2-23

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 77,098

NORTHERN PALM BEACH COUNTY WATER CONTROL DISTRICT, a drainage district of the State of Florida,

Appellant

v.

THE STATE OF FLORIDA, et al.,

Appellee

On Appeal from a Bond Validation in the Circuit Court in and for Palm Beach County, Florida
Case No.: CL-90-6844-AH

ANSWER BRIEF OF APPELLEE

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PREFACE

For purposes of this brief, the Appellant, Northern Palm Beach County Water Control District, will be referred to as the "District;" the Appellee, State of Florida, will be referred to as the "State;" and the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, will be referred to as the "Trial Court."

The abbreviations "Ap." shall refer to the Appendix in Appellant's Brief, "T." shall refer to the Index Tab Number, and "P." shall refer to the Page number.

STATEMENT OF THE CASE AND OF THE FACTS

The State generally agrees with the Statement of the Facts and of the Case as expressed by the District. However, certain facts warrant further clarification, as outlined below.

First of all, the District has stated that the proceeds from the issuance of the Water Control and Improvement Bonds, Unit of Development No. 31, Program Two (the "Bonds"), would be used to finance the Program Two Improvements (the "Improvements"), i.e., the on-site roadways and associated landscaping. However, a closer reading of the District's Water Management Plan reveals that the contemplated Improvements include paving, striping, signage, irrigation, bridges, an overpass, culverts, street lighting, a secondary drainage system, security gatehouses to limit access to those roadways, and extensive landscaping to provide an overall theme of a "Caribbean Island effect." (Ap.: T. 4 P. 170-171).

In addition, in order to fully appreciate the context in which this controversy arose, it is helpful to note that Unit of Development No. 31 (the "Unit") is more commonly known as Ballen Isles, part of the JDM Country Club. The Unit is being developed by Hansen-Florida II, Incorporated, et al. (the "Corporation"), and will include single family residences, multi-family housing, park areas, and three golf courses. (Ap.: T. 4 P. 166).

SUMMARY OF ARGUMENT

POINT I.

Florida's general constitutional prohibition against governmental aid to corporations was properly upheld by the Trial Court when it refused to validate these Bonds. See Art. VII, ss. 10, Fla. Const.

No valid public purpose is served in this case by financing the costs of construction of (1) roadways within an exclusive private development; (2) security gatehouses which will be used to bar the public from using those roadways; and (3) landscaping of those roadways to fulfill an overall theme of providing a Caribbean Island effect for the development.

POINT II.

The District had no authority under the provisions of its enabling legislation, i.e., Chapter 59-994, Laws of Florida, as amended and supplemented, particularly by Chapter 89-462, Laws of Florida, to issue the Bonds. Such legislation required the District to comply with the Safe Neighborhoods Act, ss. 163.501 - 163.522, Florida Statutes (1989). Since the District disregarded the requirements of the Safe Neighborhoods Act, the Trial Court properly denied validation of the Bonds.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY FOUND THAT THE INTENDED USE OF THE PROCEEDS OF THE BONDS BY THE DISTRICT TO FINANCE THE COST OF CONSTRUCTION OF SECURITY GATEHOUSES TO LIMIT ACCESS TO THE UNIT, AND THE PAVING, STRIPING, SODDING, AND LANDSCAPING OF THOSE LIMITED ACCESS ROADWAYS IN THE UNIT SERVES NO VALID PUBLIC PURPOSE.

Article VII, Section 10, of the Florida Constitution provides a general prohibition against government giving aid to corporations. Specifically, it states that:

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership, or person ...

While several exceptions are enumerated in this section, none of these are applicable to the instant case. Art. VII, ss. 10 (a) - (d), Fla. Const.

In addition to these enumerated exceptions, the case law in this area has developed certain other exceptions. These other exceptions involve bonds which were issued for proper public purposes.

Although the test in this case would not be the "paramount public purpose" test, the public interest still must be "present and sufficiently strong." Linscott v. Orange County Industrial Development Authority, 443 So.2d 97 (Fla. 1983); State v. Housing Finance Authority of Polk County, 376 So.2d 1158 (Fla.

