

IN THE SUPREME COURT OF FLORIDA

THE CITY OF OLDSMAR,
a municipal corporation and
public body corporate and
politic of the State of Florida,

Appellant,

vs.

CASE NO. SC00-2695

STATE OF FLORIDA, and
the taxpayers, property owners,
and citizens of the City of
Oldsmar, Florida, including
non-residents owning property
in, or subject to taxation by,
the City of Oldsmar, and
STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION,

Appellees.

SUPPLEMENTAL BRIEF OF APPELLEE, STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
GENERAL CIVIL DIVISION
CASE NO: 00-004479-CI-21

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§ 75.08, Fla. Stat. (1997) 6

OTHER AUTHORITIES

Article 7, Section 12, Florida Constitution 2
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PRELIMINARY STATEMENT

Appellee, STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, pursuant to this Court's order, files its Supplemental Brief regarding the Court's jurisdiction to hear this appeal. For the purposes of this Supplemental Brief, the parties will be referred to in the same manner to which they were referred in the Department's Answer Brief, to wit: the State of Florida, Department of Transportation, the intervenor below and appellee herein, will be referred to as the "Department;" the State of Florida, the named defendant and appellee herein, will be referred to as the "State;" and the City of Oldsmar, plaintiff and appellant herein, will be referred to as the "City."

Citations to the record will be in the same format as in the Department's Answer Brief. Citations to the City's Initial Brief will be in the form of (IB.) and to the City's Reply Brief will be in the form of (RB.) followed by the appropriate page number(s).

SUMMARY OF THE ARGUMENT

The trial court was imminently aware of the previously filed Hillsborough County action, the numerous admissions of the City regarding the nature of its claim, the execution of the Joint Participation Agreement (JPA) by the City, the City's payment of the amount called for under the JPA, and the City's attempt to invalidate the JPA in the purported Chapter 75 proceeding. Upon that record and those admissions, the trial court properly concluded that the JPA is not a bond or certificate of indebtedness subject to Article 7, Section 12 of the Florida Constitution and Chapter 75, Florida Statutes, and that the City's action is not a proper Chapter 75 proceeding. Because the trial court correctly concluded that the City's complaint is not a proper Chapter 75 proceeding, this Court does not have jurisdiction to hear the City's appeal.

This Court has said that Chapter 75 "[p]roceedings to validate bonds are purely statutory. The power of the courts with reference thereto must be found within the statute itself." State v. City of Miami, 103 So. 2d 185, 188 (Fla. 1958)(Section 75.02, Florida Statutes). Such power of review does not exist in this case because the action from which it arises is not a bond validation proceeding. Rather, as the City admits, the proceeding below is an attempt to invalidate the City's JPA with the Department to avoid a pending proceeding in Hillsborough County. None of the cases

cited by the City or discovered by the Department has held that direct review by this Court based upon the unique procedural aspects of Chapter 75 proceedings is appropriate where a governmental entity is merely seeking to void and avoid its contractual obligations.

ARGUMENT

THIS COURT DOES NOT HAVE JURISDICTION OVER THE CITY'S CONTRACT ACTION, WHICH THE TRIAL COURT REJECTED AS AN IMPROPER ATTEMPT AT A BOND VALIDATION PROCEEDING.

A. Background

The complaint from which this appeal arises was filed by the City in Pinellas County Circuit Court, purporting it to be a bond "invalidation" proceeding pursuant to Chapter 75, Florida Statutes. The complaint is included as Tab 1 in the appendix accompanying the City's initial brief. See also Tab 4, p. 13. The City failed to allege, however, that it was a third party defendant to a breach of contract action pending in Hillsborough County and that its allegations were identical to the affirmative defense it raised to the Hillsborough County action. (Tab 4, p. 12, 17-22)

Just two days before the hearing scheduled on the City's Pinellas complaint, the Department first learned of its existence, filed a "Motion to Intervene, to Dismiss, or Alternatively, to Abate," and appeared at the hearing on August 24, 2000. (Tab 4, p. 17-22; Tab 6.) At the conclusion of the hearing, the trial judge, the Honorable Bruce Boyer, entered an "Order Granting Motion to Dismiss of Florida Department of Transportation" which stated in pertinent part:

It is therefore ORDERED and ADJUDGED as follows:

A. The FDOT's Motion to Intervene is granted.

B. The JPA is not a bond or certificate of indebtedness subject to Article 7, Section 12 of the Florida Constitution and Chapter 75 of the Florida Statutes. This is not a proper Chapter 75 proceeding and therefore, this court lacks jurisdiction. For that reason, this action is dismissed.

