

>> THAT'S WHY WE'RE HERE, RIGHT?

[LAUGHTER]

>> EXACTLY, YOUR HONOR.

>> HAS SOMEBODY ACTUALLY TAXED AS INTANGIBLE PROPERTY TAX, HAS SOME GOVERNMENTAL OFFICIAL TAKEN THE POSITION THAT AGREES WITH YOU?

BECAUSE YOU SAID, I THOUGHT YOU SAID IT WAS BEING TAXED THREE WAYS.

>> YOUR HONOR, PROPERTY APPRAISERS AND COURTS ALL OVER THIS STATE HAVE TAKEN POSITIONS THAT ARE CONSISTENT WITH THE POSITION WE URGE ON THE COURT TODAY.

>> SO THERE ARE SITUATIONS ALL OVER THE STATE WHERE THERE ARE THE LEASE OF THE PROPERTY AND SOMEBODY ACTUALLY -- AGAIN, THESE ARE CONDOS OR BEACHFRONT RESIDENCES WE'RE --

>> YOUR HONOR --

>> BECAUSE WHEN WE TALK ABOUT IMPROVEMENTS, GIVE ME A PICTURE. THEY'RE CONDO UNITS AND THEY'RE RESIDENCES?

>> YOUR HONOR, I CANNOT IDENTIFY ANOTHER CONDO UNIT, I CAN IDENTIFY -- I'M SORRY, I CAN'T IDENTIFY A CONDO UNIT FOR YOU. THERE'S A CONDO AT THE AIRPORT IN BOCA RATON.

>> NO, I'M ASKING UP HERE.

>> HERE.

>> ARE WE TALKING ABOUT THIS IS AN IMPROVED LAND WHERE THERE ARE CONDO APARTMENTS BUILT AND SOLD TO PEOPLE WHO RESIDE IN THEM OR RENT THEM OUT?

>> THAT'S RIGHT, YOUR HONOR.

>> AND THERE ARE RESIDENCES ALSO BUILT ON PROPERTY THAT IS OWNED BY THE COUNTY?

>> THAT'S CORRECT, YOUR HONOR.

>> AND UNDER THESE ARE ANY OF THEM SHORTER THAN A 99-YEAR LEASE?

>> YOUR HONOR, THERE ARE EIGHT PARCELS INVOLVED IN THE LITIGATION AND THE COMPANION CASE.

>> IS THAT EIGHT IN THIS PARTICULAR CASE, OR ARE WE TALKING --

>> NO.

>> HOW MANY ARE IN THIS CASE?

>> THERE ARE NONE IN THIS CASE, YOUR HONOR.

MY STATEMENT -- I'M PLEASED TO HAVE JUSTICE CANADY INTERRUPT ME.

MY STATEMENT WAS THERE ARE THREE DIFFERENT WAYS OF TAXING LEASEHOLD INTERESTS ON SANTA ROSA ISLAND, AND THE THIRD IS THE WAY THAT'S CONSISTENT WITH BELL V. BRYANT, AND BELL V. BRYANT APPLIED TO THE 1980 STATUTE.

AND THAT STAYED IN PLACE SOME PERIOD OF TIME UNTIL WARD V. BROWN WAS DECIDED BY THE FIRST DCA.

SO OUR CENTRAL POINT TODAY, THE COURT POINT THAT WE WANT TO MAKE IS THE LEGISLATURE HAD AUTHORITY TO DETERMINE AND CLASSIFY STATE PROPERTY OR THE PROPERTY OF STATE SUBDIVISIONS IN A WAY THAT THE LEGISLATURE DECIDES IS APPROPRIATE.

THERE CAN BE REALLY NO DOUBT, AT LEAST IN MY MIND, ABOUT A CLEAR APPLICATION OF THE STATUTE ITSELF.

WE'RE DEALING HERE WITH CLIENTS WHO HAVE LEASEHOLD INTEREST IN COUNTY PROPERTY OF LESS THAN 100 YEARS --

>> YOUR BASIC ARGUMENT IS THAT

ALL OF THE PROPERTY INVOLVED IN THIS CASE, THESE LEASEHOLD PROPERTIES SHOULD ONLY GET -- THEY SHOULD NOT HAVE AD VALOREM TAXES, NONE OF THEM.

IS THAT --

>> TAXES INTANGIBLE.

>> AND YOU ONLY HAVE INTANGIBLE PROPERTY TAX --

>> THAT'S CORRECT, YOUR HONOR.

>> -- FOR ALL OF THESE.

>> THAT'S CORRECT, YOUR HONOR.

>> LET ME IN CONNECTION AS A FOLLOW UP TO THAT QUESTION, LET ME ASK YOU THIS: DO YOU MAKE AN ARGUMENT HERE THAT WOULD ALLOW US TO DISTINGUISH BETWEEN CERTAIN CATEGORIES OF PROPERTIES DEPENDING ON THE TERMS OF THE LEASES?

THAT IS, FOR INSTANCE, AN ARGUMENT THAT WOULD SAY, WELL, IF SOME OF THESE DO HAVE RENEWABLE, PERPETUALLY RENEWABLE LEASES, THOSE WOULD FALL IN A CATEGORY THAT'S DIFFERENT FROM THOSE THAT DO NOT HAVE PERPETUALLY RENEWABLE.

YOU'RE NOT MAKING AN ARGUMENT LIKE THAT, OR ARE YOU?

>> YOUR HONOR, I THINK THAT THAT IS A PERFECTLY PRINCIPLE RESOLUTION OF THESE MATTERS.

YOU DON'T REACH THE TAXATION OF LAND THROUGH THAT PROCESS, BUT THERE IS SOME LANGUAGE IN THE STATUTE THAT SAYS IF THE IMPROVEMENTS ARE ACTUALLY OWNED BY THE LEASEHOLDER, THEN AD VALOREM TAXES MAY BE APPLIED.

MY SUBMISSION IS THAT THE IMPROVEMENTS ARE NOT OWNED BY LEASEHOLDERS, BUT WHERE THERE'S PERPETUAL LEASE TERMS, THAT IS AUTOMATIC RENEWAL FOR PERIODS OF TIME AS IN WARD V. BROWN, WE

THINK THOSE LEASES SHOULD BE SEPARATED OUT.

PART OF THE PROBLEM --

>> WHAT ABOUT LEASE TERMS?

THERE'S CONFUSION IN MY OWN MIND ABOUT THE REFERENCE TO

"AUTOMATICALLY RENEWABLE."

THAT MEANS IT'S JUST GONNA, IF -- I'M NOT SURE EXACTLY WHAT THAT MEANS, BUT IT SEEMS TO ME THAT YOU'VE GOT PERPETUALLY RENEWABLE LEASE IF AT THE END OF EVERY 99-YEAR PERIOD OR SHORTLY BEFORE THAT, THE LEASEHOLDER CAN SAY I WANT TO RENEW, I DON'T SEE THAT THAT'S ANY DIFFERENT THAN A LEASE THAT WOULD SAY IT WILL RENEW AUTOMATICALLY UNLESS THE LEASEHOLDER SAYS I DON'T WANT TO RENEW.

>> THERE MAY NOT BE LARGE DIFFERENCES, YOUR HONOR.

THERE IS A CASE WHICH WE'VE CITED, A CASE BY THIS COURT, A CISCO CASE WHICH HOLDS LEASES MAY NOT BE RENEWED FOR MORE THAN ONE TERM.