1979); State v. Putnam County Development Authority, 249 So.2d 6 (Fla. 1971).

In addition, this Court has stated several times that:

> public bodies cannot appropriate public funds indiscriminately, or for the benefit of private parties, where there is not a reasonable and adequate public interest.

Linscott v. Orange County Industrial Development Authority, 443 So.2d 97 (Fla. 1983); State v. Housing Finance Authority of Polk County, 376 So.2d 1158 (Fla. 1979); State v. Putnam County Development Authority, 249 So.2d 6 (Fla. 1971).

The purpose of Article VII, Section 10, has been stated to be to:

> protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefitted.

State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980); Bannon v. Port of Palm Beach District, 246 So.2d 737 (1971).

Clearly, what we have in the instant case is a situation where public resources would be exploited by assisting the Corporation in its development of the Unit as an exclusive private residential complex. It is also clear that it is the public purpose, as opposed to the private purpose, which is, at most, insignificant and merely incidental to the benefits which the Corporation will reap by the issuance of the Bonds.

The proceeds of these Bonds will be used to construct, among other things, roadways and security gatehouses. These

gatehouses will be placed on the roadways at the entrance points to the Unit, i.e., the Ballen Isles Development. (Ap.: T. 3 P. 33 and 34). The purpose of these gatehouses, as was determined at the validation hearing, is to bar the general public from entering the Unit. (Ap.: T. 3 P. 58, 59, 65 and 119).

Of all the cases which the District has cited for the proposition that a valid public purpose exists in this case, the one that is most analogous to this case is State v. Sunrise Lakes Phase II Special Recreation District, 383 So.2d 632 (Fla. 1980).

The issue in Sunrise Lakes, Id., was whether a valid public purpose existed for the issuance of bonds by a recreation district for the purpose of purchasing recreation facilities within a condominium complex. Such facilities were to be available for use by the general public as well as by the condominium owners. The Court found that the bond issue served a valid public purpose. However, the Court stated that:

> The key is the availability of the facilities to the general public. Without that availability, there is no public purpose.

Id. at 633

Here, there is no availability to the general public. In fact, what we have instead are barriers, i.e., the gatehouses, which will deny the public access. Therefore, under the reasoning of Sunrise Lakes, Id., there is no valid public purpose for the issuance of the Bonds.

The State is not unmindful of the fact that a legislative declaration of a public purpose carries with it a presumption of validity, and should be given great weight. State v. Sunrise Lakes Phase II Special Recreation District, 383 So. 2d 631 (Fla. 1980); State v. Housing Finance Authority of Polk County, 376 So.2d 1158 (Fla. 1979). However, such declarations are not final. City of Daytona Beach v. King, 181 So. 1 (Fla. 1938).

In City of Daytona Beach, Id. at 3, discussing what is a public purpose, the Court stated that:

> where the purpose declared by statute to be such may in fact not be a (public) purpose, or where the purpose may be by the Constitution expressly or by implication excluded as a (public) purpose, or where the execution of the purpose may involve a violation of organic law, the courts will ultimately determine whether it is or is not a permissible (public) purpose, and in doing so will consider the pertinent facts that may be peculiar to the particular case as well as the controlling law in the premises. *

A review of the pertinent facts in this case requires that the legislative declaration of public purpose not be upheld, as no valid public purpose, in fact, exists.

In effect, the Corporation seeks to create, through the Improvements, a walled-city for the privileged few who can afford to reside there, where the public's rights of access and

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* The term "public" has been substituted for the term "municipal" as it appears in the original opinion, for purposes of this brief. No change in meaning results from such substitution.

travel will be severely restricted, and not as to just time, place, and manner.

As for the benefits to the Corporation, the construction of the security gatehouses and the roadways, the landscapin public from the use of the roadways, will serve to increase the value of the Unit. The Corporation will, therefore, be able to sell the homesites within the Unit at higher prices and will, thereby, realize greater profits.

In addition, the Corporation's profits will also be increased by the use of low-cost financing for these improvements. That is to say, that by using these tax-exempt Bonds to finance the cost of the security gatehouses, roadways, landscaping, etc., rather than using more conventional and, therefore, more expensive financing methods, the Corporation will be saving money resulting in another increase in its profits.

