SUPREME COURT OF FLORIDA
No. SC17-1806 (consolidated with No. SC17-1807)
Lower Tribunal Case No. 2016-CA-004023

WILLIAM MANN, *ET AL.*, *Appellants,*

v.

POINCIANA COMMUNITY DEVELOPMENT DISTRICT, *ET AL.*, *Appellees.*

- and -

MARTIN KESSLER, *Appellant,*

v.

POINCIANA COMMUNITY DEVELOPMENT DISTRICT, *ET AL.*, *Appellees.*

On Appeal from the Tenth Judicial Circuit, In and For Polk County, Florida

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ANSWER BRIEF OF POINCIANA COMMUNITY DEVELOPMENT DISTRICT AND POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT

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TABLE OF ABBREVIATIONS

App.	Refers to the appendix filed by Mann & Taylor and includes pinpoint citations as appropriate
AV	Refers to Avatar Properties, Inc., a private entity that owns the existing recreational amenities at issue
Districts	Refers collectively to the Poinciana Community Development District and the Poinciana West Community Development District
EFG	Refers to the Environmental Financial Group, Inc., the valuation consultants the Districts hired
Fishkind	Refers to Fishkind and Associates, Inc., the assessment methodology consultants the Districts hired
Fla. Const.	Refers to the most recent version of the Florida Constitution
Fla. Stat.	Refers to the most recent version of the Florida Statutes
HOA	Refers to Homeowners Association
K Int. Br.	Refers to the Kessler's Initial Brief before this Court and includes pinpoint citations as appropriate
M&T Int. Br.	Refers to Mann and Taylor's Initial Brief before this Court and includes pinpoint citations as appropriate
SA Br.	Refers to the State Attorney's Answer Brief before this Court and includes pinpoint citations as appropriate
Solivita	Refers to the over 55 community the Districts serve

INTRODUCTION

This appeal arises from the trial court's decision *not* to validate the issuance of certain bonds. The Districts seek to issue the bonds to raise cash. The Districts intend to use the cash to purchase privately owned recreational amenities, refurbish existing amenities, and construct new amenities while *lowering* resident expenses. Three residents (Mann, Taylor, and Kessler) opposed the bond validation at the 4-day trial below. All three appealed the trial court's 25-page final judgment. Mann and Taylor filed a joint initial brief. Kessler filed a separate initial brief. The State Attorney also filed an answer brief suggesting this appeal may be moot.

The Districts respond to all three briefs here. The Districts begin by reciting the facts actually adduced at trial, not as Mann and Taylor imagine them. Because of the State Attorney's mootness concern, and the ultimate denial of validation, the Districts address this Court's jurisdiction. The Districts then respond to the substantive arguments: the statutory argument that Mann and Taylor make, which Kessler shares, and which the plain language in § 190.016(1)(c) of the Florida Statutes refutes; Mann and Taylor's public purpose argument, which fails as a matter of law and fact; Mann and Taylor's fact-specific concerns with the arms-length transaction between the Districts and AV, owner of the amenities, which the trier-of-fact also rejected; and Mann and Taylor's discovery-related arguments, which constitute harmless error at best because Mann and Taylor deposed most of

the Districts' Supervisors (including Chairmen Zimbardi and Case), District Manager Moyer, the Districts' Assessment Expert Plenzler, and even District Counsel Eckert in an unsuccessful attempt to prove a conspiracy theory.

STATEMENT OF CASE & FACTS

I. A STATUTORILY RECOGNIZED PUBLIC PURPOSE: USING BOND FUNDS TO PURCHASE EXISTING RECREATIONAL AMENITIES, REFURBISH AMENITIES, AND BUILD NEW AMENITIES.

Mann and Taylor refer to the Districts as "developer-created." M&T Int. Br. at 1, 5-6. This is not so. The Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, established the Poinciana Community Development District in 1999. App. at 42 ¶ 1, 62-71. Polk County established the Poinciana West Community Development District in 2006. App. at 42 ¶ 1, 72-79. The Districts exist as special-purpose units of local government organized under Florida's Uniform Community Development District Act of 1980. App. at 42 ¶ 1, 62-71, 72-79. The Districts encompass 4,189 acres in Polk County and are responsible for the financing, management, acquisition, construction, and operation of community development facilities in the Solivita residential community. App. at 43 ¶ 3. A 5-member Board of Supervisors governs each of the Districts. App. at 42 ¶ 2, 70, 74-75.

Consistent with their role as special-purpose units of local government, the Districts, through their duly elected and appointed resident supervisors, voted to

issue up to $102 million in special assessment bonds and levy associated special assessments. App. at 47 ¶ 15, 11596-97, 11601. This was a legislative act entitled to a presumption of correctness. *See City of Winter Springs v. State*, 776 So. 2d 255, 257-58 (Fla. 2001).

Section 190.012(2)(a) of the Florida Statutes specifically allows the Districts to issue bonds and levy assessments "to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for" "[p]arks and facilities for indoor and outdoor recreational, cultural, and educational uses." This Court has authorized the acquisition of amenities as a valid purpose. *See State v. Sunrise Lakes Phase II Special Rec. Dist.*, 383 So. 2d 631, 633 (Fla. 1980). Circuit courts throughout the State routinely validate bonds for this purpose. App. at 6504-05 ¶ 24 n.7, 6513-6600 (compiling judgments).

The trial court called the transaction between the Districts and AV "complex." App. at 11432. It is. In the simplest terms, however, the bonds and associated assessments at issue would allow the District to acquire from AV, the project's developer, 11 community pools and associated facilities; 2 spa, health and fitness centers; tennis courts, basketball courts, baseball and softball fields, pickleball courts, bocce ball courts, a bell tower, and community parks; 2 restaurants; ballroom facilities; and other facilities that include a ceramic and arts studios, computer labs, a billiards room, and a library. App. at 102. The Districts

also intend to use bond funds and associated assessments to update some of the amenities being acquired. App. at 102. And the Districts intend to construct a new performing arts building; another spa, health and fitness center; and additional recreational and community facilities. App. at 102.

