53-2016CA-004023-0000-WH
Section:

DEFENDANT'S CLOSING ARGUMENTS AND SUMMARY ANALYSIS
OF THE TRANSACTION TOGETHER WITH OPTIONS FOR FINAL JUDGMENT

MAY IT PLEASE THE COURT.

Defendant elects to provide the court with his argument and analysis of the instant case in essay form to aid in the drafting of Final Judgment the court would think appropriate. Defendant concedes he is at a loss to prepare a Final Judgment of findings of facts and conclusions of law in style and format similar to the kind of presentation the court expects of learned counsel. An attempt to manufacture such a Final Judgment by reviewing and imitating the general statements by copying the similarities found in many Final Judgments, except for case-specific commentary the court chooses to add, such verisimilitude would open up the Defendant for ridicule. I see no need for pretences. I will describe the options on the essential and pertinent issues as best I can.

Defendant has spent many professional years working with real estate developers. Developers are not stupid. Developers are not timid men. They are very intelligent and experienced property negotiators. It is axiomatic that Sellers always want as much as they can get for their properties. Buyers are not stupid. They are always seeking to pay as little as possible. We call acting in self-interest rational behavior.

There was something surprising about this case that engendered a sense of suspicion or apparent irrationality on the part of the seller and the buyer right from the start. But with patient analysis we plan to argue appearances are deceptive--that the parties performed rationally all along, accept, perhaps, for a failure in business judgment.

It came as a surprise that no purchase price was entered into the purchase and sale contract, except as an item of definition, an omission that immediately suggested this deal should be scrutinized carefully. The omission was perhaps unintentional... or, perhaps, intentionally deceptive.

A valuation consultant was retained by the District to give advice on the value of the proposed real estate purchase and the acquisition price. One comes to discover $73.7 was said by financial experts to be only the maximum possible dollars available for a purchase price, but the price could be much less. To the consultant's credit he did not state a specific price which was termed the "Acquisition price" -- that was a poor choice of wording --but the $73.7 million he insisted was only the maximum net bond proceeds the District could possibly pay not that it was the only price payable. Given the range of dollars from $0 to $73.7 any price in between could be any number of dollars the District could possibly offer as payment or engage to an appraiser to advise on the fair value of the real estate to aid in contract negotiation and establish a purchase price.

The negotiators for the district could have offered less money but there has to be some logical reason why they offered as much as they had potentially available net from a bond sale. That is not expected of a rational buyer of real estate. Except for one pre-condition imposed upon a CDD in purchasing property [190.016(1)(c)] there is nothing in Chapter 190 to guide a Board of Supervisors elected from a random pool of Residents with limited or no knowledge of commercial real estate which is different to *residential* real estate as is Civil Law is to Criminal Law, but may have a passion or ego for public service. One is entitled to suspect some other understanding of what we have seen on the surface is not convincing to an inquiring mind. Perhaps the Supervisors were not expected to be "buying" real estate after all. Keep that in mind to which we will return later.

Let us suppose we are privy to the following hypothetical negotiations. If the buyer offered the seller 20 million did the seller counter and say that is far below the fair value of my property? No, there was a reason why the seller stood mute the buyer then, let us imagine, offers 40 million. The Seller again stands mute and does not counter. If the buyer--still negotiating against himself --offers 60 million and the seller again stands mute and does not counter one would question the good faith of the seller in the transaction or the intelligence of the buyer. If the buyer would have offered $19.250 million, as is the value in fact established by an independent appraiser, or the value in fact

of $15 million as the Polk County appraiser computes the value of the property by their valuation methods for tax purposes, would the seller have agreed to accept the offer?

It boggles the mind to think a rational and reasonable buyer could have paid less but knowingly chose to offer the seller as much as the net bond proceeds available without knowing the worth of what he was buying. That's reckless. In this case we aver that's illegal. That does not happen in real estate deals between rational, intelligent parties negotiating at arms-length. Perhaps the explanation is the interpretation I present below.

The Board of Supervisors are honorable men. Perhaps they thought they were giving the Seller money that was rightfully his in the only way they knew how. They--as a CDD--having been given -- rightly or wrongly -- the power by Chapter 190. F.S. to issue bonds was acting in this case only as a financial intermediary, having become more like a specialized governmental banking institution for developers.

