

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR.

GIVE ATTENTION, YOU SHALL BE
HEARD.

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

>> THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THIS SESSION OF THE FLORIDA
SUPREME COURT.

JUSTICE MUNIZ CANNOT BE IN THE
COURT TODAY, BUT HE WILL BE
PARTICIPATING IN THE DECISION OF
THIS CASE.

AS YESTERDAY, TODAY'S
PROCEEDINGS AFTER THIS FIRST
CASE WILL BE PROCEEDING
REMOTELY.

BUT THE FIRST CASE TODAY IS
HAYSLIP V. U.S. HOME
CORPORATION.

COUNSEL FOR THE PETITIONER.

>> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT, JOSH
BURNETT ON BEHALF OF SHANE AND
LAURA HAYSLIP.

WE'RE HERE TODAY, YOUR HONORS,
BECAUSE THE HAYSLIPS, AS
SUBSEQUENT PURCHASERS OF THEIR
HOME, NEVER AGREED TO
ARBITRATION WITH U.S. HOMES.

THE ARBITRATION PROVISION IN THE
REMOTE DEED FROM THE ORIGINAL
SALE OF THE HOME BY U.S. HOMES
TO THE ORIGINAL PURCHASERS DOES
NOT RUN WITH THE LAND BECAUSE IT
DOES NOT TOUCH AND CONCERN THE
LAND.

IT'S NOT A REAL COVENANT, IT'S A
PERSONAL COVENANT.

AND IF THE COURT WERE TO ENFORCE
THE ARBITRATION PROVISION UPON
THE HAYSLIPS WHO DID NOT AGREE
TO IT AND WERE NOT PRIVY WITH
U.S. HOME, IT WOULD INFRINGE
UPON THEIR CONSTITUTIONAL RIGHTS
TO THE RIGHT TO A JURY TRIAL AS

WELL AS ACCESS TO THE COURTS.

>> COUNSEL, WHAT WOULD BE THE CONSEQUENCE OF ASSUMING, AS I GATHER YOU'RE ASKING US TO ASSUME, THAT THE HAYSLIPS EITHER DID NOT REVIEW THE DEED OR ARE NOT TO BE BOUND BY THE PROVISIONS IN THE DEED?

>> CORRECT, YOUR HONOR.

THE HAYSLIPS WERE NOT AWARE OF THE REMOTE DEED TO WHICH THEY WERE NOT PARTY TO.

THEY WERE NOT AWARE OF THAT PROVISION, AND ESSENTIALLY U.S. HOME IS ARGUING THAT THE HAYSLIPS HAD CONSTRUCTIVE NOTICE JUST BY VIRTUE OF IT BEING IN THEIR CHAIN OF TITLE.

HOWEVER, YOUR HONORS, I WOULD SUGGEST THAT IS NOT SUFFICIENT TO REQUIRE THE HAYSLIPS TO GIVE UP THE CONSTITUTIONAL RIGHT TO A JURY TRIAL AND ACCESS TO THE COURTS.

>> MY QUESTION IS WHAT'S THE CONSEQUENCE OF OTHER CONDITIONS THAT THEY MIGHT PERMISSIBLY, GIVEN YOUR READING OF THE LAW, SAY THEY HAD NO CONSTRUCTIVE AWARENESS OF EVEN THOUGH THEY ARE IN THE CHAIN OF TITLE? LIKE, FOR EXAMPLE, THE BOUNDARY LINES.

>> YOUR HONOR MAKES A GREAT POINT.

JUSTICE COURIEL, THE TYPES YOU'RE SPEAKING TO ARE RESTRICTIONS, EASEMENTS, THINGS THAT DO TOUCH AND CONCERN THE LAND.

HOWEVER, THIS ARBITRATION HAS NOTHING TO DO WITH THE USE OR ENJOYMENT OF THE PROPERTY ITSELF.

ALL IT DOES IS PROVIDE A MECHANISM BY WHICH THE OWNER OF THE PROPERTY CAN LATER ON SEEK DAMAGES AS A RESULT OF ANY DISPUTE RELATED TO THE CONSTRUCTION OF THE HOME.

>> WHY WOULDN'T IT, WHY WOULDN'T IT TOUCH THE PROPERTY BY PROVIDING A RESTRICTION ON HOW IT IS THEY'RE TO PURSUE LEGAL

REMEDIES IN THE FUTURE?
WHY IS IT TOUCHING AND
CONCERNING--

>> IT HAS NO IMPACT WHATSOEVER
ON THE WAY IN WHICH THEY CAN USE
THE PROPERTY, WHAT THEY CAN DO
WITH THE PROPERTY, HOW THEY CAN
USE THE PROPERTY, WHAT
ACTIVITIES THEY CAN CONDUCT ON
THE PROPERTY.

>> WELL, THEY'RE ARGUING THAT
THIS IS SOME KIND OF RESTRICTION
ON HOW THEY CAN PURSUE LEGAL
REMEDY, SO ISN'T THAT SOME TYPE
OF RESTRICTION THAT AFFECTS THE
PROPERTY?

>> IT AFFECTS THE OWNERS, IT
AFFECTS THEIR ABILITY TO HAVE
ACCESS TO THE COURTS AND THE
RIGHT TO A JURY TRIAL.
HOWEVER, IT DOES NOT AFFECT THE
PROPERTY, YOUR HONOR.

ALTHOUGH THE ISSUES RAISED IN
THIS CLAIM RELATE TO A
CONSTRUCTION DEFECT AND
COMPLIANCE WITH THE BUILDING
CODE BY U.S. HOMES.

IT'S A STATUTORY CLAIM UNDER
553.84 FLORIDA STATUTES.

IT AFFECTS THE WAY IN WHICH THEY
CAN PURSUE THAT CLAIM.

IT HAS NO IMPACT WHATSOEVER ON
THEIR USE OF THE PROPERTY.

>> IT CERTAINLY RELATES TO THEIR
USE AND ENJOYMENT OF THE
PROPERTY BECAUSE IT'S ABOUT AN
ALLEGED CONSTRUCTION DEFECT, AND
THE CONSTRUCTION DEFECT,
OBVIOUSLY, HAS AN IMPACT ON
THEIR USE AND ENJOYMENT OF THE
PROPERTY.

YOU KNOW, CANDIDLY, I MEAN, THIS
CONCEPT OF TOUCH AND CONCERN IS
A RATHER CAPACIOUS, VAGUE
CONCEPT.

