

SUPREME COURT OF FLORIDA

CASE NO. SC01-411

LOWER CASE NO. K-00-1525

KEYS CITIZENS FOR RESPONSIBLE GOVERNMENT, INC.,

Appellant,

v.

FLORIDA KEYS AQUEDUCT AUTHORITY,

an Independent Special District,

Appellee.

APPELLANT'S INITIAL BRIEF

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PREFACE

This is a direct appeal of a judgment of the Monroe County Circuit Court validating the proposed issuance of \$4,500,000 in sewer revenue bonds by the Florida Keys Aqueduct Authority (“the Authority”). Most components of the judgment are routine and not challenged here. Instead, the issues before this Court will center on the propriety of the Authority’s attempt to use the scant procedures of summary bond validation, premised upon a sharply circumscribed function, to sweep in an almost casual adjudication of distinct and far more problematic issues. More specifically, this appeal challenges the use of summary bond procedures to adjudicate the rights of landowners throughout the county concerning whether they must mandatorily connect to the Authority’s sewage facilities. As issued, the Circuit Court’s order effectively forces an abandonment, and virtual divestiture, of all existing treatment plants. All this was purportedly accomplished without any actual notice of the mandatory connection requirements being published, much less duly served upon interested parties, prior to the hearing .

For the reasons that follow, the trial court’s judgment goes far beyond the narrow scope of validating revenue bonds and the unlawful components should be vacated by this Court.¹

¹ The materials in the appendix will be cited as (“App.”), while the hearing transcript, Appendix item 16, will be cited as (“T.”).

STATEMENT OF THE CASE AND OF THE FACTS

The Authority is an autonomous public body conceived to supply and distribute an adequate water supply for the Florida Keys while also addressing the treatment and disposal of wastewater (Complaint, App. 1 at 2). Its powers include the issuance of bonds to develop facilities that further its statutory responsibility. *Id.* The Appellant is a not-for-profit Florida corporation whose members are taxpayers, property owners and citizens of Monroe County, Florida (App. 4 at 1) that was permitted to intervene without objection below (T. 12-14).

The present controversy reflects the Authority's desire to increase reliance on its own wastewater treatment rather than the use of cesspools, septic tanks and small package plants which have historically been relied upon in the Florida Keys. On October 18, 2000, the Authority adopted Resolution 00-20 providing among other things that:

... [T]hese systems have become antiquated and inadequate to handle the volume of wastewater and the high nutrients and other pollutant produced.

(Complaint, App. 1 at 5). Therefore, to enhance "a rich quality of life and economy," the Authority elected to develop a sewer system to include:

[A]ny and all sewer collection's transmission, treatment, storage and disposal facilities now owned and operated or hereafter owned and operated by the issuer

(Complaint, App. 1 at 6).

Pursuant to a Memorandum of Understanding with Monroe County, the Authority agreed it would finance and operate the wastewater system and effectively become the exclusive wastewater authority for the Florida Keys (Complaint, App. 1 at 3). As part of that agreement, the County gave its approval to the bond issue that was approved below. *Id.*

Presumably for the purpose of maximizing funding for the Authority's bonds and projects, the County passed an ordinance on January 19, 2000, requiring that property owners abandon their existing treatment plans and convert at their own expense to become customers of the "publicly owned or investor-owned sewage system." (App. 1E-3).

(a) The owner of an onsite sewage treatment and disposal system must connect the system or the building's plumbing to an available publicly owned or investor-owned sewerage system within 30 days after written notification by the owner of the publicly owned or investor-owned sewerage system that the system is available for connection.

This regulatory requirement for mandatory connection and compulsory abandonment of the owner's existing treatment and disposal system applies irrespective of the environmental quality of a landowner's existing treatment facility (App. 1E). Nor

does it account for the financial investment landowners may have made to create viable treatment facilities. *Id.* And the ordinance did not propose compensation to the landowner for the improvements that would thus become valueless.

In light of the MOU with the County, and pursuant to the County's ordinance, the Authority proceeded with the issuance of bonds to fund costs of the proposed improved system for the Marathon Wastewater District in the Upper keys. Pursuant to the Authority's Resolution No. 00-20 on October 18, 2000, it authorized the issuance of bonds in the sum of \$4,500,000 to be repaid through, among other things, the fees of future users. Part of the Authority's payments on the debt would rely on the forced abandonment of existing treatment facilities and mandatory hook-ups to the Authority's system.

