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IN THE SUPREME COURT OF FLORIDA

WILLIAM N. RICH, JR., MARY L.
SIMS, BORIS W. BOOKIN, EARLE
SNIDER, ROBERT D. CONNER,
RICHARD L. MOULTON, CHARLES
LATHOM, VALGENE T. RIEDEL,
RUSSELL G. DAY, DALE R.
LYDIGSEN, SHIRLEY A. LYDIGSEN,
NORMA B. HENRETTA, and THOMAS
E. HENRETTA,

Appellants,

vs.

CASE NO. 85,494

STATE OF FLORIDA,
VILLAGE CENTER COMMUNITY
DEVELOPMENT DISTRICT and
LAZY B. CATTLE VENTURE, LTD.,
a Florida limited partnership,

Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT IN AND FOR
LAKE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE
LAZY B. CATTLE VENTURE, LTD.

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PRELIMINARY STATEMENT

Appellee, Lazy B. Cattle Venture, Ltd., a defendant below, is hereafter referred to as "appellee". All emphasis is supplied unless otherwise noted. Citations to the portions of the record on appeal contained in the Appellee's Appendix will be made as follows: (A-App., Exhibit "__", pg.__). Citations to the portions of the record on appeal contained in the Appellant's Appendix will be made as follows: (App., Exhibit "__", pg.__).

STATEMENT OF THE CASE AND FACTS

Pursuant to it's Notice of Filing dated February 9, 1995, the Village Center Community Development District amended Exhibits C and D to the original complaint and filed the correct interlocal agreements. (A.-App., Exhibits "2", "3", and "4") These amended Exhibits were not included in appellants' Appendix. Also missing from the appellants' Appendix is the executed and recorded interlocal agreement with Lake County. (A.-App., Exhibit "5")

It should be noted that, beginning on page 2 of appellants' brief in the Statement of the Case and of the Facts, appellants make a number of factual statements that are unsupported in the record other than in appellants' own unsworn Memorandum of Law and for which there was no evidence introduced at the hearing before the circuit court.

SUMMARY OF THE ARGUMENT

The appellants have no standing to prosecute the pending appeal. The circuit court properly considered the appellants' standing to participate in the bond validation pursuant to Section 75.07, Florida Statutes. The circuit court correctly determined that the appellants were not persons "interested" under the provisions of that statute and appropriately determined that the appellants did not have the right to become a party to the action by filing an Answer and Affirmative Defenses or by moving to intervene.

Even if the appellants were allowed to participate in the bond validation proceeding, the circuit court properly entered the final judgment validating the bonds. The Assistant State Attorney appeared on behalf of the people of the State of Florida and argued to the circuit court on the sole issue which the appellants bring before this Court, that of "legitimate public purpose". The public purpose for the validation of the bonds is set forth in detail in the enabling legislation Chapter 190, Florida Statutes and in the interlocal agreements introduced into evidence at the hearing.

No further proceedings are necessary or appropriate to consider the Complaint filed by the Villages District and the Final Judgment Validating Bonds should be affirmed without further delay.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THAT THE APPELLANTS ARE NOT INTERESTED PERSONS UNDER §75.07, FLORIDA STATUTES.

Appellee acknowledges that this court has jurisdiction of appeals of final orders entered in proceedings for validation of bonds pursuant to Rule 9.030(a)(1)(B)(i), Florida Rules of Appellate Procedure. Contrary to appellants' position however, that review is specifically limited by Section 75.08, Florida Statutes to appeal by "any party to the action whether plaintiff, defendant, intervenor or otherwise..."

When this Court decided the case of City of Fort Myers v. State Atlantic Coast line R. Co., 176 So. 483 (Fla. 1937), Section 5108(3298.), Florida Statutes (1927), which was the predecessor to the current Section 75.07, Florida Statutes, stated as follows:

"Any taxpayer or citizen may become a party to said proceedings; and any party thereto, whether petitioner, defendant or intervenor, dissatisfied with the decree of the court, may appeal therefrom to the Supreme Court..."

In the City of Fort Myers, there was a question raised in the answer of an intervenor as to the effect of refunding bonds where the boundaries of the municipality had been reduced by legislative action after the original bonds were issued. The Court noted that the intervenor was a taxpayer but was neither a bondholder nor a creditor of the city. The Court stated that a taxpayer adversely effected can raise the question. Id. at 484. This requirement of an adverse effect, even for an individual who is listed in the statute as a specific party to the proceedings, was reinforced in

the case of Atlantic Coast line R. Co. v. City of Lakeland, 177 So. 206, 214 (Fla. 1937).

