

THE COURT WILL NOW TAKE UP BEACH BOULEVARD, LLC V. LIVE OAK BANKING COMPANY.

>> YOU MAY PROCEED, COUNSEL.

>> GOOD MORNING, YOUR HONORS.

MAY IT PLEASE THE COURT, I'M RICHARD THAMES, I REPRESENT 1944 BEACH BOULEVARD, LLC, THE APPELLANT IN THIS MATTER.

I WAS LAST HERE MAYBE 35, 36 YEARS AGO WORKING AS AN INTERN FOR JUSTICE BARKET.

DON'T KNOW THAT I EVER SAW THE INSIDE OF THIS COURTROOM --

[LAUGHTER]

THEY KEPT US IN THE LIBRARY OR IN THE MUSTY BASEMENT --

>> WELL, WELCOME BACK.

>> YEAH.

[LAUGHTER]

IT'S GOOD TO SEE TWO OF MY CLASSMATES ON THIS PANEL.

WE'RE NOT HERE TO TALK ABOUT THE MUSTY BASEMENT, OBVIOUSLY.

WE'RE HERE TO LOOK AT AN APPEAL OF A -- WE'RE TRYING TO SEEK DETERMINATION ON WHETHER THE APPELLEE'S ASSERTED LIEN ON BEACH BOULEVARD'S ASSETS IS PROPERLY PERFECTED AS A RESULT OF THEIR FAILURE TO FOLLOW THE PROTOCOLS THAT ARE OUTLINED IN SECTION 679.5021 FLORIDA STATUTE WHEN HAY FILED A UCC1 FINANCING STATEMENT USING AN ABBREVIATION OF MY CLIENT'S NAME.

THIS IS --

>> IT WAS A MISTAKE.

>> THAT WAS A MISTAKE, AND I THINK THAT IS ADMITTED.

THE 11TH CIRCUIT HAS FOUND THIS TO BE AN IMPORTANT QUESTION FOR THE COURT TO DECIDE AND, YOU KNOW, CERTAINLY THIS IS ON THE SPEAKING TOUR RIGHT NOW WHEN YOU GO TO THE BUSINESS LAW SECTION. THEY'RE PAYING ATTENTION TO IT. BEFORE I ADDRESS THE LEGAL ISSUES, I WANT TO MAKE SURE THAT THE COURT UNDERSTANDS HOW THIS PLAYS OUT IN THE REAL WORLD CONTEXT.

WHENEVER A LENDER MAKES A LOAN

TO A -- SECURE BY RECEIVABLES,
INVENTORY, OTHER PERSONAL
PROPERTY, THERE ARE USUALLY
THREE INSTRUMENTS.
THERE'S THE NOTE THAT EVIDENCES
THE OBLIGATION TO PAY, THERE'S
THE SECURITY AGREEMENT WHICH IS
THE PLEDGE OF THE COLLATERAL --
SOMETIMES THOSE TWO CAN BE
COMBINED, BUT THOSE ARE THE TWO
THINGS SIGNED BY THE DEBTOR --
AND THE THIRD ITEM IS A UCC1
FINANCING STATEMENT WHICH IS
USUALLY FILED BY THE LENDER WITH
THE APPROPRIATE AUTHORITIES.
THAT'S TO PUT THE WORLD ON
NOTICE THAT SOMEBODY'S CLAIMING
A LIEN ON THAT ASSET.
HAVING THAT DOCUMENT FILED
PROPERLY IS IMPORTANT BECAUSE IT
ESTABLISHES LIEN PRIORITY WITH
THE OTHER CREDITORS, AND ALSO
FIRST LIEN RIGHT BASIS AND
HAVING ALERTS POTENTIAL
PURCHASERS THAT, HEY, THESE
ASSETS MAY BE ENCUMBERED.
AND SO IT'S VERY IMPORTANT THAT
THE NOTICE OF THE LIEN BE
PROPERLY FILED AND PUBLISHED SO
THE SUBSEQUENT PURCHASERS AND
LENDERS DON'T FIND THEMSELVES
FACED WITH AN UNKNOWN LIEN.
I MENTIONED THAT IN FLORIDA --
>> LET ME DIRECT YOU, WOULD YOU
AGREE THAT THE OUTCOME OF THIS
CASE HINGES ON THE SAFE HARBOR
PROVISION?
>> IT'S ALL ABOUT THE SAFE
HARBOR PROVISION.
>> OKAY.
AND I THINK MAYBE THE MOST
CRITICAL LANGUAGE IN THERE IS
FIGURING OUT WHETHER, WHAT IS
THE STANDARD SEARCH LOGIC OF THE
FILING OFFICE.
IN THAT LANGUAGE IT SAYS IF ANY.
SO I THINK THE COMMERCIAL LAW
AMICUS INITIATIVE FRAMED THAT
WELL AND REALLY FOCUSED ON THAT
IN THEIR AMICUS BRIEF.
AND I'M WONDERING, THERE WAS NO
RESPONSE TO THE AMICUS BRIEF
FROM EITHER PARTY.
BUT IT SEEMS LIKE IF THE SEARCH

IN FLORIDA IS VIEWED AS BRINGING UP THE WHOLE LIST, THEN THAT WOULDN'T BE A SEARCH LOGIC. SO, AND IF ANY HAS TO MEAN SOMETHING.

