

>> SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE BE SEATED.
>> OKAY.
THIS IS THE CASE OF LARGO V.
AHF-BAY FUND.
WHENEVER YOU'RE READY.
>>MAY IT PLEASE THE COURT MY
NAME IS ALAN ZIMMET, AND I
REPRESENT THE PETITIONER, CITY
OF LARGO.
WE'RE HERE ON APPEAL OF THE--
>> IF YOU COULD SPEAK, WE
SOMETIMES DON'T DO IT EITHER,
BUT WE'VE GOT TO SPEAK IN THE
MIC.
>> YES, SORRY.
THANK YOU.
THE SECOND DISTRICT COURT OF
APPEALS' DETERMINATION THAT THE
PILOT PAYMENTS AT ISSUE IN THIS
CASE ARE REALLY TAXES IN
VIOLATION OF ARTICLE 7, SECTION
9A OF THE CONSTITUTION AND
SECTION 96 IS CONTRARY TO THIS
COURT'S DEFINITION OF TAX, THIS
COURT'S DEFINITION OF LEVY AND
THE LANGUAGE OF CHAPTER 196.
THE LYNCH PIP OF THE SECOND
DISTRICT'S REASONING WAS THAT
SECTION 196.1978 EXPRESSLY
PROHIBITED AD VALOREM TAXATION
ON PROHIBITED POLICIES.
THE SECOND DCA WAS INCORRECT ON
THIS POINT BASED UPON THE CLEAR
LANGUAGE OF CHAPTER 196 AND
SPECIFICALLY .011.
AS CONFIRMED BY THIS COURT'S
RECENT RULING WHERE THE COURT
SAID THAT EXEMPTION IS NOT A
RIGHT AS AN EXPECTATION, IS
WAIVEABLE AND RECOGNIZED THAT
UNDER 196.011 THAT--
>> I'M SORRY, WHAT CASE DID YOU,
WERE YOU REFERRING TO?
>> SEOUL V--
[INAUDIBLE]
CASE THAT THIS COURT ISSUED BACK
IN JUNE.
>> OKAY.
>> SPECIFICALLY RECOGNIZED THE
DECISION UNDER 196.011 THAT ALL
AFFORDABLE HOUSING PROPERTY
OWNER HAS TO DO IS FAIL TO FILE

AN APPLICATION TIMELY OR THE EXEMPTION, AND IT IS CONSIDERED WAIVED.

>> LET ME, LET ME, BE YOU COULD HELP ME-- IF YOU COULD HELP ME OUT WITH SOME BACKGROUND INFORMATION IN THIS CASE, AS I UNDERSTAND IT, THE CITY CAN ENTER INTO THESE KINDS OF PILOT AGREEMENTS WITH ANY NONPROFIT. IS THAT TRUE OR NOT?

>> OUR POSITION IS, YES, THE PILOT AGREEMENTS CAN BE ENTERED INTO--

>> UNDER 423?

>> WELL, 423 IS SPECIFIC TO PUBLIC AFFORDABLE, PUBLIC HOUSING AUTHORITIES.

>> OKAY.

>> SPECIFICALLY AUTHORIZED TO ENTER INTO--

>> AND THIS, THIS IS NOT A PUBLIC HOUSING.

>> NO, THIS IS A PRIVATE, NOT-FOR-PROFIT.

>> AND IT'S NOT CONSIDERED A HOUSING PROJECT?

>> THIS IS AN AFFORDABLE HOUSING PROJECT.

THE TAX EXEMPTION APPLICABLE TO 501(C)(3)s IS IN SECTION 196.1978.

>> I KNOW THERE'S 196 AND 423. SO 423 IS NOT APPLICABLE AT ALL TO THIS PARTICULAR UNIT?

>> NOT TO THIS PROPERTY OWNER. BUT WHAT'S INTERESTING TO NOTE--

>> SO THERE'S-- WELL, THEN LET ME ASK YOU THIS: IF THERE IS A PILOT AGREEMENT BETWEEN AN ENTITY SUCH AS THIS THAT'S DOING THE AFFORDABLE HOUSING, ARE THERE ANY LIMITATIONS ON WHAT AMOUNTS CAN BE INCLUDED IN THAT PILOT AGREEMENT?

BECAUSE UNDER 423 IT SEEMS LIKE THERE IS SOME LIMITATION. THERE IS NO LIMITATION IF YOU ENTER INTO ONE PILOT AGREEMENT WITH AN ENTITY UNDER 196?

>> WELL, 196 DOESN'T SPECIFICALLY ADDRESS PILOT AGREEMENTS.

>> RIGHT.

>> SO IT DOES NOT-- THERE IS NO AMOUNT UNDER WHICH IT WOULD INDICATE THAT WOULD BE UNCONSTITUTIONAL OR CONTRARY TO 196 THAT IF IT VOLUNTARILY WAS AGREED TO, WHATEVER THAT AMOUNT MAY BE, BY THE PARTIES WITH REGARD TO A PRIVATE 501-C3. UNDERSTAND THAT PUBLIC HOUSING AUTHORITIES WERE CREATED BY STATUTE, AND THEIR EXEMPTION IS DIFFERENT.

IN THE CASE OF PUBLIC HOUSING AUTHORITY, THERE'S NO SITUATION UNDER WHICH THEY COULD FAIL TO FILE AN APPLICATION AND THEREBY WAIVE THEIR EXEMPTION.

SO THERE IS, THERE IS A DIFFERENCE IN THAT SENSE. AS FAR AS THE SENSE GOES. EXEMPTION GOES.

IN THIS CASE, THE PILOT AGREEMENT WAS ENTERED IN DECEMBER OF 2000 WHERE THE CITY AND THE PROPERTY OWNER AT THE TIME, RHF, AGREED THAT THE CITY WOULD AUTHORIZE THE CAPITAL TRUST AGENCY TO ISSUE TAX-EXEMPT BONDS TO FINANCE--

>> WHEN THAT HAPPENED, WHAT DISCRETION DID THE IS CITY HAVE TO EITHER DO THAT TRANSACTION WITH THEM OR NOT?

>> TOTAL DISCRETION.

THEY COULD HAVE NOT DECIDED TO AUTHORIZE OR ENTER INTO THAT INTERLOCAL AGREEMENT WITH THE CAPITAL TRUST AGENCY AND AUTHORIZE THE ISSUANCE OF THE TAX-EXEMPT FINANCING FOR THAT PROJECT.

>> AND THEY NEEDED THIS KIND OF AGREEMENT AND FINANCING IN ORDER TO BUILD THE ACTUAL AFFORDABLE HOUSING?

I MEAN, WAS IT--

>> WELL, THEY--

>>-- WAS IT DONE TO BUILD THE AFFORDABLE HOUSING?

>> THEY MADE, THEY MADE THE DETERMINATION THAT IT WAS IN THEIR BEST INTERESTS TO ENTER INTO THE AGREEMENT WITH THE CITY

IN ORDER TO INDUCE THE CITY TO
AUTHORIZE TAX-EXEMPT FINANCING
AND IN RETURN MAKE PILOT
PAYMENTS.

THAT WAS THE VOLUNTARY DECISION
MADE BY THE PROPERTY OWNER AT
THE TIME.

>> YOUR ARGUMENT ISN'T THAT--
IS YOUR ARGUMENT THAT THE CITY
CAN NEVER BE, RECEIVE
RENUMERATIONS FOR ENTERING INTO
THESE PILOT AGREEMENTS?

>> NO.

MY POSITION IS THAT THE CITY CAN
OBTAIN COMPENSATION OR
CONSIDERATION UNDER THESE--

>> SO THE OTHER ARGUMENT IS THEY
CAN'T TIE IT TO AD VALOREM
TAXES, IS THAT IT?

