

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.
>> THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET IS
SANTIAGO VERSUS MAUNA LOA
INVESTMENTS.
COUNSEL?
>> THANK YOU VERY MUCH, YOUR
HONOR.
MAY IT PLEASE THE COURT, MY NAME
IS CELENE HUMPHRIES.
I REPRESENT THE PETITIONER HERE
TODAY, ANAMARIA SANTIAGO.
THE CONTEXT HERE IS REVIEWING A
JUDGMENT ENTERED UPON A DEFAULT.
THE ISSUES CAN REALLY BE DIVIDED
INTO TWO MAIN CATEGORIES.
ONE IS THE LEGAL QUESTION, THAT
THE THIRD DISTRICT COURT OF
APPEALS REVIEWED.
FROM A LEGAL PERSPECTIVE, WAS
THE DEFAULT PROPER?
OR, AS THE THIRD DISTRICT
CONCLUDED, WAS IT IMPROPER
BECAUSE IT WAS PREMISED ON A
COMPLAINT THAT DID NOT ESTABLISH
A CAUSE OF ACTION?
THE OTHER PERSPECTIVE IS THE ONE
TRADITIONALLY ENGAGED IN WHEN
REVIEWING A TRIAL COURT'S
DECISION NOT TO VACATE A
DEFAULT, THE ANALYSIS OF WHETHER
OR NOT THE MOVANT HAS
ESTABLISHED THE THREE FACTORS
FOR OBTAINING A VACATION OF A
DEFAULT.
>> JUST THE ISSUE OF WHETHER IT
STATES A CAUSE OF ACTION, SEEMS
-- I THOUGHT THIS SEEMED MORE

LIKE SOMETHING WHERE YOUR CLIENT MAY HAVE MISREPRESENTED WHO THE OWNER WAS.

HOW IS THAT FAILURE TO STATE A CAUSE OF ACTION?

I MEAN, THAT'S SORT OF A FRIENDLY QUESTION.

>> IT IS A FRIENDLY QUESTION AND THAT WAS GOING TO BE RIGHT WHERE I STARTED.

BEFORE ENGAGING IN EITHER OF THAT ANALYSIS, THAT WAS THE ARGUMENT PORTRAYED OR MADE OR THE THEME MADE BY THE DEFENDANT TO THE THIRD DISTRICT COURT OF APPEAL.

THAT ARGUMENT WAS VERY POWERFUL AT THE THIRD DISTRICT COURT OF APPEAL.

IF YOU WERE TO WATCH THE ORAL ARGUMENT, THEY WERE VERY CONCERNED WITH THIS ARGUMENT, BASICALLY THINKING THAT A FRAUD HAD BEEN PERPETUATED UPON THE COURT.

>> THAT'S WHY I SAY, IF THE FRAUD -- WE'RE NOT HERE ON WHAT SEEMS LIKE THE POSSIBLE CAUSE OR THE CLAIM, WHICH IS THAT THERE WAS AN INTENTIONAL MISREPRESENTATION.

WAS THERE EVER A HEARING ON THAT ISSUE?

>> NO, THERE WAS NOT.

AND THAT WAS WHAT I WAS GOING TO START WITH, BECAUSE, FRANKLY, THE REASON WHY I MENTIONED THE ORAL ARGUMENT AT THE THIRD DISTRICT, IF YOU WERE TO WATCH THAT, THAT IS THE ISSUE THAT THEY FOCUSED ON AND I CAN TELL YOU IN 25 YEARS OF PRACTICING AS AN APPELLATE LAWYER, I'VE NEVER EXPERIENCED SUCH A HOSTILE REACTION.

>> TO ME THE PROBLEM HERE IS THAT AN ALLEGATION MADE IN THE COMPLAINT NOW SEEMS TO BE UNTRUE, CORRECT?

AND SO ANYTIME -- BUT IF YOU

TAKE THE COMPLAINT AND ASSUME THAT THE ALLEGATION THAT IS NOW PROVEN UNTRUE IS TRUE, IT WOULD STATE A CAUSE OF ACTION, WOULDN'T IT?

>> I NEED TO STEP BACK A MOMENT AND DO A BETTER JOB OF ADDRESSING THIS, BECAUSE I DON'T WANT IT TO BE CONFUSED AGAIN.

>> WELL, TO HER QUESTION, THE ANSWER IS YES, RIGHT?

>> WELL, NOT QUITE, BECAUSE FIRST OF ALL SHE SAID THAT A PART OF THE COMPLAINT WAS DISPROVED.

THAT'S NOT EVEN TRUE.

>> WELL, ASSUMING THAT -- THEY ALLEGED IN THE COMPLAINT THAT THE APPELLEE HERE OWNED THE PROPERTY OR CONTROLLED THE PROPERTY.

THERE WERE ALTERNATIVE ALLEGATIONS.

>> RIGHT.

>> BUT IT'S NOW BEEN DEMONSTRATED THAT THEY DID NOT OWN THE PROPERTY AS OF THAT DATE, CORRECT?

>> I DISAGREE.

AND THAT'S WHERE I WAS FOLLOWING UP ON HIM ANSWERING YOUR QUESTION NO, MA'AM.

THEY TOOK A COMPLAINT THAT WAS FILED IN ANOTHER CAUSE OF ACTION THAT ATTACHED A DEED AND THEY SAID, THIS DEED PROVES THAT AT THE TIME OF THE INCIDENT IN JULY OF 2008 THIS DEFENDANT DID NOT OWN THE PROPERTY.

ONE OF MY RESPONSES IN BRIEFING IS THAT WAS NOT SUFFICIENTLY PROVEN.

THERE WAS NEVER AN EVIDENTIARY HEARING ON THIS.

>> HOW COULD A DEED JUST FLOATING THERE POSSIBLY PROVE ANYTHING OTHER THAN THE FACT THAT THE DEED WAS EXECUTED? PRIMA FACIE PROOF OF THAT. BUT THE FACT THAT THE DEED HAS

BEEN EXECUTED DOESN'T TELL YOU
WHAT THE STATUS OF TITLE TO THE
PROPERTY WAS AT ANY TIME.

YOU'VE GOT TO KNOW THE WHOLE
HISTORY OF THE TITLE.

>> THAT'S IT.

THAT'S IT.

AND I'VE GOT A LOT OF STUFF I'D
LIKE TO TELL YOU.

REMEMBER, THIS WAS A VERY LONG
PROCESS AT THE TRIAL COURT,
ABOUT EIGHT TO TEN MONTHS, AFTER
NUMEROUS MOTIONS, DEFENDANT
RAISED THIS ARGUMENT FOR THE
FIRST TIME.

THE TRIAL COURT DID NOT EVEN
ALLOW THAT EVIDENTIARY HEARING
TO HAPPEN BECAUSE THE TRIAL
COURT HAD REPEATEDLY TOLD THE
DEFENDANT STOP FILING SUCCESSIVE
MOTIONS TO DEFAULT.

>> DID THE DEFENDANT EVER -- THE
FIRST TIME THAT HE HAD A CHANCE
TO SAY THIS COMPLAINT -- NOT
THAT IT DOESN'T STATE A CAUSE OF
ACTION, THAT IT'S NOT TRUE.

I DIDN'T OWN IT.

I DIDN'T MAINTAIN IT.

I HAVE EXCUSABLE NEGLECT.

I WANT TO SET ASIDE THE DEFAULT.

THAT'S WHAT WE WOULD NORMALLY
EXPECT TO HAVE HAPPEN.

>> RIGHT.

>> ONLY THE DEFENDANT KNOWS.

>> RIGHT.

>> AND HE NEVER AT THE BEGINNING
OF THE FIRST TIME HE FILED A
MOTION TO SET ASIDE THE DEFAULT
SAID, NO, I DO NOT OWN, I NEVER
OWNED OR I ONLY OWNED IT AFTER
THE SLIP -- I MEAN, THIS IS A
SLIP AND FALL CASE.

>> RIGHT.

