

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.

FILED

SID J. WHITE

APR 24 1995

CLERK, SUPREME COURT

By _____

Chief Deputy Clerk

APPELLANTS' INITIAL BRIEF

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

THE HONORABLE MARK J. HILL PRESIDING

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STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal from final orders entered in a proceeding for validation of bonds in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Lake County.

On or about February 2, 1995, Appellee filed in the Circuit Court its Validation Complaint. (App., Exhibit "1")¹. Also on February 2, 1995, the Circuit Court entered a Notice and Order to Show Cause why the bonds sought to be validated by the Appellee's Validation Complaint should not be validated and confirmed. (App., Exhibit "2"). The Circuit Court's Notice and Order to Show Cause set a hearing for March 2, 1995 at which time "taxpayers, property owners and citizens of Village Center Community Development District, including non-residents owning property or subject to taxation therein, and others having or claiming any rights, title or interest in property to be affected by the issuance of said Bonds or to be affected thereby," were to show cause why the bonds should not be validated. In response to the Notice and Order to Show Cause, the Appellants, designated as Intervenors below, filed their Answer and Affirmative Defenses², Motion to Intervene, Motion

¹References to the Appendix shall be as follows: (App., Exhibit "___"). References to Exhibits to Documents within the Appendix shall be as follows: (App., Exhibit "___", Exhibit "___").

²In their Answer and Affirmative Defenses, Appellants asserted, inter alia, that no legitimate public purpose exists for the issuance of the revenue bonds and that, because the members of the Appellee-District issuing the bonds would not be able to utilize a substantial portion of the Facilities, the issuance of the bonds was not within the purview of Chapter 190, Florida Statutes. Appellants also asserted, as an affirmative defense, that repayment of the subject bonds seeks to impose obligations on

for Continuance, and Intervenor's Memorandum of Law on or about February 28, 1995. (App., Exhibits "3", "4", "5", and "6", respectively).³

The primary Appellee in this bond validation proceeding is Village Center Community Development District (hereinafter "Appellee-District") a community development district created in 1992 under Chapter 190, Fla. Stat. (1993), the Uniform Community Development District Act of 1980, as amended through 1994 (the "Act"). (App., Exhibit "8", pg. 26). The Appellee-District, which is located completely within the Town of Lady Lake, Lake County, Florida, was created pursuant to the Act by Ordinance 92-06 of the Town Commission of the Town of Lady Lake, Florida adopted on August 17, 1992. (App., Exhibit "1", pg. 2 & Exhibit "A" thereto).

The Appellants are residents of either Lake County, Florida or Sumter County, Florida. Each of the Appellants reside in either a residential community known as the Villages of Lady Lake or a residential community known as the Villages of Lake Sumter (sometimes hereinafter collectively referred to as the "Villages"). The Villages of Sumter was developed by the Villages of Lake-

Appellants, and others similarly situated, in violation of applicable Declarations of Restrictions for the residential communities of the Villages of Lady Lake and the Villages of Lake Sumter. Appellants concede that this defense is a collateral issue beyond the scope of judicial inquiry in a bond validation proceeding. The sole issue which Appellants sought to contest in the bond validation proceeding below, and in this appeal, is the public purpose of the bond issue.

³Appellee, Lazy B. Cattle Venture, Ltd., also filed an Answer to Validation Complaint on March 2, 1995 which admitted all allegations of the Validation Complaint and asserted no affirmative defenses. (App., Exhibit "7").

Sumter, Inc., a Florida corporation, and the Villages of Lady Lake was developed by Orange Blossom Hills, Inc., a Florida corporation. There is a common promotional scheme for the sale and marketing of residences within the Villages. Likewise, there are certain recreational facilities (the "Facilities") consisting, inter alia, of executive golf courses, tennis courts, and other amenities which are for the sole and exclusive use of residents of the Villages. The constituent documents of the Villages provide that each resident of the Villages will pay a fee (the "Amenities Fee") for the maintenance of the Facilities. (App., Exhibit "6", pg. 1-2).⁴

