

>> LET'S MOVE NOW TO THE NEXT CASE OF 1108, ARIOLA V. JONES, THE CAUSE OF THE SAME ISSUES IN THE CASE.

WE ENCOURAGE YOU NOT TO USE THE FULL TIME IF YOU DON'T FEEL LIKE YOU HAVE TO.

YOU MAY PROCEED.

YOU ARE TWO MINUTES OVER, SO

LET'S PROCEED IN THIS CASE.

YOU'VE GOT 20 MINUTES TO ADDRESS ANY OF THE ISSUES THAT YOU WANT TO TALK ABOUT.

>> MAY IT PLEASE THE COURT, MY NAME IS DANNY KEPNER ALONG WITH MR. D'ALEMBERTE, WE REPRESENT IN THIS CASE LEASEHOLDERS AT THE OTHER END OF SANTA ROSA ISLAND CALLED PENSACOLA BEACH.

AS WITHIN ESCAMBIA COUNTY RATHER THAN SANTA ROSA COUNTY.

THE DISTRICT COURT OF APPEAL IN THIS CASE CERTIFIED THIS QUESTION OF GREAT PUBLIC IMPORTANCE.

THAT IS WHETHER THESE LESSEES ARE EQUITABLE OWNERS WHEN THEY DO NOT HAVE PERPETUAL LEASEHOLD, AND THEY DO NOT HAVE A RIGHT TO PURCHASE THE PROPERTY FOR A NOMINAL SUM AT THE END OF A LEASE TERM.

AND THE STATUTE --

>> HELP ME UNDERSTAND THE QUESTION AND THE FACT HERE.

COULD YOU TELL ME WHAT THE LEASE RENEWAL TERMS, RELEVANT LEASE -- [INAUDIBLE]

>> PENSACOLA BEACH, NONE OF THEM HAVE THE PROVISIONS THAT WERE FOUND --

>> WHAT ARE THEY?

DON'T TELL ME WHAT THEY'RE NOT, TELL ME WHAT THEY ARE.

[LAUGHTER]

>> WELL, THEY ARE VARIED.

SOME HAVE NO PROVISION
WHATSOEVER FOR RENEWAL.
THERE ARE ABOUT 600 LEASES IN
OUR CASE WHICH IS, WE'VE GOT
2200 PARCELS, AND ABOUT 600 OF
THEM HAVE NO PROVISION FOR
RENEWAL WHATSOEVER.
SO AT THE END OF THE LEASE TERM,
THEY'RE GOING TO HAVE TO TALK TO
THE COUNTY AND SEE IF THEY CAN
GET A DEAL.
>> AND THOSE ARE 99-YEAR LEASES?
>> YES, THEY ARE, YOUR HONOR.
>> OKAY.
>> ANY OF THEM HAVE A PROVISION
THAT SAYS YOU CAN RENEW THIS
WITHIN -- YOU DO IT BEFORE SIX
MONTHS ARE NEARLY UP -- ON LIKE
TERMS AND CONDITIONS.
NOW, IT DOES NOT SAY SAME LIKE
RENT.
IT DOESN'T SAY THAT.
AND, OF COURSE, I'VE SAID MANY
TIMES, IF IT JUST SAYS TERMS AND
CONDITIONS, IT'S NOT A GUARANTEE
OF WHAT RATE YOU'RE GOING TO
GET.
YOU'VE GOT TO STRIKE A NEW DEAL
WITH THE COUNTY.
THAT'S THE 99-YEAR DEAL THAT HE
KEEPS SAYING IS, LIKE, AN
AUTOMATIC RENEWAL.
NO, NOT AUTOMATIC.
NOT IN ANY WAY WHATSOEVER.
THE LEASES ON SANTA ROSA COUNTY
HAD A PROVISION, MANY OF THEM
THAT SAID THIS IS AUTOMATIC
RENEWAL.
THESE DON'T HAVE ANYTHING LIKE
THAT.
INSTEAD YOU HAVE TO GO TO THE
COUNTY AND SAY I'M NEAR THE
99-YEAR END OF THIS, I WOULD
LIKE TO RENEW.
THE COUNTY THEN SAYS, WELL, LIKE
TERMS AND CONDITIONS IS YOU'RE

GOING TO HAVE TO PAY RENT JUST LIKE YOU DID BEFORE, IT'S JUST GOING TO BE A HIGHER RATE.

>> I DON'T UNDERSTAND WHY THE RENT IS NOT A TERM.

THE SPECIFIC RENT.

I DON'T UNDERSTAND THAT.

>> WELL, BECAUSE IT DOESN'T SAY IDENTICAL.

IT SAYS LIKE TERMS AND CONDITIONS.

>> WELL, THAT'S THE SAME.

"LIKE" MEANS THE SAME, DOESN'T IT?

>> WELL --

>> THAT'S ONLY YOUR CLIENT'S POSITION, THAT THEY'RE ENTITLED TO KEEP THAT GOING THE WAY IT IS NOW?

>> I'M SORRY, YOUR HONOR, I DIDN'T UNDERSTAND.

>> WOULDN'T IT BE YOUR CLIENT'S POSITION, THOUGH, THAT THEY WOULD BE ENTITLED TO KEEP THE SAME RENT?

>> WELL, THAT WOULD BE AN ARGUMENT TO MAKE TO THE COUNTY, YES, SIR.

BUT, YOU KNOW, THAT HASN'T GOTTEN -- WE HAVEN'T GOTTEN TO THAT DATE WITH THESE LEASES. THE FIRST ONES STARTED, I THINK, IN THE LATE '50s, SO WE'RE NOT TO THE POINT WHERE THOSE RENEWALS HAVE HAPPENED.

I DO KNOW WHEN PEOPLE WANT TO DO SOMETHING SLIGHTLY DIFFERENT WITH THEIR PROPERTY, THE COUNTY SAYS, OKAY, LET'S STRIKE A DIFFERENT DEAL WITH YOUR LEASE TERM, THAT BEING THE RENT. SO THERE'S NOTHING AUTOMATIC WHATSOEVER HERE.

