

DA 6-7-01

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IN THE SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA

**FILED**  
THOMAS D. HALL  
MAY 21 2001

CLERK, SUPREME COURT  
BY \_\_\_\_\_

THE CITY OF OLDSMAR,

Plaintiff, Appellant,

Case No. SC00-2695

v.

Lower Tribunal No. 00-4479 1 CI-2 1

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

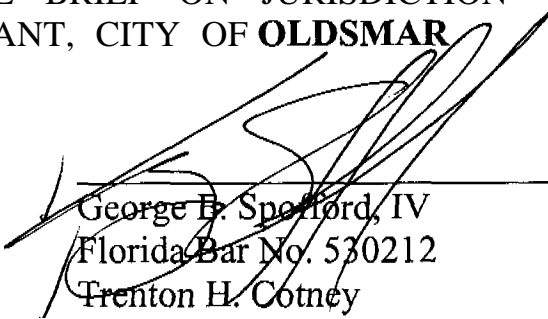
Defendants-Appellees.

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ON DIRECT APPEAL FROM THE CIRCUIT COURT  
IN AND FOR PINELLAS COUNTY, FLORIDA

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SUPPLEMENTAL BRIEF ON JURISDICTION  
OF APPELLANT, CITY OF **OLDSMAR**

  
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## STATEMENT OF THE CASE AND FACTS

This appeal addresses the dismissal of the bond validation lawsuit filed by the City of Oldsmar, Florida, (“City”) in which the City sought an adjudication pursuant to Chapter 75, Florida Statutes, regarding whether a certain debt obligation executed by the City violated Article VII, Section 12 of the Florida Constitution.

In 1995 the City entered into a contract referred to as a Joint Project Agreement (“JPA”) which is the subject of this appeal, (Complaint ¶ 6, Appendix Tab 1.)<sup>1</sup> Pursuant to the JPA, the Florida Department of Transportation (“FDOT”) agreed to construct certain improvements to utility lines owned by the City; the FDOT agreed to hire a contractor to perform the work; the City agreed to pay the FDOT \$1,094,817.19 for the work; and, the FDOT agreed that if the actual cost of the utility work exceeded \$1,094,817.19, then the FDOT agreed to pay the excess costs, and obtain reimbursement from the City, plus interest, after the 715 day project was complete. (Complaint ¶¶ 7, 8, 9, Appendix Tab 1; JPA ¶¶ 8, 11, 12, Appendix Tab 2.) The project was intended to be complete in 715 days, but actually required more than four years to complete. (JPA ¶ 11 ,Appendix Tab 2.) The FDOT contends that it incurred construction cost overruns of between

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<sup>1</sup> This is a supplemental brief requested by the Court. References to the Appendix refer to the Appendix filed contemporaneously with Appellant’s Initial Brief.

\$600,000 and \$4.5 million dollars, which it now demands that the City reimburse the FDOT with interest. (Hillsborough County Third Party Complaint ¶ 30, Appendix Tab 3A.) The City contends that the cost overruns are due to the mismanagement of the project by the FDOT and the FDOT's contractor. (Answer and Affirmative Defenses, Appendix Tab 3B.) The City also contends that the JPA is void because it is a public debt in violation of Article VII, Section 12 of the Florida Constitution. (Complaint, Appendix Tab 1.)

Pursuant to Chapter 75, Florida Statutes, the City filed suit below asking the Pinellas County Circuit Court to adjudicate whether the City's debt to the FDOT was in violation of Article VII, Section 12 of the Florida Constitution, because the debt is payable from City ad valorem tax revenues, but the debt had not been approved by a voter referendum. (Complaint, Appendix Tab 1.)

The Circuit Court dismissed the City's complaint for lack of subject matter jurisdiction, (Appendix Tab 7.) This appeal to the Supreme Court followed pursuant to Florida Statutes, Section 75.08, which states that appeals from final orders issued in suits brought pursuant to Chapter 75, Florida Statutes, are to be appealed directly to the Florida Supreme Court.

In its Answer Brief, the State conceded that this court had subject matter jurisdiction for this appeal.

On May 9, 2001, this Court requested that all parties submit supplemental briefs regarding the Supreme Court's jurisdiction to hear this appeal.

### SUMMARY OF THE ARGUMENT

The Supreme Court has jurisdiction to hear this appeal pursuant to Article V, Section 3 (b)(2) of the Florida Constitution which states that, when provided by general law, the Supreme Court shall hear appeals from final judgments entered in proceedings regarding the validation of public debt. Section 75.08, Florida Statutes, provides that any party to an action brought pursuant to Chapter 75, Florida Statutes, (the public debt validation statute) may appeal directly to the Supreme Court.