IT'S AGAINST PUBLIC POLICY IN FLORIDA FOR LEASES TO BE RENEWED OVER AND OVER AND OVER AGAIN.

>> MR. D'ALEMBERTE, IS THERE, IS THERE A CONCEPT IN THE STATUTE OF EQUITABLE OWNERSHIP, OR DO YOU ARGUE THAT THIS IS A STRICT STATUTORY CONSTRUCTION PACE AND THAT THE LEGISLATURE DID NOT INTEND THAT IN A SITUATION LIKE THIS THAT THERE COULD BE SUCH A NOTION AS EQUITABLE OWNERSHIP?

>> THAT'S CORRECT, YOUR HONOR. THE LEGISLATURE DREW THE LINES. IT LOOKED AT THE SO-CALLED BUNDLES OF RIGHTS AND DECIDED WHERE TO DRAW THE LINE.

THE LINE WAS IF THERE'S A LEASE OF GOVERNMENT PROPERTY, COUNTY

PROPERTY WAS FOR LESS THAN 100 YEARS, AND IF YOU PAID RENT, IT WAS GOING TO BE TAXED SOLELY AS INTANGIBLE PROPERTY.

>> NOW, ON THE RENT PART I JUST WANT TO, AGAIN -- AND I REALIZE MAYBE THE FACTS SHOULDN'T MATTER, BUT THEY MATTER TO ME. HOW MUCH DO EACH OF THE OWNERS OF THE CONDOS AND RESIDENCES, WHAT IS THE YEARLY LEASE RENTAL PAYMENTS?

>> YOUR HONOR, ASSUMING THAT YOU DO NOT AFFIRM THE COURT BELOW, THEY WILL PAY INTANGIBLE TAX RATE WHICH IS TWO MILLS --

>> NO, NO.

WHAT DO THEY PAY TO THE COUNTY FOR THEIR LEASE?

>> YOUR HONOR, DIFFERENT TERMS FOR DIFFERENT LEASES --

>> TWO OR THREE HUNDRED DOLLARS?

>> SOME AS LOW AS THAT, YOUR HONOR, BUT OTHERS GREATER, AND ALL THE LEASES ARE PART OF THE RECORD, AND THEY'RE ALL OVER THE LOT.

>> WHAT IS THE DIFFERENCE IN THE AD VALOREM TAX BREAK, AND THESE ARE DOLLARS THAT GOES TO THE COUNTY OR IMPROVEMENTS FOR ROADS AND OTHER TYPES OF -- IS THAT WHAT THAT GOES TO?

>> YOUR HONOR, THE COUNTY SETS THAT RATE AT WHATEVER IT DECIDES TO DO AND SPENDS IT IN WHATEVER WAY IT DECIDES TO --

>> I'M TALKING ABOUT WHERE DOES THE AD VALOREM TAX MONEY GO? WHO BENEFITS FROM THESE PROPERTY LEASEHOLDERS WITH OWNING CONDOS?

>> THE COUNTY GETS THE RENTAL INCOME, AND THE SCHOOL BOARD GETS THE INTANGIBLES TAX.

>> AND WHO WOULD GET THE AD VALOREM TAXES?

>> WELL, IT'D BE SPLIT AS AD VALOREM TAXES ARE SPLIT OTHERWISE, YOUR HONOR.

>> BUT AGAIN, YOU'RE SAYING THAT YOU BELIEVE THAT IF WE STRICTLY CONSTRUE THIS STATUTE, WE WOULD HAVE TO CONCLUDE THAT THE LEGISLATURE DID NOT INTEND IF THERE'S LESS THAN 100-YEAR LEASE NO MATTER WHAT THE BENEFITS OF THE LEASEHOLD WAS TO HAVE TO PAY AD VALOREM TAXES.

AND THAT WOULD BE THE EASIEST WAY FROM YOUR POINT OF VIEW FOR US TO RESOLVE IT.

>> YOUR HONOR?

>> YES?

>> THAT'S THE EASIEST WAY TO LOOK AT LEGISLATIVE AUTHORITY. NOW, IF YOU'RE TROUBLED AT ALL OF WHETHER OR NOT THERE'S CONTRIBUTION TO THE PUBLIC BENEFIT, THINK OF ALL THE WAYS THAT THE COUNTY HAS TO GET ASSESSMENTS.

>> LET ME GO BACK TO THE LEGISLATURE.

SO COULD THE LEGISLATURE ALTERNATIVELY HAVE TAKEN A LEASE WHERE ALL OF THE OTHER BENEFITS ARE SET FORTH IN THE FIRST DISTRICT'S OPINION AND INTEND CONSTITUTIONALLY FOR IT TO BE TAXED AS AD VALOREM TAXES?

>> YOUR HONOR, NOT ONLY COULD IT DO IT, BUT THAT'S EXACTLY WHAT THE LEGISLATURE DID IN THE 1971 ACT.

>> OKAY.

SO YOU SAY, AGAIN, REALLY THE WAY TO RESOLVE THIS IS WE ARE NOT -- IF IT'S CLEAR, THEN IT'S REALLY UP TO THE LEGISLATURE GOING FORWARD TO RESOLVE THIS.

>> THAT'S OUR POSITION, YOUR HONOR.

>> LET ME, LET ME ASK YOU ABOUT WHAT THE LEGISLATURE'S DONE, AND, ADMITTEDLY, THIS IS A VERY COMPLEX THING BECAUSE YOU'VE GOT THE STATUTES AND THEIR INTERACTION.

AND AS YOU GO THROUGH IT, IT'S KIND OF EASY TO GET LOST IN THE THICKET.

BUT IT SEEMS TO ME THAT AN IMPORTANT PART OF THE ANALYSIS HERE COMES BACK TO THE LANGUAGE IN THE 2005 STATUTE WHERE THAT IT HAS THE DEFINITION OF INTANGIBLE PERSONAL PROPERTY, AND THINGS ARE GOING TO BE TAXED IN THAT MANNER AS OPPOSED TO AD VALOREM, SUBJECT TO AD VALOREM TAXES.

AND THIS IS IN 99.023, SECTION 1D, THERE'S A REFERENCE TO ALL LEASEHOLD OR OTHER POSSESSORY INTERESTS IN REAL PROPERTY.

NOW, IT SEEMS LIKE TO ME THAT THAT DOESN'T INCLUDE BENEFICIAL OR, I'M SORRY, EQUITABLE OWNERSHIP INTEREST IN REAL PROPERTY.

AND SO THAT'S WHERE I DON'T KNOW THAT YOUR STATUTORY ARGUMENT REALLY WORKS, BECAUSE THE LEGISLATURE HAD SAID, HAD INCLUDED A REFERENCE TO EQUITABLE OWNERSHIP.

THAT WOULD BE A DIFFERENT MATTER.

AND WE ALL -- AND THE OTHER POINT THAT I'D JUST POINT OUT AND GET YOU TO RESPOND IS THAT WE KNOW THAT IN FLORIDA LAW THE CONCEPT OF EQUITABLE OWNERSHIP IS AN IMPORTANT CONCEPT IN THIS CONTEXT.

