ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 93,549

GEORGE R. CAPLE and ENTERPRISES, INC.,

Appellants,

v.

TUTTLE'S DESIGN-BUILD, INC.,

Appellee.

Appeal From The Third District Court Of Appeal
Lower Tribunal Case Number: 97-3068

AMICUS CURIAE BRIEF OF FLORIDA BANKERS ASSOCIATION IN SUPPORT OF APPELLANTS, GEORGE R. CAPLE AND CAPLE ENTERPRISES, INC.

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STATEMENT OF INTEREST OF AMICUS CURIAE

Florida Bankers Association("FBA") is a voluntary organization of financial institutions doing business in the state of Florida. Its membership constitutes more than 90% of the commercial lenders in the state of Florida. FBA participated in the hearings before the Foreclosure Study Commission in 1992, focusing on the need to balance the competing interests and allocate risk of loss in Florida foreclosure practice. The statute here before the Court was the legislative response to the recommendations of the Foreclosure Study Commission. The decision of the Third District Court of Appeal, holding the statute unconstitutional, has a grave and immediate impact on FBA members and, of necessity, affects the availability of credit for commercial enterprises. FBA has filed a separate Motion for Leave to Appear as Amicus Curiae in this matter, with the consent of the parties hereto.

STATEMENT OF THE CASE AND OF THE FACTS

FBA accepts the statement of the case and of the facts as provided by Appellants George R. Caple and Caple Enterprises, Inc.

SUMMARY OF THE ARGUMENT

When a mortgagor defaults on a commercial loan, the mortgagee's security for the money it has lent is at risk of waste and depreciation for however long it takes the foreclosure process to operate. The mortgagor, who is unable or unwilling to make payments as required under the loan agreement, may have little inclination or ability to properly maintain or protect the collateral. Under the law prior to 1993, the borrower could cease payment on the mortgage but continue to use, and profit from the use, of the property until the foreclosure process wound to its conclusion. This created an incentive for the borrower to prolong the foreclosure process, often by frivolous defenses and protracted litigation. The 1993 legislation created a system by which a commercial borrower could be required to make ongoing payments as a condition of continued use of the property during the foreclosure conditioned upon a determination of the court that the borrower was not likely to prevail on its defenses to the foreclosure.

In 1991, the Florida legislature recognized the need to assess Florida's system of judicial foreclosure and to determine whether it best served and protected the competing interests involved in the creditor/debtor relationship. The legislature created the Foreclosure Study Commission, which undertook the investigation ordered in Chapter 91-116, Laws of Florida. As a result of that study, the legislature considered a variety of procedures which would streamline the foreclosure process without denying due process to either party. Section 702.10(2) is the balanced and entirely constitutional result of careful weighing of considerations of public policy and the requirements of commerce.

FBA appears as amicus curiae to demonstrate the constitutionality of section

702.10(2), Florida Statutes, as enacted. The Third District held the statute unconstitutional on two grounds: First, it held that the statute's failure to require that the mortgagee post a bond against wrongful repossession violated constitutional due process. Second, the district court of appeal ruled that the statute on its face violated the constitutional separation of powers by legislating judicial procedure. In both holdings, the Third District Court of Appeal was wrong.

The statute is not constitutionally defective for failure to require that the plaintiff/mortgagee to post a bond to protect the defendant/mortgagor. The United States Supreme Court has outlined the analysis by which to determine whether statutes providing pre-judgment remedies for private parties satisfy due process standards: The court must analyze the nature of the private interest affected, the risk of erroneous deprivation of property, the nature of the interest of the party seeking prejudgment possession, and the interest of the state in providing such a procedure and the burden on the state of providing additional protection. Section 701.20(2) provides adequate due process protection to balance the competing--and constitutionally protected--interests of both parties. The statute provides significant procedural due process safeguards for the mortgagor. The mortgagor is given notice and an opportunity to be heard. The statute requires the court to weigh the showings, by affidavit or other evidence, of the relative merit of the plaintiff/mortgagee's claim and the defendant/mortgagor's defenses. Only after a determination that the plaintiff/mortgagor is likely to prevail on its claim is the defendant/mortgagor required to make the payments due under the contract for purchase and sale, all of which are credited against the amount due. Because the remedy is ordered by a judge after a hearing in which both parties are allowed to present evidence

of the claims and defenses thereto, there is little risk of erroneous deprivation.

