>> All rise.
The Supreme Court of Florida is now in session.
Please be seated.
We will now take up the case of the City of Palm Bay versus Wells Fargo Bank.
>> Good morning Your Honors.
May it please the court.
I am Steve Brannock representing the city of Palm Bay.
We have got in front of us an important case concerning the city's exercise of his home rule powers.
The specific question is whether a city like Palm Bay can adopt a zip code enforcement as super-priority and we think the answer that question is yes.
>> Is there any distinction -- and I know the League of Cities asked us to make that distinction between a lien that is for a fine or a penalty, like it was here, this $50 a day mark, and a lien for when the city comes in and actually repairs the property so there are repair costs.
Does your statute address both types of priorities for both types of liens and they extend from the same ordinance?
Is there any kind of a legal distinction that the League of Cities would have us make, as to the super-priority for a repair cost lien versus a fine or a penalty lien?
>> Our position is that there is no distinction and most of the purposes of the preemption analysis and the purpose of the process analysis, those circumstances the ordinance survives constitutional and statutory scrutiny so we don't see that difference.
I understand different arguments can be made in the due process context but our position is there is no difference because number one there is no preemption and number two, the

bank here contracted with notice
of the super priority statute
and in fact incorporated within
his own contract that it was
going to be subject to
ordinances so we don't see a
problem.
>> How broad is this power?
Does it cover the entire, the
entire width of the world with
regard to what could go into a
code of the municipality or home
rule barter kind of
organization?
Is it that broad?
>> The basic law --
There are two fundamental
propositions that we rely on.
One is that, and less the
Florida Legislature steps in and
says, city you cannot regulate
on the subject matter and the
city has the exact same powers
as the legislature.
The second proposition is that
any matter that the legislature
legislate son, the city has the
power to legislate on as well.
>> So basically, you have some
constitutional limitations but
it is huge as to what they can
go on?
>> Exactly.
With the legislature having the
right to step in at any time and
exercise their rights.
It has in this case.
>> But you do acknowledge too
that the city cannot adopt an
ordinance that is in conflict
with a state?
>> Right.
>> I guess the one, I guess
there are two issues here and
you have briefly address them,
as has everyone, whether the
statute that creates the right
to have a code enforcement
board.
That is a state statute.
Why and I guess you are --
Why is the municipalities are
free to do whatever they wanted
this area, couldn't they have
done that?

Why did they need the state law for a code enforcement board?
>> Well because the Article I, section 18 of the Constitution which says that the city cannot analyze someone except pursuant to law.
So that constitutional limitation is exempt.
>> Then there would be a distinction though from my scenario or the league of cities where there are some repair costs, not a fine or penalty. Would they still need 162 for that, if they go in and they have an ordinance that says that if you won't fix your property in 30 days, we will come in and repair it for you and there will be a lien?
>> I think that would be a good argument but we are essentially talking about the fines here.
>> That is why 162 is important. Is there an argument to be made as to what 162 does not say. It talks about liens but it doesn't say the lien as a priority and that means that statute does not provide authority for a super-priority lien?
That is one of the arguments made.
>> That is their argument and our argument in response is first you have to show a conflict.
The statute gives the city the right to a lien and the city is taken and impose that lien.
The statute does not impose any limitations on the sort of lien that may be granted.
There is a whole separate body of law that tells us about priorities and there is no indication here that the legislature in adopting Chapter 162 has reached out to preempt essentially the separate law that applies.
In order to show preemption they have to show the legislature has

affirmatively stepped in.
>> BECAUSE OF OUR ORDINANCE.
I DON'T UNDERSTAND HOW THAT ORDINANCE, WHICH DISPLACES THE PRIORITY THAT IS ESTABLISHED UNDER THE STATUTORY SCHEME, CAN BE VIEWED AS ANYTHING OTHER THAN BEING IN CONFLICT WITH THAT STATUTORY SCHEME.
>> ONLY IF YOU LOOK AT THE STATUTORY SCHEME VERY NARROWLY AND FOCUS ON 695.11, WHICH IS FIRST IN TIME, FIRST IN RIGHT STATUTE.
BUT THAT'S ONLY A SMALL PART.
>> YOU LOOK AT THE REST OF IT TOO.
YOU LOOK AT THE PART ABOUT THE FIRST SECTION THERE, YOU LOOK AT THE OTHER PROVISIONS THAT GIVE PRIORITY TO OTHER THINGS.
YOU LOOK AT ALL OF THAT AND WHAT YOU'RE -- YOU'RE DOING SOMETHING -- THE CITY IS ATTEMPTING TO DO SOMETHING THAT DOES NOT FIT WITHIN THAT.
IT DISPLACES THE PRIORITY THAT WOULD BE ESTABLISHED BY THAT SCHEME.
AND WITH ANOTHER PRIORITY THAT'S ESTABLISHED BY ANOTHER CODE, RIGHT?
>> THIS IS A COMPLEX SCHEME WITH LOTS OF STATUTES, LOTS OF COMMON LAW THAT YOU HAVE TO LOOK TO.
WHAT THEY HAVE TO SHOW TO FIND PREEMPTION IS THE FLORIDA LEGISLATURE --
>> LET ME ASK YOU THIS.
WE TALK ABOUT COMMON LAW.
I DON'T KNOW HOW THIS PLAYS INTO ALL THIS HERE, BUT CAN THE -- DO THE HOME RULE POWERS, THE MUNICIPALITIES, ALLOW THEM TO DISPLACE A COMMON LAW RULE?

>> I WOULD THINK SO, YES.
I HADN'T REALLY THOUGHT ABOUT THAT.
>> LET ME MAKE SURE I'M -- YOU WENT FROM 162 TO 695.
162 CLEARLY DOESN'T -- WHICH IS -- I THINK IT'S 162.
IT ACTUALLY DOESN'T -- AS I'M LOOKING AT IT, IT DOESN'T EVEN TALK ABOUT A LIEN BEING IMPOSED,

RIGHT?
>> YES.
IT SAYS THAT THEY MAY IMPOSE A
LIEN, BUT DOESN'T SAY ANYTHING
ABOUT THE PRIORITY OF THAT.
>> OKAY.
THAT WAS MY FIRST QUESTION, IS
WHETHER BY NOT -- BY NOT SAYING
ANYTHING ABOUT IT, DID THE
LEGISLATURE INTEND THAT THERE
NOT BE PRIORITY?
THAT'S ONE ARGUMENT THAT'S BEING
MADE BY THE RESPONDENT, CORRECT?
>> EXACTLY.
>> NOW, THE SECOND ARGUMENT,
THOUGH, HAS TO DO WITH 695, WHICH
IS THE FIRST IN TIME -- IT'S
ACTUALLY ENTITLED INSTRUMENTS
DEEMED TO BE RECORDED FROM THE
DATE OF THE FILING, WHICH, YOU
KNOW, SEEMS LIKE IT'S A DEFAULT
RULE, BUT IT'S AN IMPORTANT ONE.
>> RIGHT.
>> BUT THERE'S NO QUESTION -- AND
THIS IS WHAT YOU'RE -- AND THIS
IS WHAT I'M SORT OF STRUGGLING
WITH.
THERE'S NO QUESTION THAT THE
LEGISLATURE CAN COME IN AS THEY
HAVE FOR CONDO ASSESSMENTS, ALL
SORTS OF THINGS, AND SUPERSEDE
THIS WITHOUT REFERENCING 695.
DO THEY HAVE TO REFERENCE THAT
THIS SUPERSEDES 695?
>> THEY HAVEN'T.
THERE ARE ALL SORTS OF SUPER
PRIORITY EXCEPTIONS.
>> BUT THEY DON'T REFERENCE, GO
BACK TO --
>> RIGHT.
>> OKAY.
SO YOUR POINT -- AND I -- THIS IS
REALLY -- IS THAT THE
LEGISLATURE IS GIVING THROUGH
THE CONSTITUTION -- WELL, THE
CONSTITUTION, PLUS THE STATUTE,
GIVES THE MUNICIPALITY THE SAME
RIGHT TO DO WHAT THE STATE IS
DOING.
>> EXACTLY.
AND SO MAYBE THE SIMPLE ANSWER TO
YOUR QUESTION AND JUSTICE
KENNEDY'S QUESTION IS THAT WE ALL
KNOW THAT THE LEGISLATURE CAN
ADOPT STATUTES THAT AFFECT SUPER

