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IN THE SUPREME COURT OF FLORIDA
CASE NUMBER: SC2024-0990
LT CASE NO: 2024-CA-000252

DEAN K. MATT,

Appellant,

v.

UNIVERSITY PARK RECREATION DISTRICT,

Appellee.

INITIAL BRIEF OF DEAN K. MATT

ORAL ARGUMENT REQUESTED

ON MANDATORY REVIEW FROM A DECISION OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR MANATEE COUNTY, FLORIDA

DEAN K. MATT
Appellant (Pro Se)
7006 Lancaster Ct.
University Park, FL 34201
Telephone: (630) 248-0646
E-Mail: MuchoDeanAero@aol.com

TABLE OF CONTENTS

CITATION OF AUTHORITIES

PREFACE

Appellant, Dean K. Matt shall be referred to in this Initial Brief as “Matt”, “Appellant” or “Defendant”.

Appellee, University Park Recreation District shall be referred to in this Initial Brief as “UPRD”, “Appellee" or “Plaintiff”.

For the purpose of this brief, the following abbreviations have the following meanings:

Appendix Submitted by Defendant as Record in the Florida Supreme Court will be cited by the abbreviation “A.”, followed by the page number (i.e., A. 001).

Other:

The April 29, 2024 bond validation hearing may sometimes be referred to as the “Hearing”.

Defendant’s May 13, 2024 Motion for Emergency Hearing to Stay Judge’s Pending Order from the April 29, 2024 Bond Validation Hearing may sometimes be referred to as “Motion for Emergency Hearing”.

STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument. This appeal presents issues of first impression in this Court and carries important consequences for Appellant. Appellant believes that this Court's disposition of this instant case would be aided by oral presentation to this Court.

STATEMENT OF JURISDICTION

Under Florida Statutes Section 75.01, a circuit court has "jurisdiction to determine the validation of bonds and all matters connected therewith." Pursuant to Rule 9.030(a)(1)(B)(i) of the Florida Rules of Appellate Procedure, this Court has jurisdiction over final orders entered in proceedings for the validation of bonds where provided by general law. This Court has mandatory jurisdiction to hear appeals from final judgments entered in a proceeding for the validation of bonds. Article V, Section 3(b)(2), Florida Constitution, and Section 75.08, Florida Statutes provide that either party may appeal the trial court's decision on the complaint for validation.

STATEMENT OF THE CASE AND FACTS

On August 18, 2018, the Manatee County Board of Commissioners adopted Ordinance 18-29,[1] establishing the University Park Recreation District ("UPRD," or "District") in response to a petition from residents of University Park Country Club.

On November 21, 2019, UPRD issued $24,000,000 University Park Recreation District Non-Ad Valorem Assessment Bonds, Series 2019 (the "2019 Bonds") to purchase a 27-hole golf course, tennis courts, dining facilities, a fitness center, and other country club facilities and amenities. These assessments are affixed to the UPRD landowners' annual property tax bills and appear as a non-ad valorem assessment, which the 1,202 UPRD landowners are paying over a 30-year period. The median annual payment for each UPRD landowner is approximately $1,222, and the total burden of debt for the median landowner is approximately $37,000.[2]

Section 5.04 of the First Supplemental Trust Indenture from the 2019 Bonds ("Section 5.04") states, in pertinent part:

> **"…the Issuer [UPRD] covenants not to issue any other Bonds or debt obligations for capital projects, secured by Non-Ad Valorem Assessments on the assessable lands within the**

[1] A. 018-035
[2] $1,222 median annual payment for 30 years.

District that are subject to the Series 2019 Non-Ad Valorem Assessments."[3]

Section 5.04 has been the effective, operative, and governing language for almost five years, since it was first authored by UPRD's bond counsel, Robert Gang ("Gang") of Greenberg Traurig, LLP, in 2019. The UPRD's Board of Supervisors ("BoS"), Plaintiff's attorneys, and advisors were aware that Section 5.04 prohibits the issuance of additional bonds.

In 2022, the UPRD BoS, comprised of five elected public officials, commenced the process of issuing additional [but prohibited] bonds. Initially, in March 2022, the proposed bonds were expected to be in the $15,000,000 range.[4]

During the period from early November 2023 to January 2024, Plaintiff conducted various proceedings related to the attempted issuance of additional [but prohibited] bonds. These proceedings included, but were not limited to: a) Holding a public hearing; b) Approving Resolution 2024-07[5] (which adopted the financial consultant's [PFM Financial Advisors LLC, or "PFM"] Master Assessment Methodology report on December 8, 2023); c)

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[3] A. 408
[4] By December of 2023, due to inflation, supply chain issues, and scope creep, the amount increased to $21,000,000.
[5] A. 086-139

Conducting Town Hall meetings with UPRD landowners (in November and December 2023 and January 2024); d) Publishing the required legal notices to the general public; and e) Holding the required referendum on January 16, 2024.[6]

In late November or early December 2023, as UPRD continued to take actions to issue prohibited bonds, UPRD landowners, including Matt, requested the UPRD BoS to clarify how UPRD could legally issue additional bonds when Section 5.04 explicitly prohibits such action.[7] However, when asked, UPRD failed to provide an answer to Matt or other landowners.

In December 2023, the UPRD BoS circulated what it represented as a "legal opinion" to UPRD landowners. It further represented that UPRD's attorneys had opined that UPRD could legally issue $21,000,000 University Park Recreation District Non-Ad Valorem Assessment Bonds, Series 2024 (the "2024 Bonds").[8] During the January 4, 2024 Town Hall meeting, attended by numerous landowners deciding on their vote for the January 16, 2024 referendum, UPRD Board Supervisor David Murphy ("Murphy") refused to address the aforementioned and supposed "legal opinion" when

[6] A. 001-017
[7] A. 551-552 ¶ 38
[8] A. 151-152 ¶ 18-19

presented by Matt. Murphy declared, "I do not acknowledge that document," and refused to confirm its validity, despite Plaintiff's earlier representation.[9] The January 4, 2024 Town Hall meeting was the first time many residents were made aware that UPRD's power to issue the proposed 2024 Bonds was encumbered and impaired [by Section 5.04].

On January 5, 2024, the day after the Section 5.04 issue was raised at the January 4, 2024 Town Hall, UPRD Chair Sally Dickson ("Dickson") sent an email to all UPRD landowners. In the email, she stated that the UPRD's attorneys had issued an opinion letter confirming that UPRD could issue the proposed 2024 Bonds.[10]

Less than a week later, on January 12, 2024, UPRD's bond counsel Gang requested to discuss two urgent agenda items at the next UPRD BoS Meeting: a) Consideration of Waiver of Potential Conflict for Greenberg, Traurig Opinion Letter, and b) Consideration of Resolution 2024-08, Authorizing a Second Supplemental [Trust] Bond Indenture [to amend Section 5.04 by eliminating the language prohibiting the issuance of additional bonds].[11]

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[9] A. 410
[10] A. 151-152 ¶ 18-19
[11] A. 411-412; A. 414-415; A. 417

On January 16, 2024, UPRD held a referendum on the 2024 Bonds. The referendum passed 62% to 38%.[12]

On March 22, 2024, the UPRD BoS passed Resolution 2024-13, which included a [draft] Second Supplemental Trust Indenture ("SSTI") to be executed by bond trustee Scott Schuhle ("Schuhle") of U.S. Bank Trust Company, National Association, Dickson, and UPRD District Manager, Vivian Carvalho ("Carvalho").[13] The title page of this SSTI was dated "March 1, 2024."[14] Plaintiff failed to provide any evidence about the execution or effectiveness of the SSTI.