There has to be a rational explanation of obvious irrationality which is usually the result of incomplete knowledge. This conundrum may have been resolved by appropriate discovery. Perhaps the quandary of understanding apparently "irrational" behavior of a seller and a buyer may be seen as reasonable and rational if I may examine the issues from anther perspective, an explanation which I will attempt to offer as follows.

ANOTHER PERSPECTIVE TO UNDERSTAND THE TRANSACTION
A TALE OF TWO TRACKS

TRACK ONE.

Track one will begin the story by stating Avatar (as Seller), is the developer who established the Poinciana Community Development District. That creates a relationship with the PCDD as a Father is to a Son. When the PCDD was established in 1999 the Board of Supervisors were for many years employees and under the direction of their

employer--Avatar. Law binds them and the law that binds them is Chapter 190, F.S. in its entirety.

Some background: When the community was initially developed Avatar at its expense made a wise investment by retaining ownership of recreational assets and formed a social Club in which membership was mandatory as a condition of purchasing a home The recreational assets are for the resident's use and enjoyment for a monthly utilization fee that is established by contract at the owner's sole discretion without regard to it's cost of production. Such charge is rightly termed a monopoly tax masquerading as a fee as it is based on whatever the traffic will bear. As a result the monopolist seller after many years of building and selling houses is currently the beneficiary of free net cash flow of $5.4 million, over and above expenses, which he can lower or raise at his sole discretion. A wise investment, indeed.

The question then is what is $5.4 million received annually worth? Suppose the seller plans to give $5.4 million to the District annually and asks it to calculate the value today--that is, the present value -- of $5.4 million paid for 30 years at 3.75 %. The result of that calculation is easily shown to be $96.3 million. That sum --as a fact --can be borrowed from players in the financial markets purchasing bonds -- IOUs --and in return they will be paid back with certainty $162 million ---$5.4 million for 30 years.

As stated, the seller receives from the residents a net cash flow of $5.4 million in monopoly returns. If he does not need the money he may profitably put it to use in other more productive ways. Moreover, coming to the limit of the homes that can be built in this community over the past 17.5 years the developer is close to the maximum in free cash flow that accumulates year by year, as the cash flow depends on the number of homes sold. Not much more can be extracted from the remaining undeveloped lots.

Had the seller the power to issue tax-free bonds he might keep the $5.4 million and make the payment himself. But as the District has been given the power to issue tax-free bonds

it is far wiser to give the District the $5.4 million annually, forgo his profit, and lay on the District's residents the burden to service the debt and keep it off his corporate books.

In due time, the seller approaches " his" CDD with a "plan" to sell some recreational assets There are two reasons why he approached the District. He approaches the District only because the District has the power to issue tax-free bonds that can be converted into ready cash. And he approached the District as no other savvy third party real estate investor would in all likelihood pay him anything close to the fair market value of the recreation assets, now almost 20 years old.

Seller proposes to sell his ownership of certain selected recreational assets of unknown value to the District acting as agents for the residents for undertaking the chore and any risks associated with repayment. The proposal is designed to have the residents pay the exact fees --$5.4 million - currently paid to the seller as monopoly profit but will be recast and paid as a non-ad valorem special annual assessment. Seller and Buyer will jointly formalize the contract for sale and purchase of some specifically selected recreational non-income producing assets--the swimming pools, a building and two eating establishments, the latter may be operating at a net loss. [That is not an unfair assumption, one may legitimately say, as the seller has never provided the buyer an income statement on which to estimate it's positive value, if any, nor has the Supervisors or their advisors asked for one.]

Recall, $96.3 million is the present value of the bonding capacity of $5.4 million paid annually. Seller expects the District to turn the contract sale proceeds over to him. However, as there are expenses and other costs to be first deducted amounting to (say) $ 11.4 million. The result is the worth of the proceeds now amounts to a net sum of $84.9 million. In view of their special relationship the District requests, as a result of Seller's prodding which Seller may now regret promises made, there are two new buildings the residents would enjoy in addition to the current amenities already provided. The District intends to "piggy-back" in the bonding capacity estimates for 2 new buildings at a cost of $11.2 million in it's own name, which shall be set aside and, for a 5% management fee,

Seller will see that the buildings are built within the remaining funds. The new net balance of the seller's $5.4 million annual payment now amounts to $73.7 million

NOW TO TRACK TWO

Track two is to explore how is the District proposing to transfer $73.7 million of the seller's funds? It would seem unjust and possibly actionable to transfer the funds to a private party without a quid pro quo. The vehicle adopted by the parties was to form a purchase and sale agreement. In return for acting as a bank and generating net bond proceeds of $73.7 million the parties propose the District will "purchase" all the recreational assets the seller owns, except for the highly profitable ones, at a stipulated purchase price of $73.7 million.