PRIORITY.
THERE'S -- THE CODE'S LOADED
WITH THEM.
AND THE SIMPLE PROPOSITION WE'RE
POINTING OUT IS CITIES HAVE
EXACTLY THE SAME POWER.
>> BUT THEY DON'T HAVE THE POWER
TO ADOPT A PRIORITY THAT -- A
SUPER PRIORITY THAT CONFLICTS
WITH THE PRIORITY THAT'S BEEN
ESTABLISHED BY THE LEGISLATURE.
I JUST DON'T SEE HOW THOSE CAN BE
RECONCILED.
>> IF THE LEGISLATURE HAD A
SCHEME THAT SAID FIRST IN TIME,
FIRST IN RIGHT ALWAYS, AND WE
RESERVED TO OURSELVES, THE
LEGISLATURE, THE RIGHT TO MAKE
EXCEPTIONS, I THINK THAT WOULD BE
A POINT WELL-TAKEN.
BUT THAT'S NOT WHAT THE STATUTE
SAYS HERE.
>> WELL, YOU'RE SAYING THEY'VE
GOT TO PREEMPT.
THERE'S GOT TO BE AN EXPRESS
PREEMPTION.
YOU CAN'T REALLY HAVE A CONFLICT.
>> NO.
I'M NOT SAYING THAT.
WE ALL KNOW THERE'S NO EXPRESS
PREEMPTION.
SO THE QUESTION IS IS THERE A
CONFLICT.
OUR POINT IS HOW CAN THERE BE A
CONFLICT WHEN YOU HAVE A SCHEME
THAT IS FULL OF EXCEPTIONS?

>> WELL, LET ME ASK YOU THIS.
WHEN THE CITY FILED ITS LIEN, HOW
DID IT FILE ITS LIEN?
SO ON THE LIEN ITSELF THERE WAS
A SIGN JUST LIKE HERE ON THE FINAL
SUMMARY JUDGMENT THERE'S GOING
TO BE AN OR BOOK NUMBER WITH A
PAGE NUMBER.
>> RIGHT.
>> AND THAT NUMBER IS GOING TO BE
HIGHER THAN WHAT WELLS FARGO'S
LIEN WAS.
>> RIGHT.
>> WHY UNDER 695.11 THAT CONTROLS
OR PRIORITY AND TO THE EXTENT ARE
YOU OTHERWISE, THERE'S A
CONFLICT?
>> IF 695.11 WERE THE END OF THE

ANALYSIS, I WOULD AGREE, BUT IT'S
ONLY THE FIRST STEP.
YOU HAVE TO LOOK AT 695.01, THE
NOTICE STATUTE.
THEN YOU HAVE TO LOOK AT THE
COMMON LAW RELATING TO WHEN
SOMEONE HAS ACTUAL OR
CONSTRUCTIVE NOTICE.
THEN YOU HAVE TO LOOK TO THIS
WHOLE PANOPLY OF EXCEPTIONS.
>> BUT THE LIEN DID NOT EXIST
UNTIL AFTER WELLS FARGO'S LIEN,
RIGHT?
>> THAT'S TRUE.
>> YOU HAVE TO LOOK AT THIS.
THIS TEAMS TO ME THAT WHEN YOU
LOOK AT 695 AND GO STRICTLY ON
WHAT THEY SAY IN 695 ABOUT THE
RECORDING, OKAY, AND THE
PRIORITY AND RECORDING AND YOU
LOOK AT WHAT THE STATE DID -- I
MEAN -- I GUESS IT'S A
MUNICIPALITY DID HERE, I DON'T
UNDERSTAND -- I GUESS I'M SAYING
THE SAME THING THAT YOU
SAID -- HOW THAT DOESN'T
CONFLICT WITH 695.
WHAT THE MUNICIPALITY DID.
THEY ACTUALLY ARE SAYING, NO,
DESPITE THE FACT THAT MY NUMBER,
MY RECORDED NUMBER, IS HIGHER
THAN THAT OF THIS OTHER
LIENHOLDER, I'M GOING TO JUMP IN
PRIORITY.
>> IN DETERMINING WHETHER THERE
IS A CONFLICT, YOU DON'T LOOK
NARROWLY AT ONE PIECE OF THE
PUZZLE.
THE CASE WHICH YOUR HONOR DECIDED
IN 2010 SAID YOU HAVE TO LOOK AT
THE ENTIRE STATUTE IN ITS OBJECT
AND PURPOSE BEFORE YOU DETERMINE
WHETHER THERE'S A CONFLICT.
>> THE WHOLE STATUTE WAS PASSED
BY THE LEGISLATURE, SO WE ARE ALL
CLEAR THAT THE LEGISLATURE HAS
THAT AUTHORITY TO IN FACT MAKE
EXCEPTIONS TO THE BROAD 11,
CORRECT?
THE LEGISLATURE --
>> THE LEGISLATURE HAS THAT
AUTHORITY.
>> OKAY.
>> AND OUR POINT IS -- IT'S A VERY
SIMPLE ONE.

IF THE LEGISLATURE HAS THAT
AUTHORITY, THEN THE CITY HAS THAT
AUTHORITY --
>> YOU'RE SAYING IF THE
LEGISLATURE PASSES A LAW THAT HAS
SOME EXCEPTIONS IN IT, THEN THE
HOME RULE TOWER OF
MUNICIPALITIES ALLOWS THEM TO
ADD EXCEPTIONS.
THAT'S WHAT YOU'RE SAYING.
>> NO.
>> WELL, YOU DID SAY THAT.
I THINK I HEARD YOU SAY THAT.
>> ALL RIGHT.
LET ME GIVE YOU --
>> THAT'S NOT WHAT YOU MEANT TO
SAY.
>> NO.
LET ME GIVE YOU -- LET ME GIVE YOU
AN EXAMPLE OF TWO DIFFERENT
STATUTES TO SHOW YOU THE POINT
I'M TRYING TO MAKE.
IF WE GO TO THE PUBLIC RECORD ACTS
STATUTE, A CASE WHICH WAS AN
INSTANT THAT DEALS WITH
PREEMPTION, PUBLIC RECORDS SHALL
AT ALL TIMES BE OPEN FOR
INSPECTIONS BY ALL PERSONS.
THEN THE LEGISLATURE HAS SOME
EXCEPTIONS.
NOW, YOUR HONORS DETERMINED THAT
WHEN YOU HAVE A STATUTE THAT SAYS
FOR ALL TIME AND FOR ALL PURPOSES
PUBLIC RECORDS ARE GOING TO BE
OPEN, THAT PREEMPTS THE ABILITY
OF ANYONE ELSE TO COME IN AND MAKE
AN EXCEPTION.
SO IN THE STATE OF --
>> EVEN THOUGH THAT LAW HAS
EXCEPTIONS IN IT.
>> EXACTLY, BECAUSE OF THE
PROVISO THAT SAYS PUBLIC RECORDS
ARE OPEN FOR ALL TIME.
WE DON'T HAVE THAT SORT OF
PROVISO IN 695.
>> BUT YOU DO.
IT'S UNEQUIVOCAL ABOUT WHAT IT
SAYS ABOUT THE PRIORITY AND
NOTICE.
NOW, THERE ARE OTHER THINGS THAT
HAVE TO BE LOOKED AT TO
DETERMINE -- THERE ARE SOME
EXCEPTIONS TO THAT.
BUT THAT LANGUAGE IN THAT CHAPTER
SEEMS TO BE UNEQUIVOCAL.