Evidence at trial proved that, over several months, the Districts and AV "heavily-negotiated" a purchase and sale agreement. App. at 11880. The Districts and AV went through "at least 22" drafts of the agreement. App. at 11880. Under this "heavily-negotiated agreement," App. at 11880, the Districts would gain control over existing amenities, including the programming of activities; obtain funds from AV for financial reserves, and replacement of existing equipment; obtain an additional $11.2 million for new amenities and renovation of existing amenities; gain certain tax benefits; help defray some of the costs for due diligence associated with the transaction, like the fees for consultants, supporting studies, and experts; and save residents money when compared to fees owed to AV under an existing club plan. App. at 11443, 11606, 11883-94. AV, in turn, would obtain $73.7 million in cash (less approximately $3.9 million for an assessment equalization payment, $600,000 in closing costs, and $440,000 in debt assessments) while forfeiting the right to club fees under the existing club plan. App. at 11444, 11881-82.

The existing club plan provides homeowners within the Districts access to the existing amenities. App. at 11430, 11875-76. Each homeowner pays a club fee for this access – and cannot opt out of the fee. App. at 12059-60. The fees vary from a low of $65 per month to a high of $85 per month depending on when a homeowner bought property within the Districts. App. at 8510. The fees increase one dollar per month, annually, for several years. App. at 11431. Covenants that run with the land require homeowners to pay club fees to AV in perpetuity. App. at 11430.[1]

As part of the transaction, AV insisted on a purchase price that accounted for its income from the club plan. App. at 12098-99. The Districts considered hiring

[1] Such club plans and club fee structures are common. As a Florida Bar treatise explains:

> Another approach for ownership and use of shared areas is the mandatory membership club. Under this approach, the club owner is often the master developer or an entity affiliated with it. This approach is typically used when the master developer intends to build extensive recreational facilities and offer them for use not only by the homeowners in the community, but also by other nonowner members. The terms of club membership and use of the club facilities are spelled out in a club plan and the declaration of covenants and restrictions requiring the owners and tenants of dwelling units in the community to become members of the club and pay club dues. The financial obligations of the resident club members are secured by a lien on the members' dwelling.

Florida Condominium and Community Association Law, 3d. ed., §3.16(D).

one of three consultants to calculate a price using an "income-based approach." App. at 11612, 11878, 12098-99. The Districts settled on EFG, which produced a valuation report for the Districts to consider. App. at 8504-75, 11612. The valuation report notes that EFG was "instructed by the [Districts'] Boards to utilize income-based valuation methods to capitalize net available 2016 [c]lub [f]ee [r]evenue into an acquisition value." App. at 8508. The valuation report further states that EFG derived its "maximum asset acquisition value" of $73.7 million based on the "annual revenue generated [for AV] by 5,590 planned and developed housing units paying existing 2016 [c]lub [f]ees." App. at 8510.[2] This analysis also reserves approximately $11.2 million to construct new amenities and refurbish existing amenities, App. at 8508, and supports a total bond issuance of up to $102 million. App. at 11435-8511.

[2] Mann and Taylor unsuccessfully attempted to attack the valuation report below – and do so now through selected excerpts from EFG's expert, Harder. M&T Int. Br. at 21, 25-28. Mann and Taylor wish for the valuation to exclude 1,400 planned but undeveloped units, thus reducing the valuation. M&T Br. at 21, 25-28. This ignores, however, that the 1,400 units are being developed at a rate of approximately 200 units per year. App. at 11957. Importantly, this also ignores that if builders buy the remaining lots – *all* 5,995 units must pay club fees to AV in perpetuity. App. at 8442-44 (defining "Club Owner" and "Owner"), 8448 (discussing fees and expenses paid by "Owners" to "Club Owners"). Mann and Taylor's critique of the valuation report reflects only a disagreement with the Districts' legislative findings and the testimony of the Districts' Valuation Expert, which the trial court found persuasive. App. at 11446.

Working from the valuation report, the Districts' assessment methodology consultant, Plenzler of Fishkind, prepared an assessment methodology report. App. at 8049-136. The assessment report lists the various special benefits that homeowners would receive from the proposed project – which none of the Appellants challenge here. App. at 8057. The assessment report also calculates a "benefit per unit" by adding the purchase price of the existing amenities, refurbishment of existing amenities, and the costs of the new amenities, and dividing that sum by the number of real properties within the Districts. App. at 8057. Because of the Districts' firm stance that residents would *not* be assessed an amount that exceeds the respective 2016 club fees, the assessment report includes an "[a]ssessment [e]qualization [p]ayment" of $3,935,533.49. App. at 8055. The assessment report defines this payment as a "contribution of infrastructure reflected in a deduction from the purchase price." App. at 8053. Put another way, the assessment equalization payment reflects a "prepayment of assessments" by the developer to ensure that fees for some residents do not increase because of the transaction. App. at 11882. Ultimately, AV agreed to reduce the purchase price by the assessment equalization payment of $3.9 million. App. at 8055, 11437-38.

Again, as supported by the valuation report and the assessment methodology report, the Districts would eliminate the club plan and its associated club fees. App. at 8051, 8505. Special assessments collected over 30-years would replace the

perpetual club membership fee. App. at 8057. The Districts also "guaranteed the residents that nobody would pay a dime more than they're paying today if this agreement should go forward." App. at 11433. "[I]f anything, [many residents] would pay less," while enjoying more amenities and control over all amenities. App. at 11433. To secure an even better deal for their residents, the Districts continue to negotiate with AV on certain aspects of the transaction. App. at 11881.

II. A REVERSE CLASS ACTION: CHAPTER 75'S PROCESS FOR BOND VALIDATION, AND OPPOSITION FROM MANN, TAYLOR, AND KESSLER.

To validate the bond issuance and levying of assessments, the Districts followed the process outlined in Chapter 75 of the Florida Statutes. *See* § 190.016(12), Fla. Stat. (requiring same). Specifically, as the government entities proposing to incur debt, the Districts filed a complaint for validation in circuit court. App. at 41; § 75.01, Fla. Stat. That complaint named as defendants the State, all the residents of the Districts, and other statutorily required parties. App. at 41; § 75.02, Fla. Stat. The trial court issued an order to show cause, which the Districts published in the local newspaper to give constructive notice of the proceedings to all members of the defendant class. App. at 213-16; § 75.05, Fla. Stat. Of the thousands of homeowners within the Districts, App. at 8510, only three appeared at trial to oppose the bond validation: Mann, Taylor, and Kessler. App. at 217, 248.

Extensive discovery followed. Among many other things, Mann and Taylor deposed the District Supervisors, the District Counsel, the District Manager, the Districts' Assessment Methodology Expert, the Districts' Valuation Expert, and the Districts' Bond Underwriter. App. at 6416-44. The 12,521-page appendix before this Court reflects the extent of Mann and Taylor's discovery efforts.