IT MEANS THERE ARE ELECTRONIC SYSTEMS THAT WILL GIVE SOME RESULT THAT DON'T, DON'T FALL UNDER THE SEARCH LOGIC PROVISION IN THIS CONTEXT, RIGHT?

>> WELL, I TAKE EXCEPTION TO THE AMICUS BRIEF THAT SAYS THERE'S NO SEARCH LOGIC.

I THINK IN 815 OUR DEFENDANTS, FLORIDA HAS CONTINUED THE COMPACT NAME AS ITS SEARCH LOGIC.

THERE IS NO DEFINITION OF SEARCH LOGIC IN THE STATUTE, BUT WHAT WE HAVE IS PROCEDURE.

THE FINANCIAL STATEMENT IS ONLY EFFECTIVE IF IT IDENTIFIES THE NAME OF THE DEBTOR, HAS THE NAME OF THE DEBTOR, THE LENDER AND THE COLLATERAL.

THE NAME OF THE DEBTOR IS ONLY SUFFICIENT IF YOU USE THE ORGANIC NAME FILED, THE ENTITY, AS FILED WITH THE SECRETARY OF STATE.

YOU THEN PUT THAT IN.

IF YOU FOLLOW THOSE PROCEDURES, I PROMISE YOU, THAT LIEN WILL SHOW UP IF A SEARCHER USES THAT SAME PROTOCOL AND SEARCHES UNDER THAT NAME.

IT SHOWS UP.

AND THE INTENT OF --

>> YOU SAY IT SHOWS UP.

YOU'RE SAYING IT WILL SHOW UP IN THE SEARCH AT THE TOP OF THE FIRST PAGE THAT'S DISPLAYED, IS THAT WHAT YOU MEAN?

>> IS THE LIEN -- YES.

THERE'S 20 PAGES.

>> RIGHT.

IT MAY EXTEND BEYOND THE FIRST PAGE --

>> RIGHT.

>> -- BECAUSE OF THE NUMBER OF FINANCING STATEMENTS THAT MAY HAVE BEEN FILED.

>> RIGHT.

AND IF YOU UNDERSTAND THE BRIEF,

THE WHOLE GOAL OF PUTTING THIS SYSTEM IN PLACE WAS TO SHIFT THE BURDEN AND GET RID OF ALL THESE DECISIONS ON HOW FAR BACK YOU'VE GOT TO GO, HOW FAR FORWARD YOU'VE GOT TO GO, WHAT VARIATIONS OF THE NAMES SHOULD YOU SEARCH UNDER.

ALL OF THOSE ITEMS HAVE JUST LED TO ALL KINDS OF CRAZY RESULTS.

MOST OF THE TIME THOSE THE RESULTS WERE BASED ON THE JUDGE'S OPINION OF EQUITY.

>> I'M SORRY TO INTERRUPT YOU, BUT I THINK THAT THIS GETS TO THE HEART OF WHAT JUSTICE LAWSON IS ASKING ABOUT WHICH IS, SO THE FIRST POINT IS THEY'LL DETERMINE THE STATUTE, YOU KNOW, THE COURT HAS TO GIVE THAT MEANING.

THE AGENCY CAN'T JUST SAY WHATEVER WE CALL IT, A SEARCH LOGIC IS A SEARCH LOGIC.

THEY COULDN'T JUST HAND YOU, YOU KNOW, THEY COULDN'T JUST SAY OUR SEARCH LOGIC SO PRINT OUT OUR ENTIRE LIST AND HAND IT TO YOU, AND WE CAN ASSURE YOU THAT YOU WILL FIND YOUR THING IN THE HERE, RIGHT?

AND SO I THINK HIS POINT IS, IS THAT BY HAVING A QUOTE-UNQUOTE SEARCH LOGIC THAT DOESN'T REALLY WINNOW THE RESULTS, ESSENTIALLY YOU'RE RIGHT BACK IN THE SAME SPOT OF WHERE ALL THIS DISCRETION, YOU HAVE TO GO A PAGE BACK, A PAGE FORWARD, ETC., ETC.

AND SO REALLY, I MEAN, I THINK THE AMICUS BRIEF MAKES A COMPELLING POINT THAT, ESSENTIALLY, WE'RE DEAD ON ARRIVAL BECAUSE IN FLORIDA -- NOTWITHSTANDING WHAT THE AGENCY SAYS, AND I KNOW, YOU KNOW, CONSTITUTIONALLY WE DON'T HAVE TO DEFER TO THEM IF THEY, YOU KNOW, HAVE AN UNREASONABLE SORT OF INTERPRETATION IN THE STATUTE.

AND SO REALLY THERE IS EFFECTIVELY NO SAFE HARBOR HERE.

>> WHICH MEANS THAT YOU HAVE TO

PUT IN THE EXACT SAME.

>> [INAUDIBLE]

>> TO ME, IT'S -- I DON'T, I THINK THAT THAT'S A RED HERRING HONESTLY.

>> IT'S NOT A RED -- I MEAN, I THINK THE RESULT ISN'T SO MUCH THAT --

[INAUDIBLE]

THE EXACT NAME, IT'S THAT YOU HAVE TO GET IT RIGHT WHEN YOU FILE THE THING, AND IF YOU DIDN'T, IT'S BASICALLY A STRICT LIABILITY SORT OF, YOU KNOW, NO MARGIN FOR ERROR KIND OF SITUATION.

