

IN THE SUPREME COURT OF FLORIDA

FILED

CASE NO.: 71,640

JAN 29 1988

CLERK OF THE SUPREME COURT

DEPARTMENT

JAMES RISHER and CAROLYN RISHER, et al.,

Intervenors/Appellants,

v.

TOWN OF INGLIS, a municipality of the
State of Florida,

Plaintiff/Appellee.

Appeal From a Final Judgment of the Eighth
Judicial Circuit, In and For Levy
County, Florida

Case No.: 87-436-CA

REPLY BRIEF FOR INTERVENORS/APPELLANTS

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TABLE OF CONTENTS

	Page
Table of Contents.....	1.
Table of Citations.....	2.
Abbreviations and Designations.....	3.
Summary Argument.....	4.-5.
Argument.....	6.-10.
Conclusion.....	11.
Certificate of Service.....	12.
Appendix.....	13.

TABLE OF CITATIONS

CASES:

City of Winter Haven v. State, 170 So. 100
(Fla. 1936)

Rianhard v. Port of Palm Beach District, 186 So.2d 503
(Fla. 1966)

State v. City of Coral Gables, 154 So.2d 254
(Fla. 1934)

STATUTES:

§75.02, Fla. Stat.

ABBREVIATIONS AND DESIGNATIONS

The following abbreviations and designations shall be used in this brief:

Florida Statute shall be abbreviated to Fla. Stat.

Section shall be abbreviated to §.

SUMMARY ARGUMENT

Appellee misconstrues the basis on which Appellants have grounded their appeal in the instant case. Appellants have argued the Trial Court erred in concluding the Town of Inglis had the prerequisite authority to conduct its municipal business where there was no evidence submitted to or cited by the Court which would sustain that conclusion and further that the Trial Court erred in failing to grant a stay order of the bond validation proceedings pending resolution of Intervenor/Appellants' prior-filed class action lawsuit requesting certain declaratory and injunctive relief. Appellee continues to raise purely substantive arguments to assertions of procedural error.

Notwithstanding, Appellee has failed to substantively appreciate Appellants are also fundamentally challenging the original Town Charter by maintaining and alleging the Town of Inglis' boundaries are so uncertain they make impossible the determination of its territorial boundaries. Further, Appellant has substantively questioned not only the 1975 Amendment to the Town Charter, but also procedural compliance with adoptions of ordinances, resolutions, and annexation procedures.

Curiously, Appellee in it's Summary Argument concedes the dispute over the northern boundary might be

relevant to the service of a small portion of the Town. Appellee proposes certain adjustments can be made to resolve these infringements, but the basic validity of the project for which the bonds were issued cannot be affected. Appellee seems to admit Defendant's authority to act within the territory under dispute may be suspect and somehow the cancerous portion may be carved out.

It is precisely the inapplicability of this bond validation proceeding and its underlying water works project to this "small portion of the Town" which has caused Appellants to intervene in the instant action and to have previously filed a class action lawsuit requesting certain declaratory and injunctive relief with respect to the Town's northern boundary.

ARGUMENT

Appellee distorts the holding in Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966). While Rianhard does state the "introduction of the supporting resolution into evidence is all that was necessary to justify validation", this statement was made within the context of a challenge to the fiscal feasibility of a revenue project, which would require reassessment of the detailed plans and specifications of the proposed improvements to be undertaken and would, therefore, be beyond the scope of a validation hearing. The case cited by the Court in Rianhard in support of the aforementioned quotation reinforced the two-prong function of a validation proceeding: (1) to assure compliance with the statutory prerequisites necessary to issue said debt; and (2) confirm the power of an issuing governmental entity to act. Thus, validation proceedings assures procedural compliance and jurisdictional power to act. Moreover, Rianhard did not reach the issue as to the quantum and quality of evidence necessary to support a conclusion that a governmental body had the jurisdictional power to act,

since, unlike the case at bar, there was no objection raised to the validation petition and resolution authorizing the issuance of the revenue bonds when they were admitted into evidence at the validation hearing. Rianhard does not stand for the proposition that no evidence is required to support the conclusion that a municipal government has the inherent power to act.

