

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE.

SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO
PLEAD, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA,
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.

>> WELCOME TO THE FLORIDA
SUPREME COURT.

FIRST CASE FOR THE DAY IS
NICHOLAS ARSALI VERSUS CHASE
HOME FINANCE.

COUNSEL READY TO PROCEED?

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I'M BETH COLEMAN AND I'M HERE
ON BEHALF OF THE PETITIONER,

NICHOLAS ARSALI.

WE'RE HERE ON A QUESTION OF
GREAT PUBLIC IMPORTANCE ON THE
IMPORTANCE OF SETTING A
STANDARD FOR SETTING ASIDE A
JUDICIAL SALE.

THE IMPORTANCE IS BECAUSE THE
FOURTH DISTRICT DECISION BELOW
THREATEN THE PREDICTABILITY OF
THE ENTIRE SALE PROCESS.

ONE OF THE
PRIMARY PURPOSES OF THE PROCESS
IS TO TRY TO GENERATE THE HIGHEST
POSSIBLE PRICES ON THESE
PROPERTIES BY ATTRACTING AS
MANY BIDDERS AS POSSIBLE.

IN ORDER TO DO THAT YOU NEED TO
HAVE A RELIABLE AND PREDICTABLE
SALE PROCESS.

UNTIL NOW AFTER THE SALE
OCCURRED THERE WERE RELATIVELY
NARROW GROUNDS TO SET IT ASIDE.

>> YOU MUST HAVE AN ISSUE

INVOLVING THE, INSUFFICIENCY OF
THE BID PRICE?

>> WELL, OUR RESTATED QUESTION
IS A LITTLE NARROWER THAN THAT
BECAUSE IN OUR CIRCUMSTANCE WE
HAD A MISTAKE AND SO WE'RE
ASKING THE COURT TO HOLD THAT A
MISTAKE ALONE IS NOT ENOUGH TO
SET ASIDE A SALE THAT WAS
PROPERLY CONDUCTED AND THAT
RESULTED IN AN ADEQUATE BID.

THE FOURTH DCA'S CERTIFIED QUESTION
IS A LITTLE BROADER AND I THINK
ASKS WHETHER YOU HAVE TO HAVE
AN INADEQUATE BID IN EVERY
CIRCUMSTANCE.

>> IF THAT'S THE CASE, HOW DO
YOU RECONCILE YOUR POSITION
WITH THIS COURT'S BROWN CASE
WHERE IT SEEMS TO ME THEY LAID
OUT A NUMBER OF, THE COURT LAID
OUT A NUMBER OF GROUNDS THAT
YOU COULD HAVE IN ORDER TO SET

ASIDE A FORECLOSURE SALE?

ONE OF THOSE GROUNDS SEEMS TO BE
MISTAKE.

>> ONE OF THOSE GROUNDS IS
MISTAKE BUT UNTIL NOW THE MISTAKE
HAD TO BE COMBINED WITH A
GROSSLY INADEQUATE PRICE.

WHAT BROWN --

>> DID BROWN SAY THAT?

>> WELL WHAT BROWN SAID IS,
WHAT HAPPENED IN BROWN IS THE
CLAIMANT MADE A NUMBER OF
ALLEGATIONS THAT THE PRICE WAS
INADEQUATE.

THERE WAS A MISTAKE.

THERE WAS FRAUD.

THERE WAS ANY NUMBER OF
PROBLEMS WITH IT AND THE COURT
SAID YOU DIDN'T PROVE ANY OF
THOSE THINGS.

AND IT SAID --

>> DIDN'T PROVE ANY OF THOSE
GROUNDS?

>> ANY OF THOSE GROUNDS.

SO ON A PROPER SHOWING MADE ANY
OF THOSE GROUNDS COULD BE A
BASIS FOR SET ASIDE OF SALE AND
PROCEEDED TO QUOTE OR TO CITE
WELL-ESTABLISHED PRECEDENT THAT
ONE OF THOSE GROUNDS THE
INADEQUATE BID ISN'T ENOUGH.

>> HOW IS IT THAT RULE 1.504-B,
IS THERE A, WHAT IS THE
JURISPRUDENCE SAYS THAT THAT
ISN'T WHAT IS FOLLOWED WHEN
IT'S A TIMELY FILED?
BECAUSE YOU'RE NOT SAYING IT IS
NOT TIMELY, A TIMELY-FILED
MOTION TO SET ASIDE?
IS THERE, AND I'M JUST HAVING
TROUBLE RECONCILING WHATEVER WE
MIGHT HAVE SAID 80 YEARS AGO OR
100 YEARS AGO AND WITH THE FACT
THAT ARE WE, IS IT BECAUSE IT'S
A FORECLOSURE SALE THAT THE
RULE HAS TO BE DIFFERENT?

THAT RULE 1.540-B DOESN'T

APPLY?

>> WELL, AND I DON'T THINK THAT
THE OLDER CASES WERE DEALING
WITH 1.540-B.

>> PROBABLY THE RULE WASN'T
THERE.

WHAT I'M ASKING WAS THIS FILED
UNDER THAT RULE?

>> NO, I DON'T BELIEVE IT WAS.
IT WAS FILED WITHIN THE 10 DAYS
THAT YOU HAVE UNDER THE STATUTE
TO CHALLENGE THE SALE, WHICH IS
SORT OF ANALOGOUS TO THE
DIFFERENCE BETWEEN LIKE A 1.430
MOTION FOR REHEARING VERSUS A
1.540.

>> IS IT THE STATUTE IT WAS
FILED UNDER, IS THAT LIMIT
THE BASIS FOR SETTING ASIDE A
FORECLOSURE SALE?

>> NO, IT DOESN'T.

>> I GUESS I CAN'T THINK IN

THIS PARTICULAR TIME THAT WITH
THE NUMBER OF FORECLOSURES THAT
ARE GOING ON THAT WHEN A, THE
OWNER OF THE PROPERTY THOUGHT
HE HAD A DEAL WITH THE
MORTGAGE HOLDER THAT, WHERE THE
MORTGAGE HOLDER SCREWED UP,
RIGHT? THAT'S WHAT HAPPENED.
THAT WE WOULD NOT SAY THAT IN
THAT SITUATION A TIMELY-FILED
MOTION IS, IT'S GOT TO BE
SOMETHING WRONG WITH THE ACTUAL
SALE.

I JUST DON'T SEE WHAT PUBLIC
POLICY WE WOULD BE FOSTERING
FOR THAT?

>> WELL THE POLICY, AGAIN, THE
PURPOSE OF THE SALE IS TO TRY
TO GET THE HIGHEST POSSIBLE
BID.

>> UNDERSTAND THAT AND THAT'S
WHY I AM SURE THOSE CASES THAT
TALK ABOUT THE INADEQUATE SALE

PRICE, YOU KNOW, GROSSLY
INSUFFICIENT, SAY, WELL, YOU
JUST CAN'T BE THAT.

IT HAS GOT TO BE COMBINED WITH
SOMETHING ELSE.

>> RIGHT.

>> I MEAN IT'S NOT JUST IT'S
LOW.

THERE HAS GOT TO BE ANOTHER
THING BUT WHEN IT IS SOMEBODY
HAS MESSED UP AND THIS
UNSUSPECTING HOMEOWNER, THIS IS
HIS HOME.

THOUGHT THAT HE WAS, OR SHE, OR
WHOEVER IT IS, WAS FINE AND IN
A TIMELY-FILED MOTION IS THERE
THAT WE WOULD SAY, NO, NO,
UNLESS YOU PROVE THAT YOU'RE
THE PERSON WHO BID, TOO LOW,
YOU DON'T GET TO KEEP YOUR
HOME?

>> WELL, AND AGAIN THIS IS
DRAMATICALLY OPENING UP THE

BASES TO SET ASIDE THESE SALES.

IN THE PAST --

>> SEE, I DON'T GET THAT.

I CAN'T BELIEVE IF WE SURVEYED,

LIKE, EVERYBODY THAT THEY

WOULDN'T THINK, THIS WAS THE

ONE, IF WE WERE GOING TO TAKE

ONE REASON, TO ALLOW A SALE TO

BE SET ASIDE, THAT'S TIMELY

FILED, THAT THIS WOULDN'T BE

THE REASON?