The state also has ample reason to provide the remedy in the form embodied in the statute. The public policy underlying the statute is to remove any economic incentive for the mortgagor/defendant to delay mortgage foreclosure proceedings. Thus, the initial remedy provided serves *only* to maintain the economic status quo pending the final judgment. If, and only if, the mortgagor is unwilling or unable to make those payments does the mortgagor face the choice of posting a bond or surrendering possession of the property.

The statute is not, as the Third District Court of Appeal held, procedural. Like the replevin and garnishment statutes, it creates a substantive right to protect the mortgagor's interest in the secured property pending the entry of a final judgment.

Section 702.10(2), Florida Statutes is not facially unconstitutional.

I. MORTGAGORS ARE PROVIDED A FULL MEASURE OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS IN SECTION 702.10(2), FLORIDA STATUTES.

"The requirements of due process of law 'are not technical, nor is any particular form of procedure necessary.'[citation omitted] Due process of law guarantees 'no particular form of procedure; it protects substantial rights.' [citation omitted] 'The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'" Mitchell v. W.T. Grant Company, 416 U.S. 600, 610 (1974). Section 702.10(2), Florida Statutes (1993) was enacted to protect the substantial rights of the commercial lender who has advanced a substantial amount of cash for a promise of repayment secured by real property. In protecting that interest, the Florida legislature struck a careful balance between the rights of the mortgagee and those of the mortgagor,

who has accepted the benefit of the credit and who is alleged to have failed to make payments as and when due. The statute provides an ample measure of due process to both parties.

A. <u>The Policy Underlying The Legislation</u>.

Prior to the enactment of section 702.10(2), Florida Statutes, the mortgagor in possession of commercial property was rewarded for protracting foreclosure proceedings. Although the mortgagor was no longer making payment on the mortgage loan, it nonetheless enjoyed possession of the property *without charge* for so long as the judicial proceedings could be spun out. Facing ultimate dispossession by foreclosure, however, the mortgagor had absolutely no incentive to maintain the premises or to perform even the most basic of upkeep, to pay taxes or to keep the premises adequately insured. This incentive was to hold onto the property as long as possible and thus to make as much profit as possible from its use before surrendering possession. In effect, once the mortgagor defaulted, the mortgagee had no benefit of the bargain between the creditor and borrower--the mortgagee had neither payment nor possession of the security. It was required to stand helplessly by as the security depreciated while the court struggled to find time on a crowded docket and coped with frivolous defenses interposed solely for the purpose of lengthening the mortgagor's cost-free possession of the property.[1]

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[1] As the Foreclosure Study Commission noted:

> The Commission found that there is often needless delay in the judicial foreclosure process from the time service of process is obtained until the entry of the final judgment of foreclosure by the Court. That delay stems from two sources: (a) the defendants who interpose frivolous defenses for the sole purpose of thwarting the entry of a final judgment and (b)

In 1991, the legislature mandated an inquiry into the foreclosure process in Florida. Chapter 91-116, Florida Statutes created the Foreclosure Study Commission (the "Commission"), and established its mission:

> (2) The Commission shall:
>
> (a) Review the existing mortgage foreclosure process to identify problems in the existing system, including problems that are particular to condominiums.
>
> (b) Identify ways the system could operate more efficiently.
>
> (c) Review other states' foreclosure systems to identify any ideas that may improve Florida's system.
>
> (d) Review alternatives to the existing process, including non-judicial foreclosures.

Id.

The Commission, after reviewing foreclosure process in all fifty states[2], recommended adoption of a non-judicial foreclosure. The Commission stated:

> Perhaps the most examined area by the Commission was the power of sale statutes or what is commonly referred to as nonjudicial foreclosures. The general question for the

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> the varied local practices of the courts in obtaining time for hearings, particularly for summary judgments and attorneys' fees.

Final Report of the Foreclosure Study Commission, January 1992 (Appendix A)(Hereinafter "Final Report").

[2] Final Report at 30, n.12 (App. A)

> Commission was whether Florida's statutes should provide for a nonjudicial, summary process to foreclose real property by the exercise of a private power of sale. It is a remedy given to the lender by the debtor for enforcing the payment of debt without resorting to the Courts. *A majority of the states have available some form of a private power of sale.*

Final Report at 30 (emphasis added)(App. A).