During the bond validation hearing on April 29, 2024, Plaintiff's financial consultant, Kevin Plenzler ("Plenzler") from PFM, and Matt testified. Before the hearing concluded, the Circuit Court orally ruled to validate the bonds. On May 14, 2024, the Final Judgment was issued and determined that:

> **"All proceedings held in connection with the levying and imposing of the Non-Ad Valorem Assessments are legal and valid and the Non-Ad Valorem Assessments made pursuant thereto provide special benefits peculiar to, and based on the logical relationship with, the property against which they are levied, are apportioned reasonably, fairly and equitably…"[15]**

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[12] A. 036-037
[13] A. 483-493
[14] A. 487-488
[15] A. 513 ¶ 16B

Subsequent to the April 29, 2024 bond validation hearing, Matt filed a Motion for Rehearing[16] and a Motion for New Judge,[17] both on May 24, 2024. The Circuit Court denied the Motion for Rehearing on June 4, 2024[18] and denied the Motion for New Judge on June 10, 2024.[19]

On May 13, 2024, Matt filed a Motion for Emergency Hearing to Stay the Judge's Pending Order from the April 29, 2024 Bond Validation Hearing,[20] in which the Circuit Court was made aware that the SSTI in the *executed* version[21] of Plaintiff's Resolution 2024-13 which was executed by Carvalho, Dickson, and Schuhle and posted on UPRD's official website (universityparkrd.com) under the "Resolutions Passed" section, was backdated to January 1, 2024. This date is different from the one *approved* by UPRD's BoS in Resolution 2024-13 on March 22, 2024 (supra). In the officially approved version, the SSTI title page was dated March 1, 2024.

The Circuit Court issued its ruling in its Final Judgment[22] on May 14, 2024 without addressing Matt's pending May 13, 2024 Motion for Emergency

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[16] A. 527-536
[17] A. 517-526
[18] A. 537-538
[19] A. 539-541
[20] A. 454-460
[21] A. 495-505
[22] A. 506-514

Hearing. Accordingly, the Final Judgment was issued *before* the ruling on the Motion for Emergency Hearing.

The day *after* issuing the Final Judgment, on May 15, 2024, the Circuit Court issued the Order on Emergency Motion to Stay,[23] denying Matt's May 13, 2024 motion without a hearing.

Due to the absence of a court reporter at the April 29, 2024 Hearing and, in accordance with Fla. R. App. P. 9.200(b)(5), Matt prepared an Affidavit of Dean K. Matt, Statement of the Evidence and Proceedings, which was submitted to the Manatee County Clerk on June 14, 2024 ("June 14, 2024 Statement").

On August 16, 2024, Matt and Plaintiff reconciled the June 14, 2024 Statement and the Circuit Court settled and approved the Statement of Evidence and Proceedings Pursuant to Fla R. App. P. 9.200(b)(5) on August 30, 2024.[24]

This appeal followed.

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[23] A. 515-516
[24] A. 542-553

STANDARD OF REVIEW

The standard of review of a legal determination is de novo. *See Howard v. Savitsky, M.D.,* 813 So. 2d 978 (Fla. 2d DCA 2002). The standard of review in Issues I and II is de novo because both issues involve questions of law. The standard of review in Issue III is a question of both law and fact. Each of these issues raised is a question of law to be reviewed de novo by this Court, and each independently is a reversible error.

SUMMARY OF THE ARGUMENT

This Court should reverse the Circuit Court's rulings in this case. The Circuit Court erred in finding the proceedings related to the imposition of the Non-Ad Valorem Assessments to be valid. Furthermore, the Circuit Court's conclusion that UPRD has the power to issue the 2024 Bonds and utilize the proceeds is incorrect and should be overturned.[25]

UPRD, on February 14, 2024, filed a Complaint to validate the 2024 Bonds. In the Complaint, Plaintiff cited Resolution 2024-02, emphasizing its lawful power and authority to declare, assess, levy, and collect the Non-Ad Valorem Assessment to fund the improvements to the University Park County Club as per the stipulations outlined in the Assessment Statutes.[26]

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[25] A. 506-514
[26] A. 008 ¶ 17; A. 054-055

Appellant is a landowner within the UPRD. Appellant asserts that Resolution 2024-02 should have no effect because the valid and operative language of the First Supplemental Trust Indenture of the 2019 Series Bonds expressly prohibits additional bonds from being issued. As such, the approval of Resolution 2024-02 was improper and should be disregarded.[27]

The Circuit Court's final ruling poses the following questions:

a. Issue I: Whether bonds can be validated when the power to issue such bonds is impaired and encumbered by the First Supplemental Trust Indenture. UPRD did not have the power to issue additional bonds due to the existence of language prohibiting additional bonds from being issued. Thus, the 2024 Bonds should not have been validated as the language in effect during all proceedings prohibited Plaintiff from issuing additional bonds, and thus all bond issuance-related proceedings have been queered and are invalid and illegitimate as they are violative of sections 75.04(1), 75.05(1), and 75.07, Florida Statutes.

b. Issue II: Whether UPRD has met the burden of proof required in *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) in demonstrating that *special benefits* (if any) exceed the *burden of debt* proposed to be imposed.

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[27] A. 147-148 ¶ 8; A. 414-415; A. 417

c. Issue III: Whether the Circuit Court judge violated Appellant's right to due process by exhibiting prejudice towards Defendant, not considering all testimony, evidence, and motions, and ignoring the relevant issues and rules of law.

ARGUMENT

I. WHETHER BONDS CAN BE VALIDATED WHEN THE POWER TO ISSUE SUCH BONDS IS IMPAIRED AND ENCUMBERED BY THE FIRST SUPPLEMENTAL TRUST INDENTURE.

Chapter 75, Florida Statutes, governs bond validation proceedings, and Florida Circuit Courts are legally permitted to hear cases pertaining to bond validity. *See* § 75.01, Fla. Stat. (2024). Nonetheless, no Florida court has the subject-matter authority to consider a case in order to decide hypothetical or unreviewable issues. *See City of Naples Airport Auth.* v. *City of Naples,* 360 So. 2d 48, 48 (Fla. 2d DCA 1978). Appellee did not have the power to issue bonds.

In the Circuit Court's Final Judgment dated May 14, 2024, the Court errs when it ruled that (in pertinent part):

> **"*All* proceedings held in connection with the levying and imposing of the Non-Ad Valorem Assessments are *legal and valid* and the Non-Ad Valorem Assessments made pursuant thereto *provide special benefits* peculiar to, and based on the logical relationship with, the property against which they are levied, are apportioned**

> **reasonably, fairly and equitably…"**[28] *[emphasis added]*

Section 5.04 from UPRD's 2019 Bonds' First Supplemental Trust Indenture is the effective legal, governing, and operative language that prohibits the [2019] issuer [UPRD] from issuing additional bonds. In pertinent part Section 5.04 states:

> **"…the Issuer [UPRD] covenants not to issue any other Bonds or debt obligations for capital projects, secured by Non-Ad Valorem Assessments on the assessable lands within the District that are subject to the Series 2019 Non-Ad Valorem Assessments."**[29]

The document speaks for itself. This clause is a red line in that it explicitly prevents the UPRD from issuing additional bonds as it encumbers and impairs its power to issue additional bonds [unless and until cured].

