

>> THE NEXT CASE ON THE DOCKET THIS MORNING IS JBK ASSOCIATES VERSUS SILL BROS.

>> GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT, ADAM HODKIN.

THANK YOU FOR MAKING TIME TODAY TO HEAR THIS IMPORTANT ISSUE REGARDING EXISTING CASE LAW IN THE FLORIDA HOMESTEAD EXEMPTION. WE'RE HERE TODAY REGARDING THE HOMESTEAD EXEMPTION AND HOW IT IS INVOKED.

THIS CASE INVOLVES JBK ASSOCIATES, A SMALLY-HELD COMPANY OWNED BY THE CAPELS THAT WAS SOLD --

>> CAN I ASK YOU A QUESTION AS WE GET INTO THIS THAT WOULD HELP ME UNDERSTAND MORE?

IS THERE ANYTHING ABOUT THESE ACCOUNTS THAT WERE USED TO INVEST THAT PROHIBITED LIQUIDATION OF THOSE WITHIN ANY PARTICULAR PERIOD OF TIME, NUMBER ONE.

AND, SECONDLY, WITH REGARD TO IS THAT AN ISSUE THAT IS EVEN INVOLVED HERE?

>> THE FIRST QUESTION THAT YOU ASKED IS THAT, NO, THERE WAS NOTHING THAT PREVENTED LIQUIDATION.

THE ACCOUNT DID HAVE A STATED GOAL OF A THREE TO FIVE-YEAR HORIZON.

>> WAS THERE SOME RESTRICTION ON LIQUIDATING THAT ACCOUNT BEFORE THREE TO FIVE YEARS?

>> NO.

>> YOU AGREE UNDER THE ORANGE BREVARD CASE THAT AFTER THE HOUSE IS SOLD, THERE ARE PROCEEDS THAT HAVE SOME PROTECTION FOR SOME PERIOD OF TIME.

>> CORRECT.

>> OKAY.

SO THE QUESTION -- IS THE QUESTION SOLELY WHERE YOU INVEST

-- WHERE YOU PLACE THAT MONEY?
I MEAN, IF YOU PLACE IT IN --
YOU TAKE THE CASH AND YOU PUT IT
UNDER YOUR -- IN YOUR HOUSE, IT
CAN'T BE REACHED FOR I'M
ASSUMING THERE'S SOME PERIOD.
I DON'T KNOW.

IS THERE SOMETHING WHERE IT'S
PROTECTED INDEFINITELY?
OR IS THERE A REQUIREMENT TO
REBUY A HOUSE IN A CERTAIN
PERIOD OF TIME?

>> THIS COURT'S LANGUAGE WAS
THAT THE MONIES HAD TO BE HELD
IN A SEPARATE FUND.

>> OKAY.

>> SEPARATE AND APART FROM ANY
OTHER MONIES, COULDN'T BE
COMMINGLED, COULDN'T BE USED FOR
THE GENERAL PURPOSES OF THE
DEBTOR, AND THEY HAD TO BE
REINVESTED IN A NEW HOMESTEAD
WITHIN A REASONABLE PERIOD OF
TIME.

>> HERE ARE THERE CERTAIN OF THE
FUNDS THAT YOU AGREE WOULD BE
ENTITLED TO HOMESTEAD EXEMPTION?
IS THIS AN ALL OR NOTHING AS TO
WHERE HE PUT THE FUNDS?

>> THIS IS AN ALL OR NOTHING.

>> SO NONE OF THE PLACES THAT IT
WAS -- EVEN THOUGH HE COULD GET
IT OUT AT ANY TIME AND EVEN
THOUGH THE FOURTH DISTRICT SAID
THAT ANY PROFIT MADE COULD BE
REACHED, I THINK THAT WAS -- IS
THAT NOT PART OF THEIR --

>> EXCESS, CORRECT.

>> SO IF HE HAD TRIPLED HIS
MONEY, THE CREDITOR COULD OBTAIN
THAT.

BUT SO, AGAIN, I'M TRYING TO
UNDERSTAND, WHY IS THIS IT A
MISAPPLICATION OF ORANGE
BREVARD?

>> I'M GLAD YOU ASKED THAT
QUESTION AND I'M HAPPY TO
EXPLAIN.

>> BECAUSE I THINK THAT'S WHAT
YOU'RE SAYING THE CONFLICT IS.

>> THAT IS THE CRUX OF THE
ISSUE.

ORANGE BREVARD HAS THREE
COMPONENTS.

ONE IS A PRESENT INTENTION TO
REINVEST THE PROCEEDS OF THE
SALE OF AN EXISTING HOMESTEAD
INTO A NEW HOMESTEAD WITHIN A
REASONABLE PERIOD OF TIME.

ORANGE BREVARD HAS TWO OTHER
COMPONENTS.

>> ON THAT ONE, DID THE TRIAL
COURT FIND THAT THERE WAS THAT
INTENT TO REINVEST?

>> YES, THEY DID.

>> SO THAT'S A FACTUAL FINDING
THAT'S NOT BEING DISPUTED.

>> CORRECT.

>> OKAY.

>> THE OTHER TWO COMPONENTS
WERE, AS I SAID EARLIER, THAT
THE FUNDS HAD TO BE HELD
SEPARATE AND APART.

>> NOW, WHAT DOES THAT MEAN IN
MODERN DAY?

BECAUSE -- DOES IT JUST HAVE TO
GO INTO A SAVINGS ACCOUNT?

ARE YOU SAYING THAT IT CAN NEVER
GO INTO THESE TYPES OF ACCOUNTS?

>> WELL, NO FLORIDA COURT HAS
EVER HELD PREVIOUSLY THAT THE
MONIES COULD GO INTO AN ACCOUNT
THAT WAS TRADING SECURITIES,
EQUITY PIECES AND OTHER
CORPORATIONS.

>> WELL, HASN'T A COURT HELD
OTHERWISE?

>> YES.

THIS COURT.

THIS COURT.

IN ORANGE BREVARD, IF WE BACK UP
TO 1962, THE FACTUAL SCENARIO
WAS --

>> WHERE IS THAT?

WHERE IS THAT IN ORANGE BREVARD?

>> I'M ABOUT TO EXPLAIN.

>> OKAY.

>> ORANGE BREVARD INVOLVED A
SITUATION WHERE THE HOMESTEAD
WAS SOLD, THE PROCEEDS STAYED IN

THE ATTORNEY'S ACCOUNT, AN INTEREST-FREE ACCOUNT, AND THAT'S WHERE THEY WERE KEPT.
>> I UNDERSTAND WHAT THE FACT WERE THERE, BUT I DON'T UNDERSTAND HOW THAT GETS YOU TO A HOLDING IN THAT CASE THAT PRECLUDES PLACING FUNDS IN AN INVESTMENT ACCOUNT.
I DON'T KNOW WHERE THAT'S IN THERE.
THAT'S JUST AN ISSUE THAT WASN'T ADDRESSED.
>> WELL, THAT'S RIGHT.
>> IT DIDN'T COME UP IN THAT CASE.
BECAUSE THOSE WEREN'T THE FACTS OF THE CASE.
>> THEY DON'T TALK ABOUT PUTTING IT INTO AN INVESTMENT ACCOUNT AT ALL.
>> WELL, THEY COULDN'T.
IT WAS 1962.
THESE ACCOUNTS THAT PROBABLY EXIST.
I DON'T KNOW.
WE WERE ALL THERE IN 1962, BUT, YOU KNOW, IN DIFFERENT PHASES.
I MEAN, THE FACT IS IS THEY WERE MAKING WHAT WAS -- YOU KNOW, IS A 4-3 DECISION THAT COULD PROCEEDS BE PROTECTED BY THE HOMESTEAD STATUTE.
THAT WAS APPARENTLY A PRETTY RADICAL IDEA IN 1962, BUT THE COURT HELD YES.
SO THE ISSUE IS WHY ISN'T THIS FAITHFUL TO WHAT THE COURT HELD IN ORANGE BREVARD?
>> SURE.
THE COURT MENTIONED AS IT LED INTO ITS HOLDING THAT THIS WAS ITS LIBERAL INTERPRETATION OF THE FLORIDA HOMESTEAD EXEMPTION AND EXTENDED IT TO THE SALE PROCEEDS.
THE COURT SAID THAT THE SALE PROCEEDS HAD TO BE HELD -- MUST NOT BE COMINGLED WITH OTHER MONIES BUT MUST BE KEPT SEPARATE

AND APART AND HELD FOR THE SOLE PURPOSE OF ACQUIRING ANOTHER HOME.