Prior to 1967, Section 75.07, Florida Statutes, provided that:

"Any property owner, taxpayer, citizen or person interested may become a party to said proceedings by pleading to the said petition on or before the time set for hearing is provided in Section 75.05, or thereafter by intervention upon leave of court..." Section 75.07, Fla. Stat. (1965)

The language allowing for intervention after the hearing on the bond validation was eliminated by the 1967 Amendment and that section now provides that:

"any property owner, taxpayer, citizen, or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing." Section 75.07, Fla. Stat. (1993)

The appellants filed an Answer and Affirmative Defenses simultaneously with a Motion to Intervene in an attempt to be designated as parties or intervenors in the action below. The appellants noticed their Motion to Intervene at the time scheduled for the final hearing on the Complaint to validate the bonds (A-App., Exhibit "1") and this issue was argued before the court (App., Exhibit "8", pgs. 5-20).

The circuit courts are given jurisdiction to determine "the validation of bonds and certificates of indebtedness and all matters connected therewith" Section 75.01, Fla. Stat. (1993). In its exercise of this jurisdiction, the circuit court ruled on the issue of appellants' standing to appear as interested persons pursuant to their Motion to Intervene and Answer and Affirmative Defenses prior to proceeding with the testimony in the bond

validation proceeding. The court heard argument on this issue and properly reviewed the case law outlining and defining the interest required for intervention under Rule 1.230, Florida Rules of Civil Procedure as analogous to the interested person requirement under Section 75.07. That rule allows for intervention for anyone "claiming an interest" in pending litigation.

The cases of Heatherwood Community Homeowners Assoc., Inc. v. Florida Rock Industries, Inc., 629 So. 2d 928 (Fla. 5th DCA 1993) and Union Central Life Insurance Company v. Carlisle, 593 So. 2d 505 (Fla. 1992) are informative in the court's inquiry on this issue. The Heatherwood Court points out that the person must "either gain or lose by the direct legal operation and effect of the judgment." There must be a "direct and immediate interest". Heatherwood, 629 So. 2d at 929.

The Union Central Court tells us that the test as to what interest entitles a party to intervene is that of "such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment". Union Central, 593 So. 2d at 507.

In appellants' Memorandum in Support of the Motion to Intervene (App., Exhibit "6"), when arguing that there is no benefit to the members of the development district by the approval of the bonds, appellants acknowledge that:

"There is likewise no benefit to the Intervenor and the other residents of the Villages since they will be in the same position as they were in prior to the transaction. The only impact will be that any monies properly payable by the Intervenor and the other residents of the Villages which would otherwise be considered as 'profit'

to the payee will be converted from taxable income into tax exempt income." (App., Exhibit "6", pg. 6)

They further admit that:

"intervenors and other residents of the Villages are not members of the CDD nor are they located within the geographic limits of the CDD....While intervenors recognize the issue of whether there is sufficient revenue to repay the bonds is a 'collateral issue' and such is not within the purview of this court relative to the bond validation proceedings." (App., Exhibit "6", pg.4)

These admissions were acknowledged at the hearing by counsel for the appellants. (App., Exhibit "6", pgs.13-14)

Appellants argued that they were "interested" in the sense that the recreational facilities to be purchased through the issuance of the bonds were developed for the exclusive use of residents of the Villages and that the maintenance fees they pay to the developer will be the revenue to help pay off the bonds (App., Exhibit "8", pg.14). They acknowledge, however, that there will be no change of position as a result of the bond validation proceedings and confirm that they will continue to have exclusive use of the same facilities and that these fees will remain as before the bond validation. (App., Exhibit "8", pg.13)

The lower court determined that the appellants would neither gain nor lose by the Final Judgment validating the bonds. There was no assertion or proffer of evidence of any kind to show the court that the appellants would either gain or lose by the operation and effect of the judgment.

Appellants must demonstrate that the trial court abused its discretion in order to prevail on this appeal. State v. Florida

State Improvement Commission, 75 So. 2d 1 (Fla. 1954). There is no evidence in the record that the lower court abused its' discretion in denying the appellants' attempt to intervene and/or appear as a party in this proceeding. As appellants were neither appropriate parties nor intervenors to the bond validation proceedings under Section 75.07, Florida Statutes or Rule 1.230, Florida Rules of Civil Procedure, the appeal brought before this court by the appellants should be dismissed and the judgment of the lower court affirmed.