The Facilities are owned by the Villages of Lake-Sumter, Inc. (hereinafter referred to as the "Seller"). Under the transaction which is proposed by Appellee, the Seller will convey the Facilities to the Appellee, and the purchase by the Appellee of the Facilities is to be funded by the bonds which form the subject matter of this proceeding. (App., Exhibit "1"). The Seller and the Appellee have entered into an agreement (hereinafter referred to as the "Purchase Agreement") to effectuate this transaction. (App., Exhibit "1", Exhibit "B"). The geographic area encompassed by the Appellee-District consists of retail and commercial buildings and facilities. None of the area constituting the residential lots whose owners have exclusive use of the Facilities are within the geographic confines of the Appellee-District. Also,

⁴Because the Appellants' were denied the right to participate in the bond validation proceeding and to present evidence, the only source for these facts is the Memorandum of Law filed by Appellants.

with one minor exception, the Facilities are outside of the Appellee-District. (App., Exhibit "8", pg. 27-28).

The purchase of the Facilities is to be financed by the issuance by the Appellee of revenue bonds, and the primary source of repayment of the bonds, as they relate to the Facilities, will be the Amenities Fees payable by the Appellants and other similarly situated residents of the Villages. The Seller has a contractual obligation to the Appellants and other residents of the Villages to maintain the Facilities for the exclusive use of the Appellants and the other residents of the Villages. Because of this contractual agreement, the Facilities will not be available for the use of property owners in the Appellee-District. (App., Exhibit "8", pg. 29, 31-33).

At the hearing scheduled by the Court in its Notice and Order to Show Cause, Appellants appeared through counsel and attempted to participate in the bond validation proceedings in their status as Intervenors. However, after argument of counsel, the Court denied the Appellants' Motion to Intervene and denied the Appellants the ability to participate in the bond validation proceeding in the capacity as Intervenors. (App., Exhibit "8", pg. 20). The Circuit Court thereafter entered its Order Denying Motion to Intervene. (App., Exhibit "9") It is this denial that is the subject matter of this Appeal.

SUMMARY OF ARGUMENT

The Circuit Court erred in denying the Appellants the ability to participate as Intervenors in the bond validation proceeding. Pursuant to §75.07, Fla. Stat. (1993) any "person interested" may intervene in a bond validation proceeding merely by "pleading to the complaint at or before the time set for hearing." In accordance with §75.07, Appellants pled to the Validation Complaint by filing their Answer and Affirmative Defenses. (App., Exhibit "3"). Out of an abundance of caution, however, the Appellants also filed a Motion to Intervene. (App., Exhibit "4"). Merely by filing the Answer and Affirmative Defenses at or before the time set for the hearing, the Appellants became parties to the action and should have been allowed the opportunity to participate in the bond validation hearing, to present testimony, to cross-examine the witnesses, and to otherwise present their case.

By denying the Appellants the ability to participate in the bond validation proceeding, the Circuit Court denied the Appellants the ability to present evidence and elicit testimony which goes to the issue of whether the proposed project for which the bonds were sought constituted a public purpose. Specifically, the Appellants, in their Answer and Affirmative Defenses, asserted that no legitimate public purpose exists for the issuance of the revenue bonds and that, because the members of the Appellee-District issuing the bonds would not be able to utilize a substantial portion of the Facilities, the issuance of the bonds was not within the purview of Chapter 190, Florida Statutes.

Because Appellants were denied the opportunity to participate as Intervenors in the bond validation proceeding, the Order Denying Motion to Intervene and the Final Judgment Validating Bonds should be reversed, and this matter should be remanded to the Circuit Court with instructions to conduct another bond validation hearing at which the Appellants will be allowed to participate, present evidence, and cross-examine the witnesses presented by the Appellee-District.

ARGUMENT

I. JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction to of this appeal pursuant to Fla. R. App. P. 9.030(a)(1)(b)(i) in that this is an appeal from final orders entered in a proceeding for the validation of bonds. Furthermore, as required by Rule 9.030, general law provides for this appeal. Specifically, §75.08, Fla. Stat. (1993) states, as follows:

Any party to the [bond validation] action whether plaintiff, defendant, intervenor or otherwise, dissatisfied with the final judgment, may appeal to the Supreme Court within the time and in the manner prescribed by the Florida Rules of Appellate Procedure.