C. Additionally, because the Hillsborough County Case is still pending, the doctrine of collateral estoppel bars the instant action, which constitutes a second reason supporting the dismissal of this action. (Tab 7)

The City took a direct appeal to this Court based upon the unique procedural aspects of Chapter 75, Florida Statutes, bond validation proceedings.

B. This Court lacks jurisdiction over a trial court's order concluding that the City's inter-governmental contract dispute was not a Chapter 75, Florida Statutes, bond validation proceeding.

This Court lacks jurisdiction to review a circuit court order finding a purported debt "invalidation" proceeding to be a breach of contract action not subject to Chapter 75, Florida Statutes. In a half-hearted response to the Department's arguments that this Court lacks jurisdiction over this appeal, the City discounts the vital distinction between the use of Chapter 75 as a "bond validation" proceeding and its "contract invalidation" proceeding as nothing more than a matter of perspective. (RB. 3) Jurisdiction is not a matter of perspective, it is a matter of law.

The City admits that the proceeding below and the appeal to this Court reflects the City's attempt to "determine the validity

of the JPA [Joint Participation Agreement between the City and the Department]." (IB. 3) However, if this Court has jurisdiction to hear this appeal, it must derive from Article V, Section 3(b)(2), Florida Constitution, Sections 75.02 and 75.08, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(a)(1)(B)(i). This Court in Collier County v. State, 733 So. 2d 1012, 1013 n.1 (Fla. 1999), described its jurisdiction as "mandatory" when appeals are from final judgments entered in proceedings for validation of "certificates of indebtedness," when provided by general law. (citing Art. V, § 3(b)(2), Florida Constitution and Section 75.08, Florida Statutes (1997)). However, there is no authority for direct review jurisdiction of this Court when the action below is not a validation proceeding or directly related to a proposed bond issuance.

The City also admits that in a "typical" Chapter 75 proceeding a bond issuer seeks a ruling that the debt is valid and opponents seek a ruling that the proposed issue or debt is invalid, but argues that this case is simply the reverse of the typical situation. That is, the City claims that in this case it is a bond issuer (the City has issued no bonds and there is no anticipated bond issue) and that it is merely seeking a ruling that its own bond or debt (there is no bond and no debt, only a contract) is invalid rather than seeking a ruling that it is valid. However, the City's case is, as recognized by the trial court, a

governmental entity's attempt to after the fact invalidate a written contract utilizing the unique features of Chapter 75, Florida Statutes. Not one of the cases cited by the City to the trial court or to this Court is a case where a governmental entity was determined to be entitled to initiate a Chapter 75 proceeding or entitled to review of an order of a trial court's conclusion that a dispute over an executed and performed contract between two governmental entities is a contract action and not a Chapter 75 bond validation proceeding.

The alleged Chapter 75 proceeding filed by the City in this case is a flagrant attempt to ignore and circumvent the law, and to utilize Florida Rule of Appellate Procedure 9.030(a)(1)(B)(i) to obtain direct review of a circuit court order and avoid an existing, prior filed lawsuit. The motivation behind this unauthorized use of Chapter 75 and Florida Rule of Appellate Procedure 9.030(a)(1)(B)(i) is obvious - to exploit the unique procedural aspects governing disposition of such a proceeding, obtain a resolution without the participation of the Department, and avoid having to defend a legitimate lawsuit for breach of contract presently pending in another circuit.

In State v. City of Miami, 103 So. 2d 185, 188 (Fla. 1958), this Court, addressing Section 75.02, Florida Statutes, held: "Proceedings to validate bonds are purely statutory. The power of the courts with reference thereto must be found within the statute

itself." The power of this Court to review the trial court's order, concluding the City's complaint is a breach of contract action and not a Chapter 75 proceeding, cannot be found in Section 75.02, Florida Statutes. Section 75.02, Florida Statutes, is neither written nor interpreted broadly enough to bring the City's complaint within the review jurisdiction of this Court. Contrary to the City's position, Florida law does not authorize a Chapter 75 proceeding to "resolve all potential questions regarding the validity of the public debt in question." (IB. 15) Furthermore, not a single case has been offered by the City to support its claim that this case is, in fact, a Chapter 75 bond validation proceeding.

