5993-1

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.

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

Appellees.
_____/

CASE NO. 85,494

APPELLANTS' REPLY 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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I. ARGUMENT IN RESPONSE AND REBUTTAL TO ANSWER BRIEF OF APPELLEE, VILLAGE CENTER COMMUNITY DEVELOPMENT DISTRICT.

In the District's[1] Answer Brief, it relies on Belmont v. Town of Gulfport, 122 So. 10 (Fla. 1929) to support its position that Appellants are not proper parties to intervene in this bond validation proceeding. The District's reliance on Belmont is misplaced. This Court's holding in Belmont turned on whether the attempted intervention was by a "citizen" or a "taxpayer". The Belmont Court did, however, state that the term "citizen" means a person "having a justiciable interest in the litigation ... ." Belmont 122 So. at 10. The Statute under which Appellants in the instant case sought to intervene, §75.07, Fla. Stat. (1993), does not limit the right of intervention to only taxpayers or citizens. That Statute states that "any property owner, taxpayer, citizen, or person interested may become a party to the action ... ." (Emphasis added). Appellants have conceded from the outset of this action that they are not taxpayers or citizens of the District. Appellants sought intervention as "persons interested" within the meaning of §75.07 because: (1) they have the exclusive right to use the facilities which would be acquired through the issuance of the subject bonds; and (2) the amenities fees which they pay would be used to retire the bonds. (App., Exhibit "8", Pg. 14-15). [2]

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[1]Appellee, Village Center Community Development District shall be referred to in this Reply Brief as the "District".

[2]As indicated on page 9 of the Initial Brief, the transcript of the bond validation hearing incorrectly indicates that it is Mr. Thornton, counsel for the District, who is speaking at page 14

Appellants agree, as stated by the District at page 6 of its Answer Brief, that Appellants admitted at the hearing on the bond validation that certain issues raised by their Answer were collateral to the issues appropriately considered in a bond validation proceeding. However, counsel for the Appellants went on to state as follows:

> MR. McFALL: We'll concede that that issue is a collateral issue, and obviously brought to the Court's attention in our Memorandum but we have asserted other defenses.
>
> The first two really go to the public purpose of this project, and I think as interested persons, they are entitled to dispute the public purpose of this project or the lack of public purpose. And for that reason, we would be entitled to remain in the proceeding, to raise that issue, although we haven't conceded the financing issue is collateral under the appropriate case law.

(App., Exhibit "8", Pg. 17-18).

The District asserts that the Appellants have made a legal and factual error in relying on Meyers v. City of St. Cloud, 78 So. 2d 402 (Fla. 1955). It is the District which has erred in its contention that Appellants have relied on Meyers as being either factually or legally on point with the instant case. Meyers was merely cited as a demonstrating a recognition by this Court of the legislative liberalization of the procedure for bond validation proceedings and an extension of the rights of "persons interested" under Chapter 75.

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beginning on line 12, but this argument was made by Mr. McFall, counsel for the Appellants. References in this Reply Brief to the Appendix to the Initial Brief shall be as follows: (App., Exhibit "__", Pg.__).

The District's reliance on State v. Florida State Improvement Commission, 75 So. 2d 1 (Fla. 1954) also is misplaced. As recognized by the District, the Appellants in that case petitioned to intervene after the return date. In contrast, in the case sub judice, these Appellants, as required by §75.07, pled to the Complaint before the time set for the hearing on the bond validation. Accordingly, unlike the Appellants in Florida State Improvement Commission, the Appellants in the instant case did become parties to the proceeding merely by pleading to the Complaint before the hearing as provided by Statute. This Appeal should not, as requested by the District, be dismissed for lack of standing by these Appellants.

Appellants agree with the District that the acquisition of parks and facilities for recreational use is within the authority of the District pursuant to §190.012(2)(a), Fla. Stat. (1993). However, the Appellants' position is that the acquisition of these parks and facilities must be for a "public purpose." None of the authorities cited by the District stand for the proposition that it may acquire parks or facilities which are not available to the general public or available for use by the residents and taxpayers of the District. Contrary to the District's argument, State of Florida v. Sunrise Lake Phase II Special Recreational District, 383 So. 2d 631 (Fla. 1980) makes clear that the sine qua non of acquisition of facilities by bond financing is the availability of such facilities to the general public. If there is no such availability, then the acquisition lacks a public purpose. Sunrise

Lake, 383 So. 2d at 633. Equally erroneous is Appellees' strained interpretation of § 190.12(2)(a), Florida Statutes, 1993 which authorizes the District to acquire parks and facilities for indoor and outdoor recreational, cultural and educational uses. Although perhaps not clearly expressed in the statutory scheme allowing for the creation of districts, it is fundamental that the benefit and use associated with the parks and facilities must be primarily for the District residents and taxpayers.

Appellants agree that the issues regarding the violation of restrictive covenants is collateral to the bond validation proceeding, but that issue was raised by Appellants in the context of whether the proposed acquisition was for a "public purpose" in that the restrictive covenants demonstrate the lack of availability of the subject facilities to the general public.

II. ARGUMENT IN RESPONSE AND REBUTTAL TO ANSWER BRIEF OF APPELLEE, LAZY B. CATTLE VENTURE, LTD.

In support of their position that Appellants are not interested persons entitled to intervene in this bond validation proceeding, Lazy B.[3] relies on City of Fort Myers v. State, 176 So. 483 (Fla. 1937). A comparison of the Statute in effect when City of Fort Myers was decided, and the current version of §75.07, demonstrates the legislative liberalization argued by the Appellants. Under the predecessor to the current §75.07, only a "taxpayer or citizen" could become a party to the validation proceedings. The current version of §75.07, as previously argued by Appellants, allows "any property owner, taxpayer, citizen or person interested" to become a party to the bond validation proceeding. Accordingly, the requirement in City of Fort Myers that the "taxpayer" must be "adversely affected" in order to become a party is inapplicable in light of the Legislature's clear intent to broaden the class of persons entitled to participate in a bond validation proceeding. Lazy B.'s reliance on Atlantic Coastline R. Co. v. City of Lakeland, 177 So. 206 (Fla. 1937) is equally inapposite. It is clear from these cases that the adverse effect requirement is applicable only to a "taxpayer", and no authority has been cited which holds that a "person interested" must be adversely affected in order to become a party to a bond validation proceeding under §75.07.

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[3]Appellee, Lazy B. Cattle Venture, Ltd, shall be referred to in this Reply Brief as "Lazy B.".

Lazy B.'s reliance on Heatherwood Community Home Owners' Association, Inc. v. Florida Rock Industries, Inc., 629 So. 2d 928 (Fla. 5th DCA 1993) and Union Central Life Insurance Co. v. Carlisle, 593 So. 2d 505 (Fla. 1992) also is misplaced. Neither of these cases involved intervention in the context of a bond validation proceeding pursuant to Chapter 75. It is clear from §75.07 that one may become a party to a bond validation proceeding merely by "pleading to the complaint at or before the time set for hearing", and that becoming a party does not turn upon intervention by leave of the court.

In response and rebuttal to Lazy B.'s argument that the purpose of the bonds is legal, Appellants incorporate herein by reference their argument in response and rebuttal to the District's Answer Brief regarding the absence of a public purpose for the acquisition of the subject facilities through the bond financing mechanism.

CONCLUSION

In light of the Briefs presented by the parties, Appellants should have been afforded an opportunity to be heard and participate in the bond validation proceeding in the Circuit Court. It was error for the Circuit Court to deny the Appellants the right to so participate. As prayed for in the Initial Brief, 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 proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 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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