IN THE SUPREME COURT OF FLORIDA

JAMES E. GOWEN,

Appellant,

v.

CASE NO.: SC14-2269
L.T. CASE NO.: 37-2014-CA-002004

STATE OF FLORIDA, ETC., ET AL.,

Appellees.

_____/

APPELLEE'S MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW

Appellee, the Florida Green Finance Authority ("FGFA"), by and through its undersigned attorney, respectfully requests that this Court dismiss Appellant, James E. Gowen's appeal of this matter because he lacks standing. He is an improper party, his appearance is untimely and he has no interest in the case. As such, there is no need for this Court to reach the arguments on the merits. *Int'l Longshoremen's Ass'n v. Fisher*, 800 So. 2d 339, 340 (Fla. 1st DCA 2001) (Appellant's failure to demonstrate appellate standing is dispositive).

Appellant appeals an uncontested bond validation judgment from the Second Judicial Circuit Court authorizing bonds to be issued pursuant to Florida's property-

assessed clean energy ("PACE") statute, Section 163.08, Florida Statutes. Appellant only filed notices of appearance and appeal after the final judgment was entered. This is the third (3rd) PACE bond validation case where an appellant has appeared at the eleventh (11th) hour, not otherwise appearing as a party in the proceedings below. Moreover, this is the fourth (4th) PACE bond validation appeal to come before this Court relying on *Meyers v. City of St. Cloud,* 78 So. 2d 402 (Fla. 1955) to establish standing.

Chapter 75, Florida Statutes, provides that "property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by issuance of bonds" may become parties to a bond validation proceeding. *See* Section 75.05, Florida Statutes (establishing procedure for the circuit court to issue an order to show cause in bond validation proceedings); *see also* Section 75.07, Florida Statutes ("[a]ny property owner, taxpayer, citizen or person interested may become a party to the action"). Contrary to these requirements, Appellant's initial brief does not establish that he is even a property owner, taxpayer, citizen or person interested in the proceeding. Since nothing in the record indicates that Appellant is a proper party to this case, he is an improper party and his appeal should be dismissed.

Even if Appellant were a proper party, his appearance was untimely. Section 75.07, Florida Statutes, provides that "[a]ny property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint *at or before the time set for hearing*" (emphasis added).

In response to the show cause order, only four (4) answers from state attorneys were filed and none presented any objection to, or argument against, the issuance of these bonds. Despite this, Appellant now attempts to introduce several issues on appeal, including impairment of contracts that he is not a party to, infringement of constitutionally protected banking interests that are not his, illegality of the PACE Act's financing system, and inappropriateness of the bond validation.

Appellant cannot now raise arguments on appeal that no party raised in the Circuit Court. *See Rosado v. DaimlerChrysler Fin. Servs. Trust*, 112 So. 3d 1165, 1171 (Fla. 2013) ("In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.") (citing *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005)). No interested party moved or pleaded against this bond validation complaint at or before the hearing, including Appellant. Thus Appellant

preserved no argument for review and therefore, there is no issue for this Court to consider.

Appellant's reliance on *Meyers* to establish standing is misplaced because it is distinguishable. First, in *Meyers,* it was undisputed that appellants were "citizens and taxpayers of the petitioning political unit bringing the proceedings." 78 So. 2d at 403 (quoting *State v. Sarasota Cnty*, 159 So. 797, 799 (Fla. 1935)); *see also Rich v. State*, 663 So. 2d 1321, 1324 (Fla. 1995) (stating *Meyers* "dealt with the right of *property owners* and *taxpayers* of the City of St. Cloud, who were proper parties to the proceeding, to intervene on appeal"). Here Appellant's initial brief makes no showing whatsoever that he is a citizen, taxpayer, property owner, or other interested person in this proceeding.