Section 5.12 Compulsory Connections. In order to better secure the prompt payment of principal and interest on the Bonds, as well as for the purpose of protecting the health and welfare of the of the inhabitants of the County, and acting under authority of the Act or other applicable laws of the State, the Issuer will require every owner of each lot in the area of operation of the Issuer which abuts upon any street or public way containing a sewer line which shall be a part of the facilities of the System and upon which lot a building shall exist and be used for residential, commercial or industrial use, to connect such building to such facilities and to cease to use any other method for the disposal of sewage.

To validate the bonds, the Authority filed an action pursuant to Chapter 75 of the Florida Statutes. In the complaint, the Authority's requested relief included:

B. [T]he Authority has the power to levy non-ad valorem assessments as provided in the Act and Chapter 197, Florida Statutes, and Section 197.3632, Florida Statutes, which is additional general law authority for the Authority to impose and collect charges in the form of non-ad valorem assessments which is supplemental and alternative to the Act.

* * *

F. [T]he Authority has the power to covenant with the Bondholders so as to: (i) require all property owners or users of wastewater or sewer service to connect with and use exclusively the sewer and wastewater services and facilities of the Authority; (ii) require discontinuance of all other compelling or other sewer or wastewater service within the geographic boundaries of the Authority, including but not limited to any existing septic tank, cess pit, onsite sewage treatment and disposal systems or package plants, whether or not such competing or alternative services or facilities are properly functioning or otherwise in compliance with any regulatory permit or authorization; (iii) require discontinuance of water service of System users of all premises which are delinquent in payment of System charges.

On November 21, 2000, Monroe Circuit Judge Susan Vernon thereupon issued a generic show cause order:

You and each of you are hereby required to appear on the 21st day of December, 2000 at 9 o'clock a.m. before the Circuit Court for Monroe County, Florida, at the Courthouse in Key West, Florida, and show cause why the

prayer of the Complaint filed in the above-entitled proceedings should not be granted and the bonds therein described and the proceedings authorizing the issuance thereof validated and confirmed, said bonds consisting of not exceeding \$4,500,000 principal amount of Sewer Revenue Bonds, a more particular description of said bonds being contained in the Complaint for Validation filed in these proceedings.

The hearing was set for December 21, 2000. Neither the body of the Order nor its caption specifically informed the landowners of Monroe County that within thirty days, there would be a judicial determination that they would be ultimately required to abandon their existing treatment plants and pay for connection costs and perpetual usage of the Authority's system. (App. 2).

The Court's Order provided that notice would be published in a local newspaper. (App. 2). On November 30 and December 7, 2000, a notice appeared in the *Key West Citizen* repeating the words of the Court's Order but specifying the wrong case number. (App. 7) (T.7). Rather than the bond validation proceeding, the case number in the legal notices represented a mortgage foreclosure action. (App. 8, at 2-3). The Authority called this defect to the Court's attention one day before the December 21st hearing. *Id.* As before, nothing was mailed to individual residents nor did the notification advise those who might read it that potentially significant issues concerning their property rights were also to be adjudicated.

On December 13, 2000, the Appellant first learned of the hearing, discovering the notice in a copy of the December 7th *Key West Citizen*. According to Appellant's motion for continuance, that newspaper is not widely read in the Upper keys. (App. 4) (T.4). As matters would develop, Little Venice, in the Upper keys, is the immediate subject of the proposed mandatory sewage system and the accompanying user fees. (T.20, 34).

Appellant promptly called plaintiff and was promised faxes of the court filings. (App. 4, at 2). By December 18, 2000, five days later, Appellee had sent only a copy of the amended order to show cause, the same generic description contained in the legal notices (App. 4 at 2). After further delays, the Appellant received a copy of the complaint without exhibits at 5:00 p.m. on Monday, December 18, 2000. The exhibits consisted of roughly 110 pages of resolutions and bond documents, many reflecting technical issues and concepts that are not familiar to most lawyers, much less members of the public. *Id.* In light of the issues concerning notice, Appellant moved on December 20, 2000, for a continuance at the December 21, 2000 hearing.