AND IF FLORIDA WANTS TO HAVE A REAL SEARCH LOGIC THAT DOES WINNOW THE SEARCH, THEN THE SAFE HARBOR WOULD KICK INTO EXISTENCE.

>> WELL, I WOULD SAY THIS, THERE'S THE ONLY ONE PERSON THAT CAN CONTROL THE INPUT, AND THAT'S THE LENDER.

AND THAT'S WHAT THE LEGISLATURE INTENDED TO DO.

LET'S PUT THE RISK OF A MISFILING ON ONE PERSON.

AND, YOU KNOW, MY POINT IS WHY HAVE A STATUTORY SAFE HARBOR IF THE COURTS WERE GOING TO IGNORE IT?

WHY HAVE IT?

AND I DON'T THINK --

>> WELL, THERE HAS, THE CONDITIONS FOR IT HAVE TO EXIST. AND ONE, AND THE CONDITION OF A STANDARD SEARCH LOGIC IS PART OF THE REQUIREMENT, RIGHT?

>> IT'S, THERE IS, IT'S NOT A DEFINED TERM --

>> WELL, I UNDERSTAND THAT, UNDERSTAND THAT.

I UNDERSTAND THAT, YOU KNOW, WE COULD, THERE CAN BE DIFFERENCES OF OPINION ABOUT IT, BUT, YOU KNOW, THE AMICUS BRIEF, I THINK, MAKES SOME COMPELLING POINTS ABOUT HOW THIS OPERATES.

BECAUSE IF I UNDERSTAND CORRECTLY, THERE'S A HYPOTHETICAL ON PAGE 25 OF THE AMICUS BRIEF WHERE -- AND,

AGAIN, IF I'M UNDERSTANDING, YOU
KNOW, IF IT DOESN'T SHOW UP ON
THE FIRST PAGE, OKAY, THAT'S
PRODUCE BY THIS SEARCH, THEN
IT'S NOT GOING TO BE
CONSIDERED --

[INAUDIBLE]
RIGHT?

>> THAT'S --

>> UNLESS --

>> YOU'RE RIGHT, YES, SIR,
ABSOLUTELY.

UNDER THE SAFE HARBOR.

>> UNLESS, OF COURSE, YOU GET TO
THE END OF THE FIRST PAGE AND
YOU HAVE, AND THEN YOU HAVE THE
NAME IS CORRECT AND THEN IT GOES
ON TO THE NEXT PAGE.

>> YEAH.

>> OKAY.

BUT THE PROBLEM WITH SAYING IF
IT'S NOT ON THAT PAGE THAT IT'S
NOT PERFECTED IS THAT THAT CAN
CHANGE.

SOMETHING COULD BE NOT PERFECTED
AND THEN BECOME PERFECTED
BECAUSE OF FINANCING STATEMENTS
EXPIRING AND GOING OFF.

>> YOU'RE RIGHT --

>> [INAUDIBLE]

AM I WRONG ABOUT THAT?

>> NO, YOU'RE NOT, BUT I
DON'T --

>> BECAUSE THAT'S THE
HYPOTHETICAL, AND THAT SEEMS TO
ME TO CREATE KIND OF A VERY
ANOMALOUS SITUATION.

>> WELL, THE AMICUS DOES A GREAT
JOB OF POINTING OUT, OF
CRITICIZING THE SYSTEM.

BUT I DON'T THINK THAT'S
NECESSARY BECAUSE, TO YOUR
POINT, GET BACK TO WHERE WE
STARTED.

WHO BEARS THE RISK OF FILING --

>> THIS ARGUMENT DOES NOT HURT
YOU.

>> I KNOW.

BUT YOU CAN HAVE --

>> I MEAN, SO IT'S NOT -- I

UNDERSTAND ABOUT WHO BEARS THE
RISK, AND THIS IS LIKE,
ULTIMATELY, THEY'VE GOT TO GET
THE NAME RIGHT.

>> AND THEY FOLLOW WHAT THE STATUTE LAYS OUT, THIS SYSTEM IMPLEMENTS IT.

NO, IT'S NOT A GOOGLE SEARCH WITH ALGORITHMS THAT ARE PREDICTIVE OF WHAT OTHER VARIATIONS MAY EXIST.

I DON'T THINK THERE'S THE ANY REQUIREMENT OF THAT.

THAT WOULD ACTUALLY SHIFT THE RISK TO THE PROGRAMMER TO MAKE SURE THAT HE'S GOT ALL VARIATIONS THOUGHT THROUGH.

>> BUT DOESN'T THE SUBSECTION, THE SAFE HARBOR PROVISION CONTEMPLATES THAT THERE MAY NOT BE A STANDARD SEARCH IS LOGIC. BECAUSE IT SAYS IF ANY.

SO --

[INAUDIBLE CONVERSATIONS]

>> THANK YOU.

>> SO THE LEGISLATURE SAYS, OKAY, IF IT'S HERE, THEN THIS IS WHAT HAPPENS.

>> YES, THANK YOU.