I MEAN, THE WAY IT'S BEEN
APPLIED IN DIFFERENT CONTEXTS, I
MEAN, OBVIOUSLY THERE'S OUTER
BOUNDARIES, THERE'S SOME THINGS
OUTSIDE OF IT, BUT IT IS NOT A
SORT OF BRIGHT LINE TEST.

YOU WOULD CONCEDE THAT, WOULDN'T
YOU, COUNSEL?

>> IT'S NOT PERFECT, YOUR

HONORS.

IT'S NOT PERFECT.

JUSTICE CANADY, I DO BELIEVE,
HOWEVER, IT'S WELL KNOWN, IT'S
BEEN-- THE STANDARD HAS BEEN
APPLIED EFFECTIVELY--

>> BUT, AND YOU WOULD ALSO
CONCEDE THAT WE HAVE SAID THAT
WE REALLY DON'T APPLY IT IN A
TECHNICAL WAY.

DIDN'T WE SAY THAT IN BESSAMER?

>> YES, YOUR HONOR.

YES, YOU DID.

AND I UNDERSTAND THAT.

AT THE SAME TIME, WHAT WE'RE
TALKING ABOUT HERE IS
EFFECTIVELY DOING AWAY WITH ANY
NECESSITY THAT ANY PROVISION
WITH ANY DEED TOUCH AND CONCERN
THE PROPERTY WHATSOEVER AND
OPENING THE DOORS TO BUILDERS,
ANY HOMEOWNER, ANY OWNER OF REAL
PROPERTY AT THEIR WHIM INSERTING
INTO A DEED ANY PROVISION THAT
THEY SEEM FIT-- THEY DEEM FIT
WHEN IT ACTUALLY AFFECTS THE
PROPERTY OR NOT.

WHICH I WOULD SUBMIT WOULD
CREATE AN UNDUE BURDEN ON THE
REAL ESTATE MARKET IN THE STATE
OF FLORIDA AND IN HOMEOWNERS OR
PROPERTY OWNERS IN THE STATE OF
FLORIDA.

>> LET ME ASK YOU THIS.

I'M TRYING TO FIGURE OUT HOW
YOUR ARGUMENTS FIT IN WITH THE
RESTRICTIVE COVENANTS RELATED TO
HOMEOWNERS ASSOCIATIONS.

WE'VE GOT HOMEOWNERS
ASSOCIATIONS ALL ACROSS THE
STATE THAT ARE BASED ON DEED
RESTRICTIONS.

THEY SET UP A SCHEME FOR KIND OF
THE MANAGEMENT OF PROPERTY AND
COMMON AREAS, THINGS LIKE THAT.
AND FROM THAT WE CAN-- PEOPLE
HAVE PAYMENTS.

UNDER-- THE WAY YOU'RE ARGUING
THIS, IT'S ALMOST AS THOUGH
YOU'RE SAYING, WELL, IF THEY
DIDN'T KNOW ABOUT THAT, THEY
DON'T HAVE TO PARTICIPATE IN
THAT.

>> NO, AND THAT'S NOT REALLY THE

ARGUMENT, YOUR HONOR.
JUSTICE CANADY, THE ARGUMENT IS
THAT IF THEY ARE GOING TO BE
BOUND BY AN ARBITRATION
PROVISION WHICH FORCES THEM TO
GIVE UP THE RIGHT TO A JURY
TRIAL AND THEIR ACCESS TO THE
COURTS, THEY NEED TO HAVE
SPECIFICALLY AGREED TO IT.

>> SO THAT WOULD BE AN
ARBITRATION THAT WOULD
INCLUDE-- YOUR ARGUMENT
INCLUDES ANY SORT OF ARBITRATION
AGREEMENT.

SO IT WOULD BE AN ARBITRATION
PROVISION RELATED TO A
HOMEOWNERS-- AND THE
ARBITRATION OF DISPUTES ARISING
IN CONNECTION WITH THE
ENFORCEMENT OF THE RESTRICTIVE
COVENANTS.

>> AND, JUSTICE CANADY, I CAN
SEE HOW THAT WOULD BE A
DIFFERENT SITUATION.
IN THAT SITUATION YOU'RE DEALING
WITH A PROVISION, A RESTRICTION
ON THE USE OF THE SPECIFIC
PROPERTY.

AND THAT WOULD BE INTERTWINED
WITHIN THE ABILITY TO PUT THAT
PROVISION WITHIN THE COVENANT.
HERE WE'RE TALKING ABOUT PUTTING
A RESTRICTION ON A REMOTE OWNER
OF THE PROPERTY WHICH DOES
NOT--

>> THOSE ARE ALL, I MEAN, WE'RE
TALKING ABOUT REMOTE OWNERS OF
THE PROPERTY IN THE EXAMPLE I
GAVE, RIGHT?

>> CERTAINLY.
CERTAINLY.

AND IN THAT EXAMPLE, YOUR HONOR,
ALSO THOSE FOLKS KNOW ABOUT THE
RESTRICTIVE COVENANTS THAT
AFFECT THEIR PROPERTY.

>> WELL, THEY MIGHT NOT.
THEY MIGHT NOT HAVE ACTUAL
KNOWLEDGE.

I MEAN, THERE ARE PEOPLE THAT
OBTAIN TITLE THROUGH SOME
QUITCLAIM DEED, THE DEED THEY
GOT.

BUT THERE IS THE STATUTE,
SECTION 695.11, WHICH BASICALLY

SAYS IF SOMETHING'S RECORDED IN THE OFFICIAL RECORDS, IT'S NOTICE TO THE WORLD OF WHAT'S IN THE RECORDS.

"AND IT SHALL BE NOTICED TO ALL PERSONS," IS WHAT IT SAYS THERE.

AND THAT IS A FUNDAMENTAL PRINCIPLE ABOUT THE WAY PROPERTY TRANSACTIONS ARE RECOGNIZED AND THE CONSEQUENCES OF DEEDS AND OTHER DOCUMENTS THAT ARE RECORDED.

>> AND I--

>> IS THAT CORRECT?

>> YES, JUSTICE CANADY.

AND I WOULD AGREE THAT THAT AFFECTS, THAT TOUCHES AND CONCERNS THE PROPERTY, THOSE ISSUES WITH RESPECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS THAT WE'RE TALKING ABOUT.

