O/A 8-31-87 Original

IN THE SUPREME COURT OF THE STATE OF FLORIDA.

CASE NO.: 70,812

BROWARD COUNTY, a political subdivision of the state of Florida.

Appellant,

vs.

THE STATE OF FLORIDA, et al., and SOUTH BROWARD CITIZENS FOR A BETTER ENVIRONMENT INC., and BRUCE HEAD,

Appellees.

ANSWER BRIEF OF APPELLEE, SOUTH BROWARD CITIZENS FOR A BETTER ENVIRONMENT, INC. AND BRUCE HEAD

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

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PRELIMINARY STATEMENT

The Appellees, South Broward Citizens for a Better Environment, Inc. and Bruce Head, the Defendant-Intervenors below (hereinafter referred to collectively as "SBC") adopt the method of reference to the Appendix as set forth by the County in its Preliminary Statement.

STATEMENT OF THE CASE AND OF THE FACTS

SBC corrects or expands upon the Appellant's statement in the following manner:

1. The County quotes this court's opinion in the earlier validation proceeding at page 4, line 9 of the brief "the County would first issue revenue bonds under Chapter 166" (see, State v. Broward County, 468 So.2d 967, (Fla, 1985). This term "revenue bonds" issued pursuant to F.S. 166 is clearly erroneous since only general obligation bonds can be issued pursuant to F.S. 166, therefore the reference to revenue bonds is an inadvertant mistake which has caused confusion in the past and could cause some future confusion if not corrected now.

2. At page 5 of the Appellant's statement it should be noted that the County's bond attorneys' Brown and Wood created for themselves (in 1984) an interest in the corporations which were to build the resource recovery plants by having members of their firm (two partners and one non-lawyer) become the sole officers and owners of the corporations. No pleadings or records in the trial court or official records anywhere reflect the public notification to the County by Brown and Wood that they would direct and own the corporations.

3. The County's profits on the 1984 bonds are over $80,000,000 (A. 12, answer to interr. 19) not the mere $20,000,000 set forth on page 7.

4. The County's own attorney raised the issue of whether the bondholders needed to be named in the suit (A.7, p. 11, l. 5-6) not the court as claimed on p. 10.

5. At page 12 of the Appellant's statement it makes some general allegations regarding SBC's objection to the law firm of Brown & Wood participating as counsel in this case. SBC's written objection filed before the trial judge more completely states the objection and it is incorporated herein by reference as Exhibit "A" attached hereto.

The County was never publicly notified that Brown & Wood represents in numerous other ongoing bond issues (involving other governmental bodies) certain underwriters of the County's bond issue. The County's attorney in this issue is Brown & Wood. The underwriters for the bond issue are represented by different counsel since there is an adverse and conflicting relationship between the County and the underwriters. Brown & Wood never has advised its client (Broward County) that it has a number of attorney-client relationships with members of the County's underwriting group.

6. According to an affidavit filed in this case by the County's deputy counsel there are less than one hundred bondholders, each with a correct mailing address. It should also be noted that the mailing addresses for over 95% of the bondholders (dollar amount of ownership) are out-of-state, beyond any real notice of publication printed in the Fort Lauderdale News.

The County has admitted in discovery and admissions that the two corporations now mentioned to build the plants (SES Broward Company, Limited Partnership and Broward Waste Energy Company, Limited Partnership) were never mentioned (or even in existence) in any of the enabling laws (such as Resolution 84-3113, 84-2053 and 84-964) prospectus, etc., regarding the 1984 bonds. The two new corporations have virtually no assets and were only created immediately prior to the 1987 validation suit filing.

SBC adopts by reference any additional corrections made to the Appellant's statement by counsel for the State of Florida (co-appellee).

SUMMARY OF ARGUMENT

The trial court was correct in dismissing the case for the County's failure to join indispensible parties (the initial bondholders) because of the one-of-a-kind situation involving these bonds, their unique revalidation and the possible fraudulent and/or unintentional misrepresentations by the County when the bonds were first issued.

It cannot be disputed that the collateral/security for the bonds is going to be reduced to the detriment of the bondholders. Therefore, the bondholders must be given actual notice and an opportunity to appear in this case. Because the bonds are now backed by two shell corporations cutting off all liability to the parent corporations (which is important since there is _no_ insurance available whatsoever for failed and/or evironmentally dangerous resourse recovery plants), a "risky venture" indeed.

Prior judicial actions taken on the 1984 bonds do not preclude any of the issues raised by the Appellees from being litigated because none of these issues were actually considered by any court.

F.S. 75 impermissably intrudes on the power of this court to proscribe court rules and practice and to any extent F.S. 75 conflicts with the Florida Rules of Civil Procedure (as inferred by the Appellant i.e. no discovery, only one hearing allowed, etc.) the statute is invalid and unconstitutional.