>> THAT IMPLIES IF IT'S NOT HERE, AND IT MAY NOT BE EVEN THOUGH THERE'S A COMPUTER SEARCH, THERE MAY NOT BE A LOGIC, THEN THAT PROVISION JUST DOESN'T HELP THE OTHER SIDE.

>> AND THAT'S THE POINT HERE, THAT THE LEGISLATURE WANTED TO GET AWAY FROM THIS, ALL THE VARIATIONS, ALL THE PROBLEMS WITH SEARCH ENGINES, ALL THAT. THIS IS THE SIMPLE, FAST, HARD AND FAST RULE.

AND WHEN A JUDGE IN THIS THE INSTANCE SAYS, WELL, THEY'RE ONLY ONE PAGE BEHIND, MAYBE -- THAT'S JUST KIND OF INEQUITABLE, IS WHAT'S BASICALLY HAPPENED, HE'S TAKEN AWAY THE SAFE HARBOR. HE'S IGNORING IT.

AND HE'S INJECTING THE VERY SAME UNCERTAINTY THAT THE LEGISLATURE AND THE DRAFTERS INTENDED TO GET DOWN.

OUR SEARCH ENGINE IN FLORIDA WILL EVOLVE OVER TIME, I'M SURE, AS COMPUTERS GET BETTER.

BUT RIGHT NOW THIS IS WHAT WE HAVE, AND IT WORKS.

IT WORKS.

AND IT IMPLEMENTS THE
LEGISLATIVE INTENT.

YOU FOLLOW THESE RULES, YOU
KNOW -- AND, BY THE WAY, NO SAFE
HARBOR FOR A SEARCHER.

IF THEY INPUT THE WRONG THING,
THEY'RE OUT OF LUCK.

SO THIS SAFE HARBOR
APPROPRIATELY BALANCES THOSE
RISKS ON BOTH SIDES.
BECAUSE THERE'S ONLY ONE PERSON
THAT CONTROLS IT.

I KEEP COMING BACK TO THAT
POINT.

AND I THINK IN THIS CASE WHAT'S
HAPPENED IS THEY HAVE, THEY'RE
INJECTING SAME UNCERTAINTY.

I DON'T HAVE ANY QUALMS WITH
THIS, WITH OUR SYSTEM HERE.

BUT NOW TO GET, START ATTACKING
THE METHODOLOGY, GETTING INTO
ALGORITHMS AND CONSIDERATION OF
ALL THOSE TYPES OF THINGS WHEN
WE DO HAVE SOMETHING.

[NO AUDIO]

>> THAT'S LUCK.

>> OKAY, IT'S JUST LUCK.

IT'S GOING TO DEPEND ON LUCK.

THAT'S QUITE A SYSTEM.

>> NO, I SAY -- NO, YOU'RE
PERFECTED IF YOU FOLLOW THE
PROTOCOL.

>> -- WHAT ABOUT THIS EXAMPLE IF
YOU'RE LOOKING AT WHAT'S ARRAYED
ON THAT FIRST PAGE, THAT CAN
CHANGE OVER TIME.

>> EXACTLY.

>> AND THEN THE NAME THAT'S NOT
PRECISELY RIGHT MIGHT SHOW UP ON
THAT PAGE --

>> UH-HUH.

>> -- ON ONE DAY WHEN IT
WOULDN'T SHOW UP ON IT ON
ANOTHER DAY BECAUSE OTHER THINGS
THAT HAVE FALLEN OFFER.

>> OR THE AGENCY CHANGES ITS
CONVENTION, AND INSTEAD OF
OUTPUTTING 20 NAMES AT A TIME,
IT'S OUTPUTTING 50 NAMES AT A
TIME.

THAT'S JUST A DEFAULT.

>> YOU KNOW, IT IS LUCK, BECAUSE
IT IS GOING TO BE SHIFTING BY

VIRTUE OF SOMEBODY SATISFYING A
LIEN, TAKING IT OFF, AND NOW
YOUR LIST IS GOING TO CHANGE.
BUT AREN'T WE LOOKING AT LIEN
PERFECTION AT THE TIME WE MADE
THE LOAN OR THE TIME, YOU KNOW,
SOMEBODY SHOULD BE --

>> IT'S GOT TO BE REPLICABLE.

I DON'T KNOW.

>> YOU LOOK AT TIME WHEN I MAKE
THE LOAN, I SHOULD BE PRINTING
OFF THE SHEET THESE ARE THE 20
JUST TO SHOW WHAT APPEARED THAT
DAY.

THAT WOULD BE THE APPROPRIATE
THING, FIND A SUBSEQUENT
SEARCHER MAKING A LOAN TO THE
SOMEONE BASED ON WHAT I'M SEEING
AT THE SECRETARY OF STATE'S WEB
SITE.

THAT'S PRUDENCE, THAT'S WHAT
THEY SHOULD BE DOING.

BUT IT IS A LITTLE BIT RANDOM
WHETHER YOU'RE ON THAT LIST ONE
DAY AND --

>> YOU START BY SAYING THE WHOLE
SCHEME WAS ON THE FILER, THE
ONUS IS ON THE FILER TO THE
PERMIT THAT LIEN, AND NOW YOUR
ARGUMENT IS IT'S JUST LUCK.

>> THAT NEVER CHANGES.

