

>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.

PLEASE, BE SEATED.

>> WE NOW COME TO THE THIRD AND  
FINAL CASE ON TODAY'S DOCKET,  
JACKSON V. THE SHAKESPEARE  
FOUNDATION, INC.

>> MAY IT PLEASE THE COURT, MY  
NAME IS JEAN DOWNING, AND I'M  
HERE ON BEHALF OF KERRY AND  
GEORGE JACKSON, THEY WERE THE  
DEFENDANTS IN THE TRIAL COURT  
BELOW AND ARE THE PETITIONERS  
HEREIN.

THEY ARE REALTORS OVER IN BAY  
COUNTY WHO SOLD SOME PROPERTY,  
AND WHEN THEY WERE SUED OVER THE  
PIECE OF PROPERTY OVER AN ISSUE  
REGARDING WETLANDS, THEY FILED A  
MOTION TO DISMISS REQUESTING  
THAT THE TRIAL COURT SEND THE  
CASE TO ARBITRATION.

AND THE TRIAL COURT AGREED WITH  
THE PETITIONERS AND SENT THE  
COURT -- SENT THE CASE TO  
ARBITRATION.

AND AS JUSTICE PARIENTE STATED  
EARLIER, ARBITRATION IS FAVORED  
BY FLORIDA AND BY THE FEDERAL  
ARBITRATION ACT.

IT'S FAVORED ACROSS THE UNITED  
STATES.

IT IS AN AGREEMENT OF THE  
PARTIES, IT SAVES THE COURTS  
TIME, IT SAVES THE PARTIES TIME,  
IT ALLOWS THE PARTIES TO PICK  
THEIR ARBITRATOR RATHER THAN  
TRYING TO FILE A CASE TO PICK A  
JUDGE.

THEY ACTUALLY HAVE AGREED TO  
PICK THEIR ARBITRATOR, TO PICK  
SOMEBODY WHO IS FAMILIAR WITH  
THIS AREA OF LAW.

>> BUT THIS CASE DOESN'T, I  
MEAN, IT DOESN'T TURN ON WHETHER  
ONE FAVORS ARBITRATION OR NOT.  
THE QUESTION IS, IS WHETHER  
THERE'S SOME KIND OF INDEPENDENT  
TORT.

AS I UNDERSTAND FROM READING THE  
FIRST DCA OPINION, THAT THE  
FIRST DCA HAS SAID THAT EVEN  
SEPARATE AND APART FROM THIS  
CONTRACT, THERE'S A  
FREE-STANDING TORT, AND  
THEREFORE, THAT WOULD NOT NEED  
TO GO INTO ARBITRATION.

THAT'S, AS I UNDERSTAND IT.  
IS THAT NOT WHAT THEY HAD  
INDICATED?

>> YES, IT IS.  
IT IS, YOUR HONOR.  
>> OKAY.

>> AND THE DISCUSSION REGARDING  
ARBITRATION GOES TO THE NEXUS OF  
THE CASE WITH THE CONTRACT.  
THE PLAINTIFFS ARE THE ONES WHO  
FILED THIS COMPLAINT, AND THEY  
ATTACHED THE CONTRACTED ISSUE TO  
THE COMPLAINT.

THEY REFERRED TO THE CONTRACTED  
ISSUE IN THE COMPLAINT.  
THEY DIRECTLY REFERRED TO THE  
NEXUS BETWEEN THE ARBITRATION  
CLAUSE AND THE COMPLAINT.

THE FIRST DCA IN ITS RULING SAID  
THERE WAS NO NEXUS, THAT THIS  
FRAUDULENT MISREPRESENTATION  
CASE COULD BE COMPLETELY  
DECIDED, COULD HAVE BEEN FILED  
WITHOUT REFERENCE TO THE  
COMPLAINT.

THE PETITIONERS RESPECTFULLY  
DISAGREE WITH THAT, AGREE WITH  
THE JUDGE'S WELL-REASONED  
DISSENT AND WOULD SAY THAT THE  
CONTRACT HAS TO BE REFERRED TO  
WHEN DEALING WITH THE ISSUES IN  
THIS CASE.

>> DO YOU AGREE THAT THE FEDERAL  
ARBITRATION ACT DOES NOT, DOES  
NOT COME INTO PLAY IN THIS CASE?  
>> I DO NOT, JUSTICE PARIENTE,  
BECAUSE THE FLORIDA ARBITRATION  
CODE IS MODELED AFTER THE  
ARBITRATION ACT.

I BELIEVE THAT THE CASE LAW,  
INCLUDING THE BUCKEYE CASE THAT  
WE CITED, THAT THOSE PRINCIPLES  
OF ARBITRATION, THOSE ALL --  
>> BUT SO YOU'RE NOT, THERE'S NO  
ISSUE ABOUT SOMETHING UNIQUE  
ABOUT THE FEDERAL ARBITRATION  
ACT THAT WOULD GOVERN THIS?

>> THERE IS NOT.

>> NOW, MY CONCERN, LET'S -- I  
UNDERSTAND WHAT YOU'RE SAYING  
ABOUT REFERRING TO THE CONTRACT.  
WHAT IS YOUR ARGUMENT, THOUGH,  
ABOUT THAT THERE REALLY ARE NO  
REMEDIES FOR THE FRAUD CLAIM,  
THAT IT ENVISIONED THAT THESE  
REMEDIES ARE REALLY MORE GEARED  
TO IF THERE'S DEFAULT BY THE

BUYERS?

SO IS THERE -- WHAT WOULD -- ARE THERE REMEDIES IF IT'S TO GO TO ARBITRATION FOR THE FRAUD CLAIM?

>> YOUR HONOR, AND TO ANSWER THAT QUESTION --

>> BY THAT I MEAN DAMAGES.

>> YEAH.

>> IT SEEMED LIKE THERE WAS LIMITED -- THAT THERE WAS SPECIFICATION OF DAMAGES THAT WOULDN'T BE APPLICABLE TO A FRAUD CLAIM.

>> FIRST, IN ANSWER TO THAT QUESTION I WOULD ARGUE THAT IF THE PARTIES IN THIS CASE, JUST LIKE THE PARTIES IN THE MCGUIRE V. KING CASE FROM THE FIFTH DCA, IF THEY LIMITED THEIR REMEDIES BY THIS CONTRACT AND THERE'S NOTHING IN THE RECORD -- BECAUSE REALLY MOST OF WHAT WE HAVE IS THE COMPLAINT -- THERE'S NOTHING IN THE COMPLAINT THAT SAYS THAT THESE PARTIES WERE INCOMPETENT TO MAKE THIS AGREEMENT OR DIDN'T UNDERSTAND IT OR WEREN'T ANYTHING OTHER THAN TWO BUSINESS ENTITIES MAKING AN AGREEMENT REGARDING A PIECE OF PROPERTY.