At trial, as they do in their initial brief, Mann and Taylor attempted to prove a conspiracy between the Districts and AV to inflate the purchase price paid to AV. App. at 11440-42; M&T Int. Br. at 1-21. They failed. After hearing testimony and considering the evidence, the trial court, serving as the trier-of-fact, had this to say:

> The Court does not find that the Developer [AV] improperly controlled, unduly influenced, or coerced the Districts' Boards and other involved parties, such as the consultants, during Negotiations, to secure their predetermined purchase price to maximize their profits. Beyond the expectant negotiated give-and-take and intimate cooperation and communication between individuals and entities involved in a complex real estate purchase and bonds issuance process; at best, it appears to the Court that the Developer [AV] may have engaged in tactics of persuasion on its behalf to maximize profits. However, the Court finds this does not evidence improper control, undue influence, or coercion. *See* Trial Tr. (excerpt portions of Charlie Case) 12:23-13:14, July 19, 2017) (Chairman Case testified: "Q. During the due diligence and negotiations periods, did AV [the Developer] do anything that you would consider to be inappropriate? A. No. Q. Did it try to overpower your will and forcing [sic] you to accept this deal? A. No. Q. Did it use any influence that you would consider inappropriate? A. No . . . Q. Are you aware of any facts that would lead you to believe that AV conspired with the districts in this transaction? Absolutely not."); Trial Tr. (excerpt portions of Robert Zimbardi) 11:11-11:13, July 20, 2017 (Chairman Zimbardi testified. "Q. What is your response to the

> allegation that AV and Tony Iorio exerted undue influence on the boards? A. I have not experienced that.").[3]

App. at 11444. The trial court added: "having found insufficient evidence for Defendants' [conspiracy theory], any argument that the Districts' Boards' approval of the purchase and construction of the [e]xisting and [p]rospective [a]menities was not legal, being arbitrary and capricious, based on the [conspiracy theory] must likewise fail." App. at 11445.

The trial court also rejected arguments rooted in §§ 190.016(1)(c) and 475.611-.612 of the Florida Statutes. Based on the plain language of § 190.016(1)(c), and related factual findings, the trial court concluded that these statutory provisions simply do not apply here. App. at 11445-47.

Attacks on the income-based valuation methodology fell short, too. The trial court stated that "while alternative valuation methodologies may render a more favorable outcome to [Mann, Taylor, and Kessler], the income based approach utilized by the Districts, via their consultant expertise, was not arbitrary and capricious." App. at 11446. According to the Court, "the dispute of valuation methodologies allowed for reasonable people's differing opinions thereon." App. at 11446. "Consequently, the Court must defer to the presumed validity of the

[3] The trial court explained that "[t]o the extent that the Court referenced or citied witnesses' trial testimony or trial exhibits entered into evidence, the Court finds such to be credible." App. at 11452.

Districts' chosen income based valuation methodology." App. at 11446. In addition, the trial court noted that "a developer [here AV] is entitled to payment for its income stream from membership-type fees when negotiating a real property purchase by a local governing body." App. at 11446 (citing *Palm Beach Cnty. v. Cove Club Investors, Ltd.*, 734 So. 2d 379 (Fla. 1999)).

The trial court went on to reject "lesser arguments," including the "legality of the underlying [c]lub [p]lan or the [c]lub [f]ee [s]cheme, as privately contracted between the Developer and Solivita homeowners, under Fla. Stat. Ch. 720 (2017) to be collateral to bond validation." App. at 11447. Mann and Taylor even conceded that the legality of the club plan and club fee structure was not an issue before the trial court.[4] App. at 11567-68, 11907-08; *see also* Florida Condominium and Community Association Law, 3d. ed., §3.16(D) ("Typically, the club plan does not grant any ownership rights in the club to any community association [like a homeowners' association] or owner. Rather, the club members receive a nonexclusive license to use portions of the club facilities available to members.").

[4] Having waived the issue, Mann and Taylor cannot raise it for the first time on appeal. *See, e.g., Raymond James Fin. Servs. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005) ("We have defined 'waiver' as the voluntary and intentional relinquishment of a known right or conduct which implies the voluntary and intentional relinquishment of a known right.").

The trial court, however, denied validation of the bonds and associated assessments on one narrow ground: the Districts' failure to explain the difference in assessments levied against the residents. App. at 11451. Specifically, while the benefits were the same, as a result of the assessment equalization payment, the assessments proposed by the Districts would vary from resident to resident depending on that resident's 2016 club fee payment. App. at 11451. But "[t]he Court [found] no testimony or record evidence" that "justified the [residents] being specially assessed at different rates." App. at 11451.

Mann, Taylor, and Kessler appealed. App. at 11467.

SUMMARY OF THE ARGUMENT

The trial court did *not* validate the issuance of bonds and related special assessments. Mann, Taylor, and Kessler still appealed. Section 75.08 of the Florida Statutes entitles any party "dissatisfied with the final judgment" to appeal. This Court thus has jurisdiction over the appeal. And the appeal is not moot because the Districts are in the process of revising their assessment methodology to address the trial court's sole concern, the allocation of assessments. A final resolution of the issues now before this Court would streamline subsequent proceedings, facilitate the bona fide sale of bonds, and help the Districts' residents soon realize the benefits from the acquisition of existing amenities, refurbishment of some of those amenities, and construction of new recreational amenities.

The substantive issues before this Court include two statutory questions. First, Mann, Taylor, and Kessler all argue that § 190.016(1)(c) of the Florida Statutes requires a "fair value" analysis before the Districts can issue bonds and use the bond proceeds – cash – to close on the transaction with AV. Yet, as the trial court recognized, the plain language of § 190.016(1)(c) requires such an analysis only where "any properties [are] exchanged for the bonds." There is no exchange of bonds here for property – only a payment of cash. Kessler concedes that the plain language of § 190.016(1)(c) does not require a "fair value" analysis unless it is rewritten. Kessler even rewrites § 190.016(1)(c); however, writing and rewriting statutes is the exclusive province of the Florida Legislature. The trial court correctly interpreted § 190.016(1)(c) as written.

Second, Mann and Taylor argue that §§ 475.611(1)(e), (1)(a)(1), and 475.612(1) require an appraisal from a Florida licensed real estate appraiser before the Districts can purchase amenities from AV for a "fair value." Not so. Nothing in Chapter 190 or Chapter 475 requires the Districts to obtain an appraisal. As noted above, § 190.016(1)(c)'s "fair value" requirement does not apply because there is no exchange of bonds for property. Even if it did apply, § 190.016(1)(c) contemplates a "fair value" "as determined by the board[s]" of the Districts. The Districts' Boards chose to use EFG and its valuation expert – Harder – to advise the Districts. Harder qualified as an expert under § 90.702 of the Florida Statutes

because of his special "knowledge, skill, experience, training, or education." Section 475.612(4) allows for Harder's expert testimony despite his not being a licensed appraiser. Having heard Harder's bona fides, and his expert opinion, the trier-of-fact credited Harder's opinion at trial.

