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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1282

L.T. CASE NO. 13-CA-003457

VICKI THOMAS, CHRISTOPHER TRAPANI, and SIDNEY KARABEL,

Appellants,

v.

CLEAN ENERGY COASTAL CORRIDOR,

Appellee.

On Appeal from the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida

REPLY BRIEF of APPELLANTS

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ARGUMENT

Appellee has raised a number of procedural arguments in an attempt to divert this Court from determining this case on the merits. Each of these arguments is addressed in turn below. Appellee also takes issue with Appellants' citation, in their Initial Brief, of several cases fundamental to the nature of bond validation proceedings. While Appellee is entitled to distinguish cases, the effort to completely disregard cases such as *Keys Citizens for Responsible Government, Inc. v. Florida Keys Aqueduct Authority*, 795 So. 2d 940 (Fla. 2001), a seminal case outlining the scope of review in a bond validation proceeding is an unprecedented attempt to turn the bond validation process into a meaningless rubber stamp proceeding.

Appellee also evicerates this Court's opinion in *Ingram v. City of Palmetto*, 112 So. 861 (Fla. 1927). While *Ingram* does contain the language quoted by Appellee in its Answer Brief, the quoted language is an alternative holding—that even if this Court were to allow amendment of a complaint or other pleading, which it did not, the property owners' due process rights had been violated by failing to allow an opportunity to respond. Not only does Appellee ignore the primary reason for reversing the validation, namely that once pled, a bond validation complaint could not be amended to cure violations of statute, but also ignores the rights of other parties to the case, who by virtue of the complaint and

attachments being amended during the hearing, had no notice of the changes or opportunity "to take issue on the facts alleged," as even Appellee agrees *Ingram* requires.

Appellee attempts to distinguish *Brown v. Reynolds*, 872 So. 2d 290 (Fla. 2d DCA 2004), by pointing out that it was a replevin action. *Brown* was indeed a replevin action. However, the distinction is irrelevant. Appellee can point to no reason why the nature of a show cause hearing would be different in a bond validation case as opposed to other cases, and there is no statutory or caselaw authority as to why this would be the case. As with every other area of law, unless some authority requires a different result, principles from replevin actions are applicable in bond validation actions. *Rianhard v. Port of Palm Beach District*, far from refuting this point, as Appellee claims, actually strongly supports it. 186 So. 2d 503 (Fla. 1966). In *Rianhard*, the trial court had determined that, as a matter of law, the bonds were valid, and thus no further evidentiary hearing was required. Here, the trial court determined that portions of the complaint were *not* lawful, and required that they be adjusted before validating the bonds. Under *Rianhard*, then, the trial court should have set a hearing to resolve evidentiary questions, if it had any, or simply denied validation. Instead, the trial court turned the bond validation hearing into a workshop, allowed amendment of the pleadings and validated the

bonds subject to its newly imposed requirements. Appellee's arguments to the contrary are inapposite, and the cause should be reversed and remanded.

I. Appellants Properly Preserved for Review All Issues Raised in the Initial Brief

Appellee correctly indicates that an issue must be preserved for this Court to review it on appeal, unless it is an assertion of fundamental error. Appellee is incorrect that the issue was not preserved below. To preserve an issue, a party must identify the issue to the lower tribunal "with sufficient specificity to apprise the trial court of the potential error." *Ferguson v. State*, 417 So. 2d 639, 641 (Fla. 1982). This may be done through an objection, a motion in limine, or other means sufficient to call the attention of the trial court to the issue and obtain a ruling on the record. Philip J. Padovano, *Florida Appellate Practice* § 8:1 (2013). The appraisal need not be as detailed as an argument on appeal, but must specifically identify the grounds for the objection. *Ferguson*, 417 So. 2d at 641.

Appellants raised the issue of improper amendment of pleadings throughout the initial hearing by objecting to the amendment of pleadings to exclude the taxpayers and citizens of Broward County from participating in the proceedings. (App. 190-91, 201-02.) Appellant specifically articulated a due process claim related to rendering judgment on a complaint seeking relief against Broward County defendants while dismissing such defendants from the cause; counsel

specifically stated that were Appellants Karabel and Trapani not permitted to participate in the hearing, "it would be a violation of due process rights to be heard." The trial court effectively allowed an improper and untimely amendment to the complaint by reducing the relief sought in the motion to dismiss and granting validation on modified documents that were not part of the complaint.

Appellant raised the issue of whether foreclosure was a valid remedy most particularly during the second day of hearing. (App. 254-55.) At the time the argument was made, the trial court had not indicated that it would be allowing the pleadings to be changed to reflect what all parties acknowledged was the law—judicial foreclosure is not a valid remedy. There was an extended discussion regarding whether the final judgment could limit the language in the Complaint to mean something other than what it directly said. (App. 283-90.) In fact, counsel for Appellants specifically indicated that the proper remedy was for Appellee to "go back and do it right." (App. 290.) The trial court then articulated a definitive ruling that the bonds would be validated with a provision that judicial foreclosure not be used unless the Legislature changed the law in an attempt to address Appellants' arguments. (App. 293.) All of Appellants' issues and objections were specifically identified to the trial court and thus preserved for appellate review.