>> IF YOU LOOK AT THEIR
ARGUMENT, THEIR ARGUMENT SOUP
OFFICIALLY IS IT CAN'T BE TIED,
BUT THEY ALSO STATE THERE'S
ESSENTIALLY NO AMOUNT THAT COULD
BE AGREED TO THAT WOULD BE
CONSISTENT WITH 196.1978.

>> RIGHT.

I SHOULD HAVE ASKED THEM THAT
QUESTION, NOT YOU.

OKAY, SORRY.

[INAUDIBLE]

>> LET ME ASK YOU TO SHIFT FOCUS
HERE TO THE OTHER ISSUE WHICH
WOULD BE DISPOSITIVE, AND THAT'S
KIND OF RUNNING WITH THE LAND.
NOW, I ASSUME THAT WOULD BE
DISPOSITIVE.

IF THE OBLIGATION AT ISSUE HERE
IS NOT A COVENANT RUNNING TO THE
LAND, THEN-- RUNNING WITH THE
LAND, THEN THE CITY LOSES,
RIGHT?

>> YES.

>> OKAY.

[LAUGHTER]

WELL, I'M, I'M HAVING TROUBLE
SEEING HOW THIS IS A COVENANT
RUNNING WITH THE LAND.

AND TELL ME WHY I'M WRONG IN
THINKING-- AND I UNDERSTAND THE
JURISPRUDENCE ABOUT COVENANTS
RUNNING WITH THE LAND IS
INTERESTING AND MAY BE COMPLEX,
AND YOU CAN FIND A HOT OF

DIFFERENT THINGS. -- A LOT OF
DIFFERENT THINGS.
WHY IS IT WRONG TO THINK THAT AT
LEAST PART OF THAT JURISPRUDENCE
SAYS THAT FOR COVENANT TO BE A
COVENANT RUNNING WITH THE LAND,
THE PARCEL WHICH IS BURDENED HAS
TO ENJOY SOME ONGOING BENEFIT IN
CONNECTION WITH THE COVENANT?
IS THAT THE WRONG WAY TO THINK
ABOUT IT?

>> WELL, I THINK IT'S PART, IT'S
PARTIALLY INCORRECT BECAUSE,
FIRST OF ALL, THERE'S DIFFERENT
TESTS TO DETERMINE IF A COVENANT
IS ONE THAT RUNS WITH THE LAND.
THE FIRST TEST THAT WE RELY UPON
IS THE IMPLIED ACTUAL NOTICE
TEST.

AND WHAT YOU DON'T EVEN GET TO
THE ISSUE OF WHETHER IT IS A
BENEFIT OR WHETHER THE COVENANT
TOUCHES AND CONCERNS THE LAND.
YOU DON'T EVEN GET THERE IF
THERE'S IMPLIED ACTUAL NOTICE.
IN THIS CASE--

>> SO YOU'RE SAYING THAT THERE'S
A LAW THAT SAYS YOU CAN HAVE A
COVENANT-- ANYTHING, ANY SORT
OF OBLIGATION CAN BE A COVENANT
RUNNING WITH THE LAND AS LONG AS
SOMEBODY'S GOT NOTICE OF IT?

>> YES, JUDGE.

THERE ARE CASES THAT SAY IF A
SUCCESSOR TAKES PROPERTY WITH
NOTICE AND THERE'S THE INTENT OF
THE PARTIES THAT THAT COVENANT
BE BINDING UPON THE SUCCESSORS
AND ASSIGNS, THEN, YES.

THAT-- YOU DON'T EVEN GET TO
THE ISSUE OF WHETHER IT BENEFITS
THE PROPERTY.

IN THIS CASE NOT ONLY WAS--

>> THERE IS A LAW THAT SAYS TO
THE CONTRARY, RIGHT?

THAT YOU GET TO--

>> WELL, THERE'S LAW THAT SAYS
THERE'S ONLY CONSTRUCTIVE
NOTICE, THEN YOU HAVE TO ALSO
PROVE COVENANT TOUCHES AND
CONCERNS THE LAND.

BUT IF YOU HAVE IMPLIED ACTUAL
NOTICE-- AND I KNOW THAT
THERE'S A LOT OF CASES ON--

[INAUDIBLE]

SOME OF IT IS VERY OLD.
I KNOW, AND WE'VE CITED A NUMBER
OF THOSE CASES IN THE BRIEFS.
BUT OUR-- IT'S BASED UPON THE
RECORD EVIDENCE.

THE AHF HAD IMPLIED ACTUAL
NOTICE OF THE COVENANT.
THEY DID THIS BECAUSE, ONE, THEY
RECEIVED THE FINANCIAL RECORDS
FROM THEIR SELLER.

THEY RECEIVED-- THOSE FINANCIAL
RECORDS REFLECTED PILOT
PAYMENTS.

THE, NOW THEY HAD ACTUALLY BEEN
ASSIGNED THE PURCHASE AGREEMENT
BY ANOTHER COMPANY, AND THERE'S
ED IN THE-- EVIDENCE IN THE
RECORD THAT BEFORE THEY SIGNED
THE CONTRACT THEY HAD LOOKED AT
THE FINANCIAL RECORD, AND THEY
WERE ABLE TO IDENTIFY THAT THERE
WERE PILOT PAYMENTS BEING PAID
BY THE PREDECESSOR OWNER.

>> BUT IF IT'S GOING TO GO WHO
THE LAND-- WITH THE LAND, ISN'T
THERE SOME NEXUS TO RECORD
NOTICE?

IT'S NOT JUST--

[INAUDIBLE]

>> THERE WAS A MEMORANDUM--
>> I UNDERSTAND, BUT LET'S JUST
TALK ABOUT THE CORE ELEMENTS
YOU'RE RESPONDING TO.
ISN'T THAT ONE OF THE ESSENTIAL
ELEMENTS, IS THAT IT-- THE
NOTICE YOU'RE TALKING ABOUT BE
RECORD NOTICE, NOT JUST, OH, SAM
SMITH TOLD HIM, YOU KNOW, TWO
WEEKS AGO?

>> WELL, AND I WAS GOING SO--
TO SAY IN THIS CASE THERE WAS A
MEMORANDUM OF AGREEMENT--

>> I UNDERSTAND THAT.

[LAUGHTER]

THAT'S ESSENTIAL IN THIS CASE,
ISN'T IT?
SOMETHING WAS RECORDED IN THIS
CASE.

>> YES.

>> BUT IF IT HAD NOT BEEN, THEN
JUSTICE CANADY'S CORRECT.
I MEAN, FOR THIS NOTICE IT HAS
TO BE SOMETHING THAT'S OF RECORD

