IN THE SUPREME COURT OF FLORIDA
CASE NOS. SC09-1817 and SC09-1818 (consolidated)

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA, ETC.,
Appellant/Cross-Appellee,

vs.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, ETC., ET AL.,
Appellee/Cross-Appellant

NEW HOPE SUGAR COMPANY, ET AL.,
Appellant/Cross-Appellee,

vs.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, ETC., ET AL.,
Appellee/Cross-Appellant

SECOND AMENDED ANSWER BRIEF OF STATE ATTORNEYS

On Appeal from the Circuit Court for the Fifteenth Judicial Circuit
In and for Palm Beach County, Florida
Lower Tribunal Case No. 50-2008-CA-031975XXXMB

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I. STATEMENT OF THE CASE AND FACTS

The State of Florida is a party to bond validation proceedings pursuant to Section 75.05, Florida Statutes (2008). Eight judicial circuits are affected by this validation proceeding and were served with the Complaint for Validation through the designated State Attorneys. The judicial circuits are, the 9th, 10th, 11th, 15th, 16th, 17th, 19th and 20th. These circuits comprise 16 counties. Inasmuch as the Complaint for Bond Validation was filed in the Fifteenth Judicial Circuit in Palm Beach County, Michael F. McAuliffe, the State Attorney for the 15th Judicial Circuit was designated by the collective State Attorneys in the other affected judicial circuits to represent their interests in this proceeding.

In compliance with its statutory responsibilities as defined in Section 75.05(1) Florida Statutes the State examined all pleadings, attended discovery depositions, pretrial motions and the eight days of trial proceedings beginning in February and concluding in August, 2009. The matter was vigorously litigated and defendants New Hope Sugar, Okeelanta Corporation and the Miccosukee Tribe of Indians asserted an exhaustive, detailed and thorough challenge to the validation of the Certificates of Participation. At the conclusion of the trial proceedings, the State entered its position on the record in a brief closing argument. The State asserted no defense or objection to the validation of the Certificates of Participation in an amount that would comply with the provisions of Senate Bill

2080 capping the total annual debt service for bonds to twenty percent (20%) of the districts ad valorem tax revenue. The State maintained that there was substantial, competent evidence to support the narrow and well defended three prong test set forth in *Strand v. Escambia County*, 992 So.2d 150 (Fla. 2008).

The State accepts and adopts in its entirety the comprehensive procedural history and findings of fact set forth in the Final Judgment Validating Certificates of Participation Lease-Purchase Financing, not to exceed $650 Million. (A1).

II. SUMMARY OF THE ARGUMENT

There is competent, substantial evidence to support the trial Court's findings of fact and conclusions of law validating the Certificates of Participation Lease Purchase Financing in the amount of 650 million. The role of the trial court in bond validation proceedings is confined to a three prong review process which is very limited in scope. The trial court's role is to determine that there is authority to issue the bonds, that the obligation serves a public purpose and is legal, and that the obligation otherwise complies with the requirements of law. *Strand v. Escambia County*, 992 So.2d 150 (Fla. 2008). The role of the State Attorney is likewise very narrow and circumscribed by statute. (§75.05(1) Fla. Stat. (2008)). The review process may not entertain the wisdom of business and financial judgments made by governing entities absent a fraud or violation of legal duties. *Town of Medley v. State*, 162 So.2d 257 (Fla. 1964). The State maintains that South Florida Water Management District (SFWMD) has established through sufficient and competent evidence that they had authority to issue the COPs, that the obligation was for a legal public purpose (Everglades Restoration) and that it complied with all requirements of law. There was no showing of fraud or violation of legal duty sufficient to overcome the validation.

ARGUMENT

A. Standard Of Review

The scope of appellate review in bond validation proceedings is limited to three issues: the authority for the governmental entity to issue the bonds; the legitimacy and public purpose of the obligation; and whether the bond issuance complies with the requirements of law. *City of Gainesville v. State*, 863 So.2d 138, 143 (Fla. 2003). In this context this Court reviews the "trial court's findings of fact for substantial competent evidence and its conclusions of law de novo." *Id.* A final judgment for bond validation is cloaked with the presumption of correctness. *Boschen v. City of Clearwater*, 777 So.2d 958, 962 (Fla. 2001). The appellant bears the burden of showing that the record does not support the trial court's findings and conclusions. *Id*. It is not the province of the courts "to substitute their judgment for that of officials who have determined that revenue certificates should be issued for a purpose deemed by them to be in the best interest of those whom they represent". *Town of Medley v. State*, 162 So.2d 257, 259 (Fla. 1964). The governing bodies legislative judgments and prerogatives are inviolate absent fraud or a violation of legal duty. *Id*.

B. The Trial Court Correctly Validated The Certificates Of Participation Lease Purchase Financing In The Amount Of 650 Million.