>> ALL 695.11 SAYS IN DETERMINING WHO RECORDED FIRST WE LOOK AT THE LOWER NUMBER.
THAT'S ALL IT SAYS.
IT DOESN'T SAY A THING ABOUT WHO UNDER THE LAW HAS PRIORITY.
NOW WE HAVE TO GO TO 695.01 AND EVERYTHING ELSE.
IT'S A VERY BIG BUNDLE OF STATUTES AND COMMON LAW PRINCIPLES.
AND OUR POINT IS THAT SINCE YOU GET LOTS OF DIFFERENT RESULTS UNDER THAT BIG PACKAGE OF COMMON LAW PRINCIPLES AND STATUTORY PRINCIPLES, YOU CAN'T READ INTO THAT, WHICH IS WHAT THEY HAVE TO DO.
AN INTENT FROM THE LEGISLATURE TO PROHIBIT ANYONE ELSE FROM MAKING AN EXCEPTION.
>> BUT IT SEEMS YOU'RE SAYING IF THE LEGISLATURE DOES SOMETHING THAT'S REALLY COMPLICATED, THEN MUNICIPALITIES HAVE THE ABILITY TO COME IN AND TINKER WITH IT.
>> YOUR HONORS DECIDED THAT IN THE SARASOTA ALLIANCE CASE IN 2010.
YOU DECIDED IT DOESN'T MATTER WHETHER YOU HAVE A COMPLEX STATUTORY SCHEME.
WHAT MATTERS IS WHETHER YOU SEE AN INTENTION BY THE LEGISLATURE TO STEP IN AND STOP CITIES AND MUNICIPALITIES AND COUNTIES FROM REGULATING.
THAT'S WHAT YOU HAVE TO LOOK AT, NOT THE COMPLEXITY OF THE SCHEME.
>> THERE'S ABOUT PREEMPTION AS OPPOSED TO CONFLICT.
THAT'S THE ISSUE THERE.
I'M NOT FOCUSED ON PREEMPTION.
I'M FOCUSED ON CONFLICT.
>> RIGHT.
AND I'M SAYING IF YOU HAVE A SYSTEM WHERE YOU GET TEN DIFFERENT RESULTS IN TEN DIFFERENT CASES DEPENDING UPON THE PARTIES, THE NOTICE, THE STATUTES THAT APPLY, HOW CAN YOU READ INTO THAT A BLANKET RULE THAT FIRST IN TIME, FIRST IN LINE ALWAYS WINS?
THE ONLY -- IF THIS HAD BEEN LIKE

THE PUBLIC RECORDS ACT AND THEY
HAD HAD THAT SORT OF PROVISO THAT
SAYS FIRST IN TIME ALWAYS WINS
UNLESS THE LEGISLATURE MAKES AN
EXCEPTION, THEN WE WOULD NOT BE
ARGUING THE CITY HAS THE RIGHT TO
COME IN --
>> THE LAST SENTENCE, IT SHALL
HAVE PRIORITY OVER ANY INCIDENT
BEARING A HIGHER NUMBER.
>> THAT TELLS US WHO RECORDED
FIRST, BUT WE ALL KNOW --
>> AND ALSO ESTABLISHES A
PRIORITY, RIGHT?
>> IN SOME CASES, BUT NOT ALL THE
CASES, NOT WHERE THEY HAVE
ADOPTED SUPER PRIORITY STATUTE,
NOT IN A CASE WHERE THERE'S A BONA
FIDE PURCHASER --
>> THERE'S CASES AND OTHER
CIRCUMSTANCES -- NONE OF THOSE
EXCEPTIONS EXIST HERE FOR YOUR
CLIENT.
>> THE POINT IS IF THE
LEGISLATURE HAS THE POWER TO MAKE
EXCEPTIONS, THEN THE CITY HAS THE
POWER TO MAKE EXCEPTIONS UNLESS
THE LEGISLATURE HAS SAID THEY
DON'T HAVE THE POWER TO MAKE
EXCEPTIONS.
>> EXCEPTIONS TO THE EXCEPTIONS.
>> WHAT ARE EXAMPLES OF SOME OF
THE AREAS, LIKE CONDOMINIUM
ASSESSMENTS ARE SOMETHING
THEY'VE LEGISLATED, RIGHT?
I SEE YOUR POINT.
I DON'T KNOW IF I AGREE WITH IT,
BUT I SEE IT.
THE LEGISLATURE HAS MADE PLENTY
OF EXCEPTIONS TO SUPER PRIORITY,
THE THINGS THAT ARE LESS
IMPORTANT THAN A MUNICIPALITY'S
ABILITY TO ENFORCE ITS CODE AND
HAVE LIENS FOR BOTH PENALTIES AND
COSTS.
BUT IT DOESN'T CONFLICT WITH
ANYTHING THE LEGISLATURE IS
DOING.
IF ANYTHING, THE LEGISLATURE
MINIMIZED FIRST IN TIME BY COMING
UP WITH ALL THESE OTHER
EXCEPTIONS, CORRECT?
>> EXACTLY.
>> BUT IT SEEMS TO ME THAT WE GET
INTO A REAL CONFLICT HERE WITH

WHETHER OR NOT -- WHEN YOU SAY
THAT A MUNICIPALITY CAN DO THE
SAME THING THAT THE
LEGISLATURE -- WHAT THEY'RE
ACTUALLY DOING IS OVERRULING TO
SOME EXTENT, IN MY MIND, WHAT THE
LEGISLATURE HAS ALREADY SET OUT.
SO I JUST DON'T KNOW WHERE THIS
WOULD END UP TAKING US.
THE STATUTE AND THE MUNICIPALITY
CAN CONTINUE TO MAKE ITS OWN
EXCEPTIONS TO THAT STATUTE.