Appellee also raises the substantive issue of estoppel. Appellants believe it is improper to continue to raise substantive issues before this Court, which has before it, solely issues of procedure. Intervenors/Appellants believe the complex issue of estoppel, while admittedly related to the question of a municipality's power to act, is still secondary to Intervenors/Appellants' contention that this issue, among others, should have been decided in Intervenors/Appellants' prior-filed class action lawsuit. Nevertheless, whether equitable estoppel would factually apply in the instant case is far from clear. As late as July 26, 1983, there continued to exist a dispute between the Property Appraisers Office for Levy County and the Town Commission of the Town of Inglis as to the precise line of the northern boundary of the town. See Exhibit

"A", Copy of Resolution of the Town of Inglis, Executed on the 26th day of July, 1983. Further, whether ouster of the Town of Inglis' authority to act would at this stage in the Town's growth cause a confusion and disaster in the administration of its municipal affairs is also unclear. The Town has just begun to develop its northern boundary. Appellee readily admits amendments to the water system could be made to avoid irreparable harm to Appellants if the water bond issue is validated. However, it would appear a greater threshold of inequitable conduct would be necessary to estop citizens who believe they are being illegally taxed in violation of their constitutional rights than would be required to estop the Attorney General. Appellants believe they have timely objected to the first meaningful invasion of their constitutional rights as property owners of certain real property which the Town of Inglis claims to be within its northern border. Cf., City of Winter Haven v. State, 170 So. 100 (Fla. 1936) "where the judgment of ouster which is sought would cause confusion or disaster in the administration of the affairs of a municipality, and it does not appear that its refusal would be detrimental to public interest or prejudicial to the constitutional rights of citizens, duly

claimed and asserted, the Court has the power to quash the information after it is filed or to refuse judgment of ouster." (Emphasis supplied.)

Appellants did not state a boundary dispute cannot be relevant to a bond validation proceeding. Appellants stated boundary disputes are collateral in nature only where the disputes relate to compliance with procedural prerequisites, rather than the fundamental power of a municipal government to act. Statutory authority and case law both recognize one of the two essential functions in a bond validation hearing is the determination of a governmental entity's power to act. Appellee's citation of State v. City of Coral Gables, 154 So.2d 254 (Fla. 1934), is availing because the Court is not clear whether its refusal to address the boundary dispute was because of a defect in procedural compliance or the fundamental jurisdictional power of a municipality to act was questionable.

Appellee believes the enactment of the Municipal Home Rule Powers Act eliminates any requirement, demonstration or burden of showing a municipality fundamental power to act because that would create a limitation on its power. First, the words "any limitation" were used within the

context of a limitation imposed in a municipal charter. Second, the Municipal Home Rule Powers Act did not attempt to eliminate the question of a municipality's power to authoritatively implement its own resolutions, ordinances, charter amendments, etc. Third, such a contention would conflict with other statutory provisions, such as Fla. Stat. §75.02, which provides any municipality may determine its authority to incur bonded debt and the legality of all proceedings in connection therewith through a bond validation proceeding.

With respect to Appellee's contention that the collateral action has lain dormant for three months, Appellant merely brings to this Court's attention the action now pending before the Trial Court is Defendant's Motion to Dismiss. Nevertheless, Appellant has calendared a Hearing on Defendant's Motion to Dismiss.

Finally, Appellee somehow believes citation to statutory authority in a final judgment gives a municipality the very authority it must have to enable it to comply with statutory grants of power. Intervenors/Appellants have challenged the Town of Inglis' authority to act, not the Town's procedural compliance with the bond validation process.

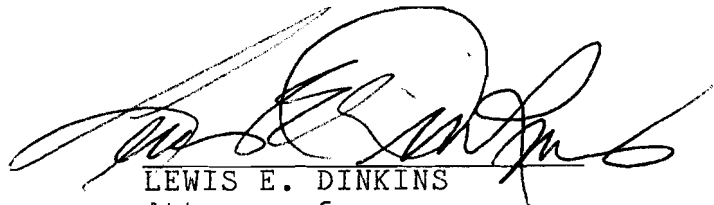
CONCLUSION

Appellee has yet to address the significant procedural issues in the instant case. Taken to its logical conclusion, Appellee would have this Court authorize the Town of Inglis to continue to incur expenses incidental to the construction of the proposed water system and, eventually, expenses directly related to construction itself, and then subsequently admit the expenses were incurred in error, and halted the construction in progress because the Town of Inglis was held to have acted without proper authority. It makes far greater sense to have a Trial Court decide threshold issue of a municipality's power to act (or a Court of prior competent jurisdiction if the issue was raised in a collateral action were similiar, as in the case at bar) prior to the incurrence of carrying costs and funded indebtedness. Certainly, this must have been what the Legislature intended when they enacted Florida Statute 75.02 which permits any municipality to determine its authority to incur bonded debt and the legality of all proceedings in connection therewith through a bond validation proceeding.

WHEREFORE, Intervenors/Appellants respectfully request this Honorable Court grant the relief requested in Intervenors/Appellants' Initial Brief, and reverse the validation bonds until the preceeding collateral pending action has been decided.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a conformed copy of the foregoing Reply Brief has been furnished by mail, on this 28th day of January, 1988, to PETER LANGLEY, III, P.O. Box 124, Yankeetown, Florida 32698, Attorney for Plaintiff/Appellee.



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