Section 75.02, Florida Statutes, is very specific and limited:

Any county, municipality . . . authorized by law to issue bonds, may determine its authority **to incur** bonded debt or **issue** certificates of debt and the legality of all proceedings in connection therewith, including assessment of taxes levied or to be levied, the lien thereof and proceedings or other remedies for their collection. (emphasis added)

Section 75.02, Florida Statutes, is prospective only - it provides a mechanism for a specific category of entities to bring a proceeding to determine its authority **to incur** bonded debt or **to issue** certificates of debt. Section 75.02, Florida Statutes, does not provide a mechanism for an after the fact determination of an entity's lack of authority over already incurred debt, or

determination of an entity's rights under an executed and fully performed inter-governmental contract. None of the conditions necessary to bring a Section 75.02, Florida Statutes, proceeding exists or has occurred in this case: there has been no attempt by the City to incur bonded debt or to issue certificates of debt; there has been no anticipatory action to determine the propriety of any proposed issuance; and there have been no proceedings in connection with a bond or certificates of indebtedness, the assessment of taxes levied or to be levied, or otherwise. Unable to satisfy any of the criteria of the statute, the City and its contract dispute do not qualify for the unique proceeding afforded by Chapter 75, Florida Statutes, and this Court is without jurisdiction to hear this appeal.

This Court has, on many occasions, held that a Chapter 75 proceeding to validate governmental securities

was never intended to be used for the purpose of deciding collateral issues or those other issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto. . . . This Court has consistently held that these statutes do not contemplate that collateral matters shall be adjudicated in validating bonds.

City of Miami, 103 So. 2d at 188-189 (citations omitted). Among the many cases cited by this Court for that proposition is State v. Dade County, 70 So. 2d 837 (Fla. 1954). Discussing Dade County, this Court said "we again were asked to rule upon a collateral

question relating to marketing bonds and other matters. Disposing of this question we said: 'Much as we might be inclined to accommodate the appellees, we feel neither obligated nor authorized in this action which is a suit to validate bonds, to approve an incidental contract relative to preparing prospectuses, marketing bonds, and so on.'" City of Miami, 103 So. 2d at 189-190 (quoting Dade County, 70 So. 2d at 840). Thus, even if the subject JPA was collateral to proposed bonded debt or certificates of debt, this Court would be without jurisdiction to address it. There is, however, no proposed bond or certificate of debt in this case, only an executed and performed inter-governmental agreement, the funds for which were paid at its inception, which includes no provision for long term payments, and which has been fully performed. The trial court concluded that under these facts and circumstances, the JPA could not form the basis for a Chapter 75 circuit court proceeding. The Department believes that neither the JPA nor the trial court's order forms the basis for a direct appeal to this Court.

None of the cases previously cited by the City at the hearing or in its briefs addresses a public entity's challenge to the validity of its own contract after it had been fully performed. The City proclaims that "Chapter 75, Florida Statutes, provides anyone who has standing with a method to determine whether any debt incurred by a public entity complies with Article VI, Section 12 of

the Florida Constitution." (IB. 15) Neither the language of Chapter 75, the cases offered by the City, nor any of the reported cases interpreting Chapter 75 support the City's position.

The City likens what it is attempting to do in this case to the state's action in State v. Brevard County, 539 So. 2d 461 (Fla. 1989). (IB. 15-16) However, there are no similarities. In Brevard County, the state challenged a complicated arrangement wherein the county proposed to establish a not-for-profit corporation to purchase certain equipment for lease to the county. According to the state, the arrangement created an obligation that would be secured by the county's non-ad valorem revenues. This Court upheld the trial court's final judgment validating the county's proposed obligations. Id. The cost of the work required under the JPA in this case was estimated by the City and paid by the City prior to performance. Because the City may be responsible for its errors and shortcomings in estimating the cost and the location of the utilities that were moved in accordance with the terms of the JPA, the action below was filed to avoid all responsibility under the agreement.

As to its jurisdiction, the majority of this Court said

Justice Shaw questions the Court's jurisdiction over this case, a point not raised by any party to the proceeding. We believe jurisdiction lies because the entire thrust of the state's argument is that by entering into an equipment leasing arrangement with a nonprofit corporation which issues certificates of indebtedness to pay for the

equipment, the county is doing indirectly what it cannot do directly without meeting the referendum requirement of article VII, section 12, of the Florida Constitution. In essence, this Court rejected a similar argument against jurisdiction in *State v. City of Daytona Beach*, 431 So.2d 981 (Fla.1983), when it validated an agreement by the city to pay designated revenues to the county to assist in servicing county revenue bonds previously validated and issued to finance the construction of a convention center.

