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Supreme Court of Texas.
Galveston Central Appraisal District, Petitioner,
v.
TRQ Captain's Landing, LP, a Texas Limited Partnership and American
Housing
Foundation, a Texas Non-Profit Corporation, Respondent.
No. 07-0010.

January 15, 2008.

Appearances:
Michael B. Hughes, McLeod, Alexander, Powel & Apffel, P.C.,
Galveston, Texas for petitioner.
John Ben Blanchard, Sprouse Shrader Smith P.C., Amarillo, Texas
for respondent.

Before:

Chief Justice Wallace B. Jefferson.

Nathan L. Hecht, Harriet O'Neill, Dale Wainwright, Scott A.
Brister, Supreme Court Justices.

David Medina, Paul W. Green, Phil Johnson, and Don R. Willett,
Supreme Court Justices.

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CHIEF JUSTICE JEFFERSON: Please be seated. The Court is now ready to hear argument in 07-0010, *Galveston Central Appraisal District v. TRQ Captain's Landing*.

SPEAKER: May it please the Court. Mr. Hughes will present argument for the petitioner. Petitioner has reserved five minutes for rebuttal.

ORAL ARGUMENT OF MICHAEL B. HUGHES ON BEHALF OF THE PETITIONER

MR. HUGHES: May it please the Court. This case will require this Court to construe the tax code particularly Statute 11.182(b) and apply those provisions of that statute to the specific fact to this case. The American Housing Foundation, AHF, is asking this Court to construe that statute in such a manner that it would write a word into the statute. Now this is the word equitable into the statute. They even argued on page 13 of their brief that the single most important issue in this

case is whether AHF is the equitable owner. I would say that's not true. It's whether or not the owner of the property in this case qualifies to the tax exemption. Just look at the statute itself, 11.182, that was passed in the late 1990s to encourage investment in low and moderate income housing.

JUSTICE HECHT: Can you help me with -- to try and understand why it would matter whether equitable ownership were allowed or not. Does it -- does the operation in the departments or the responsibility -- 'cause you're gonna get your taxes from somebody at some point exactly to me.

MR. HUGHES: Well then not necessarily. I mean, the -- the taxes the -- the, the exemption would apply and the property would not generate any taxes. The --

JUSTICE HECHT: Right. But I mean is --

MR. HUGHES: -- [inaudible] --

JUSTICE HECHT: -- it could be structured where you wouldn't. I mean there's a way to structure this where you --

MR. HUGHES: -- oh, absolutely there is a way to structure this deal in which it would have worked.

JUSTICE HECHT: But, so, what I'm wondering is why -- what does the -- what does the American Housing Foundation get from the structure that they shouldn't have?

MR. HUGHES: Well, you'll have to ask them why they set it up this way. I mean, they could easily have set it up --

JUSTICE HECHT: I see what they get, but I mean that they shouldn't have.

MR. HUGHES: Well, you mean that they shouldn't have. They --

JUSTICE HECHT: If -- if I were the legislature and we're writing the statute and I was thinking about putting equitable ownership in, why should I not do that?

MR. HUGHES: Well that would -- it would be up to -- the -- the -- that would be up to the legislation to do it. They do it here --

JUSTICE HECHT: I mean, is there -- is there a reason why they would or they wouldn't?

MR. HUGHES: Well it would a -- corporate entities and -- and structures have their -- their reasons, you know, it's not just a fiction. It's not a fiction for a lot of other purposes. I mean, the fact that it may be disregarded for income tax purpose maybe one thing. But in this case, it -- it wants to make sure that the charity itself is the owner of the property. They've structured this in such -- such a way that they limited partnership, a full profit company could be the owner of the property.

JUSTICE WILLETT: But they own the entity that owns the property. Don't they?

MR. HUGHES: They, if they own -- the general or general partner of the property. You're right there. In this particular case, 100 percent of the interest ultimately flowed back to AHF.

JUSTICE WILLETT: Right.

MR. HUGHES: Unlike some of the other cases -- we -- we -- we can talk about in a little bit -- but the statute doesn't talk about equitable ownership. And --

JUSTICE HECHT: Right.

MR. HUGHES: -- and that's what -- and -- and historically, this Court --

JUSTICE HECHT: I guess I'm just wondering if you know of any reason why it does that.

MR. HUGHES: I do -- I do -- I do not. I do not. The legislature

history is -- is brief and -- and does not mention that. But it's clear that the statute requires the organization to ... if you're gonna get the -- qualify for the exemption, the organization on property that it owns, the organization itself has to be organized as a CHDO, this Community Housing Development Organization.

JUSTICE GREEN: They have to own all of it?