>> WELL, KEEP IN MIND THAT THIS

IS EIGHT MONTHS AFTER THERE WAS

A FINAL JUDGMENT.

THE FINAL JUDGMENT WAS THE

OPERATIVE DOCUMENT THAT SORT OF

BEGAN THIS PROCESS.

>> YOU'RE A STRANGER TO THE

FINAL JUDGMENT?

>> CORRECT.

>> THAT'S NOT REALLY AT ISSUE

HERE.

I UNDERSTAND THAT GOT SET ASIDE

BUT THAT'S REALLY NOT YOUR
CLIENT'S CONCERN.

YOUR CLIENT'S CONCERN IS THE
SALE, IS THAT CORRECT?

>> CORRECT.

BUT MY POINT IS THAT FROM A
POLICY PERSPECTIVE WE HAVE TO
KEEP IN MIND THAT THE BORROWERS
HAD EIGHT MONTHS TO TRY TO DO
SOMETHING ABOUT THIS AND NOW --

>> WELL THEY DID.

AND THEY DID IT BEFORE THE SALE
WAS SET AND THEN, BOTH FAILED
TO DO WHAT THEY WERE SUPPOSED
TO DO.

THERE WAS A MISTAKE.

>> THERE WAS A MISTAKE BUT
KEEP IN MIND THAT THIS IS SORT
OF COMPOUNDING OF ERRORS
BECAUSE THE MISTAKE WASN'T JUST
THAT, OH, WE'RE GOING TO REACH
SOME SORT OF SETTLEMENT AND
POSTPONE THE SALE.

THE MISTAKE WAS THAT --

>> THEY WERE GOING TO CANCEL
THE SALE.

>> WELL THEY WERE GOING TO
CANCEL THE SALE BASED ON A
REINSTATEMENT BUT THE LOAN
DIDN'T EXIST ANYMORE.

YOU CAN'T REINSTATE A LOAN --

>> YOU'RE ASSERTING THAT THEY
CAN AGREE TO DO WHAT THEY WANT
TO DO WITH RESPECT TO THAT
LOAN.

>> BUT THEY CAN'T DO IT WITHOUT
ASKING THE COURT'S PERMISSION
TO GO IN AND CANCEL THE SALE.

>> I UNDERSTAND THAT. I'M SORRY.

>> I'M SORRY.

>> GO AHEAD.

>> ONCE THE SALE TAKES PLACE,
FROM A MATTER OF PUBLIC POLICY
YOU NEED TO HAVE THAT SALE BE
RELIABLE.

IF YOU WANT TO SHOW UP AND BID

AT THAT SALE THEY NEED TO KNOW
IF THEY MADE A FAIR BID AND THE
SALE WAS PROPERLY CONDUCTED
THAT THEY'RE PROBABLY GOING TO
GET TITLE TO THAT PROPERTY.

>> I DON'T DISAGREE I WOULDN'T
DISAGREE WITH THAT GENERAL
PRINCIPLE.

I GO BACK TO THE QUESTION THAT
JUSTICE PARIENTE ASKED ABOUT
1.540-B.

FOR THE LIFE OF ME I CAN'T NOT
UNDERSTAND WE WOULD NOT LOOK TO
THAT AS THE BASIC STARTING
POINT AND FRAMEWORK FOR
EVALUATING THIS.

AND IT SAYS ON MOTION AND UPON
SUCH TERMS AS ARE JUST.

NOW ADMITTEDLY THAT IS SOMEWHAT
AMORPHOUS BUT THAT'S THE WAY,
THAT'S THE WAY THESE THINGS ARE
DEALT WITH BECAUSE YOU'VE
GOT, THESE TYPICALLY

ARE COMPLICATED CIRCUMSTANCES
OR CAN BE COMPLICATED
CIRCUMSTANCES WHERE THERE ARE
EQUITIES ON BOTH SIDES AND YOU
HAVE TO SOME KIND OF EVALUATION
OF IT.

WHAT IS THE REASON, CAN YOU
ARTICULATE A REASON WHY THIS
RULE BY ITS TERMS WOULD NOT
APPLY?

REGARDLESS OF WHAT YOU THINK
THE RESULT SHOULD BE BUT WHY
WOULD WE NOT LOOK TO THIS RULE
AS THE STARTING POINT FOR THE
ANALYSIS?

>> WELL, NOW WHAT YOU'RE SAYING
NOW YOU'VE GOT A YEAR TO TRY TO
UNDO THE SALES IF YOU BRING IT
UNDER 1.540.

I DON'T THINK IT WAS BROUGHT
UNDER.

IT WAS BROUGHT UNDER THE 10
DAYS BUT NOW YOU'RE REALLY

OPENING UP --

>> AGAIN, I DON'T HAVE IT RIGHT
IN FRONT OF ME HERE.

I THOUGHT THAT THE MOTION JUST
SAYS, A MOTION TO VACATE?

>> IT WAS A MOTION TO SET ASIDE
THE SALE AND IT WAS NOT
BROUGHT UNDER 1.540 AS FAR AS I
KNOW.

AND IF THEY HAD DONE THAT THEY
COULD HAVE DONE THAT A YEAR
LATER.

THAT IS REALLY GOING TO UP SALE
THE SALE PROCESS.

>> IT WAS DONE 10 DAYS AFTER
THE SALE.

YOU CAN'T MAKE ANY TRUE
ARGUMENT THAT THE BUYERS
WEREN'T AWARE IN A TIMELY FASHION
THAT THERE WAS A SOME PROBLEM
HERE.

AND IF WE TAKE YOUR ARGUMENT TO
ITS LOGICAL CONCLUSION, IT

SEEMS TO ME THE OWNER COULD PAY
THE ENTIRE AMOUNT AND THEN IF,
IF THE BANK, OR WHOEVER THE
LENDER IS, DOESN'T SET ASIDE
THE SALE, WHERE ARE YOU?

>> BUT THAT'S A DIFFERENT,
THAT'S A DIFFERENT RIGHT.

YOU HAVE THE RIGHT TO REDEEM
RIGHT UP UNTIL THE DAY OF THE
SALE.

>> SO HOW IS THAT DIFFERENT
FROM THE FACT THAT THEY CAME UP
WITH THE AMOUNT OF MONEY THAT
THE LENDER SAID THEY NEEDED IN
ORDER TO RENEGOTIATE AND
THEY WERE SUPPOSED TO CANCEL
THE SALE OF THE PROPERTY?

IT'S NO DIFFERENT?

>> IT IS DIFFERENT.

THE BANK WAS PROMISING
SOMETHING, FRANKLY IT COULDN'T
DO.

YOU CAN'T SET, YOU CAN'T

REINSTATE A LOAN THAT DOESN'T
EXIST ANYMORE.

YOU COULD GO IN AND ASK THE
COURT TO DO IT AHEAD OF TIME
BUT THEY DIDN'T DO THAT.

SO NOW YOU HAVE BORROWERS THAT
HAVE, IN THE PAST --

>> SO THE LOAN DIDN'T EXIST
BECAUSE THERE WAS A FINAL
JUDGMENT?

>> RIGHT.

>> IF THEY GET A FINAL JUDGMENT
AND YOU PAY 3/4 OF THE LOAN,
THE LOAN STILL DOESN'T EXIST IF
THERE HAS BEEN A FINAL
JUDGMENT.

SO I DON'T SEE THE DIFFERENCE
HERE.

>> THE DIFFERENCES ARE BETWEEN
A REDEMPTION AND JUST SOME KIND
OF SETTLEMENT.

THEY HAVE A RIGHT TO REDEEM UP
UNTIL THE DATE OF THE SALE.

THEY LOSE THAT RIGHT AFTER THE SALE.

IF THEY WANT TO MAKE SOME KIND OF OTHER DEAL TO SOMEHOW PUT OFF THE SALE, MAYBE A FORBEARANCE AGREEMENT OR SOMETHING LIKE THAT, THEY HAVE TO GO IN AND ASK THE COURT TO DO THAT.