BECAUSE IN OUR CASE, UM, THE LEON COUNTY EDUCATIONAL FACILITIES AUTHORITY CASE BACK

FROM THIS COURT IN 1997 WE SAID THE CONCEPT OF EQUITABLE OWNERSHIP IN AD VALOREM TAXATION HAS LONG BEEN A PART OF FLORIDA LAW, SO THAT'S PART OF THE BACKDROP OF WHAT WE HAVE TO UNDERSTAND THE LEGISLATURE IS OPERATING ON.

AND IN THAT -- GIVEN THAT, I DON'T, I'M HAVING TROUBLE UNDERSTANDING HOW AN INTEREST THAT COULD BE DETERMINED TO BE A EQUITABLE OWNERSHIP INTEREST IS GOING TO BE PULLED OVER INTO THE TREATMENT OF THE INTANGIBLE PROPERTY CATEGORY, THE TREATMENT THAT YOU'RE SEEKING.

>> YOUR HONOR, TWO QUESTIONS. FIRST OF ALL, AS TO THE LEON COUNTY EDUCATIONAL FACILITIES ACT, REMEMBER THAT THE COURT FOUND THAT WAS A FINANCING ARRANGEMENT.

AND SO --

>> I'M NOT REALLY RELYING ON THE HOLDING THERE, I'M RELYING ON THIS GENERAL PRINCIPLE ABOUT EQUITABLE OWNERSHIP BEING PART OF THE --

>> SO, YOUR HONOR, IN ANSWER TO THAT LET ME PUT FORWARD TWO PROPOSITIONS.

ONE, THE STATUTE ITSELF. THE STATUTE YOU'RE READING FROM, I BELIEVE, SAYS SUCH LEASEHOLD OR OTHER INTERESTS SHALL BE TAXED ONLY AS INTANGIBLE --

>> NO.

NO, ACTUALLY, THE STATUTE I'M READING FROM -- THE STATUTE YOU'RE READING FROM REFERS BACK TO, IF I'VE GOT THIS STRAIGHT -- REFERS BACK TO THE 2005 STATUTE THAT I'M REFERRING TO, AND IT REFERS TO ALL LEASEHOLD OR OTHER POSSESSORY INTERESTS IN REAL

PROPERTY.

>> YES.

>> WHICH I THINK IS A CATEGORY THAT'S DISTINCT FROM THE CATEGORY OF EQUITABLE OWNERSHIP.

>> THIS, YOUR HONOR, HOW DO WE READ POSSESSORY INTERESTS?

>> THAT'S WHY THE FIRST DCA, THAT'S THE WAY THEY'VE ANALYZED IT.

AM I CORRECT?

>> I THINK THAT'S RIGHT, YOUR HONOR.

FIRST DCA CLEARLY WENT TO THIS BENEFITS AND BURDENS ANALYSIS. IN THE WARD V. BROWN DECISION -- OF COURSE, THE AUTHOR IS SITTING ON THE COURT, SO I'M NOT TRYING TO SAY WHAT MOTIVATED THE COURT -- BUT IT CLEARLY PLACES A GREAT DEAL OF EMPHASIS ON THE FACT THAT THESE LEASES BEING REVIEWED IN WARD V. BROWN WERE PERPETUAL LEASES.

THAT SEEMS TO BE THE HEART OF WARD V. BROWN.

WE THEN MOVE TO THIS IDEA OF BENEFITS AND BURDENS.

I HOPE YOU'LL LOOK AT THAT TEST OF BENEFITS AND BURDENS VERY CLOSELY.

BECAUSE WHAT ARE THE BENEFITS? THE BENEFITS THAT ARE ASSERTED IN THE --

>> WELL, IT SOUNDS LIKE THE BENEFITS ARE THAT THEY OCCUPY THESE THINGS AND ESSENTIALLY TREAT THEM LIKE THEIR OWN PROPERTY.

>> YOUR HONOR --

>> AM I MISSING SOMETHING HERE? I THINK IF YOU RODE UP ON THE STREET AND LOOKED AT IT AND WATCHED IT OVER A PERIOD OF YEARS, IT WOULD LOOK LIKE FOR ALL PRACTICAL PURPOSES, THEY

OWNED THE PROPERTY.

AM I WRONG?

>> YOUR HONOR, YOU'RE RIGHT.

BECAUSE THAT'S EXACTLY WHAT
HAPPENED WITH EVERY LEASE.

IF YOU LOOKED AT A PROPERTY, YOU
CAN RIDE BY THE PROPERTY AND
LOOK AT A LEASED PROPERTY, WHO'S
IN POSSESSION?

>> IF YOU DID IT HERE FOR 200
YEARS, THAT'S WHAT YOU'D SEE.

>> YOUR HONOR, THAT'S AN ISSUE
ABOUT WHERE TO DRAW THE LINE ON
DURATION.

YOU DECIDED TO DRAW THE LINE AT
99 YEARS.

SO 100 YEARS, YOU LOSE.

IF IT'S LESS THAN 100 YEARS AND
YOU PAY RENT, BECAUSE WHEN YOU
DRIVE BY YOU DON'T SEE WHETHER
OR NOT THE PERSON WHO'S
OCCUPYING IT IS ACTUALLY PAYING
RENT.

YOU DON'T PAY RENT IF YOU'RE AN
OWNER.

>> BUT, MR. D'ALEMBERTE, THE
POINT BEING IF SOMEONE'S A
LESSEE, PEOPLE RENT CONDOS FOR
THE WINTER ALL THE TIME, YOU
MIGHT HAVE TWO YEARS, YOU MIGHT
HAVE FIVE YEARS.

BUT THE PEOPLE, AS I UNDERSTAND
IT, THAT HAVE THE POSSESSION OF
THESE CONDO UNITS, THEY CAN
FREELY SELL THE CONDO UNIT TO
WHOEVER THEY WANT, CORRECT?

>> JUST LIKE ANY OTHER LESSEE,
YOUR HONOR.

>> YOU CAN LEASEHOLD YOUR
INTEREST.

THIS IS NOT A DISTINCTION THAT
IS PECULIAR TO THIS CASE.

YOU CAN ENCUMBER, YOU CAN
MORTGAGE YOUR LEASEHOLD
INTEREST.

>> BUT I GUESS STILL THE PROBLEM

I'M HAVING IS HOW A CONDO UNIT IS INTANGIBLE PROPERTY.

IT'S A RESIDENCE.

>> YOUR HONOR, IF YOU HAD A CONDO UNIT AND YOU OWNED IT AND YOU HAD THE ABILITY TO SELL IT, THAT'D BE A DIFFERENT THING.

>> HOW IS FOR THE NEXT 90 YEARS, HOW IS IT DIFFERENT FOR THESE PEOPLE THAN ANYONE ELSE THAT OWNS A CONDO?

WHAT CAN'T THEY DO THAT ANYONE ELSE THAT OWNS THE CONDO UNIT DO?

>> YOUR HONOR, LET ME MAKE TWO POINTS.

WHAT CAN THEY DO, AND WHAT ARE THEY REQUIRED TO DO THAT NO OWNER WOULD EVER BE REQUIRED TO DO?

FIRST OF ALL, A LEASE OF THIS COUNTY LAND IN SANTA ROSA OR ESCAMBIA REQUIRES CONSTRUCTION, REQUIRES YOU TO DO IMPROVEMENTS. IF I'M AN OWNER OF LAND, I DON'T HAVE TO IMPROVE THE LAND.

I CAN MAKE THE DECISION MYSELF TO IMPROVE THE LAND.