MR. HUGHES: The -- well, under the statute as it existed in -- now go -- in [inaudible] in terms -- in terms of equitable ownership --

JUSTICE GREEN: One --

-- they would not have to own all of it.

JUSTICE GREEN: -- one hundred percent legal ownership is that required?

MR. HUGHES: Ownership in the -- well now we're talking about -- in this case, the -- the property is 100 percent owned by TRQ.

JUSTICE GREEN: Right, what I'm talking about is there a legal title v. equitable title. How about legal title. Does it matter how much ownership interest they have if there's a legal owner of -- of the TRQ?

MR. HUGHES: I don't -- well the statute doesn't specify. It doesn't specify how the investors or classify how the investors had to be organized. It just classifies ownership.

JUSTICE GREEN: So would you say -- so what they just say, "Okay we have legal ownership by only one percent." That qualifies?

MR. HUGHES: Well that's under the -- the [inaudible] Jim Wells County case, it would say it would. It -- it would say that if -- if that poor profit companies could own 99 percent [inaudible] --

JUSTICE GREEN: I guess what I'm saying is --

MR. HUGHES: [inaudible] the tax --

JUSTICE GREEN: -- that -- that leaves me to believe that -- that the structure really doesn't matter if it's one -- one percent, 100 percent, equitable, legal. If you can show ownership in one form or another, why would it matter?

MR. HUGHES: Well, it -- it -- it requires that the property be used for low and moderate income housing and that it be owned by a ... it requires who the owner must be and the owner must be a CHDO. You're right. It's inartfully worded and you can see it's been amended several times since -- in its brief history. And -- and -- and it's gotten more limited because of the -- I guess tax ramifications it's had.

JUSTICE WAINWRIGHT: The statute, as you pointed out, doesn't use the term, that's, 11.182(b) doesn't use the term legal title or equitable title that just says owns. And then you cite Black's Law Dictionary that which references legal title. Webster's Dictionary says rightful -- own means rightful title to whether legal or natural. I'm not sure what it means by natural, but it doesn't limit ownership to legal title. So the statute doesn't tell us which it includes. What guides do you think we ought to use then to determine whether equitable and legal title are both included in the term own for ownership?

MR. HUGHES: I would point this Court to one of this Court's decisions about seven or eight years ago with the *Childress* case in -- cited by both parties in the brief, in which it said that legal title -- the legal title holder is the owner of the property for tax purposes. That's been --

JUSTICE WAINWRIGHT: And -- and --

MR. HUGHES: -- the way the Tax Code has -- has been applied for years.

JUSTICE WAINWRIGHT: -- but in *Childress*, the county was a lien holder and couldn't compel legal title unless the purchaser defaulted.

In this case, as you pointed out, AHF, American Housing Foundation, ultimately controls 100 percent of the entities that own the -- that own the apartments. So, the argument at least has been made that AHF has complete control over the direct ownership of these -- of the apartments. So there's a difference between *Childress* and this case. Isn't there?

MR. HUGHES: Well -- but -- but we got the right to compel legal title. It's been discussed in a lot of cases. Well, like at *Southeast Housing Company* case as cited by -- by them. But, it usually is used to -- in terms of equitable ownership to determine who does not have equitable ownership rather than who does. I think that's what Justice Blanc pointed out in her dissent in -- in that case, or in this case right here in the lower Court.

JUSTICE WAINWRIGHT: In *Childress*, the county was a lien holder. You would agree that AHF is not a lien holder. AHF is in much different position than -- than the county in *Childress*.

MR. HUGHES: That's correct. It's a -- AHF is the principal investor of the property owned in this case.

JUSTICE WAINWRIGHT: So -- so what guide should we use when -- when a statute says owns to determine whether that means equitable or legal, or only one, or both?

MR. HUGHES: Well if you're gonna -- I would -- I would say you have to just respect the corporate entities in the corporate structure, that is that the property owner chose to place this thing on this land in, what you have to do. And In this case, it, rather than place it in a -- in the -- in the hands of a nonprofit corporation, it chose to place it in this poor-profit limited partnership. And I'm not sure with all the tax, I'm sure it's not income tax implications that went into that. I -- I -- I can't tell you what they were. But --

JUSTICE WAINWRIGHT: So then if a -- if X company owned 100 percent of Y company which owned the -- and both are charities, which owned the apartments, and only X is a CHDO, Community Housing Development Organization, you would say Y doesn't qualify as a -- to get the tax exemption or 11.182(b).

MR. HUGHES: If Y was the legal tax holder I would say that.

