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T. Patton Youngblood v. Estate of Reinaldo Villanueva

SC06-1205

WE'LL
MOVE TO OUR NEXT CASE THIS
MORNING, WHICH IS YOUNGBLOOD
VERSUS VILLANUEVA.,,

>> THANK YOU, YOUR HONOR.
MAY IT PLEASE THE COURT.
MY NAME IS SCOTT SAMIS.

HE REPRESENT PATTON
YOUNGBLOOD.

THE QUESTION IS WHETHER THE
CASTILLO QUESTION SHOULDN'T
APPLIED WHERE AN OWNER TURNS
HIS CAR OVER TO A
CONSIGNMENT LOT PER SE.

>> YOU COULD TELL ME WHERE
WE'RE IN CONFLICT IN THE
CASE?

>> WELL, YOUR HONOR.

>> WELL, IT APPEARS WHAT THE
APPELLANT ATE COURT, THE
TRIAL COURT GRANTED A SUM MY
JUDGMENT SAYING THAT THE
DANGEROUS UNSTREW MENTALITY
DOCTRINE WOULD APPLY OR IN
FAVOR OF YOUNGBLOOD WOULD
NOT APPLY, AND THE DISTRICT
COURT OF APPEAL UNDER THE
CASES NEVER DEAL WITH THIS,
SO THEY REVERSED THAT.
IS THAT NOT PROCEDURERAL
SITUATION HERE?

>> WELL, YOUR HONOR, I THINK
THAT THE CONFLICT EXISTS
BECAUSE YOU CAN NOT
RECONCILE THE DECISION IN
THIS CASE WITH SEVERAL
DECISIONS FROM BOTH THIS
COURT AND THE APPELLATE
COURT.

>> HAS THIS COURT OR ANY
OTHER APPELLATE COURT EVER
CONSIDERED THESE FACTS THIS
THE CONSIGNMENT AGREEMENT
THAT MAY HAVE MULTIPLE

FACTORS INVOLVED?

>>, NO NOT CONSIGNMENT AGREEMENT BUT LEGALLY IN DISTINGUISHABLE SITUATION. >> THAT BECOME AS QUESTION WHETHER THEY ARE LEGALLY THAT IS WHAT YOU ARE SAYING THEN?

>> YES.

>> THOSE ARE LEGALLY INDISTINGUISH KBL TO THE SAME FACT AND THAT A SERVICE REPAIR BUSINESS IS THE SAME THING AS CONSIGNMENT.

>> IS THAT YOUR POSITION?

>> YEAH, IT IS, YOUR HONOR.

>> LET ME ASK YOU.

I HAVE BEEN THROUGH THIS RECORD.

I AM HAVING A HARD TIME UNDERSTANDING WHAT THIS QUOTE CONSIGNMENT WAS IN THAT THERE APPARENTLY WAS NO CONSIGNMENT AGREEMENT WRITTEN AGREEMENT BETWEEN APONTE AND MR. YOUNGBLOOD.

THE TIGHT TOLL THE VEHICLE

-- THE TIGHT TOLL THE

VEHICLE WAS NOT IN

MR. YOUNGBLOOD'S NAME AND

THE -- THERE ISN'T ANYTHING

ON THE RECORD WHICH REALLY SETS OUT WHAT THE AGREEMENT

BETWEEN THE OWNER OF THE

VEHICLE OR IF YOU CONSIDER

HIM TO BENEFICIAL OWNER BY

REASON OF THE DIVORCE DECREE

AND HIS CAR DEALERSHIP SO I

AM HAVING A HARD TIME

UNDERSTANDING WHAT, WHAT THE

CONSIGNMENT WAS.

>> WELL, THINK, YOUR HONOR,

IT GREW OUT OF THE DIVORCE

SETTLEMENT, WHERE

ESSENTIALLY MR. YOUNGBLOOD

AGREED TO HANDLE THE SELLING

OF THE CAR WHICH HAD BEEN IN

HIS WIFE'S NAME.

I BELIEVE THAT WAS

MEMORIALIZED IN THE DIVORCE

DECREE, HE TOOK POSSESSION

OF THE CAR, WENT TO APONTE,

I THINK APONTE AND

MR. YOUNGBLOOD EXPLAINED

THAT THE DEAL WAS APONTE,
TURNED THE CAR OVER, AN
EXTREME AUTO WOULD SELL THE
CAR AND THEY WOULD GET
COMPENSATED FOR DOING THAT
SALE AND MR. YOUNGBLOOD SAID
THINK I WANT THE MONEY.

>> WELL, WOULD IT BE ANY
DIFFERENT THAN IF HE TOOK IT
OVER TO THE NEIGHBOR AND
SAID, I WANT TO THIEVE CAR
WITH YOU, IF YOU GET -- I
WANT TO LEAVE THIS CAR WITH
YOU, I HAVE TO HAVE \$16,50
BECAUSE THAT IS THE LIEN ON
THE CAR, IF YOU GET
ANTICIPATE MORE, YOU GET, IT
IS ALL YOURS.

I MEAN, HOW WOULD THAT BE
DIFFERENT THAN WHAT HAPPENED
IN THE INSTANCE?