NOTICE, ISN'T IT?
YOU THINK NOT?
>> UM--
>> OKAY.
THAT'S--
>> I'M NOT SURE.
OBVIOUSLY, IN OUR CASE WE HAVE A
MEMORANDUM THAT WAS RECORDED
THAT SAID THERE'S A COVENANT AND
A PILOT AGREEMENT THAT
ESTABLISHED COVENANTS RUNNING
WITH THE LAND, AND THEREFORE,
THEY HAD RECORD NOTICE AS WELL.
UNFORTUNATELY, THEIR TITLE
COMPANY--
>> I'M ASKING YOU AS TO WHETHER
THAT RECORD NOTICE IS
SUFFICIENT.
>> NO.
THEY HAVE ADMITTED THAT THAT
MEMORANDUM IS IN THEIR CHAIN OF
TITLE--
>> AND DID NOT CONTEST THE
SUFFICIENCY OF IT.
>> THEY HAVE NOT TO DATE
CONTESTED THE SUFFICIENCY OF
THAT--
>> ALL RIGHT, FIND.
>> ARE ALL THE PILOT
AGREEMENTS-- IT'S NOT IN THE
RECORD ARE, BUT THE IDEA IS EVEN
THOUGH THESE NONPROFITS DON'T
PAY AD VALOREM TAXES THAT,
ESSENTIALLY, THIS IS A WAY FOR
THEM TO PAY AD VALOREM TAXES SO
THAT THERE IS A QUID PRO QUO.
IS THERE EVER AN ARGUMENT THAT
AFTER AT A CERTAIN POINT,
ESPECIALLY AFTER IN THIS CASE
THE BOND IS PAID OFF, THAT THE
CONTINUATION OF THE AGREEMENT
UNJUSTLY ENRICHES THE CITY?
AND ARE THERE OTHER AGREEMENTS
WHERE THE ACTUAL AMOUNT THAT IS
BEING PAID BACK TO THE CITY IS
COMMENSURATE WITH THE SERVICES
THAT ARE BEING PROVIDED?
YOU UNDERSTAND MY QUESTION?
>> I THINK SO.
LET ME ADDRESS, FIRST, THE
PAYMENT-- THE REFINANCING OF
THE BONDS.
ACTUALLY, THAT IS A RED HERRING.
IT DOESN'T MAKE IT A TAX.

THERE'S BEEN NO ARGUMENT THAT THE CITY'S BEEN UNJUSTLY ENRICHED IN THIS CASE. THAT'S NOT A DEFENSE THAT WAS ARGUED BELOW.

THE PARTIES, THE ORIGINAL CONTRACTING PARTIES OBVIOUSLY THOUGHT THAT THE BENEFITS THAT WERE BEING IMPOSED WOULD CONTINUE SO LONG AS THAT PROPERTY WAS AFFORDABLE HOUSING. BECAUSE THE INDUCEMENT TO THE CITY, INDUCING THE CITY TO ALLOW THE TAX-EXEMPT FINANCING, THAT ORIGINAL CONTRACTING PARTY-- IN THAT CASE, THE ORIGINAL OWNER, RHF-- OBVIOUSLY BELIEVED THEY WOULD BENEFIT GOING FORWARD SO LONG AS IT WAS AFFORDABLE HOUSING.

THE AMOUNT OF CONSIDERATION, WHICH IS REALLY THIS KIND OF RELATES SOMEWHAT TO THE DETERMINATION AS TO THE AMOUNT THAT THE CITY WAS TO BE CONSIDERED OR GIVEN CONSIDERATION, IS NOT AN ISSUE GENERALLY THAT THE COURTS ADDRESS.

YOU ADDRESS IS THERE CONSIDERATION, NOT WHETHER THERE'S AN ADEQUATE CONSIDERATION.

>> IF YOU WOULD CONTINUE, TRY TO KEEP YOUR VOICE UP, I'M HAVING A HARD TIME HEARING YOU.

>> SORRY, YOUR HONOR.

SO THE REFINANCING OF THE BONDS IS NOT REALLY AN ISSUE THAT RELATES TO WHETHER THIS PILOT PAYMENT IS A TAX OR NOT. AND THE COURT IS REALLY NOT, DOES NOT GENERALLY DELVE INTO WHETHER THE COMPENSATION OR CONSIDERATION PAID THE CITY THAT THE PARTIES ORIGINALLY DETERMINED WOULD BE PAID FOR AS LONG AS THIS WAS AN AFFORDABLE HOUSING PROJECT IS ADEQUATE OR NOT.

THAT WAS A DETERMINATION VOLUNTARILY MADE BY THE ORIGINAL CONTRACTING PARTIES.

THE LOWER COURT, AS I INDICATED

BEFORE, WAS INCORRECT IN DETERMINING THAT THIS WAS A TAX, BECAUSE IF YOU LOOK AT THIS COURT'S DECISION IN PORT ORANGE, THE COURT SAID THAT A TAX IS ONE THAT'S UNILATERALLY IMPOSED BY SOUTHERN RIGHT.

THIS IS NOT A-- SOVEREIGN RIGHT.

THIS IS NOT A PAYMENT THAT AHF BECAME OBLIGATED TO PAY BY AN ORDINANCE OF SOME KIND ADOPTED BY THE CITY SAYING YOU WILL PAY THIS AMOUNT.

WHEN YOU LOOK AT A CASE LIKE PORT ORANGE, IT IS ALSO NOT SIMILAR TO THE SITUATION THERE WHERE THERE WAS A FEE PROPOSED ACROSS NUMEROUS PROPERTIES OR THE ENTIRE CITY.

THIS IS AN AGREEMENT BETWEEN ONE PROPERTY OWNER AND THE CITY.

THIS COURT REITERATED THE DEFINITION OF THE TERM "LEVY" IN THE RECENT SOWELL CASE WHERE THE COURT SAID LEVY, WHICH IS TERMINOLOGY USED IN THE CONSTITUTION, IS THE IMPOSITION OF A TAX STATED IN TERMS OF MILLAGE AGAINST ALL PROPERTY LOCATED PROPERTY BY D APPROPRIATELY LOCATED PROPERTY BY A GOVERNMENTAL BODY.

IN THIS CASE, THE FEE IS MUCH CLOSER TO YOUR DEFINITION OF A USER FEE IN PORT ORANGE.

IT WAS A RESULT OF AN AGREEMENT THAT WAS ENTERED INTO BY THE CITY IN ITS PROPRIETARY CAPACITY TO CONTRACT.

IT WAS IN EXCHANGE FOR A SERVICE.

IT WAS NOT SHARED WITH OTHER PROPERTY OWNERS, AND IT WAS PAID BY CHOICE BY THE PROPERTY OWNER. AS THE--

>> WAS THE, IN CONNECTION WITH JUSTICE PARIENTE'S QUESTION AS TO THE LONGEVITY OF THE PAYMENTS, WERE THE AMOUNTS IMPACTED, WAS IT A VARYING AMOUNT, OR DID IT REMAIN THE SAME PAYMENT THROUGHOUT ITS EXISTENCE?

>> NO.
IT VARIES EACH YEAR DEPENDING
UPON THE--
>> TAXES.
>>-- THE APPRAISED OR VALUE BY
THE PROPERTY APPRAISER AND THE
MILLAGE RATE.
>> SO IT SMELLS LIKE A TAX, IT'S
CALCULATED LIKE A TAX X IT'S IN
THE SAME AMOUNT OF A TAX, BUT
IT'S NOT BECAUSE THEY AGREED TO
DO IT.
>> WELL, IT IS IN THE SAME
AMOUNT OF A TAX, I ADMIT THAT.
BUT IT IS NOT IMPOSED, IT'S NOT
UNILATERALLY IMPOSED BY THE CITY
ALONE.
IT WAS ENTERED INTO, YES, AS A
VOLUNTARY AGREEMENT.
AND IT'S NOT COLLECTED LIKE A
TAX.
IT'S, IT IS THE RESULT OF AN
AGREEMENT VOLUNTARILY ENTERED
INTO.
IF THE PARTIES HAD DECIDED,
OKAY, INSTEAD OF THE FULL AMOUNT
WE'RE GOING TO CHARGE A
PROGRAMMING OF WHAT THE TAXES
WOULD BE-- A PERCENTAGE OF WHAT
THE TAXES WOULD BE, WHETHER THAT
BE OVER 100% OR LESS THAN 100%,
MY OPPOSING COUNSEL HAS
INDICATED THAT THAT WOULD BE A
VIOLATION OF 196.19782.
THERE WAS A PROVISION, THERE IS
A PROVISION IN THE PILOT
AGREEMENT WHICH WE ASKED THE
LOWER COURT TO RECOGNIZE IF THEY
DETERMINED THAT THE METHOD OF
CALCULATION MADE THIS AN
IMPROPER TAX, AND THAT WAS A
PROCESS THAT THE PARTIES AGREED
TO THAT THEY WOULD GO THROUGH TO
IF THERE WAS EVER A
DETERMINATION EITHER BY THE
LEGISLATURE OR THE COURTS THAT
THE METHOD OF CALCULATION MADE
IT A TAX OR MADE IT INVALID,
THERE WAS A PROCESS FOR THE
PARTIES TO GO THROUGH AND
UTILIZE TO ESTABLISH ANOTHER
METHOD FOR DETERMINING THE
AMOUNT OF THE PAYMENT.
THEY ARGUE YOU SHOULDN'T USE