JUSTICE WAINWRIGHT: Even though, basically, the companies, the charities are all the same; same directors, complete ownership of one or the other as you would say that formality --

MR. HUGHES: Must be --

JUSTICE WAINWRIGHT: -- would fix them from getting the tax exemption.

MR. HUGHES: That's our position here, your Honor, it is. That -- that -- I think it also it's in comport with the way these tax statutes are to be construed and how the, you know, the -- the Constitution would mandate that *ad valorem* taxes be imposed in legal and uniformed manner. And because of that, the exemptions of the antithesis of the quality and uniformity, and they are not favored and it should be strictly construed with the *North Alamo* case some years ago. Well then, the *Bullet* case goes on to say that this instance can't be raised by implication. It must affirmatively appear --

JUSTICE WAINWRIGHT: But what is -- and I understand that, and yes we've said that. What does it mean to strictly construe a statute that says owns but doesn't tell us if that means legal or equitable type?

MR. HUGHES: If you -- if --

JUSTICE WAINWRIGHT: Anything on which dictionary you read, it could mean legal and equitable or just legal, I guess. So what does it mean to strictly construe that statute when it says owns if you're

trying to decide what owns means?

MR. HUGHES: Well, you know, owns -- well, for example, probably in -- in the -- in the other context, like when Foster setup the trustee holds legal title. But -- but the trustee, it may be coming out of the beneficiaries money eventually when it's the trustee upon the -- it's the entity upon whom the taxes are imposed, and that's legal title even though the beneficiaries can have full use and enjoyment of it because you can be murky and confusing. And when you start parsing who various owners are, if you have the simple rule it would keep it simple. And so, only one entity is responsible for the payment of the assessed taxes on that property.

JUSTICE HECHT: There had been a number of these cases. Did any of them start before the last, before section (e) was adopted?

MR. HUGHES: Well the -- the -- this case may have -- this case applied the property before section (e) came into existence. It was generated -- I guess it was filed after (e) came into existence. But since the -- since the properties here were built prior December of '01, it just didn't apply.

JUSTICE HECHT: I was just wondering if the legislature has reacted to this legislation.

MR. HUGHES: Well I think -- I think they have. If you look at -- there's even 11.1825 that has been passed a few years ago that intended to restrict the properties even more. It -- it applies to properties even further down -- down the line, and it makes the exemption a little bit tighter. It does allow that E type exception for -- for property owners if the CHDO owns 100 percent of the general partner. But -- which is fated in the -- in the exception as well.

JUSTICE HECHT: But there had been at least four cases and they're going different ways. And I was just wondering if the -- if you think the legislature has reacted to that at all.

MR. HUGHES: I'm not aware of it. I'm not aware of it. It's -- like you said, it's -- for a statute -- if this thing has risen in 1999 I think, it will arrange a lot of litigation. And as such -- it's -- I'm sure it's a lot that comes up for the appellate record because by the nature of the ad valorem cases are generally questions of law and gets substantive in summary judgment and get [inaudible] in appellate courts and this Court on a -- on a regular basis. What I would I guess say is that we're -- of course we're -- we're arguing for strict construction and no exemptions by implication. And in this Court -- this case, the Court of Appeals got a bit over backwards to give an exemption by limitation -- by implication, I'm sorry, and it [inaudible] reconstrue the statute rather than narrowly construed it.

JUSTICE JOHNSON: Of course the term always as somewhat ambiguous given the circumstances. It's in the purpose of the statute is to get a low income housing development online of anytime and that's the [inaudible] to get that done. How those equitable ownership somehow violate the spirit of intent and purpose of the statute; what

MR. HUGHES: Well --

JUSTICE JOHNSON: -- to cash in, you get to be taken care of, they're taking care of the housing developments. Doing all of those things and legislature want it done, how does -- how do we -- how's a [inaudible] for the term owns to -- be construed both equitable or legal as long as we get it taken cared of?

MR. HUGHES: How I would address that, is that it brings clarity into the situation. Because once you start looking again into whom equitable owners are v. legal owners, it could be a murky situation, and then you know you have wanted to [inaudible] to whom the tax should

be imposed and whether or not they qualify for it. That -- the example I gave earlier, I don't know what about the trustee in *Hill*, Hill's legal tile that's one of -- that's undisputed . He's the one who's the taxes are assessed against and who's responsible for paying the taxes, and it at least bring -- bring clarity into the -- into the statute.

CHIEF JUSTICE JEFFERSON: Any further questions? Thank you, Mr. Hughes. The Court is now ready to hear argument from the respondents.

ORAL ARGUMENT OF JOHN BEN BLANCHARD ON BEHALF OF THE RESPONDENT

SPEAKER: May it please the Court. Mr. Blanchard will present argument for the respondents.