AND THIS COURT IN CIPHER SPECIFICALLY SAID THAT NO MATTER MAY BE FORCED TO SUBMIT A DISPUTE TO ARBITRATION THAT THE PARTY DID NOT INTEND AND AGREE TO ARBITRATE.

AND IN THIS SITUATION, WHAT U.S. HOMES IS ARGUING IS THAT CONSTRUCTIVE NOTICE IS ENOUGH TO SHOW THAT THE HOMEOWNER INTENDED AND AGREED TO ARBITRATE.

>> WELL, IN CIPHER WE WERE DEALING WITH THE FLORIDA ARBITRATION CODE.

HERE WE HAVE SPECIFIC REFERENCE TO THE FEDERAL ARBITRATION ACT. THAT'S WHAT'S APPLIED, RIGHT?

>> YES.

AND THAT'S SPECIFICALLY SET FORTH IN THE DEED ITSELF.

AND-- HOWEVER, THIS COURT ALSO IN GLOBAL TRAVEL MARKETING V. SHAY SAID THAT THE FEDERAL ARBITRATION ACT DOES NOT REQUIRE PARTIES TO ARBITRATE WHEN THEY HAVE NOT AGREED TO DO SO.

AND IN THIS CASE, THE HAYSLIPS NEVER AGREED TO ARBITRATE.

>> WELL, YOU'RE NOT SAYING IT'S A LAW UNDER THE FEDERAL ARBITRATION ACT THAT YOU HAVE TO SIGN A CONTRACT IN ORDER FOR

ARBITRATION TO APPLY.

YOU'RE NOT SAYING THAT, ARE YOU?

>> I'M NOT.

THERE ARE CIRCUMSTANCES WHERE YOU WOULD NOT HAVE TO SIGN AN AGREEMENT TO ARBITRATE.

I WILL SAY-- AND I'M GOING TO

REFER TO THE SUPPLEMENTAL

AUTHORITY THAT U.S. HOMES

SUBMITTED TO THE COURT JUST LAST

WEEK IN AN IDENTICAL CASE TO

WHAT WE'RE DEALING WITH HERE

TODAY, THE CASE OF LENNAR V.

WHITELY IN TEXAS, DEALING WITH

THE EXACT SAME LANGUAGE THAT

WE'RE DEALING WITH TODAY IN THE

HAYSLIP CASE.

AND NOT SURPRISINGLY, BECAUSE

LENNAR IS THE PARENT CORPORATION

TO U.S. HOMES.

SO WE'RE DEALING WITH THE EXACT

SAME LANGUAGE.

AND IN THAT COURT, THE TEXAS

COURT SAID TO THAT POINT,

JUSTICE POLSTON, IT SAID THAT AS

A GENERAL RULE, A PARTY MUST

SIGN AN ARBITRATION AGREEMENT TO

BE BOUND BY IT.

AND, YES, IT'S GOT THE TERM

"GENERALLY."

GENERALLY, YOU'VE GOT TO SIGN IT

TO KNOW THAT YOU'VE AGREED TO

IT.

>> RIGHT.

BUT THERE ARE CIRCUMSTANCES

UNDER THE FEDERAL ARBITRATION

ACT IN WHICH THEY'RE NOT

REQUIRED TO.

>> SURE.

SURE.

I ACKNOWLEDGE THAT.

BUT WHAT THE INTERMEDIATE

APPELLATE COURT IN TEXAS ALSO

DID WAS IT ANALYZED, AGAIN,

WHETHER THIS SPECIFIC PROVISION

IN THE DEED TOUCHED AND

CONCERNED THE LAND.

AND THE 14TH CIRCUIT COURT OF

APPEALS IN TEXAS SAID IT

DOESN'T.

AND WHAT IT SAID WAS COVENANTS

THAT DO NOT BURDEN OR RESTRICT

THE USE OF THE CONVEYED PROPERTY

ARE NOT COVENANTS THAT RUN WITH

THE LAND.

AND IT WENT ON TO SAY, "WE CONCLUDE THE ARBITRATION AGREEMENT IN THE SPECIAL WARRANTY DEED DOES NOT TOUCH AND CONCERN THE LAND."

"THEREFORE, IT IS NOT A COVENANT THAT RUNS WITH THE LAND."

>> THE TEXAS APPELLATE COURT SPECIFICALLY DISTINGUISHED HAYSLIP BASED ON TEXAS CONTRACT AND PROPERTY LAW.

>> IT MAKES REFERENCE TO THE FACT THAT IT WAS APPLYING TEXAS LAW--

>> RIGHT.

>>-- AND IT CITED THE HAYSLIP CASE.

AND REALLY, YOUR HONORS, WHAT I WOULD SAY, AND JUSTICE LABARGA, WHAT I WOULD SAY IS WHAT THE INTERMEDIATE APPELLATE COURT IN TEXAS SAID WAS, HEY, THIS IS AN ISSUE THAT'S BEEN CERTIFIED WITH THE FLORIDA SUPREME COURT, AN ISSUE OF GREAT PUBLIC IMPORTANCE.

WE DON'T AGREE WITH THE REASONING OF THE SECOND DISTRICT COURT OF APPEAL.

IT'S NOT PERSUASIVE TO US AND, HEY, WE THINK THE FLORIDA SUPREME COURT'S GOING TO FIX IT. FOOTNOTE THREE, IT SAYS IT'S GOING UP, IT'S A QUESTION OF GREAT PUBLIC IMPORTANCE WITH WIDE-REACHING IMPACT.

AND SO--

>> LET ME ASK YOU THIS.

CAN YOU GIVE ME AN EXAMPLE OF SOMETHING THAT YOU BELIEVE TOUCHES AND RUNS WITH THE LAND?

>> WELL, I THINK THERE'S SEVERAL GOOD EXAMPLES IN THE BRIEF.

IN THE WINN-DIXIE CASE, THERE WAS A COVENANT THAT DEALT WITH THE WAY IN WHICH OTHER PROPERTY OWNERS IN A SHOPPING PLAZA COULD USE THEIR PROPERTY.

THEY WERE NOT ALLOWED TO ALSO BE A GROCERY STORE IN COMPETITION WITH WINN-DIXIE.

THERE WAS THE DUNN CASE-- VERY, VERY OLD CASE, ALSO CITED IN THE

BRIEFS-- DEALING WITH THE INABILITY TO USE A PARTICULAR PIECE OF PROPERTY AS A PUBLIC BAR, THAT SORT OF THING. SO THAT, THOSE ARE THE TYPES OF CONDITIONS AND RESTRICTIONS THAT WOULD RUN WITH THE LAND. THEY IMMEDIATELY IMPACT THE LAND.