SO RIGHT THERE YOU HAVE A STATEMENT THAT THERE CANNOT BE INTERVENING PURCHASES.

THERE SHOULDN'T --

>> LET ME ASK YOU THIS.

>> YES.

>> BUT THAT LANGUAGE, IT JUST SEEMS TO ME THAT IF YOU TAKE THE MONEY AND PUT IT IN ANY ACCOUNT THAT DOESN'T HAVE ANY OTHER OF YOUR MONIES IN IT, CORRECT?

>> CORRECT.

>> THAT'S WHAT THAT SAYS YOU HAVE TO DO, BASICALLY.

>> CORRECT.

>> IT SEEMS TO ME YOU'RE INTERPRETING THAT TO ALSO SAY AND THIS ACCOUNT CANNOT MAKE ANY MONEY.

HOW IS THIS ANY DIFFERENT FROM IF I HAD PUT IT IN A BANK OR A SAVINGS AND LOAN OR CREDIT UNION AND GETTING INTEREST ON IT? WOULD THAT VIOLATE BREVARD?

>> NO, AND I THINK THAT MANY OF THE APPELLATE COURTS IN THE STATE HAVE UPHELD EXACTLY THAT.

>> SO HOW IS THIS DIFFERENT, BECAUSE YOU'RE PUTTING IT IN AN ACCOUNT THAT HOPEFULLY WILL MAKE MORE INTEREST THAN YOU WOULD GET IN A SAVINGS ACCOUNT OR A CREDIT UNION ACCOUNT?

THAT'S WHAT THIS LOOKS LIKE TO ME.

THIS IS AN ACCOUNT THAT HOPEFULLY YOU WILL GET MORE MONEY ON YOUR MONEY THAN YOU WOULD IN A REGULAR SAVINGS.

>> YOU WOULD HOPE SO.

AND THAT WOULD BE A BEST CASE SCENARIO.

AND YET THAT'S NOT WHAT A SECURITIES ACCOUNT IS.

FIRST OF ALL --

>> IT'S NOT A WHAT?

>> THAT'S NOT WHAT A SECURITIES

ACCOUNT IS OR DOES AS COMPARED TO, SAY, A BANK ACCOUNT. A BANK ACCOUNT IS TYPICALLY GOING TO HAVE A STATIC FLOOR. YOU'RE NOT GOING TO LOSE MONEY ON YOUR BANK ACCOUNT UNLESS YOU TAKE MONEY OUT.

>> OR UNLESS THE BANK GOES UNDER.

I MEAN, THAT AMOUNT'S NOT EVEN INSURED, THOUGH.

>> WELL, ACTUALLY, IT IS.

THERE'S FDIC INSURANCE.

>> UP TO THE POINT OF THIS, \$700,000, ON ONE ACCOUNT?

>> I DON'T KNOW IF THEY WALKED IT BACK FROM THE \$500,000 THAT IT WAS INCREASED TO IN 2008.

>> BUT, I MEAN, THEORETICALLY, IF YOU PLACE IT IN -- AND WE SAW BANKS GO UNDER LEFT AND RIGHT IN THE RECENT HISTORY.

>> THAT'S TRUE.

AND AT LEAST YOU HAVE INSURANCE, AS OPPOSED TO --

>> BUT NOT FOR THE FULL AMOUNT. THAT'S THE POINT.

YOU SAY YOU CAN'T LOSE MONEY.

>> THAT IS THE RARE CIRCUMSTANCE WHERE, IF IN THE REASONABLE PERIOD OF TIME WHERE YOU'RE GOING TO REINVEST THE FUNDS, THAT YOU COULD LOSE MONEY IF THE BANK WENT OUT OF BUSINESS.

>> BUT THAT'S THE CONSUMER'S CHOICE.

I MEAN, HERE'S THE SITUATION.

IF MR. --

>> SILL.

>> SILL, HAD PUT THIS INTO SOMETHING RISKY AND HE LOST ALL OF THE PROCEEDS, HE'D BE OUT OF LUCK, AS WOULD THE CREDITOR. IF HE PUT IT INTO SOMETHING AND IT DOUBLED, THEN ACCORDING TO THE OPINION OF THE FOURTH DISTRICT, HE'D BE IN LUCK AND SO WOULD THE CREDITOR BECAUSE THEY COULD ATTACH, AS I'M UNDERSTANDING, THE PROFITS FROM

THAT.

BUT THE ISSUE OF WHETHER THIS WAS TO -- IF THIS IS -- YOU KNOW, WE DON'T WANT A SHAM. WE DON'T WANT SOMEBODY SELLING A HOUSE AND NOT HAVING A VALID PURPOSE OF BUYING ANOTHER HOUSE AND TRYING TO AVOID A CREDITOR. THAT IS UNDERSTOOD.

BUT THE JUDGE FOUND THAT IT WAS PLACED HERE FOR A VALID PURPOSE, FOR THE SOLE PURPOSE OF BUYING ANOTHER HOME.

NOW, IF ANOTHER JUDGE FOUND IT DIFFERENTLY, THEN THOSE PROCEEDS COULD BE ATTACHED.

>> WELL, HE COULD HAVE GONE OUT AND BOUGHT TOOTHPASTE AND SAID HE WAS GOING TO RESELL THAT AND USED THAT TO BUY ANOTHER HOME, TOO, THE POINT BEING --

>> NOW YOU'RE TALKING -- THAT'S AN ABSURDITY.

THAT'S NOT THIS SITUATION.

AND THAT'S -- YOU WOULD AGREE WITH THAT.

>> BUT THAT'S EXACTLY WHAT THE PUBLIC POLICY AS RECITED IN ORANGE BREVARD IS INTENDED TO AVOID.

YOU'RE NOT -- THE PUBLIC POLICY WAS TO ENCOURAGE PEOPLE TO GO OUT AND TAKE THE MONEY AND STAY IN A HOME, HAVE A ROOF OVER THEIR HEADS, NOT BECOME ABSOLUTELY DESTITUTE.

THE ENCOURAGEMENT --

>> BUT YOU ALREADY SAID YOU'RE NOT CONTESTING THE FINDING THAT THE PURPOSE OF PUTTING IT IN THE ACCOUNT WAS TO BUY ANOTHER HOME.

>> WE ARE NOT CONTESTING THAT.

>> SO THIS ISSUE -- ANOTHER CASE WHERE SOMEONE GOES OUT AND BUYS TOOTHPASTE, YOU KNOW, \$700,000 WORTH OF TOOTHPASTE, IS GOING TO BE THAT PERSON WAS TRYING TO AVOID CREDITORS AND THERE'S GOING TO BE A WHOLE DIFFERENT SCENARIO ATTACHED TO THOSE

FACTS.