MR. BLANCHARD: Good morning. May it please the Court. By an act in section 11.182 of the Texas Tax Code, the Texas Legislature evidences is intent to promote the charitable purpose of providing housing -- housing to the poor and needy by providing an exemption. A portion of that statute subsection (d) indeed requires that of the tax exemption granted 40 percent of that amount would be reinvested in -- in that low income housing to provide social or economic assistance and educational assistance. The question, as the Court has already ascertained is what is the meaning of ownership as set forth in section 11.182. Now, the petitioner invites this Court under the manner of strict construction to ignore the legislative intent behind section 11.182 --

JUSTICE BRISTER: Well it doesn't exempt these properties. It exempts certain organizations, right?

MR. BLANCHARD: That's correct. The -- the language --

JUSTICE BRISTER: For instance, if I own a low income housing apartment building, I couldn't get the tax exemption?

MR. BLANCHARD: It -- it -- it --

JUSTICE BRISTER: Because I'm not a charitable organization.

MR. BLANCHARD: Assuming you were not, that's correct. If you're not a CHDO or a charitable organization.

JUSTICE BRISTER: And I assume that TRQ Captain's Landing LP is not a charitable organization.

MR. BLANCHARD: That is correct.

JUSTICE BRISTER: You wouldn't get investors. Investors don't invest in charitable organizations. They invest in profitable organizations, right?

MR. BLANCHARD: That's not correct. That is not correct, if -- and that goes to the issue under Subsection E where tax credits are given so as to encourage poor profits to come in and invest money in for -- in return for which they get tax credits so that --

JUSTICE BRISTER: Which kind of tax credits?

MR. BLANCHARD: They are low income tax credits under subsection (e).

JUSTICE BRISTER: Income tax credits.

MR. BLANCHARD: Yes sir, income tax credits. Yes sir. But it -- what it does in effect is to provide a -- an equity investment that will return.

JUSTICE BRISTER: But the -- the investors do this because they're gonna get something out of it.

MR. BLANCHARD: If they are already for profit, that's correct.

JUSTICE BRISTER: No, the -- I'm -- I'm not talking -- I'm talking

about your limited partners.

MR. BLANCHARD: If a poor profit comes in under (e), which is not the case in -- not -- not the facts in this case, that's a correct assumption, your Honor. In -- in our case, you have a series of transactions that ended -- that occurred at the very end of 2003 in which a -- a -- an entity under 11.182(b), American Housing Foundation, which is a qualified CHDO, Community Housing Development Organization, which is in the sole business of providing low and -- and moderate income housing, acquired in essence the sole control of this entity that owns TRQ Captain's Landing apartments.

JUSTICE BRISTER: So why didn't you do it that way. They're saying if -- if AHF just bought apartments, no problem would give them the exemption?

MR. BLANCHARD: I think that's exactly what they're saying. And what they're saying is, is that under section 11.182(b) which references the term owner twice, that that must necessarily mean legal title owner --

JUSTICE BRISTER: So why didn't you do it that way?

MR. BLANCHARD: Because of the -- why -- it's irrelevant as to why because it --

JUSTICE BRISTER: Oh, but I just wanna know. Why did you do it that -- this case goes away if you did done it that way. Why didn't you do it that way?

MR. BLANCHARD: At the end of 2003, when you're looking at the tax exemption that encourages the acquisition of this property, it was simply structured that way for convenience, your Honor. I think one of the things that this Court needs to -- has focused on, but you need to look at, for instance, and -- and the question keeps coming up, why didn't the statutes specifically relate to legal ownership? Government Tax Code, we pointed this out in our brief under section 152.001, the legislature in fact did define legal title ownership as the mechanism. It said that it defined an owner of the motor vehicle as the person named in the certificate of title as the owner of the vehicle. Clearly in this case, had the legislature intended to limit the term owner in 11.182(b) they could have easily said the legal title owner is entitled to an exemption, but they didn't --

JUSTICE HECHT: So do you think --

MR. BLANCHARD: -- do that.

JUSTICE HECHT: -- do you think that means that owner, whenever used in the tax code and not defined as legal owner, it will always include equitable ownership?

MR. BLANCHARD: I think -- I think that it's certainly that -- that argument could be made, but and as like this Court have said, the owner is not a --

JUSTICE HECHT: Just forgot that. The Court of Appeals seemed to worry about that because Justice Keyes seemed to be nervous that Justice Blanc had a point in saying that if you always included investors in this group of owners that might broaden this whole and far more than it was intended.