I THINK JUSTICE CANADY'S
QUESTION WAS IF YOU HAVE AN
ERRONEOUS FINANCING STATEMENT,
IT MAY OR MAY NOT APPEAR ON THAT
LIST OF 20 THE DEPENDING ON THE
DAY.

AND I AGREE WITH HIM THAT CAN
HAPPEN.

BUT THAT'S, THAT, TO ME, BECOMES
EVIDENTIARY ABOUT WHETHER OR NOT
IT WAS PERFECTED ON THE DATE IN
THE QUESTION.

IT DOESN'T MEAN THAT YOU DON'T
ENFORCE --

>> NOT MUCH LOGIC IN A SEARCH
LOGIC LIKE THAT.

>> IT'S NOT PERFECT, BUT IT'S --
IT DOES.

IF YOU FOLLOW IT, YOUR LIEN'S
PROTECTED.

THE SAFE HARBOR, YOU PROVE THAT
AT SOME GIVEN POINT MANY TIME IT
WAS ON THE LIST, YOU'RE ENTITLED

TO THE SAFE HARBOR.
IF YOU FILE SOMETHING ERRONEOUS,
YOU RUN THE RISK THAT IT'S NOT
ON THAT TOP 20, AND YOU ALSO RUN
THE RISK THAT NEW FINANCING
STATEMENTS GET IN AHEAD OF YOU,
PUSH YOU OFF THAT THE LIST.
BUT WHO SHOULD BEAR THAT RISK?
>> YEAH, I DON'T KNOW WHY YOU'RE
TRYING -- I DON'T KNOW WHY
YOU'RE DEFENDING IT.
THIS IS A RARE OPPORTUNITY FOR
US TO DO SOMETHING TO MAKE THE
ACADEMIC COMMENTARY THE HAPPY --
[LAUGHTER]
ACTUALLY MAKE THE LAW MORE
RATIONAL.
>> IS THAT THE ROLE OF THE
JUDICIARY, IS MY QUESTION.
ISN'T THAT THE LEGISLATURE?
AND WE'RE LOOKING AT THE FACTS
OF THIS CASE.
THEY DIDN'T DO IT.
AND IT APPEARED, IT DIDN'T
APPEAR ON THE TOP 20, IT APPEARS
BEFORE IT.
AND IN THE FACTS OF THIS CASE IT
SHOULD, THERE WAS NO LIEN
PERFECTION.
YOU CAN CRITICIZE THE SAFE
HARBOR OR NOT, BUT --
>> I DON'T THINK ANYBODY'S ASKED
A QUESTION THAT DISAGREES WITH
THAT.
WE MAY BE PERSUADED OTHERWISE
WHEN OPPOSING COUNSEL SPEAKS,
BUT I DON'T THINK ANY OF THESE
QUESTIONS HAVE BEEN UNFRIENDLY
TO YOUR ULTIMATE POSITION.
>> I, YOU KNOW, IT'S -- I LIKE
THE AMICUS BRIEF BECAUSE, YOU
KNOW, THE ANALYSIS THERE.
BUT I THINK THEY'RE GOING OFF
TARGET BECAUSE YOU CIRCLE
BACK --
>> ALL RIGHT.
YOU'RE IN YOUR, YOU'RE IN YOUR
REBUTTAL.
>> OKAY.
>> YOU CAN KEEP GOING IF YOU
WANT TO.
>> NO, SIR.
THANK YOU.
>> ALL RIGHT.

COUNSEL?

>> GOOD MORNING, MAY IT PLEASE
THE COURT, MY NAME IS EZRA
SCRIVANICH, AND THE COURT'S VERY
AWARE OF THE BACKGROUND OF THIS
CASE.

IT'S VERY OBVIOUS.

SOME MAIN POINTS.

YOU KNOW, MY CLIENT PROVIDED TWO
LOANS TOTAL AND \$5 MILLION.

AND IT WAS SECURED BY 19
ENTITIES, 1 WHICH IS NOW THE
APPELLANT IN THIS CASE.

ALL THE LOAN DOCUMENTS, AS WAS
DESCRIBED BY APPELLANT'S
COUNSEL, ALL LISTED 1944 BEACH
BOULEVARD WITH THE WORD
BOULEVARD ABBREVIATED.

AND IF THE COURT REFUSED THE
ATTACHMENTS, THERE'S EVEN
CERTIFICATIONS THAT'S -- FROM
THE BORROWER THAT'S THE CORRECT
NAME.

WITH THAT SAID, I THINK IT'S
IMPORTANT BECAUSE I THINK IT
SHOWS THAT ALL THE PARTIES
AGREED FROM THE OUTSET OF THIS
LOAN THAT THAT WAS THE NAME OF
THIS ENTITY.

>> COULD YOU --

>> THIS IS ABOUT THE RIGHTS OF
THIRD PARTIES.

>> YES.

THE THIRD PARTY IN A WAY -- I
UNDERSTAND THAT.

IT IS WEIRD IN THAT THE THIRD
PARTY BEING THE DEBTOR OF
POSSESSION IN CHAPTER 111 IS
ALSO THE BORROWER.

>> I'M SORRY.

>> COULD YOU KIND OF ADDRESS
WHAT WE'VE BEEN TALKING ABOUT --

>> YES.