Appellants concede that the scope of judicial inquiry into the validation of bonds is limited. This three-fold scope of inquiry has been defined by this Court as follows:

Judicial inquiry in bond validation proceedings is sharply limited. It extends only to determining if a public body has the authority to issue the subject bonds, that the purpose of the bonds is legal and to insuring that the bond issue complies with all legal requirements. Other matters are collateral to a bond issuance and will not be addressed in a validation proceeding.

Warner Cable Communications, Inc. v. City of Niceville, 520 So. 2d 245 (Fla. 1988) (citations omitted). Even in light of this limited scope of judicial review, the Circuit Court and this Court may inquire into the public purpose of the project which is to be financed by the bonds.

Appellants also concede that "a legislative declaration of public purpose is presumed valid and should be considered correct unless patently erroneous." Zedeck v. Indian Trace Community Development District, 428 So. 2d 647 (Fla. 1983). However, had Appellants been provided the opportunity to participate in the bond validation proceeding, they could have presented evidence and elicited testimony from the Appellee-District's witnesses to show the Circuit Court the patent error in the legislative declaration by the Appellee-District that the project is for a public purpose. (App., Exhibit "1", Exhibit "E").

II. THE CIRCUIT COURT ERRED IN DENYING APPELLANTS THE RIGHT TO INTERVENE.

§75.07, Fla. Stat. (1993) provides:

Any property owner, taxpayer, citizen or person interested may become a party to the [bond validation] action by moving against or pleading to the complaint at or before the time set for hearing. At the hearing the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay.

As provided by §75.07, the Appellants pled to the Appellee's Validation Complaint by filing their Answer and Affirmative Defenses (App., Exhibit "3"). By so doing, the Appellants became a party to the action. At the hearing on the Order to Show Cause, the Appellee took the position that the Intervenors were not property owners within the community development district, were not taxpayers within the community development district, and were not citizens of the community development district. (App., Exhibit "8", pg. 8-9). The Appellants conceded this position, but argued that they were interested persons within the meaning of §75.07. Appellants argued that, because they had the exclusive right to use the Facilities which would be acquired through the issuance of the bonds and that their Amenities Fees would be used to retire the bonds, they had an interest in the matter. (App., Exhibit "8", pg. 14-15).⁵

⁵The transcript of the bond validation hearing incorrectly indicates that it is Mr. Thornton, counsel for Appellee, who is speaking at page 14 beginning on line 12, but this argument was made by Mr. McFall, counsel for the Appellants.

Appellee, however, took the position that Appellants were not "interested" in the legal sense. (App., Exhibit "8", pg. 9). The Circuit Court found that the Appellants' position would not change after the bond validation and that they were therefore not "interested" in the legal sense. (App., Exhibit "8", pg. 13-14).

Appellants clearly were interested persons within the meaning of Chapter 75, Florida Statutes. There is a dearth of authority interpreting the term "person interested" as used in §75.07. But see Meyers v. City of St. Cloud, 78 So. 2d 402 (Fla. 1955) (change in Chapter 75 in direction of liberalizing procedure and extending rights of interested persons). However, in light of the facts and the argument presented by Appellants at the hearing in the Circuit Court, Appellants are interested in this bond validation proceeding and should have had the opportunity to participate therein, and the Circuit Court erred in denying them that opportunity.

III. APPELLEE FAILED TO DEMONSTRATE A PUBLIC PURPOSE FOR ISSUANCE OF BONDS.

Judicial inquiry in a bond validation proceeding is threefold in nature, the obligation of the Court being to determine: (1) whether the public body in question has the authority to issue the subject bonds under the Florida Constitution and statutes; (2) whether the purpose of the bonds is legal; and (3) whether the bond issue complies with all legal requirements related to their issuance. Warner Cable Communications, Inc. v. City of Niceville, 520 So. 2d 245, 246 (Fla. 1988); Wohl v. State, 480 So. 2d 639 (Fla. 1985). The second consideration specified above is lacking in the instant case in that no public purpose is served by the issuance by the bonds. The end result of the transactions contemplated by the Appellee and the Seller will result in the ownership of the Facilities by the Appellee and the creation of a debt from the Appellee to the holder of the bonds. There will be no benefit to the residents of the Appellee-District, if in fact there are any such residents, nor to the owners of property within the Appellee-District, since neither of these groups are permitted to utilize the Facilities. (App., Exhibit "8", pg. 29, 31-33).