IF I'M AN OWNER, I DON'T HAVE TO INSURE THE LAND.

IF I'M AN OWNER CONSISTENT WITH LOCAL ORDINANCES, I DON'T HAVE TO MAINTAIN.

HERE A PERSON WHO LEASES HAS TO IMPROVE, AND WHAT DO THEY HAVE TO IMPROVE?

IT'S BECAUSE THAT'S WHAT THE GOVERNMENT WAS BARGAINING FOR. THEY WANTED TO TAKE THIS SANDBAR AND TURN IT INTO AN ENGINE OF ECONOMIC DEVELOPMENT IN ESCAMBIA AND SANTA ROSA COUNTY.

>> AND DEVELOPMENT OF AD VALOREM TAXES?

>> YOUR HONOR, ORIGINALLY NO AD VALOREM TAXES ON THE PROPERTY.

LEGISLATION IN 1971 SAID THAT THERE WILL BE AD VALOREM TAXES ON THE LEASEHOLDS.

THAT LEGISLATIVE DETERMINATION WAS UPHELD IN A SERIES OF CASES, AND THEN THE 1980 LEGISLATURE DECIDED THAT THE PROPER WAY TO TAX LEASEHOLDS OF GOVERNMENT LAND -- BECAUSE THEY'RE ONLY LEASEHOLDS, YOU DON'T HAVE ALL THE RIGHTS OF AN OWNER, AND YOU HAVE REQUIREMENTS PLACED ON YOU --

>> BUT LET ME ASK YOU, YOU'RE JUST ARGUING THAT THERE IS NO SUCH THING AS EQUITABLE OWNERSHIP.

>> YOUR HONOR --

>> ARE YOU ARGUING THAT?

>> NO, YOUR HONOR.

LOOK --

>> WHY AREN'T AT LEAST SOME OF THESE EQUITABLE OWNERSHIP?

>> YOUR HONOR, BECAUSE IF YOU GO DOWN THIS ANALYSIS ABOUT BENEFITS AND BURDENS, IT DOESN'T GET YOU THERE.

WHAT ARE THE BENEFITS AGAIN? THE BENEFITS ARE TO OCCUPY THE PROPERTY, TO BE ABLE TO ENCUMBER THE PROPERTY, TO BE ABLE TO SUBLEASE --

>> WHAT MORE COULD THEY ASK FOR? WHAT BENEFITS ARE THEY LACKING? I MEAN, WHAT REAL, PRACTICAL BENEFITS ARE THEY LACKING WITH RESPECT TO THESE PROPERTIES?

>> YOUR HONOR, THEY LIKE THE BENEFIT OF BEING ABLE TO TRANSFER IT AND BE SIMPLE.

THEY LIKE --

>> WELL, OKAY.

BUT WAIT, WAIT, THAT'S AN ARGUMENT THAT THERE IS NO SUCH THING AS EQUITABLE OWNERSHIP. BECAUSE THAT WOULD APPLY TO ANY

SITUATION.

YOU'D NEVER HAVE AN EQUITABLE OWNER WHO COULD TRANSFER A FEE SIMPLE, WOULD YOU?

>> YOUR HONOR, IN FACT, MOST OF THE EQUITABLE OWNERSHIP CASES ARISE IN CIRCUMSTANCE WHERE THE PERSON WHO'S FOUND TO BE AN EQUITABLE OWNER ACTUALLY DOES GET TITLE.

IT'S A CONTRACT FOR DEED.

THAT'S THE INSTANCE OF EQUITABLE OWNERSHIP IN FLORIDA, AND HERE THE SOLE ISSUE IN MY JUDGMENT IS WHETHER THE LEGISLATURE HAS THE AUTHORITY TO MAKE THE DETERMINATION ABOUT HOW TO TAX GOVERNMENT-OWNED PROPERTY THAT'S LEASED TO PRIVATE INTERESTS.

NOW, LET'S DEAL WITH THE ISSUE ABOUT PRIVATE INTEREST.

BRIEFS FOR RESPONDENTS SEEM TO INDICATE THAT OCCUPYING PROPERTY BY PRIVATE INTEREST IS SOMEHOW EVIL.

NOTHING WRONG WITH THAT.

WE'VE BEEN ENCOURAGING ECONOMIC DEVELOPMENT SINCE THE HOMESTEAD ACT 150 YEARS AGO.

WE KNOW THAT IF WE WANT TO DEVELOP PROPERTY, WE WANT TO ENCOURAGE DEVELOPMENT, WE KNOW THAT PRIVATE INVESTMENT CAN TURN PROPERTY THAT IS NOT PRODUCTIVE INTO SOMETHING THAT'S VERY PRODUCTIVE.

AND THAT'S EXACTLY WHAT HAPPENS HERE.

PUBLIC OFFICIALS IN ESCAMBIA AND SANTA ROSA COUNTY GOT WHAT THEY BARGAINED FOR.

>> [INAUDIBLE]

>> A PRACTICAL --

>> IF I COULD, HIS TIME'S EXPIRED.

WE HAVE ANOTHER CASE COMING UP.

WOULD IT BE OKAY TO ASK THAT QUESTION IN THE NEXT CASE, OR DO YOU WANT TO HAVE IT DONE HERE? HERE?

OKAY, GO AHEAD.

>> WHAT IS THE REAL, PRACTICAL EFFECT HERE?

WHAT IS THE DIFFERENCE, OR DOES THE RECORD SHOW WHAT IS THE DIFFERENCE BETWEEN WHAT ONE OF THESE PEOPLE WOULD PAY IN AD VALOREM TAX AND WHAT THEY WOULD PAY IN INTANGIBLE PERSONAL PROPERTY TAX?

>> YOUR HONOR, I DON'T REMEMBER THE EXACT MILLAGE RATE THEY PAID IN AD VALOREM TAX.

THE MILLAGE RATE HERE, OBVIOUSLY, IS TWO MILLS. BUT LET ME MAKE THIS POINT, IF I MAY, YOUR HONOR.

THIS IS NOT THE ONLY WAY LOCAL GOVERNMENT HAS TO GET MONEY FOR BENEFITS ON THE PROPERTY. BOTH SANTA ROSA COUNTY AND ESCAMBIA COUNTY HAVE BENEFIT DISTRICTS THAT ARE ESTABLISHED FOR PURPOSES OF COLLECTING MONEY TO PAY FOR IMPROVEMENTS OR BENEFITS TO THE PROPERTY. AND SO SPECIAL ASSESSMENT METHODS ARE AVAILABLE TO THE COUNTIES QUITE APART FROM AD VALOREM TAXATION.

>> THANK YOU.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, MY NAME IS TOM FINDLEY.

I REPRESENT THE PROPERTY APPRAISER, GREG BROWN, OF SANTA ROSA COUNTY AND ALSO THE TAX COLLECTOR, STAN NICHOLS, OF SANTA ROSA COUNTY.

SEATED WITH ME ARE CO-COUNSEL, ELLIOTT MESSER COULD NOT MAKE IT, HE HAS BEEN ILL LATELY.

YOUR HONOR, WITH RESPECT TO THE QUESTION OF WHAT'S THE DIFFERENCE, THE DIFFERENCE IS VERY SUBSTANTIAL BECAUSE THE WAY THE AD VALOREM TAX SYSTEM WORKS THERE CAN BE DIFFERENT MILLAGES ASSESSED BY EACH LOCAL UNIT OF LOCAL GOVERNMENT.

