

IN THE SUPREME COURT OF THE STATE OF FLORIDA
APPELLATE ACTION

RAYMOND P. MURPHY, : Supreme Case No. 96,997
: :
Appellant, : Appeal Case No. 99-3534-CA-JBR
: :
vs. : :
: :
LEE COUNTY, a political subdivision :
of the State of Florida, and THE :
STATE OF FLORIDA, :
: :
Appellees. :
_____ :

A BOND VALIDATION APPEAL FROM A FINAL JUDGMENT
OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

ANSWER BRIEF OF THE APPELLEE

STATE OF FLORIDA

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TYPE CERTIFICATION

The undersigned certify that the type in the body of this Answer Brief is 14-point Times New Roman.

PRELIMINARY STATEMENT

The Appellee, the STATE OF FLORIDA, by the Twentieth Judicial Circuit, Office of the State Attorney, was the defendant in the cause below and will be referred to as “State” in this brief. The Appellee, LEE COUNTY, a political subdivision of the State of Florida, was the plaintiff in the cause below seeking validation and will be referred to as “Lee County” in this brief. The Appellant, RAYMOND P. MURPHY, was the defendant in this cause and will be referred to as “Defendant” in this brief. The transcript on appeal will be referred to by the letters “TR” followed by the appropriate page number. The appendix will be referred to by the letters “APP” followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

In May of 1999, Lee County filed a Complaint for Validation under the authority contained in Chapter 75 of the Florida Statutes. (APP 12-22). Lee County sought to have the trial court validate revenue bonds entitled “Lee County, Florida Water and Sewer Revenue Bonds, 1999 Series B.” (APP 12). The State was named as a Defendant in this case. (APP 12).

On May 21, 1999, the trial court entered an Order to Show Cause with the hearing being set for September 7, 1999. (APP 23-26).

On September 7, 1999, the trial court entered an Order Authorizing Intervention of Defendant. (APP 29). The trial court reserved ruling on Defendant’s motion for Failure to State a Cause of Action and Lack of Jurisdiction over the Subject Matter. (TR 8-10).

The trial court heard testimony from various witnesses that Lee County presented before the court at the final hearing, on September 7, 1999. (TR 18-72). The trial court heard argument from Lee County and Defendant. (TR 78-116). At the conclusion of the hearing, the trial court requested Lee County and Defendant each prepare a written memoranda addressing the Motion to Dismiss based on the issues of Failure to State a Cause of Action and whether the Town Of Fort Myers Beach was an indispensable party. (TR 118-119).

On September 24, 1999, the trial court issued the Final Judgment validating and confirming the bonds. (APP 1-11). The Appellant then filed the notice of appeal upon which this proceeding is brought.

SUMMARY OF ARGUMENT

ISSUE I.

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT ARTICLE VIII, SECTION 4 OF THE FLORIDA CONSTITUTION DOES NOT REQUIRE LEE COUNTY TO OBTAIN THE TOWN'S PERMISSION BEFORE PURCHASING THE WATER UTILITY WITHIN THE TOWN'S MUNICIPAL LIMITS.

In the Final Order, the trial court found that Lee County did not need the consent of the Town of Fort Myers Beach according to Chapter 125 of the Florida Statutes. (APP 3-4).

ISSUE II.

WHETHER THE COUNTY DID NOT COMPLY WITH SECTION 125.3401 OF THE FLORIDA STATUTES IN APPROVING THE PURCHASE OF THE WATER UTILITY WITHIN THE TOWN OF FORT MYERS BEACH.

The trial court determined that Lee County complied with the requirements of section 125.3401 of the Florida Statutes. (APP 5-6). The trial court heard testimony that Lee County provided a financial evaluation which included an analysis of the entire system. (TR 37-38). The trial court admitted into evidence the resolution of the Board of County Commissioners which was done as part of the public hearing held on January 26, 1999. (TR 39). Lee County provided testimony that the public hearing had been advertised in the local newspaper. (TR 39-40). The trial court admitted into evidence Plaintiff's Exhibit Number 23 which was proof of publication. (TR 40-41). The trial court heard testimony regarding the public benefits from the water and sewer system. (TR 51-56). Lee County provided testimony concerning the maximum amount to be issued of these bonds which is \$3.5 million, and that they will be paid back from the revenues of the Lee County utility system. (TR 56-57).

ISSUE III.

WHETHER THE PURCHASE OF THE WATER SYSTEM WITHIN THE TOWN OF FORT MYERS BEACH VIOLATED THE POWERS GRANTED TO THE COUNTY AND THE GUA IN THE INTERLOCAL AGREEMENT, AND ALSO VIOLATED THE COUNTY'S OWN CODE OF ORDINANCES.

The State is not a party to this issue of appeal. The State does not take a position on this issue.