>> BUT THE LEGISLATURE -- GO
AHEAD.
ANSWER HER QUESTION.
>> THE -- I GUESS THE BASIC POINT
THAT I'M MAKING IS THAT THE
MUNICIPALITIES HAVE EXACTLY THE
SAME POWER TO LEGISLATE AS THE
LEGISLATURE DOES.
YOU HAVE TO FIND A CLEAR
EXPRESSION OF PREEMPTION OR
CONFLICT.
ALL WE'RE SAYING HERE IS WE ALL
AGREE THERE'S NO CLEAR
EXPRESSION OF PREEMPTION, SO
THERE HAS TO BE A CLEAR
EXPRESSION OF CONFLICT.
RECORDS ARE OPEN AT ALL TIMES FOR
ALL PURPOSES.
THAT MAKES IT CLEAR NO ONE CAN
MAKE AN EXCEPTION.
THE LEGISLATURE HAS NOT --
>> WELL, THE LEGISLATURE CAN
MAKE --
>> PARDON ME?
>> THE LEGISLATURE CAN MAKE AN
EXCEPTION AND THEY DO AND THEY
HAVE.
>> TO THE PUBLIC RECORDS ACT,
RIGHT.
BUT BECAUSE OF THAT IMPORTANT
PROVISO IN THE BEGINNING OF THAT
SECTION, OTHER FOLKS, THE CITIES
AND MUNICIPALITIES, CANNOT MAKE
OTHER EXCEPTIONS.
IF WE HAD THAT SORT OF LANGUAGE
HERE THAT SAID THAT FOR ALL
INTENTS AND PURPOSES, FOR ALL
TIMES, NO EXCEPTIONS, FIRST IN
TIME APPLIES --
>> MR. BRANNOCK, WE HAVE USED ALL
YOUR -- IT SEEMS TO ME THAT IN THE
AREA OF (INAUDIBLE), WE HAVE BOTH

LOCAL FORFEITURE PROVISIONS AND
STATE.
IS THAT A FAIR ANALYSIS?
>> IN THE CITY OF HOLLYWOOD CASE
YOU ALLOWED THAT TO GO FORWARD.
>> AND SO THEN I'M TRYING TO
UNDERSTAND.
SO THEN IF A MUNICIPALITY WOULD
SAY THAT WHEN REAL ESTATE IS USED
OR INVOLVED IN CONNECTION WITH
DRUG ACTIVITY, THEN THAT IS
FORFEITED AND THAT FORFEITURE IF
IT'S REPORTED WOULD TAKE
PRIORITY, COULD WIPE OUT A
MORTGAGE THEN IF IT IS SO
PROVIDED IN A CODE.
>> IT COULD.
AGAIN, IF THERE'S NO -- I'M NOT
COMPLETELY FAMILIAR WITH THE
STATUTE, SO I DON'T KNOW WHETHER
THERE WOULD BE A PREEMPTION
ARGUMENT IS THERE OR NOT.
>> WE HAVE EXHAUSTED ALL YOUR
TIME.
I WILL NONETHELESS GIVE YOU TWO
AND A HALF MINUTES FOR REBUTTAL.
>> I APPRECIATE THAT, YOUR HONOR.

>> MAY IT PLEASE THE COURT, MY
NAME IS MATT CONIGLIARO WITH CARL
TON FIELDS HERE ON BEHALF OF THE
RESPONDENT, WELLS FARGO.
THE LEGISLATURE HAS GIVEN CITIES
SUPER PRIORITY FOR TAX LIENS, FOR
>> WE SHOULD ONLY ANSWER THE
QUESTION AS IT PERTAINS TO WELLS
FARGO AND NOT THE BIGGER
QUESTION.
IS THERE A WAY TO DO THAT?

>> THEY WERE THE COURTS -- IT'S
NOT REALLY OURS, BUT LET ME TRY
TO SAY WHAT I THINK THEY WERE
SAYING.
THEY WERE TRYING TO SAY CAN WE
LEAVE FOR ANOTHER DAY THE
CIRCUMSTANCE WHERE THE LIEN IS
BASED ON RECOUPING COSTS?
AND IN THIS CASE THAT'S NOT AT
ISSUE.
I THINK -- I AGREE WITH OPPOSING
COUNSEL THAT IT'S HARD TO DO THAT
HERE.
THIS IS REALLY ONE APPROACH.
IT IS ONE ORDINANCE AND IT SAYS

THAT THESE LIENS GET A SUPER
PRIORITY AND OUR POSITION IS WE
AGREE WITH THE 5TH DCA, THAT THAT
ORDINANCE IS INVALID.
>> OKAY.

>> I DO WANT TO AT LEAST SUGGEST
THAT IN A DIFFERENT CASE THERE
MIGHT BE DIFFERENT ARGUMENTS
THAT WOULD BE MADE BY THE CITY
ABOUT WHERE THEY MIGHT BE ABLE TO
ARGUE THAT THERE'S A DIFFERENT
CIRCUMSTANCE WHERE YOU HAVE
LIENS THAT ARE BASED ON RECOUPING
COSTS.
THAT WASN'T DONE HERE.
WE'RE JUST UNDER THE SINGLE
ORDINANCE THAT'S IN FRONT OF THE
COURT.
AND I DON'T WANT TO SUGGEST THAT
THOSE ARGUMENTS WILL WORK OR
WON'T WORK.
I JUST WANT TO SUGGEST THAT THAT
MAY BE A DIFFERENT CIRCUMSTANCE.
AND I THINK THAT'S WHAT THEY WERE
TRYING TO DO.
>> AND THE OTHER CIRCUMSTANCE IS
THAT ALTHOUGH NO QUESTION YOUR
MORTGAGE WAS FILED BEFORE THE
LIEN OR WE WOULDN'T BE HERE, I
ASSUME, THE MORTGAGE DID
SAY -- THE MORTGAGE WAS ENTERED
INTO AFTER THE ORDINANCE WAS
ENACTED, AND THE MORTGAGE DOES
SAY SUBJECT TO ALL APPLICABLE
LAW, INCLUDING LOCAL ORDINANCES.
AND IN FACT ONE OF THE ARGUMENTS
THAT WELLS FARGO HAS IS YOU
SHOULD HAVE TOLD US YOU'RE GOING
TO BE ASSESSING OUR PROPERTY
OWNER BECAUSE WE WOULD HAVE TOLD
THEM YOU BETTER PAY IT OFF.
AGAIN, AS FAR AS WE HAVE TO LOOK
AT THE FACTS OF THE CASE.
THE FACT THAT YOUR -- YOU COULD
HAVE AGREED WITH THE CITY TO LET
THEIR LIEN HAVE PRIORITY, BUT THE
FACT THAT YOUR MORTGAGE SAYS IT'S
SUBJECT TO ALL APPLICABLE LAW,
WHICH INCLUDES THE CODE
ENFORCEMENT LIEN ORDINANCE, WHAT
IS THE ARGUMENT AS TO THAT
CONTRACTUALLY YOU HAVE AGREED TO
THE PRIORITY?
>> I THINK OUR CONTRACT IN THIS

CASE GETS US TO THE SAME PLACE
THAT COMMON LAW WOULD IN THE
ABSENCE OF THAT PROVISION.
THE CONTRACT HERE DOES REFERENCE
APPLICABLE LAW, BUT THAT'S A
DEFINED TERM.
AND THE DEFINED -- THE
DEFINITION OF THAT TERM READS
THAT APPLICABLE LAW MEANS ALL
CONTROLLING LAW, AND OUR
POSITION IS SIMPLY THAT IF AN
ORDINANCE IS INVALID, IT'S NOT
CONTROLLING LAW, THAT IN THIS
CONTRACT, WHICH IS VERY SIMILAR
TO COUNTLESS OTHER CONTRACTS,
THE PARTIES WEREN'T ADOPTING
INVALID LAWS, IF THEY'RE IN FACT
INVALID.
>> SO THAT'S YOUR ARGUMENT TODAY.
NOW, ON THIS ISSUE OF
WHETHER -- DO YOU AGREE THERE IS
NO EXPRESS PREEMPTION IN THIS
AREA?
I DON'T WANT TO -- DO YOU AGREE
OR DISAGREE WITH THAT?
>> WE DISAGREE IN SEVERAL
RESPECTS, BUT LET ME TRY TO
QUICKLY PAINT THE LARGER
PICTURE.
WE PRESENTED FOUR DIFFERENT
ARGUMENTS TO THE 5TH DCA.
IT RULED ON ONE AND DIDN'T
PROCEED TO REACH THE OTHER THREE.
THE FIRST IS THAT THERE IS A
CONFLICT WITH 695.11 BECAUSE THE
LAST SENTENCE OF 695.11 STATES AN
INSTRUMENT BEARING THE LOWER
NUMBER SHALL HAVE PRIORITY OVER
ANY INSTRUMENT BEARING A HIGHER
NUMBER.
THAT LANGUAGE HAS BEEN HELD TO
MEAN THAT THAT IS A PRIORITY OF
INTEREST.
IT'S NOT ONLY IN THIS CASE, BUT
IN PRIOR CASES.
AND IF THAT IS A CONFLICT, IT
CANNOT BE RECONCILED, THE STATE
STATUTE WINS.
>> WELL, HERE IS -- BUT THE
PROBLEM WITH THAT, BECAUSE
LOOKING AT THIS, YES, BUT IT DOES
SAY INSTRUMENTS DEEMED TO BE
RECORDED FROM TIME OF FILING,
WHICH SEEMS LIKE IT'S AGAIN MORE
OF A -- POSSIBLY A MECHANICAL