YOU'VE GOT A 99-YEAR LEASE.

NOW, I DO WANT TO ADDRESS THIS WHOLE QUESTION WHAT THE

LEGISLATURE WAS DOING.

IN '71 THEY PASSED A STATUTE THAT DID CAUSE EVERY ONE OF THESE LEASEHOLDS TO BE TAXED, IMPROVEMENTS AND LAND, AS IF THE LESSEES OWNED IT.

IN 1980 THEY CHANGED THEIR APPROACH TO IT.

THEY SAID WE'RE NOT GOING TO DO THAT ANYMORE.

INSTEAD WE'RE GOING TO SAY THESE PROPERTIES ARE GOING TO BE TAXED ONLY AS INTANGIBLE PERSONAL PROPERTY EXCEPT FOR THE IMPROVEMENTS IF YOU OWN THE IMPROVEMENTS.

THEN YOU GET LEVIED WITH A AD VALOREM TAX.

PENSACOLA BEACH ONLY INCLUDE THE TAXATION OF THE IMPROVEMENTS.

THE SUBSEQUENT CASES WE'VE HAD TO FILE ARE NOT PART OF THIS CASE BEFORE YOU TODAY.

>> SO DO YOU HAVE A DIFFERENT POSITION AS TO WHAT KIND OF TAX SHOULD BE LEVIED ON THESE PROPERTIES IN THIS CASE?

I MEAN, I UNDERSTAND MR. D'ALEMBERTE'S ARGUMENT IN THE OTHER CASE WAS THAT ONLY INTANGIBLE PERSONAL PROPERTY TAX IS APPLICABLE.

IS THAT YOUR ARGUMENT IN THIS CASE TOO?

>> IT IS, YOUR HONOR. IT IS.

THAT'S WHAT THE STATUTE SAYS. TAX IS INTANGIBLE.

IT SAYS IMPROVEMENTS -- IT'S THE SAME STATUTES.

WE'RE TALKING ABOUT EXACTLY THE SAME STATUTES.

BUT IT SAYS THE IMPROVEMENTS -- BECAUSE THAT'S ALL WE'RE DEALING WITH HERE -- CAN BE TAXED IF YOU OWN THEM.

SO WE GET INTO THIS QUESTION OF,
WELL, WHO OWNS THESE
IMPROVEMENTS?

WELL, FIRST WE LOOK AT THE
LEASES.

THE LEASES ALL SAY THE MOMENT
THEY'RE PLACED ON THE PROPERTY,
PERMANENT IMPROVEMENT FORTHWITH
IS ENTITLED IN ESCAMBIA COUNTY.
IT WAS DIFFERENT IN THE WARD V.
BROWN CASE.

THERE IT SAID FOR SANTA ROSA
COUNTY THAT THE COUNTY WAS GOING
TO GET THE LEASEHOLD
IMPROVEMENTS AT THE END OF THE
LEASE TERM.

>> WHEN WE'RE TALKING, WHEN
YOU'RE SAYING "IMPROVEMENTS,"
WE'RE TALKING ABOUT THE CONDOS
THEMSELVES, CORRECT?

>> THE BUILDING, YES.

ANY KIND OF IMPROVEMENTS.

>> SO YOU'RE SAYING THE LEASES
IN THIS CASE, THOSE BUILDINGS
BELONG TO THE COUNTIES?

>> I AM, YOUR HONOR, BECAUSE
THAT'S WHAT THEY SAY, EVERY ONE
OF THEM.

NOT ONE OF THEM SAYS ANYTHING
DIFFERENT FROM THAT.

>> WHY WOULDN'T THAT JUST BE
FAIR LEGAL TITLE?

BECAUSE THE DIFFERENCE IN
PRACTICAL TERMS BETWEEN THAT AND
THE OTHER IS NONEXISTENT BECAUSE
THEY GET THE SAME USE -- THE
LEASEHOLDER GETS THE SAME USE OF
THE PROPERTY, THEY'VE GOT THE
SAME PRACTICAL RIGHTS WITH
RESPECT TO THE PROPERTY.

THERE'S JUST THE DIFFERENCE AND
THE ISSUE OF WHO HAS THE FAIR
LEGAL TITLE.

>> WELL, I WOULD DISAGREE WITH
YOUR HONOR BECAUSE LET'S SAY I
HAD A VERY -- LET'S SAY I'M

DONALD TRUMP, AND I'VE GOT A NICE PLACE ON PENSACOLA BEACH. I'VE DECIDED I'D LIKE TO HAVE THAT BUILDING ACROSS THE BAY. COULDN'T DO THAT. I'M A LEASEHOLDER. I CAN'T MOVE THE PROPERTY. I CAN'T MOVE THE IMPROVEMENTS. THEY MUST STAY IN PLACE. I MUST KEEP REPAIRING THEM IF THEY GET TORN DOWN. SO IT'S DIFFERENT. WE'RE LEASEHOLD, IT'S NOT OWNERSHIP.

>> BUT YOU STILL HAVE THE RIGHT TO RENT IT?

>> YES.

>> AND COLLECT THE RENT.

>> YES.

>> YOU HAVE THE RIGHT TO CHANGE IT AND MAKE IMPROVEMENTS, CORRECT?

>> YES.

>> YOU HAVE THE RIGHT TO ENCUMBER IT?

>> THAT'S CORRECT. JUST LIKE ANY LESSEE.

>> OKAY.

>> JUST LIKE ANY LESSEE. AND WE'VE SHOWN YOU CASE --

>> AND YOU CAN TRANSFER YOUR INTERESTS?

>> I'M SORRY?

>> YOU CAN TRANSFER YOUR INTEREST IN THAT PROPERTY?

>> THE LEASEHOLD INTEREST?