Section 75.04, Florida Statutes, identifies the essential elements that must be plead to obtain an adjudication regarding the validity of a public debt pursuant to Chapter 75. The City's complaint states a cause of action pursuant to Section 75.04, Florida Statutes, and the City otherwise complied with all of the requirements of Chapter 75 to maintain a bond validation suit. The trial court's dismissal below, although in error, was an appealable final order.

Section 75.08, Florida Statutes, states that all appeals from bond validation suits shall be made directly to the Florida Supreme Court. Accordingly, this Court has jurisdiction to decide this appeal. This Court previously has heard appeals of cases concerning the enforceability of debt instruments similar to the JPA in this

case, See e.g. State v. Brevard County, 539 So.2d 461 (Fla. 1989)(equipment lease valid under Chapter 75); State v. City of Daytona Beach, 43 1 So.2d 981 (Fla. 1983);(interlocal agreement valid under Chapter 75); Orange County Civic Facilities Authority v. State, 286 So.2d 193 (Fla. 1973)(cooperation agreement valid under Chapter 75); GRW Corp. v Department of Corrections, 642 So.2d 718 (Fla. 1994)(lease purchase agreement valid under Chapter 75).

## ARGUMENT

### **I. THE FLORIDA SUPREME COURT HAS SUBJECT MATTER JURISDICTION TO HEAR THE CITY’S APPEAL ARISING OUT OF THE BOND VALIDATION SUIT BROUGHT PURSUANT TO CHAPTER 75, FLORIDA STATUTES.**

The Florida Constitution, Florida Statutes, and Florida Rules of Appellate Procedure all provide that the Florida Supreme Court has jurisdiction to hear appeals from final orders in bond validation proceedings. Specifically, Article V, Section 3 (b)(2) of the Florida Constitution states that, when provided by general law, the Supreme Court shall hear appeals from final judgments entered in proceedings brought under Chapter 75 for the validation of public debt.<sup>2</sup> Section 75.08, Florida Statutes, states that any party to the action that is dissatisfied with the final judgment may appeal to the Supreme Court within the time and in the

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<sup>2</sup> Article V, Section 3(b)(2) refers to “bonds and certificates of indebtedness.” As established in Appellant’s Initial Brief at pages 18 through 22, the phrase “bonds or certificates of indebtedness” used in Article V encompasses all forms of public debt regardless of form.



manner prescribed by the Florida Appellate Rules. Rule 9.030, Florida Rule of Appellate Procedure, states that if provided by general law, e.g. Section 75.08, Florida Statutes, the Supreme Court shall review by appeal final orders entered in proceedings for the validation of public debt.

In State v. Brevard County, 539 So.2d 461 (Fla. 1989), Justice Shaw questioned whether the Supreme Court had jurisdiction over an appeal from a Chapter 75 suit where the issue was whether the debt obligation, an equipment lease, violated Article VII, Section 12 of the Florida Constitution. The majority ruled that jurisdiction was proper because, “The entire thrust of the State’s argument is that by entering into an equipment leasing arrangement . . . the County is doing indirectly what it cannot do directly without meeting the referendum requirement of Article VII, Section 12 of the Florida Constitution.” Id. at 462.

In the Brevard case, the County created a corporation for the purpose of purchasing equipment which would then be leased back to the County. The lease revenues received from the County were then to be used as collateral to obtain funds that the corporation would use to actually purchase the equipment. The debt obligation that was scrutinized and ultimately validated in a Chapter 75 proceeding and on appeal was the equipment lease agreement entered into by the County. The State contended at the Chapter 75 proceeding, and on appeal, that the County’s lease obligation violated Article VII, Section 12 of the Florida Constitution

because it was a long term debt obligation. Ultimately, this Court held that the lease agreement did not violate Article VII, Section 12, because the lease agreement contained two of the recognized savings clauses that take a debt obligation outside the scope of Article VII, Section 12.<sup>3</sup>

The Brevard case is notable because the debt obligation at issue was an equipment lease agreement, not an archtypical “bond,”<sup>4</sup> and the Supreme Court exercised appellate jurisdiction to determine whether the lease agreement was valid under Article VII, Section 12.

