO  
PREPARE A GRANT APPLICATION,  
AND IF IT WERE TO BE  
AWARDED, THE CLIENT WOULD  
AGREE >> AND WHERE WAS THE  
CONTRACT --

>> I'M SORRY, SIR?

>> NOTHING WAS ATTACHED TO  
THE COMPLAINT, AND AGAIN  
THAT COMES BACK TO --  
THAT'S WHAT'S IN THE COURT  
SYSTEM, IS THAT IF YOU HAVE  
A CAUSE OF ACTION FOR THE  
AGREEMENT, I THINK IT  
REQUIRES THAT IT'S A TAX,  
DOESN'T IT?

>> NO, WE REFERENCED THE

GRANT APPLICATION IN THE  
COMPLAINT.

WE GRANTED IN THE TERMS --

>> BUT YOU'RE NOT SUING ON  
THE GRANT APPLICATION,  
YOU'RE SUING ON A CONTRACT  
THAT WAS ALREADY AGREED TO  
THAT'S ATTACHED TO THE GRANT  
APPLICATION.

>> YES, SIR.

>> AND YOU'RE SAYING UNDER  
FLORIDA LAW, THAT A WRITTEN  
CONTRACT, AND THERE'S NO  
OBLIGATION FOR THEM TO  
ATTACH THE COPY OF THE  
WRITTEN AGREEMENT.

>> I DON'T BELIEVE THERE'S  
AN OBLIGATION TO ATTACH THE  
ENTIRE AGREEMENT.

--

ENTIRE AGREEMENT.

IT WASN'T HID FROM THE  
COURT.

>> IN THE COMPLAINT, WHAT  
DOES THE AGREEMENT SAY --

>> THERE IS NO --

>> THERE IS \$120,000

MISSING.

>> WHAT'S MISSING IS THE

ACKNOWLEDGMENT BY THE

DEFENDANT THAT WOULD RETAIN

THE PLAINTIFF TO BE A

IMPLEMENTATION CONSULTANT

AND HIS MANAGEMENT AGENT.

THE ISSUE I WOULD LIKE TO

ADDRESS THAT SEEMS TO BE THE

CONCERN, IS WHOSE BURDEN WAS

IT AT THE OUTSET TO SUPPLY

THE COURT WITH THAT GRANT

APPLICATION.

>> NOT ONLY THAT, BUT IF

YOUR VENUE IS GOING TO BE --

YOU GET THE CHOICE OF VENUE

AS A PLAINTIFF.

BUT THE CHOICE OF VENUE

NEEDS TO APPEAR ON THE FACE

OF THE --

UNTIL IT'S REFUTED BY THEM.

IF THE DEFENDANT WAS A MIAMI

CORPORATION, YOU DON'T

EXPECT THEM TO COME IN AND  
SAY I'M A MIAMI CORPORATION.

HERE, THE ONLY BASIS FOR  
BEING ABLE TO SUE IN MIAMI,  
FIRST IN TAMPA ACTION, IS  
BECAUSE THE CAUSE OF ACTION  
ACCRUED IN MIAMI.

AND YOU'RE SAYING PAYMENT  
WOULD TAKE PLACE IN MIAMI.

LET'S FORGET THE --

YOU KNOW WHETHER THESE CASES  
FROM THE 30S, YOU KNOW ARE  
APPLICABLE.

WHAT I'M SAYING, JUST AS A  
COMMON SENSE POINT OF VIEW,  
HOW DO YOU ESTABLISH THAT  
THE A--

ACCRUAL IS IN MIAMI?

THEY'RE SAYING IT IS IN  
TAMPA.

>> NOBODY IS SUING ON A  
BREACH TO PROVIDE SERVICES.

>> NO, HE IS SUING ON A  
BREACH OF AN AGREEMENT TO  
ENTER INTO AN AGREEMENT FOR

SERVICES.

>> WHICH IS ENTIRELY

ENFORCEABLE.

>> I'M NOT SAYING IF IT'S

ENFORCEABLE.

I'M SAYING THE AGREEMENT TO

ENTER AN AGREEMENT, THEY

BREACHED IT BY NOT ENTERING

IT, THEY BREACHED IT IN

TAMPA AND NOT MIAMI.

THAT'S WHY I AGREE THAT SOME

PART OF THE THIRD DISTRICT

DECISION IS IT'S NOT A

CONTRACT FOR SERVICES OR A

CREDIT OR DEBTOR EITHER.

>> THEY HAD NO OTHER

OBLIGATIONS.

>> DIDN'T THEY NEED TO HIRE

THEM FIRST?

>> WE WERE HIRED, BECAUSE

THE CONDITION TO BEING HIRED

WAS SATISFIED.

>> AND SO THAT WOULD BE THE

CONTRACT.

>> IT DIDN'T NEED TO.

>> ONE POINT --

>> I'M SORRY, RULE .1.13

REQUIRES WHEN YOU BRING  
ACTION ON A CONTRACT, THAT  
YOU NEED TO EITHER ATTACH IT  
OR INCORPORATE IT SOMEHOW IN  
THE PLEADING.

>> AND WE DID INCORPORATE  
IT, WE HAVE THE CONTRACTUAL  
UNDERTAKING OF THE CLIENTS.

>> WHERE IN THE WRITTEN  
CONTRACT THAT WAS  
INCORPORATED IN YOUR  
COMPLAINT, WHERE IN THAT  
CONTRACT DOES IT REFERENCE A  
SPECIFIC SUM CERTAIN THAT  
WAS DUE AT A SPECIFIC  
CERTAIN POINT IN TIME?