THAT AND SHOULDN'T ALLOW US TO GO THROUGH THAT PROCESS, BECAUSE ANY AMOUNT WOULD BE VIOLATIVE OF 196.178, AND THEY RELY ON THE FACT THAT THEY BELIEVE THE EXEMPTION IS NOT WAIVEABLE. AGAIN, UNDER THE SOWELL CASE AND THE LANGUAGE OF 196.011, IT'S CLEAR THAT IS WAIVEABLE. IF THEY HAD AGREED AS THE COURT, AS THIS COURT IN SOWELL INDICATED, IF THEY HAD AGREED WE'RE JUST NOT GOING TO FILE THE APPLICATION EACH YEAR ON MARCH 1ST, THEY WOULD HAVE BEEN IMPOSED THE FULL AMOUNT OF ALL TAXES, OF ALL TAXING AUTHORITIES IN PINELLAS COUNTY. AND PURSUANT TO SOWELL IN 196.011, THEY WOULD HAVE BEEN CONSIDERED TO HAVE WAIVED THE EXEMPTION AND BEEN OBLIGATED TO PAY THAT FULL AMOUNT.

>> BUT NOT, THEY WOULDN'T-- THAT WOULDN'T HAVE BEEN APPLICABLE EVERY YEAR. ASSUMING THAT THEY DID, IN FACT, DO IT THE NEXT YEAR, THEY WOULD BE EXEMPT, WOULDN'T THEY?

>> I'M SAYING, THOUGH, IF THEY HAD A AGREED WITH-- WE AGREE WE WILL NOT FILE APPLICATION EVERY YEAR DURING THE COURSE OF THIS AGREEMENT'S IN EFFECT, THEY WOULD HAVE PAID AN AMOUNT EXACTLY THE AMOUNT THAT THE TAXES FOR ALL TAXING AUTHORITIES IN PINELLAS COUNTY. IN THIS CASE, THEY JUST AGREED, OKAY, WE'RE NOT GOING TO PAY ALL THOSE TAXES, WE'RE JUST GOING TO PAY THE CITY'S PORTION. AND SO THAT, WE BELIEVE, IS SOMETHING THAT THEY'RE AUTHORIZED TO DO, IT'S NOT PROHIBITED BY 196.1978, AND IT DOESN'T MAKE IT A TAX.

>> WHAT IS THE IMPLICATION IF WE WERE TO HOLD IN THEIR FAVOR THAT THIS WAS INAPPROPRIATE? WHAT IS THE EFFECT OF THAT? DOES IT IMPACT THE BONDS IN SOME WAY, OR WHAT'S THE PRACTICAL EFFECT?

>> WELL, THE PRACTICAL EFFECT FOR MUNICIPALITIES AS THE SECOND DCA RECOGNIZES THESE AGREEMENTS ARE BOUND THROUGHOUT CITIES IN FLORIDA. THEY USE THEM, THEY'RE MUTUALLY BENEFICIAL BETWEEN NOT ONLY AFFORDABLE HOUSING PROPERTIES, BUT OVER 501(C)(3)s AS A METHODOLOGY TO HELP DEVELOP PROPERTIES HELP 501-C3s IN SOME CASES AND SO RECOGNIZE THAT THEY ARE, PLACE A DEMAND ON MUNICIPALITIES FOR SERVICES.

>> BUT IN THIS CASE DOES IT SOMEHOW UNWIND YOUR AGREEMENT WITH THIS ENTITY, OR WHAT HAPPENS?

WOULD IT ILL-- IMPACT THE BONDS?

>> IT WOULDN'T AFFECT THE BOND. THOSE BONDS HAVE BEEN REFINANCED, SO THOSE WOULD NOT BE AFFECTED.

COULD I RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL.

>> GOOD MORNING.

GOOD MORNING.

MAY IT PLEASE THE COURT, JOE LANG FROM CARLTON FIELDS IN TAMPA FOR AHF-BAY FUND, A 501(C)(3), NONPROFIT, TAX-EXEMPT ENTITY THAT PROVIDES LOW-COST, AFFORDABLE HOUSING IN THE IS CITY OF LARGO.

AT COUNSEL TABLE WITH ME IS CHRIS SMART ALSO ON THE BRIEF, ALSO FROM CARLTON FIELDS. THIS IS A CASE OF FIRST IMPRESSION IN THIS COURT. WE AGREE WITH THAT. BUT IT'S ALSO A CASE THAT IS VERY NARROW. THE CERTIFIED QUESTION HERE IS VERY NARROW. THE ACTUAL FACTS OF THIS CASE ARE EVEN NARROWER, AND I THINK THAT'S VERY IMPORTANT BECAUSE WHEN WE TALK ABOUT THE CERTIFIED QUESTION, WHEN WE TALK ABOUT THE SECOND DISTRICT OPINION, WE NEED TO LOOK AT WHAT THE ACTUAL FACTS OF THIS CASE ARE AS WELL.

>> WELL, LET ME ASK YOU A FACT OF THIS CASE.

WAS THE PARTIES, THE ORIGINAL PARTIES, THE CITY AND RHF, WERE THEY FREE TO ENTER INTO A PILOT AGREEMENT?

>> WE BELIEVE, OUR POSITION IS THAT THESE TYPE OF PILOT AGREEMENTS-- NOT EVERY PILOT AGREEMENT, THIS IS NOT A REFERENDUM ON EVERY PILOT AGREEMENT, BUT THIS TYPE OF PILOT AGREEMENT THAT AGREES TO PAY THE EXACT AMOUNT OF AD VALOREM TAXATION FOR NO SERVICES THAT ARE TIED TO THE AMOUNT OF PAYMENT--

>> THERE WAS A SERVICE. THERE WAS THE GETTING OF THE TAX-FREE BONDS IN ORDER TO EVEN, TO-- I DON'T KNOW WHAT THEY USED IT FOR, BUT RHF GOT THOSE TAX-FREE BONDS, SO WASN'T THAT A BENEFIT THAT THEY OBTAINED IN, BY EXECUTING THAT AGREEMENT?

>> THAT CERTAINLY IS THE CONSIDERATION THAT THE CITY IS TALKING ABOUT, IS THE FACILITATION OF SIGNING THE PAPERWORK THAT IT TOOK TO CREATE THAT AGREEMENT.

THEY'VE NEVER QUANTIFIED AN AMOUNT OF MONEY THAT THAT IS WORTH.

>> SO LET'S ASSUME THEN-- WE DON'T KNOW WHAT IT'S WORTH. SUPPOSE THE AGREEMENT HAD BEEN FOR \$10,000 MORE THAN WHAT WOULD HAVE BEEN PAID AS AD VALOREM TAXES.

WAS RHF AND THE CITY PRIX TO ENTER INTO-- FREE TO ENTER INTO THAT KIND OF AGREEMENT?

>> WE DO NOT BELIEVE OF THAT THEY CAN, THAT RHF CAN WAIVE THEIR AD VALOREM TAX EXEMPTION.