RECORDING STATUTE, IS THAT THEN
THE LEGISLATURE, AS YOU SAID, HAS
GONE ON IN NUMEROUS EXAMPLES,
NUMEROUS STATUTES, TO SAY BUT
THIS HAS PRIORITY AND THAT HAS
PRIORITY AND THE CONDO
ASSESSMENTS HAVE PRIORITY.
SO EACH OF THOSE STATUTES WOULD
BE IN CONFLICT WITH THIS STATUTE
IF IT WASN'T THAT THIS JUST SORT
OF SET A DEFAULT SUBJECT TO
EVERYTHING ELSE.
NOW, THAT'S MY -- IT WOULD BE SO
EASY IF THEY SAID SUBJECT TO
THE -- ANY EXCEPTIONS THAT ARE
CREATED BY LEGISLATIVE ACTS, SO
THAT YOU HAVE THAT AS A
REFERENCE.
BUT IF WE WERE HERE ON A STATUTORY
CONSTRUCTION BETWEEN THIS
STATUTE AND ANOTHER STATUTE THAT
CREATED SUPER PRIORITY, WE'D BE
IN ANOTHER -- YOU'D SAY, WELL,
THERE'S A CONFLICT BECAUSE THIS
IS AN ABSOLUTE STATEMENT.
BUT IT CAN'T BE AN ABSOLUTE
STATEMENT.
>> IT'S NOT AN ABSOLUTE
STATEMENT, YOUR HONOR.
IF WE WERE HERE IN THAT
SITUATION, I THINK MY RESPONSE
WOULD BE YOU WOULD APPLY THE
STATUTORY CONSTRUCTION
PRINCIPLE THAT THE SPECIFIC
GOVERNS OVER THE GENERAL.
AND WHAT YOU HAVE HERE BY THE 5TH
DCA OPINIONS AND OTHER OPINIONS
THAT HAVE SAID THE SAME IS A
GENERAL PRINCIPLE TAKEN FROM THE
COMMON LAW -- FIRST IN TIME,
FIRST IN RIGHT.
THAT'S WHAT THE LAST SENTENCE
DOES.
IT CREATES THAT GENERAL DEFAULT
RULE.
THE LEGISLATURE IS PERFECTLY
EMPOWERED TO CREATE EXCEPTIONS
AS IT WISHES.
>> NOW, WHY -- AND WITH THAT,
MR. BRANNOCK'S ARGUMENT IS THAT
THEN WHY ISN'T THE MUNICIPALITY
ALSO -- HAVE THE AUTHORITY TO
CREATE THE LIEN, EMPOWERED TO
GIVE IT PRIORITY?

>> AND I WILL USE THIS ANSWER TO TRY TO ADDRESS 695 AND 162 AS WELL.
THE SIMPLE FIRST ANSWER IS WHEN THE LEGISLATURE SETS A GENERAL RULE IN STATUTE, IT IS THE LEGISLATURE'S PREROGATIVE TO CREATE EXCEPTIONS, BUT IT IS NOT A MUNICIPALITIES PREROGATIVE TO CREATE EXCEPTIONS UNLESS THERE'S AUTHORIZATION TO DO THAT AND HERE THERE'S NOT.
>> THE QUESTION IS WHY.
HE'S SAYING -- GIVE -- WHAT'S THE POLICY REASON -- IN OTHER WORDS, IT'S NOT -- WHAT I SAID EARLIER, THEY'VE CREATED ALL THESE EXCEPTIONS.
IT'S NOT LIKE THEY VERY CAREFULLY GO ONLY TAX LIENS WILL HAVE EXCEPTIONS.
I DON'T KNOW IF THERE ARE CONDO ASSESSMENTS ARE NOT IMPORTANT, BUT, AGAIN, WE'RE TALKING ABOUT PRIORITY OVER A MORTGAGE, WHICH SEEMS LIKE THAT SHOULD BE THE FIRST.
BUT THEY HAVE A LOT OF OTHERS THAT GET PRIORITY.
SO HOW IS IT THAT THE LEGISLATURE'S INTENDED THAT IF THEY'RE GOING TO BE CREATING NUMEROUS EXCEPTIONS, THAT THE MUNICIPALITY FOR ITS OWN -- YOU KNOW, FOR THE SAFETY, HEALTH AND WELFARE OF THEIR COMMUNITY, BECAUSE THAT'S DIRECTLY RELATED TO CODE ENFORCEMENT, CAN'T GIVE THAT LIEN PRIORITY?
I MEAN, IT'S A VERY IMPORTANT THING FOR THE RESIDENTS OF THE CITY TO MAKE THEIR THEIR PROPERTIES THERE ARE MAINTAINED IN A SAFE AND HEALTHY WAY.
SO WHY WOULDN'T THAT BE SOMETHING THE LEGISLATURE WOULD HAVE SAID IS -- I MEAN, DIDN'T NEED TO SAY IS FINE BECAUSE IT'S WITHIN THEIR AUTHORITY.
>> AS I HOPE COMES ACROSS FROM OUR BRIEF AND FROM THE LAND TITLE ASSOCIATION'S AMICUS BRIEF, PROPERTY IN FLORIDA IS EXTREMELY IMPORTANT AND HOW REAL PROPERTY IS HANDLED ON A STATEWIDE BASIS

IS EXTREMELY IMPORTANT.
I THINK ONE OF THE PREMISES OF THE LAND TITLE ASSOCIATION'S AMICUS BRIEF WAS JUST TO ENCOURAGE THE COURT TO BE CAREFUL AND NOT SAY ANYTHING THAT WOULD MAKE IT SOUND LIKE FLORIDA'S NO LONGER A NOTICE STATE BECAUSE WE ARE A NOTICE STATE.
OF COURSE, WE AGREE WE'RE A NOTICE STATE.
THAT'S THE SIGNIFICANCE AND THE IMPORTANCE OF WHAT'S GOING ON HERE ON A STATE LEVEL.
AND WHEN THE LEGISLATURE DECIDES IT'S GOING TO ADOPT A STATUTE THAT CREATES THIS GENERAL RULE, IF YOU LOOK AT THE EXCEPTIONS, THEY'RE VERY PRECISE, THEY'RE VERY PARTICULAR, AND I COULD GO INTO SOME OF THE DETAILS, THE MERITS OF EACH ONE --
>> YOU'RE SAYING LAND IS SO IMPORTANT.
I GUESS MY QUESTION IS WE'VE GOT HOW MUCH OF THESE LIEN PRIORITY STATUTES IN THE STATE?
A LOT OF MUNICIPALITIES HAVE ENACTED THEM.
>> NO ONE'S GIVEN US A NUMBER, BUT I'M SURE IT'S A LOT.
>> A LOT.
THEY HAVEN'T BEEN CHALLENGED UNTIL NOW, OR MAYBE -- THEY HAVEN'T BEEN CHALLENGED.
THE LEGISLATURE, WHO IS THERE TO SEE OVER THIS, I MEAN, IT SEEMS THAT WHERE SAYING SOMETHING'S VERY IMPORTANT, YET THIS STATUTE'S BEEN ON THE BOOKS FOR -- SINCE 1997?