Mann and Taylor also argue that the bond issuance does not serve a public purpose. They are wrong. Section 190.012(2)(a) of the Florida Statutes allows for bonds "to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for" "[p]arks and facilities for indoor and outdoor recreational, cultural, and educational uses." The trier-of-fact similarly found a public purpose after considering the evidence, weighing the credibility of witnesses, and considering argument. The Districts' bond issuance thus serves a public purpose as a matter of law *and* fact.

Mann and Taylor's argument that the Districts' actions are arbitrary and capricious must fail as well. The argument is rooted in a conspiracy theory that the trier-of-fact heard, considered, and rejected. A reweighing of the evidence is beyond the scope of this Court's review on appeal.

Finally, Mann and Taylor's discovery-related argument is without merit. Two judges, on three occasions, considered and rejected Mann and Taylor's attempt to seek discovery and testimony from AV. These trial court judges all concluded that such discovery and testimony is collateral to the issues in the bond

validation proceeding – review of the *Districts'* actions. AV's internal materials – separate and apart from anything shared with the Districts – could not have affected the *Districts'* actions. And even if the trial court erred, which it did not, the error is harmless. Mann and Taylor obtained reams of material through formal discovery and public records requests. Mann and Taylor deposed or obtained testimony from the District Supervisors, the District Counsel, the District Manager, the District Engineer, the Districts' Assessment Methodology Expert, the Districts' Valuation Expert, and the Districts' Bond Underwriter. Discovery from AV would have been cumulative at best.

STANDARDS OF REVIEW

According to this Court, appellate "review of a bond validation proceeding is limited to three issues: (1) whether the public body has authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance complies with the requirements of law." *Donovan v. Okaloosa Cnty.*, 82 So. 3d 801, 805 (Fla. 2012) (citing *Strand v. Escambia Cnty.*, 992 So. 2d 150, 154 (Fla. 2008) and *City of Gainesville v. State*, 863 So. 2d 138, 143 (Fla. 2003)). "This Court applies the competent, substantial evidence standard of review to the trial court's findings of fact and *de novo* review to the conclusions of law." *Id.* (citing *Strand*, 992 So. 2d at 153). But, as a general matter, "[t]he trial court's order comes to this Court with a presumption of correctness." *Id.* Mann, Taylor,

and Kessler have "'the burden of demonstrating that the record and evidence fails to support the [Districts] and the trial court's conclusions.'" *Id.* (quoting *State v. Osceola Cnty.*, 752 So. 2d 530, 533 (Fla. 1999)). Mann, Taylor, and Kessler also cannot use these proceedings to argue about "collateral issues" – "issues not going directly to the power to issue the securities and the validity of the proceedings." *Id.* at 808 (citing *State v. City of Miami*, 103 So. 2d 185, 188 (Fla. 1958)).

ARGUMENT

I. THIS COURT HAS JURISDICTION TO CONSIDER THE APPEAL, THE APPEAL IS NOT MOOT, AND THIS COURT'S IMMEDIATE CONSIDERATION WOULD FURTHER THE PUBLIC PURPOSES SUPPORTED BY THE UNDERLYING BOND ISSUANCE.

This Court has jurisdiction despite the unusual procedural posture. Mann, Taylor, and Kessler sought to defeat the validation of bonds and assessments. They succeeded on a narrow issue. The Districts did not cross-appeal. Ordinarily, "[i]t is elementary that a party cannot appeal from, or file any proceedings to review, an order or judgment in his [or her] favor." *Emp'rs Fire Ins. Co. v. Blanchard*, 234 So. 2d 381, 382 (Fla. 2d DCA 1970) (citing *Paul v. Kanter*, 155 So. 2d 402 (Fla. 3d DCA 1963)). But § 75.08 of the Florida Statutes entitles "[a]ny party to the action whether plaintiff, defendant, intervenor or otherwise, *dissatisfied with the final judgment*," to appeal. (Emphasis added). In *State Road Department v. Zetrouer*, 142 So. 217, 218 (Fla. 1932), this Court also said that "[t]he mere fact that a litigant secures a judgment in his favor does not necessarily

mean that there may not be some aspect of said judgment at which he would be aggrieved and which would present grounds for review by an appellate court."

Jurisdiction makes sense from a fundamental fairness perspective as well. Without it, *res judicata* and collateral estoppel[5] would apply but Mann, Taylor, and Kessler would have no appellate rights as it relates to the issues now before this Court. *See generally Gen. Dev. Utils. v. Fla. Pub. Serv. Comm'n,* 385 So. 2d 1050, 1051 (Fla. 1st DCA 1980) (dismissing appeal but noting that "[w]e are not unmindful of Appellants' concern that the hearing officer's order may constitute *res judicata* or collateral estoppel in any future rulemaking proceeding").

This appeal is not moot either. *Cf.* SA Br. at 8-10 (discussing same). A case becomes moot "when the controversy has been so fully resolved that a judicial determination can have no actual effect" – "when the issues have ceased to exist."

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[5] *Res judicata* and collateral estoppel clearly apply here and preclude Mann, Taylor, Kessler, and others from rearguing the issues on appeal in subsequent bond validation proceedings. This Court has defined *res judicata* as follows:

> A judgment on the merits rendered in a *former* suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.

Fla. Dep't of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001). "In Florida, the doctrine of collateral estoppel bars relitigation of the same issues between the same parties in connection with a different cause of action." *Topps v. State,* 865 So. 2d 1253, 1255 (Fla. 2004).

Goodwin v. State, 593 So. 2d 211, 212 (Fla. 1992). Here the Districts are in the process of remedying the one deficiency the trial court identified so they may issue the bonds and levy the assessments necessary to gain control of existing amenities, refurbish those amenities, build new amenities, and lower resident fees. The dispute therefore remains ripe for review, and its resolution should help streamline the resolution of the lawsuit the Districts have already filed to validate the bonds and revised assessments consistent with the trial court's final judgment.