>> IT'S AN AMOUNT THAT'S EVEN MORE THAN THE AD VALOREM TAXES. COULD THEY HAVE ENTERED INTO SUCH AN AGREEMENT?

>> I BELIEVE THAT VIOLATES PUBLIC POLICY UNLESS IT IS TIED TO AN AMOUNT OF SERVICES THAT BENEFITS THE PROPERTY.

THERE ARE DIFFERENT KINDS OF--
THERE ARE LOTS OF DIFFERENT
KINDS OF PILOT AGREEMENTS, AND
WE'RE NOT HERE ARGUING AGAINST
PILOT AGREEMENTS.

THIS IS NOT A REFERENDUM ON
PILOT AGREEMENTS.

WE'RE HERE ON ONE SPECIFIC KIND
OF PILOT AGREEMENT WHICH IS,
BASICALLY, A FUNCTIONAL
EQUIVALENT OF A TAX.

I MEAN, THIS IS THE EXACT AMOUNT
OF TAXATION, AND OTHER THAN--

>> I MEAN, THAT'S WHY I WAS
TRYING TO TAKE IT OUT OF THE
CONTEXT OF THE EXACT AMOUNT OF
THE TAXATION.

LET'S ASSUME IT WAS \$10,000 LESS
THAN THE EXACT AMOUNT OF THE
TAXATION.

MY QUESTION TO YOU REALLY IS
COULD RHF AND THE CITY ENTER
INTO THAT KIND OF AGREEMENTS.

>> I BELIEVE-- AGREEMENT?

>> I BELIEVE THERE ARE KINDS OF
PILOT AGREEMENTS THAT THEY WOULD
BE ABLE TO ENTER.

SO, YES.

YOU CAN SPECULATE AS TO A TYPE
OF PILOT AGREEMENT THAT WOULD BE
VALID IN FLORIDA.

BECAUSE THERE ARE DIFFERENT
KINDS OF PILOT AGREEMENTS.

WE DON'T HAVE THOSE OTHER PILOT
AGREEMENTS IN THIS CASE, BUT IF
YOU TIE IT, IF THERE'S SOME
RATIONAL RELATIONSHIP BETWEEN
WHAT THE CITY IS PROVIDING AND
WHAT THE ENTITY, WHAT THE
NONPROFIT ENTITY IS AGREEING TO
PAY, THEN IT IS CLOSER TO A USER
FEE.

IT IS MORE LIKE A USER FEE.

IT'S NOT A FUNCTIONAL EQUIVALENT
OF A TAX.

>> BUT, YOU KNOW, I GUESS ONE OF
THE PROBLEMS I HAVE, AND YOU
STARTED OUT SAYING THAT WE DON'T
KNOW HOW MUCH IT WAS WORTH, THE
GETTING OF THE BONDS AND ALL
THAT.

BUT OBVIOUSLY, RHF THOUGHT IT
WAS WORTH THAT AMOUNT IN ORDER
TO GET THIS BOND ARRANGEMENT.

AND SO HOW DO WE EVALUATE THAT
IF WE DON'T KNOW THE ACTUAL
AMOUNT, BUT RHF THOUGHT BY
ENTERING INTO THE AGREEMENT THAT
IT WAS A GOOD DEAL--

>> I UNDERSTAND THAT.

AND THEY MAKE MUCH THAT RHF HAD
THIS OTHER PANOPLY OF OPTIONS,
AND THEY CHOSE TO COME TO US AND
VOLUNTEER TO PAY THE FUNCTIONAL
EQUIVALENT OF A TAX SO THAT
WE'LL HELP THEM GET THEIR
OPINIONS.

HE WERE THE ONLY GAME IN TOWN,
THE CITY WAS, AND THAT NEEDS TO
BE UNDERSTOOD.

NOBODY ELSE IS GOING TO GET
TAX-EXEMPT FINANCING FOR RHF--

>> BUT YOU COULD HAVE GOTTEN
FINANCING THAT WAS NOT
TAX-EXEMPT.

>> WELL, RHF PRESUMPTIVELY COULD
HAVE, I DON'T KNOW--

>> I'M JUST ASKING.

>> I ASSUME SO, BUT NOT
TAX-EXEMPT FINANCING.

THEY WERE THE ONLY GAME IN TOWN
AT THAT POINT IN TIME.

I DON'T WANT TO SPEND MY ENTIRE
TIME, THOUGH, TALKING ABOUT RHF
BECAUSE WE, THIS CASE, IS A
BETTER CASE FOR APPROVING THE
SECOND DISTRICT THAN RHF.

AND I DO THINK YOU CAN APPROVE
IT EVEN IN THE RHF SITUATION
BECAUSE, AS I SAY, I DON'T THINK
YOU CAN WAIVE YOUR TAX EXEMPTION
TO PAY THE EQUIVALENT, THE EXACT
EQUIVALENT OF THE AD VALOREM
TAXES--

>> BUT LET ME-- EXPLAIN TO ME
WHY.

ARE YOU SAYING THERE'S A
LEGISLATIVE PROHIBITION THAT IF
I'M A NONPROFIT AND I WANT TO
WAIVE MY TAX EXEMPTION BECAUSE
SOME GENEROUS DONOR SAYS,
LISTEN, WE WANT YOU TO PAY, AND
WE'LL GIVE YOU THE EQUIVALENT,
THAT THE NONPROFIT CAN'T DO
THAT?

>> YES.

WE BELIEVE THAT--

>> YES, WHAT?

YES, YOU CANNOT WAIVE--

>> YES, YOU CANNOT.

SO--

>> AND THAT'S A, SO WE'RE REALLY SPEAKING OF LEGISLATIVE AND CONSTITUTIONAL INTERPRETATION?

>> CORRECT.

I THINK THAT IF YOU LOOK AT THE HISTORY OF THIS PARTICULAR EXEMPTION, IT IS CLEAR THE HISTORY OF THIS PARTICULAR EXEMPTION IS THAT THE LEGISLATURE PUT THIS EXEMPTION IN PLACE IN THE FACE OF A FIFTH DISTRICT OPINION THAT WAS STARTING TO LIMIT WHAT HAD TRADITIONALLY BEEN UNDERSTOOD TO BE AN EXEMPTION FOR THESE TYPE OF ENTITIES--

>> ONE IS THE ISSUE IS WHETHER YOU'RE TAX-EXEMPT AS A NONPROFIT.

THE OTHER IS YOU'RE SAYING THEY WERE ADDRESSING AN EVIL, THAT NONPROFITS WERE WAIVING THEIR TAX EXEMPTION?

>> NO.

THAT WAS A JUDICIAL DECISION NARROWING WHO GOT IT.

>> OKAY.

WELL, THAT'S-- SO YOU'RE SAYING LEGISLATIVELY, WE'RE INTERPRETING LEGISLATIVE INTENT TO PROHIBIT A NONPROFIT FROM AGREEING TO PAY THE TAXES IN THE AMOUNT THAT THEY WOULD HAVE PAID IF THEY WERE A FOR-PROFIT COMPANY.

>> YES, YOUR HONOR.

I THINK THAT IS REQUIRED BY PUBLIC POLICY.

AND BE IT IS A CASE OF FIRST IMPRESSION HERE IN FLORIDA, BUT I WOULD POINT YOU TO THIS PENNSYLVANIA CASE WHICH IS THE ONLY CASE THAT IS CLOSE AT ALL TO THESE FACTS THAT HAVE BEEN BROUGHT, THAT'S BEEN BROUGHT TO THIS COURT'S ATTENTION.

AND THAT'S THE CASE OF THE CITY OF MANASSAS WHICH IS SET UP JUST LIKE THIS CASE.