The Commission received information that the *average* time required to complete a judicial foreclosure in Florida was eight months[3]. It went on to identify the reasons for the length of the process in Florida:

> In Florida, there are several reasons why it takes longer to foreclose when a judicial process is in place: (a) the requirement of personal service on residents and nonresidents; (b) service of process often must be obtained on numerous subordinate lienholders who have common names or are extremely difficult, if not impossible, to locate; (c) *defendants often interpose frivolous defenses to impede the foreclosure sale;* (d) Courts have varied local practices that are often time consuming in obtaining hearings, especially for summary judgments and attorney's fees; (e) title insurers require the Courts to appoint a guardian or attorney ad litem; and (f) the time delay between the entry of a final judgment and the foreclosure sale. *The delay results in costs that are ultimately borne by consumers who are seeking mortgage financing.*

Final Report at 31 (emphasis added)(App. A).

The Commission recommended enactment of a statute providing for nonjudicial

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[3] Final Report at 31, n.13. This statistic reflects residential foreclosures as well as the commercial foreclosures affected by the challenged statute. However, common sense and practical experience indicates that the time for completion of a commercial foreclosure is unlikely to be *less* than the time required to complete a residential foreclosure.

foreclosure, but it also recommended that the statute's application be limited to commercial transactions where the original debt exceeded $100,000.00. Id. at 32. The legislature considered this option (see, e.g., House Bill 1647), but ultimately rejected nonjudicial foreclosure. The legislature did not, however, turn its back on the need to remove any incentive for the mortgagor to delay the foreclosure process.

The statute, on its face, grants the mortgagee a measure of protection of its interest heretofore unrecognized in Florida law--the mortgagee is entitled to demand the mortgagor's continued performance of the agreement between the parties for so long as the mortgagor continues to exercise its possessory rights under that agreement. However, this right does not arise automatically by operation of statute. The mortgagee/plaintiff in the foreclosure action must petition the court for the statutory relief. The mortgagor/defendant (who has already been served with the complaint in foreclosure) is given notice of the petition and an opportunity to appear before the trial court to raise every defense and counterclaim available to it. Only where the trial court is persuaded that the plaintiff/mortgagee is likely to prevail does the statutory protection come into play--and then the defendant/mortgagor controls the nature of the remedy. The defendant mortgagor has the *option* of continuing the payments it is contractually obligated to make *or* of posting a bond for the total of all amounts due under the mortgage *or* of surrendering possession of the property. This approach is eminently fair to the borrower. The statute specifies that all payments are credited against the mortgage obligation; thus, requiring continued payments does not represent a penalty or forfeiture. The mortgagor need only start making the usual payment again notwithstanding an unpaid balance and acceleration of the debt. As a matter of public policy, the Florida legislature decided to protect the

interests of mortgagees with a minimum of disruption to the mortgagor's status quo. Such a policy determination is within the power of the legislature and does not fall short of the requirements of substantive due process.

B. The Requirements Of Procedural Due Process Are Met By The Statute.

It is axiomatic that the constitutionality of a statute must be upheld if the statute may be reasonably construed in a constitutional manner, State *ex rel.* Pittman v. Stanjeski, 562 So. 2d 673, 678 (Fla. 1990), and that all doubts as to the validity of the statute must be resolved in favor of constitutionality where reasonably possible, Department of Law Enforcement v. Real Property, 588 So. 2d 957, 961-92 (Fla. 1991). Nonetheless, the Third District Court of Appeal found the statute facially unconstitutional because the plaintiff/mortgagee is not required to post a bond to protect the defendant/mortgagor from the effects of a wrongful deprivation of property. In reaching this conclusion, the court made the astounding determination that requiring the defendant/mortgagor to continue payments under a mortgage agreement *where all such payments are credited to the mortgage obligation* is a deprivation of property. In reaching this conclusion, the Third District failed to properly weigh the procedural due process considerations implicated in the statute.

In Connecticut v. Doehr, 501 U.S. 1 (1991), the United States Supreme Court enunciated the issues material to determining whether a statute providing for a prejudgment attachment in a dispute between private parties comported with the minimal requirements of due process:

> For this type of case, therefore, the relevant inquiry requires,

> . . . , first, consideration of the private interest that will be affected by the prejudgment measure; second, an examination of the risk of erroneous deprivation through the procedures under attack and the probable value of additional or alternative safeguards; and third, . . ., principal attention to the interest of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or foregoing the added burden of providing greater protections.