>> HI YOU THINK THE OF KEY
DIFFERENCE THERE, THE
DIFFERENCE BETWEEN A
PERSONAL RELATIONSHIP WHERE
A CAR LOT IS IN THE
COMMERCIAL BUSINESS OF
SELLING CARS.

THAT I REALLY GETS TO THE
ROOT OF THE REASON FOR THIS
EXCEPTION TO THE DANGEROUS
INSTRUMENTALITY DOCTRINE
WHEN THE CASTILLO COURT
LOOKED AT THE CASES FROM THE
'60s AN '70s THAT DEVELOPED
THIS LAW, THIS EXCEPTION, IT
LOOKED AT THE FACT, WHEN A
PERSON TAKES THE CAR AND
GIVES IT TO A FRIEND OR
GIVES IT TO A NEIGHBOR OR
SOMEBODY YOU KNOW, THAT
CREATES SUPERIOR MASTER
SERVANT RELATIONSHIP.

I AM GIVING THIS YOU HE CAR
TO DRIVE IT AROUND.
I AM RESPONDABLE FOR YOU
DOING IT.

IT IS DIFFERENT SITUATION
WHEN YOU ARE GOING TO A
SERVICE AGENCY, A BUSINESS,
IT DEALS WITH CARS, IT
DOESN'T DRIVE THEM AROUND,
BUT DOES SOMETHING ELSE WITH
THEM, SUCH AS LIENS THEM,

FIXES THEM, VALLET PARKS
THEM, UM.

>> WOULDN'T THAT EXCEPTION
INTENDED TO COVER A
SITUATION IN WHICH A PERSON
TAKES THEIR CAR TO A DEALER
AND IN THE BEGINNING, AND
THE CAR, AND THE CAR REPAIR
OPERATION HAS TO HAVE THE
CAR TO FIX IT AND THEN
TEST-DRIVE IT TO MAKE SURE
IT IS FIXED AND THEN THERE
IS AN ACCIDENT IN THE
TEST-DRIVE.

I MEAN, THAT IS THE TYPE OF
SITUATION HERE.

NOT A SITUATION IN WHICH YOU
JUST TURN YOUR VEHICLE OVER
TO SOMEBODY AND THEY TAKE IT
AND IN THE RECORD,
APPARENTLY, THIS GUY WAS
TAKING THESE CARS HOME ON A
REGULAR BASIS, USING THEM
PERSONALLY, THERE WAS NOT
ANY TYPE OF AGREEMENT THAT
WOULD KEEP HIM FROM DOING
THAT.

>> THAT IS CORRECT, YOUR
HONOR.

THAT HE IS PRECISELY WHY
THIS SITUATION FALLS DEAD
CENTER IN THE CASTILLO RULE,
BECAUSE WHEN YOU LOOK AT THE
TYPE OF SERVICE THIS
INVOLVED.

IT IS REALLY NO DIFFERENT
FROM ANY OTHER SERVICE.
WHEN A CONSIGNMENT LOT TAKE
AS CAR.

IT STORES IT.

IT ADVERTISES IT.

I DISPLAYS OUT IN THE LOT.

I MOVES IT AROUND.

MOST IMPORTANTLY, FOR YOUR
EXAMPLE, TEST-DRIVES IT.

NOT ONLY ARE THEIR
TEST-DRIVES WITH THE PEOPLE,
THE MECHANICS, THE PERSONNEL
THERE, THEY ARE SUPERVISING
TEST-DRIVES FROM PEOPLE IN
THE PUBLIC, SO THAT IS ALL
THE MORE LACK OF CONTROL AND
TRUST THAT IS PUT IN THE
COMMERCIAL BUSINESS THAT HAS

SOLE CONTROL, ABILITY TO CONTROL THAT CAR, MOREOVER ON THE MICHALEK DIVISION, IN THE CLEANING CASE, IT DOESN'T MATTER, THE TYPE OF SERVICE DOESN'T CHANGE THE OWNER'S DILEMMA, THE OWN IN'S DY LIMB MACE, YOU ARE RAESING THIS CAR TO COMMERCIAL ENTITY, YOU DON'T KNOW THESE PEOPLE, THEY ARE GOING TO CONTROL IT. THEY ARE GOING TO MAKE ALL DECISIONS.

>> HAVE WE EVER DISTINGUISHED, WHEN YOU SAY COMMERCIAL ENTITY, BASE KNOW WHEN OF THE REASONS FOR THE EXCEPTION IS STATED AS INJURED PERSON CAN LOOK TO THE BUSINESS WHICH IS FREQUENTLY BETTER ABLE TO USE CARE AND INSURE AGAINST THE FINANCIAL RISK OF INJURY, I WAS THINKING OF THAT WITH REFERENCE TO THE CLEANING SERVICE OR THE CLEANING A CAR, I MEAN, THERE ARE LOTS OF JUST SINGLE INDIVIDUALS THAT DO CLEANING OF CARS AND THEY TAKE IT SOMEPLACE ELSE, SO HAVE WE ACTUALLY REQUIRED FOR THE EXCEPTION TO APPLY WHETHER IT IS THE -- YOU ARE HAVING YOUR MAYBEOR REPAIR A VEHICLE, OR YOU ARE HAVING YOUR NEIGHBOR, WHERE YOU CONSIGN IT, THAT IT A BUSINESS ENTITY, THAT I BE INCORPORATED ENTITY TO HAVE THAT PROTECTION OR THAT -- I AM THINKING OF THIS FOR NOT JUST THIS SITUATION, BUT OTHER SITUATIONS.