Similarly, in State v. Downtown Development Authority of the City of Miami, 190 So. 2d 756 (Fla. 1966), a promissory note was validated in a Chapter 75 proceeding and the Supreme Court had jurisdiction to determine the propriety of the validation proceeding. The Downtown case is noteworthy for three reasons. First, the debt in question was a promissory note and not an archtypical bond. Second, the Supreme Court ultimately held that the promissory note should not have been the subject of a Chapter 75 suit, because the note was merely an illusory debt, i.e. it was not even a valid debt without regard to Article VII, Section 12 of the Florida Constitution. The Court did not rule that the use of a Chapter 75

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<sup>3</sup> The Brevard lease agreement contained a non-appropriation clause, and an express prohibition against the use of ad valorem taxes to pay the debt. (See page 22 of the City’s Initial Brief for a full discussion of savings clauses, all of which are notably absent from the debt obligation at issue in this appeal.)

<sup>4</sup> See supra note 2.

proceeding was improper because a promissory note is not the type of obligation Chapter 75 was intended to address. Instead, the Court ruled that Chapter 75 was inappropriate in that case solely because the note did not constitute a debt obligation of any sort. The third reason Downtown is noteworthy is because the Supreme Court exercised its jurisdiction to hear the appeal even though it ultimately ruled that the document in question was not properly the subject of a Chapter 75, Florida Statutes, proceeding, i.e., the Supreme Court had subject matter jurisdiction even though the trial court should not have exercised jurisdiction pursuant to Chapter 75, Florida Statutes.

In the instant appeal, the FDOT agreed to advance funds on the City's behalf and the City agreed to repay the FDOT the principal amount, plus interest. The JPA is no different than any other enforceable promissory note subject to Article VII, Section 12. There is no question that the JPA at issue in this appeal is a debt of the City (assuming *arguendo* that the debt is not void under Article VII, Section 12). Accordingly, the Supreme Court has jurisdiction to hear this appeal, just as it did in Downtown.

**A. THE TRIAL COURT'S DISMISSAL OF THE CITY'S COMPLAINT WAS A FINAL ORDER.**

This Court has jurisdiction to hear appeals from final orders in suits brought pursuant to Chapter 75, Florida Statutes. See Article V, Section 3 (b)(2) of the Florida Constitution, and Section 75.08, Florida Statutes. An order is final and

appealable if it conclusively determines a particular question as to the parties involved. See Tyler v. Huggins, 175 So.2d 239 (Fla. 2d DCA 1965). An order is final if it puts an end to the judicial proceedings below such that nothing further remains to be done to terminate the dispute between the parties directly affected. State v. Baker, 327 So.2d 205, (Fla. 1976). An order, such as the order in this case, which actually dismisses a complaint, is final for purposes of an appeal. See Board of County Commissioners of Madison County v. Grice, 438 So. 2d 392 (Fla. 1983).

In Grice, the issue of subject matter jurisdiction was before the Court of Appeals. The appellate court acknowledged that it had the obligation to satisfy itself not only that the Court of Appeals had jurisdiction over the appeal, but also that the trial court had jurisdiction over the complaint. See also Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida, 177 F.3d 12 12 (1 1<sup>th</sup> Cir. 1999); Stel-Den of America, Inc. v. Roof Structures, Inc., 438 So.2d 882 (Fla. 1983).

The trial court below clearly issued an appealable final order when it dismissed the City's complaint.

**B. THE PROCEEDING BELOW WAS A BOND VALIDATION PROCEEDING.**

As established in the City's Initial Trial Brief, the City's attempt to obtain an adjudication regarding the validity of the City's debt obligation was properly brought pursuant to Chapter 75, Florida Statutes. The trial court below obtained

jurisdiction over this matter upon the filing of the City's complaint that met the pleading requirements set forth in the statutes. See State v. City of Sarasota, 17 So.2d 109 (Fla. 1944). City of West Palm Beach v. State, 111 So.2d 640 (Fla. 1927) ("The purpose [of a validation proceeding] being to facilitate an adjudication as to the regularity of the steps taken to issue the bonds.").

Merely because the City was seeking a determination that the debt was invalid under Article VII, Section 12 of the Florida Constitution, rather than a ruling that the debt was valid, is irrelevant. In every bond validation suit brought pursuant to Chapter 75, one party is seeking to validate the debt, and the other party is seeking to invalidate the same debt. The Court routinely hears all appeals of Chapter 75 suits regardless of which role the appellant maintains – for, or against, validation.

