

>> 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  
DISSSENT 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 DISMISSALS 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.