SO, ONE, IF THEY, IF THEY DID LIMIT THEIR REMEDIES BY CHOOSING TO SELECT AN ARBITRATION CLAUSE, CHOOSING TO INCLUDE AN ARBITRATION CLAUSE, THEN THAT'S ABSOLUTELY ALLOWABLE.

>> OKAY.

SO I THINK I'M HEARING YOU SAY THAT THEY, THAT WE WOULD INTERPRET, THAT THERE IS AN INTENTIONAL WAIVER OF COMMON LAW DAMAGES FOR INTENTIONAL FRAUD AND MISREPRESENTATION, THAT THAT'S -- WOULD THAT HAVE TO BE LITIGATED BY THE TRIAL COURT OR BY THE ARBITRATORS?

>> WHERE THE ISSUE OF FRAUD DOESN'T GO AS TO THE, DOESN'T GO TO THE ENTIRE CONTRACT, IT WOULD ALL GO TO THE ARBITRATOR.

[INAUDIBLE CONVERSATIONS]

>> THEY'RE SAYING THERE WAS -- AS I GATHERED IT, THOUGH, LET ME JUST GO BACK AGAIN.

SO I THINK WHAT YOU'RE SAYING IS THAT THE FRAUD CLAIM COULD BE

BROUGHT IN ARBITRATION BUT THAT THE CONTRACT CLEARLY LIMITS THE DAMAGES THAT ARE RECOVERABLE, AND SO THERE WOULD BE A WAIVER OF ANY OTHER DAMAGES BY VIRTUE OF THE CONTRACT?

>> THAT'S, THAT IS ONE ARGUMENT. I ALSO ARGUE THAT IF AT THE END OF THE --

>> BUT IS THAT YOUR -- I KNOW THAT'S ONE ARGUMENT.

WHAT I'M ASKING YOU, IS THAT YOUR ARGUMENT?

THAT IS, RATHER THAN THEY ARGUE THAT THE LACK OF REMEDY SHOWED THAT THE FRAUD CLAIM WAS NEVER INTENDED TO BE ARBITRATED, YOU'RE SAYING, NO, THAT SHOWS THAT THEY INTENDED TO LIMIT THEIR REMEDIES EVEN FOR A FRAUD CLAIM?

IS THAT THE POSITION -- THE POSITION WOULD BE THAT IF YOU LOOK AT THE LIMITATION OF REMEDIES, THAT JUST SHOWS THAT THERE WAS A WAIVER OF ANY COMMON LAW ACTION AND A WAIVER OF DAMAGES THAT OTHERWISE COULD BE RECOVERED.

>> YES.

I ALSO WOULD SUBMIT --

>> IT'S REALLY HARSH THEN. NOW WE'RE NOT JUST TALKING ABOUT THE BENEFITS OF ARBITRATION, NOW WE'RE TALKING ABOUT LOSING SIGNIFICANT DAMAGES THAT MIGHT COME AS A RESULT OF A FRAUD ACTION.

>> I, I DISAGREE TO THAT END. I THINK THAT THEY, THEY WOULD BE ABLE TO STILL IF THEY DIDN'T LIKE WHAT THE ARBITRATOR DECIDED, OR THE ARBITRATOR SAID THERE'S FRAUD, BUT I CAN'T GIVE YOU DAMAGES REGARDING FRAUD, I BELIEVE THAT THEY CAN THEN TAKE THAT ISSUE TO A CIRCUIT JUDGE.

>> UNDER WHAT THEORY?

YOU'RE VERY LIMITED ON ARBITRATION AWARDS UNDER THE FLORIDA ARBITRATION CODE.

I MEAN, YOU HAVE STATUTORY REASONS THAT YOU CAN GO INTO CIRCUIT COURT.

I DON'T KNOW OF ONE OF THOSE THAT JUST COVER WHAT YOU JUST SAID.

>> AND THAT'S TRUE.  
UM, THE ARBITRATION CODE, I  
DON'T KNOW IT COMPLETELY AND  
THOROUGHLY, AND THIS MAY BE ONE  
OF THOSE INSTANCES.

I DON'T --

>> DOESN'T THE CONTRACT ACTUALLY  
RECOGNIZE THAT THE BUYER HAS THE  
RIGHT TO SEEK DAMAGES IN THE  
CASE OF THE DEFAULT?

>> YES.

>> SO, I MEAN, AND THIS --  
REALLY THIS, THE LIMITATIONS  
HERE DON'T ACTUALLY ADDRESS THE  
SPECIFIC TYPE OF PLAN YOU'RE  
TALKING ABOUT.

>> NO, YOUR HONOR.

>> I MEAN, WHY WOULDN'T THERE BE  
A THEORY THAT IN THE  
ARBITRATION, THEY COULD GET  
DAMAGES?

THE REMEDY OF DAMAGES IS NOT  
EXCLUDED.

THAT'S A REMEDY.

HERE WE'RE TALKING ABOUT  
PARTICULAR CLAIM.

IS IT YOUR POSITION THAT IN THE  
ARBITRATION, THE ARBITRATION  
THERE'S REALLY NOTHING THAT THE  
ARBITRATOR CAN GIVE FOR THIS  
CLAIM?

>> NO, I DISAGREE.

THERE ARE DAMAGES THAT ARE SET  
FORTH IN THE CONTRACT.

THE --

>> WHICH IS, BASICALLY, REFUND  
OF THE DEPOSIT.

>> YES, YOUR HONOR.

>> SO THAT'S THE ANSWER, THEY  
GET A REFUND OF THE DEPOSIT, AND  
THAT'S IT?

>> THAT'S WHAT THEY AGREED TO.

>> YEAH.

>> SO NO -- AND IT DOESN'T LOOK  
LIKE THEY PLED PUNITIVE DAMAGES,  
BUT IN A COMPLAINT FOR  
INTENTIONAL FRAUD YOU COULD  
CLAIM PUNITIVE DAMAGES, AND THAT  
WOULD NOT BE ASSUMING THAT WAS  
PART OF THE DAMAGES, THAT WOULD  
ACTUALLY NOT BE SOMETHING THAT  
THE ARBITRATOR COULD AWARD.

BUT I'M NOT SURE I UNDERSTAND,  
YOU SORT OF AGREED WITH THAT BUT  
THEN SAID BUT THEY COULD GO TO  
CIRCUIT COURT AND GET THOSE  
DAMAGES?

THAT'S NOT CORRECT.

>> I'M GOING TO STEP BACK FROM  
THAT POSITION AND AGREE WITH  
JUSTICE LEWIS THAT THAT MAY NOT  
BE POSSIBLE.

UM --

>> LET'S SEE IF WE CAN WALK  
THROUGH THIS THEN.