AND THERE'S A COUPLE POINTS.

THERE'S SO MANY DETAILS IN THIS.

>> IS THAT CORRECT?

>> IT IS.

>> I JUST WANT TO UNDERSTAND.

>> YES.

>> AGAIN, SOMETIMES, AND YOU

HEAR AT THE THIRD DISTRICT, WE ARE WORRIED ABOUT BOTH THE LAW, BUT ALSO THERE'S SOMETHING CALLED CLEAN HANDS.

>> EXACTLY.

>> AND SO YOU DO WANT TO MAKE SURE THAT IT DOESN'T LOOK LIKE ONE SIDE IS DOING SOMETHING.

>> RIGHT.

>> SO, AGAIN, THE ANSWER IS THAT IF WE LOOK AT THIS RECORD, THE FIRST TIME A MOTION TO SET ASIDE THE DEFAULT WAS FILED THE DEFENDANT NEVER SAID THIS IS NOT TRUE, I DID NOT OWN THE PROPERTY.

>> THAT WAS THE KEY POINT.

THE FIRST MOTION, NO, MA'AM, THEY DID NOT.

ABOUT EIGHT MONTHS LATER THEY ASSERTED LACK OF OWNERSHIP. THEY NEVER ASSERTED THERE WAS NO VALID CAUSE OF ACTION.

BUT IF I CAN MAKE ANOTHER POINT ON THIS --

>> ON THE ISSUE OF OWNERSHIP, THE FOCUS ON OWNERSHIP EXCLUSIVELY IS FALLACIOUS BECAUSE THE PREMISES LIABILITY CAN BE ESTABLISHED ON GROUNDS OTHER THAN OWNERSHIP. ISN'T THAT CORRECT?

>> ABSOLUTELY.

THAT'S OUR EASIEST ANSWER TO ALL OF THIS.

INSTEAD OF GETTING INTO THE HE SAID/SHE SAID, WHICH I CAN EXPLAIN TO YOU, IT'S ALL ANSWERED BY THAT.

NOBODY EVER ADDRESSED THEIR ASPERSIONS TO THE PLAINTIFF AND PLAINTIFF'S COUNSEL OR COURT OF APPEAL.

AND IF YOU LOOK IN THE TRIAL TRANSCRIPT IN THE DAMAGES TRIAL THAT HAPPENED, YOU'LL SEE SWORN TESTIMONY ESTABLISHING MAINTENANCE AND CONTROL.

AND ON TOP OF THAT, ONE OF THE THINGS LATER IN THE HISTORY --

AND THERE ARE MANY MOTIONS TO UNDO THE DEFAULT, THE DEFENDANTS TRIED TO PROVIDE ADDITIONAL EVIDENCE OF OWNERSHIP. THEY PROVIDED AN AFFIDAVIT OF MY CLIENT PRO SE SAYING THE DEFENDANT DIDN'T OWN THE PREMISES.

AND THAT SOUNDS POWERFUL, RIGHT? THAT PRO SE AFFIDAVIT WAS IN EVICTION PROCEEDINGS AGAINST HER FOR NOT PAYING RENT FOR THE WAREHOUSE.

AND WHO BROUGHT THOSE EVICTION PROCEEDINGS?
THE DEFENDANT.

HOW CAN A DEFENDANT BRING EVICTION PROCEEDINGS IF THEY DON'T HAVE OWNERSHIP OR MAINTENANCE AND CONTROL?

>> WELL, THAT'S NOT APPROPRIATE TO GET INTO THAT.

THAT'S SOME KIND OF THIRD-PARTY ACTION.

SEEMS TO ME WHAT THIS CASE IS ABOUT IS A QUESTION WHEN AND UNDER WHAT CIRCUMSTANCES CAN A COURT GO BEHIND THE ALLEGATIONS OF THE COMPLAINT AFTER A DEFAULT IS ENTERED?

>> ABSOLUTELY, YOUR HONOR.

>> AND WE NEED TO HAVE SOME PARAMETERS ON THAT.

THE THIRD DISTRICT IS PAINTING THIS AS A FRAUD ON THE COURT. THEY'RE SAYING THIS WASN'T A FALL.

THIS WAS A STATUTE FALLING OVER, WHAT HAVE YOU.

THIS IS THE OWNERSHIP.

BUT THE THRESHOLD QUESTION IS WHEN, UNDER WHAT CIRCUMSTANCES YOU CAN EVEN GET TO THAT POINT.

AND HERE YOU'RE SAYING THAT, NUMBER ONE, THEY HAVEN'T ACCEDED THAT POINT.

NUMBER TWO, EVEN IF THEY'VE ACCEDED THAT POINT, THEY HAVEN'T ESTABLISHED THE REST OF THE REMEDIES, SEEMS LIKE IS WHAT

YOU'RE SAYING TO US.

>> ABSOLUTELY, YOUR HONOR.
THE REASON WE CAME KNOCKING ON
THE COURT'S DOOR IS TO SAY AS
THE OPINION WAS WRITTEN IT'S
INVALID AS A MATTER OF LAW.
IN ADDITION TO TALKING ABOUT
THESE FRAUD ALLEGATIONS, THE
ACTUAL HOLDING WAS BASED THAT
THE COMPLAINT FAILED TO STATE A
CAUSE OF ACTION.

>> IF NOTHING ELSE, IT STATES A
CAUSE OF ACTION.
IT MAY NOT BE A WINNABLE CAUSE
OF ACTION, BUT IT STATES A
COMMON PREMISES LIABILITY,
FAILURE TO EXERCISE DUE CARE
CAUSE OF ACTION.

>> RIGHT.
SO THAT'S WHY WE SAY -- YES,
SIR.

>> WOULD YOU ADDRESS THIS ISSUE
ABOUT THE PROVISION OF THE RULES
THAT PERMITS INCONSISTENCY IN
PLEADING?

BECAUSE PART OF THE FRAMEWORK
HERE THAT THE THIRD DISTRICT
RELIED ON IS THEY TOOK THIS
OTHER COMPLAINT THAT WAS IN THIS
CONSOLIDATED PROCEEDING AND THEY
SAID WE'RE GOING TO KIND OF TAKE
SOMETHING ATTACHED TO THE OTHER
COMPLAINT AND CONSIDER THAT --

>> AS AN ADMISSION.

>> AS AN ADMISSION.

BUT ISN'T ONE OF YOUR CRITICAL
POINTS ABOUT THAT ASPECT OF IT
THAT THAT JUST TOTALLY FLIES IN
THE FACE OF THE RULE PROVISION
WHICH ALLOWS PARTIES TO MAKE
CLAIMS WITHOUT REGARD TO
CONSISTENCY.

>> EVEN WITHIN THE SAME
COMPLAINT.

>> RIGHT.

>> AND YOU HAVE TO WHEN YOU'RE
FACING THE STATUTE OF
LIMITATIONS.

AND THIS IS ONE OF THE ARGUMENTS
WHEN THIS CAME OUT ABOUT THE

SUMMARY JUDGMENT HEARING WAY
AFTER MULTIPLE MOTIONS TO VACATE
HAD BEEN LITIGATED.

THIS IS ONE OF THE POINTS WE
MADE.

THE ONLY REPRESENTATION BY
COUNSEL THAT WAS IN THE RECORD
SAYING WE FILED THIS OTHER
ACTION BECAUSE THE DEFENDANT
KEPT TELLING US THAT WE HAD THE
WRONG PARTY AND WE WERE FACING
THE STATUTE OF LIMITATIONS.

SO IN AN ABUNDANCE OF CAUTION,
WE FILED THAT ACTION.

ON TOP OF ALL OF THIS, YOU KNOW,
WHAT YOU JUST SAID, THE FACT
THAT THERE WAS A PROPERLY-STATE
CAUSE OF ACTION IN THIS
COMPLAINT, YOU ALSO HAVE THE
NOTION THAT THE THIRD DISTRICT
HELD THAT THE SECOND HOLDING WAS
-- AND BECAUSE THE THIRD BELIEF
THAT THE COMPLAINT WAS FACIALLY
DEFICIENT, THE JUDGMENT MUST BE
VOID.