SO YOU MAY HAVE A CITY IN SOME CASES, A COUNTY, SCHOOL BOARD DEFINITELY, WATER MANAGEMENT DISTRICT, ETC.

SO IT CAN BE AS MUCH AS 28 MILLS IN SOME OF THESE AREAS WHEREAS THE STATE INTANGIBLES TAX IS TWO MILLS.

>> MR. FINDLEY, WE CAN'T DECIDE THE CASE --

>> OF COURSE.

>> I MEAN, WE'RE REALLY, I MEAN, DO YOU AGREE, WE'RE REALLY TALKING ABOUT ADMITTED FACTS, FEDERAL GOVERNMENT, LOCAL GOVERNMENT AND THEN THE RELATIONSHIP UNDER THE LEASE. THAT'S THE STRUCTURE WE'RE TALKING ABOUT, CORRECT?

>> THAT'S CORRECT.

>> AND THEN THE DETERMINATION COMES DOWN AS TO HOW ARE WE GOING TO DEFINE UNDER FLORIDA LAW, OR IS THERE ANY NEED TO DEFINE AT LEAST WHAT THAT MEANS.

>> RIGHT.

>> AND ISN'T THAT WHAT WE'RE HERE TO TRY TO DO TODAY?

>> I THINK THERE ARE TWO ISSUES. THE CERTIFIED QUESTION BEFORE THE COURT IS WHETHER THE CONCEPT OF EQUITABLE OWNERSHIP APPLIES UNDER 196.199.

>> WELL, THAT AGAIN RECOGNIZES THE STATUTE SAYS WHAT IT SAYS.

>> RIGHT.

>> AND SO IT WANTS TO KNOW WHETHER THERE ARE SOME

EXCEPTIONS TO THIS.

>> WELL, EQUITABLE OWNERSHIP IS SOMETHING THAT APPLIES TO ALL OF THE EXEMPTION STATUTES.

THE CONCEPT OF EQUITABLE OWNERSHIP, FOR EXAMPLE, IN THE LEON COUNTY EDUCATIONAL FACILITIES AUTHORITIES CASE DEALT WITH BOTH THE EDUCATIONAL EDUCATION EXCEPTION AND 196.199 WHICH IS THE STATUTE CITED IN THE CERTIFIED QUESTION HERE.

WE KNOW FROM THE BANCROFT CASE BEFORE THE FLORIDA SUPREME COURT AND THE LEON COUNTY -- LCEFA, ACRONYM FOR THE EDUCATIONAL FACILITIES AUTHORITY -- THAT THEY RECOGNIZE THAT EQUITABLE OWNERSHIP WAS LONG ESTABLISHED IN FLORIDA LAW.

AND THAT HAS TO BE THE FIRST THING THAT YOU LOOK AT.

IN FACT, THE LCEFA COURT WE'RE NOT BOUND.

WE HAVE TO LOOK THROUGH THAT IN FACT AND SUBSTANCE.

>> THE FACT AND SUBSTANCE OF POSSESSORY INTEREST.

>> THE POSSESSORY INTERESTS ARE WHAT I WOULD CALL EQUITABLE OWNERSHIP.

>> WELL, OKAY.

I MEAN THE RIGHT TO BE THERE. THAT'S WHAT YOU'RE LOOKING THROUGH TO ANALYZE ON WHAT BASIS DOES THIS FAMILY OCCUPY OR POSSESS THIS PROPERTY?

>> OR OWN.

AND I WOULD POINT OUT THAT PART OF THE STATUTE THAT THEY KEEP OMITTING UNDER 2B IS THE LAST SENTENCE THAT SAYS NOTHING IN THIS EXEMPTION SHALL BE DEEMED TO EXEMPT IMPROVEMENTS, BUILDINGS, ETC., THAT ARE OWNED BY THE --

>> WELL, HERE IS MY PROBLEM.
IT'S CLEAR THAT 100 YEARS OR
MORE THE LEGISLATURE CLEARLY
INTENDED FOR THIS TO BE, THOSE
INTERESTS TO BE TAXED BECAUSE
THEY FUND AD VALOREM TAXES AS
OWNERSHIP.

THE ISSUE OF 99 AND LESS IS LESS
TO SOME VAGUE IDEA OF HOW WE'RE
GOING TO HELP CONSTRUE THE
STATUTE.

WHY SHOULDN'T THE LEGISLATURE
HAVE AN OBLIGATION IN THIS
SITUATION THAT IF THEY INTEND
FOR THERE TO BE THESE TYPES OF
LEASES, EQUITABLE OWNERSHIP, TO
SET FORTH WHAT THE FACTORS
SHOULD BE TO CONSIDER RATHER
THAN US TRYING TO DECIDE, WELL,
IF THIS ONE'S RENEWED FOR, IN
PERPETUITY, THEN, YOU KNOW, YES.
IF -- I MEAN, THERE ARE
DIFFERENT RENEWAL OPTIONS HERE.
SEEMS TO ME THAT THAT'S AN
AWFULLY INACCURATE WAY TO ASSESS
SOMETHING THAT SHOULD BE
PRECISE.

SO WHAT'S THE ANSWER TO THAT?
SHOULDN'T THE LEGISLATURE SOLVE
THIS?

>> WELL, I DON'T KNOW IF THE
LEGISLATURE CAN SOLVE THIS.
THEY'VE TRIED TO DO IT SEVERAL
TIMES, AND CONTRARY TO WHAT
THEY'VE ARGUED IN THEIR BRIEF,
THE LEGISLATURE -- I MEAN, THIS
COURT ON TWO OCCASIONS HAS
STRUCK WHAT THEY'VE ATTEMPTED TO
DO TO WHAT THIS COURT CALLED
MANIPULATE THE CRITERIA,
MANIPULATE THE STATUTORY
CRITERIA.

I THINK WE HAVE TO LOOK AT
SUBSTANCE OVER FORM.
YOU'RE NEVER GOING TO BE ABLE TO
AS A LEGISLATURE PIN DOWN EVERY

ATTEMPT TO ELEVATE FORM OVER
SUBSTANCE.

>> EXCEPT THAT THEY DESIGNATED A
YEAR, 100 YEARS OR MORE AND WERE
PRECISE ABOUT THAT.

>> CORRECT.

>> CORRECT?

>> I'M SORRY, THREE COURTS HAVE
ADDRESSED THAT.

PARKER V. HERTZ, HIALEAH AND
WARD V. BROWN ADDRESSED THAT
100-YEAR STATUTE, AND WHAT THEY
ALL SAID AND WHAT I BELIEVE IS
CORRECT IS THAT THAT SETS A
BRIGHT LINE FOR ANY LEASE THAT'S
OVER 100 YEARS, BUT IT DOESN'T
SET THE CRITERIA FOR WHAT IS
OWNED UNDER FLORIDA LAW OR OTHER
CATEGORIES OF LEASES INCLUDING
99-YEAR LEASES WITH RENEWALS FOR
99 WITH OPTIONS TO RENEW FOR 99
MORE OR ONES TIED TO THE
ESCAMBIA, SANTA ROSA LEASE --

>> BUT THERE ARE, THERE ARE
DIFFERENT LEASES.

WHAT IF THERE WAS NO RENEWAL?
IT WAS 99-YEAR ABSOLUTELY WITH
NO OPTION TO RENEW AFTER 99
YEARS?