>> IT'S IN THE GRANT  
APPLICATION.

>> IS IT IN YOUR COMPLAINT?

>> NO.

>> THAT'S THE POINT, YOU  
HAVE NOT INCORPORATED, AND  
THE CRITICAL TERM IN THE

ALLEGATIONS OF YOUR  
COMPLAINT.

AND I THINK THAT'S WHERE YOU  
SEE THAT WE'RE FOCUSED ON  
AND STRUGGLING WITH HERE.

>> I UNDERSTAND THAT AND  
WHAT I WANT TO SAY IN  
RESPONSE IS I DON'T THINK WE  
HAVE AN OBLIGATION FOR THE  
ENTIRE GRANT APPLICATION.

WHAT THE DEFENDANT DID AT  
THE OUTSET OF THE LAWSUIT  
WITHOUT HAVING FILED  
ANYTHING ELSE, IS TO SAY THE  
VENUE IS NOT APPROPRIATE IN  
MIAMI-DADE COUNTY, IT'S  
APPROPRIATE IN HILLSBOROUGH  
COUNTY.

>> WHAT IF IT SHOWS IT'S NOT  
DADE COUNTY?

>> IT'S A DIFFERENT ISSUE.

>> I'M NOT SURE IT IS.

WHEN YOU SAY THEY ENTERED AN  
AGREEMENT WITH US, THAT'S  
NOT THE SAME ASSAYING WE

ALREADY HAVE AN AGREEMENT  
AND THEY OWE US X NUMBER OF  
DOLLARS, AND HERE IS THE  
CONTRACT.

>> THE OBLIGATIONS OF THE  
DEFENDANT WERE TO SATISFY A  
CONDITION, THEY WERE TO  
DELIVER TO US THE EXECUTED  
CONTRACT THAT WAS AGREED AND  
THEN TO PAY US.

IN LIEU OF DOING THAT THERE  
WAS A REPUDIATION.

SO WHEN THEY CHALLENGE, AND  
ON THE FACE IT DOESN'T SHOW  
BASIS FOR VENUE OR  
OTHERWISE, WE HAVE NO  
BURDEN.

THE PLAINTIFF HAS NO BURDEN  
TO ARTICULATE A VENUE.

>> YOU'RE SAYING THOSE CASES  
DOESN'T HAVE TO BE REFLECTED  
ON THE FACE OF THE  
COMPLAINT.

>> IT REFLECTS IT'S NOT IN  
DADE COUNTY.

IT REFLECTS IT'S IN HULLS --

HILLSBOROUGH COUNTY.

THAT'S THE PROBLEM WE GET

INTO BY NOT --

BY NOT RELYING UPON THAT

CONTRACT.

I'M GOING TO LOOK AT THIS AS

THOUGH THIS IS AN ACTION,

BASED ON THE FAILURE TO

ENTER ANOTHER CONTRACT,

WHICH IS AN ENTIRELY

ENFORCEABLE --

>> I'M NOT SAYING IT'S

ENFORCEABLE, I'M SAYING

WHERE IS THE VENUE ON THAT.

BECAUSE OF THE NATURE

PERFORMED IT'S ONLY TO HAVE

THE SIGNED CONTRACT, WHICH

THEY HAD AN OBLIGATION, IT

WOULD ACCRUE.

AND WE GET BACK TO THE

NOTION THAT WHEN A DEFENDANT

SAYS WAIT A SECOND THIS IS

NOT THE RIGHT VENUE, THEY

HAVE UNDER CLEAR AUTHORITY

FROM THE THIS COURT AND THE  
THIRD DISTRICT, THEY HAD TO  
FILE A SWORN MOTION TO RAISE  
THE ISSUE THAT THEY THOUGHT  
WAS SIGNIFICANT.

AND THE ISSUE THEY THOUGHT  
WAS SIGNIFICANT WAS WAIT A  
SECOND, THIS SO CALLED  
CREDIT-DEBTOR RULE IS  
IMAPPLICABLE BECAUSE YOU'RE  
SUING FOR UNLIQUIDATED  
DAMAGES.

THAT'S THE ARGUMENT THAT'S  
BEING MADE.

IT WASN'T MADE BELOW OR AT A  
CIRCUIT COURT.

THAT MAY, FOR THE FIRST  
TIME, BEFORE THE THURSDAY  
DISTRICT.

>> THAT'S IN THE BRIEF?

.

>> NO.

NONE OF THEM.

AND THE POINT BEING IF THE  
DEFENDANT IN HIS MOTION TO

DISMISS SAID TO THE CIRCUIT  
COURT JUDGE, WAIT A SECOND  
THERE'S A VENUE ISSUE HERE  
BECAUSE THE DAMAGES ARE  
LIQUIDATED, AND IT TURNS ON  
THAT QUESTION, IT WAS THEIR  
BURDEN TO FILE THAT GRANT  
AND ERASE THE ISSUE.

IF THEY FILED --

THE MOTION TO DISMISS OR  
TRANSFER FOR VENUE AND SAID  
NOTHING MORE.

>> NOTHING MORE.

>> THERE WAS A HEARING ENTHE  
MOTION?

>> NO.

>> IT WAS REPORTED?

>> AND THEY MADE ILLEGAL  
ARGUMENTS AT THE HEARING.

>> THEY MADE ILLEGAL  
ARGUMENTS.

>> WHAT WERE THE ARGUMENTS  
MADE AT THE TRIAL COURT?