YES.

THE APPRECIATION IN TIME IS THE DIFFERENCE IN PRICE BECAUSE IT IS A LEASEHOLD. AND A LEASEHOLD --

>> BUT ARE THOSE THE FACTORS ALSO THAT YOU TAKE INTO CONSIDERATION WHEN YOU'RE TALKING ABOUT WHETHER OR NOT SOMEONE IS AN EQUITABLE OWNER?

>> I'M GLAD YOU ASKED THAT QUESTION.
BECAUSE IF YOU HAVE AN EQUITABLE OWNERSHIP WITH A LEASEHOLD, HERE'S, REAL QUICKLY, WHAT YOU HAVE IS YOU HAVE A TITLE HOLDER WHO WILL NOT KEEP THE TITLE, AND YOU HAVE A LESSEE WHO WILL WIND UP WITH THE TITLE.
THAT'S NOT WHAT WE HAVE HERE. WHAT WE HAVE HERE IS A LESSEE, I'M SORRY, THE TITLE HOLDER -- ESCAMBIA COUNTY -- WHO WILL NEVER LOSE THE TITLE. ESCAMBIA COUNTY ALWAYS KEEPS THE TITLE.
AND YOU HAVE A LESSEE WHO WILL NEVER HAVE THE TITLE. OUR CLIENTS WILL NEVER HAVE THE TITLE. THEY DON'T HAVE ANY CONTRACT DEAL.
NOW, THIS COURT HAS STATED --
>> YOU'RE ARGUING THE CASE I LOST AS A LAWYER IN THE LEON COUNTY EDUCATIONAL FACILITY VERSUS --
>> THAT'S WHERE I WAS GOING.
[LAUGHTER]
>> YOU'RE MAKING THE SAME ARGUMENT I MADE TO THIS COURT WAY BACK WHEN, AND I LOST.
>> ACTUALLY, THE DIFFERENCE HERE, YOUR HONOR --
[LAUGHTER]
IS THAT TRANSACTION WAS A FINANCING ARRANGEMENT WHEREBY THAT FACILITY WAS GOING TO BE OWNED BY THE GOVERNMENT WHEN ALL THE PAYMENTS WERE MADE. THERE WAS AN OPTION TO PURCHASE AT THE END OF THAT FOR \$1. THERE'S NO OPTION TO PURCHASE HERE AT ANY PRICE, AND THERE'S NEVER GOING TO BE A TRANSFER OF THE OWNERSHIP, THE ACTUAL TITLE

TO THE PROPERTY OF THE
IMPROVEMENTS OR THE LAND TO OUR
CLIENTS.

SO IT IS DIFFERENT.

AND THAT DISTINCTION --

>> SO YOU'RE SAYING THAT THERE
CAN NEVER BE EQUITABLE OWNERSHIP
UNLESS THERE IS THE PROSPECT FOR
LEGAL TITLE TO ULTIMATELY SET
THE CURRENT --

>> [INAUDIBLE]

>> WHAT CASE SUPPORTS THAT
PROPOSITION?

>> WELL, THAT CASE SUPPORTS THAT
PROPOSITION.

>> I READ IT, I JUST READ IT
THIS MORNING, AND I DON'T
REMEMBER THAT BEING IN THERE.

>> WELL, HERE'S THE LANGUAGE,
AND IT WAS NOT, IT WAS NOT
UNDERLINED IN THE OPINION THAT
THE FIRST DISTRICT --

>> WELL, I'VE GOT IT, SO TELL ME
WHERE IT IS.

>> WELL, IT'S IN BETWEEN LINES
THAT WERE UNDERLINED.

THE SENTENCE SAYS, AND IT CITES
THE GAUTHIER V. LAPOP CASE.

>> WE'RE TALKING ABOUT LEON
COUNTY EDUCATIONAL FACILITIES?

>> WELL, IT IS IN THAT CASE,
YOUR HONOR, BUT THAT'S REPEATED
IN THE ARIOLA CASE.

THE COURTS SAID, AND THEY
CITED -- WHERE THEY CITED
GAUTHIER IN THE LEON COUNTY
CASE -- THEY SAID, THEY TALKED
ABOUT, YOU KNOW, JUST BECAUSE
YOU HAVE AN OPTION TO PURCHASE
DOESN'T MEAN --

[INAUDIBLE]

AND THEN IT SAYS, "WE HAVE SAID
THAT IF YOU HAVE A LEASEHOLD
EVEN IF YOU HAVE AN OPTION TO
PURCHASE AT THE END, YOU DO NOT
HAVE AN EQUITABLE INTEREST IN

THAT PROPERTY."

YOU DO NOT.

IF YOU HAVE AN ORDINARY LEASE.

IF YOU HAVE AN ORDINARY LEASE.

NOW, I SAY THE LEON --

>> BUT THAT'S NOT THE POINT.

THAT'S NOT THE PRECISE POINT

YOU'VE MADE.

THAT'S A DIFFERENT -- I MEAN,
YOU'RE EXTRAPOLATING FROM HERE.

WHAT AM I MISSING?

>> WELL, I'M NOT EXTRAPOLATING
ABOUT WHAT THE FACTS WERE IN THE
LEON COUNTY CASE.

THE LEON COUNTY CASE SAID THIS
IS A FINANCING DEAL, AND WE
DON'T HAVE A FINANCING DEAL
HERE.

SO --

>> THEY DON'T SAY THIS IS THE
ONLY CIRCUMSTANCE UNDER WHICH NO
HOLDING HERE, THAT'S THE ONLY
CIRCUMSTANCE IN WHICH THERE
COULD BE AN EQUITABLE OWNERSHIP,
DO THEY?

>> BY SAYING IF YOU HAVE AN
ORDINARY LEASE YOU HAVE NO
EQUITABLE OWNERSHIP, AREN'T THEY
SAYING YOU'VE GOT TO HAVE SOME
SORT OF EXTRAORDINARY LEASE?

