

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.

THE HONORABLE JUSTICE CHARLES CANNADY PRESIDING.

>> WELCOME TO THE SESSION OF THE FLORIDA SUPREME COURT.

THE FIRST CASE ON OUR DOCKET TODAY IS ONEWEST VERSUS LUISA PALMERO.

THE COUNSEL FOR PETITIONER IS RECOGNIZED.

>> GOOD MORNING.

IF IT PLEASE THE COURT, WILLIAM MCCAUGHAN OF THE LAW OFFICE OF WILLIAM MCCAUGHAN ALONG WITH JONATHAN MORTON AND A FORMER WHEATON REPRESENTATIVE FOR THE PETITIONER.

THE ISSUE BEFORE THE COURT IS WHO IS THE BORROWER IN THIS TRANSACTION.

THE NOSE, THE LOAN AGREEMENT, THE LOAN APPLICATION, THE APPLICABLE LOAN DOCUMENTS ALL WERE SIGNED BY LUISA PALMERO AND ALL DEFINE HIM AS THE SOLE BORROWER.

MRS. PALMEIRO EXECUTED A DOCUMENT CALLED THE NONSPOUSE BORROWER AUTHORIZATION WHERE SHE ACKNOWLEDGED THAT SHE WAS NOT A BORROWER AND SHE DID EXECUTE THE MORTGAGE THAT STATES SHE IS A BORROWER.

AFTER FULL TRIAL, THE TRIAL COURT DETERMINED THAT MRS. PALMEIRO WAS NOT A BORROWER. THE SOLE BORROWER WAS MISTER PALMEIRO.

THE INITIAL PANEL DECISION AUTHORED BY JUDGE ROBERT CLARK DETERMINED AND AFFIRMED THE RULING BY THE TRIAL COURT.

>> STRAIGHT TO THE NOTE THAT CONTAINS THE FOLLOWING LANGUAGE. IF, QUOTE, A BORROWER DIES AND THE PROPERTY IS NOT THE PRINCIPLE RESIDENCE OF ONE SURVIVING BORROWER IF YOUR ARGUMENT IS RIGHT AND ALL THE

TRANSACTION DOCUMENTS REFLECT DEALING WITH THE BORROWER AS SINGULAR HOW DO YOU DEAL WITH THE LANGUAGE IN THE NOTE THAT ACKNOWLEDGES THE LIKELIHOOD OR POSSIBILITY THAT THERE WOULD BE MORE THAN ONE SURVIVING BORROWER?

>> WHAT THE NOTE IS DEFINING IS THE RULES THAT APPLY TO A REVERSE MORTGAGE. IT DOESN'T BECOME DO UNTIL THERE IS NO LONGER A SURVIVING BORROWER RESIDING IN THE HOME. I DON'T THINK THERE'S ANY QUESTION THE NOTE DEFINES MISTER PALMERO AS A BORROWER AND IS EXECUTED SOLELY BY MISTER PALMERO SO THAT TRIGGERING OR ACCELERATION CLAUSE YOU REFERRED TO IS THE SAME ONE IN THE MORTGAGE AND THAT IS WHY WE ARE HERE AND THAT IS THE ISSUE. OF THE COURT WERE TO DETERMINE THAT MISTER PALMERO IS THE SOLE BORROWER THE TRIAL COURT, INITIAL APPELLATE COURT WOULD CORRECT THAT THE PETITIONER IS ENTITLED TO A FINAL JUDGMENT. >> YOU CONCEDE FOR THE PURPOSES OF BACKGROUND FEDERAL LAW THAT ALLOW THE MORTGAGE TO BE INSURED, WE SHOULD ESTABLISH YOU CONCEDE THIS IS PALMERO CONTINUES TO RESIDE AT THE PROPERTY. >> TO MY KNOWLEDGE CORRECT AS OF THE TIME OF THE TRIAL. >> DO YOU ALSO CONCEDE THE TRANSACTION WOULDN'T HAVE HAPPENED, THE MORTGAGE WOULD NOT HAVE BEEN INSURABLE HAD SHE NOT EXECUTED AND PARTICIPATED IN THE DOCUMENTATION? >> THAT IS NOT SHE DID NOT NEED TO PARTICIPATE IN FEDERAL LAW. FOR 7 YEARS IF NOT MORE, THAT IS WHY SHE SIGNED THE DOCUMENT DESIGNATED AS A NON-BORROWER CERTIFICATION.

IT WAS NOT REQUIRED UNDER FEDERAL LAW AT THE TIME THIS WAS ORIGINATED THAT BOTH SPOUSES BE BORROWERS.

THAT REGULATION CAME IN 2014 SOME 7 OR 8 YEARS LATER.

IN ADDITION THE FEDERAL RULES AND FEDERAL STATUTES PERTAINING TO THE INSURANCE BETWEEN HOOD, FHA AND THE LENDER, NOT BETWEEN THE BORROWER AND THERE ARE SEVERAL CASES WE CITED INCLUDING ONE OF THE ELEVENTH CIRCUIT FEDERAL COURT THAT SAYS THESE FEDERAL STATUTES SIMPLY DO NOT APPLY TO THE RELATIONSHIP BETWEEN THE BORROWER AND LENDER.