IN THIS SITUATION WE'RE TALKING ABOUT AN ARBITRATION PROVISION WHICH IS IN THIS REMOTE DEED, AND IT JUST SITS THERE.

AND UNLESS SOMEBODY HAS A PROBLEM, UNLESS SOMEBODY HAS A DISPUTE, UNLESS SOMEBODY HAS A CLAIM FOR A CONSTRUCTION DEFECT AGAINST THE BUILDER, IT HAS NO EFFECT ON THE USE OR ENJOYMENT OF THE PROPERTY WHATSOEVER.

>> I HAVE A COUPLE OF QUESTIONS ABOUT THE APPROACH THAT WE SHOULD TAKE IN DECIDING THIS CASE.

AM I CORRECT THAT THE WHOLE CONCEPT OF REAL AND PERMANENT COVENANTS INCLUDING THE TEST AND THE PART OF THE TEST THAT DEALS WITH WHETHER SOMETHING TOUCHES AND CONCERNS THE LAND IS COMMON LAW?

>> YES.

>> OKAY.

AND SO COMMON LAW IS DEVELOPED BY US, BY JUDGES ON A CASE-BY-CASE BASIS.

YOU GET A UNIQUE SET OF FACTS LIKE THIS.

WE HAVEN'T ADDRESSED THIS BEFORE.

AND DON'T YOU AGREE THAT POLICY CONCERNS ARE APPROPRIATE CONSIDERATION IN A COMMON LAW CASE LIKE THIS?

I MEAN--

>> I DO THINK POLICY CONCERNS ARE APPROPRIATE TO BE CONSIDERED.

I THINK, JUSTICE LAWSON--

>> SO THE APPROACH IS NOT JUST, WELL, THIS CASE SAID THIS, THIS CASE SAID THIS, LET'S JUST FIGURE OUT WHETHER IT TOUCHES OR CONCERNS.

THE REAL QUESTION IS WHAT IS THE CORRECT ANSWER GIVEN THE WHOLE BODY OF LAW AND ALL OTHER CONSIDERATIONS THAT SURROUND THE ISSUE.

WOULD YOU AGREE THAT THAT SHOULD COME INTO PLAY?

>> COULD NOT AGREE WITH YOU MORE COMPLETELY.

YOU'VE GOT TO LOOK AT THE BIG PICTURE.

>> WHY WOULDN'T THE PRESUMPTION THAT'S REPEATED THROUGHOUT CASE LAW IN FAVOR OF ARBITRATION BE A FACTOR THAT WE SHOULD CONSIDER IN DECIDING THIS CASE?

>> WELL, THE FACT THAT THERE IS A JUDICIAL PREFERENCE FOR ARBITRATION--

>> IT'S STATUTORY.

THAT'S SORT OF GIVEN TO US INITIALLY.

>> AND A STATUTORY PREFERENCE FOR ARBITRATION DOES NOT MEAN THAT THE COURT CAN CREATE FICTIONAL AGREEMENTS TO ARBITRATE.

IT'S STILL THE CASE THAT SOMEBODY HAS TO AGREE TO ARBITRATE, OTHERWISE THEY'RE BEING DEPRIVED OF THEIR ACCESS TO THE COURTS, DEPRIVED OF THEIR RIGHT TO A JURY TRIAL.

SO THAT, I AGREE THAT PUBLIC POLICY CONSIDERATIONS SHOULD BE TAKEN INTO ACCOUNT, BUT THAT DOESN'T MEAN YOU TAKE AWAY FOLKS' CONSTITUTIONAL RIGHTS CONCERN.

>> BUT, I MEAN, THAT WOULD BE A FACTOR, THE FACT THAT CONGRESS AND OUR STATE LEGISLATURE HAS SAID THAT A ARBITRATION IS PREFERENCED AND THAT WE SHOULD, IN A CASE THAT'S NOT CLEAR, WE SHOULD PREFER ARBITRATION, SHOULD BE A FACTOR THAT WE SHOULD CONSIDER.

>> YES.

AND THOSE SAME COURTS HAVE GONE ON THOUGH, JUSTICE LAWSON, TO SAY SIMPLY BECAUSE OF THAT PREFERENCE DOES NOT ALLOW A COURT TO FORCE SOMEBODY TO

ARBITRATE WHO DID NOT AGREE TO
ARBITRATE.

THERE STILL HAS TO BE AN
AGREEMENT TO ARBITRATE.
AND I WOULD SUBMIT ALTHOUGH
ARBITRATION PROVISIONS MAY BE
FAVORED, I WOULD SUGGEST THAT
UPHOLDING CONSTITUTIONAL RIGHTS
IS EVEN MORE FAVORED.

AND A PARTY'S RIGHT TO HAVE
ACCESS TO THE COURTS, HAVE
ACCESS TO A JURY TRIAL ARE ABOVE
THE PREFERENCE TO ARBITRATE.

>> BUT THE CONSTITUTIONAL
ARGUMENT YOU'RE MAKING CAN BE
MADE ABOUT ANY ARBITRATION
CLAUSE.

YOU KNOW, WE GET CREDIT CARDS.
WE CANNOT LIVE IN SOCIETY
TODAY-- AT LEAST I CAN'T--
WITHOUT A CREDIT CARD.

AND AS SOON AS YOU SWIPE THE
CREDIT CARD THAT YOU GET IN THE
MAIL FOR THE FIRST TIME, YOU
JUST AGREED TO ARBITRATION.

AND I WOULD SAY THAT IT IS NOT
QUITE AS CLEAR THERE THAT YOU'RE
AGREEING TO ARBITRATION AS IT
WAS IN THIS CASE WHERE THE DEED
IS SO SPECIFIC ABOUT IT.

>> AND, JUSTICE LABARGA, I'D SAY
THERE THAT PERSON IS CONTRACTING
AND ENTERING AN AGREEMENT
DIRECTLY WITH THE CREDIT CARD
PROVIDER.

HERE WE'RE TALKING ABOUT A
REMOTE AGREEMENT.

THERE WAS CLEARLY AN AGREEMENT
BETWEEN U.S. HOMES AND THE
ORIGINAL PURCHASERS OF THE
PROPERTY 14 YEARS AGO--

>> WHEN THE HAYSLIPS BOUGHT THIS
PROPERTY, I TAKE IT THERE WAS A
CLOSING.