>> YES.
IT HAS.
BUT THINGS HAVE CHANGED.
AND I'LL SUGGEST TWO -- AND THIS IS SORT OF STAYING IN THE POLICY AREA, NOT SO MUCH THE STRICT LAW, WHICH GOVERNS THIS.
BUT TWO THINGS HAVE CHANGED.
ONE, THE EQUITY THAT WAS COMMON IN FOLKS' HOMES ISN'T AS COMMON RIGHT NOW, AND SO WHO HAS PRIORITY HAS BECOME MUCH MORE SIGNIFICANT IN MANY CASES

WHEREAS MAYBE IT WASN'T AS
IMPORTANT BEFORE.
SECOND, MUNICIPALITIES ARE
LOOKING TO FIND WAYS TO GENERATE
REVENUE, AND SO FINES AND
PENALTIES -- WE'RE HERE OVER
GRASS AND A FENCE AND IT RESULTED
IN $30,000 IN PENALTIES.
THAT'S WHAT'S GOING ON RIGHT NOW
ACROSS THE STATE, THAT THE CITIES
ARE LOOKING FOR WAYS TO GENERATE
INCOME.
SO THESE THINGS ARE NOW --
>> ON THE HOME OF A MAN WHO'S
OVERSEAS SERVING IN THE
MILITARY.
>> YES.
>> LET ME ASK YOU THIS.
IT SEEMS TO ME THAT YOUR
OPPONENT'S ARGUMENT ESSENTIALLY
IS THAT WE HAVE THE GENERAL
STATUTE, 695.11, AND MAYBE YOU
CAN CORRECT ME IF I'M WRONG ON HIS
REBUTTAL, AND THE LEGISLATURE
HAS MADE EXCEPTIONS TO THAT
STATUTE.
AND THAT A MUNICIPALITY, A HOME
RULE MUNICIPALITY, CAN ALSO MAKE
EXCEPTIONS AS LONG AS THEIR
EXCEPTION DOES NOT TRY TO TRUMP
A LEGISLATIVE EXCEPTION.
I THINK THAT'S ESSENTIALLY WHAT
IS BEING SAID HERE.
AND SO WHAT'S WRONG WITH THAT
ARGUMENT?

>> IF THE CITY CREATES A CONFLICT
WITH A STATUTE THAT'S SET FORTH
AS A GENERAL RULE, A DEFAULT
POSITION -- LET ME STATE GENERAL
RULE MORE CLEARLY.
>> THE STATUTE ITSELF DOESN'T SAY
YOU CAN'T HAVE ANY EXCEPTIONS TO
IT, RIGHT?
>> NO, IT DOESN'T.
BUT IT DOES SAY THAT AN
INSTRUMENT WITH A LOWER NUMBER
SHALL HAVE PRIORITY OVER AN
INSTRUMENT WITH A HIGHER NUMBER.
>> THE PROBLEM I HAVE WITH THAT
IS 161 SAYS THAT WE ARE NOT GIVEN
ANYBODY POWER.
THE LEGISLATURE HAS GIVEN THE
HOME RULE MUNICIPALITY THE
POWER.

ANY LEGISLATION WHICH THE
LEGISLATURE MAKES MAY HAVE
EXCEPT WHEN IT'S EXPRESSLY
PREEMPTED THROUGH THE STATE OR
COUNTY GOVERNMENT OR THE
CONSTITUTION OF GENERAL LAW.
AND IF THE STATE CAN MAKE THESE
EXCEPTIONS AND THEY DON'T
PRECLUDE THE MUNICIPALITY FROM
MAKING THE EXCEPTION, WHY CAN'T
THE MUNICIPALITY DO THAT?
>> BECAUSE THIS COURT HAS SAID IN
ITS PREEMPTION JURISPRUDENCE
THAT IF THERE IS A
CONFLICT -- AND THAT'S A FORM --
>> WHERE'S THE CONFLICT?
THE PROBLEM I HAVE IS THE
LEGISLATURE KNOWS HOW TO SAY,
WELL, THEY CAN PUT WORDS IN
EFFECT THAT NO GOVERNING BODY
OTHER THAN THE LEGISLATURE
SHALL, YOU KNOW, AND THAT WOULD
HAVE PRECLUDE THE THE COUNTY OR
THE MUNICIPALITIES FROM
INFRINGING ON THAT.
IT HAS TO BE EXPRESS.
WHERE IS IT EXPRESSED IN HERE?
>> THE EXPRESSION IS IN THE
STATEMENT SHALL HAVE PRIORITY.
THAT'S A --
>> I KNOW, BUT THEN THE STATE
MAKES EXCEPTIONS.
>> AND THAT'S THE STATE'S
PREROGATIVE.
>> WELL, NOW, THE MUNICIPALITY
HAS THE SAME POWER THE
LEGISLATURES HAVE TO MAKE
EXCEPTIONS.
>> AND ON THAT POINT WE DISAGREE,
YOUR HONOR.
>> HUH?
>> WE DISAGREE, YOUR HONOR.
THEY DO NOT.
AND IF I COULD ADD A FEW
ADDITIONAL REASONS WHY THERE'S
PREEMPTION HERE, WE'VE BEEN
TALKING ABOUT 695.11 AND WE STAND
COMPLETELY ON THE 5TH DISTRICT'S
OPINION IN THAT REGARD AND WOULD
SUGGEST THE COURT DOES NOT NEED
TO GO ANY FARTHER THAN THE LAST
SENTENCE, FINDING A CONFLICT,
DECIDING THAT THE ORDINANCE IS
INVALID.
BUT EVEN BEYOND THAT, LOOKING AT

162, THE CHAPTER ON CODE ENFORCEMENT, THERE ARE MULTIPLE PROBLEMS THERE.
BUT WE HAVE CITED -- DISCUSSED AT SOME LENGTH CITY OF TAMPA VERSUS BRAXSON CASE.
THIS ACT IS PRESENTED TO CITIES AND COUNTIES ON A TAKE IT OR LEAVE IT BASIS.
THEY HAVE THE POWER UNDER THIS CHAPTER TO ADOPT OR TO ABOLISH THAT ACT AS PROVIDED HEREIN.
AND WHAT THE 2nd DCA AND ATTORNEY GENERAL HAVE SAID FOR DECADES IS THAT THEY DON'T HAVE THE POWER TO CHANGE IT.
THEY DON'T HAVE THE POWER TO CREATE NEW REMEDIES.
THEY CAN'T EVEN ADJUST COMPENSATION FOR THE BOARD MEMBERS OF THE LOCAL BOARD, THAT THIS IS PRESENTED BY THE STATE TO THE CITIES AS COUNSEL SAID EARLIER.
IT'S ALL IN CONNECTION WITH ARTICLE I SECTION 18.
THERE'S A CONSTITUTIONAL BASIS FOR WANTING TO DO THIS.
BUT IT'S PRESENTED ON AN AS-IS BASIS.
IF THEY WANT THIS, THEY TAKE IT.
IF THEY DON'T, DON'T TAKE IT.
LET THE COUNTY COURT SYSTEM PROCESS CODE VIOLATIONS.
AND THAT'S A CRITICAL PRINCIPLE.
BECAUSE THAT'S HAPPENED HERE IS A CRITICAL CHANGE TO WHAT THE LEGISLATURE'S DONE.
AS WE HEARD DISCUSSED EARLIER, THERE IS AN EXTENSIVE STATUTE AT 162.09(3) THAT DISCUSSES THESE LIENS AND IT DISCUSSES THEM IN-DEPTH, IN DETAIL.
>> WHAT STATUTE?
>> 162.09(3).
AND IT DISCUSSES THEM IN EXTRAORDINARY DETAIL, WHO THEY CAN BE AGAINST, WHEN THEY COME INTO PLAY, WHAT PROPERTY THEY COVER.
AND THEY COVER NOT JUST REAL PROPERTY, BUT PERSONAL PROPERTY OF THE OWNER.
WHEN YOU CAN FORECLOSE, HOW IT CAN BE FORECLOSED.