>> -- ABOUT WHETHER THE SAFE
HARBOR PROVISION IS EVEN A
WORKABLE EXCUSE, SO TO SPEAK, IF
THERE'S NO SEARCH LOGIC EMPLOYED
BY THE DEPARTMENT?

>> SO I AGREE THAT FLORIDA'S
SEARCH SYSTEM IS TERRIBLE.

I THINK A LOT OF PEOPLE THAT
HAVE DISCUSSED THIS, WE
UNDERSTAND IT JUST ISN'T A GOOD
SYSTEM.

THE ASSUMPTION OR OPINION OF AMICUS THAT THERE IS NO SEARCH LOGIC AT ALL IS TRUE AS COMPARED TO OTHER SYSTEMS THEY'RE RELATING IT TO.

BUT THAT BEING SAID, FLORIDA IS STUCK WITH IT AT THE MOMENT. AND FOR PURPOSES OF WHAT WE'RE HERE ON TODAY, IT'S THE UP FOR THIS COURT TO INTERPRET THIS PROVISION, THE SAFE HARBOR PROVISION, AND I WOULD ALSO WANT TO TALK ABOUT ANOTHER PROVISION IN THE SAME STATUTE.

AND THE MANNER THAT REACHES THE RESULT THE STATUTE'S INTENDED BUT ALSO REACHES A RESULT THAT'S NOT ABSURD.

AND I THINK IT'S ABSURD THE WAY THE SEARCH SYSTEM WORKS. AND THE FACT IN THIS CASE IS WHEN YOU TYPE IT IN WITH THE WHOLE WORD BOULEVARD SPELLED OUT IN THE SEARCH SYSTEM, IT POPS UP THE FIRST ENTRY ON THE NEXT PAGE BECAUSE IT'S THE ALL ALPHABETICAL.

SO IT'S A SIMPLE ONE CLICK EITHER WAY, AND IT COULD EASILY POP UP WHEN YOU'RE DEALING WITH THE ABBREVIATION.

>> WELL, LET'S START WITH JUST 50311 --

>> YES.

>> AND SO THAT'S THE STARTING PROVISION IN THE STATUTE.

AND IT IS SAYS THAT A FINANCING STATEMENT SUFFICIENT HI PROVIDES THE NAME OF THE DEBTOR ONLY IF IT PROVIDES THE NAME THAT IS STATED TO BE THE REGISTERED ORGANIZATION'S NAME ON THE PUBLIC ORGANIC RECORD MOST RECENTLY FILED WITH OR ENACT 1, AND IT GOES ON.

YOU WOULD AGREE THAT THAT REQUIREMENT WAS NOT MET BECAUSE OF THE ABBREVIATION, CORRECT? EVERYBODY AGREES WITH THAT.

>> CORRECT.

>> OKAY.

>> CORRECT, I WOULD AGREE WITH THAT.

AND THEN I WOULD THEN JUST BRING

UP THE SECTION THAT THE SAFE HARBOR'S IN WHICH IS 679.50161 AND SUBSECTION 1 OF THAT REFERS TO MINOR ERRORS OR OMISSIONS WHICH THERE IS CONTEMPLATED IF THE SAFE HARBOR AS WE'RE TALKING ABOUT IS ILLUSORY --

>> AND THAT PROVISION IS PERPLEXING.

BECAUSE IT STARTS OFF BY SAYING THAT MINOR ERRORS DON'T MATTER IN DETERMINING WHETHER IT'S SERIOUSLY MISLEADING, BUT THEN IT VERY PLAINLY SAYS THAT IF THE FINANCING STATEMENT FAILS TO SUFFICIENTLY PROVIDE THE NAME OF DEBTOR IN ACCORDANCE IS 503111, THEN IT IS SERIOUSLY MISLEADING. AND SO WE'VE ALREADY TALKED ABOUT THAT.

AND SO EVEN THOUGH IT SAYS MINOR DIFFERENCES DON'T MATTER, IT TAKES YOU BACK AND SAYS THAT THEY ACTUALLY DO IN VERY PLAIN LANGUAGE, CORRECT?

>> THEY DO --

>> OKAY.

AND THEN THAT TAKES YOU TO THE SAFE HARBOR PROVISION TO ALLOW YOU TO SOME OPPORTUNITY TO HAVE A FILING STATEMENT THAT'S VALID EVEN IF YOU DIDN'T GET THE NAME ABSOLUTELY CORRECT IF THERE IS A SEARCH LOGIC.

>> YES.

>> OKAY.

>> THAT'S EXACTLY, IT ALL BOILS DOWN TO THAT PROVISION IS BASED UPON A REAL SEARCH SYSTEM WITH SEARCH LOGIC WHICH FLORIDA DOESN'T HAVE.

>> OKAY.

>> AND I THINK SINCE IT'S ILLUSORY THAT THE SAFE HARBOR IN SUBSECTION 3 CAN'T APPLY TO FLORIDA, RIGHT?

BECAUSE WE DON'T HAVE IT.

SO WHAT DO WE HAVE?

WE HAVE SUBSECTION 1.

I THINK THIS COURT IN THE PAST IN OTHER ISSUES WHEN IT COMES TO NOTICE, IT'S SUBSTANTIAL COMPLIANCE.