HAVE WE MADE THAT DISTINCTION IN ANY CASE?

>> NOT EXPLICITLY, YOUR HONOR.

THE STATEMENT HAS BEEN MADE BY THE MICHALEK CASE, THE TYPE OF SERVICE IS NOT RELEVANT.

THERE WAS NEVER A MENTION OF

SOMEONE IN THE BUSINESS AS
OPPOSED TO --

>> BUT YOU AGREE THAT IS ONE
MUCH OF THE FOUR STATED
REASONS FOR ALLOWING THIS
EXCEPTION PUBLIC POLICY
EXCEPTION THAT IDEA THAT YOU
ARE, AGAIN, YOU ARE GIVING
OVER YOUR VEHICLE TO
SOMEBODY THAT IS IN A
BUSINESS AND THEN THEY ARE
MAKING THESE DECISIONS,
WHEREAS, THERE COULD BE,
WHETHER IT IS CONSIGNMENT OR
THE PAIR OR CLEANING YOUR
CAR, THERE COULD BE ALL
SORTS OF SITUATIONS WHERE WE
ARE DEALING WITH A SINGLE
PERSON THAT IS DHAING.
WE DON'T SEE! SEEM TO MAKE
THAT DISTINCTION.

>> AND I THINK --

>> THAT IS CORRECT?

WE HAVE NOT?

>> THE COURT HAS NOT.

>> IT WOULDN'T MATTER TO YOU
THEN, WHEN YOU SAY THIS IS A
REAL BUSINESS THAT WE HAVE,
THAT THIS GENTLEMEN TURNED
HIS VEHICLE OVER, IF,
INSTEAD, IT DOESN'T MATTER
ORP THE PURPOSES OF OUR
CASE, WHETHER HE TURNED IT
OVER TO HIS NEIGHBOR, IS IT
TO DO THE SAME THING?

>> WELL, I THINK, THERE MAY
BE A DIFFERENCE BETWEEN A
COMMERCIAL SITUATION AND
SOMEBODY DOING A FAVOR?

IT IS A TRANSACTION.

BECAUSE I THINK ONE OF THE
ASPECTS, AND IT IS NOT
EXPLICIT IN THE CASE LAW,
BUT IT IS CHARACTERISTIC
THAT MAKES IT COHERENT, A
BRIGHTLINE RULE IS THAT THE
DIFFERENCE BETWEEN GIVING
YOUR CAR FOR A FRIEND TO
DRIVE AROUND, TAKING IT TO A
SERVICE AGENCY IS THAT
TYPICALLY, YOU DON'T HAVE
THE ABILITY TO EVALUATE THAT
PERSON'S RESPONSIBILITY AND
THINGS LIKE THAT, IF IT IS

ARMS LENGTH TRANSACTION, THE PUBLIC POLICY, THE PRACTICE CALL ASPECTS OF THE CASE ARE STRONGER IN THAT CATEGORY.

>> BUT AGAIN, MY POINT IS THAT I COULD HAVE MY VEHICLE CLEANED BY, YOU KNOW, THE DEALERSHIP, THE JEEP DEALERSHIP, OR I CAN GIVE MY VEHICLE TO, YOU KNOW, SOME INDIVIDUAL THAT MAY JUST SAY, I AM DOING THIS, EITHER WAY, UNDER OUR CASE LAW, IT WOULD, THAT EXCEPTION WOULD APPLY, CORRECT?

>> YES, BECAUSE IT IS THE PURPOSE OF TURNING OVER THE CAR THAT REALLY MATTERS.

IS IT FOR TO DRIVE IT AROUND AND OPERATE IT?

IF WOULD YOU LOAN A CAR TO TRANSPORTATION, OR IS IT SOMETHING ELSE?

>> WHY SHOULDN'T WE, I MEAN, WE ARE FOLLOWING UP ON WHAT JUSTICE LEWIS SAID, THAT THIS IS THE LITTLE, YOU KNOW, THERE IS A DISTINCTION HERE BETWEEN TAKING YOUR CAR TO A REPAIR TO GET IT REPAIRED SO THAT THEY CAN FIX DO, THE FRONT-END ALIGNMENT, THEN, THEY WILL TAKE IT OUT AND TEST IT.

IN AN INSTANCE IN WHICH YOU ARE GOING TO GIVE YOUR CAR TO A DEALER AND THEY ARE GOING TO TRY SELL IT FOR YOU AND IN AN INSTANCE, IF THERE IS GOING -- IF THE EXCEPTION IS GOING TO EXTEND TO THAT TYPE OF AN ARRANGEMENT, WHY SHOULDN'T WE REQUIRE THAT IT BE IN WRITING, SO THAT EVERYONE UNDERSTAND WHAT THE EXTENT OF TURNING THE VEHICLE OVER TO THE DEALERSHIP BE?

I MEAN, THERE WAS WRITING IN THIS INSTANCE THAT JUST WASN'T SIGNED BY YOUR CLIENT, RIGHT?

>> WELL, YOUR HONOR, I THINK THAT THE IMPORTANT

CHARACTERISTIC OF THE TRANSACTION IS WHATEVER EVERYONE KNOWS IS ENTAILED IN SELLING A CAR AS OPPOSED TO FIXING A CAR.