AFTER THAT, AFTER THE TIME FOR
OUR REHEARING MOTION, THE FOURTH
DISTRICT COURT OF APPEAL ISSUED
A DECISION, AND IT RECEDED FROM
ITS PREVIOUS LAW AND THE LAW
THAT HAD BEEN THE THIRD --

>> BUT THIS IS AN ISSUE THAT WAS
NOT PRESENTED TO THE THIRD
DISTRICT.

>> IT WAS NOT.

>> SO AN ISSUE THAT YOU DID NOT
ARGUE.

>> BUT YOU KNOW WHY I DIDN'T
ARGUE IT?

THE CAUSE OF ACTION ISSUE WASN'T
ARGUED.

THIS FAILURE TO STATE A CAUSE OF
ACTION AS TO THE ELEMENTS FOR
PREMISES LIABILITY WAS NEVER
ONCE ASSERTED BY THE DEFENDANTS
IN THE TRIAL COURT.

THEY DID CLAIM FACTUALLY, HEY,
WE DIDN'T OWN IT, BUT THEY NEVER
ASSERTED THAT THE CAUSE OF
ACTION WAS DEFICIENT, FACIALLY

DEFICIENT.
AND THE DEFENDANTS NEVER
ASSERTED THAT ON APPEAL TO THE
THIRD,
THIS ISSUE, THIS HOLDING, WAS
FROM THE THIRD OF ITS OWN.
SO THAT'S WHY WE COULDN'T HAVE
VETTED THAT.
AND WE COULDN'T HAVE VETTED IT
IN THE REHEARING MOTION BECAUSE
THIS LAW HAD NOT COME OUT.
I DO WANT TO TELL YOU THIS COURT
DID ACCEPT JURISDICTION OF THAT
FOURTH DCA CASE.
IT'S YOUR CASE NO. 14-1049.
>> IT'S HERE.
>> BRIEFING JUST FINISHED IN
JANUARY IS WHAT I SAW ON THE
DOCKET.
SO THAT'S YET ANOTHER LEVEL,
TOO.
THE MANY LEGAL ERRORS COMMITTED
ON THE FACE OF THIS DECISION.
THAT WILL CAUSE CONFUSION
THROUGHOUT THE STATE.
SO THAT'S WHY WE'VE ASKED THIS
COURT TO CORRECT THAT DECISION.
NOW, THE DEFENDANTS FOCUS ON AN
ALTERNATIVE ARGUMENT, THE
DISCRETIONARY ARGUMENT.
IN OTHER WORDS, LOOKING THROUGH
THOSE PRONGS, THE THIRD DISTRICT
DID NOT ADOPT THIS ARGUMENT.
IF YOU DO WANT TO LOOK AT
WHETHER OR NOT THOSE TWO TRIAL
JUDGES COMMITTED AN ABUSE OF
DISCRETION IN ANALYZING THE
MOTION TO VACATE THE JUDGMENT, I
CAN DISCUSS THAT.
BUT ONE OF THE EASIEST POINTS I
CAN TELL YOU IS JUST LOOKING
ALONE AT WHAT THE DEFENDANT
ALLEGED, REMEMBER THERE'S FIVE
SUCCESSIVE MOTIONS OVER A YEAR
IN THE TRIAL COURT, AND ONE OF
THE FIRST ONES SHE CLAIMED
REGARDING EXCUSABLE NEGLIGENCE --
EXCUSE ME, REGARDING DUE
DILIGENCE, THAT SHE DID NOT KNOW
ABOUT THE DEFAULT, SHE BEING THE

OWNER AND PRINCIPAL OF THE DEFENDANT, DID NOT KNOW ABOUT THE DEFAULT UNTIL AFTER AUGUST OF 2008.

>> WAS THAT WHEN SHE CALLED THE ATTORNEY'S OFFICE?

>> YES, MA'AM.

>> I THOUGHT SHE SAID SHE DID KNOW ABOUT THE DEFAULT.

>> RIGHT.

>> THAT'S WHY SHE CALLED THE ATTORNEY AND WAS GIVEN SOME KIND OF ASSURANCE.

>> WHAT YOU'RE REFLECTING IS THE CONFLICTING EVIDENCE.

HER FIRST VERSION IS I GOT THE COMPLAINT, I HIRED THIS ATTORNEY, I HIRED AN ATTORNEY, I TRIED TO CALL HIM, GAVE HIM THE COMPLAINT SO HE COULD FILE AN ANSWER FOR ME.

I CALLED HIM A NUMBER OF TIMES. HE NEVER RETURNED MY CALLS.

THEN HE WAITED UNTIL AUGUST TO WITHDRAW FROM MY CASE.

THEN I LEARNED THIS DEFAULT HAD BEEN ENTERED IN MAY.

IN ONE OF HER LATER MOTIONS SHE KEPT COMING BACK TRYING DIFFERENT ARGUMENTS WITH THE SUCCESSIVE MOTION PRACTICE.

THEN SHE SAID, WELL, I DID LEARN ABOUT THE DEFAULT IN MAY.

AND I CALLED MY ATTORNEY AND ASKED HIM TO HANDLE IT.

HE SAID HE HAD IT UNDER CONTROL.

SO THERE ALONE -- I CAN TALK ABOUT ALL THE OTHER ARGUMENTS ABOUT THE DISCRETION, BUT THERE ALONE WHERE YOU HAVE THE MOVANT THEMSELVES MAKING CONFLICTING REPRESENTATIONS REGARDING ONE OF THE PRONGS TO SECURE VACATING A DEFAULT, YOU CAN'T FIND AN ABUSE OF DISCRETION.

>> THEY SAID EXCUSABLE NEGLIGENCE AND THEN WHAT WAS THE VALID DEFENSE?

>> WELL, INITIALLY THEY SIMPLY MADE A CONCLUSORY STATEMENT

SAYING WE HAVE A VALID DEFENSE.
>> WE HAVE WHAT?
>> A CONCLUSORY STATEMENT IN THE
FIRST MOTION SIMPLY SAYING I
HAVE A MERITORIOUS DEFENSE AND
THE LAW IS CLEAR THAT ANY KIND
OF CONCLUSORY STATEMENT LIKE
THAT, IT JUST DOESN'T COUNT.
TWO MOTIONS LATER THEY THEN
ASSERT, OH, YOU CAN'T BRING THIS
CAUSE OF ACTION BECAUSE I DIDN'T
OWN THE PROPERTY IN JULY.
THE DEFENDANT DIDN'T OWN THE
PROPERTY IN JULY.
WELL, THAT'S NOT EVEN A
MERITORIOUS DEFENSE BECAUSE,
REMEMBER, WE HAVE MAINTENANCE
AND CONTROL.
AND WHEN THEY FILED THAT, WHAT
THEY DID IS THEY SENT IN THEIR
ANSWER, BUT THEY AGAIN NEGLECTED
TO COMPLY WITH THE LAW.
IF YOU WANT TO VACATE A DEFAULT,
EVERYTHING HAS TO BE SWORN AND
IT WASN'T SWORN.
>> YOU'RE INTO YOUR REBUTTAL
TIME.
>> THEN I'LL SIT DOWN.
THANK YOU VERY MUCH.
>> THANK YOU.
>> GOOD MORNING, YOUR HONOR,
CHIEF JUSTICE.
MAY IT PLEASE THE COURT, DOROTHY
EASLEY ON BEHALF OF MAUNA LOA
INVESTMENTS.
I KNOW THE COURT GRANTED
JURISDICTION, BUT I HAVE TO SAY
I'VE READ THE BRIEFS AGAIN AND
AGAIN AND I'VE READ THE
DECISION.
I DON'T SEE THE CONFLICT.
MOVING FORWARD, THE COURT
OBVIOUSLY CONCLUDES THERE IS
CONFLICT JURISDICTION, BUT WE
SITE THE CRAVARO DECISION, THE
S.E. LAND DEVELOPERS CASE, ALL
OF THOSE DECISIONS ARRIVE AT THE
SAME THING, AND IT IS AS
FOLLOWS.
THE RULE IS IF THE COMPLAINT

FAILS TO STATE A CLAIM FOR RELIEF, IF THE COMPLAINT CONTAINS ALLEGATIONAL DEFECTS, IF THE COMPLAINT CONTAINS REPUGNANT ALLEGATIONS IN THIS CASE, THE CONSOLIDATED CASES FOR ALL PURPOSES WITHOUT OBJECTION FROM PLAINTIFF, THEN THE COMPLAINT FAILS TO STATE A --
>> HOW DOES THAT SQUARE WITH THE RULE PROVISION THAT ALLOWS PLEADINGS WITHOUT REGARD TO CONSISTENCY?