And here is where the confusion of understanding the parties "rationality" arises. It is at the conjunction of two unrelated but similar $73.7 million figures. One figure is the result of the calculation of the net proceeds of a bonding capacity estimate. It does not need to be related to anything but one's curiosity as to the present net worth of $5.4 million given the terms. And the other $73.7 million figure is defined in a contract as the exact price that the District agrees it will pay independent of any relation to the fair value of the underlying assets in order to effectuate a transfer of funds to the Seller.

Would a contract between such parties be inherently suspect? Defendant asks the reader to recall the special "Father/Son" relationship between a Developer with superior knowledge and a Board of Supervisors with little commercial real estate experience, especially as some Resident members of the elected Board may have worked closely with Board members who were employees of the Developer having been appointed to the Board. The propinquity establishes between members a mutuality of Developer interests. What weight to be used to evaluate how close the supervisors and the Developer's employees interact and form loyalties to a developer is not to be thought trivial.

The District is soon offered a deal it cannot refuse! The resident's fees remain unchanged and they are promised 2 more amenities. It's almost like a gift one Supervisor was known to have said. The seller, as a dutiful "Father", will even generously advance the District $850,000 of funds to conduct due diligence and engage financial consultants and any other experts to provide the appearance of contract creditability to the transfer of funds.

It was this failure to discern two figures as *maxima* employed it two different senses that accounts for the residents and others to sense viscerally that $73.7 million is indeed preposterous as a purchase price --and, of course, the resident's are correct; but $73.7 million is not preposterous as the net proceeds from a bond sale predicated on an annual payment of $5.4 million. One is the result of a financial calculation. The other $73.7 million we soon discover is a decision, however considered ludicrous, of the Supervisors to pay $73.7 Million for assets of unknown value. The reason for that is the unprofessional Supervisors were led by its advisors to believe the $73.7 million bond residual and the $73.7 million purchase price was at once simultaneously both the price and the fair value of real assets they were buying. The price paid is equal to the value. received, and the value received is equal to the price, what could be fairer! Whatever was to become the residual net bond proceeds as finally calculated, that amount would be, ipso facto, arbitrarily deemed both the purchase price and the fair value of the property under an erroneous theory of income appraising. That should not be permitted to pass without attack. Therein lies the Defendant's cause of action. Neither the Residents nor the Supervisors were able to understand their differences. But the scheme of a "sale" as the transfer vehicle by both the District and the Seller to ensure the Seller receives the net bond proceeds of $73.7 million is rational behavior, and clever negotiating.

SUMMARY

The District and the Seller's contrivances and their efforts for financial pre-validation planning prior to entering a complaint for validation is of no legal concern to the court's business when considering validation of bonds under the three -prong theory unless there is an objection. Thus the Plaintiff pleads many times for the court to provide a

presumption of correctness to the District's internal financial matters including the price a district elects to pays for products or services.

The court has no need to make any inquiry except now we have an objection raised at a validation hearing interposed by a defendant based solely on an allegation of a possible statutory "violation" of the contract's "purchase" arrangements. Defendant reviewed many cases in which a bond validation was the subject and in each case no one came forth to intervene and raise an objection. [See Composite Exhibit A, Plaintiff's "Pre-Trial Memorandum of Law", dated July 13, 2017] Has a court ever denied a validation without an objection --one wonders what is there for the court to do except ministerial duties?

That is, as Defendant alleges, the law requires if a District is under contract and intends to purchase assets with bond proceeds from a contractor, engineer or any person it must determine the property's fair value, which is unknown except in the mind of the supervisors. As much as the District may desire to relay $73.7 million to the seller Chapter 190.016(1)(c) F.S., as we understand it, prevents the District from "purchasing" --that's the key operational word--the recreational assets with bond proceeds when, all along, casting the deal as if something is being "purchased" at a price of $73.7 million was only a pretence. A Law unexpectedly upends rational negotiating!