An immediate resolution of this dispute would be consistent with Florida's public policy of quickly resolving bond validation cases to promote the marketability of bonds, and further the public purposes underlying the bonds. Bond validation appeals go directly from the trial court to this Court. Art. V, § 3(b)(2), Fla. Const.; § 75.08, Fla. Stat. The trial court does not even transmit the record to this Court. Fla. R. App. P. 9.110(i). And instead of the usual 70 days within which to an initial brief, "Appellant[s'] initial brief, accompanied by an appendix . . . , shall be served within 20 days of filing the notice [of appeal]." Fla. R. App. P. 9.110(i). The timeframes for seeking rehearing or clarification are also shortened. Fla. R. App. P. 9.330(c).

The Florida Constitution, the Florida Statutes, and the Florida Rules of Appellate Procedure provide for this expedited process "to facilitate bona fide sales of duly authorized bonds and certificates," and to facilitate the underlying public

purposes the bonds support. *City of Oldsmar v. State*, 790 So. 2d 1042, 1049 (Fla. 2001). Delay undermines these goals by adversely affecting the marketability of bonds. *Id.* at 1049-50; *see also Citizens Advocating Responsible Envtl. Solutions, Inc. v. City of Marco Island*, 959 So. 2d 203, 206 (Fla. 2007).

Accordingly, the Districts join Mann, Taylor, and Kessler in asking this Court to review the trial court's final judgment.

II. THE DISTRICTS COMPLIED WITH ALL LEGAL REQUIREMENTS BECAUSE THE PLAIN LANGUAGE OF § 190.016(1)(C) REQUIRES NEITHER A "FAIR VALUE" ANALYSIS NOR AN APPRAISAL FROM A FLORIDA LICENSED APPRAISER.

On the merits, Mann, Taylor, and Kessler argue that the Districts failed to comply with all requirements of law because they did not conduct a "fair value" analysis under § 190.016(1)(c) of the Florida Statutes. M&T Int. Br. at 33-37; K Int. Br. at 1-28. Mann and Taylor further argue that only a licensed appraiser can conduct a "fair value" analysis under §§ 475.611(1)(e), (1)(a)(1), and 475.612(1) of the Florida Statutes. M&T Int. Br. at 37-39. Yet these arguments rely on the false premise that § 190.016(1)(c) does not mean what it says.

A. Section 190.016(1)(c) requires a "fair value" analysis only for the exchange of bonds for property – not a payment of cash.

It is axiomatic that the plain language of a statute controls. *E.g., W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 9 (Fla. 2012). When that language "is

clear and unambiguous," this Court avoids all other rules of statutory construction. *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005).

Section 190.016(1)(c) is clear and unambiguous. The provision provides in its entirety that:

> Sale of Bonds – Bonds may be sold in blocks or installments at different times, or an entire issue or series may be sold at one time. Bonds may be sold at public or private sale after such advertisement, if any, as the board may deem advisable but not in any event at less than 90 percent of the par value thereof, together with accrued interest thereon. Bonds may be sold or exchanged for refunding bonds. Special assessment and *revenue bonds may be delivered by the district as payment of the purchase price of any project or part thereof*, or a combination of projects or parts thereof, or as the purchase price or exchange for any property, real, personal, or mixed, including franchises or services rendered by any contractor, engineer, or other person, all at one time or in blocks from time to time, in such manner and upon such terms as the board in its discretion shall determine. *The price or prices for any bonds sold, exchanged, or delivered may be*:
>
> (a) The money paid for the bonds;
>
> (b) The principal amount, plus accrued interest to the date of redemption or exchange, or outstanding obligations exchanged for refunding bonds; and
>
> (c) In the case of special assessment or revenue bonds, the amount of any indebtedness to contractors or other persons paid with such bonds, or the *fair value of any properties exchanged for the bonds*, as determined by the board.

§ 190.016(1), Fla. Stat. (emphasis added).

The plain language of § 190.016(1)(c) requires the calculation of the "fair value of any properties" only where those properties are being "exchanged for the

bonds." *Id.* Section 190.016 also refers to bonds being "sold" or "exchanged," making clear that receiving proceeds from the sale of bonds and the delivery of bonds through an exchange are two separate things. *Id.* Mann and Taylor's disbelief about the matter changes nothing, M&T Int. Br. at 37, especially when similar distinctions appear elsewhere in the Florida Statutes. *See, e.g.*, § 170.011, Fla. Stat. ("[B]onds may be *delivered* to the contractor in payment for his or her work *or* may be sold at public or private sale for not less than 95 percent of par and accrued interest, the *proceeds* to be used in paying for the cost of the work.") (emphasis added); § 331.339(3), Fla. Stat. (using language identical to § 190.016(1) for acquisition of aviation and aerospace facilities).

There is no exchange (or delivery) of bonds to AV here. The Districts and AV propose a cash transaction. App. at 8844, 11445-46, 11641, 11919-21. The Districts intend to issue bonds for the acquisition for existing amenities from AV, updates to existing amenities, *and* the construction of new amenities. App. at 11920-23. Proceeds from the sale of bonds would go to a trustee – here US Bank. App. at 8844, 11919-20. Among many other things, the trustee would provide cash to AV at closing – or perhaps *after* closing. App. at 8844, 11919-20. No amenities would be "exchanged for the bonds." § 190.016(1)(c), Fla. Stat. Thus, no calculation of "the fair value of any properties" is required. App. at 11919-20.

The trial court agreed. App. at 11445-46. After considering the evidence, the trial court found "that bonds are being issued for the purpose of being sold to bond purchaser(s) for monetary funds which [are] then used to pay [AV]." App. at 11445. As such, "the circumstances of the instant action do not fall under subsection 190.016(1)(c) which applies in situations where property is exchanged for the literal bonds." App. at 11445. The good judgment of the Districts' Boards governs and is subject to review under a deferential standard. App. at 11445.

In arguing the contrary, Mann and Taylor ignore the plain language of § 190.016(1)(c). Mann and Taylor's initial brief includes only a conclusory statement that "section 190.016(1)(c) required a determination of the fair value of the amenities that the [D]istricts intended to purchase." M&T Int. Br. at 33. Their remaining argument focuses on what constitutes "fair value" and how one should calculate "fair value." M&T Int. Br. at 34-42. This misses the point.

Kessler too ignores the plain language of § 190.016(1)(c). Kessler argues that it would make more sense to read § 190.016(1)(c) to require a "fair value" analysis regardless of whether the Districts exchange "bonds, cash, wampum, [or] stones" for any properties. K Int. Br. at 7. In his initial brief, Kessler rewrites the statute to read: "[A] Community Development District must determine the fair value of any properties it intends to purchase or to satisfy any financial or contractual obligation with bonds or with the proceeds of a bond sale." K Int. Br.

at 11. Before the trial court, Kessler also "rewr[o]te" the statute to read what it "should" say. App. at 10995 ("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]."") (brackets in original).