As Matt testified in the Hearing and as fully documented in the Motion for Emergency Hearing, Plaintiff was acutely aware of this language prohibiting additional bonds from being issued, yet it purposefully plowed ahead with a) holding three Town Halls to inform the UPRD landowners of this plan (November and December 2023, and January 2024); b) holding a public hearing (December 8, 2023); c) adopting Resolution 2024-07 to

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[28] A. 513 ¶ 16B
[29] A. 408

approve the Assessment Methodology (December 8, 2023); d) publishing the required legal notices in the local newspapers; and, ultimately, e) holding the January 16, 2024 referendum.[30]

On January 5, 2024 (with the referendum just 11 days away), in response to the growing questions from the residents as to "*How can UPRD issue bonds when the existing language prohibits it from doing so?*" UPRD represented that bond counsel Gang opined that UPRD could move forward with the bond referendum and even presented the residents with a supposed [bogus] "Opinion Letter" from Gang.[31]

However, less than a week later, at the January 12, 2024 UPRD BoS meeting, UPRD's story has changed: Gang now states that he and his firm could <u>not</u> issue the required [legally valid] Opinion Letter unless: 1) UPRD waived a conflict that Greenberg Traurig, LLP had in issuing such a letter, and 2) UPRD and the bond trustee enter into a Second Supplemental Trust Indenture to amend the language of the 2019 Bonds' Section 5.04 of the First Supplemental Trust Indenture to remove the prohibition against issuing additional bonds.[32] This is a tacit acknowledgment by Plaintiff that it realizes

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[30] A. 457-458 ¶ 11-14
[31] A. 151-152 ¶ 18-20; A. 211
[32] A. 411-412; A. 414-415; A. 417

the existing language prohibits additional bonds from being issued. Additionally, there can be no assurance at that time that UPRD and the trustee would ever agree on any proposed amended language in the future to cure the encumbrance and impairment against additional bonds.

UPRD landowners were never informed via a community-wide e-mail communication that the BoS was going to proceed with holding the referendum even though its attorneys first required the trustee and UPRD to go through a months-long process to attempt to determine if a suitable amendment could be agreed upon. UPRD suppressed this important information because disclosing it to the residents would have brought into question the judgment and conduct of the BoS, and almost certainly would have affected the outcome of the referendum.

Despite the existing prohibition against issuing additional bonds, UPRD knowingly chose to proceed with its January 16, 2024 referendum: Plaintiff held a referendum to approve issuing additional bonds when the operative language at that time clearly stated it couldn't. As such, the referendum is illegitimate, *illegal, and invalid* and should be of no consequence. This rather significant issue was never addressed by the Circuit Court at the April 29, 2024 bond validation hearing, a hearing with the express purpose of determining that UPRD had the power to issue additional

bonds and that all actions and proceedings required to issue bonds (i.e., legal notice publication, public hearings, resolutions, referendums, etc.) were *legal and valid*.

Having known about the restrictive language in Section 5.04 as early as November 2023 (and most likely earlier), UPRD should have: 1) advised UPRD landowners of the issue; 2) paused all actions and proceedings in its attempt to issue the [prohibited] 2024 Bonds; 3) determined if it could amend the language and, if so, how to do this (i.e., did the trustee and/or bondholders need to approve?); 4) proceeded to amend the language to eliminate the prohibition against issuing additional bonds with the trustee's approval; and, after the effective date of any approved amended language, THEN and ONLY THEN, 5) proceeded with the Town Halls, public hearings, legal notice publication, and the referendum, this time without any prohibitions, encumbrances, and/or impairments from the existing governing language. Plaintiff, however, did not choose this path. Instead, it opted to suppress this issue from its residents and took a shortcut to plow ahead with its goal of issuing additional bonds as if the language prohibiting the issuance of additional bonds did not exist. As such, all proceedings related to Plaintiff's attempt to issue additional bonds are illegitimate, including but not limited to holding a public hearing (December 8, 2023) and a referendum (January 16,

2024). Consequently, residents voted without full knowledge that the Plaintiff did not have the power to effectuate the result of the referendum if the referendum passed.

Plaintiff never presented evidence that Section 5.04 was ever superseded by amended language or that any proposed amendment to address the Section 5.04 issue was approved by the trustee. Likewise, the Circuit Court never stated that Section 5.04's prohibition against additional bonds was ever cured by Plaintiff.

At the Hearing, the Circuit Court did not address Matt's questions on this issue. In fact, other than Matt discussing this red line issue (i.e., that UPRD is prohibited from issuing additional bonds) in his testimony, there was no discussion or explanation on the Section 5.04 issue from the Circuit Court (either during the Hearing or in the Final Judgment) or the Plaintiff. Instead of focusing on the very material Section 5.04 issue, the Circuit Court seemed to prioritize its attention on the margin of the referendum vote, as if this was of any consequence in bond validation.[33] The Circuit Court did not address the Section 5.04 issue, but instead opted to give deference or weight to the

[33] A. 552 ¶ 42

margin of the referendum, an issue of no legal consequence, in its decision to validate the 2024 Bonds.

Section 75.04(1), Florida Statutes states, in pertinent part, that “[t]he complaint shall set out the…holding of an election and the result..." Implicit in this language is "election,” and all required proceedings in consideration during bond validation hearings are *legal and valid*. Consider this example: if an election was held [technically], but at the bond validation hearing, evidence was presented that during the election, residents who voted for (whatever proposal) were given $100 while those who voted against were not given any remuneration, the judge should not consider the election [in this example] to be *legal and valid* in satisfying the “election” requirement in section 75.04(1), Florida Statutes. In another example, suppose evidence was presented that residents were threatened at gunpoint to vote for (whatever proposal). In these examples, it is safe to assume that a reasonable arbiter of the law would conclude that the elections, although “held,” weren’t *legal and valid* elections at all. They were illegitimate. The Court would rule as such and conclude that a *[legal and valid]* election was not held as required by section 75.04(1), Florida Statutes, and, thus, would <u>not</u> validate the bonds.

This instant case is no different. While there was no evidence of bribery, intimidation, or duress in the UPRD referendum, Section 5.04's prohibition from issuing additional bonds makes the referendum illegal, invalid, and illegitimate because, at the time of the referendum, Plaintiff could not issue additional bonds, making all of Plaintiff's actions and proceedings nothing more than an unreviewable hypothetical exercise that the Circuit Court should have never considered.

Furthermore, Plaintiff demonstrated its knowledge of this as it worked feverishly and surreptitiously to attempt to amend the prohibitive language and even *backdated* documents to, presumably, give the appearance that the new language was in effect on January 1, 2024 (*before* the January 16, 2024 referendum). An election must not be deemed legal, valid, and legitimate if the entity conducting the election, at the time of the election, is prohibited from implementing the outcome [i.e., issuing additional bonds] that it is asking its residents to vote on at the time of the election. Additionally, all other proceedings (the December 8, 2023, public hearing and the legal notice publications, for example) necessary to the bond validation process should likewise be deemed illegal, invalid, illegitimate, and of no consequence as long as the existing language prohibited, encumbered, and/or impaired UPRD from issuing additional bonds.

