

067

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA, Appellant,
by and through CRAIG R. WILSON,
a citizen of the STATE OF FLORIDA,
as Intervenor,

Appellant,

v.

PALM BEACH COUNTY HOUSING AUTHORITY,

Appellee.

CASE NO. 69,565

FILED

SID J. WHITE

JAN 16 1987

CLERK, SUPREME COURT

By _____
Deputy Clerk

APPELLANT'S REPLY TO BRIEF OF AMICUS CURIAE

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CASES	ii
STATEMENT OF THE CASE AND FACTS	1
POINT INVOLVED	2
ARGUMENT	3-4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF CASES

	<u>Page</u>
<u>Higbee v. Housing Authority of Jacksonville (1940)</u>	3
143 Fla 560, 197 So 479 at 485	
<u>Nohrr v. Brevard County Educational Facilities Authority</u>	3,4
247 So2d 304 (Fla 1971)	

STATEMENT OF THE CASE AND FACTS

Appellant does not dispute Amicus' Statement, but would add the following: the need for housing was determined by studies. The only such study specifically mentioned was by the County Housing Community Development (T 14).

The bond expert confirmed that the project could be taken away if the project were foreclosed (T 29).

POINT INVOLVED

THE COURT ERRED IN VALIDATING A BOND ISSUE
SECURED BY MORTGAGES WITH THE ACCOMPANYING
RIGHT OF FORECLOSURE.

ARGUMENT

Amicus argues sequentially that this Court's Nohrr v. Brevard County Educational Facilities Authority 247 So2d 304 (Fla 1971) is distinguishable, that it is wrong and that Article VII, Section 16, Fla. Constitution authorizes the mortgage clause here approved.

The first two contentions have been fully debated in prior briefs. Appellant will only answer the public policy argument. The bottom line here is that there is the possibility of foreclosure and Nohrr says that requires an election. If the possibility that a mortgage may be foreclosed is more remote here than in Nohrr, then surely there is not as great a need for a mortgage clause to protect the lender. If a mortgage is so critical, Appellee should have submitted the bonds to the electorate. An election took place in Palm Beach County as recently as November. Plainly, Amicus is wrong when it says there can never be a mortgage as security for such bonds.

Amicus' reliance on Article VII, Section 16, Fla. Constitution is misplaced. Assuming for the sake of argument that it has the right to make this argument despite Appellee's concession that the section does not apply¹, it cites no basis to apply locally what seems clearly to be authorization to the State. It does not answer Appellant's questions. Why is this section not added to Section 12, Local bonds? What State agency has made or will make the required determination?

There is also the unanswered question of how authorizing bonds to be paid by revenues from mortgage payments can be read to authorize a mortgage lien in favor of the lender. Revenues from mortgage liens are received by the mortgagee. In the case of the mortgages Appellee wants no issue, that would be the lender. Surely the revenues from mortgage payments referred to in Section 16 must be ones received by the agency as mortgagee, as where it might sell property and take back a mortgage.

¹This is a dubious assumption, since Appellee's concession removes this issue from consideration as between the parties and that would seem to foreclose Amicus under Higbee v. Housing Authority of Jacksonville (1940) 143 Fla 560, 197 So 479 at 485.

Whatever Appellee may do with regard to pledging its assets under Section 421.08 Fla. Stat., there is no indication there or elsewhere in Chapter 421 that bonds may be secured by a mortgage. Such a remedy is significantly absent from Section 421.19 Fla. Stat.², which authorizes appointment of a receiver or even putting the obligee in possession, but not giving up title through foreclosure.

Further, if anything in Chapter 421 could be read to authorize the issuance of mortgages, that would not be inconsistent with the requirement of an election contained in Nohrr. If the statute purported to authorize the security of a mortgage without an election, it would be unconstitutional.

2421.19. Additional remedies conferrable by authority

An authority shall have power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in debentures, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligation of said authority as the court shall direct.

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

CONCLUSION

To the extent that these bonds provide for mortgages on the property, it was error to validate them. Either the validation must be reversed or the mortgage provision must be stricken.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 14th day of January, 1987, to: E. Cole FitzGerald, III, Esquire, 625 North Flagler Drive, 9th Floor, Barnett Centre, West Palm Beach, Florida 33401, Arthur Knudsen, Esquire, 2118 First Street, Fort Meyers, Florida 33901 and Frank R. Stockton, Esquire, Assistant State Attorney, 315 Third Street, West Palm Beach, FL 33401.

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