The Florida Constitution, however, empowers only the Florida Legislature to write and rewrite statutes. Art. III, § 1, Fla. Const. The plain language of those statutes controls. *See W. Fla. Reg'l Med. Ctr.*, 79 So. 3d at 9. The plain language of § 190.016(1)(c) does not require a "fair value" analysis under the circumstances.

B. A "fair value" analysis by a Florida licensed appraiser is unnecessary.

Even if § 190.016(1)(c) requires a "fair value" analysis here – which it does not – nothing mandates that a property appraiser licensed under Chapter 475 conduct that analysis. Mann and Taylor's arguments to the contrary are without merit. In fact, Mann and Taylor fail to cite a single case for the proposition that appraisals under Chapter 475 apply in bond validation proceedings, or that Chapters 190 and 475 require the Districts to obtain an appraisal.

Again, the plain language of § 190.016(1)(c) must control. It refers to the "fair value of any properties exchanged for the bonds, *as determined by the board*." § 190.016(1)(c), Fla. Stat. (emphasis added). Section 190.016(1)(c) does

not refer to an appraisal or a licensed appraisal. The Legislature could have required otherwise, but did not. *See e.g.*, § 70.001(4), Fla. Stat (requiring appraisal when filing property rights lawsuit); § 125.355, Fla. Stat. (governing acquisition by counties); § 166.045, Fla. Stat. (governing acquisition by municipalities); § 253.025, Fla. Stat. (governing acquisition of state lands); § 1013.14, Fla. Stat. (governing acquisition by school boards).

The Districts' Boards chose EFG to produce a valuation report to help them evaluate a part of their transaction with AV. App. at 12300. Harder of EFG prepared the report. App. at 12300-01. Harder then testified at trial, qualifying as expert on valuation under § 90.702 of the Florida Statutes because of his special "knowledge, skill, experience, training, or education." App. at 12286. While Mann and Taylor correctly note that Harder is not a licensed appraiser, M&T Int. Br. at 37-39, nothing "prevent[s] any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, registered." § 475.612(4), Fla. Stat. Mann and Taylor did not object to Harder's qualifications or his testimony. App. at 12286. In the final judgment, the trial court appropriately relied on Harder's testimony concerning valuation.[6] *See, e.g., Termaforoosh v. Wash,* 952 So. 2d

[6] Scattered throughout Mann and Taylor's initial brief is a reference to a "target price" – a pejorative intended to undermine Harder's opinion and show AV's improper influence on the Districts. M&T Int. Br. at 11-12, 14-16, 18-21, 24, 30,

1247, 1250 (Fla. 5th DCA 2007) (declining to mandate an "appraisal" by "certified or licensed appraisers" under Chapter 475 in the context of a commercial real estate transaction and holding that an "appraisal" by "a person with some amount or expertise or qualifications" is enough).

Accordingly, the Districts satisfy all legal requirements. Nothing in Chapter 190 or 475 requires a fair value analysis or an appraisal under the circumstances. Instead, as the trial court correctly concluded, § 190.016(1)(c) leaves it to the Districts' Boards, accountable to their residents, to make a deal in the best interest of their residents so long as that deal is neither arbitrary nor capricious.

III. AS A MATTER OF LAW AND FACT, THE DISTRICTS' ACTIONS SERVE A PUBLIC PURPOSE.

Rooted in conclusions of law and fact, the trial court also correctly found there to be a valid public purpose. App. at 11443-45. "[W]hat constitutes a public purpose is, in the first instance, a question for the [Districts] to determine, and [their] opinion should be given great weight." *Donovan,* 82 So. 3d at 810 (citations omitted). Where a public purpose is required, "it is immaterial that the primary beneficiary of a project be a private party, if the public interest, even

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33-34, 36, 43-44. Yet the evidence received and credited by the trier-of-fact shows that Harder undertook an independent valuation. The record further shows that what Mann and Taylor refer to as a "target price," is nothing more than agreement among the parties to a complex transaction on the methodology used to value revenue from the existing club plan and associated club fees. *See* Stmt. of Case and Facts *supra*.

though indirect, is present and sufficiently strong." *Id.* In fact, a private party always benefits when a unit of government buys anything from it. This does not defeat the government's public purpose.[7] *Id.*; *see also Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 48 So. 3 811, 822 (Fla. 2010) (providing that "[i]ncidental private benefit from a public revenue bond issue is not sufficient to negate the public nature of the project").

As a matter of law, the Districts satisfy the public purpose requirement. Section 190.012(2)(a) of the Florida Statutes allows for bonds "to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for" "[p]arks and facilities for indoor and outdoor recreational, cultural, and educational uses." The Districts intend to acquire existing amenities, refurbish some amenities, and build new amenities for their residents. App. at 102. As the trial court recognized, the Districts demonstrate a statutorily recognized public purpose. App. at 11443; *see also Sunrise Lakes Phase II Special Rec. Dist.*, 383 So. 2d at 633.

[7] At trial and in their opening brief, Mann and Taylor attempt to conflate the "public purpose" test with the "paramount public purpose test." *E.g.*, App. at 11482. It is undisputed, however, that the Districts have not pledged their full faith and credit or exercised their ad valorem taxing power. App. at 11485. As such, the "paramount public purpose" test does not apply, and a private party may also benefit without overwhelming the government's underlying "public purpose." App. at 11485.

As a matter of fact, the Districts also satisfy the public purpose requirement. The record includes testimony from several of the Districts' witnesses (Eckert, Moyer, Leo, Zimbardi, Case, and Plenzler) who testified to the public benefits from the project. *See, e.g.*, App. at 11606, 11773, 11874, 11883-94. The record shows that residents within the Districts would benefit by gaining control over existing amenities, lowering and capping the amount they pay to currently enjoy amenities, limiting the number of years they would have to pay fees to enjoy the amenities, and receiving an additional $11.2 million in new facilities. *See, e.g.*, App. at 11606, 11874, 11883-94. After considering the evidence, weighing the credibility of witnesses, and hearing arguments, the trial court agreed with the Districts. App. at 11443-45.