>> OF TRUE THEN WHY DID SHE SIGN THE MORTGAGE?

>> FOR TWO REASONS.

THE FIRST BEING SHE IS A SPOUSE. UNDER FLORIDA LAW A SPOUSE MUST SUBORDINATE HIS OR HER INTEREST IN THE PROPERTY FOR THE CONSTITUTION AND THAT IS WHY THE SPOUSE EXECUTES MORTGAGE INITIALLY.

IN THIS CASE SHE HAD REMAINDER INTEREST AND SO SHE SIGNED FOR TWO REASONS.

I POINT OUT FOR THE CHILDREN SIGNED THE MORTGAGE BECAUSE OF THEIR REMAINDER INTERESTS AND NO ONE ARGUED THE CHILDREN ARE BORROWERS IN THIS TRANSACTION.

>> EXPLAIN HOW FEDERAL LAW APPLIES IN THIS CIRCUMSTANCE.

>> IT DOES NOT APPLY AT ALL. THE FEDERAL LAW AS REGARDING THE INSURANCE OF THE LOAN BETWEEN LENDER AND GOVERNMENT.

THERE ARE NONINSURED REVERSE MORTGAGES AND EXISTENCE.

IT DOES NOT APPLY, TO THE ESTATE THERE WAS A MOMENT -

>> WAS THIS LOAN NOT INSURED?

>> TO MY KNOWLEDGE IT WAS AN INSURED LOAN.

>> DOESN'T FEDERAL LAW APPLY CERTAIN CONDITIONS TO THE

PROVISION OF THE INSURANCE OF
THE MORTGAGE?

>> THAT ONLY APPLIES TO WHETHER
OR NOT THE LENDER IS ENTITLED TO
THAT INSURANCE, APPLYING TO THE
CONTRACT BETWEEN A BORROWER AND
LENDER AND AS I POINTED OUT THE
FEDERAL GOVERNMENT WAS NOT
ENFORCING THAT PROVISION FOR 8
TO 10 YEARS.

BEFORE THE GOVERNMENT HAS TO
REGULATION, AFTER THE LOAN WAS
ORIGINATED.

>> WHAT WOULD HAPPEN IF THE SAME
FACTS OCCURRED TODAY?

I AM TRYING TO UNDERSTAND IF
THERE IS A NEED TO CONTINUE TO
TRY TO ADDRESS THE FACTS OF THE
CASE UNDER THE CURRENT STATE OF
THE LAW.

>> IT CERTAINLY IS FOR SEVERAL
REASONS.

THERE ARE MANY LOANS LIKE THIS
LOAN DURING THE TIME PERIOD I AM
SPEAKING OF BUT THE CONCEPTS THE
THIRD DISTRICT REFUSED TO APPLY,
NEUTRAL CONSTRUCTION DOCTRINE,
YOU MUST READ THE NOTE AND
MORTGAGE TO GATHER, THIS DOESN'T
EXIST SOLELY IN THE REVERSE
MORTGAGE, I WILL POINT TO THE
COURT THE CONCEPT OF A
NONRECOURSE LOAN DID NOT
ORIGINATE WITH REVERSE
MORTGAGES, IT HAS BEEN IN
EXISTENCE FOR DECADES AND WE
CITE TWO CASES THAT WERE
NONRECOURSE TRANSACTIONS JUST
LIKE THIS TRANSACTION, WHERE THE
COURTS APPLIED MUTUAL
CONSTRUCTION DOCTRINE THE NOTE
MORTGAGE MUST TO BE READ
TOGETHER.

AND MCVEIGH.

THE IMPORTANCE OF THIS CASE IS
NOT LIMITED TO REVERSE
MORTGAGES.

THE RULING BY THE THIRD DISTRICT
IS WE ARE NOT GOING TO LOOK TO
THE NOTE BECAUSE THE MORTGAGE IS

RECORDED, BECAUSE THE MORTGAGE IS THE LENDER IS PROCEEDING UNDER.

THERE IS NO CASE ANYWHERE THAT SAYS WE ARE GOING TO APPLY NEUTRAL CONSTRUCTION DOCTRINE TO A RECORDED INSTRUMENT.

WE ARE GOING TO APPLY THE MUTUAL CONSTRUCTION DOCTRINE TO THE DOCUMENT THAT HAPPENS TO HAVE THE REMEDY IN IT.

>> TO MY QUESTION EARLIER. IF APPLICATION OF FEDERAL LAW AS IT STANDS TODAY WOULD YOUR CLIENT BE ABLE TO FORECLOSE NOW WITH THE CURRENT STATE OF FEDERAL LAW?