WHAT THEY ARGUED IS THAT THE  
SERVICES THAT THE PETITIONER

WAS GOING TO PROVIDE UNDER  
THE AGREEMENT WERE GOING TO  
BE RENDERED IN HILLSBOROUGH  
COUNTY.

THEN A NOTICE OF APPEAL IS  
FILED, THERE IS THIS  
DIFFERENCE BETWEEN  
LIQUIDATED AND NONITEMS.

THERE IS NO DISTINCTION  
BETWEEN LIQUIDATED AND  
NONLIQUIDATED.

BUT THAT'S WHAT THEY CHOSE  
TO PROCEED ON.

>> IS THE GRANT IN THE  
RECORD?

>> NO IT IS NOT.

.

THE STIPULATED STATEMENT OF  
FACTS SAID NOTHING MORE THAN  
THE FOLLOWING.

THEY FOLLOWED AN UNSWORN  
MOTION THAT RAISED THE  
NOTION THAT THE UNDERLYING  
SERVICES.

THAT WAS NOT THE ARGUMENT

THEY MADE IN FRONT OF THE  
THIRD DISTRICT.

--

THE STIPULATEED FACTS, AND  
WE SITED THE CONTRARY CASE.  
THERE IS NOTHING ELSE IN THE  
RECORD.

>> I WANT TO LET YOU KNOW  
YOU'RE DOWN TO YOUR LAST 3  
MINUTES.

>> I JUST WANT, I'M HEARING  
YOU SAY THAT \$120,000, BUT  
THAT COMPLAINT IS NOT  
ATTACHED TO THE RECORD.

>> IT'S NOT.

>> HOW CAN YOU EVEN ARGUE IT  
TO US.

>> I WAS ASKED A QUESTION SO  
I AM RESPONDING.

>> YOU PUT IT IN YOUR  
RECORD.

>> THE REASON WHY I RAISED  
THE ISSUE IS NOT TO OBJECT  
THE FACTUAL ISSUES, BUT WHAT  
WAS RAISED ON APPEAL BY THE

DEFENDANT WAS RAISED IN A  
PROPER WAY BECAUSE THEY HAD  
NOT PRESERVED IT IN IN THE  
CIRCUIT COURT THAT WOULD  
HAVE PUT THE PLAINTIFF'S ON  
NOTICE THIS WAS THE  
ARGUMENT.

SO THEY ARGUED FOR THE FIRST  
TIME THIS MOTION OF  
LIQUIDATED DAMAGE, WE HAD  
NO WAY TO SAY WE HAVE NO WAY  
TO SUBMIT THE GRANT --

>> ISN'T THAT THE PETITION  
IN THE FIRST PLACE?

>> I WISH I HAD BUT IT WAS  
NOT REQUIRED.

THE ELEMENTS FOR CONTRACT  
WERE STATED, WE REFERENCED  
THE GRANT APPLICATION, AND  
IT'S NOT LIKE THEY DIDN'T  
KNOW THERE WAS A GRANT  
APPLICATION, THEY RECEIVED  
\$5.8 MILLION AND THEY KNEW  
HOW THEY GOT IT.

THE TRIAL JUDGE KNEW IT.

SHE DID NOT KNOW THE NATURE  
OR THE QUALITY OF THE  
DAMAGES BEING SOUGHT,  
CLEARLY, BECAUSE THAT WAS  
NOT AN ISSUE RAISED BY THE  
DEFENDANT.

IT DID NOT GET RAISED UNTIL  
THE APPEAL WAS PROSECUTED  
WHEN THEY RAISED FOR THE  
THIRD TIME THE DISTINCTION  
BETWEEN LIQUIDATED AND  
UNLIQUIDATED DAMAGES.

>> YOU SAY THAT OVER AND  
OVER AGAIN BUT --

[UNINTELLIGIBLE]

>> EXCUSE ME, WE RELIED ON  
IT.

>> EXACTLY.

THEY DID NOT RELY ON --

>> BUT YOU SAY IT WAS RAISED  
FOR THE FIRST TIME.

>> I'M SAYING IT WAS THE  
LIQUIDATED AND UNLIQUIDATED  
DAMAGES.

>> THAT WAS NOT THE SUBJECT

OF THE CASE IN RAY MONDAY,  
THEY DID NOT MAKE IT, IN  
FACT THE ARGUMENT THAT WE  
MADE FUNDAMENTALLY IS THIS  
COURT'S DECISION DOES NOT  
ALLOW -- R --

IT WAS NOT SOMETHING RAISED  
BELOW, THE SUPREME COURTS  
DECISIONS ARE NOT  
APPLICABLE.

I WOULD HAVE BEEN ON NOTICE  
THEN THAT I NEEDED TO DO  
SOMETHING.

>> DID THEY ADDRESS THAT?

>> NO, THEY DID NOT, AND  
AFTER, WE ASKED THE THIRD  
DCA TO REMAND THE CASE.

>> IS THAT ONE OF YOUR  
POINTS ON APPEAL HERE?

.

>> MY POINT ON A HERE IS  
THAT THE COURT WOULD HAVE  
DETERMINED THE DISPOSITIVE  
ISSUE.

I DON'T THINK IT IS IN LIGHT

OF THE COURT'S OPINION

ESPECIALLY FOR A CASE

APPLIED UNDER DIRECT

CONTRACT.

THERE'S NO WAY THAT I CAN

RESPECTFULLY THINK --

THAT THAT DISTINCTION CAN BE

ABIDED BY.

WHAT I'M SAYING IS IN LIGHT

OF WHAT THE THIRD DISTRICT

DID.

