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Stealth Appellants No Longer Have Standing To File An Appeal In A Florida Bond Validation Proceeding

By: Richard J. Miller and Mark-David Adams

For more than 60 years, challengers to Florida bond validations had an unusual option - they could quietly wait until the trial court delivered its final judgment validating the proposed bond issue, and, without appearing, appeal directly to the Florida Supreme Court. On appeal, these "stealth appellants" were free to raise issues not considered by the trial court. Under §75.08 of the Florida Statutes, the Florida Supreme Court has mandatory jurisdiction of bond validation appeals. Pursuant to the old rule, notwithstanding the merits of the challenge, an appellant could effectively block the issuance of bonds for months, or, possibly, years depending on the Supreme Court's schedule.

Under Chapter 75, local governments may determine their authority to incur bonded indebtedness and the legality of all related proceedings through a bond validation, a trial court proceeding in the circuit court where the local government is located. Although, in most cases, a bond validation is not mandatory, Florida local governments will voluntarily pursue a validation to confirm the legality of an innovative financing structure or to put to rest any potential challenges to the legality of the bonds. Once validation is complete, bonds may not be challenged except on very limited grounds.

This strange appellant practice dates from the Florida Supreme Court's decision in *Meyers v. City of St. Cloud*, 78 So.2d 402 (Fla. 1955), holding that the "privilege of appeal exists, whether the particular individual so appealing has actually appeared in, or exercised his statutory right of special intervention as a nominal party on the record, or not."

On October 1, 2015, the Court put an end to this practice in *Reynolds v. Leon County Energy Improvement District* (No. SC 14-710). The *Reynolds* decision overturned *Meyers* and held, "[u]nder the plain terms of the statute, any person wishing to participate in bond validation proceedings must appear in the circuit court." The Court noted that §75.07 of the Florida Statutes states, "[a]ny property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing." Now, only those who appear and plead in the circuit court proceedings as parties may avail themselves of the right of appeal. The holding is consistent with the rule that "failure to participate

as a party in the lower tribunal precludes the ability to invoke appellate proceedings." *Bondi v. Tucker*, 93 So.3d 1106, 1108 (Fla 1st DCA 2012).

The Court's decision in *Reynolds* seems sensible, given that Chapter 75 provides elaborate procedures for public notice of validation hearings, affording citizens and taxpayers ample opportunity to raise issues at the trial court level. By requiring would-be appellants to make an appearance at the validation hearing, the trial court now has an opportunity to address issues and provide a record for the Supreme Court to review on appeal.

Additionally, the *Reynolds* case limits the universe of possible appellants of a bond validation judgment. While the capacity for stealth appellants to file "surprise appeals" has been removed, the local state attorney, who is charged with representing the taxpayers and citizens in bond validations, retains standing to appeal. This decision may enable Florida local governments to expedite their bond issuance schedule upon consultation with their counsel, especially where no third parties have made appearances and the state attorney has given assurances that the State will not file during the 30-day appeal notice period.

For more information on the matters discussed in this Locke Lord Quick Study, please contact the authors.

Richard J. Miller | 561-820-0274 | richard.miller@lockelord.com
Mark-David Adams | 561-820-0281 | mark.adams@lockelord.com