This is precisely the kind of exploitation of public resources which Article VII, Section 10, of the Florida Constitution prohibits.

Since there is no valid public purpose for the issuance of the Bonds, the District lacks the Authority to issue the Bonds.

POINT II

THE TRIAL COURT PROPERLY FOUND THAT THE ISSUANCE OF THE BONDS WAS NOT AUTHORIZED BY LAW, AS THE DISTRICT FAILED TO COMPLY WITH ITS ENABLING LEGISLATION BY NOT MEETING THE REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES.

The District is clearly mistaken in its assertions that compliance with Chapter 163, Florida Statutes (1989), and the timing of such compliance, are merely collateral issues outside the scope of the bond validation hearing.

The issue of the District's compliance with Chapter 163, Florida Statutes (1989), and, therefore, with its enabling legislation, Chapter 59-994, Laws of Florida, goes directly to the District's authority to issue the Bonds.

As for the timing of the District's compliance with Chapter 163, Florida Statutes (1989), and also, therefore, with the District's enabling legislation, there is no expression by the Legislature that the District may comply at some time after the issuance of the Bonds. Therefore, there is no authority for the District's argument that it may comply with Chapter 163, Florida Statutes (1989), at a later date.

Contrary to the District's belief that this issue can be analogized to the area of contracts and their affect on validation proceedings, this issue goes directly to the District's enabling legislation and, therefore, to the District's authority to issue the bonds.

The determination of whether a public body has such authority is within the scope of a bond validation hearing. State v. City of Panama City Beach, 529 So.2d 250, 251 (Fla. 1988).

The District was organized under, and operates according to, the provisions of Chapter 59-994, Laws of Florida, as amended and supplemented, and Chapter 298, Florida Statutes (1989). The District was created to preserve and protect water resources, for sanitary or agricultural purposes or when the same may be conducive to public health, convenience or welfare. The District was subsequently empowered to construct and maintain public utilities, including water and sewer, drainage, irrigation, water management, roadway or related activities including offsite improvements in Palm Beach County in an area more particularly described in the Special Act creating the District, as amended. (Ap.: T. 4 P. 164).

The District's enabling legislation was more recently amended by Chapter 89-462, Laws of Florida. This amendment empowered the District:

> to include provision in a water management plan pursuant to and in furtherance of the Safe Neighborhoods Act, ss. 163.501 - 163.522, Florida Statutes, for roads for the exclusive use and benefit of a unit of development and its residents. (Emphasis supplied.)

The resolution which the District passed and adopted on September 26, 1990, declared:

> that the designation of roads for the exclusive use and benefits of a Unit of

> Development under the provisions of Chapter 59-994, Laws of Florida, as amended and supplemented, and in furtherance of the Safe Neighborhoods Act, Section 163.501 through 163.522 Florida Statutes, is a public purpose for which public money may be borrowed, expended, loaned or granted. (Emphasis supplied.)

(Ap.: T. 13 P. 305 and 306)

This resolution, as adopted by the District, is not in compliance with the enabling legislation. Specifically, the resolution does not comply with Chapter 89-462, Laws of Florida. The District, in this resolution, conveniently left out a key phrase, i.e., "pursuant to," when referring to the Safe Neighborhoods Act, Section 163.501 - 163.522, Florida Statutes (1989).

In addition, the District admits that it did not meet the requirements of the Safe Neighborhoods Act, as enumerated in Sections 163.501 - 163.522, Florida Statutes (1989). (Ap.: T. 3 P. 56, 57, 58, 61 and 62). For example, it is uncontroverted that the District did not form a safe neighborhood district through one or more of the methods established in ss. 163.506, 163.508, and 163.511. Section 163.504, Fla. Stat. (1989). (Ap.: T. 3 P. 55). Neither, for example, did the District prepare and adopt the mandated safe neighborhood improvement plan. Section 163.516, Fla. Stat. (1989). (Ap.: T. 3 P. 57).