IT'S A SUCCESSOR OWNER, IN FACT, THAT IS AT ISSUE.

THE FACTS THERE ARE EVEN MORE
ADVANTAGEOUS TO OUR POSITION
BECAUSE THEY ARE, THE
SUCCESSOR-OWNER WHICH IS AHF,
THAT'S US.

WE DIDN'T KNOW ABOUT THIS
AGREEMENT.

WE HAD CONSTRUCTIVE KNOWLEDGE,
YOUR HONOR, WE DON'T DISPUTE
THAT.

WE HAD CONSTRUCTIVE
KNOWLEDGE.

>> I UNDERSTAND THE DIFFERENCE
BETWEEN ACTUALLY FILING THE
DOCUMENT AND FILING SOMETHING
OTHER THAN THE DOCUMENT THAT
GIVES THE INFORMATION.

>> RIGHT.

WELL, THEY DID NOT FILE THE
ACTUAL DOCUMENT.

>> I UNDERSTAND THAT.

>> WE HAD CONSTRUCTIVE NOTICE OF
THIS MEMORANDUM.

>> RIGHT.

>> WE DID NOT HAVE ACTUAL
NOTICE.

SO WE'RE IN A BETTER POSITION
THAN THE PARTY IN PENNSYLVANIA,
BECAUSE IN PENNSYLVANIA THE
PARTY ACTUALLY SIGNED AN
AGREEMENT TO KEEP PAYING THESE
PILOT AGREEMENTS.

SO IT'S THE SUCCESSOR ENTITY
LIKE WE ARE.

THEY SIGN AN AGREEMENT TO SAY WE
WILL CONTINUE TO PAY THE PILOT
AGREEMENT AND THEN WHATEVER
REASON THEY DECIDE --

>> IF IT'S VOID, IT'S VOID FOR
THE INITIAL PARTY.

AND HERE'S WHAT MY CONCERN IS.
I'M LOOKING AT THE FACT THAT THE
SECOND DISTRICT CERTIFIED THIS
AS A QUESTION OF GREAT PUBLIC
IMPORTANCE BECAUSE THERE'S PILOT
AGREEMENTS.

I CONFESS TO NOT HAVING HEARD OF
THIS CASE.

ALL OVER THE STATE, ALL OVER THE
COUNTRY.

AND I'M LOOKING.

THERE IS NOT ONE AMICUS BRIEF
FROM THE LEAGUE OF CITIES, THE
REAL PROPERTY SECTION.

IF THIS IS -- AND YET WHAT WE'RE DOING MAY AFFECT THE STABILITY OF AGREEMENTS AROUND THE STATE. SO CAN YOU HELP ME UNDERSTAND SO THAT IS THERE A NARROW WAY TO RESOLVE THIS AS OPPOSED TO REACHING THE BROADER ISSUE, BECAUSE -- OR SHOULD WE ASK FOR AMICUS HELP IN UNDERSTANDING WHETHER THIS IS A VOID AGAINST PUBLIC POLICY AS A RESULT OF THE LEGISLATIVE ENACTMENT.

>> I WOULD VERY MUCH LIKE TO HELP YOU WITH THAT BECAUSE I HAVE NOTES TO THIS EFFECT THAT I WANTED TO BRING UP.

THERE'S NO RECORD SUPPORT FOR THE CERTIFIED QUESTIONS BASIS THAT THESE ARE ALL OVER FLORIDA. AND OBVIOUSLY THE LEAGUE IS NOT HERE AND THAT SILENCE IS DEAFENING.

WE DON'T HAVE ANY INDICATION THAT THESE ARE A BIG PROBLEM. WE HAVE A REPRESENTATION THAT THEY ARE.

BUT THERE ARE ALL KINDS OF PILOT AGREEMENTS, AND WE HAVE NO SUPPORT THAT THEY ALL ARE THESE KIND OF EXACT TAXATION PILOT AGREEMENTS RATHER THAN USER FEES.

BUT THE DIRECT ANSWER TO YOUR QUESTION IS IF YOU DON'T LIKE THE BREADTH OF THIS CERTIFIED QUESTION, YOU CAN DO TWO THINGS. FIRST, OUR CASE IS -- AND I'M GOING TO GET THERE.

OUR CASE IS MUCH MORE COMPELLING BECAUSE OF THE FACTS THE BONDS HAVE BEEN PAID OFF, WE DIDN'T HAVE KNOWLEDGE.

YOU COULD NARROW THE CERTIFIED QUESTION TO SUCCESSOR OWNERS. YOU CAN NARROW THE CERTIFIED QUESTION TO DEAL WITH PERPETUAL PAYMENTS THAT ARE BROUGHT ABOUT BECAUSE OF COVENANTS RUNNING WITH THE LAND.

THIS IS A PERPETUAL PAYMENT OF AN AD VALOREM TAX INTO THE FUTURE THAT OBVIOUSLY UNDERMINES THE IDEA OF NONPROFIT OPERATION OF THIS PROPERTY BECAUSE TRYING

TO SELL THIS PROPERTY AT THE
BACK END WITH THIS PAYMENT
ATTACHED TO IT MAKES IT MUCH
MORE DIFFICULT TO KEEP THIS AS
NONPROFIT --
>> WHAT DO WE -- DOES THE RECORD
REFLECT WHAT KIND OF YEARLY
PAYMENT THIS IS?
>> WELL, WE HAVE THE -- I THINK
IT DOES.
CAN YOU JUST TELL ME?
AROUND \$60,000.
WE HAVE THE JUDGMENT AMOUNT,
WHICH IS ABOUT SIX HUNDRED AND
--
>> BECAUSE THEY HAVEN'T PAID FOR
TEN YEARS.
>> RIGHT.
IT'S ADDED UP AND IT HAS
INTEREST RUNNING ON IT.
BUT THIS BECOMES MUCH MORE
DIFFICULT PROPERTY TO KEEP AS A
NONPROFIT GOING FORWARD BECAUSE
OF THIS AGREEMENT.
>> WOULDN'T IT BE A BETTER
ARGUMENT IN TERMS OF PUBLIC
POLICY IS THAT THE WHOLE PURPOSE
OF THIS IS TO ALLOW AFFORDABLE
HOUSING, WHICH WOULD REDUCE THE
OUTFLOW, WHICH WOULD ALLOW THESE
HOUSES TO REMAIN MODERATE AND
LOW-INCOME?
>> WE BELIEVE THAT, YOUR HONOR.
WE BELIEVE THIS HURTS THE PUBLIC
POLICY OF AFFORDABLE HOUSING AND
THAT THERE'S NO REASON FOR LOCAL
GOVERNMENTS AND NONPROFIT
HOUSING ENTITIES LIKE MINE THAT
I'M REPRESENTING, FOR THEM TO BE
AT LOGGERHEADS LIKE THIS, FOR
THIS TAXATION TO BE GOING ON
EVEN BY A MATTER OF SO-CALLED
AGREEMENT WITH OUR PREDECESSOR,
THAT THAT REALLY UNDERMINES
PUBLIC POLICY, BUT ESPECIALLY
ONCE WE'VE PAID OFF THIS
PROPERTY.
THESE BONDS THAT ARE IN PLACE
NOW, WE REFINANCED.
THE GOVERNOR SIGNED IT.
THE CITY DID NOT HAVE TO BE
INVOLVED.
WE PAID OFF THE BONDS THAT THE
CITY HELPED TO FACILITATE.

SO THIS IS A WHOLE NEW SET OF BONDS THAT THE CITY HASN'T BEEN INVOLVED IN.

WE PAID FAIR MARKET VALUE FOR THIS PROPERTY.

THEY SAY IN THE BRIEF THAT WE DON'T HAVE A RECORD CITE FOR THAT, BUT I'LL GIVE YOU ONE.