>> I JUST, I'M REALLY STRUGGLING WITH, AS JUSTICE PARIENTE SAID, WHY WE WOULD IN THIS DAY WHERE ALL THESE HOMEOWNERS ARE HAVING PROBLEMS WITH THEIR MORTGAGES, AND THEY COME UP WITH A SOLUTION, AND THEN WE'RE GOING TO SAY, OOPS, TOO BAD.

WITHIN THE TIME PERIOD, BEFORE THE SALE ACTUALLY TOOK PLACE THEY CAME UP WITH A SOLUTION TO THEIR PROBLEM AND, WELL, TOO BAD.

>> AND AGAIN, THE PROCESS
IS GOING TO BREAK DOWN.
THE COURTS ARE ALREADY
STRUGGLING WITH THE VOLUME OF
THESE CASES AND THE AMOUNT OF
TIME --

>> YOU'RE SAYING WE SHOULD DO
AWAY WITH EQUITABLE PRINCIPLES
AS IT RELATES TO VACATING
FORECLOSURES?

>> NO, I'M NOT SAYING THAT AT
ALL.
THE TIME FOR THE COURTS TO
EXERCISE THEIR EQUITABLE
JURISDICTION COMES WHEN UNDER
THE LAY THERE WAS A BASIS TO DO
IT.

YOU HAD A GROSSLY INADEQUATE
BID AND YOU HAD SOME OTHER
PROBLEM LIKE A MISTAKE.

>> WAIT, ARE YOU SAYING THAT
THERE IS LAUNDRY LIST THAT THE
CASES SAYS, IT IS EXCLUSIVE

LIST, IF YOU DON'T FALL WITHIN
THE PURVIEW OF UP WITH THOSE
ENUMERATED FACTORS AS OUTLINED
IN BROWN AND ARLT, THAT THE
COURT HAS NO EQUITABLE
JURISDICTION?

>> YES, WE'RE SAYING THAT --

>> YOU'RE SAYING THERE'S A
LIMITATION?

>> THERE'S A LIMITATION.

>> WHAT CASE POINTS THAT OUT?

>> THE CASE LAW IS BROWN.

>> BROWN DOES NOT LIMIT IT.

IT SAYS ANY ONE OF THOSE
FACTORS MAY BE, IT IS NOT ON
EXCLUSIVE LIST.

EQUITY IS NEVER EXCLUSIVE.

DEPENDS UPON THE FACTS OF THE
CASE, IS THAT NOT TRUE?

>> YES.

AND THE EQUITABLE JURISDICTION
OR EQUITABLE DISCRETION COMES
IN WHEN YOU HAVE GOT THE

PARAMETERS THAT SORT OF KICK IN
THE EQUITABLE DISCRETION TO
BEGIN WITH.

>> I THINK THE DISTRICT COURTS
PROBABLY MISCONSTRUED A LOT OF
BROWN IN TRYING TO RECONCILE
THESE CASES THAT DIDN'T NEED
RECONCILING, PROBABLY CAME UP
WITH THIS.

I DON'T THINK THEY MEANT TO DO
IT BUT THAT'S WHAT HAPPENED AND
I THINK THAT'S WHAT YOU'RE
LABORING UNDER.

>> FOR THE PAST 80 YEARS THE
ONLY TIME SALES THAT BEEN SET
ASIDE AND UPHOLD ON APPEAL IF
THERE IS GROSSLY INADEQUATE BID
COMBINED WITH SOMETHING ELSE
AND THAT IS WHERE THE
DISCRETION COMES IN.

>> DIDN'T IT HAVE TO DO WITH
THE PARTICULAR FACTS OF THAT
CASE, FACT INTENSIVE?

>> RIGHT.

>> IF THE FACTS WERE THERE, IF
NEW FACTS COME UP YOU SAY MY
HANDS ARE TIED WE CAN'T DO
ANYTHING.

>> WELL, NO.

>> IF IT IS PROPERLY ARGUED AND
THERE IS SUPPORT IN THE RECORD
AND IF THERE'S UNJUST AND
UNFAIR CONCLUSION, AND THOSE
FOUR OR FIVE FACTORS AREN'T SET
OUT ONE OR IN COMBINATION,
NOTHING WILL HAPPEN?

>> WELL, FOR EXAMPLE, MISTAKE
CAN ENCOMPASS ANY NUMBER OF
THINGS OR --

>> THAT IS FACTUAL.

>> RIGHT.

>> LET ME GIVE YOU ONE.

WHAT IF THERE IS, MISTAKE IS
PARTIES INVOLVED ACTUALLY HAVE
THE WRONG LEGAL DESCRIPTION?

SO YOU HAVE A PROPERTY GO,

BEING FORECLOSED ON AND IS

BEING SET ON FORECLOSURE SALE.

IT IS THE WRONG PROPERTY BUT THE

PRICE IS RIGHT.

WHAT HAPPENS UNDER THE LAW?

>> THAT IS SOMETHING INHERENTLY

WRONG WITH THE SALE PROCESS TO

BEGIN WITH.

THAT IS MORE OF A DUE PROCESS

ISSUE AND PEOPLE ARE COMING AND

BIDDING ON SOMETHING THE COURT

HAS NO JURISDICTION.

>> IT IS A PROPERTY THAT SHOULD

NOT HAVE GONE TO FORECLOSURE,

RIGHT?

>> RIGHT.

>> WHY IS THAT EXACTLY THE

SITUATION HERE?

WHERE THE PARTIES HAVE AGREED,

HAVE A CONTRACT, AND THE

PROPERTY WENT TO FORECLOSURE

THAT SHOULD NOT HAVE?

WHY ISN'T IT EXACTLY THE SAME?

>> IT IS NOT THAT THE PROPERTY
DIDN'T GO TO FORECLOSURE.

THEY STARTED, THE PLAINTIFF
STARTED THIS PROCESS --

>> FORECLOSURE SALE.

>> FORECLOSURE SALE.

IT ACTUALLY SHOULD HAVE GONE TO
A FORECLOSURE SALE BECAUSE THE
REINSTATEMENT WASN'T A BASIS TO
CANCEL THE SALE IN THE FIRST
PLACE.

IF THEY HAD GONE IN AND ASKED
THE JUDGE TO CANCEL THE SALE IN
THE FIRST PLACE, THIRD PARTIES
WOULDN'T COME IN AND YOU
WOULDN'T HAVE THESE OTHER
RIGHTS INVOLVED.

BUT --

>> BUT THE FAILURE TO DO SO WAS
A MISTAKE.

>> IT WAS A MISTAKE OF THE
BANK'S, THAT'S TRUE.

>> A MISTAKE OF THE BANK AND

MAYBE A MISTAKE OF THE

HOMEOWNER THAT WASN'T DONE.

THINK IT IS KIND OF A BILATERAL

MISTAKE BETWEEN THEM BECAUSE,

BUT IT'S A MISTAKE.

>> BUT I THINK THE KEY IS IT IS

A MISTAKE BETWEEN THEM.

YOU NEED TO KEEP THE BIDDERS

AND THE PROCESS OUT OF IT, THE

SALE PROCESS OUT OF IT.

OTHERWISE WHAT YOU'RE GOING TO

HAVE IS PEOPLE COMING IN ALL

THE TIME FOR THINGS THAT THE

BIDDERS HAD NOTHING TO DO WITH.

THAT IT DIDN'T HAVE ANYTHING TO

DO WITH THE VALIDITY OF THE

SALE.

IT DIDN'T HAVE ANYTHING TO DO

WITH WHETHER YOU GENERATED A

GOOD BID ON THE SALE BUT, OH,

THIS HAPPENS A LOT IN THE CASE

LAW WHERE THE PLAINTIFF'S

REPRESENTATIVE INTENDED TO GO

AND BID AT THE SALE AND THEN
THERE WAS SOME KIND OF
MISCOMMUNICATION AND THEY
DIDN'T SHOW UP.

>> SO YOU SAY IN ORDER TO SET
IT ASIDE IT HAS TO BE SOMETHING
INVOLVING THE ACTUAL BIDDER?
THAT SEEMS TO BE WHERE YOU'RE
LEADING HERE.