THAT'S IN THE RULE.

I READ IT.

>> YES, YOUR HONOR, IT DOES. THE PROBLEM WITH THAT RULE IS -- AND THE CASE LAW CONSTRUING IT IS YOU MUST PLEAD IN GOOD FAITH. IN OTHER WORDS, THIS IS DERIVED FROM THE FEDERAL COURT RULE 11, WHICH HAS NOT BEEN SPECIFICALLY INCORPORATED IN THE FLORIDA RULES OF APPELLATE PROCEDURE. BUT SUBSECTION B SAYS YOU MUST DO YOUR DUE DILIGENCE.

IF THIS PLEADING HAD BEEN IN FRONT OF A FEDERAL JUDGE, HE WOULD HAVE RULE 11 SANCTIONED THE TRIAL LAWYERS.

>> DID YOU RAISE THAT POINT -- I MEAN, THAT'S THE SUBJECT OF AN EVIDENTIARY HEARING.

I THINK WHAT MISS HUMPHRIES IS SAYING IS THAT WE'RE TRAVELING UNDER THIS DOESN'T STATE A CAUSE OF ACTION, BUT WHAT WE'RE REALLY -- WHAT REALLY APPARENTLY BOTHERED THE THIRD DISTRICT TO COME UP WITH SOMETHING THAT IS -- SEEMS TO ME TO HAVE SOME INCORRECT STATEMENTS OF LAW IS THAT THEY WERE OFFENDED BY THE INCONSISTENCY, BUT WAS THERE AN EVIDENTIARY HEARING THAT SAID, NO, SHE ABSOLUTELY DID NOT -- THEY DID NOT OWN THE PROPERTY OR DIDN'T MAINTAIN IT OR DIDN'T CONTROL IT ON THE DAY OF THE SLIP AND FALL?

>> YES, YOUR HONOR.

>> OR TRIP AND FALL OR STATUTE FALLING ON HER CASE?

>> WITH RESPECT -- THERE ARE A NUMBER OF QUESTIONS IN THERE, AND I WANT TO ADDRESS EACH ONE OF THEM IN ORDER AND I THINK THE MOST IMPORTANT QUESTION IS WAS THE FAILURE TO STATE A CLAIM FOR RELIEF RAISED AND WAS THE I DON'T OWN THE PROPERTY RAISED. AND THAT WAS RAISED FROM THE VERY BEGINNING IN THE MOTION TO VACATE.

>> YOU SAID THERE IS A -- AGAIN, WE'RE TALKING ABOUT AS IF THERE'S A FRAUD ON THE COURT. THAT SEEMS TO BE A WHOLE OTHER OVERLAY HERE.

YOU SAID FEDERAL JUDGES WOULD HAVE RULE 11 AND CALLED EVERYONE TO TASK.

WELL, STATE COURT JUDGES CAN DO THAT, TOO, BUT IT HAS TO BE BROUGHT TO THEIR ATTENTION THAT SOMEBODY HAS INTENTIONALLY LIED ABOUT A MATERIAL ELEMENT OF THE COMPLAINT.

I'M ASKING YOU, WAS THAT LITIGATED IN THE TRIAL COURT?

>> YES, YOUR HONOR, AS TO A FORMAL EVIDENTIARY HEARING, THE COURT NEVER HELD FORMAL EVIDENTIARY HEARINGS.

BUT HERE'S THE PROBLEM.

A NUMBER OF REPRESENTATIONS HAVE BEEN MADE ABOUT THE RECORD, AND I WOULD URGE THE COURT TO REVIEW THE RECORD A THIRD AND A FOURTH TIME.

BECAUSE IN APPENDIX 8 WE FILED A VERIFIED MOTION TO VACATE, VERIFIED, WITH GIL'S ATTESTATION.

IT IS NOTARIZED AND IT SAYS I DO NOT OWN THE PROPERTY.

>> HOW LONG AFTER THE DEFAULT WAS ENTERED WAS THAT FILED?

>> THE DEFAULT WAS ENTERED IN MAY AND IT WAS FILED IN THE

BEGINNING OF SEPTEMBER.
>> ANSWER THE QUESTION I ASKED.
I DON'T WANT TO HAVE TO
CALCULATE IT.
>> OKAY.
SORRY, YOUR HONOR.
I THINK IT'S A LITTLE OVER THREE
MONTHS.
AND THE REASON FOR THE DELAY --
AND THE CASE LAW IS VERY CLEAR
ON THIS.
THE REASON FOR THE DELAY -- AND
WE LOOK AT THE REASONS FOR THE
DELAY.
MAWANPHY GIL RECEIVED THE
DEFAULT.
SHE NEVER SAID SHE DID NOT
RECEIVE THE DEFAULT.
LET'S MAKE SURE THE RECORD IS
VERY CLEAR ON THAT.
HER TRIAL COUNSEL, HER SECOND
TRIAL COUNSEL, WHILE CONDUCTING
DUE DILIGENCE, SAID HE LOOKED UP
THE DEFAULT IN THE DOCKET AND
EXPLAINED THE IMPLICATIONS.
SHE RECEIVES THE DEFAULT AT THE
END OF MAY.
SHE GETS THE DEFAULT.
SHE CALLS HER FIRST LAWYER'S
OFFICE.
SHE IS AFFIRMATIVELY
MISREPRESENTED BY HER FIRST
LAWYER, HIS SECRETARY.
I'M GOING TO TRY NOT TO USE
NAMES.
HIS SECRETARY FORMALLY
MISREPRESENTED, DON'T WORRY
ABOUT IT, THIS HAPPENS ALL THE
TIME, IT'S NOT A BIG DEAL,
SOMETHING GOT CROSSED IN THE
MAIL, WE'LL GET IT FIXED.
SHE CONTINUES TO FOLLOW UP AND
SHE IS AFFIRMATIVELY
MISREPRESENTING CONTINUALLY THAT
THEY ARE TAKING CARE OF IT.
>> THIS IS A WELTER OF FACTS.
LET ME ASK YOU A LEGAL QUESTION
THAT HAS TO DO WITH THE FOUR
CORNERS RULE.
NOW, HOW CAN THE DECISION FROM

THE DISTRICT COURT BE RECONCILED WITH THE FOUR CORNERS RULES, WHICH IS THAT IN DECIDING WHETHER A CLAIM, A COMPLAINT, IS SUFFICIENT TO STATE A CLAIM, YOU LOOK AT THE FOUR CORNERS OF THE COMPLAINT?

NOW, OF COURSE THAT WOULD INCLUDE ANYTHING THAT'S ATTACHED TO THE COMPLAINT, BUT WHERE IS IT WRITTEN THAT YOU CAN GO TO ANOTHER COMPLAINT AND LOOK AT AN ATTACHMENT TO ANOTHER COMPLAINT TO DECIDE IF THE FIRST COMPLAINT IS LEGALLY SUFFICIENT?

>> YOUR HONOR, IF THAT WERE THE RULE, I WOULD SAY THAT'S ABSOLUTELY CORRECT.

BUT THAT'S NOT WHAT'S HAPPENED HERE.