ISSUE IV.

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT THE TOWN OF FORT MYERS BEACH WAS NOT AN INDISPENSABLE PARTY TO THIS VALIDATION PROCEEDING.

The State was named as a Defendant in this suit in accordance with section 75.05 of the Florida Statutes.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT ARTICLE VIII, SECTION 4 OF THE FLORIDA CONSTITUTION DOES NOT REQUIRE LEE COUNTY TO OBTAIN THE TOWN'S PERMISSION BEFORE PURCHASING THE WATER UTILITY WITHIN THE TOWN'S MUNICIPAL LIMITS.

After hearing argument from both Lee County and Defendant regarding this issue, the trial court determined that Lee County did not need the consent of the Town of Fort Myers Beach under Chapter 125 of the Florida Statutes. According to Florida Statute 125.3401, “[n]o county may purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a wastewater facility privatization contract for a wastewater facility, until the governing body of the county has held a public hearing on the purchase, sale, or wastewater facility privatization contract and made a determination that the purchase, sale, or wastewater facility privatization contract is in the public interest.” Fla. Stat. 125.3401(1999). Under this particular Florida Statute, there does not appear to be any requirement of consent from any party needed.

ARGUMENT

ISSUE II

WHETHER THE COUNTY DID NOT COMPLY WITH SECTION 125.3401 OF THE FLORIDA STATUTES IN APPROVING THE PURCHASE OF THE WATER UTILITY WITHIN THE TOWN OF FORT MYERS BEACH.

The trial court determined that Lee County did comply with the requirements of section 125.3401 of the Florida Statutes, after hearing the testimony presented. (APP 5-6). Lee County provided testimony and proof of publication that the public hearing had been advertised in the local newspapers. (TR 39-41). Lee County held a public hearing on January 26, 1999, regarding this matter, as required by section 125.3401 of the Florida Statutes. (TR 38-39). The trial court heard testimony that Lee County provided a financial evaluation which included an analysis for both the Lee County system and the Town of Fort Myers Beach system. (TR 37-38). The trial court admitted into evidence the resolution of the Board of County Commissioners which was done as part of the public hearing. (TR 39). The Board addressed the requirements of section 125.3401 of the Florida Statutes. (APP 31-48). The trial court heard testimony regarding the public interest in the water and sewer system. (TR 51-56). Lee County provided testimony concerning the maximum amount to be issued of these bonds which is \$3.5 million, and that the bonds will be paid back from the revenues of the Lee County Utility System. (TR 56-57).

ARGUMENT

ISSUE III

WHETHER THE PURCHASE OF THE WATER SYSTEM WITHIN THE TOWN OF FORT MYERS BEACH VIOLATED THE POWERS GRANTED TO THE COUNTY AND THE GUA IN THE INTERLOCAL AGREEMENT, AND ALSO VIOLATED THE COUNTY'S OWN CODE OF ORDINANCES.

The State does not take a position on this issue.

ARGUMENT

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN HOLDING THAT THE TOWN OF FORT MYERS BEACH WAS NOT AN INDISPENSABLE PARTY TO THIS VALIDATION PROCEEDING.

The State was named as a Defendant in this suit in accordance with section 75.05 of the Florida Statutes. *See Fla. Stat. Ch. 75.05 (1999)*. In the Final Order, the trial court found that “all the parties necessary for the resolution of these issues are properly before the Court and that the Town of Fort Myers Beach is not an indispensable party.” (APP 10).

CONCLUSION

WHEREFORE, the State respectfully requests that this Honorable Court allow the State of Florida to be dismissed as a party herein. The State of Florida is not adopting either argument of interest of Lee County or Defendant, and leaves the argument to this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to Gregory T. Stewart, Attorney At Law, 315 South Calhoun Street, Suite 800, Post Office Box 11008, Tallahassee, Florida 32302; James G. Yaeger, Lee County Attorney, David M. Owen, Assistant County Attorney, John J. Renner, Assistant County Attorney, 2115 Second Street, Post Office Box 398, Fort Myers, Florida 33902; Edward W. Vogel, III, Attorney At Law, 92 Lake Wire Drive, Post Office Box 32092, Lakeland, Florida 33802; Michael L. Chapman, Attorney At Law, Post Office Box 1288, Tampa, Florida 33602-4300; John R. Beranek, Attorney At Law, 227 South Calhoun Street, Post Office Box 391, Tallahassee, Florida 32302-0391; Robert L. Donald, Attorney At Law, 1375 Jackson Street, Suite 402, Fort Myers, Florida 33901-2841; Richard V.S. Roosa, Attorney At Law, 1714 Cape Coral Parkway East, Cape Coral, Florida 33904, by the United States Mail/Hand Delivery on this _____ day of _____, 2000.

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