Section 75.05(1), Florida Statutes states, in pertinent part, that "[t]he court shall issue an order…requiring all persons…to appear…and show why the complaint should not be granted and the proceedings and bonds…validated." This is exactly what Matt did. This is what the defendants in the "illegitimate election" examples (supra) would also do. Further, section 75.05(1), Florida Statutes, states, in pertinent part, that "[t]he state attorney shall examine the complaint, and if… in the opinion of the state attorney the issuance of the bonds and certificates in question has not been *duly authorized [emphasis added]* defense shall be made by said attorney."

In the case before this Court, the state attorney did not attend the Hearing and apparently did not read Matt's Answer[34] (April 23, 2024), which detailed the many deficiencies in UPRD's attempted bond validation proceedings. Nor did the state attorney apparently read the Motion for Emergency Hearing[35] which included actual images of documented evidence of *backdating* and executing a version of Resolution 2024-13[36] and the SSTI that were not approved by the UPRD BoS.

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[34] A. 144-168
[35] A. 454-505
[36] A. 495-505

The result is yet another guardrail for protecting citizens ignored by this bond validation process.[37] When the state attorney chooses not to defend against the validation of bonds that have not been duly authorized, it should not preclude other Defendants (like Matt in the instant case) from stepping into his/her shoes to submit a defense at the Circuit Court level.

Section 75.07, Florida Statutes states, in pertinent part, that "Any property owner…may become a party to the action by moving against or pleading to the complaint at or before the time set for the hearing. At the Hearing, the court shall determine *all [emphasis added]* questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment…" Because the Circuit Court only determined *some* questions of law and fact and ignored others (i.e., the Section 5.04 issue), it did not "determine *all* questions of law and fact," and, thus, his ruling to validate the 2024 Bonds is violative of this section 75.07, Florida Statutes.

The Circuit Court erred in validating the bond, as UPRD lacks the power to issue bonds, which is prohibited under Section 5.04. In fact, Plaintiff

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[37] Section 75.05(1), Florida Statutes, further elaborates on the broad powers of the state attorney for discovery to further investigate. Matt's only tool, on the other hand, was to make Public Records Requests that would explain the potentially nefarious actions set forth in the Motion for Emergency Hearing.

and its agents appeared to purposefully conspire to cover up and suppress this information from UPRD residents and the Court.

The Court should take into account the manner in which the case is presented and other significant issues that are specifically related to the instant case like: *Why is UPRD holding a referendum to attempt to issue bonds it is prohibited from issuing (i.e., the 5.04 issue)?;* and, *How did this attempted issuance even get to the bond validation hearing stage?;* and, *Why hasn't the Circuit Court summarily denied this bond from being validated upon finding out these facts which delegitimize and invalidate the purported election?* (supra). The Circuit Court failed to question Plaintiff on any issues raised in Matt's testimony, nor did it answer Matt's question on this matter in the Hearing,[38] nor did it explain or address anywhere in its Final Judgment how it could rule to validate Plaintiff's [proposed] 2024 Bonds which are prohibited from being issued due to Section 5.04 of the 2019 Bonds' First Supplemental Trust Indenture.

Additionally, Plaintiff has its cake and wants to eat it too. For the purpose of holding a referendum and other proceedings to have the Circuit Court validate the 2024 Bonds, it has ignored the prohibition of issuing

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[38] A. 552 ¶ 39

additional bonds in Section 5.04. But, for the purpose of issuing a *valid* opinion letter, Plaintiff's bond counsel realizes the severe encumbrance [i.e., the prohibition on issuing additional bonds] imposed by the Section 5.04 language and ultimately determined it could not issue the required opinion letter unless and until this language is first amended as contemplated in the [draft] SSTI *and* agreed to by both UPRD and the trustee. Beginning in February 2024, *after* the January 16, 2024 referendum, Plaintiff, its bond and general counsels, and its financial advisor proceeded down the path to attempt to amend Section 5.04 and remove the prohibition against issuing additional bonds. Evidence was never presented that Section 5.04 was ever superseded or the prohibition cured. According to the March 22, 2024 [draft] SSTI:

> **"Section 11: Effective Date. This Second Supplemental Indenture shall become effective upon (i) its execution by the District and the Trustee; and (ii) Bond counsel's delivery of an opinion to the Trustee and the District to the effect that this Second Supplemental Indenture is permitted under the Master Indenture, has been duly authorized by the District and that all things necessary to make a valid and binding agreement have been done."**[39]

[39] A. 492

As explained in the Motion for Emergency Hearing, because of Plaintiff's possible purposeful falsification of public records [i.e., issues involving the *backdating* of the executed version of the document with dates different than the version that the UPRD BoS approved on March 22, 2024] it is not clear when or even if the [draft] SSTI might become effective; in any event, Plaintiff never provided evidence that Section 5.04's language prohibiting UPRD from issuing additional bonds was superseded or cured before the January 16 referendum or any other bond issuance proceedings. Plaintiff's predicament, however, is and has always been that 2019's Section 5.04 language [prohibiting additional bonds] was still effective throughout all of their actions and proceedings in its attempt to issue additional [prohibited] bonds.

Additionally, in Matt's testimony during the April 29, 2024 Hearing, he stated that the last 'WHEREAS' Clause in Plaintiff's Resolution 2024-01 [which was adopted by UPRD on November 3, 2023] was not a true statement. It states:

> **"WHEREAS, *all things necessary to be done prior to the calling of an election* to be held in the District in connection with the issuance of the**

> **Bonds have been done, and the District now desires to call such election."**[40] *[emphasis added]*

As explained (supra) in this Issue I, this is simply incorrect as the existing Section 5.04 language prohibited additional bonds from being issued, and in order for the District [UPRD] to issue additional bonds, a) the District must first determine if and how the language in Section 5.04 can be amended; then b) the language should be amended to remove the existing encumbrance and impairment, and trustee approval obtained; and c) after the effective date of any amended language, which would then properly grant them the power to issue additional bonds, THEN and ONLY THEN, should UPRD and its agents begin the required proceedings (i.e., Town Halls, resolutions, public hearings, legal notice publication, and a referendum) necessary to issue additional bonds. Contrary to Plaintiff's assertion in this Resolution 2024-01, "*all things necessary to be done prior to the calling of an election*" have not been done. UPRD held an election while devoid of the power to issue additional bonds.

Further, the Circuit Court erred when it ruled in its Final Judgment:

> **"The District's proceedings relating to undertake the improvement to the University Park Country Club facilities and to levy non-ad valorem**

[40] A. 045

> **assessments to defray the costs thereof have been noticed and *held properly* and the resolutions authorizing the issuance of the Bonds, the adoption of the form of indenture and the assessment of the non-ad valorem assessments were *all adopted and undertaken as required by applicable law"***[41] *[emphasis added]*

As demonstrated (supra), this also is not true as: a) Plaintiff's proceedings were not held properly as Plaintiff held an invalid and illegitimate referendum and other proceedings in its attempt to issue bonds that the governing language prohibited them from issuing, and b) at least one resolution (Resolution 2024-01) contained false representations (see the "WHEREAS" clause discussion supra).