THERE ARE SOME TYPES OF TORT  
ACTIONS, IT WOULD APPEAR, THAT  
ALTHOUGH THEY MAY SEEM TO BE,  
QUOTE, RELATED TO THE  
CONTRACTUAL RELATIONSHIP SUCH AS  
SEIFFERT, THE WRONGFUL DEATH  
CASE, THERE'S SOME KIND OF  
DELINEATION BETWEEN THE  
CONTRACTUAL RELATIONSHIP AND THE  
TORT.

>> YES.

>> BUT THIS ONE GETS CLOSER THAN  
THAT ONE BECAUSE IT HAS  
SOMETHING TO DO WITH THE STATUS  
OF THE LAND AND THAT KIND OF  
THING.

SO I GUESS REALLY WHAT WE'RE  
TALKING ABOUT IS THE LINE  
DRAWING.

>> YES.

>> SO WHERE DO WE DRAW THE LINE?  
WE KNOW UNDER SEIFFERT WE CAN'T  
JUST SAY BECAUSE IT'S RELATED TO  
IT, IT BRINGS IT IN THE  
ARBITRATION.

WHERE'S THAT LINE, AND WHAT'S  
THE POLICY ABOUT WHERE THE LINE  
SHOULD BE, THAT KIND OF THING.  
LET'S SEE IF WE CAN GO AT IT  
THAT WAY.

>> THE POLICY IS THAT IF THERE'S  
A NEXUS BETWEEN THE CONTRACT AND  
THE CLAIM, THAT IT SHOULD BE  
COVERED BY THE ARBITRATION  
CLAUSE.

>> WHAT TYPE OF NEXUS ARE WE  
TALKING ABOUT THOUGH?  
SEIFFERT RECOGNIZES A NEXUS FOR,  
I MEAN, THAT THE PARTIES WOULD  
NEVER HAVE BEEN IN THAT  
CIRCUMSTANCE WITHOUT THE  
CONTRACT.

>> BUT IN SEIFFERT THE WRONGFUL  
DEATH ACTION WAS A COMPLETELY  
SEPARATE -- IT COULD HAVE BEEN A  
COMPLETELY SEPARATE PERSON.  
IT COULD HAVE BEEN A VISITOR TO  
THE HOME WHO COULD HAVE BROUGHT  
THAT.

IN THIS CASE THIS IS A, THESE ARE THE TWO PARTIES TO THE CONTRACT, AND THE CONTRACT ITSELF REQUIRED THAT THE BUYERS CONDUCT A FEASIBILITY STUDY PRIOR TO THE CLOSING ON THEIR PROPERTY.

AND THAT IS WHERE THE ARBITRATION POLICY FALLS INTO PLACE.

THAT IS WHERE --

>> WELL, HOW ABOUT UNDER SEIFFERT?

A PERSON WOULDN'T BE SLEEPING IN THE HOUSE UNLESS THEY HAD PURCHASED IT, AND THEY WOULD NOT HAVE DIED HAD THEY APPARENTLY INSPECTED IT, AND WE ALWAYS HAVE AS THE NORMAL, WE GO THROUGH AND WE DO A WALK-THROUGH, WE DO A PUNCH LIST, WE DO ALL THOSE KINDS OF THINGS.

I'M TRYING TO SEE HOW WE FIT THIS ONE IN WITHOUT VIOLATING THE PRINCIPLES OF SEIFFERT.

CAN YOU HELP WITH THAT?

>> THE SIEFERT CASE IS DISTINGUISHABLE FROM THIS CASE BECAUSE IN SIEFERT, THERE WAS AN ATTENUATION OF TIME.

THERE WAS AN ATTENUATION BETWEEN THE CONTRACT AND THE CAUSE OF ACTION.

HERE IT IS NOT THE CASE.

THERE IS NOT TIME AND THERE IS NOT -- THERE IS NOT ANY DIFFERENCE BETWEEN THE ISSUES RELATED TO THE CONTRACT.

THE CONTRACT ITSELF IS FOR THE SALE.

THE DISPUTE IS ABOUT THE SALE OF THE PROPERTY.

THE ALLEGED MISREPRESENTATION IS ABOUT THE SALE.

>> OKAY, SO I'M GETTING THAT. AGAIN, I AM NOT UNDERSTANDING THAT, IF THE CASE IS ABOUT A BREACH OF CONTRACT, SOMEONE HAS BREACHED THE CONTRACT AND YOU ARE SEEKING REMEDIES UNDER THE CONTRACT, THAT IS THE KIND OF NEXUS I THINK THE FIRST DISTRICT, JUDGE THOMAS, WOULD BE TALKING ABOUT.

BUT HERE, IF YOU ARE TALKING ABOUT A COMMON LAW FRAUD IN THE INDUCEMENT, WHERE THE DAMAGES

THAT ARE BEING SOUGHT ARE NOT DAMAGES UNDER THE CONTRACT, THE FACT THAT YOU AS THE DEFENDANT MAY ARGUE A DEFENSE SUCH AS, AS IT IS, YOU KNOW THAT THEY ACCEPTED IT AS IS, OR THAT THEY WERE SUPPOSED TO THEMSELVES -- YOU WOULD BE SAYING THAT BECAUSE YOU HAVE TO REFERENCE THE CONTRACT, THAT THEN IS SUBJECT TO ARBITRATION?

I DON'T KNOW THAT NEXUS TEST MAKES SENSE IN THE CONCEPT OF ANY ARBITRATION CLAUSE WHERE YOU ARE NOT SEEKING DAMAGES AS A RESULT OF THE CONTRACT.

>> AND TWO DIFFERENT RESPONSES TO THAT.

THE FIRST IS, IN THIS CASE THE COMPLAINT THAT THE COURT GOES BACK AND LOOKS AT THE FIRST 14 PAGES OF RECORD, THIS COMPLAINT IS NOT A COMPLAINT FOR FRAUD OR DOESN'T SAY IT'S A COMPLAINT FOR FRAUD AND MISREPRESENTATION OR FRAUD IN THE INDUCEMENT.

IT IS SIMPLY A COMPLAINT.

IT SIMPLY SAYS THE PLAINTIFF TO THE DEFENDANT.

>> I AM LOOKING AT IT AND IT LOOKS TO ME -- IT'S NOT A BREACH OF CONTRACT CASE, IS IT?

>> WELL THE CONTRACT IS ATTACHED.

THE CONTRACT IS REFERRED TO.

>> AS A RESULT THEY TALK ABOUT THE FRAUDULENT MISREPRESENTATION AS A RESULT OF THE FRAUDULENT MISREPRESENTATION AND THEY SUFFERED DAMAGES.

IT'S NOT A BREACH OF CONTRACT ACTION AND I DON'T KNOW WHETHER YOU KNOW THIS OBVIOUSLY WAS IN THE STATUTE OF LIMITATIONS ISSUE.