>> THE POINT BEHIND THE POLICY IS THAT PEOPLE DON'T SPECULATE WITH THEIR HOMESTEAD FUNDS.

IT IS A PROBLEM FOR TWO PEOPLE: THE DEBTOR IF HE HAD LOST MONEY INSTEAD OF MADE MONEY.

IT'S A PROBLEM FOR THE CREDITOR BECAUSE THE CREDITOR-- IF THE MONEY IS LOST, THE CREDITOR CAN'T ATTACH THE MONEY.

SO WHEN YOU PUT MONEY INTO A STOCK ACCOUNT, FIRST OF ALL, IT'S NOT ONE FUND.

IT'S A LOT OF LITTLE PIECES OF DIFFERENT HOLDINGS OF DIFFERENT CORPORATIONS.

YOU ARE SPECULATING.

AND THEN THE QUESTION BECOMES THE FOURTH DISTRICT SAYS WE DON'T FIND THIS RISKY.

A STOCK ACCOUNT CAN BE PENNY STOCKS, BLUE CHIP STOCKS.

IT COULD BE BLUE CHIP STOCKS LIKE BEAR STEARNS, IT COULD BE ONE OF THOSE FINANCIAL INSTITUTIONS THAT WENT OUT OF BUSINESS.

>> LET ME ASK YOU.

>> YES.

>> THERE'S NO ISSUE THAT THESE FUNDS WERE NOT COMINGLED, RIGHT?

>> EXCEPT FOR CORPORATE PROFITS THAT WENT INTO THAT ACCOUNT.

>> NO OTHER FUNDS FROM THIS INDIVIDUAL WAS PLACED WITH THESE PARTICULAR AMOUNT OF MONEY.

>> CORRECT.

>> IT ONLY CAME FROM THE SALE OF THE HOUSE.

>> THAT IS CORRECT.

>> AND NO MONEY LEFT THAT ACCOUNT THAT WAS USED FOR PERSONAL REASONS FOR SOME REASON.

>> NO.

>> OKAY.

AND WAS THERE ANY AMOUNT FROM THIS ACCOUNT THAT WAS -- DID IT HAPPEN TO BE MORE THAN THE SALE

OF THE HOUSE THAT WAS USED THEN
TO BUY THE SUBSEQUENT HOUSE?

>> NO.

>> OKAY.

>> SO WHAT YOU HAVE IS A
SITUATION WHERE INSTEAD OF
ENCOURAGING THE SAFETY OF THE
MONEY, YOU'D BE PUTTING IT INTO
A STOCK ACCOUNT WITH ALL KINDS
OF DIFFERENT INVESTMENTS AND
THEN A COURT WOULD HAVE TO COME
ALONG AND EVALUATE WERE THOSE
RISKY?

WERE THEY PENNY STOCKS?

WERE THEY BLUE CHIP STOCKS?

IF THEY WENT OUT OF BUSINESS,
WERE THOSE TOO RISKY?

THOSE ARE DISTINCT ISSUES FROM A
FDIC-INSURED BANK ACCOUNT.

>> BUT THE WAY THAT I'M READING
THIS OPINION IS IT ALLOWS YOU AT
THE TRIAL COURT LEVEL TO HAVE --
PRESENT EVIDENCE THAT THE
SECURITIES WERE PARTICULARLY
RISKY OR THAT THE FUNDS WERE NOT
KEPT SEPARATE AND APART FROM HIS
OTHER FUNDS.

IT SAYS THIS CASE DOES NOT
INVOLVE THE SPECULATIVE PUT AND
CALL OPTION TRADING UP TO 302
TRANSACTIONS THAT LED TO A
BANKRUPTCY PANEL TO SAY
SOMETHING DIFFERENTLY.

SO THEY RECOGNIZE WHAT YOU'RE
ARGUING AND IT SEEMS THEY
REJECTED IT BY APPLYING ORANGE
BREVARD.

BUT YOU'RE SAYING MISAPPLYING
IT.

I JUST DON'T SEE THAT.

AND THEN THEY GO ON TO SAY,
BECAUSE IT WAS NOT ARGUED, WE
DON'T REACH THE ISSUE OF WHETHER
ANY PROFITS OVER AND ABOVE THE
PROCEEDS, ARE HELD FOR THE
GENERAL PURPOSES OF THE DEBTOR,
SO THEY ARE GENERAL ASSETS.
SO IT SEEMS TO ME IT OPENS THE
DOOR THAT IF SOMEBODY MADE A
SMART INVESTMENT AND THEIR

INVESTMENT DOUBLED, THAT THE CREDITOR COULD REACH THOSE PROFITS.

>> WELL, FIRST OF ALL, I THINK THAT IN ORANGE BREVARD WHEN THEY SAY THE MONIES MUST NOT BE HELD FOR THE GENERAL PURPOSE OF THE DEBTOR, WHEN YOU BUY STOCKS AND BONDS AND OTHER INVESTMENTS, YOU ARE USING YOUR FUNDS FOR YOUR GENERAL PURPOSE, TO TRY TO MAKE A PROFIT.

HE EASILY COULD HAVE LOST THAT MONEY AND SQUANDERED IT AS WELL.

>> TO WHAT EXTENT SHOULD THE LAW AND THIS COURT -- BECAUSE THIS IS GOING TO BE A DECISION THAT IMPACTS OTHERS.

>> YES.

>> WAY BEYOND JUST THIS ONE CASE.

>> YES.

>> AND TO WHAT EXTENT SHOULD THIS COURT TAKE INTO ACCOUNT THAT 20 YEARS AGO, BANK ACCOUNTS WERE PAYING INTEREST 3, 4, 5, WHATEVER PERCENT, BUT WE'VE GONE THROUGH AN ERA, THE PRESENT TIME, THAT BANK ACCOUNTS ARE JUST CUSTODIANS ANYMORE.

IT'S LESS THAN 1%.

AND PEOPLE IN THE FINANCIAL WORLD, DUE TO GOVERNMENT POLICIES OR WHATEVER, WE'RE NOW USING THESE ACCOUNTS, INVESTMENT ACCOUNTS, AS WE USED TO USE A SIMPLE SAVINGS ACCOUNT.

SO MY QUESTION IS TO WHAT EXTENT SHOULD A COURT, SHOULD THE JURISPRUDENCE OF THE STATE OF FLORIDA, TAKE INTO ACCOUNT THOSE CHANGING TIMES AND ECONOMIC CONDITIONS IN A NEW FINANCIAL WORLD WE'RE FACING WHEN INTERPRETING THE HOMESTEAD PROTECTION?

>> WELL, ONE THING YOU WANT TO DO IS YOU WANT TO ENCOURAGE PEOPLE TO REINVEST THE MONEY AS QUICKLY AS POSSIBLE.

SO BY ALLOWING THEM TO TRY AND INVEST IN VEHICLES THAT WILL MAKE THEM MONEY OVER TIME, YOU'RE NOT REALLY ENCOURAGING THE REINVESTMENT INTO A NEW HOMESTEAD AS QUICKLY AS POSSIBLE.

THIS IS A NARROW EXEMPTION TO OUR DEBTOR/CREDITOR LAWS.

ANOTHER IS IN ORANGE BREVARD ITSELF, THAT ACCOUNT DREW NEW INTEREST.

>> HOW MUCH TIME ELAPSED FROM THE TIME THE ORIGINAL HOMESTEAD WAS SOLD AND WHEN THE MONEY WAS TAKEN OUT?