TYPICALLY, WITHIN YOU TAKE YOUR CAR TO MA CAN ING, THERE IS NO BUSINESS CONTRACT THAT TALKS ABOUT TEST-DRIVING AND THINGS LIKE THAT.

I WOULD SAY THAT 99%.

>> WHEN THEY SELL YOUR CAR, THERE GENERAL LIS?

>> THERE IS, BUT IT DOESN'T, IT DOESN'T CHANGE THE CHARACTER OF WHAT EXTREME AUTO IS DOING.

TEST-DRIVING IS AN INTERGRAL PART OF SELLING A CAR JUST LIKE TEST-DRIVING IS AN INTERGAL PART OF REPAIRING A CAR.

IF YOU LOOK AT THE WAY THIS RULE IS DEVELOPED, THERE IS REALLY NO REASON TO DISTINGUISH A CAR LOT FROM A REPAIR SHOP.

>> WELL, SURE IS THERE. THEY DO TWO DIFFERENT THINGS.

IT IS NOT AT ALL THE SAME THING.

ONE IS REPAIRS.

YOU ARE GOING TO KEEP THE VEHICLE.

VUL THE CONTROL OVER IT.

THE OTHER ONE IS, YOU HAVE GIVEN UP CONTROL?

IF YOU HAVEN'T ESTABLISHED THAT, IT SEEMS TO ME, YOUR BETTER ARGUMENT THAT IS THE REAL AND TRUE BENTION OWNERSHIP HAS PASSED, HE NO LONGER MAINTAINS OWNERSHIP, THAT IT IS PASSED, IT IS ENTITLE ONLY, BUT THAT TO TRY TO MAKE THIS DISTINGUISH THAT THE SALE OF THE VEHICLE IS THE SAME AS SERVICING, I DON'T SEE WHERE THAT COMES FROM.

WELL, AS A MATTER OF FACT, IN THIS RECORD, THERE IS NO

DISPUTE THAT MR. YOUNGBLOOD
TURNED THE CAR OVER ON
DECEMBER 4th AND IT HAD
NOTHING TO DO --

>> HAS NO LEGAL RECOURSE TO
HAVE THAT RETURNED?

IT WAS NEVER SOLD?

HE NEVER GETS IT BACK?

>> NO, HE COULD GET IT BACK.

>> THAT IS ISTINCTION, THAT
IS THE PROBLEM HERE.

IF HE HAD ASSIGNED IT TO
THEM, HE WOULD NO LONGER
HAVE THE BENEFICIAL
OWNERSHIP.

THEY DIDN'T DO THAT IN THE
CASE AS IT SEEMS TO ME, DID
THEY DO THAT?

>> BUT YOU ALSO HAVE THE
RIGHT TO GET YOUR CAR BACK
WHEN IT IS DONE BEING FIXED
AS WELL.

TURN OVER CONTROL OF THAT
CAR FOR THE PURPOSE OF THE
SERVICE BEING PERFORMED
WHICH IS DISPLAYING,
ADVERTIZING, SELLING,
TEST-DRIVING IT.

IF, FOR EXAMPLE, AFTER
PERIOD OF TIME, YOU WENT
BACK, CALLED UP AND SAID,
YOU KNOW WHAT?

IT IS TAKING TOO LONG, I
WANT THE CAR BACK, THEN, I
THINK, HIS VICARIOUS
LIABILITY REAWAKENS THAT
POINT, BUT WHILE IN THE
RECORD IS ABSOLUTELY CLEAR,
HE HAS RELINQUISHED ALL
CONTROL, LEFT THE CONSIDER
ON THE LOT, THAT IS NO
DIFFERENT THAN LEAVING IT TO
BE FIXED, THEN GETTING IT
BACK LATER.

>> HAVE WE HAD THIS REAWAKENING
CONCEPT APPLIED?

>> ACTUALLY, YOUR HONOR,
THERE HAS BEEN.

>> WHICH ONE WAS THAT?

>> I BELIEVE, IN THE LIBO
CASE, THEY TALK ABOUT THE
GOING AND COMING RULE, SO
THE RULE THAT ESTABLISHED
WHEN THE CAR IS EVENTUALLY

TAKEN TO THE BUSINESS AND LEFT WITH THE BUSINESS, THAT IS VICARIOUS LIABILITY STOP ON THE WAY TO THE BUSINESS, AS IN THE MICHALEK CASE, ON THE LOPEZ CASE, THAT IS PART OF THE GOING AND COMING, YOU ARE RESPONSIBLE IN THE OTHER CASE, YOU ARE DONE, THE CAR WAS BEING RETURNED TO THE OWNER AND THERE WAS AN ACCIDENT AND THERE WAS LIABILITY THERE.

SO THERE IS EVENTUALLY BEEN THIS GOING AND COMING RULE, BUT WHEN ARE IN THAT COCOON OF NO CONTROL, NO NEGLIGENCE, COMPLETE CONTROL BY THE ENTITY, BY THE SERVICE ENTITY, THAT IS WHEN THIS EXCEPTION KICKS CAN IN.