>> IT WOULD HAVE BEEN IMPACTED BECAUSE THE PROPERTY WAS DEVELOPED INITIALLY UNDER THE TAX-FREE BONDS, RIGHT?

>> NO.

IT'S VERY IMPORTANT TO UNDERSTAND.

THERE'S AN IMPRESSION THAT THIS THING WAS BUILT FROM THE GROUND UP BECAUSE RHF GOT A BOND ISSUED BY THE CITY.

LET ME BE CLEAR WHAT HAPPENED.

>> COME ON.

THE CITIES TODAY IN THIS COUNTRY, BECAUSE OF EXODUS TO SUBURBS, TAXABLE PROPERTY WITHIN THE LIMITS OF A COUNTY -- IT'S HAPPENING RIGHT NOW IN FRANKLIN COUNTY HERE IN NORTH FLORIDA, OR CITIES, THAT IT BECOMES IMPORTANT THAT THEY KEEP ON THE TAX ROLLS SUFFICIENT PROPERTY TO PRODUCE THE TAXES THAT ARE NEEDED TO OPERATE THE GOVERNMENT.

SO THEY COULD HAVE SAID WE DON'T WANT NONPROFIT ENTITIES TO TAKE THIS PROPERTY OFF THE TAX ROLLS. WE WOULD PREFER THAT IT BE DEVELOPED BY BUSINESS OR WHATEVER.

I MEAN, THERE IS AN INTEREST HERE.

TO SUGGEST THAT THE GOVERNMENT DOES NOT HAVE AN INTEREST IN ITS TAX BASE TO ME IS REALLY SORT OF NAIVE IN MAKING THAT ARGUMENT.

I MEAN, I UNDERSTAND, THAT THIS IS A COST TO A NONPROFIT.

I UNDERSTAND THOSE THINGS.

BUT TO VIEW IT AS THOUGH THE CITY OR GOVERNMENTS HAVE NO INTEREST IN IT, I THINK THAT'S A LITTLE DANGEROUS, TOO, BECAUSE IF THIS IS WHAT IT'S GOING TO COME DOWN TO, THEN IT MAY BE

THAT CITIES WILL REFUSE TO APPROVE WHAT MAY BE NECESSARY TO DEVELOP THE HOUSING.

>> I CERTAINLY AM NOT SUGGESTING THAT CITIES DON'T HAVE AN INTEREST IN THEIR FINANCES IN THEIR AD VALOREM BASE.

BUT THEY CANNOT USE A HIDDEN TAX TO UNDERMINE THE EQUAL PUBLIC POLICY --

>> WELL, IT'S NOT HIDDEN. THIS IS BASE VALUE, WHAT IS THERE.

I MEAN, IT COULD NOT BE MORE CLEAR, THAT THE PEOPLE WHO WANT TO DEVELOP IT, THEY WERE NOT GOING TO BE ABLE TO DO SO, APPARENTLY.

THEY DIDN'T HAVE TO SIGN IT IF THEY COULD HAVE.

SO THEY SIGNED WHATEVER THEY SIGNED TO GET THIS PROJECT BUILT AND PROBABLY DID A LOT OF GOOD WITH DOING THAT.

>> I UNDERSTAND.

I DO BELIEVE THAT YOU CANNOT UNDERMINE A NONPROFIT BY -- HERE --

>> THIS IDEA ABOUT THE UNDERMINING OF THE NONPROFIT, THE NONPROFIT SIGNED UP FOR THIS.

>> WE DIDN'T.

>> I UNDERSTAND THAT AND THAT'S WHERE WE GET INTO THIS QUESTION OF WHETHER YOU OUGHT TO BE BOUND BY IT OR NOT.

BUT THE INITIAL QUESTION IS THERE WAS A VOLUNTARY AGREEMENT. AND THE IDEA THAT SOMEHOW THIS IS IMPOSED ON THE NONPROFIT INITIALLY IT SEEMS TO ME TO BE AN ENORMOUS FALLACY.

WHERE AM I WRONG?

OR ARE YOU JUST IN A DIFFERENT POSITION?

>> WELL, I CERTAINLY AGREE I'M IN A DIFFERENT POSITION AND A BETTER POSITION.

YOU SHOULD NOT BE ABLE TO WAIVE YOUR TAX EXEMPTION AND THEREFORE I BELIEVE THE SECOND DISTRICT OPINION CAN BE APPROVED AS WRITTEN.

>> YOU SAY YOU SHOULDN'T BE ABLE TO DO IT.

PEOPLE WAIVE ALL KIND OF THINGS. WE LET PEOPLE WAIVE ALL KIND OF CONSTITUTIONAL RIGHTS, LIKE BIG CONSTITUTIONAL RIGHTS.

THE RIGHT TO HAVE A JURY TRIAL, YOU CAN WAIVE.

YOU CAN WAIVE ALL SORTS OF THINGS.

AND THEN WE'RE GOING TO SAY YOU CAN'T SAVE THIS?

THAT JUST SEEMS TO ME TO BE AN OVERSTRETCH.

BUT WHY AM I WRONG ABOUT THAT? WHY SHOULD THIS BE TREATED DIFFERENTLY THAN ALL THESE OTHER RIGHTS THAT I THINK WE WOULD HAVE TO RECOGNIZE ARE MORE VALUABLE AND MORE IMPORTANT RIGHTS THAT PEOPLE ARE ALLOWED TO WAIVE REGULARLY AND WE'RE GOING TO SINGLE OUT THIS AND SAY, NO, YOU CAN'T WAIVE THAT. WHY WOULD WE DO THAT?

>> WELL, THE CITY OF MANASSAS

--

>> I GOT MY EDUCATION IN PENNSYLVANIA, BUT I DON'T NECESSARILY GET MY LAW FROM PENNSYLVANIA.

>> BUT IT IS THE ONE CASE THAT IS CLOSEST TO THIS.

BUT I UNDERSTAND THE POINT. YOU SHOULD NOT BE ABLE TO WAIVE THIS AS A 501(C)(3), DIFFERENT THAN HAVING AN INDIVIDUAL WAIVING TAX EXEMPTIONS.

WHAT CAN WE DO MORE NARROW THAN SIMPLY APPROVE THE SECOND DISTRICT OPINION?

YOU CAN REFRAME THE CERTIFIED QUESTION TO DEAL WITH THE FACT THERE'S A COVENANT RUNNING WITH THE LAND HERE.

OR YOU CAN DISMISS THIS AS IMPROVIDENTLY GRANTED BECAUSE THERE CLEARLY IS NOT A PROBLEM ON THE GROUND OUT THERE.

THERE'S NOT A SINGLE CASE I KNOW OF SINCE THIS CASE CAME OUT TWO YEARS AGO IN ANY COURT IN FLORIDA CHALLENGING THIS, CERTAINLY NOTHING IN THE

DISTRICT COURTS OF APPEAL.
THIS HASN'T BEEN ABLE TO WORK
ITS WAY THROUGH OTHER DISTRICT
COURTS OF APPEAL.

THIS IS NOT A GOOD VEHICLE FOR
DEALING WITH PILOT AGREEMENTS

--

>> DO YOU WANT TO MAKE AN
ARGUMENT WHY THIS IS NOT A
COVENANT?

>> I WOULD LOVE TO, VERY
QUICKLY.

>> TIME IS SHORT.

>> MY TIME IS SHORT.

THIS IS NOT A COVENANT RUNNING
WITH THE LAND.

THIS IS A PERSONAL AGREEMENT
BETWEEN RHF AND THE CITY.

>> WHAT DO YOU SAY ABOUT THEIR
ARGUMENT ABOUT IMPLIED ACTUAL
NOTICE?