Perhaps the Seller should never have contracted to "sell" assets to the District. That decision may prove to be the Seller's blunder. Perhaps the Seller could have simply donated or quit claim the assets to the District in return for $73.7 million paid in cash as consideration for undertaking the debt repayment burden with the annual cash the seller diverted by assignment to the District to keep the resident's fees constant and so have avoided the sticky point in Chapter 190.016(1)(c). F.S.

"The best laid plans of men and mice often go astray.," the Poet tells us. The residents would have been ecstatic had it appeared as if the seller was donating and not selling something of value to them. There would have been no continual cries by the residents

for "another appraisal" or with the suspicious minds believing the residents are being "ripped-off", when it was not their money, anyway.

[NB: This last comment is beside the point just made but I feel it bears mentioning. All the while, ironically, claims of new buildings generosity notwithstanding, and not withstanding the proprietary claims of the ownership of the money, the $5.4 million was the "Son's" money, in the first place, in the form of monthly "excess monopoly fees", called "pure profit", above operation and maintenance expenses, which the Son had been paying as well. The seller was extracting by contract the "fees" paid for recreational amenity utilization, which is now being rerouted, back to the residents to be applied for debt service.]

A DEFENDENT'S THOUGHTS ON FINAL JUDGEMENT

The Defendant does not know if this is the first time in Florida history of bond validation where a challenge has ever been made to the legality of a proposed bond issue on the basis of Chapter 190.016(1)(c) F.S. Several complaints have been made in past Bond validation hearings where the special and peculiar benefit to a property or the fair and equal apportionment thereof was contended, but never of the contemplated purchase by the District of real estate with bond proceeds without first having appraised the fair value of the property to be purchased.

The disingenuity of the District to comply with this contention is best illustrated in one paragraph I excerpt here from the Plaintiff's recently suggested Final Judgment:

"15. That a portion of the proceeds of the Bonds will be expended to pay for the cost of the planning, acquisition, construction, reconstruction, equipping and/or installation of such systems, facilities and improvements that comprise the Amenity Improvement Plan. Proceeds of Bonds will be deposited with the Trustee in accordance the Indenture, and, after payment of expenses of issuing the Bonds and after making

certain deposits required by the Indenture, the remaining proceeds *will be disbursed by the Trustee to PCDD for use in the acquisition and construction of all, or a portion of, the Amenity Improvement Plan.*" [My emphasis]

"17. That the Amenity Improvement Plan constitutes "assessable improvements" within the meaning of the Act and the Assessment Statutes and PCDD is authorized to issue the Bonds and *to apply the proceeds received from the sale of the Bonds in the manner and for the purposes described above and in the Indenture."* [My emphasis]

There is nothing in the two Plaintiff's paragraphs quoted that would otherwise prompt a question , except the Plaintif's choice of words that explicidy fails to discribe the $73.7 million contract for sale and purchase makes it all suspect. That is, the $73.7 million proceeds disbursed by the Trustee to the PC DD is not for "acquisition and construction", of an "Amenity Impovement Plan" but it is to consumate a contract. If not, Plaintiff breaches the contract and puts itself ar risk for a suit for specific performence. Nowhere has the Plaintiff provided evidence of having appraised the fair value of the Amenity Improvement Plan. If he did, he'd be the first to tell us.

It is therefore important that a final judgment be rendered in accordance with the arguments and evidence offered to the court in support of the contention that the third Prong is violated and that the court in its judgment believes the contention, when raised, was meritorious. This precisely explains the reason why the court ordered a trial to ensue.

FINAL JUDGMENT OPTIONS

It is understood that several defendants, including the State Attorney, have made argument relative to several aspects of the complaint for validation that might be sufficient to deny validation if held to be correct. I wish to state this Defendant's rendition of a proposed Final Judgment is based on, and only on, the Defendant's objection to validation as related to Chapter 190.016(1)(c) F.S. Any other legal objection in addition to or considered separately however meritorious from the one this Defendant argues as

violating the requirements of the law is a matter for the court to determine in coming to a render a Final Judgment.