MR. BLANCHARD: It won't, your Honor, to the extent that if -- if there is an equitable ownership, then that equitable owner -- he's got to meet the requirements of 11.182(b). And those requirements [inaudible] it's a charitable organization and that it's a CHDO, it's a community housing development organization, which by my definition.

JUSTICE BRISTER: Not -- but we're not -- she's not worried about 11.182. That's true, you've got to do all these other things. We're just worried about if you say own includes --

MR. BLANCHARD: Well, its --

JUSTICE BRISTER: -- everybody that has a claim or might be able to phenagulate claim, that's gonna give those people a lot of folks to go after that -- are then gonna raise gains saying quite a second, I -- you know.

MR. BLANCHARD: Well, as this Court pointed out in Realty Trust, its 1938 case, the term owner has no definite legal meaning. According from this Court, the meaning of the term owner is not the same in all circumstances. It's not a technical term or a -- or a word at all, but one in wide application and various connections. In all instances, its meaning must be ascertained from the context and the subject matter.

JUSTICE BRISTER: But in this context, if the taxes aren't paid, they're gonna foreclose. And if they're gonna ask for judicial foreclosure usually, and that's gonna be against the legal title owner. So why shouldn't we just limit the fight to who it's normally limited, which is them and the legal title owners?

MR. BLANCHARD: 'Cause you've got to look at the legislative intent. And the legislative intent is to allow for a charitable organization, a CHDO, that has ownership of the property to go in and provide this charitable function which is to provide appropriate housing to those who can least afford it, the poor and needy of the state. So when you look at it in that context, if they are indeed, if we reverse the roles and say taxes are going to apply, who bears the burden of those taxes? American Housing Foundation. Everything that relates to these apartments flows to and [inaudible] American Housing is the ultimate equitable owner of the property.

JUSTICE WAINWRIGHT: Counsel.

MR. BLANCHARD: Yes, sir.

JUSTICE WAINWRIGHT: Certainly that's a laudable goal and it seems as certainly being the intent of this statute. You could also argue the intent of the statute though is to limit this exemption to the parties who meet the terms of the statute --

MR. BLANCHARD: And I --

JUSTICE WAINWRIGHT: -- so laudable goal, but not for everybody.

MR. BLANCHARD: I agree.

JUSTICE WAINWRIGHT: Even the folks who meet the requirements.

MR. BLANCHARD: Yes sir.

JUSTICE WAINWRIGHT: So, why don't we just look at what's the expressed intent rather than the intent that may not be expressed in these words.

MR. BLANCHARD: Well, when you say what is the expressed intent, the legislature said the owner. And -- and I guess, that -- that in -- in a sense begs the question, what is the owner.

JUSTICE WAINWRIGHT: It does.

MR. BLANCHARD: It certainly doesn't -- they clearly could have said the legal title owner, they didn't. They clearly --

JUSTICE GREEN: Because it's --

MR. BLANCHARD: -- said --

JUSTICE GREEN: -- because it's a tax exemption, why wouldn't you give it a narrower definition?

MR. BLANCHARD: The whole rule of strict construction simply says you got to interpret it according to what -- what the legislature intended.

JUSTICE GREEN: Right. But we're -- we're limited. We're exempting people and property from taxation.

MR. BLANCHARD: That's correct. And so you --

JUSTICE GREEN: So --

MR. BLANCHARD: -- look at what was --

JUSTICE GREEN: -- so -- so you -- you wouldn't want that to be a broad application; you would want it to be narrowed.

MR. BLANCHARD: Clearly.

JUSTICE GREEN: So, if you have a -- a word that's subject to two interpretations one narrow, one broad, why wouldn't you pick the narrow?

MR. BLANCHARD: That assumes that equitable is broader and --

JUSTICE GREEN: It could be. Sure could be.

MR. BLANCHARD: No, I don't -- I don't agree with that, your Honor. I think the -- the term owner simply implies that party that has control an ownership of the property. The owner is --

JUSTICE GREEN: You could look at the record title.

MR. BLANCHARD: I beg your pardon?

JUSTICE GREEN: You could look at the -- the legal record title and see who the owner is.

MR. BLANCHARD: You could.

JUSTICE GREEN: The legal owner.

MR. BLANCHARD: You could, but that's not necessarily a more narrow interpretation, your Honor.

CHIEF JUSTICE JEFFERSON: Where would you look to find the equitable owner?

MR. BLANCHARD: If you -- to look -- to find the equitable owner is the -- the -- the -- the party that as this Court -- as this Court has to find --

JUSTICE BRISTER: My point is it's not in the land titles.

CHIEF JUSTICE JEFFERSON: That would be appraised to find it, or them, they could be multiple equitable owners.