In successfully opposing the motion for continuance, the Authority emphasized the "exceptional speed" required by Chapter 75 (App. 6). In another portion of its papers, the Authority also emphasized the narrow scope of bond validation proceedings.

It is the long-standing law of this state that the scope of a bond validation proceeding is limited to the following considerations: '1) determining if the public body has the authority to issue the bonds; 2) determining if the purpose of the obligation is legal; and 3) ensuring that the bond issuance complies with the requirements of the law.' *Noble v. Martin County Health Facilities Authority*, 682 So.2d 1089, 1090 (Fla. 1996); *Rowe v. St. Johns County*, 668 So.2d 196, 198 (Fla. 1996). This proposition is in harmony with the above-cited need for speedy disposition of bond validations.

(App. 6 at 4).

On the following day, the continuance and other pretrial motions were denied and the trial judge proceeded with the hearing. Intervention was granted for Appellant (T. 12-14), although its counsel was only able to appear by telephone.

The consequence of denying the continuance was evident. No significant witnesses were presented by intervenors (T. 125) and the cross-examination was minimal. (T. 61-62). Throughout the hearing, Appellant's counsel expressed trouble hearing the proceedings, often to the seeming frustration of the trial court. (T. 103, 136) (T. 125) ("Try to speak up. I am tired of holding the telephone.") All of Appellee's objections were sustained (115-16, 122), while virtually every concern raised by Appellant was rejected. (T. 106, 108). When the hearing concluded at 12:45 p.m. with Appellant's request for a chance to file a legal memorandum, he was allowed until 4:00 p.m. that same day to submit his papers.

During the hearing itself, the testimony demonstrated that the area to be benefitted by the bond issuance was the Marathon Wastewater District in the Upper keys. (T. 20, 34). The Appellee presented various experts and consultants who testified concerning the need for a new sewer system as well as the obvious financial advantages of compelling all potential users to connect. Contending that such bond issues no longer require a referendum vote by the citizens, the Authority had, through its own resolution, approved the issuance of the bonds to Republic Bank. (T. 82-83)

The various experts and consultants explained that the county-wide system was scheduled for implementation by 2010. (T. 33). Yet while the Authority's powers operate throughout the County, several locales, including Ocean Reef and the City of Key West, remain exempt from its jurisdiction. (T. 23). In these communities, the compulsory hookup would not apply.

Although the scope of the Final Judgment is county-wide, the particular focus of this project was 681 commercial and residential units in Little Venice, in Marathon. (T. 70). A \$4.3 million grant for the Little Venice project had been awarded subject to matching funds and completion by Spring 2001. (T. 20). A twenty-one month period for construction was contemplated. (T. 20). This area was prioritized because, as the county administrator testified, "we don't know if they are functioning or there are cess pits there." (T. 35). The county's environmental manager testified that, "we

suspect there may be some cess pools.” (T. 49). Consultants hired by the Authority testified about the desirability of a mandatory connection system (T. 56), stating that the contemplated system was predicated on the hook-ups of all systems (T. 58). One consultant insisted that financing for the bonds would be harmed if some users do not hook-up as full participants since the financial assumptions were based on participation by all 681 users. (T. 71).

In the event of non-compliance or non-payment, the homeowners properly could be liened by the Authority. (T. 97). Testimony further established that the bond obligations would balloon in ten years, (T. 91), potentially subjecting the County’s landowners to assessments in the event the bank did not renegotiate for a longer term with the Authority (T. 89-91). During the closing argument, the Authority’s counsel made it plain that the relief being sought affected all property owners and taxpayers in the County (T. 107) within the Authority’s jurisdiction, and would have *res judicata* effect (T. 117). *See also* T. 73 (“However, the Authority is validating the entire sewer system ...”). In response, Appellant’s counsel complained vigorously of the effective elimination of “millions of dollars of infrastructure by owners of package plants that must be abandoned if you grant the relief asked for in Paragraph F.” (T. 121).