Id. at 11.[4]

Although this statute provided for attachment rather than prejudgment possession of secured real property, the analytical framework outlined by the Court demonstrates the constitutionality of section 702.10(2).

1. The nature of the private interest affected.

The private interest affected by application of section 702.10(2) is the commercial interest of a debtor in mortgaged property. Although the courts have acknowledged a heightened sensitivity to possessory interests in residential property[5], all property interests are entitled to due process. By the same token, the mortgagor's commercial interest in the property is not entitled to a greater degree of protection than the

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4 Doehr involved a prejudgment attachment of the defendant's residence without notice. Under Connecticut law, the attachment could issue upon the affidavit of the plaintiff averring that there is probable cause to sustain the validity of the plaintiff's claim and that attachment is reasonably necessary to secure a source of payment of damages. In Doehr, notably, the claim giving rise to the attachment was a tort claim, entirely unrelated to the property attached. Four of the justices also argued that a bond is a constitutional requirement for any pre-judgment deprivation of property. However, that is *not* the majority opinion in that case. Justices Rehnquist and Blackmun expressly noted the judicial impropriety of addressing an issue outside the factual and legal context of the case presented. 501 U.S. at 30.

5 "Those property rights are particularly sensitive where residential property is at stake, . . ." Department of Law Enforcement v. Real Property, 588 So. 2d at 964.

mortgagee's commercial interest in the same property or in the funds it provided to the mortgagor to purchase the property.

2. The risk of erroneous deprivation of property.

"The risk of erroneous deprivation through the procedures under attack" is demonstrably minimal. In obvious counterdistinction to all the cases in which the courts have found a bond to be a requisite of minimum due process, the remedy afforded the plaintiff by section 702.10 cannot occur prior to a hearing. Mitchell and Doehr, and Gazil, Inc. v. Super Food Services, Inc., 356 So. 2d 312 (Fla. 1978)(citing Mitchell as establishing the five part test for minimum due process), all arose in the context of a **pre-hearing** deprivation of property. That is simply not the case here.

The statute requires that complaint and the Order to Show Cause be served on the defendant/mortgagor *at least* twenty days before the date set for the show-cause hearing. The complaint gives the defendant/mortgagor actual notice of the event(s) of default asserted as grounds for the foreclosure. The Order to Show Cause notifies the defendant/mortgagor of its right to appear and be heard and to file affidavits on its behalf. At the hearing, the court "*shall* . .. consider the affidavits and other showings made by the parties appearing and make a determination of the probable validity of the underlying claim alleged against the mortgagor and the mortgagor's defenses." § 702.10(2)(d), Fla. Stat. (1993)(emphasis added).

In Doehr, the United States Supreme Court distinguished Connecticut's attachment statute from the statutes of the sort here under consideration. "By definition, attachment statutes premise a deprivation of property on one ultimate factual contingency--the award of damages to the plaintiff which the defendant may not be able to satisfy." Doehr, 501

U.S. at 12. On the other hand, the Court recognized that "the existence of a debt or of delinquent payments are 'ordinarily uncomplicated matters that lend themselves to documentary proof.'" Id. at 14, quoting Mitchell, 416 U.S. at 609. In this case, the statute provides for a thorough, adversarial consideration of the "ordinarily uncomplicated matters" and all of documentary or other proof or refutation of the plaintiffs' claim.

If, and only if, the court is convinced that the mortgagee is "likely to prevail in the foreclosure action," the court may grant the plaintiff/mortgagee the prejudgment remedy provided by statute:

> In the event the court enters an order requiring the mortgagor to make payments to the mortgagee, payments shall be payable at such intervals and in such amounts provided for in the mortgage instrument *before acceleration or maturity*.

§ 702.10(2)(e), Fla. Stat. (1993)(emphasis added). In other words, the court may order the defendant/mortgagor to perform its obligations under the contract as a condition for retaining the security for the money the mortgagor has borrowed.

The Third District Court of Appeal criticized the statute because it "forces a mortgagor to make payments without due process protection, and only provides for an excessive bond *to stay* payments ordered." 23 Fla. L. Weekly at D1527 (emphasis in the original). However, the Third District was apparently of the impression that the mortgagor had a constitutionally protected right to refuse to make payments required under the contract while maintaining possession of the collateral. No such right exists. Significantly, the statute's primary goal is to maintain the status quo of obligation pending outcome of the disputed foreclosure.