HERE THERE WAS DEFINITELY

SUBSTANTIAL THE COMPLIANCE WHEN YOU LOOK AT THE UNDERLYING FACTS OF THIS CASE.

AND IF YOU ALSO LOOK AT THE TWO CASES THAT BOTH THE MIDDLE DISTRICT BANKRUPTCY COURT, THE DISTRICT COURT SITTING IN ITS APPELLATE CAPACITY FOLLOWED --

>> WELL, BUT, COUNSEL, I MEAN, IF SUBSECTION 3 ISN'T OPERATIVE BECAUSE WE DON'T HAVE THE STANDARD SEARCH LOGIC, YOU'RE NOT JUST THROW THING IT A BACK ON SUBSECTION 1, YOU'RE THROWING IT BACK ON SUBSECTION 2 WHICH SAYS FINANCIAL STATEMENT WHICH FAILS SUFFICIENTLY TO PROVIDE THE NAME OF THE DEBTOR IN ACCORDANCE WITH THE OTHER SECTION WE KNOW ABOUT IS SERIOUSLY MISLEADING.

AND I DON'T SEE HOW FOLLOWING THAT, I MEAN, SUBSECTION 3, IF YOU HAVE NO REFUGE IN SUBSECTION 3, IT JUST SEEMS LIKE THESE CIRCUMSTANCES WHERE YOU MADE A MISTAKE, YOUR CLIENT MADE THE MISTAKE OF USING THE ABBREVIATION WHICH IS FORBIDDEN --

>> RIGHT.

>> -- NO GOOD, THAT UNDER --

AND THAT IS ONE OF THE INTERPRETS INTERPRETATIONS I CAN BE TAKEN IT, AND WHAT WE ARE SING IS OBSERVED AND IT WOULD BE VERY UNREASONABLE, THE RESULTS IN FLORIDA ESPECIALLY BECAUSE YOU KNOW, YOU'RE DEALING WITH THE SYSTEM THAT YOU CC PROVISION DID NOT ENVISION WHEN IT WAS WRITTEN AND IT WAS JUST ADOPTED HERE IN FLORIDA BLINDLY WITHOUT ANY SORT OF YOU WHAT OUR SYSTEM IS IN IT COULD CHANGE TOMORROW AND ALL OF A SUDDEN WE ARE PERFECTED AND EVERYTHING CHANGES.

BUT IT'S NOT THAT WAY AND SO REALLY THE RELIEF THAT WERE ASKING FROM FOR THE SCORE IS TO INTERPRET THE STATUTE IN A MANNER THAT'S GOING TO BE REASONABLE IN THE FACTS OF THIS

CASE AND FAIR TO ALL THE PARTIES.

>> I DON'T UNDERSTAND WHAT IS UNREASONABLE A REASONABLE ABOUT REQUIRING THAT THE CREDIT TOUR, USED THE CORRECT NAME OF THE DEBTOR, THAT IS A VERY SIMPLE CRYSTAL CLEAR REFORM AND THEIR RESOURCES AND YOU CAN GO TO THE WEBSITE TO THE SECRETARY OF STATE'S OFFICE AND LOOK AT UP AGREED.

>> AGREED.

>> AND APPARENTLY SOMEBODY DID NOT JUST TO THAT IN THE DECIDED WELL I DON'T KNOW IT IS HARD TO UNDERSTAND, MILLIONS OF DOLLARS IN MONEY.

BUT THINGS HAPPEN IT.

>> ARE YOU MAKING A RELIANCE ARGUMENT ON THE CERTIFICATIONS THAT THEY DELIVERED IT.

>> WILL THAT IS A GOOD POINT THAT YOU BROUGHT UP SO THOSE ISSUES WERE NEVER ADDRESSED BY THE LAW ENFORCEMENT BUT THOSE ARE ASSERTED DEFENSES, THERE IS THE WAIVER OF ALLIANCE ISSUE UPON ASSERTIONS AND I DON'T KNOW IF THE COURT WANTS TO GO INTO THAT BECAUSE I DON'T KNOW IF THAT IS BEFORE THE COURT COME AS MARK INTERPRETING THE STATUTE BUT I THINK EVENTUALLY IF WE CHECKED ON THE OTHER COURSE, ULTIMATELY THE COURT WOULD HAVE TO LOOK AT THAT COMPONENT AS WELL.

YES, THAT IS A GOOD POINT.

I AM JUST ASKING THE COURT TO BASICALLY GIVEN THE RELIANCE I GUESS, IN THE WAY THAT OUR SYSTEM WORKS THERE REALLY IS NO WORKAROUND, NO SAFE HARBOR IS THE COURT FOLLOWS THE COURTS OPINIONS OF THE LOWER COURTS OPINIONS THE MIDDLE IN THE SOUTHERN IT INTERESTING THAT SOUTHERN DISTRICT OPINION FOR THE DECISION AND HOLY DOES NOT HELP ME, AND THE REASONING BEHIND IT AND HOW THEY PROVE THAT THE MIDDLE DISTRICT, HELPS OUR CLIENT.