Accordingly, the writer suggests the court has four options, in no specific order of preference, each of which depends upon the court's determination of the Defendant's allegation concerning a mandate imposed on the District by Chapter 190.016(1)(c) F.S. The court may (1) affirm the Defendant's allegation, and deny validation, it may (2) hold the Defendant's allegation is clearly erroneous and approve validation without condition, or (3) it may decide Defendant's allegation is valid in part, and conditional in part or (4) it may reserve judgment and allow the parties to seek a declaratory judgment as the issue before the court is a matter of great public importance.

Under the first, third and fourth option the plaintiff may in all likelihood prefer to withdraw and revise his complaint for validation by arranging its business affairs to circumvent the prohibition of Chapter 190.016(1)(c) F.S. Or have the assets independently appraised and try again.

THE FIRST OPTION IS TO DENY VALIDATION this presumes the court considered the contention, held a trial, heard the argument, considered the evidence and declares, by denying validation of the bonds, that the interpretation of Chapter 190.016(1)(c) F.S. as argued by the defendant is correct. The plaintiff, accordingly, cannot legally consummate the contract with the proceeds of the bond sales or agree to pay a seller whatever the Board of Supervisors decree without first performing an appraisal of the fair value of the items to be purchased from a contractor, engineer, or any other person. Once informed as to the appraised just value of a proposed purchase there is yet nothing in the construction of Chapter 190 F.S. that precludes the Board of Supervisors from paying a contractor, engineer, or any person any price they wish. The Act simplistically assumes the Board will be cognizant of the fair market value of the appraisal and conduct itself accordingly. This is not the first time a CDD has acquired recreational assets from its developer. In several case where a CDD has acquired amenities from a developer it has commissioned

an independent real estate appraisal prior to inform contract negotiations or prior to contract closing.

THE SECOND OPTION IS TO APPROVE VALIDATION. The trial did not convince the court that a legal violation will occur of such degree and measure as to deny validation. This presumes the court considered the contention, held a trial, heard the argument, considered the evidence and declares, by validation of the bonds, that the interpretation of Chapter 190.016(1)(c) F.S. and it's applicability to the facts in this case by the Defendant is clearly erroneous. The plaintiff, accordingly, is legally permitted to consummate the contract with the proceeds of the bond sales and is free to pay a seller whatever price the Board of Supervisors decree without first performing an evaluation of the fair value of the items to be purchased as the fair value of the amenities is unrelated to the purchase price.

THE THIRD OPTION IS TO APPROVE VALIDATION. The court approves the bond issue with the proviso that bond proceeds may be applied howsoever the District wishes and it may proceed to construct new recreational buildings or for any other legal purpose but bond proceeds cannot be applied to the purchase of real estate as currently under contract in accordance with the defendant's contention based upon the legal prohibition of Chapter 190.016(1)(c) F.S. Which the court hereby affirms, in part.

THE FOURTH OPTION IS TO POSTPONE OR WITHHOLD ADJUDICATION AND ENLARGE THE SCOPE OF PROCEEDING SUA SPONTE TO RENDER A DECLARATORY JUDGMENT. The court may choose to offer an opportunity for the parties to have the court render a Declaratory Judgment where the issue is to interpret the statutory or textural meaning of Chapter 190.016(1) (c), F.S. as it affects the legal relations between the parties to obtain a declaration of rights, status or other equitable relief. [Chapter 86.021, F.S.] This option become ever more urgent in light of the egregiously mischaracterized Defendant's contentions upon reading Plaintiff's closing arguments.

COMMENTARY PLAINTIFF'S CLOSING ARGUMENTS

How best to understand plaintiff's closing arguments? And how best to put it in perspective to enable a critique to be fair and reasonable is the point to which I now turn.

The reader will find his closing arguments was in essential substance preceded by his "Pre-Hearing Memorandum of Law, dated July 13, 2017 and is now more elaborately rendered in his "Initial Closing Arguments" dated August 4, 2017. I don't know what to make of the word "Initial" in the title of his brief. Perhaps we are yet to receive further "Additional" Closing Arguments.