>> IS IT PART OF THE UNDERLYING POLICY BEHIND THE SHOP EXCEPTION, I THINK, THERE WERE SEVERAL REASONS FOR THE EXCEPTION, IS THEIR ONE OF THE REASONS THAT THE PERSON TO WHOM THE CAR IS ENTRUSTED AS HAS FINANCIAL RESPONSIBILITY OF ITS OWN, SO THERE IS SOME KIND OF INSURANCE THAT WILL BE, THAT WILL APPLY, SO WHOEVER IS INJURED BY THIS CAR IS GOING TO BE ABLE TO RECOVER DAMAGES FROM SOMEBODY, IT MAY NOT BE THE OWNER OF THE CAR, BUT PIT IS SOMEBODY TO WHOM THE CAR WAS ENTRUSTED, THAT IS PART OF IT?

>> YOU ARE RIGHT, DOWNHOR, IN THE CASE, THERE WERE DEFENDANT, THE APONTE PERSONALLY AND THE CAR DEALERSHIP WERE BOTH DEFENDANT, AND THEY SETTLED OUT.

>> SO THAT IS PART OF THE, SHOULD IT BE PART OF REQUIREMENT THEN, IF THERE IS GOING TO BE AN ABC LOSING OF THE OWNER OF THE CAR WHEN THE OWNER ENTRUSTS THAT I THE OWNER ASCERTAINED THAT

THE ENTITY AND TRUSTED WILT DOES HAVE INSURANCE THAT WOULD RECOVER COVER ON THE EVENTUALITY OF AN ACCIDENT? I HAVE NOT SEEN THAT, THAT POLICY ANNUNCIATED IN ANY OF THE CASE LAW.

>> THE REQUIREMENT SEEMS TO BE CON YOU CYST TENT WITH THE POLICY BEHIND THE EXCEPTION.

>> I THINK THE PRESUMPTION IN THESE CASES, THEY DON'T TALK ABOUT THEM HAVING COVERAGE.

THEY SAY THEY HAVE FINANCIAL RESPONSIBILITY FOR IT.

I THINK THERE IS PRESUMPTION THAT COMMERCIAL ENTERPRISE WILL HIM V.

>> THAT IS WHY I ASKED YOU. RRL, JUSTICE CANTERO, THAT IS THE EXPLICIT UNDERSTANDING BECAUSE WE SAID IN MICHALEK, CAR CLEANING SERVICE, I AM NOT SAYING ANYTHING ABOUT NASCAR CLEANING SERVICE, BUT NOT BELIEVING THAT IS, YOU THE, A MAJOR COMMERCIAL ENTITY, YOU KNOW, THROUGHOUT THE COUNTRY.

IT SEEMS THAT THAT WOULD BE A GOOD SOMETHING TO WRITE IN FOR ALL OF THESE, IF WE'RE GOING TO DO ANY EXCEPTIONS, THAT THERE BE SOME UNDERSTANDING, THAT THIS IS RESPONSIBLE COMMERCIAL ENTITY.

>> YEAH THAT I THINK IS A RANABLE CONDITION TO PUT ON USE.

>> LET'S GO INTO THAT THEN. GARAGE OPERATION COVERAGES DON'T COVER CARS LEFT TO BE SOLD, DO THEY THEY COVER CARS THAT ARE OWNED BY DEALERSHIPS.

I HAVE NEVER SEEN ONE THAT KOOFERS SOMEBODY ELSE'S VEHICLE.

>> BUT THERE SPECIFIC COVERAGE FOR CONSIGNMENT

LOTS AS WELL, YOUR HONOR.
IT IS DIFFERENT.

>> IN THIS INSTANCE, WHAT
THIS CAR DEALER DID WAS THAT
HE HAD A CONSIGNMENT
AGREEMENT IN WHICH HE SAID
THAT THE DEALER WILL NOT BE
LIABILITY FOR SUCH VEHICLE
WHILE EXTREME AUTO SALES AN
OWNER MUST KEEP FULL
INSURANCE COVERAGE ON THE
VEHICLE.

I MEAN, THAT WAS THEIR
SCHEME, RIGHT?

>> YES, THAT IS CONTRACTUAL
OBLIGATION BETWEEN THE TWO.

>> OKAY.

>> IT DOESN'T EFFECT THE
COMMON LAW RESPONSIBILITY.

>> THAT GOES AGAINST WHAT
YOU ARE SAYING.

THAT IS WHAT WE WERE TALKING
ABOUT.

THAT IS THE FACT OF LIFE IN
THESE KINDS OF SITUATIONS,
YOU ARE DEALING INFANCY LAND
TO SAY ALL OF THESE GARAGE
COMPANY, THE USED CAR LOTS
HAVE LIABILITY COVERAGE IN
ALL OF THE VEHICLES.

THAT IS PART OF THIS RECORD?

>> OH, NO, NO, I DON'T THAT
IS TRUE AT ALL, YOUR HONOR.

>> THIS WHOLE THING IS TO
DETERMINE IF THERE IS
FINANCIAL RESPONSEK, THAT
RESTS WITH THE OWNER OF THE
VEHICLE.

BUT NONE OF THE CASE LAW FOR
THIS POINT HAS CONDITIONED
THE APPLICATION OF THIS
EXCEPTION ON THE ASSISTANCE
OF COVERAGE.