WE HAVE TWO DIFFERENT COMPLAINTS THAT WERE CONSOLIDATED FOR ALL PURPOSES WITHOUT OBJECTION FROM THE PLAINTIFF.

AND ALL OF THE CASES ON CONSOLIDATION THAT ARE CITED CONCERN CASES WHERE ATTEMPTING TO ADDRESS WHO IS THE PREVAILING PARTY FOR PURPOSES OF ATTORNEY'S FEES.

EVEN IN THOSE FACES THEY LOOK AT BOTH COMPLAINTS BECAUSE THAT'S WHAT TRIAL JUDGES DO.

THE FUNDAMENTAL PROBLEM HERE -- AND ONE OF THE OTHER CASES -- LET ME CORRECT MYSELF.

ONE OF THE OTHER CASES ALSO CONCERNED VENUE AND THE PREJUDICE TO CONSOLIDATING BASED ON VENUE BECAUSE THE CASE WAS GOING TO MOVE FROM BROWARD TO LEON COUNTY.

BUT LET ME ADDRESS YOUR OTHER QUESTION AND THAT IS WHEN YOU HAVE BEFORE YOU -- AND HERE'S THE FUNDAMENTAL PROBLEM.

YOU HAVE BEFORE YOU TWO COMPLAINTS.

YOU'VE GOT THE 2010 COMPLAINT, AND WE DO NOT CONCEDE THAT IT

STATES A CLAIM FOR RELIEF.
LET'S BE VERY CLEAR ON THAT.
>> WHAT IS THE PROBLEM WITH THE
INITIAL COMPLAINT?
>> THE INITIAL COMPLAINT DOES
NOT CONTAIN THE ULTIMATE FACTUAL
ALLEGATIONS.
IT DOESN'T EVEN ALLEGE LEGAL
DUTY.
AND THE WHOLE REASON --
>> IT DID NOT ALLEGE OWNERSHIP,
MAINTENANCE OR CONTROL OF
PROPERTY?
>> YES, IT DID, YOUR HONOR.
>> AND A FAILURE TO DO SO WITH
REASONABLE CARE, DOESN'T CONTAIN
THOSE ALLEGATIONS?
>> IT DID NOT ALLEGE LEGAL DUTY
AND IT DID NOT -- I'M TRYING TO
ANSWER YOUR QUESTION.
I APOLOGIZE.
>> WELL, YOU'RE ANSWERING IT IN
DIFFERENT TERMS.
I'M ASKING YOU IF THAT COMPLAINT
SAID WHAT THE RESPONSIBILITY OF
THE OWNER, MAINTAINER OR
CONTROLLER WAS.
>> NO.
IT USES LEGALESE.
IT SAYS MANAGEMENT AND/OR
CONTROL.
>> AND THEREFORE WHAT?
>> AND HOW DOES A DEFENDANT
RAISE A DEFENSE WITH THAT IN THE
COMPLAINT, YOUR HONOR?
>> LET ME -- BECAUSE IF YOU
DON'T OWN OR MANAGE THE
PROPERTY, YOU GO -- THAT'S THE
EASY -- I MEAN, THIS ISN'T LIKE
AN ANTITRUST, COMPLICATED
COMMERCIAL CASE.
THIS IS A GARDEN VARIETY
PREMISES LIABILITY CASE.
SOMEONE MAINTAINS AND CONTROLS
AND THEY FAIL TO EXERCISE DUE
DILIGENCE IN HOW THEY DID IT.
THE PERSON WHO GETS THAT EITHER
IS MANAGING AND CONTROLLING OR
THEY'RE NOT AS THE VERY FIRST
THING.

SO DID IT SAY THAT SHE OR THE CORPORATION MANAGED, OWNED OR CONTROLLED THIS PROPERTY?

>> YOUR HONOR, --

>> YES OR NO?

>> IT USED LEGALESE.

THAT'S ALL THE 2010 COMPLAINT USED.

>> SO IT NEVER SAID THAT THIS DEFENDANT OWNED OR CONTROLLED THE PROPERTY.

>> I'M NOT SAYING THAT.

I'M SAYING IT USED THOSE TERMS.

>> IF WE HAD YOUR STANDARD FOR WHETHER IT STATED A CAUSE OF ACTION, EVERY PLAINTIFF THAT FILED AN AUTOMOBILE ACCIDENT CASE OR A PREMISES LIABILITY CASE IN STATE COURT WOULD BE OUT OF COURT.

>> THAT MAY BE TRUE, YOUR HONOR, BUT FLORIDA IS A FACTUAL PLEADING JURISDICTION.

>> WE HAVE NOT GONE TO WHERE THE U.S. SUPREME COURT HAS GONE, WHERE EVERY FACT HAS TO BE STATED.

I'M SORRY.

>> ALLEGED LEGAL DUTY.

I'M SORRY, YOUR HONOR.

>> SO YOU HAVE A DIFFERENT ISSUE, WHICH IS THAT YOU SAY EVEN WITHOUT THE OTHER COMPLAINT, THAT THIS COMPLAINT NEVER STATED A CAUSE OF ACTION.

>> THAT'S CORRECT.

AND AGAIN WE KNOW --

>> DID YOU ARGUE THAT AT THE DISTRICT COURT?

>> YES, YOUR HONOR.

WE ARGUED FAILURE TO STATE A CLAIM FOR RELIEF IN THE DISTRICT COURT.

WE CITE IN OUR ANSWER BRIEF THE LOCATIONS WHERE WE ARGUED THAT. BUT YOU CAN -- IT'S OCR AND YOU CAN WORD SEARCH IT.

IT DID NOT STATE A CLAIM FOR RELIEF.

IT WAS DEFECTIVE.

IT CONTAINED CONCLUSORY ALLEGATIONS.

>> DID YOUR CLIENT MANAGE OR CONTROL THE PROPERTY?

>> NO, YOUR HONOR.

AND THAT'S -- A LOT HAS BEEN SAID AND I'M PREPARED TO GIVE THE COURT RECORD CITES.

MANY STATEMENTS HAVE BEEN MADE, BUT OUR CLIENT DID NOT OWN THE PROPERTY, AND WITH RESPECT, IF THE DEED IS NOT CONCLUSIVE PROOF OF OWNERSHIP, THEN THE TITLE INDUSTRY --

>> MY QUESTION DID NOT INCLUDE OWNERSHIP.

>> AND OUR CLIENT DID NOT MANAGE OR CONTROL --

>> IT HAD NOTHING TO DO WITH THE PROPERTY, JUST SOME RANDOM PERSON OUT THERE FLOATING AROUND.

>> NO, YOUR HONOR.

I'M NOT SAYING THAT.

BUT THIS IS A CASE ABOUT SUING THE CEO BECAUSE SHE WAS THE LOVER OF A SLIP AND FALL IN A GM PLANT BECAUSE THE LOVER WOULD COME BY AND PICK UP TRASH IN THE PARKING LOT FROM TIME TO TIME.

>> YOU'RE WAY OVER OUR HEAD.

THIS DOES SEEM THE THIRD DISTRICT IS UPSET BECAUSE THEY FELT THE PLAINTIFF WAS PLAYING TRICKS.

I'M FEELING THAT THE DEFENDANT IS PLAYING SOME TRICKS ON US AND YOU'RE NOT HELPING US FEEL ASSURED THAT THIS IS THE WRONG LOVER OF THE GENERAL MOTORS CEO.

>> WELL, LET ME ALLAY YOUR CONCERNS, YOUR HONOR.

>> CAN I JUST ASK YOU SOMETHING? WHAT ANALOGY -- HOW DOES THAT HELP US?

ARE YOU SAYING THAT SHE WAS THE LOVER OF SOMEBODY THAT OWNED AND CONTROLLED THE PROPERTY?

>> YES.

LET ME ALLAY YOUR CONCERNS.

>> YES?

THAT'S IN THE RECORD?

>> YOUR HONOR, YES, IT IS IN THE
-- LET ME -- MAY I ANSWER YOUR
QUESTION, PLEASE?