We find the Plaintiff --and making allowances for hyperbole and wild exaggerations to give his arguments a spirit of adversarial zealousness --concentrates his argument within several limited topics to persuade the reader his cause is both just and correct. Such as the frequent references to Presumptions of correctness, a caution to the court not to substitute the court's views for his client's and reliance upon 2 selected authorities to lend support to his arguments. Two most often cited were *Miccosukee Tribe of Indians*, 48 So.3d at 818. 6 citations and *Donovan*, 82 So.3d at 812. Cited on 8 different occasions

Plaintiff takes as axiomatic that nothing that the Defendant will argue will in any way be deemed correct. It is foreclosed plaintiff was right on all counts and his adversary was wrong on all counts.

Plaintiff is not above erecting straw men to represent a position taken by the Defendant that is a gross misrepresentation and easily defeating this opponent with convoluted argument. I expect the court to take cognizance of this trick and understand the Plaintiff has not been straightforward in meeting the Defendant's attack of the Plaintiff's violation of the essential requirements of the law.

It is to this main issue I will direct the court's attention. Enough has been written on "fair value"; other issues relating to "benefits to property" can be dealt with at a later time.

The issue with Chapter 190.016(1)(c)

FOR EXAMPLE. SEE PAGE 5: PLAINTIFF ARGUES:

[FOOTNOTE; 3 "Defendants Mann and Taylor as well as Dr. Kessler argued that the Districts cannot issue bonds if the bonds to be issued exceed the "fair v value" of the land and improvements being purchased with the bond proceeds, citing section 190.016(1)(c), Florida Statutes, as support. However, that statute does not apply in this case. The "fair value" limitation only applies when property and improvements are being paid for with bonds, i.e., actual bonds are being exchanged for property and improvements. The testimony, Asset Sale and Purchase Agreement ("ASPA") and Master Trust Indenture clearly show this transaction does not involve an exchange of bonds for the amenities."

Plaintiff's reading of the law is wrong.. What is being exchanged for the amenities? The Defendant's position rests wholly on his understanding of one, and only one, averment, namely the statutory restriction placed on a CDD that requires the determination of the fair value of any purchase of products or services from a contractor, engineer or any person, whether paid in cash or paid with bonds in lieu of cash, in order to legally apply the proceeds of a bond issue to consummate a transaction. The choice of "currency" or method of payment is not the restriction. The district can purchase any property from anyone using its own cash balances without a fair market appraisal. The use of bonds as currency is not contemplated within Plaintiff's contract to purchase Seller's fee simple title to real estate is to be paid *in cash from bond proceeds*. The contract calls for cash at closing, not Bonds.. Does that mean fair value matters little? Is that the Plaintiff's position? To appraise for "fair value" is inferred from the underlying text when an obligation is to be satisfied. The text of the law is clear.

Rather, the Defendant maintains the Legislature's intention was to ensure a CDD has determined the fair value of any prospective purchase to be paid by the proceeds of the sale of Bonds to prevent a mal-advised CDD of being the victim of contractors, engineers or other persons--- including Developers -- who have been known to over-inflate the values of real estate it plans to sell to a CDD. That should be criminal..

Defendant interprets [liberally rewrites] the relevant portion of Chapter 190.016(1)(c) as following:

> The price or prices for bonds sold [the proceeds from a sale] (c)
> [but] In the case of special assessment or revenue bonds ---the
> indebtedness to contractors or other persons may be paid with such bonds
> [with bond proceeds] or the fair value of any properties
> exchanged [bartered, or under contract] for the bonds [with
> bond proceeds.]

The satisfaction of indebtedness implies satisfaction *for the fair value of the properties.* A fair quid-pro-quo:."Giving one valuable thing for another"[Black's Dictionary 6th Ed.]. There are no bonds that could be used -"paid with"'- as currency after the bonds are sold. The Plaintiff, within its Bond Recitals, as bond issuer, has not announced plans to retain bonds, qua bonds, within its treasury to be used, if determined by the board as currency for other projects. All proceeds required to be delivered to the Trustee will be in cash.