>> BUT DOESN'T THE OPERATIVE LANGUAGE HERE SAY, ALL CONTROVERSIES, CLAIMS OR OTHER MATTERS AND THIS QUESTION ARISING OUT OF OR RELATING TO THIS TRANSACTION OR THIS CONTRACT OR ITS BREACH WILL BE SETTLED AS FOLLOWS.

AND THEN IT GOES ON FROM THERE.

AND IT TALKS ABOUT THE

ARBITRATION.

SO, IT ESTABLISHES THEIR RIGHT  
TO ARBITRATION.

SO UNLESS I'M MISSING SOMETHING  
THAT SEEMS TO BE PRETTY --  
I AM STRUGGLING WITH THE CONCEPT  
THAT SOMEHOW A MISREPRESENTATION  
THAT INDUCES A CONTRACT IS NOT  
RELATED TO THE CONTRACT.

A CLAIM OF MISREPRESENTATION  
THAT INDUCES THE CONTRACT IS NOT  
A CLAIM THAT IS RELATED TO THE  
TRANSACTION OR THE CONTRACT.

>> JUDGE THOMAS AND JUDGE VAN  
NORTWICK IN THE FIRST DCA GIVE A  
HYPOTHETICAL ABOUT WHY THEY  
COULD HAVE RELIED UPON THE  
ADVERTISEMENT AND INCURRED SOME  
COSTS, SO THAT IS NOT WHAT  
HAPPENED HERE.

>> I DON'T UNDERSTAND THAT.  
I DON'T KNOW HOW SOMEBODY CAN  
REASONABLY RELY ON AN  
ADVERTISEMENT THAT THEY SEE AND  
GO OUT AND SPEND MONEY BEFORE  
THEY HAVE BEEN IN ANY KIND OF  
RELATIONSHIP.

HOW DO THEY KNOW THE PROPERTY  
HASN'T ALREADY BEEN SOLD?  
THAT IS ABSOLUTELY FANCIFUL OF  
AN IDEA THAT THEY COULD  
REASONABLY RELY ON SOME  
ADVERTISEMENT TO GO OUT AND  
EXPEND MONEY AS A RELIANCE ON  
THAT WHEN THE WHOLE SITUATION  
COULD CHANGE.

UNTIL THERE HAS BEEN AN  
ACCEPTANCE OF AN OFFER.

>> AND A RELIANCE WAS ON THE  
CONTRACT.

THE MENTAL RELIANCE IS  
COMPLETELY TIED IN TO THE  
ARBITRATION CLAUSE INTO THE  
CONTRACT.

IS REFERRED IN THE COMPLAINT.  
IT'S GOT TO BE AS THE JUDGE  
STATED IN HER DEFENSE, IT'S GOT  
TO BE READ WITH THE REST OF THE  
CONTRACT.

I DON'T AGREE THAT IS JUST A  
DEFENSE.

THE ARBITRATOR OR THE JUDGE IS  
GOING TO HAVE TO LOOK AT THAT  
ENTIRE CONTRACT TO DETERMINE  
WHETHER THERE WAS ANY TYPE OF  
FRAUD, AND WHILE THIS MAY SAVE  
FRAUD JUSTICE PARIENTE, THEY MAY  
TALK ABOUT FRAUDULENT

MISREPRESENTATION BUT THE LAST OR SECOND TO LAST PARAGRAPH OF THE COMPLAINT REQUESTS ATTORNEYS FEES BASED ON WHAT THE CONTRACT --

>> I THINK AND YOU WILL HAVE TO ANSWER THE QUESTION BECAUSE I'M READING PARAGRAPH 14 THAT JUSTICE CANADY TALKED ABOUT AND IT DOES SAY, AND I STAND CORRECTED, JUST THE CONTRACT IS ARISING OUT OF OR RELATING TO THIS TRANSACTION.

SO, I SEE --

I THINK OF THAT ISSUE THEREFORE I THINK THE NEXUS AND WHETHER THAT WAS --

WHETHER THERE IS SOME DISTINCTION BECAUSE OF THE DAMAGES THAT ARE ACTUALLY BEING SOUGHT BECAUSE THERE -- I DON'T SEE A WAIVER OF DAMAGES PROVISION, BUT THAT IS A QUESTION I GUESS FOR -- THAT WOULD BE A QUESTION FOR THE ARBITRATOR.

SO I DO SEE THAT AS BEING A VERY BROAD QUESTION AND SO, REALLY WHEN YOU ARE TALKING ABOUT NOT TORTS THAT ARE INDEPENDENT OF CONTRACT BUT TORTS ARISING FROM A CONTRACTUAL RELATIONSHIP YOUR POSITION WOULD BE THAT IS A SUFFICIENT NEXUS?

>> NO QUESTION IN SIEFERT THIS COURT HAS HELD THAT IF THE CONTRACT ITSELF PLACES THE PARTY IN A RELATIONSHIP THAT CREATES NEW DUTIES, NEW DUTIES AS IT SAYS, NOT OTHERWISE APPROACHED BY LAW, NOT OTHERWISE APPROACHED BY LAW, THAT IS WHEN IT COMES WITHIN THE CONTRACT.

BUT IF THERE IS AN ACTION FOR IT TO BE NOT ARISING FROM THAT CONTRACT OR NOT IN THE CONTRACT, IS ARISING FROM THE COMMON LAW DUTY, HOW WOULD YOU SQUARE THOSE TWO CASES BECAUSE CLEARLY THAT IS WHAT SIEFERT HAS SAID.

YOU READ IT OVER AND OVER I AM SURE AND NO, HOW DO I DISTINGUISH THIS?

>> FIRST BECAUSE THIS IS A BROAD TRANSACTIONAL PHRASE IN THE CONTRACT FOR ARBITRATION AND SECOND, BECAUSE THE ISSUES, THE

ISSUES HERE, THE RELATIONSHIP HERE, THE MISREPRESENTATION IF IT HAPPENED, HAPPENED AS A RESULT OF THEIR RELATIONSHIP UNDER THE CONTRACT, NOT AS JUSTICE CANADY -- CHIEF JUSTICE CANADY -- SAID, NOT BECAUSE THERE WAS AN ADVERTISEMENT IN THE PAPER AND THEY RELIED UPON IT.

IT IS PURELY AND SOLELY BECAUSE THEY SOUGHT THE PROPERTY AND IT IS IMPORTANT TO KNOW THAT THE PARTIES THEMSELVES RECOGNIZE BY REQUIRING A FEASIBILITY STUDY THAT THERE MIGHT BE SOME ISSUE WITH THE PROPERTY, THAT IT MIGHT NOT BE PROPER FOR THE PLAINTIFF'S USAGE AND I SEE THAT I AM OUT OF TIME, SO UNLESS THERE ARE ANY OTHER QUESTIONS. THANK YOU.

>> MAY IT PLEASE THE COURT.  
LET ME SEE IF I CAN DEAL WITH SOME OF THESE ISSUES THAT HAVE BEEN RAISED HERE.