MR. BLANCHARD: If -- if the -- the question is that the taxes are assessed against the property and clearly if those taxes aren't paid, I think -- I think you're right, you can go in. You can post it for foreclosure. You have your security in the real property itself. And so, those taxes are going to have, obviously, go flow through the party that's the record title owner initially, who bears the ultimate burden as this Court has pointed out, is the -- is the equitable owner of the property who owns not only the limited partner but the general partner as well. So your first line in terms of assessment is clearly to cite the record title owner applies or receives the notice, I guess you would say. Who ultimately bears the burden of those taxes? It's the equitable owner. Clearly in this case, American Housing Foundation bears the responsibility for -- for all cost associated with the property and it qualifies for the exemption.

JUSTICE WAINWRIGHT: Counsel, the Tax Code 11.182(e) says that in addition to the requirements of 182(b), an organization must be to satisfy the tax exemption for the plaintiff. It must control 100 percent of the interest in the general partner if the project is owned by limited partnership.

MR. BLANCHARD: Yes, sir.

JUSTICE WAINWRIGHT: And that was in effect doesn't govern this case.

MR. BLANCHARD: Has no bearing on this case.

JUSTICE WAINWRIGHT: But that was added after 182(b).

MR. BLANCHARD: Correct.

JUSTICE WAINWRIGHT: AHS wouldn't satisfy the requirements for that, would it? 'Cause it doesn't own a 100 percent of the general partner, the limited partner that owns the property.

MR. BLANCHARD: It would qualify as the equitable owner. You don't

--

JUSTICE WAINWRIGHT: No, that wasn't my question.

MR. BLANCHARD: Okay.

JUSTICE WAINWRIGHT: AHS does not own 100 percent of the general partner, of the limited partner that owns their products.

MR. BLANCHARD: It does equitably, your Honor.

JUSTICE WAINWRIGHT: But not legally.

MR. BLANCHARD: Well, it is not the record title owner. CD Captain's Landing is the sole limited partner in this partnership. It is the sole member of TRQ Galveston L.L.C. which is the general partner. So, to the extent that it could compel legal title back to American Housing Foundation, yes it is the equitable owner. It's not -- it is not the sole member on the books of the general partner, TRQ Galveston L.L.C.

JUSTICE WAINWRIGHT: Well if -- if -- what's the purpose of adding 182(e) do you think?

MR. BLANCHARD: The whole purpose of 182(e) was to provide a financing mechanism. 182(e) simply provides that --

JUSTICE WAINWRIGHT: Well, it -- it clearly was intended to limit 182(b), don't you think?

MR. BLANCHARD: No, sir.

JUSTICE WAINWRIGHT: Not extended?

MR. BLANCHARD: I don't know sir.

JUSTICE WAINWRIGHT: Well if it says -- let me just ask you, it's says in addition to meeting the requirements of 182(b), you've got to meet this requirement in (e).

JUSTICE WAINWRIGHT: That's correct.

JUSTICE WAINWRIGHT: So --

MR. BLANCHARD: It says in addition to meeting the applicable requirements of 182(b), that's correct.

JUSTICE WAINWRIGHT: Right.

MR. BLANCHARD: The -- the confusion of a 182(b), your Honor, is that 182(e) provides -- says that if a -- if a partnership is financed with low income tax credits, what the courts have done is to say that you've got to both be a CHDO under (b) and be a -- be the owner under (e). Well (e) provides that the limited partnership owns it. Past statute, a limited partner can't be a CHDO. It can't be a nonprofit. You need for partnership access. But I mean explicitly that a partnership is one for profit, two or more individuals for profit. So when you go into (e) which is the whole purpose is to provide a financing mechanism using low income tax credits, if you require that the CHDO own the property, why does it need tax credits? It didn't pay taxes. It's a --

JUSTICE WAINWRIGHT: So --

MR. BLANCHARD: -- tax exempt entity.

JUSTICE WAINWRIGHT: -- so (e) expands (b) to allow limited partners into the equation.

MR. BLANCHARD: That's correct.

JUSTICE WAINWRIGHT: In your view.

MR. BLANCHARD: That's exactly right, your Honor.

JUSTICE HECHT: Is there -- are there any other concerns about liability for the operational departments or insurability or any kinds of concerns [inaudible]?

MR. BLANCHARD: Well, certainly when you -- when you look at the way you structure these things, I think as any poor entity would do, you look at the -- the concerns relating to liability and so forth. As this Court pointed out in an -- in an unrelated case, *Willis vs.*

Donnelly, that's the whole reason we have corporate structure is to -- to try to shield one, an entrepreneur from the liability that flows to individually if you don't use the corporate structure. So clearly, those issues are -- are -- are confronted by a number of entities including a not-for-profit such as American Housing Foundation.

