

# **Bond Case Briefs**

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## **BOND VALIDATION - FLORIDA**

### **Florida Bankers Ass'n v. Florida Development Finance Corp.**

**Supreme Court of Florida - October 15, 2015 - So.3d - 2015 WL 5996764**

Development finance company brought action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under Property Assessed Clean Energy (PACE) Act. The Circuit Court validated bonds. Bankers association and property owner appealed.

The Supreme Court of Florida held that:

- Association lacked standing to appear in appeal, and
- Owner was not denied due process by trial court's acceptance of company's amended financing agreement.

Bankers association lacked standing to appear in appeal of trial court's validation of bonds issued by government corporation for qualifying improvements in county, in development finance company's action seeking to determine validity of series of bonds proposed to be issued under Property Assessed Clean Energy (PACE) Act. Association did not intervene or appear in trial court proceedings, never showed that it was citizen, taxpayer, or property owner in any jurisdiction where company's bonds would support PACE improvements, and presented no evidence that it suffered any specific injury or had stake in matter sufficient for standing.

Property owner failed to preserve for appellate review the claim that he was denied due process when development finance company and trial court accepted amended financing agreement that removed language allowing judicial foreclosure as remedy from original financing agreement that had been attached to complaint, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. At bond validation hearing, when company's attorney offered amended agreement during testimony of company's executive director, owner's attorney did not object to admission of documents or testimony about it, but asked only to be allowed to inquire into document on cross-examination.

Property owner was not denied due process by trial court's acceptance of development finance company's amended financing agreement that removed language allowing judicial foreclosure as remedy from original financing agreement that had been attached to complaint, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. Owner had opportunity at show cause hearing and hearing on his motion for rehearing to raise objections to amended agreement and to bring those objections and arguments to court's attention.

Validation of series of bonds to be issued by government corporation for qualified developments in county under Property Assessed Clean Energy (PACE) Act was ripe for determination, in development finance company's action seeking to determine validity, even though company had not yet entered into any interlocal agreements under PACE program. Trial court had statutory jurisdiction to determine validity of bonds and certificates of indebtedness, company had statutory

authority and appropriately enacted resolution to issue bonds and to seek determination of validity of bond issue before doing so, and company intended to execute interlocal agreements to provide for implementation of PACE program in localities that chose to participate, where local governments would levy and collect non-ad valorem special assessments at issue.

Remand was warranted for trial court to require development finance company to amend all bond documents that referred to company having, or being delegated, authority to levy non-ad valorem special assessments, to make clear that it was local government that would levy such assessments, in company's action seeking to determine validity of bonds to be issued by government corporation for qualified developments in county under PACE Act. While Act did not authorize company to levy assessments, inclusion of language in bond documents did not provide basis to reverse court's amended final judgment that validated bonds, as court agreed that assessments would be collected by local government, but language of judgment was subject to misinterpretation so long as any documents continued to contain references to company imposing assessments.

Remand was warranted for trial court to require that amendment of bond documents remove all references to judicial foreclosure and that such amendments be approved by governing board of development finance company, in company's action seeking to determine validity of series of bonds to be issued by government corporation for qualified developments in county under PACE Act. Only collection method authorized by Legislature for special assessments was uniform method set forth by statute, Act did not provide for judicial foreclosure as remedy, and, while amended financing agreement removed one reference to foreclosure as remedy, other references still remained.