>> IT WOULD NOT BE A FEDERALLY INSURED REVERSED MORTGAGE IS THE WAY I WOULD ANSWER THAT. IT COULD DENY INSURANCE AND PROCEED WITH FORECLOSURE IF THERE IS NOTHING ABOUT THE FEDERAL STATUTE OR FEDERAL REGULATION THAT GOVERNS THE RELATIONSHIP BETWEEN THE BORROWER AND THE LENDER BUT YOU ARE CORRECT THAT THE INSURANCE WOULD NOT BE AVAILABLE.

>> IS IT TODAY?

THESE ANNEXATION MORTGAGES, IS IT COMMON PRACTICE TO HAVE THE HUSBAND AND WIFE SIGN AS BORROWERS IN THE MORTGAGE EVENT IF THE NOTE SAYS SOMETHING ELSE THAT EXCLUDES ONE OF THEM HAS TO BORROW, WHY DO YOU DO THAT? WAS IT A MISTAKE?

>> LOOK AT THE BUYING CASE, THAT IS WHERE REVERSE MORTGAGE PROPERLY WAS EXECUTED BECAUSE IT DESIGNATED IN THAT CASE MRS. LEVINE WAS DOING IT IS A NON-BORROWING SPOUSE.

>> THE MORTGAGE, THE LAST PAGE, ROBERT PALMERO BORROWER, LOUISA PALMERO BORROWER.

WHY DO YOU DO THAT?

DO YOU HAVE TO DO THAT TO EFFECTUATE THIS KIND OF ACTION?

>> ABSOLUTELY NOT.
SHE HAD TO EXECUTE IT BECAUSE
THE SPOUSE HAD A REMAINDER
INTEREST.
THE MISTAKE, THE LINE IT WAS
SIGNED ON A PREPRINTED FORM THAT
SAYS BORROWERS, THE NOTE
PARTICULARLY, THE SOLE BORROWER
AS BOUND BY THE TRIAL COURT AND
THE INITIAL BALLOT WAS MISTER
PALMERO.

IF YOU TALK THAT POSITION OF THE
THIRD DISTRICT TO ITS FULL
EXTREME, IF YOU HAPPEN TO SIGN
ON THAT LINE WITH THEIR NAMES
THERE AND THEY SIGNED IT,
ACCORDING TO THE OPINION OF THE
THIRD DISTRICT, THAT WITNESS IS
A BORROWER AS A MATTER OF LAW.
THAT IS NOT CORRECT.

>> SORRY TO INTERRUPT YOU.
THE MUTUAL CONSTRUCTION
DOCTRINE, IN THIS CASE THE
MORTGAGE HAS AMBIGUITY IN IT
BECAUSE IT DEFINES ONLY THE
HUSBAND AS THE BORROWER, IT
MAKES IT AN EASY CASE FOR
LOOKING AT ALL THE OTHER
DOCUMENTS.

I KNOW THIS ISN'T THE CASE BUT I
AM CURIOUS BECAUSE YOU SAID
THERE WAS THIS BROADER LEGAL
PRINCIPLE IN PLAY.

IF THE MORTGAGE IT SO FOR
UNAMBIGUOUS THAT IT DEFINED BOTH
PEOPLE AS THE BORROWER, THE
SIGNATURE BLOCK IS THE SAME WAY
IT IS NOW, BUT IN THE BEGINNING
IT WAS DEFINING THE TERM
BORROWER AND ALL THE OTHER
DOCUMENTS WERE CONSISTENT WITH
THAT, DOES THAT CREATE AN ISSUE,
AND JUST LOOK AT THAT.
HOW DOES THE MUTUAL CONSTRUCTION
HAVE INVENTED FACTS?

>> I AGREE WITH YOUR POSITION, I
WOULD SECONDLY SAY AMBIGUITY IS
NOT REQUIRED FOR APPLICATION OF
THE MUTUAL CONSTRUCTION
DOCTRINE.

THERE WAS NO AMBIGUITY.
TO ANSWER YOUR SPECIFIC
QUESTION, THE COURT WOULD LOOK
TO THE DOCUMENTS, TO LOOK AT ONE
DOCUMENT CREATES A BAD RESULT,
AND -- THE MORTGAGE REFERS TO
THE OTHER DOCUMENTS.

IT IS CONTINGENT ON THE
OPERATION OF OTHER DOCUMENTS.

>> THAT IS CORRECT AS WELL.

THE SAME ACCELERATION COST THAT
THE THIRD DISTRICT SAID
PRECONDITION IS IN THE NOTE.
IN THE NOTE, THE BORROWER IS
MISTER PALMERO.

THE MORTGAGE ACCORDING TO THE
THIRD DISTRICT BECOMES THIS
ISSUE BECAUSE MRS. PALMERO
SIGNED ON THE LINE DESIGNATED AS
BORROWER NOTWITHSTANDING SHE
DIDN'T SIGN INSIDE THE
DOCUMENTS, NON-BORROWER SPOUSAL
CERTIFICATION.

>> IS IT POSSIBLE TO ENFORCE THE
MORTGAGE WITHOUT THE NOTE.