IS THAT, WOULD THAT BE ENOUGH TO
BE TAXED DURING THE DURATION OF
THE 99-YEAR LEASE AS AD VALOREM
TAXES?

>> YES.

IT WOULD BE.

AND IN MY JUDGMENT DEPENDING ON
ALL THE --

>> SO THE OPTION, THIS IS NOT A
CRITICAL FACTOR?

>> THE OPTION TO RENEW IS
IMPORTANT.

IT'S ONE OF THE BUNDLE OF
STICKS.

THAT GOES ON IN REAL ESTATE
LITIGATION ALL THE TIME.

THEY THOUGHT, THE COURTS HAVE

TALKED ABOUT THE BUNDLE OF STICKS.

AND YOU CAN'T REALLY ISOLATE ON ANY ONE STICK.

YOU NEED TO LOOK AT THEM AS A BUNDLE.

THAT CAN BE A FACTOR WHETHER IT'S BEEN SOLD AS A CONDOMINIUM, WHETHER THE COUNTY IS IN THE MAJORITY OF CASES IN THIS CASE THE COUNTY ENTERED INTO THE DECLARATION OF CONDOMINIUM.

BY LAW THAT MEANS THEY SUBMITTED THEIR INTEREST TO THE CONDOMINIUM FORM OF OWNERSHIP WHICH THE LEGISLATURE HAS DETERMINED IS A REAL PROPERTY INTEREST.

>> DOES IT MATTER WHETHER THE TAX IS ON THE LAND AND THE IMPROVEMENTS OR JUST THE IMPROVEMENTS?

IN OTHER WORDS, I COULD SEE A BETTER ARGUMENT BEING THAT THE ACTUAL CONDO UNIT THAT IS POSSESSED CAN BE TAXED, BUT WHY SHOULD -- WHERE IS IT THAT SOMETIMES THE LAND IS TAXED AND IN OTHER PLACES THE LAND ISN'T TAXED?

>> WELL, I THINK THE LAND IS SUBJECT TO THE SAME TYPE OF EQUITABLE OWNERSHIP ARGUMENT AS THE IMPROVEMENTS ARE, AND I THINK --

>> SO WHAT WAS THE DISTINCTION MADE IN THOSE SITUATIONS WHERE THE LAND WAS TAXED AND THOSE WHERE THE LAND WASN'T TAXED?

>> OH.

THE WAY THAT BOTH APPRAISERS ARE DOING IT NOW, SANTA ROSA AND ESCAMBIA, IS TO ASSESS THE IMPROVEMENTS, CONDOMINIUM UNITS AND LAND.

MR. JONES --

>> WHEN YOU SAY "NOW," DO YOU MEAN IN THESE CASES?

>> NO, SIR.

>> IT'S DIFFERENT IN THESE CASES.

>> CORRECT.

CORRECT.

THE SANTA ROSA PROPERTY APPRAISER STARTED THIS LITIGATION IN 2001, AND HE WAS SUCCESSFUL.

THE ESCAMBIA COUNTY PROPERTY APPRAISER SAW NO DIFFERENCE AND ADDED HIS TO THE TAX ROLLS IN 2004.

MR. BROWN IN SANTA ROSA COUNTY THEN THOUGHT BASED PARTIALLY ON THE DISSENT OF JUSTICE BENTON, OR JUDGE BENTON IN THE FIRST DCA WARD V. BROWN CASE WHERE HE SAID THERE'S NO DISTINCTION BETWEEN LAND AND BUILDINGS HERE, MR. BROWN THEN PUT THE LAND ON. BECAUSE IT HAS A LONG HISTORY OF SLIGHT VARIATIONS.

BUT AS OF THE ACCARDO FIRST DCA DECISION, ESCAMBIA COUNTY NOW HAS THE LAND AND BUILDINGS ON THE TAX ROLLS.

I WOULD LIKE TO SAY SOMETHING ABOUT THE QUESTIONS ABOUT LEGISLATIVE DISCRETION.

AND, YES, THE LEGISLATURE HAS THE POWERS OF CLASSIFICATION, BUT THIS COURT HELD IN THE SEBRING DECISION THAT THE LEGISLATURE'S AUTHORITY IS NOT UNBRIDLED, AND IT HAS TO BE MEASURED WITH THE YARDSTICK OF THE CONSTITUTION.

AS I'VE MENTIONED JUST A SECOND AGO, THERE HAVE BEEN TWO OCCASIONS WHERE THIS COURT HAS STRUCK EFFORTS ON SANTA ROSA ISLAND TO MANIPULATE THE STRUCTURE IN ORDER TO GAIN AN

INDIRECT EXCEPTION WHICH IS WHAT THEY'RE AGAIN DOING.

WILLIAMS V. JONES, ALSO FROM THIS COURT, SAID -- AND THIS IS A QUOTE THAT GETS CHOPPED SHORT IN THEIR BRIEFING -- THAT THE LEGISLATURE HAS THE POWER TO CLASSIFY, AND THEN THIS IS THE PART THAT THEY LEAVE OUT: "SO THAT ALL PROPERTY DEVOTED TO PRIVATE USE IS TREATED ON A PARITY AND, THEREFORE, THERE IS AN EQUITABLE DISTRIBUTION OF THE TAX BURDEN."

BASICALLY, THE APPELLANTS CONTEND FOR A CONSTITUTIONAL EXEMPTION, CONSTITUTIONAL EXEMPTION.

THERE'S NO, THERE'S NO AUTHORITY FOR THIS TREATMENT IN THE CONSTITUTION WHICH IS FATAL TO THEIR CASE.

AND WHAT THEY WERE SEEKING IN THE WILLIAMS V. JONES CASE WAS INTANGIBLE TAX TREATMENT.

JUST WHAT WE'RE TALKING ABOUT HERE.

>> ISN'T THIS DIFFERENT BECAUSE OF THE REVERTER CLAUSES?

IF THIS IS SOLD, ISN'T THERE A REVERTER THAT BECOMES OPERATIVE?

>> [INAUDIBLE]

>> EXCUSE ME?

>> THESE ARE THE SAME LEASES.

>> NO, I'M SAYING THAT IF YOU HAVE AN ACTUAL SALE, IF WE TRY TO TREAT THIS PROPERTY AS ALL OTHER PROPERTIES, AREN'T THERE REVERTER CLAUSES PROVISIONS THAT PROHIBIT THE SALE?

>> THERE WERE IN THE WILLIAMS V. JONES.

>> I'M ASKING THIS CASE. RIGHT NOW.

ARE THERE NOT -- THIS PROPERTY ORIGINALLY WAS OWNED BY THE

FEDERAL GOVERNMENT, CORRECT?

>> CORRECT.

>> AND IT'S THE FEDERAL GOVERNMENT REVERTER CLAUSES THAT WE'RE TALKING ABOUT, AREN'T WE?

>> WELL, THE FEDERAL GOVERNMENT GAVE IT TO ESCAMBIA COUNTY --

>> WELL, I UNDERSTAND CERTAIN RESTRICTIONS ALSO.

>> THE WHOLE LEGAL TITLE.

>> BUT PROHIBITED THE SALE OF THAT LAND, DID IT NOT?

>> PROHIBITED THE CONVEYANCE OF FAIR LEGAL TITLE, IS HOW I WOULD VIEW IT.

>> NO.