>> NO.

BUT IF YOU HAVE A GROSSLY
INADEQUATE BID, THAT SORT OF
SUGGESTS THERE WAS SOMETHING
WRONG WITH THE BID ITSELF.

>> BUT THEN YOU'RE BACK TO,
THERE HAS GOT TO BE IN ANY OF
THESE, AT LEAST, AS A STARTING
POINT, A GROSSLY INADEQUATE
BID?

AND I'M NOT SURE THAT THAT'S
WHAT THE CASE LAW SAYS.

>> THAT'S THE WAY IT HAS BEEN
INTERPRETED SO FAR.

WITH THE EXCEPTION OF A FEW
CASES WHERE THERE WAS SOME
KIND OF ERROR BY THE COURT,
EVERY CASE INVOLVED, AN
INADEQUATE BID PLUS SOMETHING
ELSE.

>> BUT THE PROBLEM IS UNTIL THE
LAST FEW YEARS WHERE ALL OF
THESE SALES ARE GOING, WHERE
WE'VE GOT SUCH A VOLUME THAT
BANKS UNFORTUNATELY ARE, OR
THEIR ATTORNEYS, ARE DOING
THINGS THAT WERE NEVER DONE
BEFORE, WHICH IS UNFORTUNATELY
TAKING SHORTCUTS TO TRY TO
TRY TO HELP WITH THE VOLUME.
THAT'S WHEN THE COURTS NEED TO
STEP IN TO
PROTECT THE RIGHTS OF THE
HOMEOWNER WHERE THERE IS --,
YOU KNOW, I CAN UNDERSTAND, THIS
IS WHY I ASKED YOU, IF IT WAS A
YEAR LATER AND SOMEONE IS

TRYING TO GET IT UNDER 1.540

THERE IS RELIANCE BY THE

BUYER BUT HERE YOU'RE

AGREEING IT WAS TIMELY FILED.

IT WAS DONE WITHIN 10 DAYS AND,

YOU'RE IN YOUR REBUTTAL.

I'M GOING TO ASK YOU, WHAT IS

IT OTHER THAN THE CASE LAW THAT

SAYS THAT THE JUDGE IS LIMITED

ON THE GROUNDS, TO THE GROUNDS

TO SET ASIDE THE SALE?

IS IT IN THE STATUTE,

IS IT IN A RULE,

THAT SAYS WHAT YOU'RE

ADVOCATING BE DONE?

>> IT IS IN THE CASE LAW AND

THE WAY THAT THE CASE LAW HAS

BEEN --

>> SO THIS COURT HAS BEEN

INTERPRETING CASE LAW AND

COMMON LAW AND DECIDED THAT TO

CLARIFY WHAT HAS BEEN SOMEWHAT

CONFUSING PERHAPS TO THE

APPELLATE COURTS, THAT WHERE
THERE IS A BONA FIDE, AND I
AGREE WITH WHAT JUSTICE CANADY
SAID, A MUTUAL MISTAKE, THAT
THEY THOUGHT THE SALE WASN'T
GOING TO GO THROUGH, THAT
DOESN'T ALSO NEED TO BE
ACCOMPANIED BY A INADEQUATE
SALE PRICE THE COURT
COULD SAY THAT AND
THAT WILL HAVE LASTING IMPACTS
ON THE ENTIRE PROCESS.

AND I'LL --.

>> THANK YOU, YOUR HONORS.

MAY IT PLEASE THE COURT.

MY NAME IS THE JOE WARGO, AND

I'M HERE REPRESENTING CHASE.

MARSHALL IS REPRESENTING THE

BORROWER.

HE HAS BEEN KIND ENOUGH TO

ALLOW ME 15 MINUTES OUT OF THE

20 MINUTES TO SPEAK TO THE

EXTENT THAT IS REQUIRED BY THE

COURT AS WELL.

I'M VERY PREPARED.

THE COURT IS VERY PREPARED.

I'M HERE OF COURSE TO PROVIDE
MY REMARKS AND I'M HAPPY TO GO
THROUGH THEM AS I SAID THE
COURT IS VERY ACTIVE AND BE
HAPPY TO ANSWER ANY QUESTIONS.

>> LET ME ASK YOU THIS.

WERE YOU REQUIRED TO GO BEFORE,
EXCUSE ME, THE TRIAL JUDGE IN
ORDER TO RATIFY OR DO WHATEVER
IT WAS TO THE AGREEMENT YOU HAD
WITH THE BORROWER?

>> YES, YOUR HONOR.

WHAT HAPPENED HERE WAS A MUTUAL
MISTAKE.

THERE WAS SOMETHING THAT SHOULD
HAVE HAPPENED THAT DIDN'T
HAPPEN. IT WAS A MISTAKE.

THE BORROWER AND THE BANK DID
REACH AN AGREEMENT TO PUT OFF
THE SALE.

AND THAT JUST DID NOT GET
COMMUNICATED.

AND IN FACT THE SALE WENT
FORWARD.

THAT WAS A MISTAKE.

MISS COLEMAN IS CORRECT.

THERE IS NOT A CASE DIRECTLY ON
POINT AS OFTEN THIS COURT DOES
FACE.

THE FACTS ARE NEVER EXACTLY
RIGHT ON POINT.

>> WHAT WOULD HAVE HAPPENED, IF
THE SALE HAD BEEN PUT OFF WHAT
WAS GOING TO BE THE NEXT STEP?
THEY WOULD HAVE GONE BACK FOR
THE JUDGE AND TO DO WHAT?

>> THE SALE, IF THE SALE HAD
BEEN PUT OFF, WHICH ACTUALLY IS
ULTIMATELY WHAT DID HAPPEN
HERE.

THE COURT CONSIDERED THE
ARGUMENT AND DID REVERSE THE
FORECLOSURE.

SO HERE THE BORROWER WAS
ALLOWED UPON THE PAYMENT OF THE
CONSIDERATION, WHICH IT IS
UNDISPUTED THAT THE BORROWER
DID PAY, TO CONTINUE TO TRY TO
WORK IT OUT WITH MY
CLIENT TO TRY TO STAY IN THE
HOME, TO TRY TO STAY IN THE
CONTRACT ON TERMS AGREEABLE TO
MY CLIENT.

>> JUST SO I UNDERSTAND, AND
NOW, DOES THE RECORD REFLECT IS
THE BORROWER IN THE HOME?

>> THE RECORD DOES NOT REFLECT
THAT, YOUR HONOR.

>> WHAT IS THE INTERPLAY
BETWEEN STATUTE THAT 45 --
45.031?

>> WE HAVEN'T TALKED ABOUT
THAT.

AND THE RULE AND THE COURT'S
VERY ANCIENT JURISPRUDENCE?

>> YES.

YOUR HONOR, I THINK THE
INTERPLAY IS A HAPPY ONE FOR
THIS COURT BECAUSE IT SHOWS
THAT THE LEGISLATURE HAS PUT IN
SOME RULES THAT SAY, YOU KNOW,
THERE IS A TIME FOR YOU TO
COMPLAIN AND THAT TIME CAN
EXPIRE.

>> WHAT IS THE TIME?

>> HERE UNDER THE RULE YOU'RE
TALKING ABOUT, 1.540.

WE'RE TALK ABOUT A YEAR.

WITH REGARD TO 45.031, WE'RE
TALKING ABOUT 10 DAYS.

>> SO IF THIS, THIS IS WHAT I'M
TRYING TO UNDERSTAND, BECAUSE
WE'RE DEALING WITH A
FORECLOSURE SALE AND CERTAINLY
THERE HAS TO BE STABILITY SO IF
SOMEONE COMES IN AND THEY'RE A
BONA FIDE PURCHASER, AT A PROPER
PRICE, THE MOTION TO SET
IT ASIDE MUST BE FILED WITHIN

THE STATUTORY TIME?

>> THAT'S CORRECT, YOUR HONOR.