MY NAME IS LEONARD IRELAND AND I REPRESENT THE RESPONDENTS IN THIS ACTION.

LET ME FIRST GIVE YOU A LITTLE BIT OF FACTUAL INFORMATION WHICH I'M SURE YOU HAVE AND WHAT YOU HAVE IS A COUPLE SENTENCES ON THIS.

THE JACKSON'S ADVERTISE THIS PROPERTY FOR SALE THROUGH THE PANAMA CITY/BAY COUNTY MULTIPLE LISTING SERVICE AND PUT SPECIFICALLY IN THEIR TWO THINGS THAT ARE IMPORTANT.

ONE IS THAT THIS IS A GOOD PROPERTY FOR HOUSING AND THERE'S A FEASIBILITY STUDY THAT THERE ARE NO WETLANDS ON THE PROPERTY. THAT IS NOT TRUE.

>> IN YOUR BRIEF, DON'T YOU INDICATE THAT THERE ARE NO JURISDICTIONAL WETLANDS?

>> THERE ARE NO JURISDICTIONAL WETLANDS.

>> WE GET INTO A LITTLE AMBIGUITY THERE BECAUSE WHAT IT MEANS IS THERE MAY BE SOME LAND --

>> LET ME FINISH OUT IF I MAY.

>> WELL, ANSWER MY QUESTION BECAUSE WHAT IT MEANS IS THAT IF

THE LANDS ARE WET BUT THEY CAN STILL BE FILLED IF THEY ARE NOT JURISDICTIONAL WETLANDS.

>> I DON'T BELIEVE THAT IS CORRECT BECAUSE THERE IS ANOTHER STUDY WHICH MS. JACKSON HAD IN HER STUDY AT THE TIME SHE MADE THAT REPRESENTATION THAT SAID 26% OF THE LAND WAS IN WETLANDS. YOU HAVE TO MAKE FULL DISCLOSURE.

SAY IN YOUR BRIEF AND MAYBE I'M WRONG -- CORRECT ME IF I'M WRONG.

THERE ARE NOT JURISDICTIONAL WETLANDS ON THE PROPERTY.

>> THEY'RE NOT JURISDICTIONAL WETLANDS ON THE PROPERTY.

>> THAT MEANS THE LAND CAN BE FILLED.

>> I DO NOT KNOW THAT BUT I KNOW ONE THING THEY HAVE NOT BEEN ABLE TO DEVELOP THIS LAND SINCE IT'S BEEN PURCHASED.

>> WELL, IN THE CONTRACT DOES NOT PROVIDE FOR A FEASIBILITY STUDY SO THAT THE BUYER HAS TO GO IN DUE DILIGENCE AND DO ITS WORK AND DETERMINED THAT?

>> THAT MAY BE A DEFENSE WHEN WE GET DOWN THE LINE.

THAT DOESN'T HAVE ANYTHING TO RESPECTFULLY TO DO WITH ARBITRATION.

>> BUT LET'S GET TO THE ARBITRATION THEN BECAUSE IT SEEMS TO ME, AND I THINK YOU ASKED YOUR OPPONENT ABOUT THIS BEING A BROAD ARBITRATION CLAUSE, AND SO THERE IS LANGUAGE IN THAT ARBITRATION CLAUSE THAT TALKS ABOUT RELATING TO THIS TRANSACTION.

THAT IS THE LANGUAGE THAT REALLY TO ME SEEMS TO BE THE LYNCHPIN. WHY IS AND IT, THIS ADVERTISEMENT, RELATED TO THIS TRANSACTION?

>> BECAUSE IT OCCURRED PRIOR TO THE TIME THAT THESE PARTIES ENTERED INTO THIS CONTRACT. THE CONTRACT HAS ABSOLUTELY NOTHING TO DO WITH IT.

SIEFERT SAYS --

>> IF THE CONTRACT -- WHY DID YOU ATTACH THE CONTRACT TO YOUR COMPLAINT?

[INAUDIBLE]

>> YOU ASKED FOR ATTORNEY FEES  
UNDER THE CONTRACT.

>> PROBABLY BASED ON THE SAME  
THING BUT YOU GET TO THIS POINT.  
>> BUT HERE'S THE PROBLEM I HAVE  
ABOUT WHAT IS FAIR AND WHAT IS  
CONTEMPLATED.

I'M MORE CONCERNED WITH THE  
LIMITATION OF REMEDY BUT LET'S  
JUST STAY WITH A CAUSE OF  
ACTION.

THEY HAVE EVERY RIGHT TO DEFEND  
THIS ACTION FOR FRAUDULENT  
MISREPRESENTATION BY SAYING THAT  
THE CONTRACT, YOU BOUGHT IT AS  
IS AND YOU HAVE THE RIGHT --  
THE "AS IS" IS PRETTY CRITICAL  
AND YOU WOULD AGREE THEY CAN  
RAISE THAT AS A DEFENSE.

>> NO QUESTION.

>> THAT IS WHAT I'M SAYING.  
HOW IS THAT NOT RELATED TO THE  
TRANSACTION?

YOU PURCHASED PROPERTY AND YOU  
SAID YOU WOULDN'T HAVE PURCHASED  
IT IF THEY HADN'T MADE THE  
MISREPRESENTATION AND THEY SAY,  
BUT WHEN WE ENTERED THE  
CONTRACT, YOU TOOK IT AS IS AND  
YOU COULD HAVE DONE A  
FEASIBILITY STUDY.

THAT IS THE DEFENSE.

IT'S NOT LIKE SIEFERT, WHERE  
IT'S A WRONGFUL DEATH TORT  
ACTION FOR SOMETHING THAT IS  
WRONG WITH THE PROPERTY.

THAT WOULD BE LIKE, SOME FEW  
YEARS LATER OR NOT A FEW YEARS  
LATER, WHILE THEY WERE OUT DOING  
THEIR FEASIBILITY STUDY, THEY  
FELL INTO THE WETLANDS AND  
SOMEBODY HAD BRAIN DAMAGE.  
I DON'T THINK THEY WOULD SAY  
THAT WOULD GO TO ARBITRATION,  
RIGHT?

SO I AM NOT SEEING HOW THIS IS A  
BROAD ARBITRATION CLAUSE, RIGHT?

>> NO QUESTION ABOUT THAT.

>> SO WHY ISN'T THERE THE  
REQUISITE NEXUS THAT SEEMS TO BE  
THE REQUIREMENT WHEN WE SAY  
WHETHER THEY SHOULD GO TO  
ARBITRATION OR INTO A LAWSUIT?

>> LET ME ANSWER THAT IN

SIEFERT.