>> THE MORTGAGE IS SOLELY
SECURITY FOR THE UNDERLYING
OBLIGATION CREATED FOR THE NOTE,
IN LOAN AGREEMENT.

THE NOTE MORTGAGE MUST BE READ
TOGETHER.

THE COURT HELD THIS WAS ONE
AGREEMENT.

AND THE NOTE CONTROLS FOR
OBVIOUS REASONS.

AND --

>> YOU ARE NOW ABOUT TO GO INTO
YOUR REBUTTAL TIME.

YOU HAVE 30 SECONDS BEFORE YOU
GET THERE.

I WILL TRY TO ANSWER THAT IF NOT
RESERVED REBUTTAL TIME.

>> MAY IT PLEASE THE COURT,
JEFFREY HEARNE ON BEHALF OF THE
PETITIONER LOUISA PALMERO.
REVERSE MORTGAGES ARE DIFFERENT,
UNIQUE, FINANCIAL INSTRUMENT
DESIGNED TO KEEP ELDERLY
HOMEOWNERS IN THEIR HOMES.
BY THEIR OWN TERMS, REVERSE

MORTGAGE NOTES STATE THE LENDER MAY ONLY AND FORCED ITS TERMS BY ENFORCING THE SECURITY AGREEMENT, THE MORTGAGE RELATIONSHIP TURNS UPSIDE DOWN. THE MORTGAGE IS THE INSTRUMENT THAT CONTROLS.

THE OTHER ISSUE IN THIS CASE.

>> EVEN IN THIS CONTEXT THE MORTGAGE AND FORCED WITHOUT THE NOTE.

>> THE NOTE HAS MEANING.

IT SET OUT A BALANCE OF THE LOAN AND THE HOLDER OF IT CAN PROCEED WITH THE FORECLOSURE BUT THAT IS IT.

WHEN LOOKING AT THE ACCELERATION CLAUSE WHICH IS PARAGRAPH 9 OF THE MORTGAGE YOU NOTICE IT DOESN'T REFERENCE THE NOTE IN THAT PARAGRAPH AND IT REFERENCES THE BORROWER.

THE BORROWER IS A DEFINED TERM IN THE NOTE AND MORTGAGE.

WE GIVE EFFECT TO BOTH INTERESTS BUT IF YOU LOOK AT THE NOTE IT SAYS THE BORROWER, WHO SIGNS AT THE BOTTOM, THAT IS MISTER PALMERO.

AS I SAID BEFORE THE NOTE BY ITS OWN TERMS CAN ONLY BE ENFORCED THROUGH THE MORTGAGE.

YOU GO TO THE MORTGAGE.

AT THE TOP OF THE MORTGAGE IT HAS A DEFINITION OF BORROWER.

THE LENDER CHOSE TO INCLUDE ALL MORTGAGORS AS BORROWER.

IT IS NOT JUST MISTER PALMERO OR IT WOULD SAY MISTER PALMERO, BORROWER, THEN INCLUDE THE REST OF THE MORTGAGE.

>> LET'S PLAY A THOUGHT EXPERIMENT.

THE SIGNATURE BLOCK, IT SAID A REMAINDER OF THAT FOR SPOUSE.

ARE WE STILL HERE?

>> IN THE DEFINITION OF BORROWER, I BELIEVE SO.

IT IS A DIFFERENT FACT PATTERN A LITTLE CLOSER TO AMBIGUITY BUT

THE DEFINITION OF BORROWER IS CLEAR.

SHE SIGNED THE MORTGAGE AND THE LENDER CHOSE TO DEFINE ALL MORTGAGE BORROWERS AS BORROWERS. IT IS COMPARABLE TO THE SECOND DISTRICT COURT OF APPEAL IN THE GREER CASE FROM THE FOURTH DISTRICT.

BOTH OF THOSE CASES THE COURTS WERE ENFORCING ACCELERATION CLAUSE AND THOSE MORTGAGES, THE MORTGAGE IS GOING TO MORTGAGE YOUR NOTE.

THE NOTE IS SAYING THE MORTGAGE IS GOING TO CONTROL, TO ENFORCE ITS RIGHTS.

THE LOAN AGREEMENT RECOGNIZES THAT, THE LOAN AGREEMENT RECOGNIZES ACCELERATION UNDER ONE OR MORE OF THE SECURITY INSTRUMENTS AND WHAT THAT MEANS IS THE LINE OF CREDIT IS CUT OFF ON MISTER PALMERO'S DEATH BUT THE LENDER CANNOT CLOSE OR ENFORCE ITS RIGHTS UNDER THE NOTE UNTIL ALL BORROWERS ARE DECEASED.

BORROWER IS UNAMBIGUOUS.

IT IS A DEFINED TERM.

IF YOU LOOK AT THE PRESIDENT, THE TRAVELERS CASE CITED IN THE BRIEFS, THE COURT WAS TRYING TO INTERPRET THE MEANING OF THE WORD ACCIDENT IN AN INSURANCE POLICY AND THE MAJORITY OPINION AND ONE OF THE DISSENTS POINTS OUT THE TERM ACCIDENT IS UNDEFINED.