IT'S IN CONFLICT WITH THIS

COURT'S OPINION, AND THE

THIRD DISTRICT TOOK IT A

STEP FURTHER BY SAYING WE'LL

DEFAULT TO THE GENERAL

SERVICES RULE THAT SAYS WHEN

YOU SUE FOR BREACH OF A

SERVICES CONTRACT, YOU HAVE

TO SUE IN THE VENUE OR

COUNTY WHERE THE SERVICES

WILL BE --

>> YOU HAVE EXHAUSTED YOUR

TIME, BUTLY GIVE YOU A

MINUTE FOR REBUTTAL.

>> I APPRECIATE THAT, I WAS  
ATTEMPTING TO ANSWER TIME.

>> I UNDERSTAND THAT'S WHY I  
GIVING YOU A MINUTE.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT,  
DAVID WEISS ON BEHALF OF  
HACIENDAVILLEAGE.

THIS COURT HAS IN THE  
GOEDNEKER CASE.

THE PLAINTIFF HAS A BASIS  
FOR ALLEGING VENUE IN THE  
COMPLAINT.

.

SAYS THAT ALL OF THE  
COMPLAINTS WILL BE.

>> PURSUANT TO A CONTRACT  
THEY DID NOT DELIVER.

>> BUT IF THE ISSUE IS AN  
ANTICIPATE --

ANTICIPATORY PART OF THE  
BREACH, IF THEY BREACH IT  
BEFORE THE CONTRACT STARTS,  
IT'S AN ANTICIPATORY BREACH  
OF A CONTRACT.

AND YOU DON'T RAISE --  
YOU SAY IN YOUR BRIEF, BUT  
YOU DIDN'T RAISE THE  
COMPLAINT AND FAIL TO SAY  
THE CAUSE OF ACTION SO THAT  
THE CONTRACT IS ATTACHED.  
THEY DON'T SAY THAT IT IS A  
COMPLAINT.

>> WE ARE TRYING TO FIGURE  
OUT WHAT EXACTLY THE CAUSE  
OF ACTION WAS.

I MEAN IT WAS FOR IT WAS FOR  
THE OPERATION CONSULTANT FOR  
THE VILLAS?

WHICH IT FOR OTHER WORK TO  
BE DONE?

WE HAVE NO IDEA FOR THE  
COMPLAINT --

>> THE ISSUE REALLY IS, THE  
FIRST ISSUE GOING BACK TO  
WHAT HE SAID, IS IT CORRECT  
YOU DIDN'T RAISE IN THE  
TRIAL COURT LO BLOW --  
THERE IS NO LIQUIDATED SUM

--

>> THERE WAS NO COURT

REPORTER IN MIAMI.

>> THE MOTION TO DISMISS FOR

IMPROPER VENUE DOES NOT

RAISE IT DOES IT?

>> NO, IT IS JUST A

NOT-FOR-PROFIT CORPORATION,

AND THAT 47.051 AND --

>> IF YOU DON'T SAY,

ADDITIONALLY, IT'S NOT A

LIQUIDATED --

IT'S NOT FAIR, SO WHERE IS

IN T IN THE RECORD THAT WE

CAN LOOK TOO?

>> IN THE STIPULATED

PROCEEDINGS, IN PARAGRAPH 3,

THEY AGREE TO THE THIRD DCA,

THAT AT THE TRIAL COURT

LEVEL EACH COUNCIL PRESENTED

LEGAL ARGUMENT WITH THE

PLAINTIFF RELYING UPON

RAYMOND INC..

MORALIS SAND AND SOIL IS A

CREDITOR-DEBTOR RULE.

IT CITES TO KROEKER VERSES

POWELL, IT SITES THIS  
COURT'S OPINION IN THAT  
CASE, AND THEN GOES ON TO  
DISTINGUISH IT AND WHY, IN  
CASES WHERE THE SUM DOES NOT  
APPEAR TO BE CERTAIN, THAT  
THE KROEKER RULE DOES NOT  
APPLY AND --

--

[UNINTELLIGIBLE]

THIS IS NOT A CASE LIKE THE  
SALE OF GOODS WHERE THE  
VENDOR SHIPS A KNOWN  
QUALITY TO A PURCHASER WHO  
FAILS TO PAY FOR THEM.  
IN THAT CASE IT'S FAILURE TO  
PAY A KNOWN SUM.

>> WHAT DOES IT MATTER FOR  
WHERE THE VENUE IS IF THE  
CAUSE OF ACTION IS ACCRUING.

IF I AGREE TO PAY YOU, AN  
ATTORNEY, IN --  
AT YOUR OFFICE.

IF I AGREE TO PAY THAT  
AMOUNT.

AND I DON'T --

TO PAY AN AMOUNT, NOT A  
SPECIFIC AMOUNT.

AND YOU DON'T PAY ANYTHING  
TO ME.

WHY DOES IT MATTER FOR THE  
PURPOSES --

YOU KNOW THESE RULES THAT WE  
MIGHT HAVE WITH A BETTER OR  
CREDITOR, IT'S A BREACH TO  
PAY MONEY, DOESN'T THAT  
ACCRUE WHERE THE LAST ACT  
WAS TO TAKE PLACE WHERE THE  
PAYMENT WAS TO TAKE PLACE.

>> THE PURPOSE IS TO HAVE  
THE LEAST AMOUNT OF  
INCONVENIENCE TO THE PARTY  
THAT'S BEING HELD IN THE  
COURT, WHICH IS WHY YOU CAN  
HAIL THAT PARTY IN THE COURT  
WHERE IT HAS IT'S PLACE OR  
BUSINESS OR RESIDENT IF IT'S  
A PERSON.