MARTINA SR. WAS THE OWNER OF
IBERIA, A NORTHERN CORPORATION.
WHEN HE DIED IN FEBRUARY OF
2008, THE PROPERTY PASSED TO HIS
SON, WHO FORMED LIBERIA, I
BELIEVE IT WAS APRIL OF 2008.
THAT PROPERTY PASSED FROM FATHER
TO SON.

REPRESENTATIONS WERE MADE THAT
MAWANPHY GIL AND HE WERE
MARRIED.

THEY'RE UNTRUTHFUL.

WHEN THE PROPERTY PASSED FROM
THE FATHER TO THE SON, MARMOL,
HE INHERITED THE PROPERTY AND
IBERIA MANAGED THE PROPERTY.

THEY WERE THE LANDLORD.

THE LEASE WITH THE COMPANY WAS
WITH IBERIA.

SHE WAS A TENANT.

ALL THE LEASE TERMS CONTINUED
PURSUANT TO THE TERMS AND
CONDITIONS OF THE LEASE.

MAWANPHY GIL WAS THE MISTRESS OF
MARTINEZ.

WHEN HE DIED, SHE WAS DELETED
FROM THE CORPORATION AND THAT
WAS DISSOLVED.

BUT THEY WERE LOVERS.

THEY HAD TWO DAUGHTERS OUT OF
WEDLOCK.

SHE'S A SINGLE MOTHER.

THEY WERE NEVER MARRIED.

BUT THERE'S BEEN A LOT OF
INFERENCE AND INNUENDO THAT
DOESN'T EXIST.

IT'S LIKE JOHN F. KENNEDY
TALKING ABOUT THE GREATEST
DANGER OF THE TRUTH IS NOT THE
LIE, BUT THE MYTH.

AND THAT'S WHAT WE HAVE HERE.

WE HAVE A MYTH.

AND WHAT'S HAPPENED HERE IS
WE'VE GOT TWO COMPLAINTS BEFORE
THE TRIAL JUDGE --

>> BUT, YOU KNOW, THERE'S A
PROCESS WHERE PEOPLE FILE
LAWSUITS AND THE DEFENDANT IN
THE LAWSUIT IS REQUIRED TO FILE
AN ANSWER.

AND THAT DID NOT HAPPEN IN THIS
CASE.

THERE WAS A DEFAULT.

>> THAT'S RIGHT.

AND NOT BECAUSE OF MAUNA LOA.
BECAUSE OF THE ATTORNEY --

>> ALL THE TRIAL COURT JUDGES
WHO LOOKED AT THIS FOUND THAT
THERE WAS NO BASIS FOR SETTING
THAT ASIDE.

AND THEN WE GET THE DISTRICT
COURT SETTING IT ASIDE ON A
BASIS THAT SEEMS TO BE NOT
SOMETHING THAT WAS ARGUED TO
THEM OR NOT PROPERLY PRESENTED
TO THEM.

AND SO THIS IS A VERY CONVOLUTED
THING.

I WANT TO ASK YOU A QUESTION
ABOUT SOMETHING YOU SAID ABOUT A
DEED BEING CONCLUSIVE PROOF OF
OWNERSHIP OF PROPERTY.

IS THAT YOUR POSITION?

>> THAT IS MY POSITION, YOUR
HONOR.

WE DO A TITLE SEARCH, THE FIRST
THING WE DO TO DETERMINE WHO
OWNS THE PROPERTY --

>> OH, A TITLE SEARCH.

YES.

YES.

>> WE LOOK AT THE DEED.

>> YOU CAN DO A TITLE SEARCH AND
LOOK AT A SERIES OF TRANSACTIONS
AND COME UP WITH A CONCLUSION
ABOUT WHO THE OWNER OF PROPERTY
IS.

IT'S A VERY DIFFERENT MATTER TO
TAKE ONE DEED AND SAY, OH,
BECAUSE A CERTAIN PERSON SIGNED
THIS DEED ON A CERTAIN DATE,
THAT PERSON OWNED THE PROPERTY,
AND BECAUSE IT WAS GRANTED TO
THE GRANTEE ON THAT DAY, THEN
THE GRANTEE OWNED THE PROPERTY.

THAT MIGHT BE -- THE DEED COULD BE FROM SOMEBODY WHO NEVER OWNED THE PROPERTY.

THAT IS TOTALLY FALLACIOUS, THE NOTION THAT A DEED, A SINGLE DEED IN ISOLATION, ESTABLISHES ANYTHING CONCLUSIVELY ABOUT THE OWNERSHIP OF PROPERTY.

>> MAUNA LOA WAS ONLY FORMED IN APRIL OF 2008.

>> BUT WE'RE TALKING ABOUT THIS DEED IN ISOLATION ESTABLISHING SOMETHING IN THE MIND OF THE THIRD DISTRICT, WHICH IS JUST SEEMS TO ME TO BE -- I DON'T UNDERSTAND HOW ANYONE WHO UNDERSTOOD ANYTHING ABOUT LAND TITLES COULD EMBRACE SUCH A POSITION.

>> BECAUSE THE THIRD DISTRICT COURT OF APPEAL ALSO LOOKED IN RELYING ON A DECISION FROM THIS COURT, FERNANDEZ, WHICH SAYS THAT WE HAVE BINDING JUDICIAL ADMISSIONS THAT PLEADINGS -- WE ARE BOUND BY OUR PLEADINGS. AND THE PLAINTIFF IN THE 2011 COMPLAINT STATED IN PARAGRAPHS 11 AND 12 THAT IBERIA OWNED THE PROPERTY AND THAT IBERIA AND MARMOL MANAGED AND CONTROLLED THE PROPERTY.

WHAT IS A TRIAL JUDGE SUPPOSED TO DO WITH THIS?

>> I CAN UNDERSTAND YOUR ARGUMENT ABOUT THE INCONSISTENT POSITIONS AS A MATTER OF FACT ABOUT OWNERSHIP THAT THESE TWO DIFFERENT ENTITIES, UNLESS THEY OWNED IT JOINTLY SOMEHOW, SHOULD NOT HAVE SOLE OWNERSHIP OF THE PROPERTY AT THE SAME TIME.

IT SHOULD BE -- IF THEY'RE SOLE OWNERSHIP, IT SHOULD BE ONE OR THE OTHER.

BUT THAT DOESN'T ADDRESS -- AND YOU'VE NOT HELPED ME AT ALL ON THE ALLEGATIONS ABOUT MANAGEMENT AND CONTROL.

SO TO THE EXTENT THAT WAS A

FACTUAL ISSUE, WELL PLED, STATED
IN THE COMPLAINT, A DEFAULT WAS
ENTERED.

A LIABILITY OF DEFAULT WAS
ENTERED.

AND THE TRIAL COURT EXERCISED
DISCRETION NOT TO ALLOW YOUR
CLIENT TO VACATE THAT DEFAULT.
SO I DON'T UNDERSTAND HOW IT IS
THAT SHOULD BE ALLOWED TO BE
VACATED.

>> WELL, YOUR HONOR, LET ME
ADDRESS THE CONCERNS ABOUT THE
MANAGEMENT AND CONTROL.

AND I THINK THAT -- YOU'RE THE
FLORIDA SUPREME COURT.

IF YOU THINK THIS 2010 COMPLAINT
SUFFICIENTLY ALLEGES IN A FACT
PLEADING JURISDICTION,
SUFFICIENTLY ALLEGES MANAGEMENT
AND CONTROL, THEN WE WOULD LIKE
TO KNOW THAT EXPLICITLY, BECAUSE
IT SIMPLY CONTAINS LEGALESE.

AND WORKING IN FEDERAL COURT, A
NOTICE PLEADING JURISDICTION,
THAT COMPLAINT WOULD NOT PASS
MAWANPHY.

>> I'M NOT SURE ABOUT THAT, BUT
GO AHEAD.