**C. THE SUPREME COURT IS THE ONLY APPELLATE TRIBUNAL AVAILABLE TO THE CITY.**

When a complaint is dismissed for lack of subject matter jurisdiction, the appellate court that would have heard the case absent the dismissal on subject matter grounds is the correct court to hear the appeal. The existence of subject matter jurisdiction is to be determined from the pleadings, and in reviewing a lower tribunal's dismissal for lack of subject matter jurisdiction, an appellate court considers the matter *de novo*. Tamiami Partners, 177 F.3d 1212. Section 75.09, Florida Statutes, designates the Florida Supreme Court as the sole appellate

tribunal to hear cases filed under Chapter 75. No one has, or can, contend that the City's complaint below did not state a cause of action under Chapter 75. Therefore, this Court which is the sole appellate tribunal of Chapter 75 suits, has jurisdiction to decide this appeal.

In State v. City of Daytona Beach, 43 1 So.2d 98 1 (Fla. 1983), Chapter 75, Florida Statutes, was utilized to adjudicate the validity of an interlocal agreement between two public entities. The Supreme Court accepted jurisdiction and found that the interlocal agreement was merely another form of public debt subject to Article VII, Section 12. The sole debt instrument at issue in that case was the interlocal agreement whereby the City of Daytona Beach agreed to pay Volusia County funds which the County intended to use to finance a civic center. The State argued that "Chapter 75 does not authorize validation of interlocal agreements." Id. at 982. The Supreme Court ruled, that "This type of interlocal agreement may be validated under Chapter 75 because it is evidence of an indebtedness." <sup>5</sup> Id.

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<sup>5</sup> Ultimately, in Daytona Beach, the Court held that the interlocal agreement was properly validated because the interlocal agreement expressly stated that payment of the debt could only be made from two non-ad **valorem** sources of revenue, i.e., the interlocal agreement contained a savings clause absent from the JPA at issue in this appeal. (See Appellant's Initial Brief p. 22 for an explanation of why the JPA's lack of any savings clause renders the JPA void.)

The JPA at issue in this appeal is nothing more than an inter-local agreement between the City and FDOT evidencing a City debt. Therefore, the Supreme Court has jurisdiction over this appeal.

**D. FLORIDA STATUTES, CHAPTER 75 IS NOT RESTRICTED TO VALIDATION PROCEEDINGS BROUGHT PRIOR TO ACTUAL INCURRENCE OF THE DEBT.**

Chapter 75, Florida Statutes, does not state that a suit brought to determine the validity of a public debt can only be brought prior to the debt actually being incurred. While most validation suits are brought in advance, Section 75.02, Florida Statutes, does contemplate the use of a Chapter 75 suit after the debt has been incurred. For example, Section 75.02 states in part that a plaintiff may use Chapter 75 to “determine. . . the legality. . . of taxes levied. . .,” and further states that Chapter 75 is appropriate “in actions to validate bonds or certificates of debt issued. . .” The use of terms in the past tense establishes that Chapter 75 can be utilized to determine the validity of debts even after the debt has been incurred.

In GRW Corp., the debt validated pursuant to Florida Statutes, Chapter 75, was evidenced by a lease-purchase contract to build a prison. The debt instrument validated was the lease-purchase contract itself. The contract was not validated pursuant to Chapter 75 until after the contract had been awarded by the Department of Corrections. In other words, the contract was validated after the debt obligation

had been incurred. GRW Corp., 642 So.2d at 718. See also State v. Inter-American Center Authority, 84 So.2d 9 (Fla. 1955).

**E. THE VALIDITY OF THE JPA IS NOT A COLLATERAL ISSUE.**

If the validity of the JPA is merely collateral to a proceeding to validate a separate bond obligation, then the trial court and the Supreme Court would lack jurisdiction to determine the validity of the JPA. See McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252 (Fla. 1980). In this case, however, the JPA is not collateral to some other underlying debt obligation, because the debt in question is the JPA itself. Therefore, the trial court and the Supreme Court have jurisdiction to decide the issue. See Brevard, 539 So.2d 461; Orange County, 286 So.2d 193; City of Daytona Beach, 431 So.2d 981; and, GRW Corp, 642 So.2d 718.

Moreover, even where the trial court has ruled that it lacks subject matter jurisdiction to determine the validity of a collateral agreement, the Supreme Court still has jurisdiction to determine whether the trial court properly ruled that the debt obligation was merely an agreement collateral to the main debt obligation. See McCoy, 392 So.2d 252; State v. Sunrise Lakes Phase II Special Recreation District, 383 So.2d 63 1 (Fla. 1980); Orange County, 286 So.2d 193.

