

IN THE FLORIDA SUPREME COURT
CASE NO. SC09-1817

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, ETC.,

Appellant,
vs.

L. T. Case No.: 50-2008-CA-
031975XXXMB

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,
Appellee.

BOND VALIDATION PROCEEDING

**APPELLEE, SOUTH FLORIDA WATER MANAGEMENT DISTRICT'S
OBJECTION AND RESPONSE IN OPPOSITION TO MICCOSUKEE
TRIBE OF INDIANS OF FLORIDA'S MOTION TO ORDER
TRANSMISSION OF RECORD AND TO SET BRIEFING SCHEDULE**

Appellee, SOUTH FLORIDA WATER MANAGEMENT DISTRICT (the "District"), objects to the Miccosukee Tribe of Indians of Florida's (the "Tribe") Motion to Order Transmission of Record and to Set Briefing Schedule and files this response in opposition as follows:

1. A complaint was filed by the Appellee on October 14, 2008, to validate this proposed issuance of Certificates of Participation (the "COPs") to finance the purchase of land owned by the United States Sugar Corporation (the "USSC") for the purpose of Everglades restoration. The validation hearing was held on February 6, 2009, March 16, 17 and 18, 2009, July 13, 14, 15 and 16, 2009, and closing arguments were heard on August 6, 2009. On August 26, 2009,

the trial court issued its Final Judgment validating the COPs in the amount of 650 million dollars.

2. The Tribe is attempting to utilize Rule 9.200 of the Florida Rules of Appellate Procedure rather than the required procedure set forth in Rule 9.110(i). The Tribe's motion fails to recognize that the public interest involved in this appeal requires its expedited review, not its delay. The fact that the public interest is involved requires the expedited review of bond validation proceedings. *See State v. Fla. State Tpk. Auth.*, 134 So. 2d 12, 15 (Fla. 1961). Acquiring this enormous expanse of real estate offers the State of Florida the opportunity and flexibility to store and clean water on a scale never before contemplated, thereby better protecting Florida's coastal estuaries and helping to revive, restore, and preserve the Everglades.

3. In order to accomplish this momentous purchase, Appellee must meet its contractual obligations to timely close on the acquisition of this land. The Purchase and Sale Agreement requires Appellee to obtain a final validation judgment no later than March 31, 2010, and the closing must take place no later than 90 days thereafter, that is, June 30, 2010. Pursuant to the Amended and Restated Agreement for Sale and Purchase at ¶ 4 (May 13, 2009) (App. Ex. 1), final resolution of this appeal on or before the March 31, 2010 validation deadline

is required to ensure the successful closing of the acquisition.¹

4. Section 75.08, Florida Statutes (2009), provides that any party to a bond validation may appeal to this Court "within the time and in the manner prescribed by the Florida Rules of Appellate Procedure."²

5. Rule 9.110(i) of the Florida Rules of Appellate Procedure requires the Appellant to assemble its own record in the form of an appendix and file it with its Initial Brief within twenty (20) days of filing its Notice of Appeal. The Tribe appears to be requesting this Court to order transmission of the entire record in lieu of the Tribe filing an appendix with its Initial Brief, effectively seeking a significant extension of time to file its Initial Brief. The Committee Notes to Rule 9.110 are clear that the filing of an appendix is mandatory. Rule 9.110(i) does not allow for the record as a whole to be a substitute for the appendix. To require the clerk of the Circuit Court to compile the record will result in delay and an

¹ In a similar case, *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997), this Court substantially expedited the bond validation appeal. In *Poe*, this Court set oral argument approximately one month after the filing of the notice of appeal and shortened the briefing schedule to comply with the expedited oral argument date. *See* Order Scheduling Briefing and Oral Argument (April 4, 1997) (App. Ex. 1). Similar to this case, the governmental entity was under critical time restraints. The agreement entered into between the parties would have substantially penalized a governmental entity if the project was not completed on time.

² *See* Appellee's Motion to Expedite Review filed October 1, 2009 which sets forth in detail the expedited nature of appellate review of bond validations and seeks expedited review.

unnecessary burden to an already overburdened lower court.

6. The Tribe, as the Appellant, must supervise the orderly progress of the cause and take all steps necessary to insure its proper and expeditious presentation to the court for disposition. *See Ward v. Fountain*, 122 So. 2d 209, 210 (Fla. 1st DCA 1960). Rather than taking the necessary steps to expedite the process by assembling its own records and previously transcribed court transcripts, the Tribe is attempting to delay the proceedings by shifting the burden to the lower court and filing a designation to the court reporter to suggest that the transcripts will need to be transcribed.³ With the exception of one uniform motion calendar hearing on June 30, 2009, all of the transcripts for each of the hearings listed by the Tribe in its designation have already been transcribed and delivered to the parties below. In fact, the transcript of the last evidentiary hearing was available on July 26, 2009. *See* Trial Tr. vol. VII, 925-26, July 16, 2009 (indicating the court reporter will quickly prepare all transcripts so that the parties may use them in preparation of their proposed final judgments). (App. Ex. 2) The Tribe also received the Final Judgment by email on August 26, 2009. The Tribe, therefore, will have fifty (50) days from the Final Judgment to assemble its appendix. Since

³ On October 1, 2009, the Tribe filed written designations to the court reporter pursuant to Rule 9.200(b) of the Florida Rules of Appellate Procedure. As noted above, Rule 9.110(i) provides its own procedure for bond validation proceedings. Absent an order of this Court requiring the transmittal of the entire record, Rule 9.200 is inoperative.

the Tribe already has all of the exhibits and transcripts, it can easily assemble them and have them copied. The Tribe has failed to set forth any basis to relax the Rules of Appellate Procedure and cause a delay in this proceeding.

WHEREFORE, the SOUTH FLORIDA WATER MANAGEMENT DISTRICT respectfully requests that the Tribe's Motion to Order Transmission of Record and to Set Briefing Schedule, along with its Designation to Court Reporter filed below be denied and that the Tribe be required to follow the procedures set forth in Rule 9.110(i), Florida Rules of Appellant Procedure.

Respectfully submitted this _____ day of October 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US Mail to **Joseph P. Klock, Jr., Esq.**, 283 Catalonia Avenue, 2nd Floor, Coral Gables, FL 33134 and **Dexter W. Lehtinen, Esq.**, 7700 N. Kendall Drive, Suite 303, Miami, FL 33156, this ____ day of October 2009.

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