THE PROPERTY AND LITIGATION  
IT LOCATED BECAUSE IT MAKES

SENSE IF I BUY PROPERTY  
SOMEWHERE I SHOULD HAVE TO  
ANSWER QUESTIONS ABOUT IT,  
OR WHERE THE CAUSE OF ACTION  
ACCRUED.

AND IF YOU HAVE A SITUATION  
WHERE I HAVE PERFORMED  
SERVICES, I AM DUE A SUM OF  
MONEY WITHOUT DOUBT OF WHAT  
IT IS.

>> BUT AN ACCRUAL DOESN'T --  
IT WAS LEGAL SERVICES, THE  
DEBTOR WAS A DEFENDANT IN A  
LAWSUIT, AND ASKED AND HIRED  
SOMEBODY FROM JACKSONVILLE,  
CAME DOWN AND PERFORMED  
SERVICES IN PALM BEACH  
COUNTY, AND THERE WASN'T AN  
AMOUNT SPECIFIED.

HE GOT TO SUE IN  
JACKSONVILLE, CORRECT?

>> HE GOT TO SUE IN  
JACKSONVILLE NOT ON THE  
SERVICES IN PALM BEACH  
COUNTY, HE GOT TO SUE IN

JACKSONVILLE BY RESCINDING  
THE CONTRACT THAT HAD  
ORIGINALLY BEEN ENTERED  
INTO.

THE DISAGREEMENT BETWEEN --  
DISAGREEMENT BETWEEN THOSE  
PARTIES WERE FOR ADDITIONAL  
--

>> SO YOU'RE SAYING CROCKER  
DOESN'T EVEN HAVE A  
CREDITOR-DEBTOR LIQUIDATED  
RULE.

>> HOW COULD IT IF THERE IS  
NOT A SUM OF MONEY DUE.

>> BECAUSE HE HAD A CONTRACT  
FOR \$2500, ANOTHER 2500 IN A  
YEAR, PLUS \$1000 BASED ON  
THE OUTCOME OF THE APPEAL.

>> I HAVE HAVING TROUBLE  
UNDERSTANDING, I'M GOING TO  
TAKE AWAY CROCKER.

WE DO THAT WITH ALL CASES  
ANYWAY, THERE IS A STATUTE  
OF LIMITATIONS, AND IT  
DOESN'T MAKE SENSE TO ME

THAT A CAUSE OF ACTION  
ACCRUING, OR MONEY DUE,  
DEPENDS ON WHETHER THE MONEY  
DO IS A SUM CERTAIN.

I MAY BE WITH YOU ON THIS  
CASE, I THINK THE THIRD  
DISTRICT GOT IT RIGHT, BUT  
IT'S NOT AN ALL OUT  
IMPOSSIBLE QUESTION HERE,  
BUT ON THE ACTUAL ISSUE, WE  
WANT THE LAW NOT TO LOOK  
IDIOTIC ON THINGS.

I DON'T SEE HOW THE FACT OF  
THERE BEING A SUM CERTAIN OR  
NOT EFFECTS A CAUSE OF  
ACTION ACCRUING.

>> THERE'S CLOSE TO 50 YEARS  
OF CONSISTENT DISTRICT COURT  
OF APPEAL APPLICATIONS OF  
THIS EXCEPTION.

THERE ARE OTHER EXCEPTIONS  
TO THE RURAL --

>> THIS IS NOT AN EXCEPTION.

I'M SAYING IT'S A PART OF  
THE SUM OF MONEY DUE THAT

WHEN A CONTRACTOR IS  
BREACHED BY NONPAYMENT AND  
PAYMENT IS TO BE MADE IN A  
SPECIFIC WAY, THAT'S THE  
LAST ACTION, FOR STATUTE OF  
LIMITATIONS PURPOSES, THAT  
IS THE NONPAYMENT OF THE  
BREACH OF THE CONTRACT THAT  
STARTS THINGS GOING, RIGHT?  
THE CAUSE OF ACTION ACCRUED.

>> BUT YOUR FOCUS IS ON  
CASES WHERE SAY THE SERVICES  
OR THE GOODS HAVE BEEN  
RENDERED AND THERE IS AN  
AMOUNT DUE, AND WE KNOW WHAT  
THAT AMOUNT DUE IS.

>> WHAT ABOUT IF NO SERVICES  
ARE RENDERED.

>> YOUR CASE IS GOOD FOR YOU  
BUT NOT BECAUSE OF THE  
CREDITOR DEBTOR RULE.

>> SO THERE WAS A CONTRACT  
IN THIS CASE BUT NOT IN THE  
OTHER CASES.

AND THE PLACE OF PAYMENTS

RULES WHERE --

I MEAN THE OUTLAY RULE

MATTERS.

WHETHER IT ACCRUES OR NOT,

THERE WAS A CONTRACT.

AND THE INDICATIONS, TALKING

ABOUT THE COURT, YOU CAN

CALCULATE WHERE HE WAS A

RESIDENT, AND THE

CALCULATION --

BUT IT REALLY TURNS OUT IF

THERE WAS A CONTRACT.

AND IF THERE WAS NO CONTRACT

YOU HAVE TO GO BY THE

STATUTE FOR WHAT IT SAYS IN

051 ACTIONS AGAINST

CORPORATIONS.

THAT DETERMINES WHAT VENUE

IS.

>> I AGREE, AND WE THINK

THAT TO THE EXTENT THAT

THERE WAS THE ACCRUAL WOULD

HAVE BEEN WHEN HACIENDA

DIDN'T THEN BRING THEM IN

THIS TO DO THIS WORK.