>> THE ORIGINAL HOMESTEAD -- WHAT HAPPENED WAS MR. SILL LIQUIDATED A NONEXEMPT VACATION HOME IN COLORADO, BOUGHT A MANSION AS SOON AS THE RULING CAME DOWN AGAINST HIM, CLAIMED THE HOMESTEAD EXEMPTION, WHICH HE'S ENTITLED TO DO, AND THEN AS SOON AS WE HAD THE HEARING IN FRONT OF JUDGE CROWE, WHERE HE SAID, WELL, YOU BETTER GET THIS REINVESTED, I THINK IT WAS WITHIN SIX MONTHS THAT A HOUSE WAS PURCHASED.

>> THAT'S A REASONABLE TIME.

>> YES.

WE'RE NOT CONTESTING THAT IT WAS A REASONABLE TIME.

NOW, AS TO --

>> I WOULD LIKE YOU TO COMPLETE YOUR ANSWER TO JUSTICE LEWIS' QUESTION ABOUT THE REINVESTMENT IN TODAY'S FINANCIAL CLIMATE.

>> YES.

SO I THINK THAT TO GO BEYOND WHAT THIS COURT HAS DONE PREVIOUSLY REALLY WOULD BE THE FUNCTION OF THE LEGISLATURE IF THEY WANTED TO TRY AND EXPAND THE EXEMPTION OR EXPAND THE CONSTITUTIONAL PROVISION ALLOWING THE EXEMPTION IN THE FIRST PLACE.

BUT WHAT YOU HAVE, AS A

PRACTICAL MATTER, WHEN YOU TALK ABOUT IT GOING BEYOND AND AFFECTING A LOT OF PEOPLE, IF WE WERE TO SAY THAT, WELL, YOU COULD INVEST IN SECURITIES, BUT NOT IN EXCESSIVELY RISKY SECURITIES, DEBTORS WILL BE UNCERTAIN WHETHER IN FACT BY MAKING THEIR CHOICE, THE CHOICE MR. SILL MADE.

ORANGE BREVARD IS A BRIGHT LINE RULE.

HE COULD HAVE FOLLOWED IT. HE CHOSE NOT TO.

>> YOU SAY THAT, BUT THE DISSIDENTERS SAID THIS WAS A COMPLETE EVISCERATION OF THE HOMESTEAD EXEMPTION.

THAT'S WHAT THEY ARGUED BACK IN 1962.

>> WE DO HAVE 50 YEARS OF JURISPRUDENCE NOW ADDRESSING THAT.

WHEN YOU TELL A DEBTOR, YOU CAN INVEST, ARE WE GOING TO SAY PENNY STOCKS, OPTION STOCKS? WHAT SORT OF INVESTMENT?

NO ONE WILL KNOW.

THE DEBTOR WILL KNOW IF HE'S PROTECTED.

THE CREDITOR WON'T KNOW IF THE MONEY CAN BE REACHED.

THE MONEY MAY BE LOST.

NEITHER THE CREDITOR OR THE DEBTOR'S PURPOSES ARE SERVED THERE.

AND IF, AS TO MY COLLEAGUE'S ARGUMENT THAT, WELL, THE JUDGMENT CREDITOR HERE SHOULD HAVE GOTTEN A STAY, SHOULD HAVE POSTED A BOND, CAN YOU IMAGINE THE SCENARIO IF YOU'RE GOING TO TELL PEOPLE YOU CAN OPEN A SECURITIES ACCOUNT, BUT IT CAN'T BE EXCESSIVELY RISKY, NOW MY CLIENT COULD HAVE HAD TO PUT UP AN APPELLATE BOND JUST FOR TRYING IN GOOD FAITH TO REDEEM HIS RIGHTS AS A JUDGMENT CREDITOR.

AND IF HE WERE WRONG, HE COULD
BE EXPOSED TO LIABILITY.
SO NO ONE WILL HAVE THE
CERTITUDE THAT ORANGE BREVARD
PROVIDES.

>> YOU'RE DEEP INTO YOUR
REBUTTAL.

YOU'RE WELCOME TO CONTINUE.

>> WELL, I WAS TRYING TO ANSWER
THE QUESTION ABOUT HOW THIS
WOULD AFFECT MANY.

AND SO I APOLOGIZE IF I LEAPT
AHEAD.

BUT I THINK THAT THE POLICY
IMPLICATIONS OF EXPANDING ORANGE
BREVARD'S FAIRLY NARROW AND, IN
COMPARISON, EASY TO READ
LANGUAGE, IT HAS TO BE HELD FOR
THE SOLE PURPOSE OF ACQUIRING
ANOTHER HOME, NOT FOR THE
PURPOSES OF TRYING TO GENERATE
ADDITIONAL PROFITS TO BUY
ANOTHER HOME.

THAT'S NOT WHAT THIS MONEY IS
FOR.

THIS MONEY IS SUPPOSED TO BE
USED TO KEEP THE ROOF OVER THE
HEAD OF THE DEBTOR AND HIS
FAMILY AND THAT'S IT, NOT TO GO
OUT --

>> SO THE BOTTOM LINE OF YOUR
ARGUMENT THAT YOU CAN DO NO MORE
THAN WITH THAT MONEY THAN PUT IT
IN A BANK ACCOUNT.

>> THAT IS EXACTLY WHAT WE
BELIEVE ORANGE BREVARD SAYS.

>> OKAY.

>> THAT IS THE BOTTOM LINE.
THAT'S NOT WHAT HAPPENED HERE.
SO TO ALLOW THIS WOULD, IN OUR
VIEW, ALLOW -- FIRST OF ALL, WE
FEEL THAT THESE ARE GENERAL
PURPOSES.

WHEN YOU GO OUT AND YOU BUY
PIECES OF COMPANIES TO TRY AND
MAKE A PROFIT, THAT'S YOUR
GENERAL PURPOSE.

THAT'S NOT THE SOLE PURPOSE OF
BUYING ANOTHER HOME.

YOU MIGHT SAY WHEN I MAKE MY

MONEY, I'M GOING TO GO BUY
ANOTHER HOME, BUT THERE'S AN
INTERVENING STOP THERE.
THAT STRIPPED THESE FUNDS OF THE
VERY NARROW, BUT
CONSTITUTIONALLY-PROVIDED
EXEMPTION.

>> YOUR TIME IS UP.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, LES
OSBORNE ON BEHALF OF MR. SILL.
YOUR HONORS, I OBVIOUSLY
DISAGREE WITH THE INTERPRETATION
OF ORANGE BREVARD THAT
MR. HODKIN HAS PRESENTED AND I
AGREE WITH MANY OF THE QUESTIONS
THAT WERE ASKED HERE.
FOR EXAMPLE, THE SEGREGATION.
LET ME BACK UP.

ORANGE BREVARD TELLS US, I
BELIEVE --

>> WELL, LET ME ASK YOU THIS
BEFORE YOU GET DOWN TOO FAR AND
THAT IS THAT THE ARGUMENT IS
BEING MADE HERE THAT HE COULD
HAVE LOST THE MONEY BY PUTTING
IT IN THIS KIND OF ACCOUNT, AND
SO IS THAT TRUE?

WHAT KIND OF ACCOUNT WAS THIS?
IS THIS A KIND OF ACCOUNT THAT,
YOU KNOW, I GUESS THE STOCK
MARKET FELL, YOU KNOW.

IT'S WHAT, 1600 SOMETHING NOW.
IF IT FELL 1500 POINTS, HE WOULD
HAVE LOST ALL HIS MONEY, RIGHT?

>> NO.