The condition imposed on the mortgagor to keep possession is not onerous. The borrower need only make the regular payment required by the mortgage before default. This continued payment may only be required after an adversarial judicial determination that borrower's defenses are not likely to be sustained.

If the defendant/mortgagor wishes to avoid the effect of the court's order, it may post a bond. The posting a bond is a common condition for avoiding the effect of a court's order[6]. The legislature has determined the amount of the bond necessary to protect the interests of the mortgagee and to dissuade the mortgagor from interposing frivolous defenses or engaging in dilatory tactics. In reaching that determination, the legislature was well within the scope of its constitutional power. In holding the bond to be excessive, the Third District "transgress[ed] the proscription of article II, section 3 of the Florida Constitution, which forbids one of the branches of government from invading the province of another." Department of Law Enforcement, 588 So. 2d at 961-62.

Only if the mortgagor is unwilling or unable to either make the payments due under the contract or to post the bond will the court order surrender of the premises. At that point, the legislature has exercised its authority to make a policy decision to award possession of the property to the party which is better able to preserve the value of the collateral for the benefit of both parties.

3. The interest of the party seeking the prejudgment remedy.

The Third District Court of Appeal ignored the interest of the mortgagee/plaintiff in holding that section 702.10(2), failed to provide adequate due

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6 See, e.g., §§ 30.30; 59.13; 83.19(3); 458.320(5)(g); 924.065, Fla. Stat.; Rule 9.310(b)(2), Fla. R. App. P.

process for the mortgagor/defendant. However, the undisputable fact is that the plaintiff/mortgagee is being deprived of private property for so long as the mortgagor/defendant both retains possession of the property and fails to make the payments it is obligated to make. In addition, the mortgagee may be irreparably harmed if the property securing the debt is allowed to deteriorate to the extent that its value does not equal the amount owed under the contract. Section 702.10(2) balances both the mortgagor's and the mortgagee's right to due process.

4. The ancillary interest the government may have in providing the procedure or forgoing the burden of providing greater protections.

As discussed in I.A., above, the state has clearly documented its interest in removing the incentive to delay foreclosure proceedings. As the Commission found,

> The number of foreclosure cases in Florida has been steadily increasing. In 1991, foreclosure actions will represent between 17%-19% of the civil docket, which will be a 24% increase from 1990 alone. Yet, the testimony from Florida's circuit judges was that only 1% of its judicial time is expended on such foreclosure cases.

Final Report at 30 (App. A). The legislature has the obligation to determine the best use of state resources--including judicial resources--without impeding fundamental rights. The legislature has the authority and the obligation to protect the property rights of all its citizens, not just those of debtors. In Mitchell, the Supreme Court recognized that

> both seller and buyer had current, real interests in the property and the definition of property rights is a matter of state law. Resolution of the due process question must take account not only of the interests of the buyer of the property but those of the seller as well.

Mitchell, 416 U.S. at 604; see also, Goodman v. Brasseria La Capannina, Inc., 602 So. 2d 1245, 1249 (Fla. 1992). In the context of section 702.10(2), the mortgagee as well as the mortgagor has current, real interests in the property which the legislature was required to protect.

The Third District questioned the legislature's decision to have the payments made to the mortgagee, rather than into the registry of the court. In this context as well, the legislature is invested with the authority to balance the burden imposed on the clerks of the courts by having to undertake the depository and accounting functions against the degree of "greater protection" afforded the mortgagor. Again, and at risk of being unnecessarily repetitive, the statute provides that the payment may be ordered *only* where the evidence that the debt is owed considered in the context of all the defenses asserted by the mortgagor convinces the court that the mortgagee is likely to prevail in the foreclosure action. *All payments are credited against the mortgage balance!* For every payment made, the mortgagor receives immediate and documented credit against the balance due.

In the instant case, the mortgagee (appellant below) argued that the failure to require a bond leaves the mortgagor at risk that the payments made may not be recoverable if the mortgagor is the ultimate prevailing party[7]. This argument, specific to

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[7] In the case below, the mortgagor was ordered to make interest payments. It appears from the brief that the mortgagor disputed the amount of the balance remaining. However, it does *not* appear that had it prevailed on its defenses in a reasonably timely fashion, it would have made payments exceeding the amount the mortgagor acknowledged to be owed. Nor may the statute be challenged because in some hypothetical setting payments could be ordered which might exceed the amount ultimately held to be owing. The defendant/mortgagor has a full opportunity to outline this potential and to test the merit of its defenses at the hearing on the Order to Show Cause.

individual cases, does not implicate the facial constitutionality of the statute. The test of the constitutionality of a statute is not that it is incapable of misapplication any more than judicial error constitutes a denial of due process. See, e.g., Phillips v. Guin & Hunt, Inc., 344 So. 2d 568, 573 (Fla. 1977). Rather, the test is whether the statute, on its face, balances the property rights of the parties are balanced and affords the procedural and substantive process which is "due," under the circumstances. Section 702.10(2), Florida Statutes, passes this test.