>> LET'S GO BACK TO THAT  
BECAUSE YOUR OPPOSITION SAID  
VERY CLEARLY ON THE FACE OF  
THIS COMPLAINT THAT IT SHOW  
THAT'S WHAT THEY WERE SUING  
FOR WAS THE TERMS OF THE  
CONTRACT THAT WAS ATTACHED  
TO THE GRANT, ALTHOUGH NOT  
ATTACHED, BUT THE TERMS NOT  
THE --  
NOT THAT YOU DIDN'T ENTER  
INTO SOMETHING, BUT THAT'S  
WHAT THEY WERE SUING ON,  
THIS CONTRACT THAT'S ALREADY  
IN EXISTENCE, YOU JUST  
HAVEN'T SIGNED IT.

>> I DON'T READ PARAGRAPH 13  
AS BEING THAT DEFINITE.

>> TELL ME WHY NOT.

>> HOW I READ IT IS, FIRST  
OF ALL WE DON'T KNOW WHAT  
WAS IN THE GRANT.  
YOU CAN TELL THEY'RE SUING  
ON WHATEVER WAS ATTACHED  
THERE.

SO THAT WOULD THEN BE  
HACIENDA'S REPUTATION OF  
THIS CONTRACT --  
>> I'M LOOKING TO --  
THAT WOULD BE THE  
REPUDIATION WOULD BE IN  
HILLSBOROUGH COUNTY THAT  
WOULD BE WHERE THE CAUSE OF  
ACTION ACCRUED FOR NOT  
FOLLOWING THROUGH.  
THERE IS, I CAN'T ACTUALLY  
SAY, BECAUSE I DON'T KNOW  
THAT THERE IS A SIGNED  
CONTRACT THEY WERE SUPPOSED  
TO PUT IN THE MAIL AND  
DELIVER.  
THAT'S NOT WHAT'S ALLEGED.  
BUT THE CONTRACT ITSELF WAS  
ALREADY ON THE GRANT, AND  
THAT'S THE ESSENCE OF THE  
FACTION.  
>> THEY SAY IN PARAGRAPH 13,  
THEY FAILED TO RETAIN THEM  
AS THE MANAGER OF THE  
HACIENDA FACILITY.

>> THEY SAY IT IN PARAGRAPH

TEN.

THEY CONFIRMED IN WRITING

THAT MIA HAD BEEN RETAINED

TO IMPLEMENT THE ASSISTED

LIVING, AND THEN EXHIBIT

NINE SAYS THE APPLICATION OF

HUD FOR THE CONTRACT WITH

MIA CONSULTING GROUP TO

IMPLEMENT THE ASSISTED

LIVING PROGRAM AND PROVIDE

MANAGEMENT AND SUPPORTIVE

SERVICES, THAT ALLEGED IN

THE COMPLAINT.

>> THEN WHY DO THEY SAY

FAILED AND REFUSED TO

RETAIN MIA.

>> THEY SAY IN 13 THAT --

MIA FAILED TO DELIVER IN MIA

IN MIAMI-DADE COUNTY A

SIGNED CONTRACT UNDER WHICH

MIA AUTHORIZED TO DO

WHATEVER WORK THEY'RE

AUTHORIZED TO DO.

SO AS I READ IT, IT SEEMS

THIS CONTRACT, I MEAN THIS  
COMPLAINT IS SAYING THAT  
THEY DID, IN FACT, FAIL TO  
ENTER INTO A CONTRACT.

>> AND IF HACIENDA DID THAT  
IN HILLSBOROUGH COUNTY.

>> ISN'T THAT WHAT WE'RE --  
ISN'T THAT WHAT WE'RE GOING  
BACK TO?

THE STATUTE OF LIMB --  
THE STATUTE OF LIMITATIONS,  
THE LAST ACT IS AN ACCRUAL,  
FOR A CAUSE OF A?

>> I THINK SO, YES.

>> UNLESS YOU HAVE HARM, YOU  
CAN'T --

SO WHAT IT IS, THE LAST ACT  
OF THIS CASE, THAT WAS THE  
BREACH, THAT --

THE STATUTE IS RUNNING WHERE  
YOU COULDN'T RAISE OR NOT  
RAISE THE STATUTE OF  
LIMITATIONS.

>> IT WOULD HAVE TO BE  
HACIENDA'S REPUDIATION.

>> BUT THEY'RE SAYING YOU  
WERE SUPPOSED TO DELIVER A  
CONTRACT TO THEM IN  
MIAMI-DADE.

AND THAT'S DIFFERENT FROM  
WHAT WE'RE SAYING IS A  
CREDITOR OR DEBTOR RULE,  
THAT'S WHAT THEY'RE SAYING.

THEY'RE SAYING YOU WERE  
SUPPOSED TO DELIVER A  
CONTRACT AND YOU FAILED TO  
DO THAT.

>> THAT'S LIKE SAYING EVERY  
CONTRACT CASE THAT HAS  
VENUE, THAT'S NEVER BEEN THE  
LAW AS FAR AS I KNOW,  
ANYWHERE.

WHAT THE ACTION OF HACIENDA  
IS, IS IF THERE WAS IN FACT  
A SIGNED CONTRACT THEY  
SUPPOSEDLY THEN DELIVERED,  
WE WOULD SEE IT.

IT WOULD BE OUTLINED.

WE WOULD KNOW ABOUT IT.

>> A CONTRACT TO EXTEND A

CONTRACT, THAT KIND OF --

>> THAT'S NOT DELIVERING IN  
DADE COUNTY MEANS TO ME.