Following the hearing the court entered final judgment that not only validated the bonds, but also purported to adjudicate the Authority’s power to force property

owners to switch over to use of the Authority's system. While neither the County which had passed the mandatory ordinance nor the affected landowners were joined as parties, the trial court nonetheless ruled:

8. Based upon the Act, the Plaintiff has the power to require all customers of the Plaintiff's Sewer System to provide access to the Plaintiff for installation of all necessary pipes and other facilities in order to provide service or otherwise connect to Plaintiff facilities at the customer's expense, all without payment or compensation by the Plaintiff in order to successfully complete the project as described in the Master Resolutions as part of the System which timely completion will assist in providing the Pledged Revenues to pay debt service on the Bonds.

9. Pursuant to the Act and the laws of the State of Florida, the Plaintiff has the power to require all necessary property owners within its geographic jurisdiction to utilize the Plaintiff as the sole provider of sewer services (including, but not limited to, wastewater), as provided in the Act, and to connect at the customer's expense each improved parcel of property to the Plaintiff's Sewer System.

(11-3 ¶¶ 8 and 9; emphasis added). Appellant timely moved for reconsideration and amendment of the Final Judgment seeking, among other things, the deletion of paragraphs eight and nine. That motion was denied and this appeal timely followed.

SUMMARY OF THE ARGUMENT

This Court's decisions have clearly established that bond validation procedures under Chapter 75 are conceived to operate speedily and within very narrow parameters. The core issues to be addressed are whether the issuing entity has the requisite legal authority, whether the bond has a public purpose, and whether the legal processes have been properly followed in conjunction with issuance and validation.

In the proceedings below, the trial court exceeded the statutory scope of Chapter 75 and ruled upon collateral issues. More specifically, the trial court issued, in effect, a declaratory and even injunctive decree requiring landowners in Monroe County to hook-up with the Authority's system and abandon any treatment facilities that they may have built or acquired. As numerous decisions of this Court have established, a judicial holding directed to collateral issues, even if important to effectuating the repayment scheme, falls outside the ambit of Chapter 75.

As a result, this Court should direct that, upon remand, the provisions of the Final Judgment that purportedly compel landowners to connect to the Authority's system should be deleted. Alternatively, this Court should require a clarification of the Final Judgment establishing that it has no collateral estoppel, *res judicata*, or other preclusive effects concerning the citizenry of Monroe County and the recently enacted mandatory connection ordinance.

The same result is compelled by considerations of due process. If Florida law did indeed afford the results obtained by the Authority below - and it does not - such would offend basic notions of due process due to the lack of meaningful notice or a meaningful opportunity to be heard on the mandatory connection issues.

LEGAL ARGUMENT

INTRODUCTION

This appeal presents no quarrel with the Authority's desire to develop and expand water and sewer treatment systems for Monroe County. Nor has Appellant objected to the issuance of bonds in furtherance of that purpose. Instead, the Appellant comes before this Court because what should have been a simple bond validation under Chapter 75 was improperly expanded to become a declaratory, even injunctive, decree directed to land owners with no meaningful notice of the impending adjudication. By virtue of that adjudication, the landowners are being ordered to abandon any existing treatment facilities and, at their expense, connect to the Authority's water and sewage system and pay fees to finance the bonds. According to the Final Judgment such a compulsion is to be imposed without any compensation for any existing treatment facilities that are now to be abandoned and completely devalued. Irrespective of whether such a result could be sustained following appropriate judicial proceedings, Florida law is overwhelmingly clear that such

significant issues affecting the rights of many thousands cannot be molded into a summary bond validation that relies on two cursory newspaper ads for prior notice.

Accordingly, this appeal does not confront the Authority's goal of improving water quality or even the alleged power of local government to compel landowners to use only the government's treatment system.² Rather, this appeal respectfully submits that the trial court below committed substantial error by adjudicating liabilities and rights far outside the fast and very narrow track that Florida has delineated for summary bond validations.

²Existing Florida law may provide for mandatory connection to an investor-owned or publicly owned sewerage system if one is available. Affected landowners must be given one year's notice before the system is available, and an additional one year after the system is in place before connection is required. §§ 381.0065 and 382.00655, Fla. Stat. (2000). Monroe County Ordinance No. 04-2000 goes beyond existing law by making the Aqueduct Authority the exclusive provider of sewerage services, except for exempted locales such as Ocean Reef; moreover, it compresses the two one-year notice periods into thirty days. Thus, as addressed in the pages that follow, owners of private treatment facilities that may be capable of all applicable environmental compliances are now, in appellant's view, subject to a summary divestiture of their property that was not imposed under previous law.