>> SO THEY REALLY, SHOULDN'T
OUR RULES REFLECT THIS REALITY
BECAUSE REALLY THE TIME PERIOD
IS A PROCEDURAL ISSUE, NOT A
SUBSTANTIVE ISSUE?

>> YES, YOUR HONOR AND THAT IN
FACT, WE BELIEVE THE RULES DO
REFLECT THAT AND CLARIFICATION
FROM THIS COURT ON THE BROWN
ARLT ISSUE WOULD CLARIFY
THAT AS WELL.

WITHIN THE 10-DAY PERIOD FOLKS
LIKE ARSALI KNOW THERE IS THIS
OPPORTUNITY TO VACATE THE SALE.

>> WELL, YOU'RE NOT SAYING THAT
1.540 HAS NO APPLICATION TO
FORECLOSURE ACTIONS AT ALL, ARE
YOU?

>> I'M NOT SAYING THAT, NOT AT
ALL. NO, IT DOES APPLY.

AND WITH REGARD TO THE 10-DAY

RULE OF 45.031 THAT APPLIES AS
WELL.

AND CERTAINLY --

>> I UNDERSTAND HOW THE TWO, IF
ONE SAYS ONE YEAR AND THE OTHER
SAYS 10 DAYS, HOW IS IT, WOULD
SEEM WE WOULD GET
NARROWER AS FAR AS GROUNDS TO
SET ASIDE AS THE TIME WENT ON.
SO WHERE IS IT, DO WE NEED THAT
CLARIFICATION?

10 DAYS, SORT OF LIKE, CAN'T BE
MUCH RELIANCE.

NOW I UNDERSTAND, AGAIN I'M NOT
TRYING TO MINIMIZE WHAT THE
ARGUMENT IS HERE BUT AS FAR AS
THE EQUITIES IT SO CLEARLY WITH
THE BORROWER THAT THE BANK I
GUESS COULD HAVE SAID TOO BAD
AND I'M GLAD THEY DIDN'T,
RECOGNIZING THEIR MISTAKE.
BUT WHERE IS THE, DO WE
NEED TO MAKE CLEAR THIS IS A

10-DAY RULE, NOT A ONE-YEAR
RULE?

>> NO, I DON'T THINK SO, YOUR
HONOR.

I THINK WHAT WE'RE TALKING
ABOUT AS JUSTICE PERRY
MENTIONED, NO MATTER
HOW HARD WE TRY TO AVOID IT,
AND SQUEEZE OUT EQUITY THE SAND
WILL FALL THROUGH OUR HANDS.
THE FACTS ARE MANY.

ONCE WE FIGURE OUT THE FACTS
ANOTHER FACT COMES UP.
THE COURT NEEDS TO RESPECTIVELY
I COURTS SITTING IN EQUITY ARE
ALLOWED TO DO EQUITY.

>> WHAT ABOUT THE SITUATION
WHERE THE BORROWER SAYS, OH, I
MEANT TO GO TO THE SALE AND I
MISMARKED THE DATE?
THAT'S A MISTAKE.
HOW DO YOU DISTINCT TO ME,
THAT'S DIFFERENCE BUT YOU

STILL, YOU KNOW, YOU SAY
EQUITABLY, JEEZ, WANT THAT
PERSON TO GET THEIR HOME BACK.
SO WHAT'S THE, THIS CASE CRIES
OUT FOR THE RELIEF THAT THE
TRIAL COURT AND THE FOURTH
DISTRICT GAVE BUT IT IS NOT
JUST ANY MISTAKE, IS IT?

>> NO, IT IS NOT JUST ANY
MISTAKE.

YOUR HONOR, YOU HIT IT ON THE
HEAD WHEN YOU'RE SUGGESTING
FACTS.

THE ANSWER IS I'M LUCKY HERE I
DON'T GET TO BE A TRIAL COURT
JUDGE, THEY HAVE A VERY HARD
JOB.

THEY GET TO WEIGH ALL THOSE
FACTS.

YOU WERE ON THE CASE IN THE
ALBERTS CASE WHERE THERE WERE
VERY HARD FACTS WHEN YOU WERE
IN THE DCA AND IT CAME OUT ONE

WAY.

BUT THAT COURT SPECIFICALLY
HELD, YOU KNOW, WE HAVE
ABUSE OF DISCRETION STANDARDS
THAT ARE IN PLACE AND SOMETIMES
FACTS THAT LOOK SOMEWHAT
SIMILAR BASED ON A STANDARD OF
REVIEW MAY COME OUT
DIFFERENTLY.

>> EXCEPT THAT IT DOES SEEM
THAT AGAIN, WE'RE TALKING ABOUT
THE STABILITY OF THE REAL
ESTATE MARKET -- EXPECTATIONS.

I'M CERTAINLY A BELIEVER IN
TRIAL COURT DISCRETION --

[INAUDIBLE]

RULES HERE, BUT IS IT, IS IT
CORRECT THAT UP TILL NOW PEOPLE
HAVE ASSUMED THAT YOU HAVE TO
ALSO SHOW INADEQUATE SALES
PRICE SET ASIDE A SALE?

>>> YOUR HONOR, THE CASE LAW
HAS BEEN IN CONFLICT.

I'M GOING TO PRONOUNCE IT

CORRECTLY I HOPE.

THE INGORVIA CASE IN 2002

ATTEMPTED TO CERTIFY THIS VERY

QUESTION TO THE COURT.

THEY WERE WRESTLING WITH THE

QUESTION WHETHER ARLT CONFLICTS

WITH BROWN.

THERE WAS ISSUES OF INADEQUATE

BID PRICE.

ARSALI AND THOSE CASES IN THIS

CASE IN PARTICULAR WE'RE

DEALING WITH A PURE QUESTION OF

HARM AND PREJUDICE FLOWING TO

THE BORROWER SPECIFICALLY IN

THE CASE WHERE THERE IS ALSO NO

ALLEGATION OF AN INADEQUATE BID

PRICE.

SO THIS ALSO GOES FOR OUR

NOTION HERE WE'RE SUGGESTING

THAT, IN APPELLANT'S BRIEF THEY

DISCUSSED HOW SO MANY BAD

THINGS CAN HAPPEN AND IF THAT

THE FLOODGATES ARE GOING TO
OPEN, BUT, YOUR HONOR, THIS
DOES NOT HAPPEN THAT OFTEN.

>> I HOPE NOT.

>> WHAT WE'RE HERE FOR TRULY IS
FOR THE COURT TO RECONFIRM THAT
THESE TRIAL COURTS ARE SITTING
IN EQUITY.

>> BUT IF YOU SAY THAT
DISCRETION IS BROAD, COULD THE
TRIAL COURT IN THIS CASE HAVE
SAID, I'M NOT SETTING IT ASIDE
AND THAT HAVE BEEN WITHIN
THE TRIAL COURT'S DISCRETION?
OR IS THIS SOMETHING THAT IS
REALLY, THERE SHOULDN'T BE ANY
DISCRETION?

IF WITHIN 10 DAYS SOMEBODY THE
BANK AND THE BORROWER HAD MEANT
TO CANCEL THE SALE AND THROUGH
NEGLECT DID NOT, CAN A TRIAL
COURT SAY, TOO BAD AND NOT
SET IT ASIDE?

>> YOUR HONOR, THAT WOULD BE
WITHIN A TRIAL COURT'S
DISCRETION.

>> THAT CAN'T BE.

IN OTHER WORDS, YOU CAN'T HAVE
IN MY VIEW, BECAUSE IT'S, TOO
MUCH IS AT STAKE THAT THIS
SITUATION, AGAIN, NOT ANOTHER
SITUATION, SAME EXACT FACTS,
AND NOT DISCRETION, IF YOU LOOK
AT CANAKARIS, TALKING ABOUT
PRINCIPLES THAT WERE GUIDING.
TO SAY IT IS ALL WITHIN THE
TRIAL COURT'S DISCRETION,
CERTAINLY IF THERE ARE NEW
FACTS OF THESE FACTS, THIS IS
AND SHOULD BE THE CASE LAW,
THIS HAPPENS.

IS THE APPROPRIATE REMEDY IS
TO TIMELY SET IT ASIDE, THE
SALE?