SEE HERE, AGAIN, THIS GETS INTO A GAME OF SEMANTICS RATHER THAN SOLVING THE PROBLEM, MR. FINDLEY.

AS I LOOK AT THIS, THERE'S GOT TO BE A PRACTICAL WAY TO APPROACH THIS.

AND IT WAS VERY CLEAR TO ME THAT THE FEDERAL GOVERNMENT STILL HOLDS THE TRUMP CARD THAT IF YOU WANT TO CALL ALL THIS OWNERSHIP, THEN WHEN DOES THE REVERTER COME INTO PLAY?

>> WHAT THE COURT HELD IN LCEFA WAS THAT THE APPEARANCE OF LEGAL TITLE WAS NOT SIGNIFICANT TO THE OUTCOME.

IT REVERSED THE FIRST DISTRICT COURT OF APPEAL AND SAID YOU'RE ONLY LOOKING AT LEGAL TITLE.

THIS IS A -- THIS HAS TO BE AN ANALYSIS OF EQUITABLE OWNERSHIP.

SO THAT PRESERVATION OF THE LEGAL TITLE IN ESCAMBIA COUNTY TO THIS COURT WOULD HAVE BEEN NOT SIGNIFICANT IN THE LCEFA CASE.

CAN I GIVE YOU A CLEAR ANSWER?

NO.

BUT I CAN TELL YOU THAT THE

INTANGIBLES TAX TREATMENT IS SOMETHING THAT'S NOT AUTHORIZED BY THE FLORIDA CONSTITUTION.

>> IT COMES STRAIGHT FROM THE STATUTE.

>> BUT THE CONCEPT OF THE PROHIBITION OF THE TRANSFER OF TITLE TO PROPERTY YOU OWN IS ALSO NOT A CONCEPT THAT'S OF A CONSTITUTIONAL BASIS EITHER, IS IT?

>> I'M NOT SURE I UNDERSTAND THAT.

>> WELL, OUR TRANSFER OF REAL PROPERTY'S PROTECTED BY THE CONSTITUTION, AND UNDER THESE CIRCUMSTANCES IF THERE ARE REVERTER CLAUSES THAT PROHIBIT THE TRANSFER OF OWNERSHIP, IT SEEMS TO ME THAT, I MEAN, THE WHOLE CONCEPT IS OUT, IS EXTRACONSTITUTIONAL.

IT'S BEYOND THE REALM OF THE CONSTITUTION WE'RE TALKING ABOUT.

>> I WOULD DISAGREE, RESPECTFULLY DISAGREE WITH THAT, YOUR HONOR, BECAUSE THERE IS NO PROHIBITION ON CONVEYING EQUITABLE OWNERSHIP IN THAT, IN THAT LAW.

THE UNITED STATES GOVERNMENT, ESCAMBIA COUNTY, NO GOVERNMENT ENTITY IS INVOLVED IN THIS CASE IN COMPLAINING THAT TOO MUCH WAS CONVEYED.

I THINK EVERYONE WOULD CONCEDE THAT WHAT WAS CONVEYED WAS LAWFUL.

THE QUESTION TO THE COURT IS WHAT WAS CONVEYED IS THAT EQUITABLE OWNERSHIP UNDER FLORIDA LAW.

AND I WOULD SUBMIT THAT IT IS USING THE STANDARDS OF LCEFA AND ALL THE --

>> WELL, THEN IT'S NOT
CONSISTENT WITH THE REVERTER ON
THE TRANSFER OF THE PROPERTY.
>> I THINK IT'S JUST AS
CONSISTENT WITH THE REVERTER AS
THE BANCROFT CASE WAS WHERE THE
UNITED STATES GOVERNMENT HAD
LEGAL TITLE, AND THE EQUITABLE
OWNER WAS THE PRIVATE PARTY.
AND I THINK THERE ARE OTHER
CASES WHERE THAT EXISTS WHERE
THE COUNTY --
>> AND THE PRIVATE PROPERTY, THE
EQUITABLE OWNER THERE WAS
SUBJECTED TO TAXATION --
>> CORRECT.
>> -- EVEN THOUGH THE FEDERAL
GOVERNMENT HAD THE LEGAL TITLE
TO THE PROPERTY.
>> CORRECT.
AND THAT'S THE BANCROFT
DECISION, YES.
>> BUT THIS IS NOT DEPENDENT
UPON WHO'S TAXED.
THIS IS DEPENDENT UPON
OWNERSHIP, ISN'T IT?
>> THAT'S THE SAME AS BANCROFT.
THE PRIVATE PARTY WAS THE
EQUITABLE OWNER AND THE ONE THAT
SHOULD BE ASSESSED THE FULL TAX.
>> IT DOESN'T DEPEND UPON
TAXATION.
IT DEPENDS UPON WHO OWNS IT.
>> WHO IS THE EQUITABLE OWNER OF
THE INTEREST.
>> WELL, YOU KEEP RESTATING IT,
SO, YOU KNOW, I GUESS YOU'RE
RIGHT.
>> THAT'S HOW THIS COURT HAS
DEFINED OWNERSHIP.
THEY'VE DEFINED OWNERSHIP
CONSISTENTLY AS EQUITABLE
OWNERSHIP.
IN LCEFA THE PARTY WHO HAD LEGAL
TITLE WAS DETERMINED NOT TO BE
THE OWNER FOR AD VALOREM TAX

PURPOSES.

AND THIS ISN'T SOMETHING THAT THE COURTS BELOW MADE UP, AS THEY SUGGESTED.

THIS IS SOMETHING THAT'S BEEN A LONGTIME PART OF FLORIDA LAW, AS JUSTICE CANADY POINTED OUT.

>> YOU WERE TALKING ABOUT THE BUNDLE OF RIGHTS OR THE STICKS THAT WOULD MAKE UP EQUITABLE OWNERSHIP, AND IN ANSWER TO MY QUESTION YOU SAID THAT THERE WAS, THAT THE FACT THAT THERE WAS RENEWABLE LEASE OPTIONS WAS NOT DETERMINED.

YET MR. D'ALEMBERTE SAID THEY'VE GOT BURDENS THAT ORDINARY PROPERTY OWNERS WOULDN'T HAVE. COULD YOU SAY THAT IF YOU WERE TO WRITE THIS OPINION OUT OF THE COURT, WHAT WOULD YOU SAY WERE THE MOST SIGNIFICANT BENEFITS THAT THE PLAINTIFFS, PETITIONERS HAVE ENJOYED AND CONTINUE TO ENJOY?

>> I WOULD FOLLOW THIS COURT'S FOUR DECISIONS ON SANTA ROSA ISLAND THAT CONCLUDE THAT THESE INTERESTS ARE TANTAMOUNT TO OWNERSHIP AND THE EQUIVALENT OF OWNERSHIP, AND I WOULD FOLLOW THE DISTRICT COURTS OF APPEAL DECISIONS, THREE OF THEM THAT ARE PUBLISHED, THAT SAY INCLUDING FROM THIS CASE THAT SAY THE PROPERTIES ARE USED FOR PURELY PRIVATE PURPOSES, THE PRIVATE PARTY GETS ALL OF THE RIGHTS TO CAPITAL APPRECIATION, ALL OF THE RIGHTS TO RENTAL INCOME.

>> LET ME ASK YOU ON CAPITAL APPRECIATION.