JUSTICE WAINWRIGHT: Can you see the potential for abuse, Counsel, alluded to -- your opposing Counsel alluded to where there could be numbers of entities involved and maybe instead of 100 percent control of the top of the [inaudible] maybe on the 51 percent and some poor profit entities here and it could get pretty complicated. Couldn't it?

MR. BLANCHARD: No, sir. Under (b) --

JUSTICE WAINWRIGHT: You don't see any potential for abuse.

MR. BLANCHARD: No, sir under (b), (b) is very, very clear. Under 11.182(b), it says that it -- it -- that it must be a community housing development corporation. That's 11.182(b)(1), it must meet the requirement of a charitable organization under 11.18 of the Tax Code and it owns the property for the purposes of -- of -- of building or repairing housing for low-income individuals. There's really no chance for abuse because whether it be legal title or equitable title, the owner has to be a CHDO. It's got to be a charitable organization. The whole purpose behind 11.182 was to provide a charitable function, providing affordable housing to those who can't afford it. And so, the legislature said in order to ensure that we are gonna require that a charity be over, that it owned that property, that it have control of that property whether by it's by legal title or by equitable title. I mean, this whole scheme in which American Housing in structure by which American Housing Foundation owns and controls this property fits squarely within the four corners of the statute. There is no structure. There is no ownership by implication. It owns the property. It controls the property. It takes the -- and If it gets the exemption, it will take the 40 percent that it would, otherwise paying property taxes and put it back into the property or risk losing the exemption. It would do that, which the legislature expressly requires it to do. And if he doesn't do that, then it fails and it loses the exemption.

This issue of -- of -- of equitable ownership has been addressed by this Court going back to 1884 in the *Galveston Wharf* case, where this Court said even -- and it was confused and it wasn't clear -- clear from the consent decree whether or not the City of Galveston had legal title, whether it had title to stock, whether it had title to property, but it said regardless ... there could be no doubt that the decree vests in the city such a beneficial interest in the property sufficient to extend the tax exemption. Texas Code [inaudible], those saying that this state was not the beneficial owner because it didn't have the present right to compel legal title by virtue of these contingencies of which it had no control. Certainly by implication or implicitly stated that equitable ownership was sufficient to receive the tax exemption. I think the case, that this is close to being on point as -- as -- as you would often see is the *Harris County v. Southeast Texas Finance* case in which the property -- the housing project was owned by qualifying entity just as American Housing Foundation. And the Court ruled that Southeast was the equitable owner because it had the present right to compel the title and knew that it was entitled with the tax exemption. It is as close as you can get to the facts of this case. You know, the ultimate goal here legislatively is to make low-income housing financially viable for those entities who buy, build, or rehabilitate them. Because it has offered -- the low-income housing has offered greatly discounted rights, there's little

margin available to make such projects financially viable. The removal of the property tax burden can be the difference between viability and nonviability. Not only that as I pointed out, the legislature requires you to take some of the funds that you would otherwise pay in taxes and roll it back into the property. Finally, as I -- as we --

JUSTICE BRISTER: All of those are great goals.

MR. BLANCHARD: I beg your pardon?

JUSTICE BRISTER: All of those are great goals but there is an easy way to do that, which is just to own the property. And some confused with this, you know. Actually, we really got to do this, we need to encourage this, but we didn't do it that way because it was so inconvenient but it's -- and I'm so -- if the only reason to not let people do this, like AHF, is because it's -- or not let them tax them is because it's inconvenient, then that have a hard time balancing that with the inconvenience, this may cause and all the rest of the property tax which is millions of other properties and entities.

MR. BLANCHARD: Certainly, if the Court were to rule that you had to have legal title, you also have to consider whether or not that's going to discourage charitable organizations --

JUSTICE BRISTER: That's a tough argument I'm looking forward. Why -- why would it?

MR. BLANCHARD: Well, because of the -- because in any setting, just as I pointed out in the *Willis v. Donnelly*, the structure that you use which protects a charitable organization from exposure to whether it be a tort liability or otherwise is one that's going to encourage you to go in and acquire these properties to rehabilitate them and to provide the housing. If you -- if you simply take away that level of protection to this entity or any other entity it needs in order to protect itself and its charitable goals, then what you're doing is taking out of that housing market, potential owners of property who otherwise might be there, your Honor. May it clearly the corporate structure provides a level of protection not only for a -- for profit but for a foundation such as American Housing Foundation. It clearly provides a level of protection that's going to encourage them to go in and acquire this property to rehabilitate it and to provide the -- the -- the housing that's so desperately needed and it would otherwise fall on the shoulders of the county or the state if -- if not provided by these charitable organizations.