>> WELL, AN EXTRAORDINARY LEASE
MIGHT BE PERPETUALLY RENEWABLE
OR RENEWABLE VIRTUALLY
PERPETUALLY.

>> THAT'S WHERE I WAS GOING WITH
MY ARGUMENT, YOUR HONOR.

>> I'M GLAD I HELPED YOU THERE.

>> THANK YOU VERY MUCH.

ARE THESE EXTRAORDINARY LEASES?
THEY'RE NOT.

THEY'RE ORDINARY LEASES WHEREAS
IN WARD V. BROWN WHAT WAS BEFORE
THE FIRST DISTRICT COURT OF
APPEAL WAS, IN FACT,
EXTRAORDINARY LEASES BECAUSE
THEY HAD THIS LEASE TERM THAT

SAID WE'RE GOING TO RENEW
AUTOMATICALLY.

AND IT ALSO SAID SOMETHING
DIFFERENT FROM OUR LEASES THAT
THE OWNERSHIP, THE TITLE TO THE
IMPROVEMENTS WERE NOT GOING TO
GO TO THE COUNTY UNTIL THE END
OF THE LEASE TERM.

AND THE FIRST DISTRICT SAID,
WELL, IF IT'S A PERPETUAL LEASE,
THERE IS NO END OF THE LEASE
TERM.

THEREFORE, THE LESSEE ALWAYS HAS
THE OWNERSHIP OF THE
IMPROVEMENTS.

THEY DON'T HAVE TITLE, BUT THEY
ALWAYS HAVE OWNERSHIP OF THE
IMPROVEMENTS AND, THEREFORE,
THEY SHOULD BE TAXED BECAUSE
THEY OWN THE IMPROVEMENTS.

THAT'S AN EXTRAORDINARY LEASE.

NOW, WHAT'S ANOTHER
EXTRAORDINARY LEASE?

I SAY THE OTHER EXTRAORDINARY
LEASE IS THE LEASE IN WHICH
THERE IS THIS STRIKING A DEAL
WHERE WE'RE BUYING THE PROPERTY.
THE LESSEE IS PURCHASING THE
PROPERTY.

IT'S LIKE A CONTRACT FOR DEED.
AND MR.--

>> WELL, IT'S REALLY NOT WHETHER
IT'S EXTRAORDINARY, IT'S REALLY
YOU HAVE TO LOOK TO WHETHER
UNDER THE TERMS OF THE
TRANSACTION THAT YOU'RE LOOKING
AT YOU HAVE THE RIGHT, AN
OBLIGATION THAT WOULD CONSTITUTE
OWNERSHIP, RIGHT?

NOT WHETHER IT'S ORDINARY OR
NOT.

WE COULD LOOK AT WHETHER THESE
ARE KIND OF ORDINARY
CIRCUMSTANCES.

PROBABLY NOT EVERYWHERE IN
FLORIDA.

WE HAVE THIS EXACT SCENARIO WHERE WE HAVE LAND OWNED BY THE GOVERNMENT AND THE LEASE DEALS THAT WE HAVE OF 99-YEAR SOMETIMES PERPETUAL LEASES AND THOSE KIND OF CIRCUMSTANCES. 99-YEAR RENEWABLE LEASES WHERE RESIDENTS AREN'T WALKING AROUND EVERYWHERE.

THEY ARE SOMEWHAT EXTRAORDINARY. BUT BEYOND THAT WHAT WE LOOK TO IN FLORIDA LAW IS WHETHER OR NOT THE TERMS HAVE CONDITION OF OWNERSHIP.

>> WELL, THE QUESTION FOR THIS COURT REALLY IS DO YOU HAND THAT RESPONSIBILITY OVER TO THE PROPERTY APPRAISERS?

THEY JUST WALK AROUND SAYING, WELL, I JUST HAVE OWNERSHIP. THERE'S NOTHING PRECISE ABOUT WHAT THAT IS.

THE STATUTE IS THERE'S A GUIDELINE --

>> WELL, THAT'S JUST PART OF FLORIDA LAW.

THIS WHOLE CONCEPT OF EQUITABLE OWNERSHIP IS PART OF THE STRUCTURE OF FLORIDA LAW WITH RESPECT TO AD VALOREM TAXATION. AM I WRONG?

>> YOU'RE NOT WRONG, YOUR HONOR.

>> IT MAY BE UNDESIRABLE, BUT WE WOULD HAVE TO UNDO A LOT TO GET RID OF THAT, WOULDN'T WE?

>> BUT THERE'S NOTHING BEEN SAID BY THIS COURT OR OTHER COURTS, LOOK, PROPERTY APPRAISER, YOU GO LOOK AT ANY LEASE YOU WANT TO, AND YOU FIGURE OUT WHETHER IT'S EQUITABLE OWNERSHIP OR NOT.

>> WELL, WHAT WE SAID IS WHETHER THERE'S VIRTUALLY ALL OF THE BENEFITS AND BURDENS OF OWNERSHIP.

THAT'S KIND OF THE PENULTIMATE

LINE THERE IN OUR CASE, IN THE LEON COUNTY EDUCATIONAL FACILITIES PART.

THAT SEEMS TO BE -- WE LOOK AT EQUITABLE OWNERSHIP, WE'RE LOOKING AT VIRTUALLY ALL THE BENEFITS AND BURDENS.

NOW, AGAIN, THAT'S NOT PRECISE BECAUSE DIFFERENT PEOPLE CAN DISAGREE ABOUT WHAT VIRTUALLY ALL WOULD AMOUNT TO.

ISN'T THAT REALLY WHAT WE NEED TO LOOK AT TO DETERMINE WHETHER THERE'S EQUITABLE OWNERSHIP?

>> BUT YOU NEED TO LOOK AT ALL BECAUSE IF THERE'S NOT EVER ANY OPPORTUNITY FOR THAT PERSON TO BE THE OWNER, THEN HOW ARE YOU GOING TO CALL THAT OWNERSHIP?