AT THIS CLOSING YOU HAVE THE
DEEDS, YOU HAVE ALL THESE
THINGS, AND PEOPLE SIGN
DOCUMENTS AND EXCHANGE THE KEYS
AND THINGS LIKE THE THAT.

I TAKE IT THIS WAS DISCUSSED?

>> THEY RECEIVED A DEED.

THEY RECEIVED THEIR DEED, NOT
THE DEED THAT CONTAINED THE
ARBITRATION PROVISION.

THE ARBITRATION PROVISION THAT U.S. HOMES IS SEEKING TO ENFORCE IS IN A DEED THAT WAS AT THE CLOSING 14 YEARS EARLIER BETWEEN U.S. HOMES AND THE KENNISONS. SO THEY WERE NOT PROVIDED THAT DEED.

THEY DID NOT KNOWINGLY INTEND TO ENTER INTO AN ARBITRATION AGREEMENT.

>> COUNSEL, YOU ARE CONSUMING YOUR REBUTTAL TIME.

I UNDERSTAND WE'RE HELPING YOU, BUT I WANTED YOU TO BE AWARE OF IT.

>> NO, I'D LIKE TO GO AHEAD AND RESERVE--

>> OKAY.

AND I'LL GIVE YOU FOUR MINUTES ANYWAY.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, DAVID GERSTEN ON BEHALF OF THE--

>> COUNSEL, COULD YOU SPEAK UP A LITTLE BIT?

I REALIZE--

[LAUGHTER]

THE MASKS.

>> I WAS GOING TO ASK IF IT'S OKAY WITH THE COURT IF I REMOVE MY MASK.

>> OH, CERTAINLY.

>> I DON'T SPEAK LOUDLY.

>> CERTAINLY, IF YOU'RE COMFORTABLE.

>> AND YOU CAN MOVE THE MICROPHONE DOWN.

THERE YOU GO.

>> THANK YOU.

THANK YOU, JUSTICE LABARGA.

YOUR HONORS, IN SPITE OF THE PROTESTATIONS ABOUT THE EFFECT ON THE REAL ESTATE MARKET AND THE EFFECT ON THE REAL ESTATE LAW, THE REAL ESTATE MARKET AND THE REAL ESTATE LAW HAVE NOT BEEN IMPACTED BY THE SECOND DISTRICT COURT OF APPEALS' HAYSLIP OPINION AND CERTAINLY NOT ADVERSELY AT ALL.

THE SECOND DISTRICT CORRECTLY FOLLOWED FLORIDA PRECEDENT AND UTILIZED SOME ON-POINT PRECEDENT

OF OTHER STATES; OREGON,
CALIFORNIA, ILLINOIS AND
OKLAHOMA.

AND THAT DETERMINATION FROM
THOSE STATES AND WITH THE SECOND
DISTRICT COURT OF APPEAL IS THAT
THE ARBITRATION PROVISION RUNS
WITH THE LAND.

BUT I HAVE TO AT LEAST DISPEL
IMMEDIATELY THE CONCEPT THAT THE
PETITIONERS HAD TO SIGN THE
DEED.

THAT IS NOT THE LAW IN FLORIDA.
THE LAW IN FLORIDA, AS INDICATED
IN MY BRIEF, IS THAT IT IS
SIGNED BY THE GRANTOR AND TO
ATTESTING WITNESSES.

BUT THE LAW IN FLORIDA FROM THIS
COURT SINCE 1903 IN THE SILVER
SPRINGS OCALA RAILROAD CASE SAYS
THAT WHEN YOU ACCEPT A DEED AND
YOU TAKE POSSESSION, THAT YOU
ALSO EXPLICITLY ACCEPT THAT
WHICH YOU ARE REQUIRED TO DO
UNDER THE DEED.

AND THAT CASE WAS FOLLOWED THREE
YEARS-- FOUR YEARS LATER IN THE
TAYLOR CASE AND HAS BEEN
FOLLOWED CONSISTENTLY IN THE
STATE OF FLORIDA BY THE DISTRICT
COURTS OF APPEAL TAKING YOU
UP-- ACTUALLY, TO AT THIS COURT
FIRST BESSAMER THAT YOU HAD
MENTIONED, YOUR HONOR, AND THEN
WINN-DIXIE.

YOU ACCEPT THE DEED, YOU ACCEPT
THE POSSESSION OF THE PROPERTY,
YOU ACCEPT WHAT THE BUNDLE OF
RIGHTS ARE AND RESPONSIBILITIES
AND OBLIGATIONS ARE THAT ARE
INHERENT IN NOT ONLY THE DEED
THAT YOU GET, AND THE
PETITIONER'S DEED HERE SAID
SUBJECT TO EASEMENTS,
RESTRICTIONS, LIMITATIONS OF
RECORD WHICH PUTS THEM ON NOTICE
UNDER ANY CIRCUMSTANCES YOU'RE
BUYING THE MOST IMPORTANT THING
YOU'LL EVER BUY IN YOUR LIFE,
YOUR HOUSE.

>> COUNSEL--

>> YES, YOUR HONOR.

>> COULD I ASK YOU, COULD YOU
GIVE US AN EXAMPLE OF A RIGHT

THAT COULD NEVER BE INCLUDED IN THAT BUNDLE, THAT IS A CONDITION IN A DEED THAT I DON'T SEE, A PRIOR DEED THAT IS NONETHELESS A RECORD BECAUSE IT'S BEEN RECORDED AND, THEREFORE, BY STATUTE CHARGED WITH KNOWLEDGE OF IT HAVING BEEN RECORDED.

CAN YOU GIVE US AN EXAMPLE OF SOME UNDERTAKING THAT SOME PRIOR OWNER OF A PIECE OF PROPERTY MAY HAVE MADE THAT COULD NOT BIND ME?

IS THERE ANY SUCH THING?

>> ABSOLUTELY, YOUR HONOR.

IT WOULD BE A POLICY IN VIOLATION OF UNITED STATES, FLORIDA LAW AND EVERY CONCEPT OF MORALITY THAT YOU COULD NOT PUT A COVENANT IN A DEED ABOUT RACE OR RELIGION.

CLEARLY, YOUR HONOR.

THAT WOULD NOT BE ACCEPTED, I HOPE, BY ANY COURT IN THIS COUNTRY.

THAT WOULD BE AN EXAMPLE.

>> OTHER THAN WHAT IS CONSTITUTIONALLY BARRED, I'M WITH YOU--

>> RIGHT.