Florida Statute 75.05(1) mandates that the State Attorney in the judicial circuit where the validation is filed examine the complaint to determine if it is defective, insufficient, untrue or not duly authorized. The role of the State Attorney is narrow and clearly defined. In discharging its responsibility under this statute the State maintains that it is circumscribed by the same parameters and limited review set forth in *Strand v. Escambia County*, 992 So.2d 150, 154 (Fla. 2008). The *Strand* Court reiterates the scope of proceedings previously defined in the *City of Gainesville v. State*, 863 So.2d 138, 143 (Fla. 2003)

> We have previously explained the scope of a bond validation proceeding: "[C]ourts should: (1) determine if a public body has the authority to issue the subject bonds; (2) determine if the purpose of the obligation is legal; and (3) ensure that the authorization of the obligation complies with the requirements of law." *State v. City of Port Orange*, 650 So.2d 1, 2 (Fla. 1994)

It is within these specific criteria that the State performed its oversight function.

First, it is the position of the State that the SFWMD has met the burden imposed by the *Strand* analysis. The Trial Court's Final Order clearly and succinctly recognizes that the District has the statutory authority to issue the bonds. Certificates of Participation (COPs) are included in the definition of "bonds" in subsection 373.584(4)(2) Florida Statutes. Revenue bonds include "bonds of a

water management district…of which the full faith and credit and power to levy ad valorem taxes are not pledged." §373.584(4)(c). Moreover, Section 373.584(2) confers the same broad powers that municipalities possess under Chapter 166 Florida Statutes which includes the power to issue COPs. There is no impediment to the District's authority to issue COPs.

Second, it is the position of the State that the Trial Court was correct in finding a valid public purpose for the initial acquisition of 73,000 acres of land. As stated in the Trial Court's Final Judgment "the District witnesses outlined, parcel by parcel, the immediate and future benefits to be gained by the 73,000 acre acquisition". (A1, p. 20) The Trial Court declined to validate the remaining 107,000 acres of option land finding the plans to be tenuous and lacking in specificity.

The Court found that the 73,000 acre purchase was intended primarily to benefit storage and treatment of water before it is discharged into Lake Okeechobee. Overall, the additional storage and treatment projects are to work in concert with Comprehensive Everglades Restoration Project (CERP). The evidence overwhelmingly supports a finding that surface water storage, treatment and management is a critical component to the overall Everglades Restoration Plan. As noted in the Trial Court's Order defendants own expert witnesses testified that surface water storage and treatment is a valid public purpose. (A. 21). Clearly,

Everglades restoration promotes a public purpose benefitting the citizens of the State of Florida and no credible argument can be made to the contrary.

The Trial Court properly recognized that it is improper and outside of its scope of review to delve into the wisdom or economic feasibility of the project. *Boschen v. City of Clearwater*, 777 So.2d 958, 966 (Fla 2001). Although the defense offered a myriad of witnesses addressing the economic viability of this project over the long term as well as the practicality and suitability of this plan vis a vis the already existing Comprehensive Everglades Restoration Plan, such criticisms, however astute, are outside the review function of the Court. *Town of Medley v. State*, 162 So.2d 257, 259 (Fla. 1964); *Boschen* at 966; *Warner Cable Commc'ns v. City of Niceville*, 520 So. 2d 245, 246 (Fla. 1988).

Allegations were made during trial proceedings intimating that this proposed acquisition constituted nothing more than a sweetheart deal intended to bail out U.S. Sugar. However, there was no evidence of any abuse, fraud or illegality. The Trial Court further found that any private benefit to U.S. Sugar "is more than incidental to any public purpose" (A 23). As noted by the Trial Court this finding comports with the requirements of *Orange County Indus. Dev. Auth. v State*, 427 So.2d 174, 179 (Fla. 1983) ("bonds will be validated since the incidental private benefits are not so substantial as to tarnish the public character of the project") (citation omitted). There is competent substantial evidence to support the Court's

finding of a valid public purpose under the second prong and the Trial Court has correctly applied the law to its factual findings.

Finally, as the State asserted at trial the authorization of the COPs complies with all requirements of law. The Trial Court's Final Judgment presents a detailed comprehensive and erudite analysis as to the numerous challenges raised in this regard. The State adopts in its entirety the legal reasoning contained in the Trial Court's Order addressing with specificity each of the issues raised.

CONCLUSION

It is respectfully submitted that this court should affirm the Final Judgment validating the Certificates of Participation Lease Purchase Financing, not to exceed $650 million. The Court correctly applied the *Strand* analysis and pertinent law to the facts of this case and there is competent substantial evidence to support the finding and legal conclusions.

Respectfully submitted this __9_ day of November, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail to **Joseph P. Klock, Jr., Esquire**, 283 Catalonia Avenue, 2nd Floor, Coral Gables, FL 33134; **Dexter W. Lehtinen, Esquire**, 7700 N. Kendall Drive, Suite 303, Miami, FL 33156; **Randall W. Hanna, Esquire**, 101 North Monroe Street, Suite 900, Tallahassee, FL 32301; and **Sheryl G. Wood, General Counsel**, 3301 Gun Club Road, MSC-1410, West Palm Beach, FL 33406, this __9_ day of November, 2009.

/S/ MAUREEN ANN HACKETT
Maureen Ann Hackett
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the font requirements of Rule 9.100(*l*) of the Florida Rules of Appellate Procedure.

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