

# **Bond Case Briefs**

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## **PACE FUNDING - FLORIDA**

### **Florida PACE Funding Agency v. Pinellas County**

**District Court of Appeal of Florida, Second District - March 27, 2024 - So.3d - 2024 WL 1288194 - 49 Fla. L. Weekly D660**

County brought action against Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) for declaratory and injunctive relief, alleging that FPFA breached interlocal agreement by financing residential improvements in violation of county code.

The Circuit Court denied FPFA's motion to dismiss for improper venue. FPFA appealed.

The District Court of Appeal held that:

- Sword-wielder doctrine as exception to FPFA's home-venue privilege did not apply;
- Forum selection clause in interlocal agreement, at the least, applied to legal or equitable disputes that arose between the parties while agreement was still in effect;
- County's declaratory relief claim arose while agreement was still in effect, and thus forum selection clause applied to claim; and
- County's claim seeking injunctive relief arose while agreement was still in effect, and thus forum selection clause applied to claim.

Sword-wielder doctrine as exception to home-venue privilege did not apply based on county's allegations that bond validation judgment, which permitted Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) to finance residential improvements statewide without regard to county ordinance, violated county's constitutional "home rule" powers, in action against FPFA; sword wielder doctrine's protections did not apply to showdown between two governmental parties, bond validation judgment purported to apply statewide, and primary purpose of county's complaint was a collateral attack on bond validation judgment, rather than contention that FPFA was directly violating county's constitutional rights.

Forum selection clause in interlocal agreement between county and Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA), which expressly covered "any legal or equitable action involving the County the Agency or its program in" county, at the least, applied to legal or equitable disputes that arose between the parties while the interlocal agreement was still in effect; FPFA and the county contracted for a broad forum selection clause that was not limited just to claims "arising under" the interlocal agreement or to claims requiring interpretation of the agreement's substantive provisions.

County's declaratory relief claim arose while interlocal agreement between county and Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) was still in effect, and thus forum selection clause in agreement, which expressly covered "any legal or equitable action involving the County the Agency," applied to claim, in action against FPFA, seeking declaration that county could enforce its PACE ordinance against FPFA, notwithstanding bond validation judgment stating otherwise; FPFA wrote county before expiration that in light of judgment, it would operate without regard to county's ordinance, that it would offer financing for PACE improvements to residential

property owners, and that it would do so even if it never entered into another interlocal agreement with county.

County's claim seeking injunctive relief arose while interlocal agreement between county and Florida Property Assessed Clean Energy (PACE) Funding Agency (FPFA) was still in effect, and thus forum selection clause in agreement, which expressly covered "any legal or equitable action involving the County the Agency," applied to claim, in action against FPFA, seeking an injunction enjoining FPFA from conducting any PACE business in county unless it complied with county code; county alleged that FPFA began providing PACE financing to residential property owners in violation of the county's ordinance immediately after bond validation judgment issued, well before the interlocal agreement expired, and that such operation violated state law, local ordinance, and the provisions of the agreement.