LET ME SEE IF I HAVE ANY OTHER POINTS OR ANY OTHER QUESTIONS FOR ME AND I DID WANT TO POINT OUT BUT AGAIN, THE SUPPLIES IF ARE LOOKING AT THE SAFE HARBOR, AND THEY TALK A LOT ABOUT THE REVISIONS DID AWAY WITH A REASONABLE SEARCH REQUIREMENT, IT DID, BUT THERE'S A TWO-STEP PROCESS, YOU HAVE RESEARCH, THEN YOU HAVE YOUR ACTUAL REVIEW OF THE DOCUMENTS AND I DON'T BELIEVE THE REVISION DID AWAY WITH THE FACT THAT A SURGERY HAS GOT TO USE REASONABLE COMMON SENSE IN REVIEWING RESULTS ESPECIALLY WHEN YOU'RE ONLY GETTING 20, AND YOU WERE DEALING WITH A LOT OF THAT HAS 19 ENTITIES THAT SECURED, SO 19 RIGHT THERE JUST ON ONE LOAN TIMES TWO.

I THINK AT SOME POINT, THE BUTTON HAS TO BE PUSH FORWARD OR BACKWARDS AND HOW MANY TIMES NOBODY KNOWS.

AND I'M SURE A LOT OF PEOPLE CARE, JUST NOBODY KNOWS. I WOULDN'T PROPOSE THEY DID AWAY WITH A REASONABLE SEARCH BUT THERE STILL IS THAT REASONABLE EXAMINATION STEP THAT HAS TO BE TAKEN AND I THINK THAT CHANGES A LOT.

I TALKED ABOUT THE CASES AND I REALLY HAVE NOTHING FURTHER AND WE DISCUSSED THIS AND 800-POUND GORILLA IN THE ROOM WHICH THEY POINTED OUT WHICH THE SEARCH SYSTEM HAS SEARCH LOGIC IN FLORIDA WITH HAVING SAID, HAVE NO FURTHER THINGS TO PRESENT AT THIS TIME.

>> THANK YOU.

>> AS THE JUSTICE POINTED OUT, THE STATUTE 6956.3, DOES NOT REQUIRE A SEARCH LOGIC AND WE CANNOT JUST IGNORE THAT SPECIFIC WORDING TAKEN OUT OF THE STATUTE.

I THINK WITH SOME OF THE QUESTIONING HERE TODAY, SHOULD THERE BE ONE AND MAYBE THERE SHOULD, IT IS JUST NOT REQUIRED

UNDER THIS STATUTE PRESENTLY
THAT'S WHAT NEED TO COME BACK
TO.

AND AGAIN, I DON'T HAVE QUALMS
WITH THE SYSTEM THAT OTHERS
MIGHT THINK IT WORKS FINE AND WE
RELY ON IT.

WE MAKE LOANS AND SURGES ENEMA -
AND TRYING TO DETERMINE WHAT
MEANS ARE OUT THERE WE LOOK AT
THAT YOUR QUESTION EARLIER,
THERE ARE 18 OTHER DEBTORS WITH
COLLATERAL PLEDGE TO THEM AND AS
A DEBTOR IN POSSESSION THAT WE
ARE BASICALLY FIDUCIARIES FOR
THE UNSECURED CREDITORS IN
SESSIONS OF THIS RELIANCE ISSUE
AND ALL THAT, THAT IS WAY BEYOND
WHAT IS HERE BEFORE THE
CORPORATE JUST SO YOU KNOW, THIS
IS CUSTOMARY FOR A DEBTOR TO
HAVE THESE RIGHTS TO FULFILL
THIS FIDUCIARY DUTY TO OTHERS.

>> BUT THE POINT IS THERE NOT
JUST THE INTEREST OF THE QUEEN
OF THE PARTIES, IN TERMS OF YOU
KNOW REPRESENTATIONS OF THAT
WERE MADE BUT RELIANCE TO
INTERESTED THIRD PARTY.

>> CORRECT, AND HE JUST HAS TO
LEVEL OF CERTAINTY WHICH I THINK
EXIST IF YOU FOLLOW THE STATUTE
TO AND WAS NOT FOLLOWED IN THIS
INSTANCE.

NO MATTER WHO IS AT FAULT WITH
ONE PERSON WHO COULD HAVE
CHECKED THE SECRETARY OF STATE
RECORDS GOT THE CORRECT NAME AND
PUT IT ON THE FINANCE STATEMENT
DID NOT DO IT RIGHT IN DIZZY
IT'S BUT AGAIN WE BALANCE THE
RISK AND RESEARCHERS PUT IN THE
WRONG NAME, LINCOLN TAKEN ON THE
CHIN AS WELL AND SO IT IS A
QUESTION THAT THE STATUTE OR
STATUTORY SCHEME IN THE INFORMED
LAW COMMISSIONERS ADOPTED THIS
IN FLORIDA THAT IT WORKS AND FOR
THE LEGISLATURES TO DECIDE IF
THEY WANT TO ADD A SEARCH LOGIC
BUT NOT GOOD WITH THE
ADMINISTRATIVE LAW ISSUES THAT
WE HAVE ADOPTED THIS IS
IMPERFECT AS SOME MAY BELIEVE

THANK YOU.

>> WE THANK YOU FOR YOUR
ARGUMENTS IN THIS CASE TODAY IN
THE COURT WILL NOW TAKE IN
RECESS ABOUT TEN MINUTES BEFORE
WE TAKE UP THE CASE ON THE
DOCKET.