II. SECTION 702.10(2) CREATES SUBSTANTIVE RIGHTS. IT DOES NOT VIOLATE FLORIDA'S CONSTITUTIONAL SEPARATION OF POWERS.

The Third District also held the statute unconstitutional as an intrusion into this Court's power to establish rules of procedure. The district court held:

> [I]t does *not* declare or create a new right for mortgagees: it only creates a new *manner, method or process* for mortgagees to receive monies they already have a right to receive under existing law.

23 Fla. L. Weekly at D1527 (emphasis in the original).

This statement is at odds with the Third District's reluctance to afford the mortgagee's present interest in those monies any statutory protection, and therein lies the crux of the district court's error. Before the enactment of section 702.10(2), the mortgagee's opportunity to receive that payment or to protect the value of the security for that payment prior to entry of a final judgment did not exist. The statute, on its face, creates the entirely new right to petition for that remedy and establishes the grounds upon which the petition may be granted.

The statute is procedural only insofar as it provides for procedural due process. The Third District confused the promulgation of rules of procedure--which is solely this Court's province--with making statutory provision for procedural due process--which is the obligation of the legislature whenever it enacts a statute which determines property or liberty rights of individuals. Such statutes must provide for a hearing--either before the deprivation of property or liberty or within a reasonably immediate time thereafter. That is procedural due process--not procedure. Such a statute may establish the burden of proof and the nature of that proof. That, too, is procedural due process.

In fact, section 702.10(2) is analogous to a number of Florida statutes which provide for prejudgment (and, in many cases, prehearing) remedies. See, e.g., sections 78.055 (setting forth the requirement for a complaint in replevin) and 78.067 (setting forth the manner of conduct and standard of proof for entry of a pre-hearing writ of replevin). All of those have withstood constitutional challenge. See, e.g., Goodman v. Brasseria La Capannina, Inc., 602 So. 2d at 1245 (holding the Florida distress for rent statute constitutional); Gazil, Inc. v. Super Food Services, Inc., 356 So. 2d at 312 (holding the Florida replevin statute constitutional).

This Court noted in Department of Law Enforcement, that "the doctrines of substantive and procedural due process play distinct roles in the judicial process, [but] they frequently overlap." 588 So. 2d at 960. However, insuring that statutes provide both substantive and procedural due process is the obligation of the legislature. In section 702.10(2), the legislature has fulfilled its duty.

CONCLUSION

For the foregoing reasons, the Florida Bankers Association, as amicus curiae, respectfully requests this Honorable Court to reverse the decision of the Third District Court of Appeal and to find that section 702.10(2), Florida Statutes, provides procedural and substantive due process to both mortgagors and mortgagees in foreclosure proceedings and that the statute does not unconstitutionally intrude into this Court's authority to establish rules of judicial procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished by first class mail, postage pre-paid, this 10th day of September, 1998, to Vance E. Salter, Esquire and Christopher N. Johnson, Esquire, or Coll Davidson Carter Smith Salter & Barkett, P.A., at 3200 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131-2312; to Gary A. Woodfield, Esquire, of Edwards & Angell, at 250 Royal Palm Way, Palm Beach, Florida 33480-4309; to Robert M. Quinn, Esquire, of Carlton Fields Ward Emmanuel Smith & Cutler, P.A., at Post Office Box 3239, Tampa, Florida 33601; to Philip J. Sheehe, Esquire, of Simmons, Hart & Sheehe, P. A., at One Biscayne Tower, Suite 1684, Two South Biscayne Boulevard, Miami, Florida 33131; and to Sharon L. Wolfe, Esquire, of Cooper & Wolfe, P.A., at 200 South Biscayne Boulevard, Suite 3580, Miami, Florida 33131; and to John M. Lynn, Esquire, of Lynn & Hanson, P.A., at 48 N.E. 15th Street, Homestead, Florida 33030.

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