>>-- IS THERE ANY RESTRICTION ON THE USE OF THE PROPERTY OR ANY RESTRICTION ON DISPUTES ARISING FROM THE USE OF THE PROPERTY THAT WOULD BE PROHIBITED?

OR WOULD ANY COVENANT RELATING TO DISPUTES ABOUT THE PROPERTY-- SAY, FOR EXAMPLE, A WAIVER OF JURY TRIAL OR AN AGREEMENT TO MEDIATE UNDER THE LAWS OF FRANCE, WOULD THOSE THINGS BE ACCEPTABLE AS CONDITIONS IN A DEED?

>> WELL, YOUR HONOR, YOU POSE AN INTERESTING QUESTION.

MEDIATE UNDER THE LAWS OF FRANCE--

>> OR PICK YOUR POISON.

>> I GET IT.

I GET IT, YOUR HONOR.

I THINK YOU WOULD, FIRST, HAVE TO TAKE A LOOK AT THIS EXACT ARBITRATION PROVISION FIRST.

THAT WOULD BE THE FIRST STEP IN AN ANALYSIS.

AND WHEN YOUR HONORS VIEW THE DEED, WHICH IS IN RESPONDENT'S APPENDIX 8-11, AND YOU GO THROUGH IT CAREFULLY, THIS IS A SPECIAL WARRANTY DEED THAT COVERS EXACTLY WHEN YOU MUST ARBITRATE.

AND I WILL GET TO AN EXAMPLE HERE WHERE MAYBE IT DOESN'T APPLY.

BUT IT SPECIFICALLY STATES THAT YOU WOULD HAVE TO DO IT WHETHER CONTRACT, WARRANTY, STATUTE, TORT OR OTHERWISE.

SO I MIGHT CALL TO ATTENTION, YOUR HONOR, UNDER THIS ARBITRATION PROVISION THAT WE'RE DEALING WITH THIS IN THIS CASE, PERHAPS A TAX DISPUTE.

THAT MIGHT NOT BE COVERED UNDER THIS ARBITRATION PROVISION.

THAT'S THE POISON I'M PICKING IN THIS INSTANCE, YOUR HONOR.

THERE COULD BE OTHERS, BUT THAT'S WHAT COMES TO THE TOP OF MY MIND AT THE MOMENT.

BUT IT IS IMPORTANT ALSO WHEN IT COMES TO TOUCHING AND CONCERNING THE LAND, THAT TEST-- AND, CHIEF JUSTICE CANADY, IT IS AN AMORPHOUS TEST.

I'LL AGREE WITH YOU, IT'S KIND OF YOU KNOW IT WHEN YOU SEE IT.

AND IN THIS CASE, CLEARLY IT MUST TOUCH AND CONCERN THE LAND BECAUSE IT CONCERNS YOUR HOUSE.

OKAY, YOUR VERITABLE CASTLE.

AND THE USE AND ENJOYMENT.

AND THAT'S WHAT THE SECOND DISTRICT COURT OF APPEALS SAID IS THE WAY TO RESOLVE.

IN THIS INSTANCE, YOUR HONOR--

[AUDIO DIFFICULTY]

TIED TO THE STRUCTURE OF THE--

[INAUDIBLE]

YOU TAKE PRIDE IN YOUR HOUSE, YOU WANT IT TO LOOK GOOD.

AND IF YOU HAVE A PROBLEM WITH HOW YOUR HOUSE LOOKS, YOU'RE UPSET.

THAT CERTAINLY TOUCHES AND CONCERNS YOUR INTEREST IN YOUR

HOUSE, UNQUESTIONABLY.
AND THIS ARBITRATION
PROVISION-- WHICH IS WHY IT'S
FAVORED POLICY, JUSTICE LAWSON,
POLICY.

THE UNITED STATES SUPREME COURT,
THIS COURT, EVERY DISTRICT COURT
OF APPEAL, EVERY CIRCUIT COURT
AND COUNTY COURT RECOGNIZES THE
OBLIGATION TO HONOR ARBITRATION
UNDER 9 USC ET SEQ. AND NOT ONLY
THAT WHEN WE TALK ABOUT POLICY,
WHEN WE TALK ABOUT POLICY, THE
TRUE POLICYMAKER REALLY IS THE
LEGISLATURE TO BEGIN WITH
BECAUSE THEY'RE THE ONES THAT
DETERMINE POLICY IF THERE'S A
VOID.

THE SUPREME COURT, OF COURSE,
STEPS IN AND DETERMINES POLICY
AS WELL.

AND THAT'S-- AND, BY THE WAY,
JUSTICE POLSTON, THAT'S WHAT YOU
HAD SAID IN YOUR SAUNDERS CASE
BACK IN THE OLD DAYS WHEN YOU
WERE ON THE FIRST DCA.

SO ASIDE FROM THAT, WHEN WE TALK
ABOUT POLICY, I SEE WHAT THE
LEGISLATURE SAID.

AND, CHIEF JUSTICE CANADY, YOU
BROUGHT UP A HOMEOWNERS
ASSOCIATION.

AND IT'S AS IF YOU WERE READING
MY NOTES TO THE COURT BECAUSE
UNDER 720--

>> LET'S BE VERY CLEAR, I DID
NOT.

[LAUGHTER]

>> YOU DID NOT.

ACTUALLY, I WANT TO LOOK AT YOUR
NOTES--

>> I READ YOUR BRIEF.

[LAUGHTER]

I'LL INTERJECT HERE THAT YOUR
BRIEFS ON BOTH SIDES HERE, I
THOUGHT, WERE EXCELLENT.

>> WELL, THANK YOU.

I APPRECIATE THAT VERY MUCH,
YOUR HONOR.

BUT WHEN WE TALK ABOUT THE
POLICY AND WE LOOK AT 720 WHICH
IS THE HOMEOWNERS ASSOCIATION
WHICH IN THIS VERY CASE UNDER
THE DEED WHERE I HAVE POINTED

YOUR HONORS' ATTENTION IN THE APPENDIX UNDER SECTION F, THE HAYSLIPS, THE PETITIONERS, ARE BOUND TO BE MEMBERS OF A DECLARATION OF THE HOMEOWNERS ASSOCIATION.

THEY DIDN'T AGREE TO IT BUT THEY ARE.