LOOK TO THE DENNY CASE FROM THIS COURT, POLLUTION WAS THE TERM, A DEFINED TERM.

WHAT THE INSURER WAS TRYING TO DO IS WHAT THE LENDER IS DOING, TO REWRITE A DEFINED TERM.

>> Reporter: BEST CASE SCENARIO FOR YOUR POSITION, THIS THING AT THE BEGINNING IS AMBIGUOUS, REFERRING TO ALL OF THESE PEOPLE AS BORROWER.

IT SEEMS YOU ARE TRYING TO HAVE IT BOTH WAYS.

THE MORE NATURAL READING OF THE BEGINNING IS THERE WAS ONE BORROWER, THE HUSBAND, BUT EVEN IF YOU THINK ALL THESE PEOPLE ARE CONSIDERED BORROWERS YOU GO TO THE SIGNATURE BLOCK AND OTHER FOLKS YOU'RE CALLING BORROWERS DIDN'T SIGN AS BORROWER WHICH WE CREATE AMBIGUITY WHICH WOULD REQUIRE YOU TO LOOK AT OTHER STUFF, PUTTING ASIDE I UNDERSTAND YOUR COLLEAGUE ON THE OTHER SIDE, JUST INHERENTLY HAVE TO LOOK AT ALL THE DOCUMENTS TOGETHER BUT EVEN IF YOU WANT TO LOOK AT THIS ONE THING IN ISOLATION IT SEEMS INESCAPABLE TO CONCLUDE THERE IS AMBIGUITY HERE.

THE DOCUMENT ISN'T INTERNALLY CONSISTENT.

>> I WOULD SUGGEST IF ONLY MISTER PALMERO IS THE BORROWER THE TERM WOULD COME AFTER HIS NAME.

PARAGRAPH 9 -

>> YOUR POSITION IS THE CHILDREN ARE ALSO BORROWERS?

>> THAT WAS NOT ADVANCED BY ANYONE --

>> I DON'T SEE HOW YOU CAN READ THIS AND SAY IT IS NOT REFERRING TO ROBERT PALMERO BUT IS REFERRING TO LOUISA PALMERO BUT NOT THE OTHER PEOPLE LISTED IN THE CLAUSE.

THE MORTGAGE GIVEN ON THIS DATE, THE MORTGAGOR IS ROBERT ROBERTO PALMERO, A MARRIED MAN, AND IT GOES ON AND LISTS THE OTHERS IN RELATIONSHIP TO THE PROPERTY. HOW CAN YOU LOOK AT THAT TEXT AND SAY THAT YOUR THEORY, THE HUSBAND AND WIFE OF BORROWERS BUT THE CHILDREN ARE NOT.

>> THE FACTS ARE DIFFERENT IF YOU LOOK AT AMBIGUITY FOR PURPOSES OF THE CHILDREN, MISS

PALMERO, THE LENDER PRINTED HER NAME AND THE NAME BORROWER UNDERNEATH.

THERE IS NO TESTIMONY AT TRIAL ABOUT THE INTENT.

ALL WE HAVE IS THE DOCUMENTS THEMSELVES WHICH THE COURT SAID IS THE BEST EVIDENCE OF INTENT AND THE LENDER CHOSE TO INCLUDE HER NAME AS WELL AS THE TERM BORROWER BECAUSE OF THE BACKGROUND.

>> THE CHILDREN'S NAME IN THE SAME MANNER AS HER NAME, CORRECT?

>> NOT ON THE WORDAGE ITSELF.

>> THE FIRST PARAGRAPH YOU SAID BORROWER WAS A DEFINED TERM IN THE FIRST PARAGRAPH.

THAT IS YOUR ARGUMENT AND YOUR POSITION IS THAT FIRST PARAGRAPH DEFINES ROBERTO AND HIS WIFE AS BORROWERS BUT DOES NOT DEFINE THE CHILDREN AS BORROWERS.

>> OUR POSITION IS THEY ARE DEFINED AS A BORROWER.

THEY ARE MEETING MORE AMBIGUITY CREATED BY THE LAST PAGE OF THE DOCUMENT, BUT THERE IS NO AMBIGUITY IN THAT DEFINITION.

ALL THOSE INDIVIDUALS ARE INCLUDED IN THE DEFINITION OF BORROWER.

>> THE BARGAIN THAT WAS STRUCK ACCORDING TO YOU, THE LENDER COULD NOT FORECLOSE AS ANY OF THOSE PEOPLE, ANY OF THE FOUR REMAINING IN THE HOUSE.

>> WE HAVE NOT ADVANCED TO THAT. THAT IS WHAT THE DEFINITION OF BORROWER IS, THE MORTGAGE, PARAGRAPH 9, SAYS YOU CAN'T FORECLOSE, ALL BORROWERS ARE NO LONGER --

>> IF MRS. PALMEIRO -- PALMERO WAS A BORROWER WHY DID SHE FILL OUT A NO BORROWER INTEREST CERTIFICATION?