ONE MORE EXAMPLE. SEE PARAGRAPH 3, PAGE 9: DEFENDANT COMMENTARY INTERSPERCED IN BRACKETS. THE PLAINTIFF ARGUES THE DFENDANT'S ISSUE:

> "The valuation issue is a legal red herring. Defendants Mann, Taylor, and Kessler all asserted that the price to be paid for the improvements was too high. and not based on a certified appraisal prepared by a Florida licensed real estate appraiser. What the defendants failed to acknowledge is that there is no appraisal

requirement under Florida law. As set forth above"

[There is no appraisal mandated except for "fair value" in Chapter 190.016(1)(c) or county land appraisers --[chapter195 F.S. -- or unless otherwise mandated or reasonably deduced by inference from the underlying text.]

" although these defendants repeatedly cited to an isolated portion of section 190.016(1)(c), Fla. Stat., which requires "fair value" as determined by the boards in instances where improvements are being exchanged for bonds, that section does not apply in this case because there is no aspect of this transaction where improvements are being exchanged for bonds.[6] The subject transaction entails payment of cash at closing, not the exchange of bonds.

[Defendant's point exactly, as pointed out earlier.]

"Although the cash at closing is being generated through the issuance of bonds, that is not legally the same as exchanging property for bonds".

"Even if valuation could somehow be relevant, the evidence at trial showed the Districts had a valid valuation of the transaction. Scott Harder of EFG testified and his written valuation proved that the price paid for the improvements was reasonable."

[Was it fair? Plaintiff please read the transcript! Mr. Harder said he only calculated the maximum number of dollars that the District -- possibly -- could - pay for the property, not a "reasonable" value he recommends. Not as a "Payment exchanged for fair value received". There have been several other CDDs acquiring a developer's real estate that invariably had the property independently appraised beforehand.]

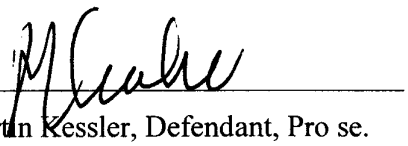
"Mr. Harder was admitted as an expert valuation consultant without objection, likely because he has been performing similar valuations for over 30 years. Mr. Harder admittedly did not appraise the "bricks and mortar" being acquired, but that was because the Club Plan and Club Fees make the amenities income-producing assets. Even Defendants' expert, Michael McElveen, admitted that an income (investment) approach to value is proper when valuing income-producing assets. *See* Deposition of Michael McElveen, admitted as Plaintiff's Ex. 24, p. 33:2-36:9.[7] "

[Appraisers use income as a basis to estimate value but Mr. Harter did not use the so-called income approach. So what shall we call the approach Mr. Harter used? We call the approach Mr. Harter used the net bond proceeds approach derived from a firm's selected net profits.]

CONCLUSION

This sad case reinforces the Defendant's views that Chapter 190. F.S is in dire need of legislative review and repair on several critical aspects since it was first promulgated in 1980, especially the indiscriminate and inappropriate use by a CDD or developers of the bonding powers of a CDD. A legislature should not lightly or gratuitously bestow such powers without clearly enumerated limitations. Otherwise, the courts of Florida may be faced with many more cases similar to the instant case. A CDD was intended to perform civil engineering functions for basic infrastructure and not intended to be an unregulated banking institution with access to the bond market for unrelated risky ventures or as a money-making machine for developers in selling its assets to a CDD in violation of Law

Most respectfully submitted,



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ADDENDUM

As There Is Nothing That Pleases The Law More Than Brevity We Present A Brief Fictional Exchange Overheard Between Seller and Buyer.

Seller: What did you get for the $5.4 million I gave you?

Buyer: How much do you want for the property? You never quoted an asking price.

Seller: As much as I can get.

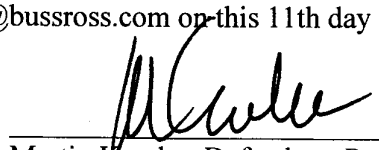
Buyer: All I got is $73.7 million.

Seller: That's my price!!

Buyer: You got a deal!

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to Victoria Avalon, Esq. vavalon@sao10.com, Michael Eckert, Esq. Michaele@hgslaw.com, Doug Smith DougS@hgslaw.com; Michael Alao, Esq. MichaelA@hgs.com kellerc@gtlaw.com, Lindsay Whelan, Esq. lindsayw@hgslaw.com, Daniel J. Fleming, Esq., daniel.fleming@gray-robinson.com; J. Carter Anderson, canderson@bussross.com and Harold Holder, hholder@bussross.com on this 11th day of August, 2017



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