>> I UNDERSTAND.

IT'S YOUR POSITION THAT UNLESS THERE'S AN OPPORTUNITY, A CLEAR LEGAL PATH FOR THE OWNER TO GET, THE EQUITABLE OWNER TO GET THE LEASEHOLDER TO GET LEGAL TITLE, THEN THERE CANNOT BE AN EQUITABLE OWNERSHIP INTEREST.

I JUST DON'T SEE THAT.

WITH ALL DUE RESPECT, I DON'T SEE THAT.

THAT PROPOSITION STATED, EITHER STATED OR IMPLICIT IN LEON COUNTY.

IF IT'S SOMEWHERE ELSE, TELL ME WHERE IT IS.

>> WELL, I'LL FOLLOW THAT.

IN LEON COUNTY WHAT CASES DID THEY CITE AS AUTHORITY?

HIALEAH, A CASE IN WHICH OWNERSHIP WAS GOING TO GO FOR, LIKE, \$100 AT THE END.

THAT'S THE FIRST CASE THEY CITED AS THEIR AUTHORITY FOR THEIR OPINION.

THEN THE FIRST UNION CASE THEY APPROVED TRANSACTION.

THE LESSEE WAS GOING TO BECOME
THE OWNER AT THE END OF IT.
THEY CITED BANCROFT.
BANCROFT WAS A CONTRACT FOR DEED
WITH THE UNITED STATES
GOVERNMENT.

I PAY YOU FOR FIVE YEARS, AND I
GET FULL OWNERSHIP AT THE END OF
THOSE FIVE YEARS.

DURING THOSE FIVE YEARS, THAT
LESSEE HAD TO PAY TAXES BECAUSE
HE WAS AN EQUITABLE OWNER JUST
LIKE ANY CONTRACT FOR DEED.
SO THE CASES THEY CITE, THE
CASES CITED BY THIS COURT ALL
GET TO THE SAME EXCEPTION.
THE ONLY EXCEPTION WAS WHERE THE
PEOPLE OWNED THE SHARES OF STOCK
IN A CORPORATION THAT OWNED THE
LAND, AND THEY PUT THEIR MOBILE
HOMES ON IT.

COURT SAID, WELL, YOU'VE GOT
EQUITABLE OWNERSHIP OF THAT
PROPERTY.

IT'S NOT A LEASEHOLD.
IT DOESN'T MATCH UP ANYWHERE TO
THESE FACTS.

>> I JUST HAVE TROUBLE
CONCEPTUALLY WITH THE NOTION
THAT IF SOMEONE HAS A LEASE THAT
IS PERPETUALLY RENEWABLE ON THE
SAME TERMS AND THEY -- AND
THEY'RE GONNA -- SO THEY HAVE
THE RIGHT TO KEEP THAT PROPERTY
JUST LIKE THEY'RE THE REAL OWNER
OF IT, I HAVE A HARD TIME SEEING
WHY THEY DON'T HAVE VIRTUALLY
ALL THE BURDENS OF OWNERSHIP
EVEN THOUGH THERE'S NEVER GOING
TO BE A DAY WHEN THEY WILL GET
LEGAL TITLE.

I JUST, I HAVE -- CONCEPTUALLY,
I DON'T GET THAT.

>> WELL, AGAIN, WHAT AUTHORITIES
DID THIS COURT RELY UPON IN THE
LEON COUNTY CASE?

>> I UNDERSTAND YOUR POINT ABOUT THAT, BUT YOU'VE GOT TO LOOK AT THE REASONING ALSO ABOUT THE BENEFITS AND BURDENS OF OWNERSHIP.

THAT'S WHAT'S DRIVING IT ALL. THE FACT THAT THE PARTICULAR CASES INVOLVE PARTICULAR FACT CIRCUMSTANCES DOES NOT MEAN THAT THAT EXHAUSTS THE POSSIBILITIES OF WHAT EQUITABLE -- WHERE EQUITABLE OWNERSHIP MAY EXIST.

>> WELL, THE FOURTH DISTRICT IN ROBBINS V. MT. SINAI DID A CAREFUL REVIEW OF THESE CASES INCLUDING THE LEON COUNTY CASE AND SAID THIS IN THEIR OPINION: "IF YOU DO NOT HAVE AN OPTION TO PURCHASE AT THE END OF THE LEASE TERM FOR A NOMINAL AMOUNT, YOU DO NOT HAVE EQUITABLE OWNERSHIP."

AND THEY RULED THAT IN THAT CASE THERE WAS NOT EQUITABLE OWNERSHIP OF THE IMPROVEMENTS THAT THE PERSON HAD ALL KINDS OF USE OF.

NOW, MR. FINDLEY'S GOING TO SAY, WELL, THAT WASN'T REAL PROPERTY. WELL, WE'RE TALKING ABOUT IMPROVEMENTS.

WE'RE TALKING ABOUT THINGS THAT ARE SALABLE LIKE IMPROVEMENTS. THEN YOU GO TO THE DADE COUNTY CASE, IT'S THE DADE COUNTY V. THE BROTHERS OF THE GOOD SHEPHERD.

IN THAT CASE THEY HAD A 99-YEAR LEASE.

THEY HAD FULL USE OF THE BUILDING, THIS CHARITABLE ENTITY.

THEY HAVE FULL USE OF THE BUILDING.

BUT THEY DIDN'T HAVE THE RIGHT TO PURCHASE IT AT THE END.

THEY DIDN'T HAVE RIGHT TO GET THE TITLE TO THE PROPERTY OR NOMINAL PRICE AT THE END.

THEIR DISTRICT SAID YOU DON'T HAVE EQUITABLE OWNERSHIP.

SO YOU LOOK AT THE CASE LAW IN FLORIDA, AND YOU SAY HOW DO WE MEASURE IT.