>> AGAIN, YOU ARE THE FLORIDA
SUPREME COURT.

YOU DECIDE WHETHER YOU THINK
THIS COMPLAINT STATES A CLAIM
FOR RELIEF.

WE'RE NOT GOING TO CONCEDE THAT
IT DOES.

BUT GOING TO THE SETTING ASIDE
THE DEFAULT, AS TO SETTING ASIDE
THE DEFAULT, MANY CASES MONTHS,
MONTHS LATER, FOR EXAMPLE
FRANKLIN VERSUS FRANKLIN
DECISION, LIKE MAWANPHY GIL,
UNFAMILIAR WITH THE LEGAL SYSTEM
IN THE UNITED STATES, DID NOT
APPRECIATE WHAT TRANSPIRED, IN
THAT CASE THE COURT SET ASIDE
THE DEFAULT.

HE WAS UNEDUCATED, DID NOT
APPRECIATE THE IMPLICATIONS OF
THE DEFAULT.

ALL WE'VE WANTED TO DO, YOUR HONOR, FROM THE VERY BEGINNING IS TO BE ABLE TO LITIGATE THIS CASE ON THE MERITS.

LET US LITIGATE THE OWNERSHIP, MANAGEMENT AND CONTROL.

BUT THE PROBLEM HERE IS THAT MAWANPHY GIL, MAUNA LOA DID BACK FLIPS TO TRY TO GET THIS DEFAULT SET ASIDE.

HER FAILING WAS TRUSTING THE LAWYER'S OFFICE.

>> WELL, HER CLAIM MAY BE A CLAIM FOR LEGAL MALPRACTICE. I MEAN, AND WE'VE GOT A SYSTEM THAT CANNOT JUST UPSET JUDGMENTS BECAUSE IT SEEMS LIKE MAYBE THE RESULT IN A CASE THAT RESULTED FROM A DEFAULT IS UNDESIRABLE. THAT'S NOT THE WAY THIS CAN FUNCTION.

WE'VE GOT THIS SYSTEM WHERE WE'VE GOT SOME REQUIREMENTS THAT ARE STRICT REQUIREMENTS ABOUT SETTING ASIDE DEFAULTS. BECAUSE WHEN YOU GET THAT PAPER, YOU BETTER DEAL WITH IT. IF YOU DON'T, IF YOU SNOOZE, YOU WILL LOSE.

THAT'S THE RULE.

>> THAT IS RIGHT, YOUR HONOR. AND THAT SYSTEM WE AGREE WITH HEARTEDLY.

BUT WE HAVE THE CORPORATION ENGAGING IN DILIGENT EFFORTS. WHAT DID SHE DO UPON GETTING SERVED?

IMMEDIATELY RETAINS COUNSEL. WHAT HAPPENS THEREAFTER?

>> THEN YOU WOULD BE HOME FREE AS A MATTER OF LAW. DEFENDANT RECEIVES A COMPLAINT, TAKES IT TO A LAWYER. AS A MATTER OF FACT YOU CAN'T ENTER A DEFAULT BECAUSE YOU DELIVERED IT TO THE LAWYER.

>> NO, YOUR HONOR. THAT'S NOT THE RULE I'M ARTICULATING.

>> WELL, THAT'S NOT THE RULE IN

FLORIDA.

BUT YOU'RE ARGUING THAT BECAUSE SHE GAVE IT TO A LAWYER THAT THAT PARTY --

>> THAT'S NOT THE RULE I'M ARGUING.

>> BUT IT DOES SOUND LIKE WHAT YOU'RE ARGUING HERE IS SOMETHING THAT THE THIRD DISTRICT DIDN'T EVEN DECIDE, WHICH IS THAT THE DEFENDANT EXERCISED DUE DILIGENCE IN SETTING ASIDE THE DEFAULT AND HAD A MERITORIOUS DEFENSE.

>> THE ISSUES WERE FULLY BRIEFED, YOUR HONOR, AND THIS COURT HAS THOSE ISSUES HERE AS WELL.

BUT, AGAIN, TO ANSWER YOUR CONCERNS, MAUNA LOA, A CORPORATION, CAN'T GO DOWN AND FILE ITS OWN MOTION TO DEFAULT. I WANT TO MAKE SURE THAT RECORD IS VERY CLEAR FOR THE COURT BECAUSE MAUNA LOA CONTINUED TO FOLLOW UP WITH COUNSEL'S OFFICE. MAUNA LOA DID ALL THAT MAUNA LOA IS REQUIRED TO DO.

AND ALL THE OTHER CASES WHERE THE DEFAULTS ARE NOT SET ASIDE ARE CASES WHERE THE CORPORATE PRESIDENT GOES OFF TO EUROPE FOR TWO MONTHS, DOESN'T LEAVE INSTRUCTIONS.

>> ARE YOU CONCEDED THAT THE THIRD DISTRICT IS WRONG ABOUT THE BASIS THEY DECIDED THIS CASE, WHICH WAS THAT IT IS APPROPRIATE TO SET ASIDE A DEFAULT WHEN A COMPLAINT WHOLLY FAILS TO STATE A CAUSE OF ACTION?

>> YOUR HONOR --

>> IT SOUNDS TO ME LIKE YOU'RE --

>> I THINK IF THE COURT CONCLUDES -- AND THIS IS THE FLORIDA SUPREME COURT. IT'S NOT MY POSITION TO TELL THIS COURT YOU'RE WRONG AND THE

THIRD DISTRICT IS RIGHT.
OF COURSE I'M NOT GOING TO DO
THAT.
BUT WHAT I AM GOING TO SAY IS
THE THIRD DISTRICT COURT OF
APPEAL ACCOMPLISHED THE CORRECT
RESULT.
BECAUSE IF THE DEFAULT IS
VACATED -- AND IT SHOULD BE.
>> WHAT IF THEY VACATED IT ON AN
ERRONEOUS PREMISE?
>> I'M SORRY, YOUR HONOR?
>> AS LONG AS YOU GET THE
VACATED JUDGMENT, IS WHAT YOU'RE
SAYING, IT DOESN'T MATTER THAT
THEY VACATED IT ON AN ERRONEOUS
PREMISE.
>> THE THIRD DISTRICT CAN BE
RIGHT FOR THE WRONG REASONS.
IF THE COURT CONCLUDES THE THIRD
DISTRICT JUMPED THE GUN, THEN
THE DEFAULT CAN BE VACATED AND
WE GO BACK TO THE TRIAL COURT.
BUT WE'RE KICKING A COURT DOWN
THE ROAD.
THE PLAINTIFF IS GOING TO BE IN
THE SAME POSITION THE PLAINTIFF
IS IN NOW.
WE WOULD WELCOME, HAVE ALWAYS
WANTED TO LITIGATE ON THE
MERITS.
AND THAT'S CONSISTENT WITH
COGGINS AND THE POLICY OF THIS
COURT, THAT WE LIBERALLY SET
ASIDE DEFAULTS.
99% OF THE CASES IN FLORIDA
THEY'RE SET ASIDE.
I'M SORRY, YOUR HONOR.
>> YOUR TIME IS UP.
THANK YOU.
>> THANK YOU, YOUR HONOR.
MAY I BRIEFLY CONCLUDE?
I GUESS I'VE CONCLUDED.
THANK YOU FOR YOUR TIME.
>> MY ONLY FOLLOW-UP, YOUR
HONORS, WOULD BE TO ASK THAT YOU
DO NOT REMAND FOR FURTHER
THINKING ON THIS, THAT IF YOU
ARE INCLINED TO REVERSE THE
THIRD DISTRICT COURT OF APPEALS'

DECISION, THAT YOU REMAND WITH DIRECTIONS THAT THE FINAL JUDGMENT BE REINSTATED.

AND IF THE COURT DOESN'T HAVE ANY OTHER --

>> I JUST WANT TO CLARIFY ONE THING.

>> YES, MA'AM.