I CAN'T PUT ANY OTHER  
UNDERSTANDING ON IT.

>> SO IT'S REALLY, THE  
NATURE OF THE CAUSE OF  
ACTION IS SORT OF GETTING --  
IT'S BEATING US DOWN HERE,  
AND I'M STARTING TO THINK, I  
KNOW WE TOOK THIS, BUT WE  
COULD MAKE AN ARGUMENT THAT  
WE REALLY --

>> YES, I DID.

>> I THINK THROUGHOUT THE  
BRIEF, AND I COULD DO A  
SHORT BRIEF ON JURISDICTION.

BUT THAT IS SIMPLY ALL OF  
THE COURTS OF APPEAL HAVE  
AGREED IN CASES OF THIS  
NATURE, FOR THE LIQUIDATED  
OR UN LIQUIDATED ISSUE.

>> IT'S NOT ALL OF THE  
COURTS, IT'S CROCKER IS NOT  
A LIQUIDATED AMOUNT.

I THINK YOU LOSE ON THAT

PARTICULAR --

>> CROCKER IS STRANGE,

BECAUSE WHEN YOU LOOK AT

MENDEZ VERSES HUNT, IT HAS A

NICE REVIEW, AND WHAT IT

SAYS IS KROEKER COULD SUE ON

AN EXPRESSION OF A CONTRACT.

SO I DON'T THINK CROKER DOES

NOT --

>> THEY DIDN'T ANNOUNCE THE

CREDITOR RULE BASED ON

DAMAGE.

>> I THINK IT DID.

WHEN YOU LOOK AT THE

UNDERLYING, CROKER OUTLINES

SEVERAL LETTERS BETWEEN

MR. POWELL AND

MR. ROBBENSON, THE AGENT,

AND IT OUTLINES IN

SIGNIFICANT DETAIL EXACTLY

WHAT AGREEMENT WAS TO RETAIN

MR. POWELL FOR THE SERVICES

HE WAS TO PERFORM.

THE DISAGREEMENT THEN THAT

DEVELOPED WAS FOR ADDITIONAL  
WORK THAT WAS TO BE DONE.  
AND BECAUSE OF THAT POINT,  
MR. POWELL SAID NOW I DON'T  
TRUST YOU TO PAY ME ON MY  
ORIGINAL CONTRACT, SO I'M  
GOING TO RESCIND THAT AND  
SUE ON THAT.

>> HOW DID THAT HAPPEN IN  
JACKSONVILLE THOUGH.

>> BECAUSE THE CONTRACT SAYS  
EXACTLY HOW MUCH MONEY HE  
WAS SUPPOSED TO BE PAID ON  
HIS CONTRACT.

>> WHY WOULD THAT MAKE A  
DIFFERENT IN THE ACCRUAL FOR  
CAUSE OF ACTION.

>> TO MY POINT I MADE  
BEFORE, IS IT RELATES TO THE  
CRIMINAL NOTION ABOUT WHERE  
DEFENDANTS ARE TO BE HAILED  
INTO COURT.

I THINK IT'S CONSISTENT WITH  
THAT DOCTRINE THAT IT'S  
WHERE THEY LIVE AND WHERE

THEY HAVE PROPERTY, ET

CETERA.

>> WHERE THE CAUSE OF ACTION

ACCRUED.

>> SIMPLE, STRAIGHTFORWARD,

I DELIVERED YOU TEN BOWLING

PINS AND YOU --

>> WE MAY BE TALKING ABOUT

AN INCONVENIENT FORM FOR THE

PURPOSES OF TRANSFERRING, I

APPRECIATE THAT WILL OCCUR.

IF THERE ARE TWO LEGAL FORMS

YOU LOOK AT THE FORM OF

CONVENIENCE, BUT NOT ON

WHETHER VENDING PROPERLY IN

THE FIRST PLACE.

>> WHEN YOU LOOK AT ALL OF

THOSE CASES AND INTERPRETING

THE VENUE CASES, THEY'RE ALL

DOWN THE LINE.

THEY'RE VERY FEW EXCEPTIONS,

EMPLOYMENT CONTRACTS ARE

EXCEPTIONS.

>> BUT I NEVER HAD A

SITUATION WHERE I REREAD THE

BRIEF, WHERE YOU'RE SAYING  
THEY ALL SAY UP WITH THING,  
AND YOU'RE SAYING THEY ALL  
SAY SOMETHING ELSE.

>> IT'S THE SYSTEM I  
SUPPOSE.

>> IT CAN'T BE VERY CLEAR  
CAN IT.

>> I DON'T THINK WE  
PURPOSELY TRY TO MAKE IT  
UNCLEAR.

I THINK IF YOU LOOK AT THE  
BASIC ALLEGATION OF THIS  
CASE.

IF MIA IS SUING HACIENDA IN  
MIAMI COUNTY, FOR WHAT?  
THEY DIDN'T RENDER ANY  
SERVICES?

THEY DIDN'T DO ANY OF THIS  
WORK.

THERE IS NO \$120,000  
CONTRACT ANYWHERE TO BE  
SCENE IN THE RECORD.

IT APPEARS IN THE MOTION FOR  
REHEARING FOR DCA.