YOU EITHER HAVE A PERPETUAL LEASE PERPETUALLY RENEWING WHERE THE IMPROVEMENTS NEVER GO TO THE OWNER, OR YOU HAVE A SITUATION WHERE THE OWNER, THE LESSEE ULTIMATELY BECOMES THE OWNER.

IF YOU DON'T HAVE EITHER ONE OF THOSE, ALL YOU HAVE IS A NORMAL LEASE.

>> YOU'RE INTO YOUR REBUTTAL TIME.

>> THANK YOU, YOUR HONOR. I'LL RESERVE THAT.

>> MAY IT PLEASE THE COURT, IN THIS CASE WE REPRESENT CHRIS JONES, PROPERTY APPRAISER OF ESCAMBIA COUNTY, AND JANET HOLLY, TAX COLLECTOR OF ESCAMBIA COUNTY.

I WOULD JUST LIKE TO POINT OUT THAT WITH RESPECT TO THE LAST POINT MR. KEPNER WAS ATTEMPTING TO MAKE, YOU HAVE TO EVENTUALLY GET LEGAL TITLE IN ORDER TO BE AN EQUITABLE OWNER.

THAT'S INCONSISTENT WITH WHAT THEY'VE WRITTEN IN THEIR BRIEF. ON PAGE 34 THEY TALKED ABOUT THE CATEGORY OF EQUITABLE OWNERSHIP WHERE YOU HAVE LEASES IN PERPETUITY, LEASES WHERE THERE WAS AN OPTION TO PURCHASE, AND THEN THEY SAY, QUOTE: "FLORIDA CASE LAW DOES NOT LIMIT EQUITABLE OWNERSHIP TO JUST THESE TWO CIRCUMSTANCES," END QUOTE.

NOW, IF YOU LOOK AT THE LCEFA

CASE, THAT'S CLEAR.

THE MIKOS CASE IS NOT A CASE WHERE THOSE INDIVIDUALS WERE EVER ABLE TO HAVE ANY OPTION TO GET LEGAL TITLE, AND THERE WAS CERTAINLY NOTHING IN PERPETUITY IN THAT CASE.

IN ADDITION, THERE ARE 11 OTHER CASES INCLUDING SERVICE METRO WHICH JUSTICE COULSON OFFERED IN THE FIRST DCA WHERE THERE WAS OWNERSHIP, AND THE PRIVATE CORPORATION -- EVEN THOUGH ESCAMBIA HAD LEGAL TITLE -- IT WAS DEEMED TO BE THE OWNER.

THERE'S THE FOUR CASES THAT CAME FROM THIS COURT WHERE THE SANTA ROSA ISLAND INTEREST -- THE SAME ONES INVOLVED IN THIS CASE -- WERE DETERMINED TO BE TANTAMOUNT TO THE OWNERSHIP.

THERE'S A U.S. SUPREME COURT CASE WHERE THE UNITED STATES GOVERNMENT HAD A 75-YEAR LEASE, AND THE QUESTION WAS THE TAXABLE VALUE OR TAXABILITY OF A BUILDING ON THAT, AND THE COURT, THE U.S. SUPREME COURT SAID, WELL, THE BUILDING'S GOING TO LAST 35 YEARS, THE LEASE IS 75 YEARS, SO THEY'RE GOING TO GET THE WHOLE VALUE IN REALITY OF THAT BUILDING SO, THEREFORE, IT'S SUBJECT TO STATE AND LOCAL TAX.

>> I THOUGHT --

>> ON AND ON.

>> I THOUGHT YOUR OPPONENT SAID THAT A NUMBER OF THE LEASES IN THIS CASE INVOLVED 25 YEARS?

>> [INAUDIBLE]

FIRST DCA SAID THAT THE PARTIES IN THIS CASE, IN ARIOLA AND THE COURT BELOW, QUOTE: "PARTIES TREATED THESE LEASES AS IDENTICAL FOR THE PURPOSES OF

THE LEASES IN THIS CASE," END QUOTE.

THEN THEY SAID, QUOTE: "THESE ESCAMBIA COUNTY LEASEHOLDERS ARE NO DIFFERENT THAN THE LEASEHOLDERS IN WARD V. BROWN."

>> SO I ASSUME YOU AGREE WITH THAT, AND SO IT DOESN'T -- I GUESS MY QUESTION REALLY WAS IT DOESN'T MATTER IF WE'RE TALKING ABOUT 25-YEAR LEASES AS OPPOSED TO 99-YEAR LEASES THAT ARE RENEWABLE?

>> WELL, I CAN TELL YOU WHAT THE SUPREME COURT SAID WHEN IT LOOKED AT IT.

IT SAYS THAT IN WILLIAMS V. JONES THERE WAS A 25-YEAR LEASE. THEY TREATED THEM ALL THE SAME, AND THEY SAID THEY WERE TANTAMOUNT TO OWNERSHIP.

I WOULD SUBMIT THAT THERE'S PROBABLY A QUESTION OF VALUE IN THERE THAT COULD ARISE IN THE FUTURE, AND MAYBE IF THERE'S A SHORTER DURATION TO THE END, MAYBE IT HAS LESS VALUE, AND THE MARKET WOULD DETERMINE THAT. IT'S NOT SUBJECT TO THE SOLE DISCRETION OF THE COURTS AND THE DAVs.

>> JUST AS A LOGICAL SENSE WE START WITH A ONE-YEAR LEASE --

>> IT'S A FACTOR.

>> OKAY.

A FIVE-YEAR LEASE EVEN.

I MEAN, THESE ARE PRIME OCEANFRONT AND YOU'VE GOT A LEASE FOR 99 YEARS, TO ME THERE IS A SIGNIFICANT DIFFERENCE IN 5 YEARS, 10 YEARS, MAYBE EVEN 25 YEARS.