In summary, the Circuit Court's Final Judgment never addressed the Section 5.04 issue: Plaintiff's own 2019 First Supplemental Trust Indenture prohibited it from issuing additional bonds. Furthermore, the Circuit Court offered no explanation, neither at the Hearing nor in the Final Judgment, as to why and how the bonds could be validated while UPRD was prohibited from issuing additional bonds.

Thus, the Circuit Court erred in validating the 2024 Bonds because all proceedings (including the December 8, 2023 public hearing and the

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[41] A. 510 ¶ 11

January 16, 2024 referendum, and more) were invalid and illegitimate as the effective language in 2019's First Supplemental Trust Indenture's Section 5.04 prohibits additional bonds from being issued. Further, Plaintiff worked feverishly, surreptitiously, and purposefully in not only suppressing this information from all landowners but also in misrepresenting that its attorneys opined it could issue the required Opinion Letter before the referendum vote.

The Circuit Court's failure to dismiss the case was an error, as the Court did not have jurisdiction over the validation of the 2024 Bonds until UPRD first cured the prohibition from issuing additional bonds. *See City of Naples Airport Auth.,* 360 So. 2d at 49. Even assuming the Court had jurisdiction, UPRD did not have the power to issue the bonds. This Court should reverse the Circuit Court Judgment.

II. WHETHER PLAINTIFF MET ITS BURDEN TO DEMONSTRATE THAT SPECIAL BENEFITS CONFERRED, IF ANY, EXCEEDS THE BURDEN OF DEBT FOR THE PROPOSED BONDS TO BE VALIDATED

At the bond validation hearing on April 29, 2024, Kevin Plenzler, an employee of PFM and Plaintiff's financial consultant, testified on behalf of the Plaintiff. Plenzler presented the Master Assessment Methodology report, which, according to him, demonstrates that Plaintiff satisfies the two key requirements in the bond validation process. In his own words from his

report, Plenzler refers to *City of Boca Raton, 595 So. 2d 25 (Fla. 1992)*, when he states:

> **"Valid special assessments under Florida law requires two things. First, the properties assessed must receive a special benefit from the improvements paid for via the assessments that exceeds the burden of debt placed upon them.[42] Second, the assessments must be fairly and reasonably allocated to the properties being assessed in proportion to the benefits they will receive."**

The key question is, *"Where in the Master Assessment Methodology report has the Plaintiff satisfied these two requirements?"* These requirements in the *City of Boca Raton*, are important guardrails to protect landowners from bad decisions, whether they are made purposefully or inadvertently by public officials. These officials may be people of goodwill using their best efforts to act as fiduciaries, or they may be rogue public officials or bad actors purposefully pushing a nefarious agenda for their own benefit or for whatever reason.[43]

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[42] A. 094, Section 1.5 Requirements of a Valid Assessment Methodology. By logic and definition: if the *burden of debt* to finance a proposed capital project exceeds the value of the *special benefit* (if any) created by the capital project, then no *special benefit* has been created.

[43] A. 549 ¶ 31

The reason Florida law requires demonstrating that the assessed properties are conferred a *special benefit* that must exceed the *burden of debt* imposed is to protect stakeholders. Consider these simple examples: In an extreme example, let's assume that a five-member Board of Supervisors of a governmental unit which has the authority and power to levy non-ad valorem assessments decides to assess its residents $21,000,000 (principal value) to build a big cube of concrete in the community's park. The Board believes this project confers $21,000,000 [the amount of the capital expenditure] of *special benefits* (in the form of a unique work of art, or for whatever reason they believe) to the landowners. Further, this Board did not conduct or obtain any study, realtor appraisal, comparisons to similar communities, or other analysis to support this Board's belief and supposition that the big cube of concrete confers $21,000,000 of *special benefits* to the landowners. The provision in the *City of Boca Raton*, requiring analysis and a valuation of these alleged *special benefits* conferred is the only guardrail that protects the residents in this example from what most reasonable people would deem is a white elephant (i.e., something of no value) and extremely poor judgment. Now, it could be the case that if the Board undertook a study (i.e., benchmarking with other communities, financial/regression analysis, or other similar analysis), that, perhaps, the study proves that big cubes of

concrete are actually *in vogue* (for some reason) and the *before* and *after* analysis concludes that there is a tremendous increase in property values of similarly situated communities after their big cubes of concrete were financed and built and that $10 of *special benefits* accrue for every $1 of *debt burden*. Even more, perhaps, based on the analysis or study they undertook, they find that not only do big cubes of concrete enhance property values and confer a *special benefit*, but the analysis also concludes *the bigger the better!* In this example, the analysis or study demonstrates that *special benefits* have, in fact, been a) created, and b) demonstrated to exceed the *burden of debt*.

On the other hand, the result of their analysis may show that the big cube of concrete adds only, say, $17,000 of *special benefits* to the average property (again, based on empirical study or analysis) but *the burden of debt* for each home to finance this big cube of concrete (via a non-ad valorem bond assessment) is, say, $40,000. In this instance, one would conclude that the *special benefits* thought to have been created do not exceed the *burden of debt*; thus, the first requirement in the *City of Boca Raton* is not met, and the proposed bond must not be validated.

In another example, assume that the study shows similarly situated communities received no *special benefits* from the $21,000,000 big cube of

concrete. The study might even show that property values *decreased* in those communities, making it clear that the project reduced property values. Despite the lack of demonstrated *special benefits*, the *debt burden* is still $40,000 per home. This would lead to the conclusion that the *special benefits* did not exceed the *burden of debt*, even though a significant amount of money was spent on the project.

The examples above illustrate that simply spending money does not suppose *special benefits* are conferred, let alone created, that exceed the *burden of debt.*

Further, the point is that unless there is some study or analysis to identify the value or range of values of *special benefits* conferred (if any), one simply cannot meet the first requirement as held in the *City of Boca Raton*, in the manner that Plaintiff's own financial consultant states it must.

Plaintiff states that the proposed use of funds from the proposed [prohibited] bond proceeds is a) $6 million for golf course repair, b) $3 million for kitchen improvements, c) $9 million for new buildings, and d) $500,000 for additional parking.[44] Nowhere, not in the Master Assessment Methodology report, Town Hall presentations,[45] or other place did Plaintiff

[44] A. 050-051; A. 450, slide 28
[45] A. 441-452

attempt to analyze the impact these capital projects would have on revenues and expenses for the entity's financial projections after it saddles its residents with over $44 million *total burden of debt* to pay for these projects.[46]

Of course, sometimes, having an amenity, even if it doesn't increase revenue or reduce expense, could generate a *special benefit*…but, again, one cannot reach that conclusion without any analysis or study. Just saying it doesn't make it so. Plaintiff admits he never conducted the requisite study or analysis required by *City of Boca Raton*.[47]

By contrast, *the City of Boca Raton*, includes what a conclusion of such an analysis would look like, in pertinent part:

> **"…the City made *specific* findings that… the benefits would exceed the amount of the assessments..." Further, "Robert J. Harmon, the City's urban economic consultant, testified that *his analysis showed* that the subject properties *'would at least on a cumulative basis receive $7 of benefit for every $1 that they were paying in assessments.'"***[48] *[emphasis added]*