B. THE TRIAL COURT’S ADJUDICATION REQUIRING ALL PROPERTY OWNERS OF MONROE COUNTY TO CONNECT TO THE AUTHORITY AS SOLE PROVIDER OF WASTEWATER TREATMENT SERVICES WAS IMPROPER AND COLLATERAL TO THE FUNCTIONS OF CHAPTER 75 BOND VALIDATION.

In Florida, the function of a statutory bond validation proceeding under Chapter 75 is narrowly construed:

The scope of this court’s inquiry in bond validation hearings is limited to the following considerations: (1) determining whether the public body has the authority to issue bonds; (2) determining whether the purpose of the obligation is legal; and (3) ensuring that the bond issuance complies with the requirements of law.

Murphy v. Lee County, 736 So.2d 300, 302 (Fla. 2000), *citing Noble v. Martin County Health Facilities Auth.*, 682 So.2d 1089 (Fla. 1996). Especially because such proceedings are conducted with minimal notice and procedural features that would deeply offend due process in other settings, courts sharply limit the scope of permissible adjudication so that the narrow function of Chapter 75 can be realized, in extraordinarily prompt fashion, without enveloping collateral issues. These principles have long prevailed:

It was never intended that proceedings instituted under the authority of this chapter to validate government securities would be used for the purpose of deciding collateral issues or those issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereof.

State v. City of Miami, 103 So.2d 185, 188 (Fla. 1958) (emphasis added). In substantial part, the minimization of procedure safeguards and the refusal to consider issues beyond the core Chapter 75 considerations are anchored upon the importance of speedy disposition:

A recognition of the propriety of injecting collateral questions into bond validation proceedings would seriously handicap the speedy and efficient disposition of bond validation proceedings in this state and, as a result would defeat the purpose of the statute and the rules of this court and seriously impair the general welfare.

103 So.2d at 188.

In the present case, these vital principles were jettisoned. The consequences for members of the public, who received no notice of the judicial action that was looming, are all the more significant because this bond issue has been authorized not by public referendum but rather by action of the members of the Authority. Through a striking departure from the narrowly circumscribed channels for summary bond validation, the trial court imposed a costly declaratory decree and mandatory injunction upon property owners in Monroe County:

Pursuant to the Act and the laws of the State of Florida, the plaintiff has the power to require all necessary property owners within its geographic jurisdiction to utilize the plaintiff as the sole provider of sewer services and to connect at the customer's expense each improved parcel of proposals to the plaintiff's sewer system.

(Final Judgment, App. 11 at 3). This adjudication went much too far, especially in light of the tight focus of bond validation and the minimal procedural safeguards. It is precisely because a dispositive ruling amounting to a declaratory judgment would require meaningful due process for each person affected that such issues are not properly part of summary bond validations.

In the present case, the lack of safeguards anchoring the trial court's declaratory decree is especially troubling. In fact, the Court's newly enacted mandatory connection ordinance was not even mentioned in the two legal notices concerning the bond validation. Surely, a declaratory judgment compelling sewer hook-ups cannot be judicially imposed upon residents without actual notice. Even so, in the Final Judgment below, such a decree has apparently been imposed on many thousands of land owners in the County.

The judgment below stretches bond validation far beyond parameters that are acceptable in Florida. Thus, in a leading decision, this Court in *State v. City of Miami*, *supra*, declined to enmesh bond validation with the closely related issue of whether the property being acquired for the water works system was exempt from taxation. While the tax-exempt status of the system being used to repay bond holders was highly relevant to the efficacy of the bonds, that issue was nonetheless held to be collateral. 103 So.2d at 190.

The *City of Miami* decision embodies longstanding Florida principles. For example in *State v. City of Coral Gables*, 114 Fla. 326, 154 So. 234 (1934), the court held that it was outside the scope of bond validation to determine whether certain property was embraced within city limits and thus subject to paying the taxation on the bonds. As a matter of analysis, the issues of the bond authority's right to proceed against particular property of landowners was undoubtedly relevant to the financial viability of the bonds.