Mann and Taylor's arguments to the contrary are rooted in a conspiracy theory the trial court heard, considered, and rejected. App. at 11444. Specifically, as the trier-of-fact, the trial court stated:

> The Court does not find that the Developer [AV] improperly controlled, unduly influenced, or coerced the Districts' Boards and other involved parties, such as the consultants, during Negotiations, to secure their predetermined purchase price to maximize their profits. Beyond the expectant negotiated give-and-take and intimate cooperation and communication between individuals and entities involved in a complex real estate purchase and bonds issuance process; at best, it appears to the Court that the Developer [AV] may have engaged in tactics of persuasion on its behalf to maximize profits. However, the Court finds this does not evidence improper control, undue influence, or coercion. *See* Trial Tr. (excerpt portions of Charlie Case) 12:23-13:14, July 19, 2017) (Chairman Case

> testified: "Q. During the due diligence and negotiations periods, did AV [the Developer] do anything that you would consider to be inappropriate? A. No. Q. Did it try to overpower your will and forcing [sic] you to accept this deal? A. No. Q. Did it use any influence that you would consider inappropriate? A. No . . . Q. Are you aware of any facts that would lead you to believe that AV conspired with the districts in this transaction? Absolutely not."); Trial Tr. (excerpt portions of Robert Zimbardi) 11:11-11:13, July 20, 2017 (Chairman Zimbardi testified. "Q. What is your response to the allegation that AV and Tony Iorio exerted undue influence on the boards? A. I have not experienced that.").[8]

App. at 11444.

To the extent that Mann and Taylor argue against a public purpose because of the applicability of Florida's Homeowners' Association Act and supposed violation of that Act, *see* M&T Int. Br. at 39-40,[9] or an unfavorable comparison to bonds the Villages CDD issued, *see* M&T Int. Br. at 46,[10] the Districts note that

[8] It is worth repeating that, according to the trial court, "[t]o the extent that the Court referenced or citied witnesses' trial testimony or trial exhibits entered into evidence, the Court finds such to be credible." App. at 11452.

[9] Even if the HOA-related arguments were not collateral to the bond validation at issue, which they are, Mann and Taylor still presuppose too much. As the Districts represented to the trial court below, Mann and Taylor, in a separate proceeding, must still prove that AV is a homeowner's association subject to Chapter 720 of the Florida Statutes. App. at 11347 n.8. Plaintiffs must then prove that the club plan and club fees are illegal. App. at 11347, 11907; *cf.* Florida Condominium and Community Association Law, 3d. ed., §3.16(D) ("Typically, the club plan does not grant any ownership rights in the club to any community association [like a homeowners' association] or owner. Rather, the club members receive a nonexclusive license to use portions of the club facilities available to members.").

[10] Although collateral to this bond validation proceeding, the Villages CDD's bond issuance is readily distinguishable from the Districts' bond issuance. Unlike the

these arguments are collateral to the bond validation proceedings. It is improper for Mann and Taylor to inject these issues into the case. The trial court thus rightly refused to consider these issues. App. at 11447; *Donovan*, 82 So. 3d at 808 (explaining that "[i]t was never intended that proceedings instituted under [chapter 75] to validate governmental securities would be used for the purpose of deciding collateral issues or other issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto").

IV. MANN AND TAYLOR CANNOT CLEAR THE HIGH HURDLE NECESSARY TO PROVE THAT THE DISTRICTS' ACTIONS ARE ARBITRARY AND CAPRICIOUS.

Before the trial court, Mann and Taylor had to show through "strong, direct, clear and positive proof" that the Districts' actions are arbitrary and capricious. *Donovan*, 82 So. 3d at 812. They failed. Mann and Taylor now ask this Court to reweigh the evidence from a 4-day trial to conclude that "[t]he [D]istricts allowed their decision to be manipulated by a money-driven developer." M&T Int. Br. at 43. Specifically, as they did below, Mann and Taylor employ four classic fallacies to undo the trier-of-fact's conclusions: contextomy (taking words and e-mails out of context), proof by verbosity (barraging this Court with so many imagined facts

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Districts, the Villages remains (and will remain) developer-controlled, making the Villages' tax-exempt status more difficult to establish. App. at 9941. Regardless, even for the Villages, the Internal Revenue Service accepted the income-based valuation approach that Mann and Taylor criticize. App. at 11724-25, 333-35.

that the Districts cannot possibly respond to all), shotgun argumentation (raising many issues in an attempt to show a wrong), and repetitious argumentation (repeating claims regarding alleged collusion that they could not prove at trial).

The law requires more. Among other things, second-guessing the financial feasibility, advisability, or wisdom of a project is not enough. *Miccosukee Tribe*, 48 So. 3d at 818. Quibbling with the government's methodology is not enough. *See City of Winter Springs*, 776 So. 2d at 261. Questioning the government's negotiation skills is not enough. *Id.* at 258. Doubting the judgment of witnesses is not enough. *See Rosche v. City of Hollywood*, 55 So. 2d 909, 913 (Fla. 1952). Arguing that a private party received "too sweet" a deal is not enough. *See Poe v. Hillsborough Cnty.*, 695 So. 2d 672, 679 (Fla. 1997).[11]

[11] Iorio features prominently in Mann and Taylor's initial brief. Yet Iorio resigned as a supervisor in March 8, 2016, beyond which date the Districts could not force Iorio to work, and did not vote on any of the matters at issue here. App. at 11601-02, 11877. To the extent Iorio represented AV during the transaction, as the District Manager explained, the Districts' contacted Iorio when the Districts "needed [something] from AV or Iorio," which explains the e-mail correspondence with Iorio. App. at 11720. District Counsel added that, as part of this complex transaction, the parties and their representatives needed to contact one another to discuss issues like "bond rates," "buildout plan[s]," and other matters. App. at 11896, 11902-03 (discussing CDD-specific conflict of waiver provision).

Under the proposed transaction, the Districts' residents would get more but pay less. Accordingly, the trial court correctly found that the Districts' actions are not arbitrary and capricious.[12] This Court should affirm that trial court's findings.

V. TWO JUDGES, ON THREE SEPARATE OCCASIONS, RIGHTLY REJECTED DISCOVERY AND TESTIMONY ON COLLATERAL MATTERS AND, EVEN IF THEY ERRED, THE ERROR WAS HARMLESS.