>> YOUR HONOR, SHOULD THIS
COURT HANDLE THESE FACTS

DIRECTLY IN ITS OPINION AND IN
FACT SAY ON THESE FACTS THIS
COURT BELIEVES IT WOULD HAVE
BEEN ABUSE OF DISCRETION, FOR
THEM TO HOLD OTHERWISE I SUSPECT
THAT WOULD BE QUITE COMPELLING
SHOULD THESE FACTS ARISE AGAIN.
BUT I CAN'T GO SO FAR AS TO
SUGGEST WE SHOULD SHACKLE THE
TRIAL COURT AND SAY WE YOU
DON'T HAVE ANY DISCRETION IN
THIS.

>> WHAT WOULD GUIDE THE
DISCRETION DIFFERENTLY?
THAT IS WHAT I'M TRYING TO,
WHAT IS IT THAT THE JUDGE GOT
UP, DIDN'T HAVE BREAKFAST
THAT MORNING? WHAT IS IT THAT
WOULD COMPEL OR REQUIRE GIVE
THAT JUDGE THAT LEEWAY?
LIFE AND DEATH FOR THAT
HOMEOWNER, THAT HOME, SAY,
WOULDN'T SET IT ASIDE?

>> YOUR HONOR, YOU'RE SINGING
MY SONG HERE.

I TOTALLY AGREE WITH WHAT
YOU'RE SAYING.

I WOULD HOLD, IT WOULD BE AN
ABUSE OF DISCRETION SHOULD I BE
A JUDGE REVIEWING THAT.

HOWEVER, I TAKE IT AS I FIND
THEM AND HERE WE ARE DEALING
WITH A FORECLOSURE COURT
SITTING IN EQUITY AND I THINK
THAT IS ALWAYS WHERE WE COME
BACK HERE.

AND AT THAT LEVEL, WHEN WE
START TO MAKE SPECIAL RULES
FOUR SPECIAL FACTS IT DOES
START TO --

>> TELL ME AGAIN.

MAYBE YOU HAVE OR HAVEN'T.

IS IT DIFFERENT, ARE THE RULES
DIFFERENT WITHIN THE 10-DAY
PERIOD OF THE STATUTE?

>> [INAUDIBLE].

>> 1.540?

>> YOUR HONOR, I BELIEVE IT IS
HARDER AS TIME GOES ON AS YOU
EXPECT TO ACTUALLY UNDO A SALE.

>> WHERE IS THAT IN THE, IN ANY
OF THE CASE LAW?

THAT THE TIME PERIOD, BECAUSE
TO ME, IT WOULD BE, AGAIN, IF
IT IS WITHIN THE YEAR, TO SAY
SOMETHING THAT THE BUYER, THAT
THE PURCHASER, THE BONA FIDE
PURCHASER DID THAT IS,
THEREFORE, IT'S EQUITABLE IN
THAT SITUATION.

WOULDN'T THAT BE SORT OF WHAT
MAY BE OCCURRING IN OTHER
WORDS, I GET CLOSER OR AFTER
THE 10 DAYS, NOW YOU'RE REALLY
TALKING ABOUT IT BEING HARDER
TO SET ASIDE A SALE?

>> THAT IS CORRECT.

>> BUT THERE ARE NO CASES?

>> I CAN NOT PULL ANY UP THAT

DISCUSS --

>> I'M CONCERNED WITH THIS

INTERMINGLING OF 1.540 WITH

BOTH THE CONCEPT OF FINAL

JUDGMENTS AND THE SALE?

DOES 1.540 HAVE LANGUAGE THAT

CAN BE INTERPRETED OTHER THAN

FINAL JUDGMENT WITHIN ONE YEAR

OF A FINAL JUDGMENT.

>> I DON'T BELIEVE, SO, YOUR

HONOR.

>> IN THIS CASE WHAT IS THE

FINAL JUDGMENT?

IT IS NOT THE JUDICIAL SALE,

ISN'T IT?

IS THAT WHAT WE'RE GOING TO BE

HAVE TO BE SAYING?

>> NO, I DON'T BELIEVE SO, YOUR

HONOR.

>> SO OUR YEAR IS RUNS FROM THE

FINAL JUDGEMENT OF FORECLOSURE,

CORRECT.

>> CORRECT.

>> SO WE'RE GOING TO BE IN REAL PROBLEMS IF WE START COMMINGLING BOTH OF THESE CONCEPTS, 10 DAYS AND A YEAR SEEMS TO ME.

>> I DON'T KNOW THAT THEY NEED TO BE COMMINGLED IS MY POINT.

>> OKAY.

>> YES, YOUR HONOR.

>> SO ARE THERE, IF THE, SO THE FINAL, EVEN IF A SALE TAKES PLACE, THERE ARE CASES THAT TALK ABOUT SETTING ASIDE A FINAL JUDGMENT OF FORECLOSURE AFTER THE SALE WITHIN A YEAR OF FORECLOSURE?

>> YOUR HONOR, I CAN NOT ANSWER THAT DIRECTLY.

THAT WAS NOT THE SUBJECT OF THIS.

I BELIEVE THERE ARE HOWEVER, YES.

IN THIS PARTICULAR CASE I

THINK, AS THE COURT HAS ALREADY
INDICATED, YOU COULDN'T IMAGINE
A CASE WITH MORE COMPELLING
EQUITIES AS FAR AS ENFORCING A,
AN AGREEMENT.

BETWEEN A LENDER AND A BORROWER
HERE.

EVERYONE AGREES ON THIS SIDE OF
THE TABLE, IF YOU WILL, THAT
THIS IS SOMETHING THAT WAS A
MISTAKE AND THAT SHOULD HAVE
HAPPENED THE RIGHT WAY.

AT THIS POINT WE WERE IN FRONT
OF THE CORRECT COURT THAT KNEW
THE CORRECT FACTS AND WAS IN
THE BEST POSITION TO MAKE THE
CORRECT CALL.

WITH REGARD TO THE EFFICIENCIES
ASSOCIATED WITH FIXING IT RIGHT
THEN, RIGHT NOW, IN FRONT OF
THE RIGHT COURT, THAT IS
SOMETHING THAT THAT THIS COURT
SHOULD ENDORSE AS FAR AS WHEN

MISTAKES ARE FIXED, HOW FAST
THEY'RE FIXED AND IN WHAT
COURT.

AND FINALLY AS JUSTICE
PARIENTE, YOU WERE REFERRING TO
OR JUSTICE QUINCE, THIS IS NOW
HAPPENING ALL THE TIME AS FAR
AS THE UNPRECEDENTED AMOUNT OF
CASE LAW WE HAVE, THIS BEING,
BORROWERS ARE WORKING WITH
BANKS AT FURIOUS PACES, TRYING
TO MEET DEADLINES, TRYING TO
PRESERVE CONTRACTS.

TRYING TO STAY IN HOMES.

SO WITH REGARD TO WHAT POLICY
CONSIDERATIONS SHOULD BE MADE
HERE, DEADLINES ARE BEING
PUSHED TO THEIR LIMIT IN THIS
ECONOMIC ENVIRONMENT.

BANKS ARE WORKING VERY HARD.

BORROWERS ARE WORKING VERY
HARD.

>> SHOULD THERE BE A DIFFERENCE

BETWEEN A CASE IN WHICH THE
PARTIES SAY, WE'RE WORKING AT
IT, AND ONE IN WHICH YOU GO
BEFORE THE COURT AND SAY, WE
HAVE, WE HAVE WORKED IT OUT, WE
HAVE AN AGREEMENT?

IS THERE A DIFFERENCE?

>> THERE IS A DIFFERENCE

PRACTICALLY SPEAKING.

THESE RULES ARE MORE AT THE
VERY LOCAL LEVEL, THESE RULES
HAVE BEEN CHANGING RECENTLY AS
THE CASELOAD HAS BEEN WORKING
OUT SOMEWHAT.

BUT COURTS CAN EXERCISE
THEIR DISCRETION AND PUSH A
SALE BECAUSE THE PARTIES ARE
WORKING ON IT.