Nowhere, not in Plaintiff's Master Assessment Methodology report or elsewhere, has Plaintiff *attempted* to identify or quantify the value of *special*

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[46] $1,222 Median annual assessment (principal and interest) x 1,202 properties x 30-year bond note.
[47] A. 546-547 ¶ 20-21; A. 550-551 ¶ 34
[48] City of Boca Raton, 595 So. 2d at 30

benefits from these proposed capital expenditures, *if any*, purported to be conferred to the UPRD landowners. Plenzler confirms in his testimony that he did not conduct any such analysis.[49]

Further, Matt testified that Ordinance 18-29 (i.e., UPRD's "Charter"), Section 2-8-161, states (in pertinent part) that:

> **"The UPRD *shall* maintain a five-year plan for the operation and maintenance of the Recreational Facilities for the operation and the development of new projects."**[50] *[emphasis added]*

Matt testified that UPRD is not in compliance with this requirement in the Charter because he, in a Public Records Request, asked UPRD to provide the five-year plan responsive to this requirement, and he never received one adopted by the UPRD BoS.[51] This is yet another example of a guardrail intended to protect UPRD's landowners being ignored by the Plaintiff and the Circuit Court.

Without analysis or any study to determine the value or range of values for *special benefits*, if any, and just as in the big cube of concrete examples (supra), no one - not the Circuit Court, not Plenzler, not UPRD, nor its landowners - can determine if any *special benefits* have been conferred and,

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[49] A. 547 ¶ 21; A. 550-551 ¶ 34
[50] A. 440
[51] A. 550 ¶ 32-33

if so, that they exceed the *burden of debt*. Plaintiff certainly hasn't demonstrated, and, without this analysis, doesn't know if *special benefits* are even created. Again, as demonstrated in the examples (supra), spending money does not translate to creating *special benefits*. Upon cross-examination, Matt told Plenzler, "Just saying it doesn't make it so."[52] As such, Plaintiff has failed to meet the first requirement of the *City of Boca Raton* and the 2024 Bonds should not have been validated.

During the Hearing, Plenzler testified that there were two different versions of Section 1.6 in Plaintiff's Master Assessment Methodology report, although both reports were dated November 3, 2023. He explained the UPRD BoS requested Section 1.6 to be enhanced.[53] The most recent version is the same as the first version except for the following four-paragraph embellishment added to Section 1.6: Special Benefits and General Benefits:

> **"Furthermore, it is well recognized that in a master-planned, amenitized, community with a golf club, that property values are higher than in other similar communities. Dating back to the mid-1990s academic studies have demonstrated that homes in golf course communities enjoyed**

[52] A. 550-551 ¶ 34

[53] A. 545 ¶ 13. Note also: A. 054-085 (associated with Resolution 2024-02 dated November 3, 2023) contains the earlier or "first version" while A. 086-139 (associated with Resolution 2024-07 dated December 8, 2023) contains the later or "second version."

price premiums of 7.6% or more. A recent study by Realtor.com found that homes with the word "golf" in their listing description had median listing prices about 25% higher than those in the overall counties. According to a recent Wallstreet Journal article when a course closes, prices for nearby homes typically fall about 25%. Furthermore, prices can plummet 40% or 50% if a contentious legal battle arises, as potential home buyers balk at the uncertainty accompanying litigation.

As discussed herein, the average assessment (principal per unit) for the [proposed] Series 2024 Bonds would be $17,138. The total amount of the proposed assessments [principal only] would vary from $10,070 to $40,863 based on the 50%/50% methodology previously used for the bond assessments as described below.

The proposed assessments would amount to 1.6% to 8.3% (average of 2.73%) of the market values of homes (also referred to as the just values) as estimated by the Manatee County Property Appraiser as of 2022. Since 2017, property values of UPRD properties have increased by 37.5% based on data via the Manatee County Property Appraiser.

In light of these facts, it is clear that the improvement of recreational facilities will confer a special benefit on the properties that will bear the assessments. Property owners' property values will be protected, and the owners will gain enhanced enjoyment from public ownership. The value of these benefits will clearly exceed their costs, ranging from 1.6% to 8.3% (average of 2.73%) of home values as of 2022."

Respectfully, nothing in this enhancement from the original draft does anything to demonstrate the requirement that *special benefits*, if any, exceed the *burden of debt*. Sure, Plaintiff added a lot of fancy [but irrelevant] empirical market statistics to an already weak analysis, but nothing, even in this "enhanced" version, speaks to the value or range of value of *special benefits*, if any. Nothing but window dressing. Nothing that resembles economic consultant Robert J. Harmon's conclusion in the *City of Boca Raton* (supra). Yet, Plaintiff's report disingenuously states that:

> **"In light of these facts, it is *clear* that the improvement of recreational facilities will confer a special benefit on the properties that will bear the assessments. Property owners' property values will be protected, and the owners will gain enhanced enjoyment from public ownership. The value of these benefits will *clearly* exceed their costs, ranging from 1.6% to 8.3% (average of 2.73%) of home values as of 2022."**[54] *[emphasis added]*

Despite what Plaintiff *wants* to conclude, there is no causal relationship or association between these new embellished, but trivial and irrelevant, facts and data and Plaintiff's statement that this is somehow evidence that a *special benefit* is created and conferred. Further, the value of the *special*

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[54] A. 095-096, Section 1.6

benefit, if any, is not proven or even offered by the Plaintiff. Also, Plaintiff does not offer support for the general statements that “Property owners’ values will be protected…” and “The value of these benefits will *clearly* exceed their costs…” again, because Plaintiff never attempts to identify the value of supposed *special benefits* from any study or analysis other than its own generic words on paper.

Additionally, what does the average debt of 2.73% have to do with satisfying Plaintiff’s burden under the *City of Boca Raton*? Plenzler is comparing apples and oranges. Let’s take another extreme example. If Plaintiff issued the same bonds in each of the next 10 years, the average debt each year would be 2.73%; however, over the 10-year period, the total debt being shouldered by the residents would be 27.3% of their [average] home values. Plenzler wants us to focus on just one empirical statistic that has nothing to do with demonstrating if special benefits are created, and if so, if it exceeds the $21 million amount of the proposed assessment. It is nothing more than a statistic in search of a purpose.

Plaintiff’s reliance on this failed, flawed, and incomplete report, which lacks the required analysis from a financial consultant, supposedly expert in the art, is unconvincing and irrelevant. For example, representing “cost” as a percentage of home market value doesn't make sense. The 37.5%

increase in market values since 2017 is just “fluff.” It is insignificant as it is just a historical data point and doesn't indicate if any *special benefits* are created after the capital projects are implemented. Likewise, the references to “golf” and “contentious legal battles” in the first paragraph have nothing to do with identifying the value of *special benefits*. It is important to reiterate that Plenzler admits that he made no attempt to analyze or calculate the value or range of probable values of *special benefits*, if any.

Plaintiff fails to demonstrate what it previously stated is required to have a valid special assessment under Florida law, as per Section 1.5 of its own Master Assessment Methodology report (supra).