**II. THE CIRCUIT COURT CORRECTLY FOUND THAT
THE PURPOSE OF THE BONDS IS LEGAL**

Even if the appellants would have been allowed to intervene, the only appropriate decision on their sole issue on appeal is that the purpose for the issuance of the bonds was legal and the Court properly entered the Final Judgment Validating Bonds.

Appellees agree that judicial inquiry in bond validation proceedings is sharply limited. Warner Cable Communications, Inc. v. City of Niceville, 520 So. 2d 245 (Fla. 1988). The only three areas of the inquiry are

- (1) whether the public body has the authority to issue the subject bonds;
- (2) whether the purpose of the bonds is legal; and
- (3) whether the bond issue complies with all legal requirements.

"Other matters are collateral to a bond issue and will not be addressed in a validation proceeding." Id. at 246.

The appellants concede that their only point on appeal relative to the appropriateness of the entry of the Final Judgment Validating Bonds (other than their right to participate) is the public purpose of the bond issue (Appellants' brief, note 2). This issue would seemingly only apply to the second area of inquiry noted above.

In the case of Zedeck v. Indian Trace Community Development District, 428 So. 2d 647 (Fla. 1983) cited by appellants, this court approved Florida Statutes Chapter 190, ("the Act"), as a legislative declaration of public purpose and held that such a declaration is presumed valid and should be considered correct unless patently erroneous. Id. at 648. Therefore, if the purposes for which the bonds were validated are permissible under the Act, the public purpose is presumed valid and should be considered correct.

The legislature went to considerable lengths to outline the public purpose for implementing the Act. In Section 190.002, the legislature lists its findings, policies and intent. It proclaims that these districts "can constitute a timely, efficient, effective, responsive, and economic" method to provide "for delivery of capital infrastructure in order to service projected growth without overburdening other governments and their taxpayers". Section 190.002(1)(a), Fla. Stat. (1993). The legislature declares the policy in the state to be that "independent districts are a legitimate alternative method available for use by the private and public sectors, as authorized

by state law, to manage and finance basic services for community developments." Section 190.002(b), Fla. Stat. (1993).

The general powers of a Community Development District created pursuant to the Act are set forth in Section 190.011. Community Development Districts may exercise the power "(T)o borrow money ... for any district purposes and enter into agreements required in connection therewith;..." Section 190.011(4), Fla. Stat. (1993). District purposes are defined in terms of those powers that Community Development Districts are authorized by statute to exercise.

Under Section 190.012 of the Act, Community Development Districts are authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructures including:

- (1) Water management and control for the lands within the district;
- (2) Parks and facilities for indoor and outdoor recreational, cultural, and educational uses; and
- (3) Security, including, but not limited to, guardhouses, fences and gates.

As described in Exhibit "B" of the Validation Complaint, the assets being acquired with the bond proceeds being validated are:

- (1) water management control systems which serve district lands;

(2) parks and facilities for indoor and outdoor recreational and cultural uses serving the community generally known as the Villages; and

(3) security facilities including guardhouses, fences and gates. (App., Exhibit "1", pg.3)

Since the assets being acquired with the proceeds of the bonds being validated and the services to be performed are within the purposes of the Act governing Community Development Districts, they are presumptively valid and should be considered correct.

In addition, three local governmental entities have determined that the public purposes for which the bonds were validated are present and in fact legal. In anticipation of providing the services pursuant to acquiring the water control systems and the recreational and security facilities, the District entered into Interlocal Agreements with the,

- (1) Town of Lady Lake, Florida (A-App., Exhibit "3"),
- (2) County of Lake, Florida (A-App., Exhibit "5") and
- (3) Village Community Development District No. 1. (A-App., Exhibit "4")

Those Interlocal Agreements, specifically contemplated by Chapter 163 of the Florida Statutes, and Section 190.011(12) of the Act, authorize the District to provide recreational, security and water management control services within that portion of the Villages lying within their respective governmental jurisdictions. The Interlocal Agreements are additional legislative declarations of public purpose which are presumptively valid and correct.

All three interlocal agreements reference Section 163.01, Florida Statutes, the "Florida Interlocal Corporation Act of 1969" and the enabling legislation.