COULD HE HAVE LOST MONEY?
OF COURSE.

NOTHING'S SAFE IN THIS WORLD.
WHAT HE DID WAS THE TESTIMONY
BEFORE THE COURT WAS THAT HE
ASKED HIS BROKER -- HE WANTED IT
IN A CONSERVATIVE ACCOUNT, WHICH
WAS READILY MARKETABLE, SO THAT
HE COULD LIQUIDATE THE FUNDS ANY
TIME HE NEEDED BECAUSE HE WAS
BUYING A HOUSE.

THAT WAS THE INTENT.

THE IDEA WAS TO TRY TO GROW IT.
THEY WERE IN MUTUAL FUND.

IT WAS ESSENTIALLY PUT IN AN ACCOUNT.

FROM A DEBTOR'S PERSPECTIVE, HE PUT THE MONEY IN THE BANK. HE WENT TO WELLS FARGO ADVISERS. HE PUT IT IN AN ACCOUNT.

\$130,000 WAS CASH AND THE REMAINDER WAS IN SECURITIES.

>> THE THREE SUB ACCOUNTS, WAS THAT -- WAS HIS SITUATION PERHAPS LIKE I DO, BECAUSE I DON'T KNOW MUCH ABOUT THIS STUFF, WHERE I JUST GO TO MY BROKER AND SAID CONSERVATIVE, YOU DO WHAT YOU WANT WITH IT, JUST INVEST IT?

>> THAT IS MY UNDERSTANDING, YES.

>> AND HAVE MY BROKER DECIDE HOW TO INVEST THE MONEY?

OR DID HE SPECIFICALLY TELL HIS BROKER I WANT THESE THREE SUB ACCOUNTS?

>> NO.

>> DID HE CHOOSE THE INVESTMENTS?

>> THE TESTIMONY WAS STIPULATED TESTIMONY THAT HE HAD TOLD HIS BROKER TO PUT IT IN CONSERVATIVE INVESTMENTS, CONSERVATIVE SO THAT HE WOULD HAVE THE MONEY AVAILABLE TO PURCHASE A HOME.

>> IS THAT IMPORTANT IN WHAT WE DECIDE HERE, THE IDEA THAT THIS WAS, AGAIN, SEGREGATED ACCOUNT, FLORIDA HOMESTEAD ACCOUNT.

PART OF IT WAS ACTUALLY A CASH ACCOUNT.

AND THE OTHERS WERE IN MUTUAL FUNDS AND INVESTMENT TRUSTS, WHICH I'M NOT SURE WHAT THAT IS, BUT LET'S ASSUME THERE WAS NO TESTIMONY TO THE CONTRARY THAT THEY WERE OTHER THAN CONSERVATIVE.

NOW, IF I INSTEAD HAVE THE PROCEEDS AND I HAVE A FRIEND WHO IS STARTING UP A BUSINESS AND I INVEST ALL THAT MONEY INTO A BUSINESS, IS THE HOMESTEAD -- DO

I LOSE THE HOMESTEAD PROTECTION?

>> WELL, I THINK THERE IS A
DISTINCTION, WHICH I THINK GETS
BACK TO --

>> BUT DON'T WE WANT -- AGAIN,
TO HAVE A BRIGHT -- WHAT THE
CONCERN IS HERE -- AND I THINK
IT'S A VALID ONE -- IS, YOU
KNOW, BRIGHT LINE RULES ARE
IMPORTANT WHEN WE'RE
INTERPRETING A CONSTITUTIONAL
PROVISION, BECAUSE FLORIDA IS
DIFFERENT THAN MOST OTHER STATES
IN PROTECTING HOMESTEAD.
AND I CAN UNDERSTAND THE
CREDITORS BEING NOT SO HAPPY
WITH THIS SITUATION.

SO WHAT IS THE BRIGHT LINE RULE
THAT COMES OUT OF THIS?
OR IS IT A CASE-BY-CASE
SITUATION?

>> I THINK THE BRIGHT LINE RULE
GOES BACK TO WHAT ORANGE BREVARD
SAID, THE DEBTOR MUST HAVE AN
ABIDING, GOOD FAITH INTENT PRIOR
TO AND AT THE TIME OF THE SALE
OF HIS HOME TO REINVEST THAT
MONEY INTO A NEW HOMESTEAD.
THAT'S THE BRIGHT LINE RULE.
MUCH AS YOU'LL ALWAYS HAVE EVERY
DEBTOR WILL ALWAYS SAY THAT'S MY
INTENT, JUST LIKE IN THE
FRAUDULENT TRANSFER CASES, NO
DEBTOR WILL SAY I INTENDED TO
DEFRAUD.

IN THIS CASE, ON THE FLIP SIDE,
WE NOW HAVE OUR BADGES OF
INTENT, IF YOU WILL.

I THINK THAT'S WHAT THE REST OF
ORANGE BREVARD LOOKS AT.

DID YOU SEGREGATE THE MONEY,
WHICH GOES TOWARD SHOWING YOUR
INTENT.

DID YOU USE IT FOR YOUR GENERAL
PURPOSES?

TO ME, GENERAL PURPOSE --

>> THE SEGREGATION -- I MEAN,
ANYBODY, I GUESS, THAT INVESTS
MONEY WITH A BANK TO DO MORE
THAN JUST PLACE IT IN THE BANK,

WHETHER IT'S PUT IN A
CERTIFICATE OF DEPOSITOR
WHATEVER, THEIR INTENT IS TO
EARN MONEY.

>> CORRECT.

>> RIGHT?

OTHERWISE YOU WOULD JUST PUT IT
IN A BANK ACCOUNT.

SO THE IDEA IS, THOUGH, -- SO AT
WHAT POINT IS IT I WANT TO EARN
MONEY, BUT -- SO IT'S GOING TO
BE IN A SEPARATE ACCOUNT.

IS THAT ALL IT NEEDS?

OR DOES IT THEN HAVE THE OTHER
OVERLAY IS IT CONTACT BE, QUOTE,
EXCESSIVELY RISKY?

AND THAT'S THE JUDGMENT CALL
THAT'S REALLY NOT SUSCEPTIBLE TO
A BRIGHT LINE.

>> TO THAT EXTENT, I WOULD
SOMEWHAT AGREE.

THE CASES THAT HAVE ADDRESSED
ISSUES OF SECURITIES, WE REALLY
DON'T HAVE THEM IN FLORIDA.

THERE WAS A BANKRUPTCY COURT IN
FLORIDA WHERE THERE WAS A
POTENTIAL SECURITIES ACCOUNT
WHICH NOBODY REALLY ADDRESSED
THAT IT WAS IN THAT ACCOUNT FOR
INTERFERING WITH THE HOMESTEAD.
IN THE ARIZONA CASE, THE GUY WAS
DAY TRADING, THE WHITE CASE.

AND THE COURT SAID THAT THAT WAS
SO INCONSISTENT WITH THE
PURPOSES OF HOMESTEAD THAT
YOU'RE NOT REALLY FOLLOWING.

IN THE COLORADO CASE, THEIR ONLY
LIMITATION WAS IT HAD TO BE
SEPARATE AND APART AND YOU HAD
TO INVEST WITHIN TWO YEARS.

IT DIDN'T HAVE AN INTENT ASPECT.
THEY SAID JUST BY PUTTING IT IN
A SECURITIES ACCOUNT THAT WAS
NOT INCONSISTENT WITH THESE
PURPOSES.

ARGUABLY, IF YOU BELIEVE THE
APPELLANT'S POSITION, IF YOU
EARN INTEREST, INTEREST IS TO ME
THE SAME AS PROFIT.