THERE'S NO BASIS FOR THAT.  
I THINK THIS CASE, CLEARLY  
THERE IS NO NEXUS BETWEEN  
HACIENDA AND MIAMI-DADE.  
THE THIRD DCA GOT IT RIGHT.  
>> I WILL TURN THE COURT'S  
ATTENTION TO THE COCA-COLA  
CASE IN 1955, IT HAS NEVER  
BEEN CHANGED, AND IT SAYS,  
IT IS OF A VERY NATURE OF  
VENUE THAT THE PLAINTIFF  
SELECTS IT INITIALLY BUT MAY  
NOT PLEAD OR PROVE THAT THE  
SELECTION IS PROPER AND THE  
BURDEN OF PLEADING AND  
PROVING THAT THE BURDEN IS  
IMPROPER IS THE FACT THAT  
IT'S UPON THE DEFENDANT.  
AND THE PROBLEM CREATED HERE  
IS THAT THE DEFENDANT  
ELECTED OUT OF THE BOX TO  
FILE AN UNSWORN MOTION, NOT  
MAKING THE ARGUMENT THAT  
IT'S MADE ON APPEAL TO THE  
THIRD DISTRICT OR TO THE

COURT TODAY.

THE ARGUMENT THAT ULTIMATELY  
COUNSEL DEFAULTS TO IS THERE  
WAS NEVER A CONTRACT.

THAT ARGUMENT IS NOT MADE,  
AND THERE IS A CONTRACT  
BASED ON THE AUTHORITY THAT  
COUNSEL CITED IN HIS CASE  
LIKE THE BLUEVAC CASE.

THE VEUL THAT IT'S POSSIBLE  
FOR THEM TO MAKE AN  
ENFORCEABLE CONTRACT BINDING  
THEM TO EXECUTE AND PREPARE  
A SUBSEQUENT AGREEMENT  
PROVIDING IT'S DEFINITE  
DEPENDING ON ALL OF THE  
SUBJECTS TO BE EMBRACED.

AND THERE WAS A SECOND  
CONTRACT, AND ADMITTEDLY  
THERE WAS BECAUSE THE  
PARTIES AGREE THAT IF THE  
CONDITION WERE SATISFIED,  
THE FUNDING OF THE HUD  
GRANT, THE PARTIES WOULD  
ENTER INTO A DEFINED

AGREEMENT.

THAT DID NOT, I SUBMIT  
RESPECTFULLY HAVE TO BE  
ATTACHED TO THE COMPLAINT.

BUT IF IT DID, WE HAD AN  
OBLIGATION TO ASK THAT IT BE  
ATTACHED AND THEY DID NOT DO  
THAT.

SO WHAT HAPPENED, IS THERE A  
A ROPE WHERE THE FIRST TIME  
ON APPEAL, THE VARIOUS  
ARGUMENTING BEGIN TO UNFOLD  
THAT'S NOT LIQUIDATED, AND I  
AGREE WITH YOU.

A CAUSE OF ACTION CANNOT  
ACCRUE BASED ON THE QUALITY  
OF THE DAMAGES.

THEN THEY DIDN'T REALLY HAVE  
A CONTRACT.

THEY ARGUE THAT ON THE  
APPEAL OF THE THIRD  
DISTRICT.

THEY BACK OFF ON IT BECAUSE  
THEY'RE OWN AUTHORITIES SHOW  
THAT WHAT WE SUED ON IS

RECOGNIZED IN THE LAW, IT'S

A SUBJECT OF PROOF.

I DON'T NEED PROOF IN MY

COMPLAINT, AND I DON'T NEED

TO NECESSARILY ATTACH AN

ENTIRE CONTRACT BUT WE HAVE

ALSO CITED THE AUTHORITY

SAYING IF WE DISCLOSED IT OR

REFERENCED IT, THEY WOULD

KNOW ABOUT IT.

IT'S NOT EXACTLY A COMPLETE

TRUTHFUL STATEMENT TO SAY

THAT WE DON'T KNOW WHAT'S IN

THAT GRANT APPLICATION.

>> WHAT YOU ALLEGE IS THE

FAILURE --

FAILURE TO SIGN A CONTRACT,

NOT PAY MONEY.

>> BUT THE CONTRACT PROVIDES

MONEY, AND IF THEY REPUTE

THEIR OBLIGATION, WHICH THEY

DID HERE, WHAT ARE THE

CONSEQUENCES OF THAT.

THE CONTRACT PROVIDES FOR

THE PAYMENT OF MONEY.

AND ALL OF THAT IS TO TAKE  
PLACE IN MIAMI-DADE COUNTY.  
NONE OF THE DEFENDANT'S CASE  
WAS TO TAKE PLACE IN  
HILLSBOROUGH.

>> OTHER THAN THE EXECUTION  
OF THE AGREEMENT.

>> THE UNDERSTOOD LYING  
AGREEMENT COULD BE EXECUTED  
ANYWHERE.

AND THAT'S NOT AN ESSENTIAL,  
THE PLACE OF EXECUTION IS  
NOT ESSENTIAL.

>> THE QUESTION WAS NOT IF  
IT'S ESSENTIAL, THE QUESTION  
WAS WHERE SHOULD THAT OCCUR.  
ACCORDING TO YOUR PLEADING.

>> WHERE IT WOULD BE  
DELIVERED, MIAMI-DADE  
COUNTY.

THEY HAD AN OBLIGATION TO  
DELIVER IT TO US AND PAY US  
MONEY.

THAT GOES TO WHERE DID THE  
CAUSE OF ACTION ACCRUE.

IT DID IT HAPPEN IN MIAMI OR  
TAMPA.

>> THANK YOU, WE THANK BOTH  
SIDES OF THE ARGUMENT.

THAT CONCLUDES TODAY'S  
DOCKET, THE COURT WILL NOW  
STAND ADJOURNED.

>> ALL RISE.