YOU SAID THE CASE STARTED WITH

THE PREMISE THAT IN ORDER FOR THE DISPUTE TO BE CHARACTERIZED AS ARISING OUT OF LAW RELATED TO THE SUBJECT MATTER OF THE CONTRACT AND THUS SUBJECT TO ARBITRATION IT MUST AT THE VERY LEAST RAISE SOME ISSUES, THE RESOLUTION OF WHICH REQUIRES A REFERENCE TO THE CONSTRUCTION OF SOME PORTION OF THE CONTRACT ITSELF.

>> WHAT JUSTICE CANADY IS SAYING ON THAT ONE IS, IT'S VERY NICE TO SAY YOU WERE INDUCED BECAUSE OF THE ADVERTISEMENT THAT I THINK WE ALL KNOW JUST BECAUSE YOU LOOK AT A BROKERED LISTING, YOU WOULDN'T HAVE -- THERE HAS TO BE SOMETHING BETWEEN WHEN YOU GOT THAT ADVERTISEMENT AND WHEN YOU AGREED TO PAY THE MONEY AND THAT SOMETHING IS CALLED THE CONTRACT.

>> BUT THAT MONEY COULD HAVE BEEN --

IF WE HAD GONE OUT THERE AND SAID OKAY WE LIKE THE PROPERTY. HERE IS 250, \$300,000.

HERE'S THE DEED, NO CONTRACT.

>> THAT IS NOT WHAT HAPPENED.

IF IT DID YOU COULD HAVE ARBITRATION.

>> WHAT I ASK YOU TO LOOK AT, WHAT YOU WOULD NEED TO DO, WHAT PORTION OF THAT CONTRACT WOULD NEED TO BE CONSTRUED TO GIVE US A VIABLE CAUSE OF ACTION AND THE ANSWER IS NONE.

THERE WAS A MISREPRESENTATION.

IT WAS MADE KNOWINGLY.

WE RELIED ON IT AND WE WERE DAMAGED.

NONE OF THAT SHOULD HAVE TO GO TO THE CONTRACT.

YOU TEMPER THAT WITH MAGUIRE AND IN MAGUIRE THERE WAS A REPRESENTATION IN WRITING.

THERE WAS A REPRESENTATION IN WRITING THAT TWO ACRES OF THE LAND THAT WAS BEING PURCHASED HAD A DRAINAGE PERMIT.

THEY REDUCED THAT TO WRITING.

THERE IS NOTHING IN THIS CONTRACT IT SAYS THERE ARE NO WETLANDS ON THE LAND, ABSOLUTELY NOTHING IN THE CONTRACT.

YOU CAN TAKE THE CONTRACT AND

PUT IT OVER HERE AND TRY THE  
LAWSUIT ON FRAUD.

>> I THINK YOU WOULD HAVE A  
BETTER ARGUMENT IF IT SAID  
ARISING OUT OF OR RELATED  
CONTRACT BUT I THINK THE PROBLEM  
ABOUT THE INTENT TO THE PARTIES  
IS RELATING TO THIS TRANSACTION,  
WE ARE TALKING ABOUT THE REAL  
ESTATE TRANSACTION AND WHEN YOU  
TALK ABOUT IT TORT ACTION WHERE  
SOMEBODY IS INJURED IT'S NOT  
RELATING TO THE TRANSACTION.

THAT IS A PRETTY EASY  
DISTINCTION TO MAKE, BUT THE  
BROADNESS OF THAT LANGUAGE IS  
HARD TO GET AROUND I THINK.

>> THE LANGUAGE WAS THE SAME IN  
SIEFERT.

>> THAT IS NOT ACCURATE.

THE SIEFERT CASE REFERS TO THE  
PROPERTY BUT IF YOU LOOK AT THE  
LANGUAGE, UNLESS I'M MISSING  
SOMETHING, THAT IS NOT THE  
STANDARD LANGUAGE THAT IS USED  
HERE.

U.S. HOMES HAD ITS OWN.

>> THERE IS NO REFERENCE  
RELATING TO THIS TRANSACTION IN  
SIEFERT AT ALL.

>> ANY CONTROVERSY OR CLAIM  
ARISING OR RELATED TO THIS  
AGREEMENT OR THE PROPERTY.

>> LIKE I SAID --

>> I WILL STAND CORRECTED BUT I  
BELIEVE THEY DETERMINED IN  
SIEFERT THAT WAS --

>> HAD YOUR CLIENT NOT ENTERED  
INTO THIS PARTICULAR CONTRACT  
THERE WOULD BE NO CLAIM FOR  
FRAUDULENT MISREPRESENTATION.

>> THAT IS WHAT THE FIRST  
DISTRICT SAID.

THE FIRST DISTRICTS THAT JUST  
BECAUSE WE ARE THERE AND WE ARE  
PARTIES TO THE CONTRACT DOESN'T  
MEAN --

>> I AM SAYING THE OPPOSITE OF  
THAT.

IF YOU HAD NOT ENTERED INTO THE  
CONTRACT AND CLOSED IT, THEN  
THERE WOULD BE NO CLAIM FOR  
FRAUDULENT MISREPRESENTATION.

UNLIKE SIEFERT WHERE THERE WAS A  
TORT TO AN INDIVIDUAL AND THE  
TORT OCCURRED, WITHOUT REGARD TO  
A CONTRACT, THIS IS A GREAT

DIFFERENCE.

THERE WOULD BE NO TORT OF FRAUDULENT MISREPRESENTATION BUT FOR THE CONTRACT IN THE CLOSING OF THE CONTRACT.

THAT IS WHAT GIVES YOU THE CAUSE OF ACTION AND YOU APPROPRIATELY ATTACH IT TO THE COMPLAINT.

>> THAT MAY HAVE BEEN OUT OF STUPIDITY BECAUSE I COULD HAVE PLED THAT COMPLAINT.

>> HONESTLY, EVEN IF YOU DIDN'T ATTACH IT, IT STILL IS RELATED TO THE TRANSACTION, WHICH WAS THE NEGOTIATION AND SALE OF REAL ESTATE.

THAT IS THE TRANSACTION.

IN A TORT CASE, IT'S NOT THE TRANSACTION.

IT'S NOT JUST THE SALE OF THE REAL ESTATE.

IS THE UNDERLYING ISSUE OF SOMEONE BEING INJURED THAT ADDRESS THE ISSUE OF THE LIMITATION OF DAMAGES.

BECAUSE IF YOU GO TO ARBITRATION, WHAT ARE THE DAMAGES THAT YOU ARE ALLOWED TO RECOVER?

>> I DO NOT KNOW.

PARAGRAPH 14B OF THE CONTRACT SAYS, ALL DISPUTES BY THE SELLER WILL HAVE 30 DAYS ARISING BETWEEN THEIR ATTEMPT TO RESOLVE THE MATTER THROUGH MEDIATION.