SO AS LONG AS YOU'RE DEALING HERE WITH 99-YEAR LEASES THAT HAVE BEEN STIPULATED TO BE THE SAME, I REALLY DON'T THINK WE

NEED TO GET INTO A 25-YEAR
LEASE --

>> I WOULD HOPE THAT'S THE CASE.

[LAUGHTER]

>> WELL, THE OTHER SIDE SEEMS TO
HOPE THAT'S THE CASE TOO, RIGHT?
I MEAN, THE WAY THEY PRESENTED
THE CASE.

AM I WRONG?

>> UM, ALL I CAN SAY IS THEY
ATTACHED SIX LEASES TO THIS
COMPLAINT AND SAID THEY WERE
REPRESENTATIVE.

IN THE WARD CASE --

>> THE SAME --

>> 99 PLUS 99.

AND WITH OPTIONS FOR --

>> IN THE ARIOLA CASE.

>> PARDON?

THEY DID THE SAME THING.

>> THEY HAVE DIFFERENT LEASES,
BUT ALL OF THEM ARE 99-YEAR
LEASES?

>> CORRECT.

SO THOSE ARE THE ONES THEY
REPRESENTED TO THIS COURT TO BE
COMMON TO ALL, AND THE FIRST DCA
LOOKED AT IT AND SAID THERE'S NO
DIFFERENCE IN THE TERMS OF
THESE, AND THEY'RE NOT TRYING TO
MAKE A DISTINCTION BETWEEN TYPES
OF LEASES.

SO I WOULD SUBMIT THAT THEY ALL
FALL --

>> I THOUGHT HE WAS EARLIER WHEN
HE STARTED TALKING ABOUT 25-YEAR
LEASES.

>> I THINK THE BOTTOM LINE HERE
IS THAT YOU'VE GOT A PERIOD,
YOU'VE GOT INDIVIDUALS THAT, THE
PETITIONERS, THAT GO TO OFFICES
OF REALTORS, AND THEY SIT, AND
THEY SIGN CLOSING DOCUMENTS THAT
SAY I'M PURCHASING THIS
CONDOMINIUM FOR \$200, \$300,000.
THEY BUY IT.

THEY WALK AWAY.
THEY GO, THEY LIVE IN IT.
THEY RENT IT.
THEY DEPRECIATE IT.
THEY TAKE TAX DEDUCTIONS ON IT.
THEY REALIZE THE CAPITAL
DEPRECIATION.
THE COUNTY DOESN'T EVEN HAVE TO
KNOW WHO THEY SOLD IT TO.
MS. BALDWIN TESTIFIED IN
DEPOSITION FROM THE SANTA ROSA
ISLAND AUTHORITY THEY DON'T EVEN
KEEP TRACK OF WHO OWNS THESE
CONDOMINIUMS.
THESE LEASES ARE NOT AS SIMPLE
AS THEY DESCRIBE.
THEY'RE TYPICALLY THE DEVELOPERS
OF CONDOMINIUMS.
AND THE DEVELOPER TAKES THE
LEASE, PAYS AS LITTLE AS \$330 A
YEAR, AND THEN CONSTRUCTS
CONDOMINIUMS AND SELLS THOSE
CONDOMINIUM UNITS TO THE PEOPLE.
AND THOSE PEOPLE THAT LIVE OUT
THERE CAN SEND THEIR CHILDREN TO
PUBLIC SCHOOLS, THEY CAN ENJOY
THE BENEFITS OF THE COURTS, THE
PROPERTY APPRAISERS --
>> HOLD IT.
THE IDEA THAT SOMEONE CAN SEND
THEIR CHILDREN TO PUBLIC SCHOOL,
SOMEONE WHO LEASES AN APARTMENT
CAN --
>> SURE.
>> BUT AS YOU'RE GOING INTO THIS
MODE HERE, I DON'T REALLY THINK
THAT THAT -- NOW YOU'RE MAKING A
POLICY ARGUMENT THAT I WOULD
SAY, AND I AGREE WITH JUSTICE
LEWIS, THAT THE ARGUMENT AS TO
WHETHER THIS LOOKS AND FEELS
LIKE AN OWNERSHIP IS REALLY WHAT
WE'RE LOOKING AT, NOT WHETHER
THEY DON'T PAY AS MUCH TAXES AS
SOMEONE ELSE.
I MEAN, THAT'S, TO ME, NOT WHAT

THIS CASE IS ABOUT.

>> WELL, I THINK THAT THE WILLIAMS V. JONES CASE AND THE SEBRING CASE DO BRING THOSE PRINCIPLES IN.

AND, IN FACT, IN WILLIAMS V. JONES WHICH DEALT WITH SANTA ROSA ISLAND BASIS, THAT WE APPROACH IT ON -- AND THIS GOES TO WHETHER THE APPROPRIATE DEFERENCE TO THE LEGISLATURE AS WELL, WHICH IS ONE OF THEIR ARGUMENTS -- WE APPROACH IT ON THE PREMISE THAT THIS IS A DEMOCRACY IN WHICH EVERY PARCEL OF PROPERTY IS EXPECTED TO BEAR A DUE PORTION OF THE BURDEN OF GOVERNMENT.

COURTS HAVE NO MORE IMPORTANT FUNCTION THAN TO DIRECT THE CURRENT OF THE LAW IN HARMONY WITH SOUND DEMOCRATIC THEORY. AND I THINK THAT GOES BACK TO THE OTHER POINT THAT I RAISED ABOUT, YES, THE LEGISLATURE HAS POWERS TO CLASSIFY, BUT ONLY AS LONG AS THE BURDEN IS SHARED BY ALL.

>> DO THEY THEN GET -- CAN THEY THEN CLAIM HOMESTEAD EXEMPTION ON THIS PROPERTY?

>> YES.

YES.

>> YOU WOULDN'T TURN AROUND AND SAY YOU DON'T OWN.

>> OH, NO.

>> DOESN'T PART OF THE CONSTITUTION PROVIDE FOR HOMESTEAD EXEMPTION?