>> WELL, YOU ARE ARGUING,
THAT IS THE FINANCIAL
RESPONSIBILITY, DID I
MISUNDERSTAND YOU?
EYE THOUGHT WERE YOU
ANSWERING THE QUESTIONS BY
SAYING YES THE FINANCIAL
RESPONSIBILITY IS THE PART
OF THE EXCEPTION.

NOW YOU ARE SAYING IT IS
NOT?

>> NO.

DLAFS RENS BETWEEN HAVING INSURANCE ON TOP OF IT.

>> FLORIDA ALWAYS LOOKED TO FINANCIAL RESPONSIBILITY IN THE TERMS FOR AUTOMOBILE DAMAGE, ON ROADWAYS AS HAVING INSURANCE.

I MEAN THAT IS THE WHOLE IDEA, THE FINANCIAL RESPONSIBILITY LAWS ALL CENTERED ON INSURANCE OR POSTING A BOND.

>> I UNDERSTAND THAT, BUT LOOK AT IT THIS WAY -- DINNER EVERY AP MR. CATION OF THIS, OF THIS EPTION EXCEPTION, YOU HAVE OWNER WHO RELEASE AS CAR ON THE REPAIR LOT.

YOU DON'T COME AFTER THE INSURANCE, YOU DON'T COME AFTER THE OWNER BECAUSE THERE IS INSURANCE THERE. THE TARGET OF LIABILITY AND FAULT IS NOT DETERMINED BY THE EXISTENCE OF INSURANCE IN THE CONTEXT OF THIS CASE LAW.

>> WE ARE USING UP YOUR TIME VERY RAPIDLY WITH QUESTIONS, WE'LL LEAVE IT TO YOU.

I UNDERSTAND THAT, I WANTED TO MAKE ONE POINT ABOUT WHY THE CONSIGNMENT SHOP FALLS IN THE SAME CAT GR RIFF REPAIR.

JUDGE PARTICIPATED IN A VALLET CASE, IN FACT, WHEN THEY TALKED ABOUT EXAMPLE OF TURNING CARS OVER TO BUSINESSES WHERE THERE WOULD NOT BE LIABILITY, ONE OF THE THINGS IS A CAR DEALERSHIP WAS ACTUALLY MENTIONED. THIS CASE WAS CITED IN THE CASTILLO DECISION, THEN THE BEST EXAMPLE WAS THE FRAUGHT CASE WHERE THE CAR WAS BROUGHT, THE AUCTION, SIGNED OVER, THE AUCTION NEAR TAKES IT, HITS SOMEBODY, THAT IS A SALE, IT IS INDISTINGUISHABLE TO THIS

CASE.

THAT IS WHERE THE CONFLICT IS.

>> YOU RELIED ALOUT ON THE MY MICHALEK CASE FOR THE PROPOSITION THAT ANY KIND OF SERVICE WOULD BE INCLUDE ON THE EXCEPTION, CORRECT?

BUT IN THAT CASE, THEY ALSO TALKED IN TERMS OF THAT THIS SERVICE EXCEPTION ONLY APPLIES IF THE VEHICLE, THE NEGLIGENT USE OF THE VEHICLE IS DOING THE SERVICE OR THE SERVICE-RELATED ACTIVITY.

>> AND SO, WHY UNDER THE CIRCUMSTANCES OF THIS CASE IS IT NOT APPLY BECAUSE AS I UNDERSTAND, YOUR CLIENT WAS NOT, NOT YOUR CLIENT, BUT THE DRIVER OF THE VEHICLE WAS NOT USING THE CAR FOR SERVICE OR SERVICE-RELATED ACTIVITIES AND HE HAD TAKEN THE CAR OFF ON THE LOT.

SO SINCE IT WAS NOT BEG USED FOR THAT SERVICE, YOU SAY IT WAS BEING, THAT IT WAS THERE, WITH WHY DOES THIS EXCEPTION NOT APPLY?

>> YOUR HONOR, THINK THINK HE RECORD IS CLEAR, EVEN OPPOSING COUNSEL WOULD AGREE, THE REASON HE HAD THE CAR IN THE FIRST PLACE, HE SAID HE REMOVED CAR, PART OF THE DUTY OF TAKING THIS CAR TO SELL IT IS TO SECURE IT. HE HAD VANDALISM ON THE LOT. HE REGULARLY WOULD TAKE THE HIGHER-END CARS OFF THE LOT AT NIGHT, SO THE REASON HE HAD THE CAR IN THE FIRST PLACE IS THAT HE REMOVED IT FROM THE LOT.

>> SO YOU THAT I FALLS INTO THE CATEGORY OF SERVICE OR SERVICE-RELATED ACTIVITY?

>> YES, IN FACT, YOU KNOW, THAT HAPPENED IN THE ROBERTS CASE.

THE ROBERTS CASE WAS THE ONE WHERE THE REPAIRMAN TOOK THE JEEP, WENT TO THE BEACH IN

IT.

HE HAD, THERE WAS ACTUALLY A QUESTION AS TO WHETHER OR NOT HE WAS TEST-DRIVING IT AT THE TIME BUT THAT FELL WITHIN THE EXCEPTION OF WELL.