Repeated here for the reader’s convenience from Plaintiff’s Section 1.5 Requirements of a Valid Assessment Methodology:

> **“Valid special assessments under Florida law requires two things. *First, the properties assessed must receive a special benefit from the improvements paid for via the assessments that exceeds the burden of debt placed upon them.*[55] Second, the assessments must be fairly and reasonably allocated to the properties being assessed in proportion to the benefits they will receive.”** *[emphasis added]*

[55] By logic and definition: if the *burden of debt* to finance a proposed capital project exceeds the value of the *special benefit* (if any) created by the capital project, then no *special benefit* has been created.

So, while Plenzler's testimony underscored his understanding that settled case law required these conditions to be met, he never proved them in his testimony or his Master Assessment Methodology report.[56] Of course, for *special benefits* to be deemed to exceed the *burden of debt*, one must first specify the value or range of values for the supposed *special benefits*. Plenzler admits he did not do this. Plenzler only sprinkled in a few new and improved interesting market statistics in his revised Section 1.6 of his December 8, 2023 version of the Master Assessment Methodology report; however, these are of no consequence in satisfying the first requirement of *City of Boca Raton,* which requires demonstrating that *special benefits,* if any, exceed the *burden of debt* proposed to be assessed.

In *City of Boca Raton*, the economic consultant "did the math." In UPRD, no math was done. None was attempted. As such, Plaintiff did not meet the requirements that its own consultant said must be met for a valid special assessment under Florida law.

The Circuit Court erred in validating the bond because Plaintiff failed to prove that the first requirement of *City of Boca Raton* was met. As such,

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[56] A. 546-547 ¶ 19-23; A. 550-551 ¶ 34

the Bonds should never have been validated. This Court should reverse the Circuit Court Judgment.

III. WHETHER THE CIRCUIT COURT JUDGE VIOLATED APPELLANT'S RIGHT TO DUE PROCESS BY EXHIBITING PREJUDICE TOWARDS DEFENDANT (APPELLANT)

At the Hearing, Appellant's right to due process was impaired as the Circuit Court displayed prejudice toward Matt by not considering all motions, acting condescendingly and dismissively toward Defendant, not acting as a neutral arbiter of the case, demonstrating unprofessional conduct, and seemingly issuing a ruling favorable to Plaintiff by ignoring and not applying the rule of law on the material, relevant legal issues and focusing on matters of no legal consequence.

First, during the April 29, 2024 bond validation hearing, the Circuit Court judge exhibited prejudice through condescending and dismissive rhetoric and conduct toward Defendant. Twice during the Hearing, the Circuit Court judge advised Matt to "move to Myakka [City]" if he didn't like the outcome [of being assessed for the amenities in the UPRD community].[57]

Second, the Circuit Court judge's two admonitions to Matt (i.e., that if he was unhappy with how the UPRD conducted itself, he should forgo the

[57] A. 552 ¶ 42

amenities of University Park and “move to Myakka [City]") were wholly unwarranted, condescending, and not in keeping with the proper role of the judiciary. The judge's conduct violated the first stated principle of the 2005 Principles of Professionalism for Florida Judges:

> **“A judge should be courteous, respectful, and civil to lawyers, parties, witnesses, court personnel, and all other participants in the legal process.”**

Third, the Circuit Court judge seemed uninterested in the most relevant facts at issue. The Circuit Court judge did not focus on the big, relevant legal issues at hand, like a) *“How can UPRD hold a referendum to attempt to issue additional bonds that it doesn’t have the power to issue?*” (i.e., the Section 5.04 issue supra), and b) *“Specifically how and where did the Plaintiff meet its burden under the City of Boca Raton to demonstrate that the value of special benefits, if any, exceeds the burden of debt?”* Instead of addressing these issues of law, the Circuit Court judge focused his attention on giving weight and deference to the margin of the referendum (62% voted for the bonds and 38% voted against the bonds) as if the issue of the margin of bond passage bears any weight whatsoever in the bond validation process when,

in actuality, it is of no consequence at all.[58] The Circuit Court judge was grasping at straws to validate the bond while being dismissive and disrespectful of Matt and his testimony, arguments, exhibits, and evidence presented to the Circuit Court.

Fourth, not only did the Circuit Court Judge not focus on these big and relevant legal issues (i.e., Section 5.04 and satisfying the first requirement of *City of Boca Raton*), but he failed to even explain and address these rather material matters in his Final Judgment and final questions from Matt at the Hearing.[59]

Fifth, the Circuit Court judge's prejudice toward Matt continued when, early in the hearing, he stated that he would review all video recordings before ruling on validating the bonds; but then, at the end of the hearing, he ruled to validate the 2024 Bonds without viewing the video evidence, which he stated he would review before orally issuing his ruling.[60]

Sixth, the Circuit Court issued its Final Judgment on May 14, 2024, while Matt's May 13, 2024 Emergency Motion to Stay was still pending.

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[58] A. 552 ¶ 42
[59] A. 506-514; A. 552-553 ¶ 43
[60] A. 553 ¶ 44

In the motion, Matt presented evidence of potential fraud, including backdating of documents, to the Circuit Court judge. However, the Circuit Court judge showed little interest in interrupting the bond validation process to investigate these serious allegations. In the Final Judgment, the Circuit Court judge stated that he only considered the following: a) Notice [of Order to Show Cause], b) Plaintiff's Complaint (February 14, 2024), c) Answer from Ms. Cynthia Evers, Assistant State Attorney, and d) Answer from Dean Matt. The Circuit Court judge did not state that he considered [or even read] Matt's Motion for Emergency Hearing.[61] Additionally, there is no reference anywhere in the Final Judgement to the Motion for Emergency Hearing. Further, the Circuit Court judge writes:

> **"3. Ms. Cynthia Evers, Assistant State Attorney for the Twelfth Judicial Circuit received the Complaint to validate the bond (the "complaint") and timely filed an answer on March 7, 2024. Mr. Dean Matt also files an answer and objection to the Complaint on April 23, 2024."**[62]

Again, no mention of the Motion for Emergency Hearing: the Circuit Court judge entered his Final Judgment without considering <u>all</u> the evidence and motions filed in this case. Later, in the Final Judgement, the judge writes:

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[61] A. 506-507, "introduction/preamble"
[62] A. 507 ¶ 3

> **"16. This Court finds that *all* material allegations of the complaint for validation are true and correct and have been supported by the documentation, testimony and evidence submitted."**[63] *[emphasis added]*

Once again, this statement is untrue as not <u>all</u> evidence (i.e., the Motion for Emergency Hearing) was considered. This is yet another example of the Circuit Court judge not giving serious deference and weight to Matt's arguments, evidence, testimony, and motions and not treating *Pro Se* Matt *pari-passu* with Plaintiff.

Most troubling, the Circuit Court judge ruled on the Motion for Emergency Hearing on May 15, 2024, the day ***<u>after</u>*** the issuance of the Final Judgment. And when the Circuit Court judge finally issued his Order on Emergency Motion, it was short and terse: "Defendant Dean Matt's Motion for Emergency Hearing to Stay is **DENIED**."[64] The Circuit Court judge offered no other explanation or reasoning for denying Matt's 52-page (including exhibits) Motion for Emergency Hearing. Issuing a Final Judgment when there are other pending motions directed to issues that could preclude the entry of a Final Judgment demonstrates inattention to detail and potential procedural misconduct. It's one thing for the Circuit Court judge to have

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[63] A. 512 ¶ 16
[64] A. 515

reviewed and considered the Motion for Emergency Hearing and then made sound, reasoned judgment complete with an explanation as to why it was denied and then demonstrate how it affected (or not) his ruling in the Final Judgment. It's another thing, however, when the judge did not consider [or even read] this motion before rendering his Final Judgment.