THE PARTY WILL RESOLVE THE DISPUTE THROUGH BINDING ARBITRATION IN THE COUNTY WHERE THE PROPERTY IS LOCATED AND THEN IT SAYS, THE ARBITRATOR MAY NOT ALTER THE CONTRACT TERMS OR AWARD ANY REMEDY NOT PROVIDED IN THE CONTRACT.

>> WHAT REMEDY IS PROVIDED IN THE CONTRACT?

>> RETURN AS JUSTICE LEWIS SAID, RETURN.

>> TO ME, THAT IS A STRONGER ARGUMENT FOR YOU, THAT THE INTENT OF THIS WAS NEVER TO BE A BROAD CONTRACTUAL ISSUE ON ANYTHING RELATED TO THE TRANSACTION, BUT RATHER A NARROW SITUATION WHERE A BUYER IS AT FAULT AND DOES NOT -- AND DOESN'T TAKE THE REST OF THE MONEY.

>> WHICH WAS THE FIRST ARGUMENT  
WE MADE TO THE TO THE DISTRICT  
COURT OF APPEAL AND THE DISTRICT  
COURT OF APPEAL CAME BACK TO THE  
SIEFERT CASE AND DISTINGUISHED  
THE MAGUIRE CASE.

I AGREE WITH YOU, THAT WAS MY  
FIRST ARGUMENT IN THE DISTRICT  
COURT OF APPEAL IS I DON'T HAVE  
ANY REMEDY AND IT MIGHT REEF I  
SAY THE CASES THAT SAY FOR EVERY  
REMEDY THERE MUST BE --

>> UNCONSCIONABILITY AND AN  
ARBITRATION CLAUSE.

>> NOTHING HAS EVER BEEN  
LITIGATED IN THIS CASE, JUSTICE  
LEWIS.

THE MOTION OF TWO DISMISSELS  
GRANTED AND WE WENT TO THE FIRST  
DCA.

THE MAJORITY IN THAT CASE CAME  
DOWN ON THE SIDE OF THE SIEFERT  
CASE SAYING WE DON'T CARE WHAT  
IT IS BECAUSE IT'S NOT RELATED,  
WE FIND IT'S NOT RELATED.

>> BUT IT SEEMS --  
WE HAVE TO LOOK AT THIS FOR ALL  
KINDS OF SITUATIONS IN TERMS OF  
INTERPRETING ARBITRATION  
CLAUSES.

IT JUST DOESN'T SEEM THAT YOU  
CAN THROUGH 14A, WITHOUT  
REFERENCE TO 14B, AND MAYBE YOU  
KNOW, I'M SORRY, 14 WITHOUT  
LOOKING AT A AND B BECAUSE IT  
TALKS ABOUT FIRST DEPOSIT AND IT  
HAS ALL OTHER VIEWS BUT IT GOES  
BACK TO ONLY THERE IS NO OTHER  
REMEDY THAT CAN BE PROVIDED.

>> IT WAS RECOGNIZED IN THIS  
COURT BY SIEFERT IN THE SIEFERT  
CASE THAT WAS A STANDARD REAL  
ESTATE CONTRACT.

THIS IS A STANDARD REAL ESTATE  
CONTRACT.

WE ARGUED ON PAGE 22 OF OUR  
BRIEF THAT IT'S CLEAR FROM THE  
TERMS OF THE CONTRACT IT WAS NOT  
THE INTENT OF THE PARTIES THAT  
THE ISSUES RAISED IN THIS CASE  
BE SENT TO ARBITRATION AND I  
SUBMIT TO YOU THAT THAT IS  
THERE.

I GUESS I MISTAKENLY THOUGHT WE  
WERE HERE ON WHETHER THERE WAS,  
WHETHER THERE WAS A CONFLICT  
BETWEEN MAGUIRE AND THIS CASE.

>> THE PROBLEM, MAGUIRE MAY BE DIFFERENT BUT THEY CERTIFIED TO THE EXTENT THERE IS CONFLICT.

WE CAN DECIDE THERE IS NOT CONFLICT I GUESS AND NOT TAKE THE JURISDICTION BUT THEY CERTIFIED CONFLICT SO TO THE EXTENT OF THE AGREEMENT.

>> TO ANSWER YOUR QUESTION IN OUR BRIEF ON 24, I GO THROUGH ALL OF THE REMEDIES THAT ARE PROVIDED.

THE REMEDY FOR THE BUYER IN THE EVENT THE SELLER FAILS OR REFUSES OR NEGLECTS TO PERFORM A CONTRACT OR VIOLATES TO RECEIVE A RETURN THE DEPOSIT OR REMEDY FOR THE SELLER IF THE BUYER DEFAULTS IN THE SALE AND HE GETS TO RETAIN THE CONTRACT.

THE REMEDY IN THE EVENT OF DISPUTES CONCERNING ENTITLEMENT TO DEPOSITS MADE IN RESOLUTION.

ALL OTHER DISPUTES MUST BE DETERMINED BY THE MUTUAL BANK SO EVERYTHING THAT IS NOT RELATED TO YOUR NORMAL DISPUTES BETWEEN THOSE PEOPLE WHO BUY AND SELL REAL ESTATE IN THE REALTORS, THERE IS NO REMEDY.

THERE IS ABSOLUTELY NO REMEDY. THERE IS NO REMEDY FOR ACTUAL FAULT.

YOU SAID WE DID NOT PLEAD PUNITIVE DAMAGES BUT THAT IS AS YOU KNOW ANOTHER STEP IN THE PROCESS.

>> I FORGOT THAT THEY CHANGE THE LAW AND THAT.

>> ONCE WE GET THE RECORD EVIDENCE AS TO THAT BEING AN INTENTIONAL MISREPRESENTATION, THEN CERTAINLY I INTEND TO ASK THE COURT TO ALLOW THAT.

>> TO ME, THAT IS THE BIGGER ISSUE.

I AGREE THAT WE SAID ARBITRATION IS PREFERABLE SOMETIMES BECAUSE IT'S MORE EXPEDIENT BUT WHEN YOU HAVE NO REAL REMEDY THAT YOU CAN OBTAIN, THEN I THINK THERE IS ANOTHER ISSUE AND THAT IS AN ALTERNATIVE TO THAT I GUESS THE FIRST DISTRICT DID NOT ADDRESS. BUT YOU ARE MAKING IT HERE.

>> IT APPEARS THERE ARE TORTS AND THEN THERE ARE TORTS.

AND IT APPEARS THAT WHEN YOU ARE DEALING WITH THE TORT OF FRAUD, THAT IT REQUIRES ONE STEP THAT IS FAR DIFFERENT THAN ALL OTHER TORTS THAT WE LOOK TO.

AND THAT IS ATTEMPTED FRAUDS ARE NOT ACTIONABLE AND AGAIN, RIGHT FULLY AND AS YOU CANDIDLY SAID, WITHOUT SAYING I AM BUYING THIS PROPERTY AND COMING TO THE AGREEMENT, THERE IS NO ACTION BECAUSE THAT IS ONE STEP THAT IS NEEDED.