POINT I

THE STATE AND SBC ARE NOT ATTEMPTING TO RELITIGATE ISSUES ALREADY DETERMINED BY THIS COURT.

All issues raised by the State and Intervenors (SBC) have never been properly raised, presented or determined by this court. Furthermore, this claim was never raised and/or preserved at the trial level for appellate purposes by the County.

There was some reference to fraudulent issuance and other issues made by the opponents to the County's 1984 bond issue but these references were made for the first time in the reply brief and motion for rehearing, not proper places to raise these matters for consideration. Obviously, this court did not consider those improperly raised issues and there is no mention of their consideration in the earlier opinions by the trial court or this honorable court.

POINT II

THE BONDHOLDERS ARE INDISPENSIBLE PARTIES TO THIS PARTICULAR BOND VALIDATION PROCEEDING

The trial court was absolutely correct when it dismissed the suit for the County's failure to join (or even try to join) the bondholders.

Joinder of the bondholders is needed and required to change their:

1. Source of payment - from a County backed bond to a bond backed by two companies with no net worth, no earning trends, no coverage for all fixed charges and no inherent stability. See, criteria to be considered in IDB's F.S. 159.29(2).

2. Corporate entities which will build and operate the plants - the new issue creates two embryonic corporations to construct and operate the plants rather than use the ones specifically created for this job in the 1984 prospectus.

What joinder of the bondholders as indispensible parties will do is give those people (bondholders) notice of what is going on, an opportunity to be heard and (to the County's advantage) clear jurisdiction with the trial court to adjudicate their rights in the latest chapter of the County's risky ventures for resource recovery. Certainly every time this court has had the opportunity to construe a law or rule of procedure, the court has ruled in favor of disclosure to those involved in a proceeding.

The bondholders cannot be deprived of their property rights in the bonds they hold according to the due process clauses of the United States' and the State of Florida's constitutions. Both of the constitutions require as an element of due process, notice and an opportunity to be heard before a citizen's property rights are changed. See, Florida Constitution, Art. 1, Sec. 9; United States Constitution, 5th and 14th Amendments; Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed 2d 865 (1950); Coral Gables v. Certain Lands 149 So.36 (Fla. 1933); Quay Dev. v. Elegante Bld. Corp., 392 So.2d 901 (Fla. 1981).

Proceedings which do not give reasonable notice and a hearing before adjudication, or before drastic detrimental changes are made in bonds (possibly representing a retiree's life savings investment), operate to deprive a person of the organic rights of due process of law.

Appellant has conceded in the trial court that this is a one of a kind bond issue not to be repeated. It was an end-run by the County to circumvent the provisions of the Deficit Reduction Act of 1984. Due to the uniqueness of this bond issue and revalidation process, the bondholders have an absolute right to be joined as parties so they may be informed and aware of the numerous changes to the bonds and their underlying security.

It should also be pointed out that a decision by this

court affirming the trial court will only be applicable to this one exceptional bond issue and it would not be precedent to require joinder of bondholders in normal bond validation proceedings.

POINT III

THE CIRCUIT COURT HAS FOLLOWED THE REQUIREMENTS OF F.S. 75 CONSTRUED IN LIGHT OF THE FLORIDA CONSTITUTION.

The County's interpretation of F.S. 75 shows a construction of the statute which relates to judicial practice and procedure. To the extent that F.S. 75 attempts to control the judicial acts, practice and procedure, it is invalid and unconstitutional. The power to enact rules governing when a decision must be rendered, whether motions can be filed, if discovery can be utilized, etc., solely rests with this court, not the legislature. See, In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla. 1972); Graham V. Murrell, 462 So.2d 34 (1DCA, 1984).

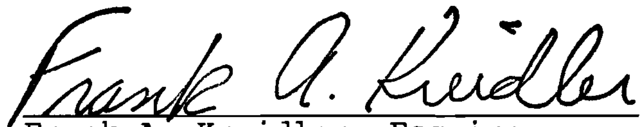
Therefore, the trial judge correctly followed F.S. 75 to the extent that he could and allowed the Appellees to utilize the rules of civil procedure as promulgated by this court in the conduct of the proceedings below.

It's strange to see the County questioning a few minor delays in the case below and to move to expedite the briefing and argument before this court. The record below clearly shows the County could have begun the revalidation on the bonds in 1985 but it chose to wait until the last minute to file its validation suit. Failure to properly plan on the County's part should not constitute an emergency on the court's part.

CONCLUSION

Based on the foregoing reasons, the trial court's order dismissing the case for the County's failure to join indispensable parties should be affirmed. The case should be remanded to the trial court and the County given twenty days to notice and join the indispensable parties.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Noel M. Pfeffer, Deputy General Counsel for Broward County, Govermental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 and Christina L. Spudeas, Esquire, State Attorney's Office, 201 Southeast Sixth Street, Room 640, Fort Lauderdale, Florida 33301, by U.S. Mail this 3rd day of August, 1987.

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