>> THERE WAS NO TESTIMONY ABOUT THAT AT TRIAL, BUT THE TRIAL

COURT RULED IT WAS INADMISSIBLE AND THEY CUT OFF TESTIMONY. FOR SEVERAL REASONS IT IS UNCLEAR IT WAS SIGNED ON CONTEMPORANEOUSLY WITH THE REST OF THE DOCUMENTS OR CLOSING AGENT TO INDICATE IT.

IT IS NOT INCORPORATED INTO THE DOCUMENT.

IF YOU LOOK AT PARAGRAPH 26, IF THIS IS THE DOCUMENT WHICH WOULD SHOW THE PARTY'S INTENT THE LENDER COULD HAVE INCORPORATED IT INTO 26 OF THE MORTGAGE BUT CHOSE NOT TO DO THAT.

>> YOU DON'T DISPUTE IT WAS IN THE RECORD BUT YOU THROUGH SOME SHADE ON IT.

>> EXACTLY.

CLEARLY EVEN UNDER THE MUTUAL CONSTRUCTION DOCTRINE, IT DOESN'T MEET ONE OF THE DOCUMENTS WE WOULD LOOK AT BECAUSE IT IS NOT OF THE SAME -- THE MONTGOMERY CASE TALKS ABOUT CONTRACTS OF THE SAME DIGNITY. THIS IS NOT THE SAME DIGNITY AS A MORTGAGE.

LOOKING TO THIS DOCUMENT, THIS IS WHAT THE THIRD DISTRICT OPINION SAID, WE ARE NOT GOING TO LOOK TO THIS QUESTIONABLE DOCUMENT TO REDEFINE A RECORDED INSTRUMENT OF MORTGAGE.

AS MENTIONED BEFORE, GO TO USUAL CONSTRUCTION IF THERE IS NO AMBIGUITY?

THE TRIAL COURT DID NOT FIND THERE WAS AMBIGUITY IN THE MORTGAGE, IT WORKED BACKWARDS, THE SPOUSE CERTIFICATION AND MOVED TO THE MORTGAGE ITSELF. NO COURT -- THE TRIAL COURT DID NOT FIND THERE WAS AMBIGUITY. LOOK AT THE CASE LAW IN THE BRIEFS, THE J M MONTGOMERY CASE WHICH THE PETITIONER PUTS IN ITS REPLY BRIEF, WHAT VENTILATION, A CONTRACTOR OR SUBCONTRACTOR DISPUTE WITH THE CITY OF MIAMI,

IT IS OKAY TO LOOK AT ANOTHER AGREEMENT ENTERED INTO WITH ANOTHER SUBCONTRACTOR.

THERE IS LATENT AMBIGUITY. THE DENNY CASE EXPLAINS YOU CAN LOOK, YOU CAN'T CREATE LATENT AMBIGUITY USE THE CHANGE THE EXPRESS TERMS OF THE CONTRACT. THE EXAMPLE THEY GIVE IS THE GREENHOUSE, THE GOODS BEING DELIVERED TO A GREENHOUSE AND THERE ARE TWO HOUSES.

THAT IS NOT THE SITUATION WE HAVE HERE.

YOU HAVE THE MORTGAGE THAT SAYS THE LENDER CAN ONLY FORECLOSE IF THE BORROWER IS LIVING IN THE PROPERTY, AND MRS. PALMERO LIVING IN THE PROPERTY, SHE IS A BORROWER.

>> CAN YOU CLEAN HOW FEDERAL LAW APPLIES IN THIS CASE?

>> WE CAN SEE MISS PALMERO CANNOT ENFORCE THE FEDERAL LAW. THE COURTS THERE, THAT STATUTE SAYS HUD SHALL ENSURE MORTGAGES, THAT IS THE DISPUTE BETWEEN HUD AND THE LENDERS. WHERE FEDERAL LAW COMES INTO PLAY IS IT SHOWS THIS INTERPRETATION IS REASONABLE AND CONSISTENT, IT IS NOT ABSURD, IT IS CONSISTENT WITH THE INTENT OF THE FEDERAL POLICY THAT WAS IN PLACE.

THE PETITIONER IS CORRECT THAT THERE WERE LOANS INSURED BY HUD DURING THIS PERIOD WHEN THEY WERE YOUNGER SPOUSES TAKEN OFF, BUT HUD HAS FIXED THAT.

REGULATIONS WERE INCONSISTENT WITH THE STATUTE AND IT WAS CORRECTED SINCE 2014.

THIS IS A FACT PATTERN THAT IS LIMITED.

LENDERS DID WRITE MORTGAGES DIFFERENTLY.

IF YOU LOOK AT THE CASES ON PAGES 6 TO 7 OF THE REPLY BRIEF TO THE FOOTNOTE THE REVERSE

MORTGAGE CASES WHERE THEY FOUND THE SURVIVING SPOUSE WAS NOT A BORROWER.

THESE FELL INTO TWO DISTINCT RULES THAT ARE DIFFERENT.