Indeed, in conceptual terms, the question of which lands were subject to repaying Coral Gables' bonds is indistinguishable from the Authority's insistence in the present case that landowners in the Keys must be compelled to connect to its system and repay its bonds. And yet because such issues entail important individual rights, they should be adjudicated separately and not swept into a bond proceeding with fewer safeguards than our law confers upon people who face parking tickets.³

In the proceedings below, the Authority persuaded the trial court to issue, under the rubric of Chapter 75 bond violations, a declaratory decree and injunction binding

³Rather than divulge the source of counsel's experiences concerning parking tickets, it should suffice to say that it is reported that parking citations are physically delivered and thereafter, if unanswered, notices are mailed to the offender's address. In the present case, the affected landowners received nothing personally. The court hearing upon the mandatory connection ordinance was preceded by two notices published in the *Key West Citizen* once a week for two weeks that failed to mention the issue and contained the wrong case number.

residents of the Florida Keys to comply with a County ordinance that created the Authority's scheme for repayment of the bonds. Indeed, the county ordinance enacted on January 19, 2000, was validated as against all Keys residents even though neither the County nor the residents were properly joined in the proceedings. Under Florida's judicial traditions, such directives go far beyond the core Chapter 75 issues of bond validation.

Even when legal issues will impact upon the success of the financing, they are considered collateral unless they fall squarely within such criteria as the authority to issue, public purpose and whether the issuance complies with legal requirements. *State v. Osceola County*, 752 So.2d 530 (Fla. 1999).⁴ Indeed, in *Osceola County*, the Court emphasized the narrow scope of bond validation:

The State's arguments against the propriety or completeness of the development and operating agreement are collateral matters which are beyond the scope of this validation proceeding. *See State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So.2d 631, 633 (Fla. 1980) (Holding that trial court does not have jurisdiction to consider validity of operation contract for recreational

⁴Significantly, in *Osceola County*, this Court made it plain that the third prong is not intended as a catch-all phase to enfold ancillary legal issues, but centers largely upon procedural compliance with Chapter 75, 752 So.2d at 539-540. *Wald v. Sarasota Health Facilities Authority*, 360 So. 2d 763, 770 (Fla. 1978) ("the procedural requirements necessary to invoke financing of this project under Part III, Chapter 154, Florida Statute (1975) have been met. Judicial inquiry may go no further.").

facility because contract involves other parties and is collateral to bond validation proceeding). Likewise, the State's argument that the County failed to comply with the SEC's disclosure requirements is collateral to the issue of validation. The statute makes no reference to any matters beyond the conditions precedent to issuing bonds and the necessary allegations in the complaint. Therefore, the issues of whether the County should comply and has complied with SEC rule 15c2-12 is beyond the scope of these validation proceedings.

752 So.2d at 540 n. 13. Applying the same principles, this Court in *Murphy v. City of Port St. Lucie*, 666 So.2d 879 (Fla. 1995), held that the validity of utility acquisition agreement by which issuing authority gained the utility system at issue was a collateral matter, even though the subject acquisition was obviously integral to the efficacy of the bonds. *See also Yakubik v. Lee County*, 471 So.2d 540, 542 (Fla. 1985) (issue of whether bonds violate prior covenants was collateral to summary bond proceeding).

Similarly, this Court found in *Warner Cable Communications, Inc. v. City of Niceville*, 520 So.2d 245 (Fla. 1988), that issues such as the economic and fiscal feasibility of a municipal cable project as well as legal questions arising under federal cable law were beyond the scope of the bond validation inquiry. *Id.* at 246; *see also Noble v. Martin County Health Facilities Auth., Fla.*, 682 So.2d 1089, 1091 (Fla. 1996) (economic effects of bond issue a collateral matter); *State v. Brevard County*,

539 So.2d 461, 464 (Fla. 1989) (wisdom or fiscal soundness of proposed financing a collateral matter).

Thus, in *McCoy Restaurants, Inc. v. City of Orlando*, 392 So.2d 252 (1980), this Court held that the validity of lease agreements that would provide the means of repayment for the bonds was a collateral issue. Even though the leases were an integral part of the funding process, the court held that “the validity of the lease agreement is clearly a collateral issue and is not properly the subject of a bond validation proceeding.” 392 So.2d at 253. In underscoring the limited scope of bond validation, this Court observed.