JUSTICE BRISTER: But nothing says you can't -- it's -- you can be a charitable corporation.

MR. BLANCHARD: Sure.

JUSTICE BRISTER: No -- no problem. You can be -- it doesn't outlaw corporations?

MR. BLANCHARD: True.

JUSTICE BRISTER: I assume American Housing Foundation is one of some kind. So why -- oh gosh, we've got to have corporate protection. Fine, be a corporation but just own it.

MR. BLANCHARD: Well, clearly -- clearly, you can do that, but Justice, in any other aspect of --

JUSTICE BRISTER: Why it's gonna cause this to collapse if we say, "Look, you have to own it."

MR. BLANCHARD: Just like in *Southeast Housing*, they went in to use various single entity or organizations to own the properties. That's simply the way that this are financed and structured. An organization like American Housing has housing projects all over the country clearly going in and using single entity, limited partnerships, or corporations, is the preferred way to do it. It's pointed out in the --

in the *Harris County v. Southeast Texas Case*.

CHIEF JUSTICE JEFFERSON: Any other questions?

MR. BLANCHARD: Thank you, your Honor.

REBUTTAL ARGUMENT OF MICHAEL B. HUGHES ON BEHALF OF THE PETITIONER

MR. HUGHES: Just to follow up on the point or upon the question Justice Brister was asking is that you're right that the CHDO or the charity could have purchased this thing but it chose not to. It chose to put it in a limited partnership. Some of the reasons advanced for this maybe in some protection, liability protection instances. But I would argue that they -- they want -- they want to get the benefits of the exemption but they want the protection of the liability in the -- you can have it both ways, but I wouldn't argue. And the other thing would [inaudible] was, it was structured this way for convenience. I mean, it's a complicated ownership structure. When you look at all those triangles and -- if that's a convenient way to own [inaudible], yeah, it's beyond me. It's beyond my legal abilities to even envision something like that.

JUSTICE GREEN: This isn't very convenient either being here.

MR. HUGHES: Well --

JUSTICE GREEN: Up here as they say.

MR. HUGHES: The -- the -- the other thing I was going to follow up on -- on one question that Justice Hecht raised earlier, I think you can argue that 11.1825 sort of clarifies this thing 'cause it -- it -- the statute itself says that notwithstanding subsection (b) they can still qualify if its general partner of -- of the organization, of limited partnership that owns the entity. And I made it clear by that that something less than the record of the title owner would be applicable.

JUSTICE HECHT: That doesn't apply here 'cause it's still one more step for move.

MR. HUGHES: Well, it didn't apply cause the years don't work for it in the -- in that [inaudible].

JUSTICE HECHT: But it work [inaudible] years with 1825 apply?

MR. HUGHES: Oh, I think -- well except in -- in this case, the CHDO is not even a general partner.

JUSTICE HECHT: Right.

MR. HUGHES: It's one step from losing that.

JUSTICE HECHT: The CHDO owns CD Captain's Landing which -- which is a 100 percent member of TRQ Galveston, which is the general partner.

MR. HUGHES: Correct. Correct. And the other point I was gonna make is they were having about Southeast Texas Financing which was relied upon by them. I would argue that case is irrelevant to this one. That case did not deal with the same section we're talking here, 11.182. That case didn't deal with CHDOs. It dealt with government housing. That was a structure owned by the government itself. It's [inaudible], that was created under the Housing Finance Corporation's Act. And I -- I think why that's an important distinction, if you look at that the enabling statute there, it's under the local government code 394-051. And unlike this statute, it specifically allows the housing authority not to hold record title to the property. I think it is an important distinction and it's one that could have been dispositive with the case. That court went on and started to talk about all of the right to

compel legal title with all those issues which I don't even think to get to address that situation.

The other thing if -- like I was pointing out, I'm not gonna even speak for this today, but whether equitable ownership was insufficient to qualify for the exemption was not even raised at the summary judgment stated. Their whole argument at that point was if they were qualified under 11.182(e). And even in that -- and that argument wasn't -- it applied even though this was a free 2001 apartment complex. And so, we've got to come full circle or AHF has come full circle. In closing, I would just say that, you know, the -- the other entity that structured this thing, they are the ones that set it up for a purpose and they've got to comply strictly with the provision of the statute in order to come with the exemption.

CHIEF JUSTICE JEFFERSON: Thank you, Counselor. The cause is submitted. There concludes arguments for this morning and the Marshall will now adjourn the Court.

SPEAKER: All rise. Oyez, oyez, oyez. The Honorable, the Supreme Court of Texas now stands adjourned.

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