THAT MEANS THAT THEY --
WHATEVER, IT'S APPRAISED AT WHEN THEY GO TO SELL, THEY WOULD

REPORT THAT AS CAPITAL GAINS?
>> CAPITAL GAINS -- I DON'T KNOW
IF THE TAX TREATMENT WOULD
PROBABLY --
>> CAN THEY --
[INAUDIBLE]
ON THESE PROPERTIES?
>> YES.
>> THEY GET A HOMESTEAD
EXEMPTION?
>> OUR POSITION IS THAT THEY'RE
GRANTED HOMESTEAD.
THEY'VE APPLIED FOR HOMESTEAD,
AND IT'S BEEN GRANTED.
>> OKAY.
SO CAPITAL APPRECIATION.
BUT YOU DON'T THINK, AND THIS
IS -- I'M CONCERNED ABOUT
THIS -- THAT WHETHER THEY HAVE,
WHAT THE RENEWAL TERM IS IS A
SIGNIFICANT PART OF THE BUNDLE
THAT WE SHOULD BE ANALYZING?
>> I THINK IT'S SIGNIFICANT.
I THINK IF YOU HAVE A -- THE
MOST COMMON LEASE IN THIS CASE
IS A 99-YEAR LEASE WITH AN
OPTION, CLEAR OPTION TO RENEW
FOR 99 YEARS WITH AN OPTION FOR
FURTHER RENEWALS ON LIFE TERMS.
>> AND THAT'S EVERY LEASE THAT
WE HAVE IN FRONT OF US?
>> NO.
THERE ARE SOME SLIGHT
DIFFERENCES, BUT I WOULD SAY
THIS, IN THIS CASE THERE WAS,
THERE WERE TWO PLAINTIFFS, TWO
PETITIONERS, MR. LOUIS WARD AND
MR. ROBERT COLEY, THAT WERE
CONSIDERED TO BE CLASS
REPRESENTATIVES, THE CLASS OF
TAXPAYERS IN 2002 THROUGH 2005.
AND SO TODAY ARGUED THAT THESE
REPRESENT EVERYBODY, AND THOSE
WERE 99 PLUS 99 PLUS OPTIONS TO
RENEW AFTER THAT, AND THEY WERE
CONDOMINIUMS.

>> WELL, HAVE, HAS OPPOSING COUNSEL EVER MADE AN ARGUMENT THAT WOULD SPLIT THESE UP SOME WAY AND SAY THAT, WELL, EVEN IF SOME ARE OF AN EQUITABLE OWNERSHIP INTEREST THAT'S SUBJECT TO THE AD VALOREM TAXATION, THESE OTHERS DON'T FOR THESE REASONS?

>> I WOULD SUBMIT THAT THEY'VE ONLY DONE THAT IN THEIR BRIEFING BEFORE THIS COURT.

BECAUSE WHAT THEY DID IN THEIR ORIGINAL COMPLAINT WAS TO ATTACH -- IF I GO BACK TO 2002 TO 2005, THEY HAVE CLASS REPRESENTATIVES --

>> BUT WE CAN'T, THIS LAWSUIT ISN'T A CLASS ACTION.

>> NO, IT ISN'T.

>> SO WHAT DID THEY ALLEGE IN THIS --

>> I'M SORRY.

THERE WERE SIX LEASES THAT WERE ATTACHED TO THIS COMPLAINT, AND THE SIX LEASES WERE ALLEGED TO BE COMMON TO ALL OF THE OTHER LEASES.

AND SO THOSE ARE THE ONES WE FOCUSED ON AND THE ONES THAT WE DESCRIBED IN OUR FACTS.

THOSE WERE ALL 99 PLUS 99.

THE FIRST DCA IN HEARING THE ARGUMENTS BEFORE IT IN THE ARIOLA CASE SAID THEY'RE NOT ARGUING THAT THERE ARE DISTINCTIONS AMONG THESE LEASES. THEY'RE ARGUING THAT THEY ALL FALL IN THE SAME VOTE.

THIS COURT IN WILLIAMS V. JONES CONSOLIDATED A NUMBER OF CASES OF ALL THE LEASEHOLDERS ON SANTA ROSA ISLAND, AND THEY DROPPED A FOOTNOTE THAT SAID ONE OF THESE LEASES IS ONLY FOR 25 YEARS.

BUT THE QUESTION REALLY IS WHO

HAS THE BENEFITS AND BURDENS OF OWNERSHIP OR JANUARY 1ST.

AND I WOULD SUGGEST TO YOU THAT THE -- WHAT WILLIAMS V. JONES ALSO DID WAS TO STATE THAT THAT 100-YEAR STATUTE OR THE 99-YEAR STATUTE IN THOSE DAYS WAS A STANDARD FOR VALUATION.

AND SO PERHAPS AS YOU GET CLOSER TO THE LEASE TERM, THERE COULD BE ADJUSTMENTS TO VALUE.

THAT REMAINS TO BE SEEN.

BUT AT THIS POINT IN TIME, YOU HAVE A SITUATION WHERE SIX TRIAL COURTS AND SIX APPELLATE COURTS HAVE LOOKED AT THIS.

THEY'VE LOOKED AT THEIR SALES CONTRACTS BY WHICH THEY SELL THESE CONDOMINIUMS.

THERE ARE CONDOMINIUM DECLARATIONS WHEREBY THE COUNTY SUBMITS ITS OWNERSHIP INTEREST TO THE CONDOMINIUM FORM OF REAL PROPERTY OWNERSHIP.

ALL OF THESE RECORDS, THEY'VE DONE ALL OF THIS LABOR, AND EVERY ONE OF THEM HAS DETERMINED THAT THESE SANTA ROSA ISLAND PETITIONERS ARE THE EQUITABLE OWNERS OF THE PROPERTY.

>> HAVE THEY APPRAISED AT A LESSER AMOUNT THAN IF THE SAME EXACT -- LET ME FINISH -- IT WAS A, QUOTE, NORMAL CONDOMINIUM WHERE THERE'S NOT A QUESTION, WHERE THERE'S A PORTION OF OWNERSHIP THE COMMON ELEMENT, OWNERSHIP -- THE DEVELOPER HAS TRANSFERRED IT.

DO THEY GET THE BENEFIT OF A LESSER VALUE BECAUSE OF THE UNIQUE STRUCTURE OF IT BEING LEASED BY THE COUNTY?

>> NO.

AND THE REASON IS THAT THE SALES PRICE GENERATE THE VALUE.

VERY EASY --

>> SO IT'S EXACTLY THE SAME SALE PRICE WHETHER IT WAS OWNED BY THE COUNTY OR NOT?

>> WELL, WE DIDN'T HAVE APPRAISERS COME IN AND COMPARE OKALOOSA COUNTY, FOR EXAMPLE --

>> BUT THEY COULD MAKE THAT ARGUMENT.

>> SURE.

>> YOU'VE OVERAPPRAISED BECAUSE YOU SHOULDN'T APPRAISE THIS AS HIGH AS --

>> RIGHT.

>> -- A IDENTICAL SITUATION WHERE IT'S NOT OWNED BY, WHERE THE LAND IS NOT OWNED BY THE COUNTY.

>> CORRECT.

THEY DID NOT RAISE ANY VALUATION CHALLENGE IN ANY OF THESE CASES.

>> THANK YOU FOR YOUR ARGUMENT.

>> THANK YOU.