The sole purpose of a validation proceeding is to determine whether the issuing body had the authority to act under the constitution and the laws of the state and to ensure that it exercised that authority in accordance with the spirit and intent of the law.

Id. This analysis is dispositive of the present controversy. Just as the validity of leases providing bond repayment in *McCoy Restaurants* was a collateral issue, the legality of mandatory connection for Monroe residents, even if important to repayment projections, was outside the narrow path of Chapter 75.

Further confirming that distinct legal issues concerning sources of repayment are collateral is *City of Sunrise v. Town of Davie*, 472 So.2d 458 (Fla. 1985). In that decision, the City of Sunrise had sought to intervene claiming that a portion of the

water and sewer system users for the contemplated Davie system should continue to use Sunrise's system. The Court found that intervention should be denied because such issues did not belong in a bond validation proceeding:

We agree with Davie that Sunrise's claim that a portion of the funds to be received from the sale of revenue bonds may positively be used in violation of Section 180.06, Florida Statutes (1983), is not a pertinent issue to be raised in the validation hearing.

472 So.2d 458. *See also Washington Shares Homeowners' Ass'n v. City of Orlando*, 602 So.2d 1300, 1301 (Fla. 1992) (in bond validation proceeding for roadway project, any complaint as to feasibility of proposed road extension is collateral).

In *Taylor v. Lee County*, 498 So.2d 424 (Fla. 1986), the same analysis prevailed. When taxpayers lodged a challenge to approval of transportation bonds, they argued that Lee County had no authority to impose tolls on an existing toll-free bridge. Even though the revenues from the challenged tolls were pledged to bond repayment, the issue was held to be collateral:

Although the generation of revenue to fund this bond issue depends on the county's authority to impose tolls, placing a toll on an existing toll-free bridge is collateral to this bond validation.

498 So.2d at 425. Because the legality of bond-paying tolls was found to be collateral, it is manifest that the far more burdensome and intrusive revenue feature of mandatory

connection is also beyond a Chapter 75 hearing. *See also State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So.2d 631, 633 (Fla. 1980) (validity of operating contract for recreational facilities being acquired with bond proceeds a collateral matter). In yet another decision, this Court ruled that bonds for water and sewer expansion could be validated notwithstanding the pendency of litigation challenging that plan. *Zedeck v. Indian Trace Community Dev. Dist.*, 428 So.2d 647 (Fla. 1983). Applied to present facts, the premise that litigation challenges to the system being funded are collateral to bond validation makes it plain that the Final Judgment below cannot properly preclude any challenges that may be made to the mandatory connection ordinance in Monroe County.

In *De Sha v. City of Waldo*, 444 So.2d 16 (Fla. 1984), this Court applied these principles in a striking parallel to present facts. The challengers argued that the trial court could not properly validate bonds for the expansion of a water and sewer system without a mandatory connection requirement. In rejecting that contention, this Court made it plain that the existence or non-existence of a valid mandatory connection requirement was beyond the purview of summary bond validation:

The appellants say that a mandatory connection ordinance is subject to being challenged on numerous substantive and procedural grounds and that, if the City adopts a substantively invalid ordinance or departs from procedural regularity in enacting the ordinance, the financial viability of

the project will be undetermined. The financial strength of the project, however, is not a matter within the scope of the Court's review. Our review is limited to the questions of "whether the issuing body has the power in accordance with law."

444 So.2d at 18. Thus, such issues are not a matter of "judicial concern in a bond validation proceeding." *Id.* In citing *State v. City of Miami, supra*, this Court reiterated the premise that bond validation does not reach issues "not going directly to the power to issue the securities and the validity of the proceedings with relation thereto." *Id.* Just as *De Sha* held that the issue of imposing mandatory hook-up obligations upon land owners was collateral, the same analysis should govern here. These principles clearly establish that the Court below went too far in attempting to adjudicate the substantial legal entitlements and liabilities of the residents of Monroe County.

C. SHOULD THIS COURT DECLINE TO DELETE THE CHALLENGED PORTIONS OF THE JUDGMENT, IT SHOULD NONETHELESS CONFIRM THAT THOSE STRICTURES HAVE NO COLLATERAL ESTOPPEL EFFECT UPON THE CITIZENS, TAXPAYERS AND LANDOWNERS OF MONROE COUNTY.