YOU LOOK WITHIN THE PUBLIC POLICY REASON, THE FACT THAT MR. APONTE WAS USING IT FOR SOMETHING THAT WAS TEN USE, MAYBE HE HAD IT OFF THE LOT FOR SECURITY PURPOSES, BUT IT WAS ALSO USING FOR SOMETHING THAT COULD HAVE NEVER BEEN ANTICIPATED BY MR. YOUNGBLOOD.

THAT IS LESS REASON TO PIN MR. YOUNG BOOD.

>> THE REASON FOR VIE VICARIOUS LIABILITY.

YOU HAVE CREATED A RISK BY PLACING THE VEHICLE THERE SO IT CAN BE USED IN THAT WAY, IF HE NEVER TAKEN THAT I WAY, IT WITH NOT HAVE BEEN USED THAT WAY.

>> BUT FOT FOR THAT PURPOSE.

>> THANK YOU, YOURON HONOR. THANK YOU YOU.

>> OKAY.

>> GOOD MORNING.

MY NAME IS KEN DANDAR, THIS IS MY THIRD TIME BEFORE THE COURT HERE IN 28 YEARS OF PRACTICE.

>> THAT MEANS YOU ARE FAIR GAME.

>> I AM FAIR GAME.

>> DID YOU HAVE FUN THE OTHER?

>> VERY GOOD RESULTS.

IT WAS MEDICAL MALPRACTICE CASE.

>> HOW LONG RECORDS ARE OBTAINED?

>> I AM SURPRISED.

I AM SURPRISED.

I AM SURPRISED MICROFISH IS THE BEST WAY BECAUSE CD CAN BE OVER AGE, THEY WILL DESTROY THEMSELVES.

>> THAT IS WHAT WE'RE TOLD.

>> ANYWAY, LET ME ASK YOU A

QUESTION ON THIS.

DO YOU AGREE WITH THE LOWER COURT HERE THAT THE POLICY REASONS BEE HOND THE SHOP EXCEPTION LIE?

>> NO.

NOT AT ALL.

IN FACT, I WILL BE SO BOLD AND JUSTICE PARIENTE MAYBE EVEN BOLD WE'RE HER COMMENT, I THOUGHT ABOUT THIS LAST NIGHT AS I WAS READING AND GETTING PREPARED.

THIS IS THE CASE WHERE THE COURT CAN LOOK AT THE DANGEROUS INSTRUMENTALITY LAW AND ABOLISH THE EXCEPTIONS OF SHOP RULE.

IT MAKES NO SENSE.

YOU KNOW, IN 1920 IN THE SOUTHERN COMFORT CASE. YOU DON'T NEED TO ABOLISH TO WIN, DO YOU WANT TO GO THAT FAR?

>> WELL, I AM JUST SAYING, I AGREE WHOLEHEARTEDLY WITH THE 2nd DISTRICT IN, THEY WERE ON POINT, BUT WHEN LOOK AT THE CASES -- DID

>> IF I TAKE MY CAR DOWN TO PONTIAC, GIVE IT TO THESE, ASK THEM TO ALUNE THE TIRES ON IT, AND TO CHECK IT OUT, MAKE SURE THAT IT IS NOT, THAT THE ALIGNMENT IS CORRECT, AND THEY DRIVE IT ON THEIR LOT DOWN THERE AND THEY HIT SOMEBODY THAT THEY ARE SHOWING A VEHICLE TO THAT I AM STILL PRIMARY RESPONSIBLE FOR THAT? IS THAT THE RULE YOU WANT TO COME OUT?

>> I WANT THE RULE I WANT THE COURT TO ADOPT.

>> OKAY.

>> HERE IS WHY.

>> I UNDERSTAND YOUR POSITION.

>> HERE IS WHY.

IN THE CASE, MR. YOUNGBLOOD, TRIAL LAWYER FROM TAMPA, PRACTITION AS LONG AS I HAVE, HE TAKES HIS LEXUS, HE

IS NOW THE BENEFICIAL OWNER
OF, WHICH I WANT THE COURT
TO SAY, --

>> PAID \$175,000?

ARE THEY PAID -- HAD HE PAID
THE \$175,000 THAT THE
DIVORCE DECREE RIERED
REQUIRED SAID THAT THIS WAS
THE WIFE WAS TO TRANSFER THE
OWNERSHIP IN 30 DAYS
FOLLOWING THE PAYMENT OF
\$175,000, WAS THEIR RECORD
ESTABLISHED THAT THE WAS
PAID?

I HAVE NO IDEA.

SHE GOT ANOTHER CAR ON THE
SAME INSURANCE POLICY.

HE KNEW THIS.

THE CAR SAT AT HIS HOUSE.

HE TOOK OVER.

>> DID HE TRANSFER THE
TITLE?

>> NO, THEY NEVER DID THAT.
WHY, I DON'T KNOW.

>> RIGHT.

>> HE WAS THE BENEFICIAL
OWNER BECAUSE HE WAS LIABLE
SOLELY ON THE NOTE, HE TOOK
IT TO THE UNDER CITIES OF
TAMPA TO A USED CAR LOT,
FISHER AUTOS FIRST, NEXT
DOOR WAS THIS EXTREME AUTO,
HIS DEPOSITION ON THE RECORD
SAYS THE FISHER AUTO HAD NO
SPACE FOR IT.