>> YES, YOUR HONOR.

THANK YOU FOR POINTING THAT OUT.

IT'S VERY CLEAR THAT EQUITABLE OWNERSHIP DOESN'T JUST ARISE FROM THE CASE LAW, IT'S ALSO IN THE FLORIDA CONSTITUTION.

AND IT SAYS FOR HOMESTEAD

EXEMPTIONS IF THERE'S A
LEASEHOLD MORE THAN 98 YEARS,
THAT'S WITH NO RENEWALS.
IF YOU HAVE A 99 WITH NO
RENEWALS, THAT QUALIFIES AS
EQUITABLE OWNERSHIP FOR PURPOSES
OF HOMESTEAD STATUTE, AND WE
THINK THAT SHOULD ALL BE READ
TOGETHER.

AND I WOULD JUST FINALLY POINT
OUT THAT THERE IS AN AFFIDAVIT
ALSO FROM THE BUDGET DIRECTOR OF
ESCAMBIA COUNTY IN THIS CASE
THAT CONFIRMS THAT NONE OF THE
LEASE FEES THAT ARE PAID GO TO
THE LOCAL SCHOOLS, NONE OF THEM
GO TO THE COUNTY'S GENERAL FUND.
THEY'RE USED FOR PROMOTION OF
ACTIVITIES ON THE --

[INAUDIBLE]

>> HOW MUCH ARE THE LEASES?

>> WELL, IT VARIES.

AND THE FIRST ONE THAT'S
ATTACHED IS BEING COMMON, IT'S
\$330 IN A YEAR.

NOW, I THINK WHEN YOU GET TO THE
CONDOMINIUM LEVEL, THERE MIGHT
BE A MASTER LEASE, AND THEN
THERE'S INDIVIDUAL LEASES THAT
MIGHT REQUIRE THEM TO PAY MORE
THAN THAT.

ARE THERE ANY OTHER QUESTIONS?

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.

>> REBUTTAL?

>> I DO WANT TO ADDRESS THE
SERVICE METRO CASE, SINCE THAT'S
BEEN BROUGHT UP.

IN THAT CASE LESSOR IS THE ONE
WHO WAS FOUND TO HAVE EQUITABLE
OWNERSHIP, NOT THE LESSEE.

IT'S NOT COMPARING AN APPLE TO
AN APPLE, IT'S COMPARING AN
APPLE TO AN ORANGE.

AND THE DISTRICT COURT DIDN'T
REALLY DESCRIBE ANY OF THESE

PARTICULAR BENEFITS AND BURDENS.
AND IT'S NOT THAT BENEFITS AND
BURDENS ARE NECESSARILY NOT TO
BE INCLUDED IN THE DISCUSSION,
BUT YOU'VE GOT TO, YOU'VE GOT TO
SAY TO YOURSELF HOW CAN I SAY
THAT A LESSEE BECOMES AN OWNER
JUST BECAUSE IT'S A LENGTHY
LEASE?

AND AS HAS BEEN POINTED OUT,
WELL, WHERE'S THE CUTOFF?
WELL, THE LEGISLATURE'S MADE
THAT CUTOFF.

AND NOW HE'S ARGUING A
CONSTITUTIONAL ARGUMENT.

I CONTEND THEY DON'T EVEN HAVE
STANDING TO BE IN THIS COURT TO
TALK ABOUT THAT.

PROPERTY APPRAISER DOESN'T HAVE
STANDING UNDER THE CROSSINGS
CASE.

TAX COLLECTOR DOESN'T HAVE
STANDING UNDER THAT SAME CONCEPT
OF THE CROSSINGS CASE.

THEY ARE SUPPOSED TO BE
ENFORCING THE LAW, AND THEY'RE
NOT ENTITLED UNDER THE LAW WITH
OUR SEPARATION OF POWERS TO TURN
AROUND AND START SAYING I'M
GOING TO TURN AROUND AND START
DOING SOMETHING DIFFERENT.

I DON'T LIKE THAT LAW,
THEREFORE, I'M GOING TO DO
SOMETHING DIFFERENT.

THEY'RE TRYING TO SAY LET'S
CHANGE THE LAW, LET'S DO
SOMETHING DIFFERENT.

THE LEGISLATURE HAS MADE ITS
DETERMINATION.

I TOTALLY AGREE THAT THE CONCEPT
OF EQUITABLE OWNERSHIP IS PART
OF THE COMMON LAW IN THE STATE
OF FLORIDA IN THE AREA OF
TAXATION.

BUT IF YOU DON'T HAVE SOMETHING
TO PEG IT TO, THEN YOU ARE

SIMPLY SAYING IT'S JUST
WHATEVER.

AND I ARGUE THAT WHAT THE
DISTRICT COURT DID HERE, FIRST
DISTRICT, THEY BASICALLY SAID
WHATEVER.

THEY RECITED THE WARD CASE, BUT
THE FACTS AREN'T SIMILAR TO
WARD, BECAUSE WE DON'T HAVE
PERPETUAL LEASES.

THE FACTS AREN'T SIMILAR TO WARD
BECAUSE WE DON'T HAVE OWNERSHIP
IN THE LESSEES.

THE TITLE, THE TITLE IS IN THE
COUNTY THE WHOLE TIME.

SO TO SAY THAT THAT CASE
CONTROLS, ACTUALLY, THE BELL V.
BRYANT CASES CONTROL, AND THIS
COURT, THE FIRST DISTRICT SAID
AS THE TRIAL COURT SAID
EQUITABLE OWNERSHIP WAS PART OF
THE BELL V. BRYANT CASE ALL THE
WAY UP, ALL THE WAY THROUGH.

THAT CASE SAYS, NO, YOU TAX IT
AS INTANGIBLE.

AND THESE IMPROVEMENTS ARE NOT
OWNED BY THE LESSEES.

THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS ADJOURNED.

>> ALL RISE.