In Orange County, the Supreme Court exercised jurisdiction to determine the validity of a “cooperation agreement” which obligated Orange County to pay the Orange County Civic Authority up to \$200,000 per year to be used to pay back



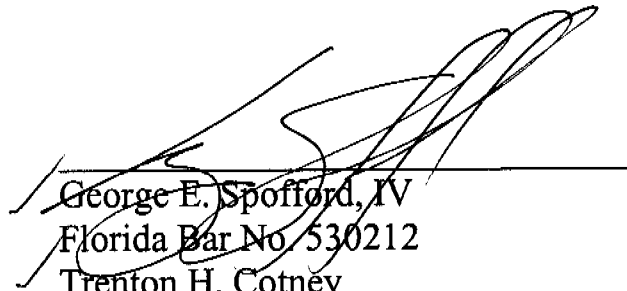
bonds issued by the Authority. The “cooperation agreement” was deemed to be a direct debt of the County subject to Chapter 75, Florida Statutes. The debt ultimately was validated because the agreement contained the savings clauses absent from the Oldsmar/FDOT JPA in this case.

In GRW, this court acknowledged that matters collateral to a bond proceeding are not be addressed by the court reviewing the validation proceedings. The GRW court had jurisdiction to consider the validity of a lease-purchase contract o build a prison because the contract was the debt instrument at issue. “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 lease-purchase agreement is legal, and whether the proceedings authorizing that obligation were proper.” GRW at 72 1.

### **CONCLUSION**

The Florida Supreme Court clearly has jurisdiction to hear this appeal pursuant to Florida Statutes, Section 75.08, and Article V, Section 3(b)(2) of the Florida Constitution. The City’s complaint satisfied the pleading requirements set forth in Chapter 75, and there is a legitimate need to determine whether the JPA is a binding debt obligation or whether the obligation is void because it was not approved by voter referendum. If the JPA debt is allowed to be enforced, then the taxpayers of the City will be burdened with an expense they never had an

opportunity to disapprove. Moreover, the defects which render the JPA void were known to the FDOT prior to the FDOT's creation of the JPA. See St. Lucie v. Town of St. Lucie Village, 603 So.2d 1289 (Fla. 4<sup>th</sup> DCA 1992). Accordingly, the Supreme Court should exercise its jurisdiction and decide this appeal.



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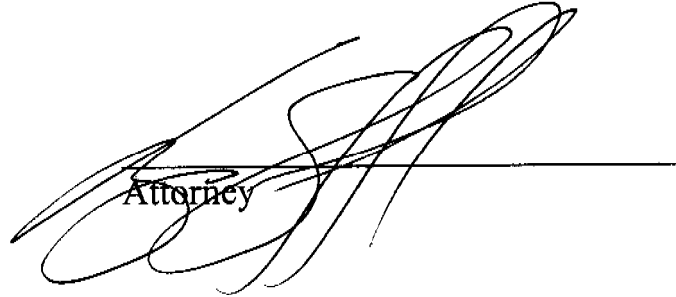
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CERTIFICATE OF SERVICE

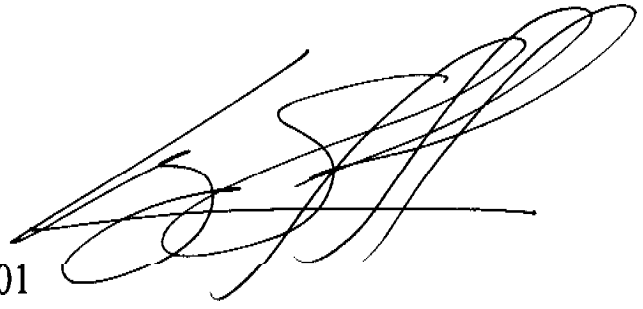
I HEREBY CERTIFY, that a true and correct ~~copy~~ copy of the foregoing document has been furnished via U.S. mail to Marie King, Assistant State Attorney, Pinellas County, P.O. Box 5028, Clearwater, FL 33758 and to Marianne A. Trussell, Esq., Florida Department of Transportation, 605 Suwannee Street, Mail Station 58, Tallahassee, FL 32399-0458 on this 18<sup>th</sup> day of May, 2001.



Attorney

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Answer Brief is submitted in Times New Roman 14-Point, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

1886-001^P JURISDICTION BRIEF 5.17.01