SOMETIMES TRIAL COURTS ARE NOT
WILLING TO DO THAT.

THAT IS UP TO HOW THEY'RE
RUNNING --

>> AS WE LOOK TO STABILITY IN

THE LAW.

STABILITY IN ALL THINGS RELATED

TO THAT, THAT POSES A CONCERN

TO ME BECAUSE THIS CASE IS

ONE WHICH WE'RE WORKING ON IT.

WE DON'T HAVE AN AGREEMENT.

I PAID SOME MONEY BUT WE STILL

HAVEN'T AGREED TO THIS.

AND OTHER CASES IN WHICH IT HAS

BEEN, I MEAN TO THE POINT THAT

IT IS, I GUESS, UNLESS YOU

HAVE TO HAVE AN ACTUAL CASH

PAYMENT, IS IN THE NATURE OF A

REDEMPTION, THAT IS, I HAVE

REDEEMED MY, I BORROWED THE

MONEY AGAIN.

>> YOUR HONOR IS REFERRING TO I

BELIEVE FULLY PAYING OFF THE

MORTGAGE AND VERSUS WORKING

SOMETHING OUT AND CONTINUING

AND THE REALITY TODAY IS SO

OFTEN PARTIES, BORROWERS, ARE

WORKING OUT WHAT PAYMENT DO

THEY NEED TO MAKE IN ORDER TO
STAY IN THEIR HOME THAT IS
ACCEPTABLE TO THE LENDER.

IN THIS CASE THAT IS EXACTLY
WHAT HAPPENED.

THOSE FACTS ARE NOT IN DISPUTE
SO --

>> I'M NOT SUGGESTING YOU DON'T
HAVE A VERY SYMPATHETIC CASE.
I'M NOT SUGGESTING THAT AT ALL.

>> AND THEN IF IT COMES DOWN TO
WHETHER A COURT IS GOING TO
SAY, UNLESS YOU EXERCISE
REDEMPTION RIGHTS OR REINSTATE
THE LOAN IN FULL, YOU'RE OUT OF
LUCK AND THAT PRACTICALLY
SPEAKING CAN NOT BE THE ANSWER
BECAUSE THERE ARE TOO MANY
BORROWERS OUT THERE WHO ARE
ABLE TO GET TOGETHER A CERTAIN
AMOUNT OF MONEY TO SATISFY
THEIR LENDER THAT THEY CAN STAY
IN THE MORTGAGE FOR THIS PERIOD

OF TIME.

THAT IS THE REALITY.

>> AS AN OPERATION, THAT IS
REALITY.

IN A OPERATIONAL MATTER THEN,
THIS MORTGAGE FORECLOSURE KIND
OF CRISIS THAT WE'RE FACING IN
THE COURT SYSTEM MAY GO ON FOR,
ANY NUMBER OF YEARS BECAUSE
WE'RE NOT GOING TO REALLY
RESOLVE IT.

ALL WE'RE GOING TO DO IS PUSH
IT DOWN THE ROAD A BIT.

>> IN THE MEANTIME THESE
MORTGAGES ARE GETTING PAID DOWN
OR PAID OFF.

SO I LIKEN THIS TO NOT A VERY
HAPPY ANALOGY BUT TO A SNAKE
SWALLOWING A RAT.

THERE ARE, THERE ARE SO MANY
THINGS THAT ARE HAPPENING NOW
THAT ARE GOING TO BE DIGESTED
THROUGH THE COURT SYSTEM BUT

RIGHT NOW, THIS IS WHAT IS
GOING ON AND ULTIMATELY THESE
MORTGAGES ARE GOING TO GET PAID
OFF OR LOAN MODS ARE GOING TO
BE DONE OR HOUSES ULTIMATELY
TAKEN AND FORECLOSED IN CASES
THAT CAN'T WORK OUT BUT I THINK
THE COURT SYSTEM HAS DONE A
TREMENDOUS JOB.

I KNOW THE TASK FORCE THIS
COURT PUT TOGETHER HAS BEEN
HELPFUL IN THAT IN WORKING
THESE ISSUES THROUGH AND HERE,
IN THIS PARTICULAR CASE, TO
CREATE A RULE THAT THEN SUCKS
EQUITY OUT OF A TRIAL COURT IN
A TIME WHEN IT IS MOST NEEDED
WOULD WE THINK BE ANOMALOUS.
I HAVE AGREED TO MARSHALL TAKING
THE LAST BIT.

SORRY FOR INVITING -- INVADING
TWO MINUTES OF HIS TIME.

THANK YOU, YOUR HONOR.

>> OBVIOUSLY I CONCUR WITH
EVERYTHING MR. WARGO HAS SAID.
>> DO ME A FAVOR.
WHERE IN PARTICULAR, PART OF 45
WAS YOU TRAVELING UNDER?
IS THERE A SPECIFIC --
>> JUST THAT WE HAVE A 10-DAY
WINDOW IN WHICH --
>> WHICH PART OF THE 45 DOES
THAT --
>> UNDER 031, SUBSECTION 5.
>> AND THAT IS, IT SAYS IF
OBJECTIONS ARE FILED WITHIN 10
DAYS.
SO THE CLERK SHALL FILE.
SO THAT'S ALL, THAT'S IT?
THAT'S THE --
>> THAT WAS, THAT IS WHAT GOT
US INTO THE DOOR TO BE ABLE TO
UTILIZE THE BROWN CRITERIA TO
SAY THAT, NOW THAT THIS IS, WE
HAVE THIS WINDOW OF OPPORTUNITY
TO COME INTO OBJECT TO THE

SALE.

THE BASIS FOR OUR OBJECTION IS
THE CRITERIA, CRITERIA SET
FORTH IN BROWN WHICH ALLOWS US
IF THERE WAS A MISTAKE TO BRING
IT TO THE COURT'S ATTENTION FOR
THE COURT TO UTILIZE ITS
EQUITABLE POWERS.

>> YOU HAVE TO COBBLE TOGETHER
SEVERAL DIFFERENT, A STATUTE
WITH A VERY OLD CASE AND NOT,
THE RULE?

NOT RULE 1.540?

>> RIGHT.

WE WENT UNDER THE STATUTE
BECAUSE I DON'T KNOW IF THERE
IS ANY CASE LAW THAT TALKS
ABOUT 1.540 WITH REGARD TO
SALES THEMSELVES AS JUSTICE
LEWIS POINTED OUT.

MOST OF THE CASE LAW ALWAYS
TALKS ABOUT WHETHER THEY DID IT
WITHIN THE WINDOW BEFORE THE

CERTIFICATE OF TITLE WAS ISSUED

AFTER THE CERTIFICATE OF SALE.

SO --

>> DOESN'T THE RULE ITSELF

CONTEMPLATE, DOESN'T THE

LANGUAGE IN THE RULE

CONTEMPLATE IF THERE IS A

MISTAKE OR FRAUD OR I CAN'T

REMEMBER WHAT THOSE FIRST THREE

ITEMS ARE, EVEN IF THERE IS A

SALE THAT YOU, YOU MOVE TO SET

IT ASIDE WITHIN THAT YEAR

PERIOD?

>> I DON'T KNOW IF IT

SPECIFICALLY SAYS THE WORD SALE

IN THE RULE.

I DON'T RECALL SEEING THAT.

I KNOW IT APPLIES TO ORDERS AND

JUDGMENTS.

>> DECREE.

>> DECREE, ORDER OR PROCEEDING.

PRETTY BROAD.

>> RIGHT.

SO, YOU KNOW, FROM A BORROWER'S
STANDPOINT IN A PERFECT WORLD
IF SOMETHING CAME UP SOON, I
THINK THERE IS STILL GOING TO
BE A DUE DILIGENCE FACTOR, ET
CETERA, THAT A COURT CAN WEIGH.

>> SO IF THIS HAPPENED ON THE
20th DAY, WHAT WOULD YOU HAVE
DONE?

I MEAN IF THIS HAD NOT COME TO
ANYONE'S ATTENTION FOR 20 DAYS
WHAT WOULD YOU HAVE FILED?