A LOT OF THEM THE SURVEILLANCE WAS NOT INCLUDED IN THE DEFINITION OF BORROWER.

SOME ARE NOT EVEN ON TITLE.

THE OTHER GROUP OF CASES YOU FIND THAT THE LENDER DID SOMETHING ON THE BASE OF THE MORTGAGE TO DESIGNATE THE SURVIVING SPOUSE WAS NOT A BORROWER.

>> THAT GOES TO THE QUESTIONS ABOUT ECONOMIC REALITIES BEHIND THE TRANSACTION, ONE OF WHICH IS JUDGE DIMAS RIGHT IN HIS DISSENT THAT MISS PALMERO RECEIVED A LARGER PAYOUT BECAUSE SHE WAS NOT A BORROWER?

>> THE TRIAL COURT DID NOT ALLOW THE LENDER, TO PUT IN SOME FIGURES.

THERE IS NO SPECIFICS IN THE RECORD.

THERE WOULD BE A DIFFERENCE BUT IT IS IMPORTANT TO KNOW THERE IS NOTHING IN THE RECORD THAT SUGGESTS THEY WERE DESPERATE, TRYING TO STOP FORECLOSURE AND THERE WAS A CUTIE.

IF YOU LOOK AT 458 THROUGH 460, THEY TOOK DRAWS ON THE LINE OF CREDIT A FEW THOUSAND DOLLARS A COUPLE TIMES.

>> IT DOESN'T GO TO THEIR DESPERATION BUT TO WHAT IS THE ECONOMIC BENEFIT, WHY WAS IT THIS AMBIGUITY AND DEFINITION OF BORROWER EXISTS.

IS IT PLAUSIBLE TO SAY ONE REASON IT EXISTS, PALMERO STOOD TO BENEFIT FROM NON-BORROWER STATUS.

>> THIS POINTS OUT ADDITIONAL ISSUES AROUND INCENTIVES FOR LENDERS AND BROKERS AS WELL BUT NONE OF IT IS IN THE RECORD ON

EITHER SIDE, WE ARE GOING OFF PURE SPECULATION OF WHAT THE INTENT WAS.

MISTER PALMERO CARED FOR HIS WIFE, BUT YOU DON'T KNOW WHAT HAPPENED, THERE WAS NO TESTIMONY ABOUT THE TRANSACTION.

>> ON THE FEDERAL LAW POINT I DON'T THINK YOUR ARGUMENT LOOKING AT THE FOUR CORNERS OF THE MORTGAGE IS THAT GREAT, LOOKING OUTSIDE THE DOCUMENT LOOKING AT FEDERAL LAW OR RELATED AGREEMENTS TO NOTE EVERYTHING ELSE, ISN'T THAT FATAL TO YOUR CASE ONCE YOU START LOOKING BEYOND THAT.

>> I DON'T THINK SO. INITIAL LOAN APPLICATION HAD MISS PALMERO ON IT.

>> THE APPLICATION, REVISED APPLICATION THAT LED TO THE TRANSACTION THERE WAS NO DISPUTE THAT IT WAS JUST BUYING A HUSBAND.

YOUR CLIENT SIGNED THE NON-BORROWER SPOUSE THING. IF YOU LOOK OUTSIDE THIS DOCUMENT, THE EVIDENCE IS OVERWHELMING THERE WAS ONLY ONE BORROWER.

DO YOU DISAGREE WITH THAT?

>> THE BORROWER IS UNDER THE NOTE, TO ENFORCE SECURITY INSTRUMENT AS A SEPARATE ANALYSIS.

IT IS IMPORTANT TO NOTE PETITIONER IS ARGUING THERE IS A FLOODGATE ISSUE HERE.

THAT IS THE CASE FOR TWO REASONS.

THIS WON'T HAPPEN AGAIN, PEOPLE LIKE MISS PALMERO WILL NOT LOSE THEIR HOME GOING FORWARD, TO ENSURE THE SURVIVING SPOUSES ARE PROTECTED.

AS THOSE CASES IN THE REPLY BRIEF ON 6 AND 7 POINT INDICATE LENDERS OFTEN WROTE IT DIFFERENTLY.

IT MIGHT CREATE AMBIGUITY FOR WHICH THE COURTS COULD GO TO THESE ADDITIONAL DOCUMENTS. THE IDEA PARTIES CAN COME TO THE COURT LATER AND SAY LOOK AT THESE OTHER DOCUMENTS TO REDEFINE PARTY TO THE TRANSACTION, THE ONLY OTHER DOCUMENT MISS PALMERO SIGNED IS QUESTIONABLE CERTIFICATION AND THAT CANNOT BE RELIED UPON TO CHANGE THE PARTY TO THE TRANSACTION AND THAT WOULD LEAD TO UNCERTAINTY AND UNNECESSARY LITIGATION IF WE ALLOW PARTIES TO REWRITE WHO IS PARTY TO THE CONTRACT.