Id. at 462 n. Justice Shaw, on the other hand, believed "neither we nor the circuit court has jurisdiction under article V, section 3(b)(2) of the Florida Constitution and Chapter 75, Florida Statutes (1987) to validate bonds issued by private parties or to validate short term leases of equipment entered into by county government."

Id. at 464.

Admittedly, not all challenges to issues collateral a proposed bond or certificate of debt issuance are doomed to fail for lack of jurisdiction. For example, GRW Corp. v. Dep't of Corrections, 642 So. 2d 718 (Fla. 1994); State v. School Bd. of Sarasota County, 561 So. 2d 549 (Fla. 1990); and State v. City of Daytona Beach, 431 So. 2d 981 (Fla. 1983), come close to the circumstances in this case, but miss the mark.

In City of Daytona Beach, the City filed a Chapter 75 proceeding to validate a proposed interlocal agreement, asserting it had authority to enter into the agreement. City of Daytona Beach, 431 So. 2d at 982. Although this Court found "that this type of interlocal agreement may be validated under chapter 75

because it is evidence of an indebtedness," several important distinctions between that case and the instant case require a different result. Id. There, the city sought to validate its authority to enter into the agreement prior to its execution and performance, and the agreement supported county revenue bonds previously validated and issued. Id. at 981-982. In the instant case, the City attempts to invalidate an agreement that does not support and is not closely related to a proposed bond issue; an agreement that has been executed and performed.

In School Bd. of Sarasota, it was argued that school boards and not-for-profit entities could not bring a Chapter 75 proceeding to validate bonds and agreements supporting them for the construction and lease back of certain educational facilities. School Bd. of Sarasota County, 561 So. 2d at 551-552. Finding that this argument had been rejected in Brevard County, this Court concluded that the school "boards [were] proper plaintiffs within the meaning of section 75.02." Id. at 552. This Court also concluded that the bonds did not require a referendum under Article VII, Section 12 of the Florida Constitution. Id. Once again, the factors militating in favor of jurisdiction and resolution by this Court in School Bd. of Sarasota County, are not present in this case. That is, in that case there was a proposed bond issuance and proposed lease back agreements. In this case, the JPA is not related to a proposed bond issue, there were no periodic payments

due under the terms of the JPA, and the JPA has been performed.

In a more recent case, the Department of Corrections filed a Chapter 75 proceeding to validate a proposed lease-purchase agreement to construct a correctional facility in Gadsden County. GRW Corp v. Dep't of Corrections, 642 So. 2d 718 (Fla. 1994). Once again, the proceeding was initiated pre-execution and pre-performance. While there was no proposed bond issue associated with the agreement, the case is unique and of no precedential value to the City in the instant case because the authority for the lease-purchase agreement derived from a special appropriation and special law enacted by the legislature. Id. at 720. The only opponent of the validation was a firm that was not the identified successful bidder and whose claims were raised in an authorized validation proceeding. Id. at 721. While agreeing that "matters collateral to a bond validation proceeding are not to be addressed by the court reviewing the validation proceedings," this Court concluded:

As indicated previously, the judicial inquiry in this validation proceeding is limited to the determination of whether the Department has the authority to execute the lease-purchase agreement, whether the purpose of the lease-purchase agreement is legal, and whether the proceedings authorizing that obligation were proper. Chapter 75, however, expressly anticipates that the judiciary, in completing such an inquiry, will hear "all questions of law and fact" that may cast doubt on the legal validity of the indebtedness. § 75.07, Fla. Stat. (1993). See *People Against Tax Revenue Mismanagement, Inc. v. County of*

Leon, 583 So.2d 1373, 1374 n. 2. (Fla.1991) (Chapter 75, Florida Statutes, clearly contemplates that a bond validation proceeding is a proper vehicle for quieting all legal and factual issues that may cast doubt on the legal validity of a bond issue."). Such a determination by the judiciary ensures that all issues relating to the validity of the obligation are forever put to rest so that no question affecting the validity of the indebtedness and financing agreements may subsequently be raised. *North Shore Bank v. Town of Surfside*, 72 So.2d 659 (Fla.1954); *State v. City of Miami*, 113 Fla. 280, 152 So. 6 (1933).

Id.

Jurisdiction was accepted in City of Daytona Beach because the agreement at issue was prospective and directly related to a previously validated bond issue. City of Daytona Beach, 431 So. 2d 981. In Brevard County, 539 So. 2d 461, the state filed a Chapter 75 proceedings challenging the authority of the county's proposed attempt to issue certificates of indebtedness through the not-for-profit corporation as an attempt to do indirectly that which the county could not do directly. In County of Volusia v. State, 417 So. 2d 968 (Fla. 1982), the county's Chapter 75 proceeding to validate its proposed capital improvement bonds for a new jail facility was denied. This Court affirmed the denial of validation, but did not address the issue of its jurisdiction. Id.