YOUR MONEY HAS GROWN.

TO USE THE EXAMPLE THAT YOU JUST GAVE, JUSTICE PARIENTE, A CD. WELL, CDs ARE USUALLY TIME-CONSTRAINED.

IF YOU PUT IT IN A THREE-MONTH CD, WHAT IF YOU BUY THE HOUSE WITHIN THREE MONTHS?

YOU'VE NOW PRECLUDED YOURSELF.

>> YOU COULDN'T UNDER THEIR SCENARIO, IF YOU PUT IT IN A THREE-YEAR CD, IT WOULD BE PRECLUDED, EVEN THOUGH IT'S FAR LESS RISKY AND THERE ARE PENALTIES FOR EARLY WITHDRAWAL, BUT NOT -- YOU DON'T LOSE YOUR PROCEEDS.

SO WOULD YOU INDICATE THAT THAT WOULD BE PRECLUDED UNDER SOME EXTENSION OF ORANGE BREVARD?

>> I DON'T BELIEVE SO.

I DON'T BELIEVE ANY COURT HAS EVER SAID YOU CAN'T INVEST YOUR MONEY AND GROW IT.

THAT IS THE AMERICAN MONEY, TO GROW YOUR MONEY, GET MORE MONEY AND HAVE A NICER HOUSE.

>> THE GROWTH PART HERE, MAYBE YOU HAD A COUPLE THOUSAND DOLLARS MORE THAN YOU STARTED WITH?

>> YES.

I BELIEVE AT THE END OF THE DAY, IT WAS \$13,000 DIFFERENCE.

THE

>> WE'RE NOT ARGUING ABOUT THAT PIECE HERE, RIGHT?

>> NO.

>> AND THEN THE DCA SAID WE'RE SPECIFICALLY NOT GOING TO ADDRESS ANYTHING THAT'S BEYOND JUST WHAT THE AMOUNT HERE IS. THAT'S NOT BEFORE US.

>> CORRECT.

THEY DIDN'T ADDRESS THE \$13,000.

I DON'T THINK THEY SHOULD.

I THINK IT'S THE SAME AS INTEREST.

>> WHAT IF YOU GOT REALLY GOOD, YOUR CLIENT REALLY DID WELL AND MADE AN EXTRA \$100,000?

>> I WOULD SAY FANTASTIC.
THAT'S WHAT WE WANT.
>> BUT DOES THE CREDITOR'S
INTEREST THEN ATTACH TO THE
\$100,000?
>> WELL, WHY SHOULD IT AND WHAT
I WOULD GO BACK TO IF HE HADN'T
HAD SOLD HIS FIRST PLACE AND THE
VALUE OF THE HOUSE INCREASED BY
\$100,000, WOULD THE CREDITOR BE
ENTITLED TO THAT?
NO.
>> WHAT DOES THE FOURTH DISTRICT
SAY WHEN IT'S TALKING ABOUT
PROFITS?
WOULDN'T THAT BE A PROFIT?
>> WELL, THEY REALLY DIDN'T
ADDRESS THE ISSUE THAT I SAW ON
PROFITS.
>> WE DON'T HAVE TO REACH IT
HERE.
>> I DON'T BELIEVE SO.
>> SINCE WE'RE DEALING WITH --
AND I'M GOING TO PLAY THE
DEVIL'S ADVOCATE WITH YOU.
I DON'T KNOW THAT THIS IS EVEN
CONCEIVABLE OR WOULD BE THE
RIGHT THING TO DO.
WE'RE DEALING WITH A
CONSTITUTIONAL PROVISION.
THE CONSTITUTION DOESN'T SAY
ANYTHING ABOUT ACCOUNTS.
IT TALKS ABOUT THE HOMESTEAD,
CORRECT?
>> CORRECT.
>> AND SO IT'S A
JUDICIALLY-CREATED DOCTRINE THAT
ALLOWS ONE TO SELL THE HOMESTEAD
AND STILL PROTECT THAT FUND.
>> CORRECT.
>> WHAT IF THIS COURT WOULD
RECEDE SOME FROM ITS PRIOR
AUTHORITIES AND SAY THAT IT MUST
GO INTO AN ESCROW ACCOUNT?
NOW, THAT MAY BE -- MAY NOT BE
SMART AND IS NOT SMART
FINANCIALLY, ECONOMICALLY.
BUT IT WOULD HOLD TRUE TO THE
CONSTITUTION, WHICH SPEAKS IN
TERMS OF THE HOMESTEAD, NOT AN

ACCOUNT.

>> WELL, AGAIN, THIS COURT HAS NEVER SAID ANYTHING --

>> NO.

NO.

NO.

I PREVIOUS FAILED BY UNDERSTANDING THAT.

>> IF THIS COURT WISHES TO RECEDE FROM ITS OWN DECISIONS, THIS COURT HAS THE POWER TO DO THAT.

>> WHAT WOULD BE WRONG WITH IT?

>> WELL, THERE WOULD BE NO BENEFIT TO IT TO -- THE WHOLE PURPOSE, I BELIEVE, FROM ORANGE BREVARD FROM MY READING OF IT AND THE PUBLIC POLICY BEHIND IT IS WE WANTED PEOPLE TO BE ABLE TO SELL THEIR HOUSES AND MOVE ON.

>> WELL, AN ESCROW ACCOUNT WOULDN'T PROHIBIT THAT.

IT JUST WOULD NOT CREATE ALL THESE OTHER TENTACLES THAT ARE JUST GOING TO APPARENTLY INCREASE OVER TIME.

WHAT DO YOU DO WITH THE MONEY?

>> THAT IS POSSIBLE, BUT I DON'T BELIEVE THE COURT -- THEIR ARGUMENT IS ESSENTIALLY SAYING WE DON'T WANT TO TAKE ANY CHANCE FOR ANY RISK WHATSOEVER.

>> RIGHT.

>> NOR DO WE WANT TO HAVE ANY GROWTH.

BUT WHEN YOU SELL A PROPERTY AND BUY A PROPERTY, THERE ARE FEES INVOLVED, THERE ARE BROKER FEES THAT YOU PAY.

THIS WOULD HELP OFFSET THOSE FEES.

THIS WOULD HELP PEOPLE TO ACTUALLY IMPROVE THEIR LIVES. PUTTING IT IN AN ESCROW ACCOUNT DOESN'T HELP THAT.

IF THE COURT SAYS, LISTEN, WE DON'T WANT TO HAVE ANY RISK WHATSOEVER, YOU CAN PUT IT ONLY IN A NONINTEREST-BEARING

CHECKING ACCOUNT OR ONLY IN A MINIMAL SAVINGS ACCOUNT, AS LONG AS IT DOESN'T EXCEED THE FDIC, THIS COURT IS THEN I THINK GOING TOO FAR IN THAT AREA IN TRYING TO OVERPROTECT --

>> THE ONLY WAY YOU DON'T HAVE ANY RISK IS IF YOU BURY IT IN THE BACKYARD, I GUESS IS WHERE WE'RE GOING WITH THAT.

>> CORRECT.

>> I'M NOT SURE ABOUT THAT ONE, EITHER.

[LAUGHTER]

>> BUT YOU'D HAVE TO PUT IT SOMEPLACE IF YOU'RE GOING TO ACCEPT THAT DOCTRINE.

>> HOW CAN WE PROVE IT WAS SEGREGATED?

YOU MAY HAVE TAKEN SOME MONEY OUT OF THE BACKYARD AND PUT SOME MONEY BACK IN.

THIS WAS FROM AN INDIVIDUAL'S PERSPECTIVE.