>> OKAY.

>> IS THAT RIGHT?

>> FIRST OF ALL --

>> THAT SEEMS TO ME TO BE A
CONTRADICTION IN TERMS.

>> FIRST OF ALL, NOT A BASIS THE
TRIAL JUDGE FOUND.

THAT WOULD BE A FACT-BASED
DECISION.

THAT IS NOT THE BASIS THAT THE
TRIAL JUDGE FOUND FOR GRANTING
THEM SUMMARY JUDGMENT IN THE
FIRST PLACE.

ONLY CONSTRUCTIVE NOTICE WAS
FOUND.

SECOND, THERE'S EVIDENCE IN THE
RECORD FROM THE PRESIDENT OF MY
CLIENT SAYING THAT HE HAD NO
KNOWLEDGE OF THIS.

>> WHAT ARE THE ELEMENTS OF --
HOW DO YOU DEMONSTRATE A
COVENANT THAT RUNS WITH THE
LAND?

WHAT ARE THE FACTORS THAT YOU
HAVE TO SHOW?

>> WELL, IT HAS TO TOUCH IN
CONCERN.

YOU FIRST HAVE TO SHOW
CONSTRUCTIVE KNOWLEDGE, BUT IT
HAS TO TOUCH IN CONCERN AND
OFFER A CONTINUING BENEFIT TO
THE SERVING THE PARCEL.
THERE'S NOT A CONTINUING BENEFIT

HERE BECAUSE THE BONDS HAVE BEEN PAID OFF AND FAIR MARKET VALUE WAS PAID FOR THE PROJECT.

REAL QUICK I WANT TO MAKE SURE I TELL YOU, PAGE 162 OF THE RECORD IS WHERE YOU'LL FIND THE FAIR MARKET VALUE WAS PAID.

FAIR MARKET VALUE WAS PAID. THE BONDS HAVE BEEN TOTALLY PAID OFF.

AND YET FOR PERPETUITY, THEY ARE TRYING TO KEEP THIS PAYMENT IN PLACE --

>> LET ME ASK YOU SOMETHING THAT REALLY JUST -- I KNOW IS NOT A PART OF THE RECORD, BUT JUST IS OF INTEREST TO ME, IS WAS THERE EVER ANY ATTEMPT, I MEAN, BETWEEN THE CITY AND YOUR CLIENT TO COME TO SOME OTHER AGREEMENT? I MEAN, MAYBE YOU DON'T AGREE, BUT MAYBE THEY COULD HAVE COME TO SOME LESSER AMOUNT THAT ONLY INVOLVED THE KIND -- WHAT THE CITY MIGHT HAVE BEEN -- THE BENEFIT THEY WOULD HAVE BEEN GETTING FROM THE CITY.

WAS THERE ANY ATTEMPT AT THAT?

>> WELL, A, I'M NOT PRIVY TO THOSE CONVERSATIONS.

AND, B, IF I WERE, I'M NOT SURE I COULD SHARE THEM.

SO I'M NOT EXACTLY SURE WHAT THE ANSWER -- CLEARLY THE PARTIES HAVE BEEN WORKING TOGETHER FOR YEARS NOW.

THIS DATES BACK TO THE TRIAL COURT.

SO THERE HAVE BEEN COMMUNICATIONS BACK AND FORTH. BUT I'M NOT PRIVY TO EXACTLY WHAT THOSE ARE.

>> IT JUST SEEMS TO ME THAT THIS COULD HAVE BEEN RESOLVED IN --

>> AND I REALLY CAN'T TALK ABOUT SETTLEMENT EFFORTS IN THE CASE. I BELIEVE THIS MEANS I'M OUT OF TIME.

AND SO --

>> IT MEANS YOU'RE OVER TIME.

>> I'M OVER TIME.

SO I WOULD ASK PRIMARILY TO APPROVE THE SECOND DISTRICT OPINION.

BUT IF YOU'RE NOT GOING TO DO THAT, TO REFRAME THE CERTIFIED QUESTION TO OUR FACTS OR TO DISMISS AS IMPROVIDENTLY GRANTED.

THANK YOU FOR THE OPPORTUNITY TO PRESENT.

>> THANK YOU.

COUNSEL?

>> IN MY BRIEF TIME REMAINING, LET ME JUST ADDRESS A COUPLE OF QUESTIONS THAT CAME UP.

>> WOULD YOU PUT THE MICROPHONE DOWN?

>> YES.

I'M SORRY.

JUSTICE CANADY, WITH REGARD TO THE COVENANT RUNNING WITH THE LAND, WE'VE INDICATED THE COURT WOULD BELIEVE YOU SHOULD NOT EXERCISE JURISDICTION THAT DOES NOT RELATE TO THE CERTIFIED QUESTION.

>> IF WE -- I THINK IT IS COMMONLY THE CASE, IF WE THINK IT'S WRONG, THE DECISION IS WRONG ON SOME OTHER GROUNDS, WE ARE NOT RELUCTANT TO GO THERE.

>> I UNDERSTAND.

THE SECOND POINT I WANTED TO ADD TO WHAT I SAID EARLIER WAS IF THIS ISN'T A COVENANT RUNNING WITH THE LAND, THEN RHF COULD HAVE THE NEXT DAY CHANGED OWNERSHIP STRUCTURE AND WOULD HAVE BEEN OUT FROM UNDER THE AGREEMENT.

CONTRARY TO WHAT OPPOSING COUNSEL SAID, THE LOWER COURT IN THE SUMMARY JUDGMENT SAID THAT HE FOUND AT LEAST CONSTRUCTIVE NOTICE.

HE JUST DIDN'T GO ANY FURTHER THAN THAT.

>> FOUND WHAT?

>> HE FOUND AT LEAST CONSTRUCTIVE NOTICE, IS THE WAY HE TERMED IT.

WITH REGARD TO THE CAN'T WAIVE THE EXEMPTION ARGUMENT, AS ONE OF THE JUSTICES RAISED, YOU CAN WAIVE ALL KINDS OF CONSTITUTIONAL RIGHTS.

THE LEGISLATURE CLEARLY SAID

THAT YOU COULD WAIVE THIS
EXEMPTION, AND I WOULD POINT THE
COURT AGAIN TO ITS RECENT
DECISION IN THE SALLO CASE,
WHERE THE COURT RECOGNIZED THAT
THIS EXEMPTION IS CONTINGENT
UPON MANY FACTORS AND THE
FAILURE TO TIMELY FILE AN
APPLICATION BY MARCH 1 SHALL
CONSTITUTE A WAIVER OF THE
PRIVILEGE FOR THAT YEAR.

SO THE COURT HAS ALREADY NOTED
THAT THE LEGISLATURE HAS ALLOWED
THE WAIVER OF THIS SPECIFIC
EXEMPTION.

IF I COULD MAKE ONE OTHER POINT,
THE PENNSYLVANIA CASE WE'VE
POINTED OUT IS A STATUTE THAT'S
MUCH DIFFERENT THAN THIS ONE.
AND WITH REGARD TO THE FINANCES
OF THIS PROPERTY, THIS WAS A
PROPERTY THAT WAS BOUGHT FOR \$28
MILLION OUT OF A \$80 MILLION
PORTFOLIO AND WAS ASSESSED --
THE VALUE WAS ASSESSED BY THE
COMPANY THAT ASSIGNED IT TO AHF
KNOWING THAT THE PILOT
AGREEMENTS EXISTED.

WITH THAT, WE WOULD ASK THAT YOU
REVERSE THE SECOND DCA,
REINSTATE THE JUDGMENT BELOW AND
REMAND THE CASE TO THE CIRCUIT
COURT.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT'S IN RECESS.

>> ALL RISE.