None of the cases cited by the City or discovered by the Department stand for the proposition that this Court has jurisdiction over a governmental entity's attempt to avoid

liability under a contract, years after its execution and performance, simply because the action is cast as a Chapter 75 proceeding.

In a recent case, this Court addressed a city's Chapter 75 proceeding to validate its proposed sales tax revenue bonds, and a citizen's answer challenging both the design, engineering, and purpose of the underlying construction project, and the City's authority to issue the proposed bonds. Boschen v. City of Clearwater, 777 So. 2d 958, 962 (Fla. 2001). Although there was testimony before the trial court regarding various aspects of the design of the project, this Court reminded us that:

This Court's inquiry in bond validation proceedings is limited to three legal issues: whether the public body has the authority to issue the bonds; whether the purpose of the obligation is legal; and whether the bond issuance complies with the requirements of law. (citations omitted)

Id. at 959. The cases cited by this Court for that proposition are, like Boschen, Chapter 75 proceedings as contemplated and authorized by the statute, and none are contract disputes. State v. Osceola County, 752 So. 2d 530 (Fla. 1999)(challenge to a proposed bond issue for acquisition and construction of a county-owned convention center); State v. Inland Protection Fin. Corp., 699 So. 2d 1352, 1355 (Fla. 1997)(challenge to a proposed bond issue to finance rehabilitation of petroleum contamination sites); Washington Shores Homeowners' Ass'n v. City of Orlando, 602

So. 2d 1300, 1301 (Fla. 1992)(proposed bond issue challenge to the city's procedures for validating bonds and the notice given by the city). Like Boschen, each of these cases reminds litigants of the three limited issues which this Court can address in bond validation proceedings. The instant case presents none of those issues.

All of the cases relied upon by the City, and located by the Department as a result of its independent research, fall into three general categories: 1) Chapter 75 proceedings by the issuing governmental entity seeking to validate its anticipated bond or debenture actions; 2) Chapter 75 proceedings to validate proposed agreements closely related to or supporting proposed or previously validated bond issues; and 3) non-Chapter 75 proceedings (injunctions, declaratory judgments, etc.) brought by third parties challenging governmental actions (bonds in default, rights under lease purchase agreements, etc.). See, e.g., State v. Suwannee County Dev. Auth., 122 So. 2d 190 (Fla. 1960)(Chapter 75 proceeding instituted by county development authority to validate its anticipated revenue certificates); City of Daytona Beach, 431 So. 2d 981 (Chapter 75 proceeding to validate proposed interlocal agreement to be used to support a previously validated bond); Kathleen Citrus Land Co. v. City of Lakeland, 169 So. 356 (Fla. 1936)(injunction action to prevent the city from issuing certain debentures).

This case is not like any reported case before it and does not fall into any of the recognized categories of cases challenging proposed government bond actions under Chapter 75, Florida Statutes. The City's case is unlike any other Chapter 75, Florida Statutes, proceeding because it is not a Chapter 75 proceeding, as the trial properly concluded. As such, this Court does not have jurisdiction to hear the City's direct appeal of the trial court's order, and the appeal should be dismissed.

CONCLUSION

The trial court properly concluded, based upon the City's admissions and the record before it, that the complaint filed by the City was not a Chapter 75, Florida Statutes, bond validation, but a contract dispute subject to the previously obtained jurisdiction of Hillsborough County Circuit Court. Because the City's action is not a bond or debt validation action, the City is not entitled to direct review by this Court, and the City's appeal should be dismissed.

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 United States Mail on this ____ day of May, 2001, to **GEORGE E. SPOFFORD, IV, ESQUIRE**, and **TRENTON H. COTNEY, ESQUIRE**, Counsel for the City of Oldsmar, Glenn, Rasmussen, Fogarty & Hooker, P.A., Post Office Box 3333, Tampa, Florida 33601-3333, and **C. MARIE KING, ESQUIRE**, Assistant State Attorney, Pinellas County, Post Office Box 5028, Clearwater, Florida 33748, Counsel for the State of Florida and the taxpayers and residents of the City of Oldsmar.

MARIANNE A. TRUSSELL

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the foregoing has been prepared using Courier New 12 point font.

MARIANNE A. TRUSSELL