AGAIN, I WOULD --

>> IN CONNECTION WITH THIS QUESTION THAT YOU JUST WERE ADDRESSING, ISN'T THIS AN AREA OF THE LAW WHERE RELIANCE INTEREST HAVE TO BE VERY MUCH TAKEN INTO ACCOUNT BEFORE WE WOULD RECEDE FROM ANY PRECEDENT OR LIMIT A PRECEDENT?

BECAUSE WOULDN'T IT BE THE CASE THAT PEOPLE WHO HAVE HELD HOMESTEADS, HAVE RELIED ON THAT CASE, MAYBE EVEN RELIED ON A LIBERAL UNDERSTANDING OF IT, BUT CERTAINLY HAVE RELIED ON THAT CASE, WOULD -- THERE WOULD BE SOME UNFAIRNESS TO THEM IN CHANGING THE RULES OF THE GAME WHEN THEY HAVE ARRANGED THEIR AFFAIRS IN SUCH A WAY THAT THEY HAVE RELIED ON THE RULES OF THE GAME?

>> WELL, I WOULD CERTAINLY AGREE WITH THAT POSITION.

>> I THOUGHT YOU WOULD.

[LAUGHTER]

>> THAT'S WHAT YOU CALL A
SOFTBALL QUESTION.

>> YES.

BUT, SEE, ONE OF THE ARGUMENTS I
WAS PLANNING TO PRESENT WAS THE
ARGUMENT THAT JUSTICE LEWIS
RAISED, THE DIFFERENCE FROM 1962
TO THE PRESENT HAS CHANGED
DRAMATICALLY.

WHEN I WAS A CHILD, MY MOTHER
WAS MOVING MONEY TO BANK TO BANK
BECAUSE SHE WAS GETTING 5% TO
10% INTEREST.

IN THIS CASE HE MANAGED TO PULL
OFF ROUGHLY 2.5% OVER THE COURSE
OF THE FIVE MONTHS IT WAS HELD.

>> IS THAT WHAT WE'RE TALKING
ABOUT HERE, IS A FIVE-MONTH
PERIOD?

>> YES.

THE HOUSE WAS SOLD IN OCTOBER OF
2014.

THE GARNISHMENT -- SORRY, 2013.

THE GARNISHMENT OCCURRED IN
FEBRUARY.

SO IT WAS A FOUR TO FIVE-MONTH
WINDOW.

>> AND WHEN WAS THE NEW HOUSE
BOUGHT?

>> OCTOBER OF 2014.

THE COURT HAD SET A NEW HEARING.

>> SO THEY WERE ACTUALLY
MONITORING TO MAKE SURE THIS
WASN'T BEING DONE TO DEFRAUD
CREDITORS.

>> CORRECT.

I'LL TAKE IT A STEP FURTHER.

MR. HODKIN-- AND IT'S IN THE
COURT RECORD-- FILED A MOTION
FOR A PRELIMINARY INJUNCTION TO
PROHIBIT THE USE OF THE MONEY ON
ANYTHING OTHER THAN THE PURCHASE
OF A HOMESTEAD, WHICH WE AGREED
TO, AND IN FACT FURTHER AGREED
THAT BEFORE WE PURCHASED THE
HOME, WE'D PROVIDE HIM THE HUD
ONE AND THEY WOULD HAVE TEN DAYS
TO OBJECT BEFORE WE DID ANY KIND
OF CLOSING.

SO THAT ALL OCCURRED.

SO THIS WAS -- THERE WAS CLEARLY -- IT WAS MONITORED BY THE COURT TO MAKE SURE THE FUNDS WERE USED PROPERLY.

>> I THINK THAT'S AN INTERESTING RELIANCE ISSUE, BECAUSE AT THE TIME THAT THE PROCEEDS WERE SOLD, WAS THE JUDGMENT ALREADY -- HAD ALREADY BEEN ENTERED AGAINST HIM?
THE CREDITOR?

>> AT THE TIME OF THE SALE OF THIS HOME, YES, THE JUDGMENT WAS ENTERED BACK IN 2010.

>> SO THE VERY -- I MEAN, THE IDEA THAT HE, HIS LAWYER, WOULD LOOK AT ORANGE BREVARD, LOOK AT THE CASES AND SAY I NEED TO PUT IT IN A SEGREGATED ACCOUNT, IT NEEDS TO BE CONSERVATIVE, THAT THOSE WERE THE INSTRUCTIONS BASED ON WHAT THEY UNDERSTOOD TO BE THE LAW IN THIS STATE.

>> I WOULD ASSUME SO.

I WAS NOT HIS LAWYER AT THE TIME.

BUT IT WAS PUT IN AN ACCOUNT LABELED HOMESTEAD ACCOUNT. HE DID TELL HIS BROKER ONLY CONSERVATIVE AND IT MUST BE READILY AVAILABLE.

>> CONSERVATIVE WOULD BE THAT OUT OF HOW MUCH MONEY WAS THIS?

>> IT WAS I WANT TO SAY \$458,000, ROUGHLY.

>> AND HE GOT \$12,000?

>> \$12,000, YES, OVER FIVE MONTHS.

CAME TO ABOUT 2%.

ON AN ANNUAL BASIS, IT WOULD HAVE COME OUT TO AROUND 6%.

SO WE'RE NOT TALKING BIG MONEY RISKS THERE.

I WOULD ALSO -- THE CASE THAT ALWAYS STUCK IN MY HEAD WAS IN THE COGIATO CASE.

THIS COURT WAS TALKING ABOUT THE INTERPRETATION AND THE RULES OF CONSTRUCTION REQUIRING A LIBERAL, NONTECHNICAL

INTERPRETATION OF THE HOMESTEAD
EXEMPTION WHEN DEALING WITH
THESE KIND OF ISSUES.

AND I THINK WHAT THE APPELLANT
IS ASKING FOR HERE IS A VERY
TECHNICAL INTERPRETATION.

I DON'T AGREE THAT IT'S AN ALL
OR NOTHING CASE BECAUSE IF THIS
COURT WERE TO RULE THAT PUTTING
IT IN A MUTUAL FUND IS NOT
APPROPRIATE, THERE WAS \$130,000
IN CASH.

THEY SEEM TO WANT TO IGNORE THAT
PART.

I DON'T THINK WE HAVE TO GET TO
THAT BECAUSE I THINK LOOKING AT
IT FROM A LIBERAL, NONTECHNICAL
PERSPECTIVE, ANY INDIVIDUAL
WOULD SAY I'M GOING TO WELLS
FARGO ADVISERS, I PUT MY MONEY
IN THERE, TOLD THEM KEEP IT
CONSERVATIVE AND READILY
AVAILABLE.

THIS IS ALL HE WANTED TO DO WITH
HIS MONEY SO IT COULD GROW AND
HAVE A NICER HOUSE.

THAT IS THE AMERICAN DREAM.

I DON'T SEE HOW THIS ARGUMENT
WOULD CHANGE ANY OF THAT.

I THINK WE GET A LITTLE MORE
INTO MIGHT MOOTNESS ARGUMENT AT
THAT POINT.

EVEN IF THE COURT WERE TO SAY WE
SHOULDN'T HAVE ALLOWED THIS, THE
FACT THAT THEY DIDN'T GET A STAY
AND PREVENT HIM FROM PURCHASING
A NEW HOME, WE'VE NOW REACHED A
MOOTNESS POINT BECAUSE THAT PART
OF THE ISSUE IS RESOLVED.