I MEAN, THAT IS CLEAR AND IN SOME CASES IT MAY BE REDUCED TO WRITING AND OTHER CASES IT MAY NOT BUT IN REAL PROPERTY IN FLORIDA OUR STATUTE OF FRAUD INCLUDES THE WRITING.

THAT IS WHAT I'M STRUGGLING WITH, THE TORT OF FRAUD IN REAL PROPERTY JUST SEEMS TO FLOW TO THAT CONTRACT.

>> BUT THE POLICY OF THAT YOUR HONOR IS THAT, BASICALLY IF IT DID DEFEND IN THIS CASE IS ALLOWED TO GET BY WITH IT AND SAYS TO THE ARBITRATION BOARD THERE IS NO REMEDY --

>> I AGREE THAT IS MAYBE A DIFFERENT THEORY.

I'M JUST TALKING ABOUT SPECIFICALLY --

LET'S SAY THE CONTRACT SAID THAT ANY CLAIMS SHALL BE DECIDED ON FLORIDA LAW AND THAT IS IT. THEN WOULD YOU BE BOUND BY ARBITRATION?

>> I DON'T THINK SO.

>> OKAY, BECAUSE THAT WOULD SEEM TO BE, THAT TO ME, IF YOU DON'T GO AFTER THIS REMEDIES ASPECT, IT MIX A PRETTY TOUGH TO PROCEED HERE.

THAT IS WHERE MY CONCERN IS.

>> IN THE SIEFERT CASE IN A CONCURRING OPINION SAID I WANT TO MAKE IT CLEAR THAT PEOPLE ARE WRITING THESE KINDS OF CONTRACTS AND WANT TO BE PROTECTED BY THOSE CONTRACTS, THEY NEED TO MAKE SURE NUMBER ONE THAT THEY WRITE IN THERE THAT IT TAKES CARE OF EVERYTHING WHETHER IT IS FRAUD, TORT OR WHATEVER AND ALSO THAT THE PARTIES BY THIS PROVISION WAIVED THEIR RIGHT TO

A JURY TRIAL IN SUCH CONTRACTS.  
THIS IS OCCURRING IN THAT CASE.  
I AGREE WITH YOU AND AS I SAID  
AND I WILL PROBABLY REPEAT  
MYSELF, THAT WAS THE FIRST THAT  
I RAISED IN THE FIRST  
DISTRICT COURT OF APPEALS.  
THEY DECIDED TO GO A DIFFERENT  
ROUTE.

>> THAT DOESN'T PRECLUDE YOU --  
IF WE WERE TO SAY THE ISSUE IS  
UNCONSCIONABILITY, IT HAS NOT  
YET BEEN RAISED.

SO NOTHING PRECLUDES YOU FROM  
RAISING IT.

IF WE WERE TO QUASH THE FIRST  
DISTRICT'S OPINION AND SAY WELL,  
YOU CAN RAISE UNCONSCIONABILITY.

>> IF THE FIRST DISTRICT IS  
QUASH THAN I AM BACK TO  
ARBITRATION AND I DON'T KNOW IF  
THAT IS SOMETHING I CAN RAISE IN  
ARBITRATION.

>> THE TRIAL COURT DECIDED IT  
HAD TO BE ARBITRATED?

>> THE TRIAL COURT GRANTED A  
MOTION.

>> AT THAT TIME DID YOU HAVE THE  
OPPORTUNITY --  
DID YOU ARGUE IN THE TRIAL COURT  
LIMITATION OF REMEDY?

>> YES, I DID AND IT WAS JUST  
BASICALLY AS I RECALL --

>> FOR THE TRIAL JUDGE TO LOOK  
AT THE ALTERNATIVE GROUNDS ON  
THE REMEDY.

>> WHATEVER THE COURT DECIDES TO  
DO.

>> IT WOULD REQUIRE A SPECIAL  
DECISION TO SAY THAT BECAUSE IF  
IT DOESN'T DIRECT THE TRIAL  
COURT ON WHAT TO DO IT IS  
REMANDED AND THEN WE HAVE THE  
DISMISSAL.

>> WE ARE BACK TO DISMISSAL AND  
SENT TO ARBITRATION AND THEN  
HAVE TO GO THROUGH THE PROCESS  
OF ARBITRATION, WHICH YOU SAID A  
WHILE AGO IS IN THE HANDS OF THE  
ARBITRATOR.

UNLESS THERE ARE ANY OTHER  
QUESTIONS I THINK I HAVE USED MY  
TIME.

THANK YOU VERY MUCH.

>> YOU HAVE GOT 10 SECONDS.

>> JUSTICE LEWIS, YOU ASKED ME  
EARLIER ABOUT, DOES FLORIDA

ALLOW -- AND SOMETHING THAT WAS SAID MADE ME LOOK BACK IN MY FILES.

ONE OF THE ARGUMENTS THAT I MADE TO THE TRIAL COURT REGARDING LIMITATION OF REMEDY IS THAT UNDER SECTION 682.12 FLORIDA STATUTE A PARTY CAN SEEK TO HAVE AN AWARD CONFIRMED OR UNDER 682.13, A PARTY CAN SEEK TO HAVE AN AWARD VACATED FOR AMONG OTHER THINGS OF AN ARBITRATOR EXCEEDED THEIR POWERS.

SO THERE WOULD NEED A PLACE FOR THE DEFENDANT --

>> THAT MEANS THEY HAVE GONE ON TO DECIDE SOMETHING.

THAT IS NOT ARBITRATABLE.

BUT IF IT IS JUST THE DAMAGES, YOU CAN'T CHALLENGE, THE CONTRACT SAYS RETURN MONEY AND THAT IS WHAT THE ARBITRATOR DOES, THAT IS NOT GOING TO BE A STATUTORY BASIS TO SET ASIDE THAT ARBITRATION.

IN ADEQUACY IS NOT A BASIS AS I RECALL UNDER ANY ELEMENT, STATUTORILY TO SET ASIDE IN ARBITRATION.

IN ANY OF THAT STUFF.

THE NORMAL THINGS WE THINK OF ARE REALLY LIMITED FOR REVIEW, AREN'T WE?

>> IF WE ARE THEN I'M GOING TO GO BACK TO THE ARGUMENT THAT THE PARTY HAS AGREED TO LIMIT THEIR DAMAGES AND THAT HAS BEEN ARGUED BEFORE THE TRIAL COURT AND THE TRIAL COURT DISMISSED IT IN ARBITRATION.

I THANK YOU ALL FOR YOUR TIME.

>> WE THANK YOU BOTH FOR YOUR ARGUMENTS.

THAT CONCLUDES TODAY'S COURT.

>> ALL RISE.