The purpose of 163.01 outlined by the legislature in Section 163.01(2) is

"to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities." Section 163.01, Fla. Stat. (1993)

The Zedeck case relied upon by appellants specifically pertained to a special district issuing bonds pursuant to Chapter 190. Broward County created a special taxing district which went before the circuit court to approve the water and sewer system expansion bonds permitted by Chapter 190. The challenge raised by Zedeck, an owner of property within the special taxing district, was that the bonds' primary purpose was to benefit private property. In that case, the Court found that the expansion of water and sewer systems contemplated by the district and the bond issue for implementing that expansion are within the purposes of Chapter 190 (specifically referencing 190.002, 190.011, 190.012 and 190.016) even though the system primarily affected land owned by a private entity.

As support for their position, appellants cite State of Florida v. Sunrise Lakes Phase II Special Recreation District, 383 So. 2d 631 (Fla. 1980). That particular case concerned bond

validation for a district formed pursuant to Chapter 418. The appellants cite Sunrise Lakes for the proposition that improvements in the districts must benefit residents in the district. In further support of that argument the appellants lapse into their position that the method of repayment of the bonds is inappropriate or in some way insufficient. This latter argument is clearly collateral and not appropriate in a bond validation proceeding. See, Warner Cable Communications, Inc., supra; Sunrise Lakes, supra; Wohl v. State, 480 So. 2d 639 (Fla. 1985); and Lodwick v. School District of Palm Beach County, 506 So. 2d 407 (Fla. 1987).

Even though the "benefit to the district residents" argument is misplaced given the clear language of the Act, the testimony of Mr. Gary Moyer, the manager of the District and Mr. John Parker, a partner in Lazy B Cattle Venture, Ltd., which is a property owner within the District, clearly establishes that property owners within the District have determined that the operation of water management and control systems serving District lands, as well as recreational and security facilities serving the community known as the Villages, directly benefits the owners within the District. (App., Exhibit "8", pg.44/lines 14-17; pg.55/lines 3-25; pg.56/line 1; pg.61/lines 24-25; pg. 62/lines 1-14; pg.67/lines 23-25; pg.68/lines 1-10). In fact, no property owner within the District complained of a lack of benefit in the bond validation proceeding. All of the witnesses were vigorously cross-examined by the State Attorney on the public purpose issue which was the primary challenge raised by the State Attorney at the hearing (App.,

Exhibit "8", pg. 19/lines 3-12). All indicated that there was a strong and definitive benefit to the owners of property within the district for the acquisitions related to the issuance of the bonds. It is noteworthy that the State Attorney has elected not to participate in the appeal of this issue.

As this Court stated in Wohl v. State of Florida , "The Final Judgment validating the Commission's revenue bonds comes to the Court with the presumption of correctness, and the appellants must demonstrate from the record, the failure of the evidence to support the Commission's and trial court's conclusions." Id., at 641.

Appellants assert that the purpose of the bond is illegal because the property owners within the District are not benefitted. Appellants' assertion is contrary to the evidence presented in the bond validation proceeding, and contrary to Florida law. In light of the public purpose determinations by (1) the Florida State Legislature as evidenced by Section 190.012 of the Act, (2) the local governmental determinations as evidenced by the Interlocal Agreements, and (3) the testimony of property owners within the District, the Appellants have failed to demonstrate from the record there is insufficient support for the trial court's conclusions and the Final Judgment Validating Bonds should be affirmed.

CONCLUSION

"It is the intent of the law that validations be expedited at the earliest time reasonably possible." Rianhard v. Port of Palm Beach District, 186 So.2d 503, 505 (Fla. 1966). In this spirit Rule 9.110, Florida Rules of Appellate Procedure allows for a time-shortened procedure for appeals from bond validation proceedings.

The record in this case, when viewed in light of the applicable law, conclusively shows that:

(1) The trial court did not abuse it's discretion in determining that the appellants are not proper parties to this action and are not appropriate intervenors and therefore have no standing to pursue this appeal; and

(2) Even if appellants had been allowed to participate, the lower court correctly determined that the purpose of the bonds was legal.

Given this analysis of the case, Lazy B. Cattle Venture, Ltd. respectfully requests that this Court affirm the order of the lower court without further argument and allow the process of issuance of the bonds to proceed as quickly as possible.

CERTIFICATE OF SERVICE


I CERTIFY that a true copy of the foregoing Answer Brief of Appellee Lazy B. Cattle Venture, Ltd. and Appendix of Appellee Lazy B. Cattle Venture, Ltd. have been furnished by hand delivery to:

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