BUT WHEN WE LOOK AT THAT STATUTE WHICH IS 720, YOUR HONOR, 720.311, THE LEGISLATURE, THE LEGISLATURE FINDS THAT ALTERNATIVE DISPUTE RESOLUTION HAS MADE PROGRESS IN REDUCING COURT DOCKETS AND TRIALS AND IN OFFERING MORE EFFICIENT, COST EFFECTIVE OPTION TO LITIGATION.

AND IT'S IN MY BRIEF UNDER SECTION 558 OF THE FLORIDA STATUTES THAT THE LEGISLATURE ALSO STEPS OUT AND TALKS ABOUT THE IMPORTANCE OF ADR.

COURTS ARE BUSY.

WE ALL KNOW THAT.

ADR IS A WAY TO RELIEVE IT WHERE AN AGGRIEVED PERSON HAS A FORUM WHERE THEY CAN HAVE THEIR GRIEVANCES HEARD.

AND I THINK IT IS IMPORTANT IN THIS CASE WHEN WE THINK ABOUT THE BUNDLE OF RIGHTS THAT THAT WE HAVE WITH OUR PROPERTY, YOU KNOW, THE POSSESSION, THE CONTROL, THE RIGHT TO EXCLUDE AND, ADDITIONALLY, THE RIGHT TO SELL OR DISPOSE OF YOUR PROPERTY, WITH THAT YOU ARE DISPOSING THAT WHICH THE BUNDLE OF RIGHTS THAT YOU HAVE EXIST. YOU ALL CAN ONLY GIVE WHAT YOU HAVE.

AND IN THIS CASE THE DEED BEFORE THE PETITIONERS IS THE DEED IN THE PUBLIC RECORDS, YOUR HONOR. AND FLORIDA IS A PUBLIC RECORDS STATE, MAKE NO DOUBT ABOUT IT. PLEASE MAKE NO DOUBT ABOUT IT.

SINCE 1932 AT LEAST OR EARLIER THIS COURT HAS CLEARLY SAID THAT FLORIDA IS A NOTICE STATE.

THAT'S SAPP V. WARNER WHICH IS BRIEFED.

THIS COURT IN SABLE V.

McCLURE, APPROXIMATELY 20

YEARS LATER, SAYS THAT
PURCHASERS TAKE TITLE SUBJECT TO
ALL THE CCNRs-- FOR LACK OF A
BETTER WORD, IT'S QUICKER--
CCNR THAT EXIST CONCERNING THE
PROPERTY.

AND THE CASES GO BACK TO SAY
FROM THE BEGINNING IT'S NOT JUST
THE DEED THAT YOU RECEIVE--
AND, AGAIN, THE PETITIONERS
RECEIVED A DEED THAT SAYS, HEY,
CHECK EASEMENTS OF THE PROPERTY
YOU'RE BUYING.

CHECK 'EM.

MAYBE YOU DON'T WANT TO BUY THAT
PROPERTY.

MAYBE YOU DON'T LIKE WHAT THE
EASEMENTS SAY.

MAYBE YOU WANT TO GRAZE COWS AND
YOU CAN'T.

YOU WANT TO KNOW ABOUT THAT.
BUT THEY DIDN'T DO IT.

THE U.S. HOMES, THE RESPONDENT,
DID EVERYTHING THAT IT WAS
SUPPOSED TO DO THAT THE LAW
REQUIRES, WHICH IS TO PLACE IT
IN THE PUBLIC RECORDS.

AND, I BELIEVE, CHIEF JUSTICE,
IT WAS YOU AGAIN THAT SAID IT--
OR I CAN'T REMEMBER, JUSTICE
POLSTON-- IT'S A PUBLIC RECORDS
ISSUE WHERE IF YOU COME TO THE
STATE OF FLORIDA AND I DON'T
CARE IF YOU GET HERE BY CAR,
TRAIN, PLANE, BIKE, SKATEBOARD,
WOULDN'T MAKE A DIFFERENCE.

WHEN YOU COME INTO HERE, YOU ARE
PRESUMED TO KNOW THE LAWS.
IGNORANCE IS NO DEFENSE, AND YOU
ARE PRESUMED UNDER PUBLIC
RECORDS TO KNOW WHAT THE PUBLIC
RECORD IS, AND IGNORANCE IS NO
DEFENSE.

IT'S NOT BECAUSE I SAY THAT,
IT'S BECAUSE THE CASES SAY THIS
COURT HAS SAID YOU CANNOT SHUT
YOUR EYES AND EARS TO
INFORMATION THAT IS AVAILABLE
AND THEN STEP BACK AND SAY I
DIDN'T GET NOTICE.

AND THAT'S IN THE CASE LAW.
THAT IS IN THE JURISPRUDENCE OF
THIS, OF THIS GREAT STATE.
AND THE IRONY HERE, THE REAL

IRONY IS THAT HAD THE PETITIONERS FOLLOWED WHAT THE MAGISTRATE JUDGE SAID THAT YOU SHOULD ARBITRATE BUT THEY DIDN'T, HAD THEY FOLLOWED WHAT THE CIRCUIT COURT JUDGE SAID BUT THEY DIDN'T ARBITRATE, HAD THEY FOLLOWED WHAT THE DISTRICT COURT OF-- THREE JUDGES ON THE DISTRICT COURT OF APPEAL UNANIMOUSLY STATED IN A WELL-REASONED OPINION YOU SHOULD ARBITRATE, THIS IS A 2017 CASE. IT IS NOW 2021.

THE MERITS OF THE UNDERLYING CLAIM OF THE PETITIONERS HAVE NEVER BEEN HEARD.

AND HAD THEY HAVE USED THE POLICY OF ARBITRATION BEING FAVORED AND WHAT THE LEGISLATURE TELLS US, IT'S QUICKER, IT'S LESS COSTLY.

CERTAINLY IN A MATTER OF MONTHS THEY COULD USE AND ENENJOY THEIR HOUSE, THEIR CASTLE, THEY COULD HAVE THEIR STUCCO REPAIRED IF, INDEED, IT WAS A MERITORIOUS CLAIM, AND WE WOULDN'T BE HERE TODAY.

SO I CAN ONLY SAY THAT THIS ARBITRATION CLAUSE DOES NOT UPSET ANY OF THE LAWS OF THE STATE OF FLORIDA, IS CONSISTENT WITH POLICY.

AND IF THERE'S NO OTHER QUESTIONS, YOUR HONOR, I GUESS I SHOULD REST ON ON MY-- WHAT'D YOU SAY, CHIEF JUSTICE CANADY? IN THAT BRIEF?