II. The Trial Court's Actions Went Beyond Mere Interpretation and Substantively Amended the Complaint and Documents Attached to the Complaint in Violation of Appellants' Due Process Rights.

Appellee argues that the trial court's actions were merely interpretive of the pleadings rather than amendatory thereto. The only way the trial court could have limited the scope of the final judgment to Miami-Dade County, when Broward County had been pled in the complaint, would be by amending the Complaint (or allowing Appellee to amend the Complaint, which it did not). The trial court did not deny validation as to Broward County, but instead simply indicated that the final judgment did not apply to Broward County. (App. 297-98.) The trial court's action effected an amendment of the Complaint, which is not permissible in a bond validation proceeding.[1]

Similarly, the plain language of the financing agreement (attached to the Complaint) clearly indicates a reliance on foreclosure, as indicated in the Initial Brief. The trial court, by creatively interpreting the language, substantively changed the document from its plain meaning as enacted by the governing board of Appellee to fit with the requirements of Florida Statutes, instead of correctly reading the plain language as allowing for foreclosure. While Appellee casts this as mere "interpretation," the fact remains that the documents mean something

[1] Appellee suggests Appellants invited error by requesting the judgment reflect a limitation to Miami-Dade County. (App. 299.) Appellee misunderstands the invited error doctrine; an error is not invited if, after obtaining a definitive ruling, the party raising an issue attempts to mitigate the effect of the ruling, as "trial court error, not tactics, dictated" the complained-of actions. *Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 202 (Fla. 2001) (quoting *Chenoweth v. Kemp*, 396 So. 2d 1122, 1127 (Fla. 1981) (Sundberg, C.J., dissenting)).

different after the final judgment than they did before the judgment was rendered. This type of workshopping is not appropriate in a bond validation proceeding. The amendment of the documents attached to the complaint is an impermissible expansion of the bond validation process and violates Appellants' due process rights.

III. The Trial Court's Failure to Allow Participation of Appellants Karabel and Trapani Was Harmful Error and Should Be Reversed.

Appellee finally argues that Appellants' standing to participate in the proceeding was waived due to Appellants' request that the trial court limit the scope of its judgment. This argument fails for the same reason that Appellees' invited error argument fails—once a definitive ruling on the record has been obtained, a party does not waive an issue simply by attempting to mitigate the effect of a negative ruling. *See Sheffield*, 800 So. 2d at 202. Appellants should not be prevented from appealing an issue simply because they sought clarity on the issue once it had been decided against them. Counsel's statement "Okay" hardly suffices to show agreement with the disposition, reflecting instead an understanding of the Court's decision. (App. 299.)

As discussed above, Appellants' status as a participant in the proceeding did not end on Appellee's Notice of Dismissal. Not only did the relief sought in the Complaint still impinge on their interests, but the dismissal likely was not proper in the first place, as discussed in the Initial Brief. However, even if the Notice of

Dismissal was effective, Appellants' timely move to participate in the hearing should have been granted, as they were a proper party to the proceeding under the Florida Rule of Civil Procedure 1.230 and conclusion of a proceeding in which relief could have been granted against them without their participation would violate due process.

Appellee seems to confuse bond validation procedure with the typical order of events in civil proceedings—particularly where parties are concerned. In most civil proceedings, the defendant's goal is to obtain a dismissal, and thus do not complain when such is achieved. However, in bond validation proceedings, parties appearing at the show-cause hearing affirmatively want to participate, and thus plaintiffs may not unilaterally dismiss them. Further, Appellee's arguments as to jurisdiction are unavailing: by appearing at the hearing despite the dismissal, Appellants placed themselves within the personal jurisdiction of the court.

Appellants' status as a participant—or not—at the hearing is material to the outcome; a trial court is presumed to consider only the evidence and arguments it considered validly placed before it, ignoring those invalidly presented, unless there is evidence to the contrary. *See Petion v. State*, 50 So. 3d 1203, 1204 (Fla. 4th DCA 2010). Appellants must presume, then, that the trial court did not consider the entirety of its arguments, particularly those presented in written form. Further, Appellee constantly disputed the participation of Appellant Thomas, and the trial

court did not make a definitive determination as to whether to accept or disregard her filings. Without the Broward County Appellants' participation, then, it is uncertain whether the trial court considered all of the arguments presented and made an adequate determination thereon.

This, along with the other reasons presented in the Initial Brief, require this Court to reverse and remand the final judgment of validation for entry of an order dismissing the cause.

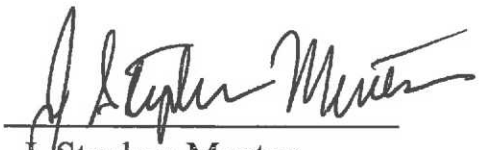
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail to Mitchell J. Burnstein at mburnstein@wsh-law.com, Jeffrey D. DeCarlo at jdecarlo@wsh-law.com, Edward Guedes at eguedes@wsh-law.com, Georgia Cappleman at capplemang@leoncountyfl.gov, Joel Rosenblatt at joelrosenblatt@miamisao.com, and Kathryn Heaven at kheaven@sao17.state.fl.us this 7th day of October, 2014.

J. Stephen Menton

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief is computer-generated in 14-point Times New Roman font in compliance with Florida Rule of Appellate Procedure 9.210(a).



J. Stephen Menton