THERE'S INCREDIBLE DETAIL.
YOU'RE SUPPOSED TO TAKE OR LEAVE
THE ACT AS A WHOLE.
THERE'S EXTRAORDINARY DETAIL
FROM THE LEGISLATURE.
WHAT THE CITY HAS DONE IS STEPPED
IN AND SAID WE DON'T LIKE THE
REMEDIES BECAUSE WE CAN'T
COLLECT ENOUGH MONEY FROM THEM,
SO WE'RE GOING TO IMPROVE THEM
AND THEY CAN'T DO THAT.
THAT'S GETTING BEYOND 695.11.
BUT I WANT TO MAKE SURE THE COURT
IS AWARE THAT WE'VE PRESENTED
THESE MULTIPLE ARGUMENTS.
WE THINK EACH OF THEM WORKS SO
THAT THE COURT NEVER NEEDS TO
REACH THE LATER ONES.
>> WELL, YOU'VE GOT AN ENTIRELY
SEPARATE ARGUMENT ABOUT DUE
PROCESS, WHICH MEANS EVEN IF YOU
LOST ON THESE OTHER ARGUMENTS,
BECAUSE YOU WON ON THE DUE
PROCESS ARGUMENT IN THE TRIAL
COURT AND THAT WAS NOT RAISED IN
THE DISTRICT COURT BY THE CITY AS
A BASIS FOR REVERSING THE TRIAL
COURT, THEN THEY'RE JAMMED ON
THAT; ISN'T THAT CORRECT?
>> YES, YOUR HONOR.
>> WHAT WAS THE DUE
PROCESS -- I'M GLAD WE'RE GOING
TO TALK ABOUT DUE PROCESS.
WHAT WAS THE ARGUMENT MADE ABOUT
THIS DUE PROCESS AT THE TRIAL
COURT LEVEL?
>> THAT IT IS A VIOLATION OF
THE -- IN OUR CASE, THE MORTGAGE
HOLDER'S DUE PROCESS RIGHTS TO
NOT BE INFORMED, TO NOT RECEIVE
NOTICE, ACTUAL NOTICE, OF WHAT'S
GOING ON HERE.
>> IN OTHER WORDS, WHAT YOU
SAID -- AND I THINK THERE IS
SOMETHING TO LOOK AT THE FACTS OF
THIS CASE.
IF YOU'VE GOT A PROPERTY THAT IS
CAUSING A PROBLEM AND YOU GOT AN
ABSENTEE LANDLORD, THE MORTGAGE
HOLDER GETS NOTICE.
THEY CAN STEP IN AND FIX IT OR PAY
THE FINE.
SO --
>> IF THERE IS A SUPER PRIORITY,
YES, YOUR HONOR.

IF THE CITY HAS VALIDLY SET UP A SYSTEM --
>> WELL, EVEN SO IT WOULD SEEM THERE WOULD BE AN INTEREST IN NOT HAVING PROPERTY -- STILL HAVING TO HAVE A DEFAULT.
DOESN'T THE LANDOWNER HAVE AN INTEREST IN THE PROPERTY BEING MAINTAINED, SIMILAR TO WHAT THE CITY WANTS, OTHER THAN THEIR WANTING TO GET ALL THE MONEY OUT OF THE FINES?
>> YES, YOUR HONOR.
THE CITY PICKS A NUMBER IN THE STATUTORY RANGE AND THESE FINES ASK RUN ON A DAILY BASIS AND WE WEREN'T INFORMED OF THEM.
>> THAT GOES TO SOMETHING ELSE.
YOU WON ON THAT BASIS AND THAT WAS NOT APPEALED BY THE CITY?
>> YES, YOUR HONOR.
>> WAS NOT.
>> WAS NOT.
>> SO THAT -- REALLY THAT ISSUE IS NOT BEFORE US AT ALL.
>> YES, YOUR HONOR.
>> WELL, THEN DOESN'T THIS WHOLE ISSUE -- ISN'T THIS ISSUE MOOT AS TO YOU?
I MEAN, IF YOU'VE WON ON DUE PROCESS AND THERE'S NO DECISION ON IT, I MEAN, OF COURSE YOU LIKE THE 5TH DISTRICT OPINION, SO THAT CERTAINLY WOULDN'T HURT YOU, BUT EVEN IF WE REVERSE, YOU WIN.
YES?
>> THE OPINION THAT THE 5TH DISTRICT ISSUED REACHES A VERY SERIOUS, VERY IMPORTANT ISSUE.
AND THE QUESTION THAT THE COURT CERTIFIED IS A VERY SERIOUS, VERY IMPORTANT QUESTION.
>> AND THAT MAY BE A SEPARATE ISSUE.
BUT YOU'RE AGREEING YOU WIN NO MATTER WHAT, EVEN IF YOU LOSE HERE.
>> WE CERTAINLY HOPE WE DO.
>> YEAH.
I MEAN -- WELL, BUT THE QUESTION -- I THINK THE POLICY OF WHETHER A MORTGAGE HOLDER SHOULD GET NOTICE IS GOOD, BUT IF YOU'VE JUST GONE THROUGH THIS SWEEPING STATUTE THAT SETS IT OUT, THAT

DOESN'T REQUIRE THAT THE CITY
GIVE NOTICE OF THE FINES TO THE
MORTGAGE HOLDER, DOES IT?
IT DOES?
>> BECAUSE THE STATUTE DOESN'T
HAVE A SUPER PRIORITY PROVISION
IN IT THAT WOULD DISPLACE FOLKS
LIKE US.
>> THAT'S THE ONLY REASON YOU
CARE?
YOU DON'T CARE IF YOUR PROPERTY
GOES INTO DISREPAIR?
YOU JUST CARE IF YOU DON'T GET
YOUR MORTGAGE BACK?
>> WELL, I DON'T WANT TO SUGGEST
THAT, YOUR HONOR.
>> YOU'VE EXHAUSTED YOUR TIME,
BUT I'LL GIVE YOU ANOTHER MINUTE.