Appellants and other residents of the Villages are not members of the Appellee-District nor are their residences located within the geographic limits of the Appellee-District. Appellants and other residents of the Villages contracted with the Seller or the developer of their particular residential community, as the case may be, to pay an amenities fee to cover the costs of maintenance

of the Facilities. While Appellants recognize that the issue of whether there are sufficient revenues to repay the bonds is a "collateral issue" and as such is not within the purview of this Court or the Circuit Court relative to the bond validation proceedings, the fact that repayment of the Bonds may require expenditures in excess of the sums required for maintenance of the Facilities does bear upon the issue of whether the bonds have been issued for a legitimate public purpose. This is an issue which Appellants were denied the opportunity to explore at the bond validation hearing.

In State of Florida v. Sunrise Lake Phase II Special Recreational District, 383 So. 2d 631 (Fla. 1980), this Court reviewed the acquisition by a recreation district created in accordance with Chapter 418, Part II, Fla. Stat. of the recreational facilities of a single, condominium development. This Court stated that

the purpose of Chapter 418, Part II, is to allow municipalities and counties to designate a limited geographic area as a recreation district for the purpose of providing the acquisition and improvement of recreational facilities. We must conclude that the acquisition of the facilities within the instant condominium complex is no different than acquiring similar facilities in a large single-family housing development serving the same number of people. The key is the availability of the facilities to the general public. Without that availability, there is no public purpose.

Id. at 633. (Emphasis added). This Court went on to say that "[s]imilar to other special districts, these recreation districts are essentially financing vehicles which allow residents of a limited geographic area to provide for improvements that

substantially benefit the residents in the district." *Id.* at 633. (Emphasis added).

§190.002(2)(b), Fla. Stat. (1993) provides "[t]hat 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." Implicit in the rationale of Chapter 190 is the concept that the "community developments" contemplated by the statute are those which benefit members of the community development district. In Zedeck v. Indian Trace Community Development District, 428 So. 2d 647 (Fla. 1983), this Court held that even though the expansion of water and sewer systems contemplated by the community development district in question, and the bond issue for implementing the same, would primarily affect private property within the confines of the district, the expansion and bond issue were within the purposes of the statute governing the establishment of the community development district. This Court went on to hold that this legislative declaration of public purpose would be presumed valid and should be considered correct unless patently erroneous. As stated in Zedeck, there may be a greater benefit to some members of a district than to others, but nevertheless, the expenditure must be for the benefit of members of the district.

In the instant case, there is no benefit to the members of the Appellee-District, and Appellants were denied the ability to make this showing in the Circuit Court. The Amenities Fees paid by Appellants are collectible by the Seller, or any other party, only

in such amounts as are necessary for the maintenance of the Facilities. "Maintenance" of the Facilities does not contemplate any sums to be paid for capital acquisition costs or interest thereon. Accordingly, there is no way in which the bonds can be repaid. Even if the contention of the Appellants as to the proper computation of the Amenities Fee is erroneous, there is still no benefit to the members of the Appellee-District. There likewise is no benefit to the Appellants 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 Appellants, 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. This clearly is not a public purpose. Again, Appellants were denied the opportunity to present this issue to the Circuit Court.


CONCLUSION

In light of the above argument, Appellants should have been afforded an opportunity to be heard and to participate in the bond validation proceeding. It was error for the Circuit Court to deny the Appellants the right to so participate. Accordingly, this Court should reverse the Order Denying Motion to Intervene and Declaring Motion for Continuance Moot and the Final Judgment Validating Bonds and remand this proceeding to the Circuit Court for a new hearing on the validation of the subject bonds with instructions to permit the Appellants to participate in such hearing. Appellants further request such other relief as the Court may deem just and property.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 1995, a true and accurate copy of the foregoing was furnished by United States First Class Mail to all parties on the attached Exhibit.

By: 
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