For reasons already stated, it is submitted that paragraphs eight, nine, and ten of the Final Judgment be deleted upon remand. Such was the procedure followed concerning collateral issues in *State v. City of Miami, supra*, and *City of Gainesville*

v. State, 366 So.2d 1164, 1166 (Fla. 1979). While this represents, in our view, the most appropriate disposition, an alternative remedy would entail specifying that the Final Judgment has no preclusive effects with respect to the collateral matters set forth in paragraphs eight, nine, and ten. *See Atlantic Gulf Communities Corp. v. City of Port St. Lucie*, 764 So. 2d 14, 20 (Fla. 4th DCA 1999) (“[f]inally, we reject the City’s argument that the bond validation proceedings somehow impacted the issues raised in this case, which are collateral to the subject matter of bond validation lawsuits.”).

D. THE SUMMARY VALIDATION PROCEEDING, AS APPLIED BELOW, VIOLATES DUE PROCESS.

As reflected in myriad decisions of this Court, bond validation proceedings avert collision with due process concerns, notwithstanding extraordinary procedural abbreviations, because they do not undertake significant adjudications beyond the tightly constricted ambit of Chapter 75. In the present case, in which notice amounted to two newspaper ads published one week apart that omitted any mention of the mandatory connection issue and contained the wrong case number, the due process implications for Keys residents are especially clear:

For more than a century the central meaning of procedural due process has been clear: ‘Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.’...

Fuentes v. Shevin, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972).

Moreover, to be constitutionally adequate, such notice must be reasonably calculated to inform the affected parties of the potential consequences of impending action so that they can properly protect their interests:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their (claims).

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306,314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950).

In the present case, the lower court proceedings, if allowed to stand, violated these fundamental precepts. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (procedural due process requires a fair opportunity to be heard “at a reasonable time and in a reasonable manner.”). *See also Resolution Trust Corp. v. Town of Highland Beach*, 18 F.3d 1536, 1548 (11th Cir. 1994) (“the Town did not adequately notify the joint venture or allow for a meaningful hearing.”). As discussed before, this appeal does not seek to determine whether Monroe’s new ordinance with its compulsion that any existing treatment facilities be abandoned (App. 1-E21) would satisfy the criteria of a taking or substantive due process violation. *Bowen v. Gilliard*, 483 U.S. 587, 606, 107 S. Ct. 3008, 3020,97 L.Ed.2d 485 (1986). *Resolution Trust*

Corp. v. Town of Highland Beach, supra. Nor should other avenues of potential challenge to Monroe's mandatory connection ordinance, such as §153.04, Fla. Stat. (2000) require a decision here. *Graham v. Estuary Properties, Inc.*, 399 So.2d 1374 (Fla. 1981); *Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.*, 521 So.2d 101 (Fla. 1988). Instead, consistently with due process, these and other such issues should be properly considered and determined "at a meaningful time and in a meaningful manner." *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971). Because the Authority's procedural strategies offended such principles, due process would be violated if paragraphs eight and nine of the Final Judgment are allowed to stand.

CONCLUSION

For the reasons set forth in this initial brief, the Appellant urges the Court to direct that paragraphs eight, nine, and ten of the Final Judgment be deleted. Alternatively, Appellant urges the Court to direct that, upon remand, the Final Judgment be clarified to confirm that those provisions have no preclusive effect upon the rights of citizens, residents, taxpayers, and landowners of Monroe County.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type size set forth in this Court's rules. The type is New Times Roman, 14 point.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2001, a true and correct copy of the foregoing Initial Brief of Appellant was sent via U.S. Mail, to:

Robert Feldman, Esq., General Counsel to Florida Keys Aqueduct Authority, Feldman, Koenig & Highsmith, P.A., 3158 Northside Drive, Key West, Florida 33040, **Office of the State Attorney**, Sixteenth Judicial Circuit, Monroe County, Florida, 302 Fleming Street, P. O. Box 1086, Key West, Florida 33041, and to **Grace E. Dunlap, Esq.**, Bryant, Miller & Olive, P.A., counsel for the Florida Keys Aqueduct Authority, 101 E. Kennedy Boulevard, Suite 2100, Tampa, Florida 33602.

By: _____
KENDALL COFFEY