The remainder of Mann and Taylor's appeal concerns a discovery and evidentiary issue, namely whether the trial court abused its discretion in denying them the opportunity to depose, obtain documents, and obtain trial testimony from representatives of the developer, AV. M&T Int. Br. at 46-50. The trial court correctly prevented Mann and Taylor from hijacking the case by conducting discovery on collateral matters from a third-party, AV, as the discovery was not relevant to the limited issues in this bond validation and would not in any way bear

[12] Competent, substantial evidence from a 4-day trial supports findings for each of the three elements necessary for a bond validation: (1) the power to issue the bonds, (2) the public purpose the bonds further, and (3) compliance with requirements of law. Specifically, the power to issue bonds appears at § 190.011(9) of the Florida Statutes, and in the record below. App. at 11443. The public purpose appears at § 190.012(2)(a) of the Florida Statutes; the trial transcript, *see, e.g.*, App. at 11773, 11786, 11883-94; and the trial court's final judgment. App. at 11443-45 ("plaintiffs demonstrated a public purpose for bond issuance to finance the construction of …"). Evidence regarding compliance with the law appears through the testimony of District Counsel (Eckert), District Manager (Moyer), and in related exhibits, *see, e.g.*, App. at 11870-73, 11602-03, 11883-94; and in the trial court's final judgment. *See, e.g.*, App. at 11445-46.

upon the Districts' determinations regarding the issuance of bonds and levy of special assessments and whether those decisions comported with Florida law.[13]

The trial court knew that its review in this bond validation was limited to five issues, three of which related to the bonds and two of which relate to special assessments. The bond issues are: (1) whether the Districts have the power to issue bonds; (2) whether the Districts followed the right procedures when approving the issuance of bonds, i.e., whether the bond issuance complies with the requirements of law; (3) and whether the purpose of the obligation is legal, i.e., whether there is a valid public purpose behind the project. *Donovan,* 82 So. 3d at 805. The special assessment issues are: (4) whether the properties to be burdened by the special assessments receive a special benefit from the project; and (5) whether the proposed allocation of the assessments is proper. Those are the sole relevant inquiries in a bond validation; anything else is collateral and irrelevant. *Id*. at 811.

Given these were the only relevant issues, it was easy and appropriate for two different judges in Polk County, on three separate occasions, to all conclude that the discovery and testimony Mann and Taylor sought from AV was not germane to the five relevant issues in this case, as the five relevant issues regard what the Districts considered, not what AV did or did not do. App. at 620, 1991,

[13] The trial court also precluded the Districts from taking (most) discovery from Mann and Taylor. App. at 5546. The Districts are not appealing that order.

5548. The Districts disclosed the information they considered to Mann and Taylor in response to public records requests and discovery, *see, e.g.*, App. at 5930, including extensive depositions of District Supervisors and Staff. AV's contacts with District Supervisors and Staff were all disclosed in discovery. The only thing Mann and Taylor did not get was information internal to AV – information that could not affect the Districts' analyses and decisions because the Districts did not have it. Instead, the evidence at trial showed the Districts relied upon their own independent consultants and experts to arrive at their decisions. AV's internal deliberations are irrelevant to the issue of whether the *Districts* acted lawfully.

Under Florida law, trial courts have wide latitude and discretion in determining discovery issues. *See, e.g., Alvarez v. Cooper Tire & Rubber Co.*, 75 So. 3d 789 (Fla. 4th DCA 2011). On all three occasions, the two separate trial court judges acted well within their discretion by precluding Mann and Taylor from undertaking irrelevant and costly discovery from AV. The discovery would not bear upon any of the relevant issues in the case.[14]

[14] Without any basis, Mann and Taylor imply that had their counsel had the opportunity to depose and call AV executives at trial, those witnesses would have broken under the pressure and contradicted what every other witness had to say about AV's involvement. Even if they succeeded in this Hail Mary effort it would not change the fact (with which the trial court agreed) that the decision-makers (i.e., District Supervisors) and District Staff relied on their own consultants and experts, not AV, in deciding whether to move forward with this transaction.

Even if this Court were to conclude that the trial court committed error on these discovery and evidence issues, Mann and Taylor cannot demonstrate that such error was prejudicial to their case and resulted in a miscarriage of justice, which is required if they want this Court to reverse. Florida's "harmless error" statute provides:

> No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

See § 59.041, Fla. Stat.; *Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251 (Fla. 2014). Based on the entire record, it is clear that Mann and Taylor were not prejudiced in any way by the limitation on discovery directed to and evidence from AV.

As noted above, Mann and Taylor obtained extensive document and deposition discovery from the Districts, and further submitted onerous public records requests. Mann and Taylor deposed most District Supervisors, the District Counsel, the District Manager, the Districts' Assessment Methodology Expert, the Districts' Valuation Expert, the Districts' Bond Underwriter, among others. Every witness refuted Mann and Taylor's claims regarding undue or improper influence.

Mann and Taylor identified the Districts Supervisors as testifying witnesses and subpoenaed most for trial. App. at 5549. Having deposed the District

Supervisors of their choosing, Mann and Taylor also had the opportunity to submit deposition designations. App. at 6603. The testimony of AV representatives would have been cumulative at best, and the undisputed evidence at trial was that none of AV's activities constituted improper influence, and none of them affected the ultimate decisions of the Boards to approve the bonds and the special assessments. As reflected in the trial court's decision, Mann and Taylor failed to prove undue or improper influence because it did not occur, not because they were precluded from engaging in unnecessary discovery directed to third-party AV.

Simply put, the trial court acted well within its discretion when denying the irrelevant discovery from AV, and then excluded testimony and evidence from AV at the trial. If the trial court erred in any way, the error was harmless because Mann and Taylor had an adequate opportunity to prove a case of undue or improper influence. Every witness deposed or who testified on such issues *denied* the existence of undue or improper influence, which is why Mann and Taylor failed to prove their conspiracy theory at trial. Having AV testify on the same issues would change little, and merely be cumulative. Accordingly, this Court should affirm the trial court's discovery-related orders.

CONCLUSION

Only the Florida Legislature legislates. Mann, Taylor, and Kessler nevertheless ask this Court to rewrite § 190.016(1)(c). Kessler even provides the

text. This is improper. Second-guessing the Districts' purpose is also improper when the Districts propose to give residents more amenities for lower fees. Asking this Court to embark on a quest for the hidden hand that supposedly duped the Districts is both improper and insulting. This is especially so because Mann and Taylor ask this Court to reweigh the evidence, and revisit the credibility and competency of witnesses. They ask for too much. The Districts ask this Court to affirm the trial court's final judgment in all respects.

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Dated: November 27, 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via transmission of a Notice of Electronic Filing through the Court's E-filing Portal to the following on this 27th day of November, 2017:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is typed in 14-point Times New Roman font, in compliance with the font requirements of Fla. R. App. P. 9.210(a)(2).

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