The term "pursuant to" is defined in the dictionary as:

> in the course of carrying out: in conformance to or agreement with: according to.

Webster's Third New International Dictionary, Unabridged 1848 1976); and Black's Law Dictionary 1112 (5th ed. 1979).

This Court has adopted a similar definition, stating that:

> "Pursuant" means conformable to, agreeable to, or in accordance with.

Potter v. Realty Securities Corporation, 77 Fla. 768, 82 So. 298 1919).

According to well-settled rules of statutory construction, the intent of the Legislature in enacting a statute must be determined from the language of the statute itself. S.R.G. Corp. v. Department of Revenue, 365 So.2d 687 (Fla. 1978); Thayer v. State, 335 So.2d 815 (Fla. 1976); Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918).

In construing the language of a statute, the Supreme Court of Florida has consistently adhered to the "plain meaning rule." Public Health Trust of Dade County v. Lopez, 531 So.2d 946 (Fla. 1988); Holly v. Auld, 450 So.2d 217 (Fla. 1984); Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla. 1973), conformed to 288 So.2d 536 (Fla. 1974); Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918). Simply stated, the language used in a statute must be given its plain and obvious meaning.

In addition, it is assumed that the Legislature knows the meaning of words, and that it expresses its intent through the use of the words found in the statute. S.R.G. Corp. v. Department of Revenue, 365 So. 2d 687 (Fla. 1978); Thayer v.

State, 335 So.2d 815 (Fla. 1976); Rinker Materials Corp. v. City of North Miami, 286 So.2d 522 (Fla. 1973), conformed to 288 So.2d 536 (Fla. 1974); Brooks v. Anastasia Mosquito Control District, 148 So.2d 64 (Fla. 1st DCA 1963); Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918).

When these principles are applied to the case at hand, we must conclude that the Legislature, when enacting Chapter 89-462, Laws of Florida, knew the meaning of the term "pursuant to." Further, we must conclude that by the inclusion of the term "pursuant to" in this enabling legislation the Legislature was expressing its intent that the District's water management plan must be "pursuant to," i.e., in conformance to or agreement with or according to the Safe Neighborhoods Act, Sections 163.501 - 163.522, Florida Statutes (1989), not merely "in furtherance of" that Act, in order to designate roads for the exclusive use and benefit of the Unit and its residents.

The District's admitted failure to comply with its enabling legislation, Chapter 59-994, Laws of Florida, as amended and supplemented, particularly by Chapter 89-462, Laws of Florida, by not meeting the requirements of the Safe Neighborhoods Act, Sections 163.501 - 163.522, Florida Statutes (1989), means that the District lacks the requisite authority to issue the Bonds at issue here.

CONCLUSION

For the reasons stated above, the State of Florida respectfully submits that the Trial Court properly found that the intended use of the proceeds of the Bonds by the District to finance the cost of construction of security gatehouses to limit access to the Unit, an exclusive, private residential complex; and the paving, striping, sodding and landscaping of those limited access roadways in the Unit serves no valid public purpose.

The State further respectfully submits that the Trial Court properly found that the District was without authority to issue the Bonds, as the District had failed to comply with its enabling legislation by disregarding the requirements of Chapter 163, Florida Statutes (1989).

As was stated in State v. Town of Sweetwater, 112 So. 2d 852 at 854 (Fla. 1959):

> It is an elemental principle of appellate procedure that every judgment, order or decree of a trial court brought up for review is clothed with the presumption of correctness and that the burden is upon the appellant in all of such proceedings to make error clearly appear.

Therefore, the State respectfully requests this Court to affirm the decision of the Trial Court denying validation of the Bonds.

Respectfully submitted,

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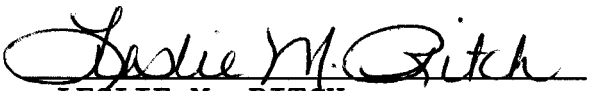
FIFTEENTH JUDICIAL CIRCUIT

By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to CHARLES F. SCHOECH, ESQUIRE, Caldwell and Pacetti, 324 Royal Palm Way, Palm Beach, Florida 33480, on this the 29th day of January, 1991.

Leslie M. Ritch

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