SO I WOULD LIKE TO CONCLUDE WE ARE ASKING THIS COURT EITHER TO DISMISS THE CASE FOR LACK OF JURISDICTION BECAUSE THERE IS NO CONFLICT OR ALTERNATIVELY THE THIRD DISTRICT'S DECISION. THANK YOU.

>> THANK YOU, COUNCIL.
REBUTTAL.

>> ON THE ISSUE OF AMBIGUITY, THREE COURTS VISITED THIS ISSUE PRIOR TO IT REACHING THE COURT AND TWO COURTS HAVE RULED SHE WAS NOT A BORROWER. WHEN COURT RULED THAT SHE IS. I SUGGEST THE TERM AMBIGUITY AS IT CAN BE REASONABLY INTERPRETED MORE THAN ONE WAY.

THE BORROWER, EXCUSE ME, THE SPOUSE, MRS. PALMERO, SIGNED A CERTIFICATION FOR A CLEAR REASON.

UNDER THE PROGRAM AND THE TESTIMONY IS IN THE TRIAL, THE PALMEROS RECEIVED MORE FUNDS BY DESIGNATING MISTER PALMERO AND THAT IS THE RECORD, 2532, OR 556, THE PALMEIROS RECEIVED 24,000 MORE IN ADDITIONAL FUNDS BY DESIGNATING MISTER PALMERO AS THE SOLE BORROWER, THAT IS WHY THE APPLICATION, FOUR MONTHS AFTER RECEIVING COUNSELING AND

THERE IS A CERTIFICATION OF COUNSELING IN THE RECORD, THEY DETERMINED THEY WOULD BE ABLE TO RECEIVE MORE FUNDS BY DESIGNATING MISTER PALMERO AS THE SOLE BORROWER.

THIS PROGRAM OF REVERSED MORTGAGE IS VERY IMPORTANT TO THE ELDERLY.

THE FUNDS IN THIS MORTGAGE PAID OFF TWO EXISTING TRADITIONAL LOANS THAT EXISTED ON THE PROPERTY.

ELDERLY TYPICALLY DON'T HAVE THE INCOME TO PAY MONTHLY PAYMENTS, SO THE PROGRAM ALLOWS THEM TO TAKE THEIR ASSETS, OR THE OBLIGATION ON TWO EXISTING MORTGAGES THAT WERE PAID OFF. THIS WAS INTENTIONAL BY THE PALMEROS.

THEY GOT THE BENEFIT OF THE BARGAIN.

THEY NEGOTIATED IT AND WANTS TO CHANGE THE BENEFIT OF THE BARGAIN TO EXTEND THIS LOAN, THE QUESTION WAS ASKED, THE CHILDREN COULD NOT BE A BORROWER UNDER THIS PROGRAM BECAUSE OF THEIR AGENTS.

YOU DON'T QUALIFY UNTIL YOU ARE 62.

>> SEEMS LIKE YOU ARE TRYING TO APPLY THE DEFINITION IN THE NOTE, DOCUMENT THAT SHE DID NOT SIGN, INSTEAD OF THE DEFINITION IN THE MORTGAGE DOCUMENT SHE DID SIGN.

>> SHE DID NOT SIGN THE NOTE. THAT SHE WAS NOT A BORROWER.

>> THE DOCUMENT THAT SHE SIGNED AND OBLIGATED UNDER, THE DOCUMENT SHE DID NOT SIGN.

>> SHE SIGNED THE MORTGAGE, AND IF IT WERE REVERSED MORTGAGE OR CONVENTIONAL MORTGAGE OR OTHERWISE.

>> COULD THE PROGRAM HAVE GONE THROUGH HAD SHE NOT SIGNED?

>> THEORETICALLY THE PROGRAM,

AND THE LENDER AGREED THAT WAS
THE SOLE REMEDY AND UNDERSTAND
THE LENDERS TAKING THE RISK
DEPENDING ON HOW LONG THE PARTY
SURVIVES OR THE VALUE OF THE
PROPERTY AT THE TIME THEY ARE
TAKING THE FULL RISK IN
PROVIDING -- MONTHLY PAYMENT ON
THE EXISTING MORTGAGES.
WHEN YOU SAY COULD IT HAVE GONE
THROUGH THERE WOULD NOT HAVE
BEEN AN ENFORCEABLE LIEN UNDER
FARGO'S CONSTITUTION BUT FOR
HER SIGNATURE AND BECAUSE SHE
HELD THE REMAINDER INTEREST AS
THE CHILDREN DID.
THEIR INTEREST IN THE PROPERTY
TOOK LONGER.
THEY ARE NOT A BORROWER.
NO CONCEPT OF --
>> YOU ARE NOW IN OVERTIME.
IF YOU COULD SUMMON IN 30
SECOND.
>> WE ARE REQUESTING THE COURT
QUASHED THE DECISION OF THE
THIRD DCA AND ENTER A
DETERMINATION THE PETITIONER IS
ENTITLED TO FINAL JUDGMENT OF
FORECLOSURE, THANK YOU.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENT IN THIS CASE TODAY.