>> BOTH SIDES.

[LAUGHTER]

DON'T REST TOO COMFORTABLY.

>> I'M NOT, YOUR HONOR.

BUT IF THERE'S NO FURTHER QUESTIONS, THANK YOU, AND I REST ON THE BRIEF THEN.

THANK YOU VERY MUCH, AND I'LL PUT MY MASK--

>> JUSTICE COURIEL, YOU'RE RIGHT, THERE'S NO PROVISION THAT YOU COULDN'T PUT INTO A DEED. NOTHING.

NOTHING YOU COULDN'T PUT.

AND THEN BY THE ARGUMENT OF

CONSTRUCTIVE NOTICE, EVERYBODY'S
NOW GOING TO BE BOUND TO
WHATEVER--

>> BUT, BUT THE TOUCH AND
CONCERN IS AMORPHOUS, AS WE HAVE
DISCUSSED.

BUT IT'S NOT MEANINGLESS.
I'LL GIVE YOU AN EXAMPLE OF
SOMETHING I THINK WOULD BE
PROBLEMATIC.

IF THERE'S A COVENANT THAT SAYS
THAT THE SUBSEQUENT OWNERS OF
THE LAND SHALL MAKE A
CONTRIBUTION, AN ANNUAL
CONTRIBUTION OF \$1,000 TO THE
SHRINE OF MOLLUCK 10 MILES DOWN
THE ROAD.

I'M NOT SURE HOW THAT WOULD
TOUCH AND CONCERN THE LAND.
AND I BET YOU THERE HAVE BEEN
COVENANTS SIMILAR TO THAT.
MAYBE NOT OF THAT EXACT NATURE.

[LAUGHTER]

SO THERE ARE SOME OUTER
BOUNDARIES EVEN-- AND
FURTHERMORE, WE DON'T EVEN IN
THIS CASE, WE DON'T EVEN HAVE TO
DECIDE THAT EVERYTHING ADDRESSED
IN THE PARTICULAR COVENANTS HERE
TOUCH AND CONCERN THE LAND.
WE'VE JUST GOT TO ADDRESS THE
SPECIFIC ONE RELATING TO THIS
ARBITRATION OF CONSTRUCTION
DEFECTS, ISN'T THAT CORRECT?

>> YES, AS TO THIS CASE.

BUT I THINK IT'S GOING TO HAVE
WIDE, SWEEPING CONSEQUENCES TO
DEAL WITH OTHER PROVISIONS THAT
BUILDERS OR OTHER PROPERTY
OWNERS ARE GOING TO TRY TO
INSERT.

SIMPLY-- FOR INSTANCE, MAYBE
NEXT YOU'RE GOING TO SEE AN
INDEMNIFICATION PROVISION, A
LIQUIDATED DAMAGES PROVISION, A
HARMLESS ERROR PROVISION.

HERE THEY'VE NOT ONLY
ENCOMPASSED WITHIN THE
ARBITRATION PROVISION, THEY'RE
HAVING THE PROPERTY OWNER GIVE
UP THEIR RIGHT TO A JURY TRIAL,
THEY ACTUALLY HAVE A SEPARATE
WAIVER OF JURY TRIAL RIGHT IN
THE DEED AS WELL.

NOT ONLY DO THEY HAVE THAT, THEY HAVE AN ATTORNEYS' FEE SHIFTING PROVISION IN THERE.

UNDER FLORIDA LAW, THE ONLY WAY YOU CAN GET ATTORNEY FEES SHIFTED IS BY CONTRACT OR BY STATUTE.

AND THEY PUT THAT IN THERE TOO.

I MEAN, WHAT-- THERE'S AN ENDLESS SUPPLY OF THINGS THAT COULD BE INSERTED INTO A DEED IF THE COURT WERE TO FIND THAT, HEY, IT'S OKAY TO FORCE THEM TO ARBITRATE JUST BECAUSE THERE'S A JUDICIAL PREFERENCE FOR ARBITRATING.

BUT THE LEGISLATURE, THEY COULD HAVE MADE EVERYBODY ARBITRATE IF THAT'S WHAT THE LEGISLATURE WANTED THEM TO DO, BUT THEY DIDN'T.

THEY DO, THEY MAKE THEM JUMP THROUGH A WHOLE BUNCH OF HOOPS UNDER CHAPTER 558 BEFORE THEY CAN ACTUALLY FILE A LAWSUIT AGAINST THE BUILDER FOR A CONSTRUCTION DEFECT.

AND NOW ON TOP OF THAT, NOW YOU'RE GOING TO HAVE TO DECIDE, OH, NOW YOU'RE GOING TO BE FORCED TO ARBITRATE TOO EVEN THOUGH YOU DIDN'T AGREE TO IT AND SOMEBODY ELSE DID IT FOR YOU, SOMEBODY ELSE WAIVED YOUR JURY TRIAL RIGHT, SOMEBODY ELSE WAIVED YOUR RIGHT TO SEEK ACCESS TO THE COURTS.

AND I WOULD SUBMIT, OKAY, YEAH, MAYBE THEIR CASE WOULD HAVE BEEN RESOLVED YEARS AGO HAD THEY JUST ACQUIESCED AND GONE ALONG WITH THIS ARBITRATION PROVISION IN THIS DEED THAT THEY WERE NOT A PARTY TO, THAT THEY NEVER AGREED TO.

BUT THEN EVERYBODY ELSE IS GOING TO ALSO BE FORCED TO DO THE SAME THING.

AND THE HAYSLIPS, IT'S IMPORTANT TO THEM THAT THEY HAVE THE RIGHT TO A JURY TRIAL.

IT'S IMPORTANT TO THEM THAT THEY HAVE ACCESS TO COURTS.

AND I WOULD SAY THIS COURT

SHOULD UPHOLD THEIR RIGHT TO A
JURY TRIAL ABOVE U.S. HOMES'
DESIRE TO SUBMIT THEMSELVES TO
ARBITRATION.

AND IF THERE ARE NO FURTHER
QUESTIONS, I WILL REST WITH
THAT.

THANK YOU.

>> THANK YOU.

THANK YOU, COUNSEL.

WE THANK BOTH OF YOU FOR YOUR
ARGUMENTS IN THIS CASE.

THE COURT WILL NOW STAND IN
RECESS, AND AT 10:30 WE WILL
CONTINUE TODAY'S PROCEEDINGS
VIRTUALLY.