>> I WOULD, PROCEDURALLY I
WOULD HAVE TRIED UNDER 1.540-B
BECAUSE I WOULD BE OUT OF LUCK
UNDER 45.031 BECAUSE THE
CERTIFICATE OF TITLE WOULD HAVE
ALREADY BEEN ISSUED.

I DO BELIEVE THERE HAS BEEN
SOME CASE LAW WHERE THEY HAVE
GONE BACK AND SAID IT WAS
UNTIMELY FILED BUT THEY STILL
CONSIDERED IT BUT THEY DIDN'T

CITE UNDER WHAT AUTHORITY.

>> SO THE CERTIFICATE WOULD NOT
HAVE BEEN FILED UNTIL AFTER THE
10th DAY, CORRECT BASICALLY.

>> RIGHT.

>> BUT YOU WOULD AGREE THAT
EQUITIES, JUST SOMEWHAT, ONCE
THERE IS CERTIFICATE OF TITLE
ISSUED, THAT'S A MILESTONE
THERE WHERE, YOU KNOW, WE NEED
TO HAVE A, SEEMS TO ME, A MUCH
MORE COMPELLING REASON TO SET
ASIDE A CERTIFICATE OF TITLE
THAT'S BEEN ISSUED THAN WE
WOULD TO SET ASIDE JUST A
CERTIFICATE OF SALE?

>> I AGREE WITH THAT BECAUSE
THAT IS A MEMORIALIZATION FROM
THE CLERK THAT WE'VE HAD
EVERYTHING THAT WE, THAT THE
STATUTE HAS BEEN COMPLIED WITH.
THERE HAS BEEN A VALID SALE
PURSUANT TO THE STATUTE AND, I

AGREE WITH YOU, IT DOES CHANGE
THE EQUITIES A LITTLE BIT AND
THAT IS SOMETHING THAT --

>> CHANGES A LOT.

>> THAT IS NOT YOUR PROBLEM.

>> NO. THAT IS --

>> YOU GOT IN --

>> DON'T YOU THINK WE DO NEED
TO MAKE CLEAR, THIS WAS,
WHATEVER THE INTERACTION IS,
THAT IT IS WITHIN THE 10 DAYS
OF THE STATUTE AND THE EQUITIES
ARE VERY STRONG?

I MEAN IT IS JUST, AGAIN, I DO
AGREE, WE DON'T WANT TO OPEN
THIS TO SAY SOMEBODY COULD COME
IN 20 DAYS, 30 DAYS, SIX MONTHS
AND JUST GO, I FORGOT, OR
WHATEVER IT MIGHT BE?

>> NO, I WOULD AGREE WITH THAT.

THAT YOU HAVE TO HAVE SOME, IT
DEFINITELY JUST CHANGES THE
SCOPE OF THE EQUITIES IN THE

CASE ONCE THE CERTIFICATE OF
THE TITLE GETS ISSUED BECAUSE
THE PURCHASER DOES HAVE TO HAVE
SOMETHING TO RELY UPON AS DOES
THE COURT SYSTEM ITSELF.

>> THANK YOU FOR YOUR ARGUMENT.

>> THANK YOU.

>> REBUTTAL?

>> ONE THING TO KEEP IN MIND
WITH REGARD TO THE CONCERNS
ABOUT EQUITABLE DISCRETION IS,
IT'S NEVER BEEN JUST ENOUGH
THAT IT SEEMS UNFAIR.
THAT WOULDN'T HAVE BEEN ENOUGH
TO AVOID THE FORECLOSURE
JUDGEMENT IN THE FIRST PLACE.
IT SHOULDN'T BE ENOUGH TO SET
ASIDE THE SALE.

AGAIN, THERE WAS PLENTY OF TIME
TO TRY TO DO SOMETHING THAT THE
COURTS TASK FORCE HAS NOTED THE
PROBLEMS THAT OCCUR WHEN THESE
THINGS ARE RESCHEDULED AND SET

ASIDE AND IT IS TAKING UP
ENORMOUS AMOUNTS OF JUDICIAL
RESOURCES.

NOW WHAT YOU'RE DOING, IT IS,
IF YOU ALLOW THIS, YOU'RE
CREATING AN ENTIRE SECOND-TIER
OF LITIGATION AFTER THE
JUDGEMENT, AFTER THE SALE, WHEN
THESE CASES SHOULD REALLY BE
ALMOST OVER AND --

>> WELL, THEY ARE ALMOST OVER.
THEY'RE NOT QUITE OVER.

>> THEY'RE NOT QUITE OVER BUT,
DEFEND, THERE WAS -- AGAIN,
THERE WAS UNTIL NOW A LIMITED
BASIS TO SET ASIDE THESE SALES
AND EVEN THOUGH THIS PARTICULAR
CASE MIGHT CRY OUT IN TERMS OF
THE BANK SAID THEY WERE GOING
TO DO SOMETHING THEY DIDN'T DO
IF THE COURT MAKES A NEW RULE
NOW WHICH IT IS GOING TO DO IF
IT SAYS IS ENOUGH, A MISTAKE IS

ENOUGH, REGARDLESS --

>> THIS MISTAKE.

NOT ANY MISTAKE.

>> I GUESS IF YOU SAY THIS

MISTAKE, BUT IF YOU SAY

MISTAKES ARE ENOUGH AND WE'LL

HAVE TO BE TIED TO WHETHER THE

SALE WAS PROPERLY CONDUCTED AND

IT DOESN'T HAVE TO BE TIED TO A

GROSS INADEQUACY.

YOU WILL OPEN IT UP TO HUGE

AMOUNTS OF EXCUSES.

>> INTEREST --

>> WHY WE WANT YOU, JUDGE TO

EXERCISE YOUR DISCRETION,

LISTEN TO OUR PLEA WHY THIS

PARTICULAR CASE SHOULD GET --

>> DESPITE WHAT MAY HAVE

HAPPENED IT SEEMS OTHER CASES

WE'VE SAID THAT.

IT SEEMS IN BROWN IT SAYS --

>> ON A PROPER SHOWING.

>> WHAT IS SAYS TO ME, ANY OF

THESE ARE GROUNDS FOR SETTING
ASIDE, AND BROWN DOES NOT SAY
YOU HAVE TO HAVE ANY
PARTICULAR ONE.

WHILE CASES FURTHER DOWN THE
LINE THAT MAY NOT HAVE COME
FROM THIS COURT SAID THAT OR
THEY MAY HAVE RULED IN THAT
MANNER DOESN'T NECESSARILY MEAN
WE EVER SAID, YOU HAVE TO HAVE
THE GROSS INADEQUACY AS ONE
PRONG OF IT.

>> WELL THAT --

>> BROWN SAID ANY OF THESE
THINGS COULD BE DONE, COULD HAVE
BEEN AN INADEQUATE BID.

>> THAT IS CERTAINLY TRUE.
BUT DOESN'T CERTAINLY SAY THE
INADEQUATE BID HAD TO BE COUPLED
WITH FRAUD OR MISTAKE OR
COUPLED WITH ANY OF THE OTHER
GROUND THAT WERE LISTED THERE?

>> ACTUALLY IT DID BECAUSE IT

WAS A CITING WELL-ESTABLISHED
LAW AT THE TIME, LAW FROM THE
1800'S SAID IF YOU HAVE
INADEQUATE BID THAT IS NOT
ENOUGH UNLESS IT WAS GROSSLY
INADEQUATE AND COUPLED --

>> THAT IS NOT BEFORE US.

THAT ISSUE, THAT MAY BE GOOD
LAW, IF YOU'RE ALLEGING IN
INADEQUATE BID PRICE, THEN IT
DOES NEED TO BE COUPLED.

BUT WHEN YOU HAVE GOT SOMETHING
ELSE, THAT IS COMPELLING EQUITY
YOU GO BACK TO THE IDEA THAT IT
IS TIMELY AND IT IS A
COMPELLING EQUITABLE REASON TO
SET IT ASIDE.

BUT ANYWAY, YOU ARE OUT OF YOUR
TIME.

>> THANK YOU, YOUR HONOR.

>> THE NEXT CASE IS NORTH

CARILLON VERSUS C RC 603