>> I APPRECIATE THAT, YOUR HONOR.
JUST TO SUM UP, THE 5TH DISTRICT
CORRECTLY READ 695.11 AS BEING
WHAT COUNSEL ACKNOWLEDGED HERE
TODAY, WHAT OTHER COURTS HAVE
HELD OVER THE YEARS, THAT IT
CONTAINS THAT LAST SENTENCE IS A
SUBSTANTIVE PROVISION AFFECTING
PRIORITY.
AND IN THAT BECAUSE THAT
PROVISION IS IN CONFLICT WITH
THIS ORDINANCE, WHICH TRIES TO
CREATE AN EXCEPTION TO IT, THE
ORDINANCE FAILS.
THE STATUTE PREVAILS UNDER THESE
CIRCUMSTANCES.
IF THE COURT IS TO REACH THE 162
ISSUES, WE THINK THERE ARE
MULTIPLE REASONS WHY UNDER 162
BASED ON EXISTING CASE LAW FROM
THE 2nd DCA, BASED ON DECADES OF
OPINION THAT'S HAVE GUIDED THIS
STATE ALONG ITS WAY, THAT THE
CITY CANNOT CHANGE THIS ACT,
CANNOT GIVE ITSELF A BETTER
REMEDY AND SO THE ORDINANCE FOR
THOSE REASONS IS INVALID AS WELL.
THANK YOU.

>> CAN YOU ADDRESS THIS DUE
PROCESS ISSUE?
IT SOUNDS LIKE THE CITY EVEN IF
THEY WIN, THEY LOSE.
IS THAT CORRECT?
YOU DIDN'T APPEAL THE DUE PROCESS
FINDING OF THE TRIAL COURT OR

RAISE IT IN THE 5TH DISTRICT?
>> THE DUE PROCESS ARGUMENT WAS ARGUED IN THE 5TH DISTRICT.
IT WAS NOT RAISED IN THE INITIAL BRIEF.
BUT WHEN THE BANK RAISED DUE PROCESS AS ANOTHER REASON FOR AFFIRMANCE, THEN WE OPPOSED THAT IN THE REPLY BRIEF.
IT'S BEEN ARGUED HERE.
BUT WE JOIN WITH COUNSEL IN SUGGESTING THAT NO MATTER WHAT HAPPENS TO THE DUE PROCESS ISSUE, WE THINK THE CERTIFIED QUESTION NEEDS TO BE ANSWERED.
>> LET ME MAKE SURE I UNDERSTAND.
THE BANK RAISED IT BECAUSE THEY SAID REGARDLESS OF THIS OTHER ISSUE THAT THE CITY'S RAISED, WE STILL WIN.
THE TRIAL COURT HAS DECIDED ON THIS OTHER GROUND AS WELL.
>> RIGHT.
>> THEN YOU THINK SOMEHOW THAT PRESERVES THE ISSUE FOR OUR REVIEW?
>> WELL, THEY DIDN'T STOP THERE.
THEY DIDN'T STOP WITH A PROCEDURAL ARGUMENT.
THEY MADE AN ARGUMENT ON THE MERITS OF THE DUE PROCESS ARGUMENT.
WE RESPONDED.
IT WAS BRIEFED AND ARGUED IN FRONT OF THE 5TH DISTRICT.
>> BUT YOU DID NOT RAISE IT IN YOUR INITIAL BRIEF.
>> DID NOT RAISE IT.
>> THE ARGUMENT -- AND I DON'T KNOW.
IT SEEMS TO BE ALMOST A BETTER ARGUMENT, IS THE PERVASIVENESS OF 162 AND ESPECIALLY THE SECTION THAT SETS UP THE LIEN.
IT WOULD SEEM TO ME THAT THAT WOULD BE THE PLACE THAT IF THE LEGISLATURE WANTED TO GIVE THE MUNICIPALITIES THE AUTHORITY TO PROVIDE THE LIEN SUPER PRIORITY, IT WOULD HAVE DONE IT RIGHT THERE.
>> BUT THAT'S PRECISELY THE POINT, YOUR HONOR.
WE DON'T NEED TO HAVE THE LEGISLATURE'S AUTHORITY FOR

THAT.
>> WELL, DO YOU NOT AGREE, THOUGH, THAT THE WHOLE -- THAT WITH WHAT MR. CONIGLIARO IS SAYING, THAT THE WHOLE CODE ENFORCEMENT THEME IS NOT SOMETHING THAT THE MUNICIPALITY CAN PICK -- THAT THEY'VE GOT TO ACCEPT IT, THEY CAN'T GO TO OTHER REMEDIES?
>> NO.
WE COMPLETELY DISAGREE WITH THAT.
THE CITIES MAY REGULATE CODE ENFORCEMENT LIENS SO LONG AS THEY DON'T DO IT IN A WAY THAT CONFLICTS WITH CHAPTER 162.
THE SUPER PRIORITY LIEN DOES NOT CONFLICT WITH 162 BECAUSE 162 SAYS NOTHING ABOUT THE PRIORITY OF THE LIEN.
ALL IT SAYS IS THAT THE CITY MAY IMPOSE A LIEN.
>> WAS THE LIEN REQUIRED TO BE FILED UNDER 695.11?

>> WAS IT REQUIRED TO BE FILED?
>> YES.
>> IT'S REQUIRED TO BE FILED UNDER THE CODE ENFORCEMENT STATUTE.
>> THE INSTRUMENT THAT'S REQUIRED TO BE RECORDED UNDER 695.11?
>> IN ORDER TO RECEIVE PRIORITY UNDER CHAPTER 162, YES, IT HAS TO BE FILED IN 695.
>> SO IT WAS UNDER THE FIRST PART OF 695.11, IT WOULD BE CONSIDERED AN INSTRUMENT REQUIRED TO BE RECORDED.
>> YES.
BUT THAT DOESN'T RESOLVE THE QUESTION ABOUT WHETHER THERE'S A CONFLICT BECAUSE 695.11 IS JUST ONE SMALL PIECE OF THE PUZZLE.
THE POINT IS WE HAVE TO GO BACK TO THE CONSTITUTION.
THE CONSTITUTION SAYS THAT THE CITY MAY EXERCISE ANY POWER EXCEPT AS PROVIDED BY LAW, WHICH MEANS THAT AS WE SIT HERE TODAY, WHAT WE HAVE TO LOOK FOR IS AN INTENT BY THE LEGISLATURE TO STEP IN AND STATE IN ITS STATUTORY

SCHEME THAT THE CITY DOES NOT
HAVE THIS POWER.
>> YOUR OPPOSITION SAYS THAT THE
STATE HAS STEPPED IN AND HAS
GIVEN 162 AS THE FRAMEWORK AND
THE CITIES, MUNICIPALITIES, ARE
NOT ALLOWED TO PICK AND CHOOSE
THE PARTS.
>> THAT'S THE BANK'S ARGUMENT,
BUT THERE'S NOT A SINGLE CASE
THAT SAYS --
>> WELL, IS THERE A CASE THAT SAYS
THE CONTRARY?
>> THE ONLY CASES UNDER 162 WHERE
THE CITY HAS BEEN LIMITED IN ITS
POWERS ARE CASES WHERE THE CITY
HAS LEGISLATED IN A MANNER THAT
WAS INCONSISTENT WITH THE
PROVISIONS OF 162.
>> SO THE ANSWER TO 162, REALLY
IT HAS NOT BEEN LITIGATED.
THIS IS GOING TO BE THE FIRST
CASE.
>> IT HAS NOT BEEN.
AND THE PARADIGM THAT WE HAVE TO
USE TO DETERMINE WHETHER THERE IS
A CONFLICT AND WHETHER THE
LEGISLATURE HAS SAID YOU MAY NOT
REGULATE IN THIS AREA, THAT'S
MISSING AND THAT'S THE
FUNDAMENTAL POINT UPON WHICH WE
RELY.
>> WE THANK YOU FOR YOUR
ARGUMENT.
WE THANK OPPOSING COUNSEL FOR HIS
ARGUMENT.
WE WILL NOW MOVE TO THE NEXT CASE.