Second, this case is distinguishable because the original analysis in *Meyers* hinged on Section 75.06, Florida Statutes, which only addressed the statutory requirements for providing adequate notice related to due process. Important to note, at the time *Meyers* was decided over a half century ago, intervention post-final judgment was permissible – that is no longer the case pursuant to the current language in Section 75.07, Florida Statutes stating that "[a]ny property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint *at or before the time set for hearing*." Therefore,

only those that first become a bona fide "party to the action" by moving against or pleading to the complaint at or before the hearing may then appeal a final judgment pursuant to Section 75.08, Florida Statutes.

In Appellant's own words, *Meyers* interprets "the predecessor to section 75.08, Florida Statutes" (br. at 2), but the current statutory requirements must be followed today. The practical effect is that non-parties are being permitted to both appear and introduce new facts and arguments for the first time on appeal, contradicting not only current Sections 75.07 and 75.08, Florida Statutes, but also established precedent before and after *Meyers* affirming that only parties to a proceeding may appeal an order emanating from it. *See, e.g., Dickinson v. Segal,* 219 So. 2d 435, 436-37 (Fla. 1969) (dismissing an appeal, noting "the general rule—universally—is that intervention may not be allowed after final judgment" and observing that "this Court has consistently refused to allow intervention in appeals here by strangers to the record"); *State v. Fla. State Improvement Comm'n*, 75 So. 2d 1, 6 (Fla. 1954) (stating "[a]s [appellants] were not parties to the cause, they had no right or authority to prosecute an appeal and have no standing in this Court.").

Finally, Appellant fails to demonstrate that he has any right, title or interest in property to be affected by issuance of the bonds (as required by Sections 75.05 and 75.07, Florida Statutes), or that he stands to gain or lose something as a result of the

bond issuance. *See Rich v. State,* 663 So. 2d 1321, 1324 (Fla. 1995) (stating a "person interested" under § 75.07 must stand to gain or lose something as a direct result of bond issuance); *see also Belmont v. Town of Gulfport*, 97 Fla. 688 (Fla. 1929) (stating a "citizen" has standing to intervene under § 75.07 if they have a "justiciable interest in the litigation"); *see also City of Fort Myers v. State*, 176 So. 483, 484 (Fla. 1937), *overruled on other grounds*, 198 So. 814 (1940) (stating a "taxpayer" has standing to intervene under § 75.07 if they are "adversely affected" by outcome of proceeding).

Appellant filed an initial brief on January 20, 2015 that was directly copied from the Florida Bankers Association's ("FBA's") initial brief in a related case currently pending before this Court. *Fla. Bankers Ass'n v. State of Fla.,* Case No. SC14-1603 (initial brief filed October 6, 2014). In the instant case, the only "interests" Appellant asserts (as an individual) are those copied from the FBA's brief: protecting rights of mortgagees, impairment of contracts and protecting the interests of banks. These are not interests that Appellant stands to gain or lose upon as a direct result of this bond issuance.

CONCLUSION

Because Appellant is an improper party, he did not move or plead to the complaint in a timely manner and he has not shown any right, title or interest in

property to be affected by issuance of the FGFA's PACE bonds, Appellee moves this Court to dismiss Appellant's appeal in the in the above-styled cause.

Respectfully submitted this 6th day of February, 2015.

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CERTIFICATE OF E-FILING, E-SERVICE AND SEARCHABILITY

I HEREBY CERTIFY that this Motion to Dismiss and Incorporated Memorandum of Law is capable of being electronically searched in compliance with Florida Rule of Judicial Administration 2.520(b).

I FURTHER CERTIFY that this Motion to Dismiss and Incorporated Memorandum of Law was filed electronically in compliance with Florida Rule of Judicial Administration 2.515 and 2.516 on this 6th day of February, 2015.

I FURTHER CERTIFY that this Motion to Dismiss and Incorporated Memorandum of Law was served electronically in compliance with Florida Rule of Judicial Administration 2.516(b)(1)(E) to all persons on the Service List on this 6th day of February, 2015.

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CERTIFICATE OF COMPLIANCE

I FURTHER CERTIFY that this Motion to Dismiss and Incorporated Memorandum of Law is typed in 14-point Times New Roman font, and otherwise complies with the font requirements of Fla. R. App. P. 9.100(l) and 9.210(a)(2).

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