UNDER THE FOURTH DCA DECISIONS
THE COURT CAN STILL MAKE A
DECISION BECAUSE THIS IS CLEARLY
LIKELY TO REOCCUR, WHERE OTHER
PEOPLE MIGHT WANT TO USE MUTUAL
FUNDS AFTER PURCHASING A HOME,
BUT IN THIS PARTICULAR CASE THE
MOOTNESS DOCTRINE WOULD APPLY.

>> IT WOULDN'T BE MOOT, BECAUSE
IF WERE NOT APPROPRIATE TO THE
PROTECTION, THEN THE JUDGMENT

WOULD ATTACH AND WOULDN'T BE ENTITLED TO THE PROTECTION.
>> EXCEPT FOR THE FACT THAT HE NOW PURCHASED A NEW HOME AND I DON'T THINK THE JUDGMENT DOESN'T ATTACH TO THE HOMESTEAD.
>> THAT'S THE POINT.
THE HOMESTEAD EXEMPTION PROTECTION WOULDN'T BE THERE AND SO IT WOULD ACTUALLY ATTACH TO THAT.
THE SAME AS SOME KIND OF MORTGAGE OR SOMETHING OF THAT NATURE.
>> SEE, I DON'T AGREE WITH THAT BASED UPON THIS COURT'S DECISIONS IN THE VARIOUS EQUITABLE LIEN CASES, WHERE YOU NEED SOMETHING MORE.
YOU NEED SOME KIND OF FRAUD OR UNJUST ENRICHMENT.
IN ALL OF THOSE CASES THE PARTIES WHO WERE CLAIMING LIENS, ET CETERA HAD -- THERE WAS SOME KIND OF UNJUST ENRICHMENT.
FOR EXAMPLE, A MORTGAGE WAS PAID OFF AND THEN THERE WASN'T A PROPER MORTGAGE GIVEN, THINGS LIKE THAT.
WE DON'T HAVE THAT HERE.
THIS WAS ALWAYS MR. SILLS' MONEY.
SO I BELIEVE WE'RE NOT IN A CASE OF UNJUST ENRICHMENT OR FRAUD.
WE ARE SIMPLY IN A CASE OF HE HAD MONEY IN A BANK, THE COURT RELEASED THE LIEN BECAUSE IT FOUND IT WAS HOMESTEAD.
IT FOUND THE PROPER TEST, THE PRESENT INTENT TO PURCHASE A HOME.
HE HAD SEEN BROKERS.
THERE WAS NO DISPUTE AS TO ANY OF THESE FACTS.
BASED UPON THAT, I THINK THE COURT PROPERLY RULED THAT THIS USE WAS VERY LIMITED.
IN FACT, I THINK THE TRIAL COURT EVEN SAID I'M VERY FAMILIAR WITH THE MARKET, I KNOW THESE ARE

CONSERVATIVE AND READILY --
LIQUIDABLE.

THE MONEY COULD BE EASILY
LIQUIDATED AND PUT INTO A HOME,
WHICH IS EXACTLY WHAT HAPPENED.
BASED UPON THAT, I BELIEVE THAT
IN THIS PARTICULAR CASE THE
COURT SHOULD AFFIRM THE LOWER
COURT AND I THINK THE COURT
SHOULD FURTHER EVEN SET FORTH A
RULE THAT WE'RE TALKING
SEGREGATION.

WE'RE NOT STRICTLY LIMITING
INTERPRETING THE WORD SOLELY.
IT WASN'T USED FOR GENERAL
PURPOSES, TO BUY A CAR, TO PAY
HIS MORTGAGE.

IT WAS PUT IN A BANK AND LEFT
THERE UNTIL SUCH TIME AS HE
FOUND A HOME.

THEN HE TOOK ALL THE MONEY AND
PUT IT IN A NEW HOME.

BASED UPON THAT, I BELIEVE HE
HAS COMPLIED WITH ALL OF THE
RULES OF THIS COURT, ALL OF THE
RULES OF THE EXEMPTION AND THE
EXEMPTION SHOULD STAND.

>> YOUR TIME IS UP.

I'LL GIVE YOU TWO MINUTES.

TWO MINUTES.

>> WELL, FIRST OF ALL, IT WASN'T
PUT IN A BANK.

IT WAS PUT IN A SECURITIES
HOUSE.

THE RULES OF ORANGE BREVARD --

>> LET'S GO BACK TO THAT.

AS WE KNOW IN COMMON INVESTMENT
-- AND, AGAIN, SOME THINGS HAVE
CHANGED RADICALLY IN 40 YEARS AS
FAR AS THE SECURITY OF WHAT YOU
CAN GET IN A BANK.

DO YOU AGREE THAT PART OF IT, A
THIRD OF IT, WAS IN A CASH
ACCOUNT?

>> YES.

>> SO WOULD YOUR ARGUMENT BE
THAT AT LEAST AS TO THAT, THAT
COMPLIES WITH ORANGE BREVARD?

>> WELL, IT COULD HAVE EXCEPT
THEN YOU HAVE THE QUESTION OF,

OKAY, WELL, NOW THAT'S IN THERE WITH THE MUTUAL FUND AND WITH THE BONDS AND WITH THE OTHER SECURITIES.

YOU COULD SAY THAT'S COMINGLING.

>> HOW IS THAT COMINGLED?

>> BECAUSE IT'S CASH WITH OTHER ASSETS, PIECES OF CORPORATIONS. IT'S NOT ALL CASH ANYMORE. PART OF IT IS CASUAL AND PART OF IT IS SITTING THERE WITH DIVIDENDS FLOWING IN FROM CORPORATE PROFITS.

>> COULD HE HAVE PURCHASED CDs?

>> HE COULD HAVE.

>> WOULD THAT COMPLY WITH ORANGE BREVARD?

>> I BELIEVE IT COMPLIES WITH DCA CASES.

THERE IS NO OTHER FLORIDA CASE THAT ALLOWED A JUDGMENT DEBTOR -- LET'S NOT FORGET.

THAT'S WHAT WE'RE TALKING ABOUT. WE'RE NOT TALKING ABOUT AN INDIVIDUAL WHOSE RIGHTS TO FUNDS IS NOT CONSTRAINED ANYMORE. SOMEBODY UNDERWENT A WRONGFUL COURSE OF CONDUCT, LIQUIDATED ASSETS TO BUY A HOMESTEAD AND THEN LIQUIDATED THAT TO BUY ANOTHER HOMESTEAD.

IN THE MEANTIME, DIDN'T --

>> YOU'RE SAYING THAT WHAT HE GOT FOR THE SALE OF THAT HOMESTEAD HAD TO BE PUT SOMEPLACE, SEGREGATED, THAT THERE WAS NO CHANCE OF LOSING AT LEAST THAT PART OF --

>> THAT'S RIGHT.

>> THAT'S WHAT YOU'RE SAYING.

>> AND WHAT YOU CARRY ORANGE BREVARD'S POLICY OUT, THAT'S WHAT IT SAYS.

THAT'S WHAT THE CASE SAYS IN PLAIN LANGUAGE.

WE'RE NOT LOOKING TO EXPAND IT. WE'RE LOOKING FOR MR. SILL TO HAVE MODULATED HIS ACTIONS BASED ON ORANGE BREVARD.

HE DID SOMETHING NO ONE ELSE IN
THIS STATE HAS DONE.
>> YOUR TIME IS UP.
THANK YOU FOR YOUR ARGUMENTS,
>> THANK YOU, MR. CHIEF JUSTICE.
AND THANK YOU, JUSTICES, FOR
YOUR TIME TODAY.
>> WE'RE IN RECESS FOR TEN
MINUTES.
>> ALL RISE.