>> THE FIRST TIME A MOTION TO SET ASIDE A DEFAULT WAS FILED, WAS IT BASED ON THIS DEFENDANT DID NOT OWN, MANAGE OR CONTROL THE PROPERTY?

>> NO.

AND DEFENDANT NEVER IN ANY OF THE LITIGATION BELOW ADDRESSED MAINTENANCE AND CONTROL.

AND TO ANSWER YOUR QUESTION, THERE ARE PAGES 54 IN THE APPENDIX AND 114 TO 115 THAT ARE EXCERPTS OF THE TRIAL ON DAMAGES, WHERE THERE IS ACTUAL EVIDENCE OF MAINTENANCE AND CONTROL, SWORN TESTIMONY ESTABLISHING THAT THAT DID HAPPEN IN THIS CASE.

>> LET ME ASK YOU JUST ONE QUESTION.

>> YES, SIR.

>> THE DEFENDANT SEEMS TO BE SAYING, WELL, JUST FORGET ALL THIS OTHER BALONEY.

WE CAME IN, WE ARE A DEFENDANT AND DID EVERYTHING WE COULD DO, TOOK IT TO A LAWYER, CHECKED WITH THE LAWYER, WERE ASSURED THAT EVERYTHING'S FINE, AND WHAT IS THE POSITION, YOUR POSITION, WITH REGARD TO THE STATUS OF DUE DILIGENCE AND SETTING FORTH A MERITORIOUS DEFENSE AS A BASIS TO SET ASIDE?

FORGET ABOUT ALL THIS OTHER HOOEY WE'RE TALKING ABOUT.

>> I WANT TO ANSWER YOU VERY CAREFULLY.

THERE ARE A NUMBER OF POINTS THAT THE DEFENDANTS FAILED ON EACH POINT.

WHEN THE DEFENDANTS DISCUSSED

THE EVIDENCE THEY PRESENTED IN THE TRIAL COURT, THEY MAKE TWO FUNDAMENTAL FAILINGS. FIRST, THEY PICK AND CHOOSE FROM DIFFERENT MOTIONS. SOME OF THESE MOTIONS WERE FILED AS LATE AS EIGHT MONTHS AND LATER AFTER THE DEFAULT WAS ENTERED. THEY'RE NOT -- THE MAJORITY OF WHAT THEY CITE WAS NOT ASSERTED THE FIRST TIME IN THE MOTION. >> LET'S GO BACK TO THE FIRST MOTION. >> THEY DID NOT HAVE SWORN ALLEGATIONS ESTABLISHING EXCUSABLE NEGLIGENCE. >> THEY DIDN'T ADDRESS EXCUSABLE NEGLIGENCE? >> NO, YOUR HONOR. THEIR POSITION WAS -- AND I DO DISAGREE WITH THE CONTENTION THAT YOU HEARD TODAY. ALL THAT THE PRINCIPAL FOR THE DEFENDANT SAID IN THE FIRST MOTION WAS I HAD THE COMPLAINT, I DID RECEIVE IT, THIS ISN'T-- EXCUSABLE NEGLIGENCE IS TAKING TOO LONG TO ANSWER. I GAVE IT TO MY ATTORNEY THAT I HAD RETAINED AT THAT TIME. HE DID NOT ACT ON IT. I CALLED HIM A NUMBER OF TIMES. HE DIDN'T RETURN MY CALLS. AND THEN IN AUGUST HE THEN WITHDREW FROM THE CASE. AND THEN AFTER AUGUST SOMETIME I LEARNED ABOUT A DEFAULT. WE'VE CITED TO YOU THE CASES THAT SAY THAT IS NOT THE BASIS FOR ESTABLISHING EXCUSABLE NEGLIGENCE. BUT THOSE ARE THE ONLY ALLEGATIONS THEY SAID REGARDING THAT. REGARDING DUE DILIGENCE IN THAT FIRST MOTION, PART OF WHAT I JUST SAID APPLIES. DUE DILIGENCE IS HOW LONG DO YOU TAKE TO COME BACK AND SEEK TO

VACATE --

>> AND WHAT DO YOU DO AS WELL?

>> AND WHAT DO YOU DO AND HOW LONG DO YOU TAKE.

ABSOLUTELY, YOUR HONOR.

IN THAT FIRST MOTION, WHAT THE DEFENDANT THROUGH THE PRINCIPAL STATED WAS I DIDN'T FIND OUT ABOUT THIS UNTIL AFTER AUGUST BECAUSE MY ATTORNEY DIDN'T TELL ME EVEN THOUGH I WAS CALLING HIM AND THEN HE WITHDREW IN AUGUST.

I KNOW YOU WANTED ME TO FOCUS ON THE FIRST MOTION, BUT THAT'S ONE OF THE FACTS THAT SHE THEN LATER CONTRADICTS TWO MOTIONS LATER AND SAYS I DID LEARN ABOUT THE DEFAULT IN MAY.

>> OKAY.

WHAT IS THE MERITORIOUS DEFENSE THAT'S STATED?

>> IN THE MERITORIOUS DEFENSE IN THE FIRST MOTION IT IS SIMPLY A CONCLUSORY STATEMENT, WE HAVE A MERITORIOUS DEFENSE.

>> NOTHING AS FAR AS THERE WAS COMPARATIVE NEGLIGENCE? THERE'S NOTHING AT ALL LIKE THAT.

>> MY MEMORY IS THERE WAS NO SPECIFICITY TO IT AT ALL IN THAT FIRST MOTION.

AND I WANT TO BE CAREFUL THAT I'M NOT CONFUSING THAT WITH LATER ON.

>> WHAT ABOUT THE FAILURE TO STATE A CAUSE OF ACTION? WAS THAT RAISED IN THE FIRST MOTION?

>> NO, YOUR HONOR.

THE ONLY ARGUMENT THAT THE DEFENDANTS MADE IN THAT REGARD WAS WHAT THEY WANTED TO SAY WAS AN INCONSISTENCY BETWEEN HOW WE PLED THE TRIPPING AND WHAT THE DISCOVERY SHOWED.

THEY DID NOT ASSERT EVER IN THE TRIAL PROCEEDINGS OR IN THE APPELLATE COURT THAT THIS

COMPLAINT WAS DEFICIENT ON ITS
FACE FOR NOT PROPERLY PLEADING A
PREMISES LIABILITY ACTION.

>> SHE SAID THIS MORNING THAT
YOU DIDN'T PLEAD A LEGAL DUTY.
THAT'S WHAT SHE SAID THIS
MORNING.

>> SHE DID.

>> SO MY QUESTION IS WHAT WERE
THE ALLEGATIONS IN THE INITIAL
COMPLAINT WITH REGARD TO WE'VE
DONE STATUS, YOU ARE THE OWNER,
THEREFORE WHAT?

>> THE SPECIFIC ALLEGATIONS WERE
THAT THE DEFENDANT EITHER OWNED,
MAINTAINED OR CONTROLLED THE
PROPERTY AND THEREFORE HAD A
RESPONSIBILITY FOR THE PREMISES.

>> OKAY.

>> OR THE SPECIFICITIES OF AND
YOU COLLECTED RENT AND -- NO.
THOSE KIND OF DETAILS, NO, SIR.

>> I'M JUST ASKING, THAT'S WHAT
IT SAID AND THEY WERE
RESPONSIBLE FOR THE PROPERTY.

>> RIGHT.

>> OKAY.

>> TIME IS UP.

>> THANK YOU VERY MUCH.

I APPRECIATE YOUR TIME.

>> I HAVE NEVER ASKED FOR THIS
BEFORE, BUT MAY I HAVE 30
SECONDS FOR A BRIEF SUR REPLY?
I JUST WANT TO GIVE THE COURT
RECORD CITES.

>> 30 SECONDS.

>> I WOULD REFER YOU TO
APPENDIXES 8 AND 9.

I'M NOT MAKING ANY ARGUMENT, BUT
I STAND BY WHAT I REPRESENTED TO
THIS COURT AS BEING ACCURATE.

THANK YOU.

>> THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.