The right to due process involves, at its most basic level, an opportunity to be heard. *See Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950). Matt was denied an opportunity to be heard, based on the relief sought in his Motion for an Emergency Hearing. The Circuit Court's Order on Emergency Motion to Stay is nothing more than an afterthought and housekeeping to close out an open motion that should have been carefully considered *before* the Circuit Court judge issued his Final Judgment.

Omitting consideration of Matt's Motion for Emergency Hearing could be considered a clerical error in that, even though the Motion for Emergency Hearing was timely filed, the Court overlooked this filing.

Fla. R. Civ. P. 1.540(a) addresses this potentiality. It provides, in pertinent part, that

> **"…errors arising from oversight or omission may be corrected by the court at any time on its own initiative… During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate**

> **court [in the instant case, the Supreme Court], and thereafter while the appeal is pending may be so corrected with leave of the appellate court."**

The Circuit Court judge chose not to amend or vacate the Final Judgment or to consider the evidence and arguments made in Matt's Motion for Emergency Hearing. In this instant case, the Motion for Emergency Hearing (along with its exhibits) presented important new information:[65] the signatures of Plaintiff's officers and those of the bond trustee were attached to *unapproved* versions of Resolution 2024-13. Specifically, the UPRD BoS approved a version with the [draft] SSTI dated March 1, 2024, but the Plaintiff and trustee executed an *unapproved* version with the relevant date backdated to January 1, 2024.[66]

Seventh, the Motion for New Judge[67] was adjudicated by the Circuit Court judge himself. This is the fox guarding the henhouse. Because of obvious conflicts and demonstrated lack of impartiality by his conduct and actions during the Hearing, the Circuit Court judge should have recused

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[65] A. 454-505
[66] Plaintiff never provided any evidence as to if Section 5.04's language prohibiting it from issuing additional bonds was ever cured and approved by the trustee.
[67] A. 517-526

himself, and the Honorable Diana Moreland, the Twelfth Judicial Circuit's Chief Judge, should have reviewed and ultimately ruled on this motion.

All parties appearing before Florida Courts deserve the expectation of impartiality and the blindfold of Lady Justice being snug. After all, tremendous time and treasure is spent preparing court cases. Regardless of political affiliation, political donations, and such, impartiality, a fair hearing, and respect must be expected in Florida's courts.

Because of the Circuit Court judge's conduct and demonstration of prejudice towards Matt's testimony, evidence, and arguments, including not considering all evidence and motions, the Circuit Court erred when it ruled to validate the Bonds. This Court should reverse the Circuit Court Judgment.

CONCLUSION

The bond validation hearing is a crucial step in the bond issuance process. It is important for the Circuit Court to thoroughly review all details and ensure that everything is in order, rather than simply rubber-stamping the process.

Appellant has raised concerns regarding legal and factual issues that suggest the 2024 Bonds should not have been validated. Additionally, the Motion for Emergency Hearing brought to light evidence of questionable and potentially nefarious actions by the Plaintiff and its third-party professionals

(i.e., who changed the date on the SSTI from March 1 to January 1, and why? After all, it didn't happen without human intervention.). This information was presented to the Circuit Court in time for it to delay issuing its Final Judgment and request an explanation from the Plaintiff regarding these troubling actions and documents, but ultimately was not reviewed before the Final Judgment was issued by the Circuit Court judge.

Despite issues of law and other strong and credible evidence that would support denying the Plaintiff's request for bond validation:

(a) The Circuit Court allowed the 2024 Bonds to be validated while knowledgeable that the January 16, 2024 referendum was invalid and illegitimate because the valid, governing language of Section 5.04 from the First Supplemental Trust Indenture of the Series 2019 Bonds prohibited, encumbered, and impaired UPRD from issuing additional bonds. Additionally, Plaintiff suppressed and misrepresented this vital information from its residents, the Circuit Court, and other stakeholders, including UPRD's voting landowners and the general public;

(b) The Circuit Court found that Plaintiff's Assessment Methodology met the burden of *City of Boca Raton* despite it being devoid of any evidence or attempt to define the value or range of values of *special benefits*, if any,

and if it exceeded the *burden of debt* (as Plaintiff readily admitted Florida law requires);

(c) The Circuit Court judge expressed prejudice which manifested itself in poor professional conduct, dismissiveness of Matt's testimony, motions, and evidence, and general disrespectfulness towards Matt which distracted the Circuit Court from its duty to apply the rule of law to the material, relevant legal issues of this case;

(d) The Circuit Court did not investigate the troubling information, complete with evidence uncontrovertibly documenting that the UPRD BoS approved one version of Resolution 2024-13 (which included the [draft] SSTI) while it and the trustee executed a different version – one with changed dates indicative of a scheme to backdate and falsify a public record as thoroughly documented in Defendant's May 13, 2024 Motion for Emergency Hearing *before* rendering its Final Judgment on May 14, 2024. Evidence of potential improprieties, nefarious activities, or, worse, fraud, should be of concern for all Florida judges, yet this judge did not consider this motion, and the troubling evidence contained therein. Further, there is no evidence in the Final Judgment that the judge considered (or even read) Defendant's Motion for Emergency Hearing before rendering his Final Judgment. Instead, the Circuit Court focused on irrelevant factors to

seemingly manufacture reasons to validate UPRD's 2024 Bonds including citing the legally irrelevant referendum margin as a reason to seemingly rubber-stamp Plaintiff's request to validate the bonds. The Circuit Court disregarded important facts and issues brought to the Court by Matt and rushed to rubber-stamp this bond validation.

The Circuit Court erred in approving the bond validation of UPRD's proposed [prohibited] 2024 Bonds because a) Plaintiff did not have the power to issue additional bonds, b) Plaintiff did not meet the burden required by ***City of Boca Raton,*** and c) Matt met with prejudice and was denied basic due process and the right to be heard. As such, the Circuit Court Judgment should be reversed and require a new proceeding to be filed if UPRD's deficiencies in the bond validation proceedings are cured.

/s/: Dean K. Matt
By: DEAN K. MATT
Appellant *(Pro Se)*
7006 Lancaster Ct
University Park, FL 34201
Telephone: (630) 248-0646
E-Mail: MuchoDeanAero@aol.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of Court using the Florida E-Portal system which will send a notice of electronic filing to Fred E. Moore, Esq. at (fmoore@blalockwalters.com) and Cynthia Evers, Esq. at (evers@sao12.org; saorounds@sao12.org; jladkins @sao12.org), this 27th day of September 2024.

/s/: Dean K. Matt

By: DEAN K. MATT
Appellant (Pro Se)
7006 Lancaster Ct
University Park, FL 34201
Telephone: (630) 248-0646
E-Mail: MuchoDeanAero@aol.com

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font and word and page limitation requirements of Rule 9.210, Fla. R. App. P.

/s/: Dean K. Matt

By: DEAN K. MATT
Appellant (Pro Se)
7006 Lancaster Ct.
University Park, FL 34201
Telephone: (630) 248-0646
E-Mail: MuchoDeanAero@aol.com