>> AS I UNDERSTAND IT, THE
TRIAL COURT FOUND THERE WERE
GENUINE ISSUES OF FACT OF
OWNERSHIP.

WE HERE ARE ASSUMING OWNER
SHIP, BUT THAT IS STILL --

>> THE 2nd DISTRICT SAID THE
SAME THING.

>> ALL RIGHT.

I UNDERSTAND YOU ARE
ANSWERING THOSE QUESTIONS.

WE GOT TO ASSUME FOR THE
PURPOSES HE IS THE OWNER.

MY QUESTION TO YOU AS IF AS

WHY, AGAIN, ON ONE HAND, I

WAS LOOKING AT THAT LAST OF

THE POLICY REASON, BUT IF

YOU LOOK AT THE OTHER POLICY

REASONS, WHETHER IT IS, YOU

ARE SENDING SOMETHING TO
HAVE YOUR CAR CLEANED, OKAY,
WE HAVE APPLIED IT OR SAID
WE'RE APPLYING IT THERE, I
CAN'T IMAGINE HOW IN A CAR
CLEANING, WE WOULD THINK
THAT PART OF IT, THEY ARE
GOING TO TEST-DRIVE OUR
VEHICLE.

WE DON'T CARE, SEEM TO CARE
FOR THE EXCEPTION AS TO
WHETHER THEY GOT FINANCIAL
RESPONSIBILITY OR NOT.

AND I AM HAVING A HARD TIME
DISTINGUISHING AND SAYING
WHY THE SAME POLICY REASON
THAT APPLY BEYOND BECAUSE I
THINK THAT THIS SENDING IT
TO AUTOMOBILE SERVICE PLACE
TO ALAIN YOUR FRONT END IS
DISCREET SERVICE THAT IS
UNIQUE.

WE HAVE APPLIED IT.

IT HAS BEEN APPLIED BEYOND
TO A WHOLE HOST OF THINGS
LIKE CAR CLEANING AS AN
EXAMPLE.

WHY ISN'T THE FACT THAT WHEN
YOU HAVE, YOU KNOW, AFTER
YOU HAVE GIVEN OVER
OWNERSHIP, I MEAN, CONTROL,
AND UNDERSTOOD WITHIN THAT
IS THAT DRIVING OF THE
VEHICLE MAY BE INCLUDED.

THAT YOU HAVE NO MORE
CONTROL OVER OR AUTHORITY
JUST LIKE, YOU KNOW, WHY
ISN'T THE SAME POLICY
REASONS APPLICABLE HERE
BECAUSE WE NEVER SAID THAT
PART TO IT THAT THERE HAS
GOT TO BE A REQUIREMENT THAT
THEY NEED TO TEST-DRIVE IT
IN ORDER TO DO THE SERVICE,
WE SEEM TO PUT IT ALTOGETHER.

>> BUT JUST LOOK AT
CASTILLO, THAT IS WHEN YOU
FIRST ANNOUNCED IN 1970,
THAT THE, THAT THE REPAIR
PERSON IS GOING TO BE
EXCEPTION TO THE RULE.

THE 1920 CASE SAID THE OWNER
HAS -- I WILL THROW OUT ALL
CASES BY THE COURT, THE

OWNER IN THE BEST POSITION
TO INSURE FINANCIAL
RESPONSEK, THE OWNER HAS A
DUTY, THE OWNER IS STRICTLY
LIABLE FOR THE OPERATION OF
THE VEHICLE TO WHOM HE
ENTRUSTS IT TO EXCEPT WHEN
YOU GET TO REPAIR SHOP, SO
IF YOU TAKE IT TO JOE BLOW'S
BRAKE SERVICE WHO WORKS OUT
OF A STORAGE PLACE, HE IS ON
THE BUSINESS OF FIXING YOUR
BRAKES, YOU, THERE IS NO
INSUREABILITY THERE, YOU
WALK AWAY FROM IT, HE IS
JUST WEEKEND MECHANIC, HE
TRIES TO FIX YOUR BRAKE.
I DOUBT THIS COURT IN THE
CASE IS GOING ELIMINATE SHOP
EXCEPTION.

I THINK WHAT I AM ASKING
YOU, ASSUMING IT EXIST,
ASSUMING YOU ITS PERIMETER,
WHY AREN'T THE SAME EXACT
POLICY REASONS APPLICABLE?

>> OKAY.

SORRY.

THIS IS A CONSIGNMENT OF A
CAR.

EVERYBODY IS GOING TO MAKE
MONEY.

THIS IS NOT A REPAIR AND
SERVICE.

THIS COURT HAS ALWAYS SAID
IT IS REPAIR AND SERVICE.

>> I GUESS ONE OF THE
REASONS FOR THE SHOP
EXCEPTION IS THAT ONCE THAT
OWNER TURNS OVER THE CAR,
THAT OWNER HAS NO CONTROL
OVER WHO DRIVES THE CAR.
THEY CAN ASSIGN IT TO LITTLE
TEDDY WHO IS 16-YEAR-OLD, GO
TEST-DRIVE THIS CAR FOR US,
AND LITTLE TEDDY GETS IN AN
ACCIDENT, HE DOESN'T EVEN
HAVE A LICENSE.

AND THE OWNERS INTO CONTROL,
AS SOON AS HE GIVES THAT
YOU, HE DOESN'T KNOW WHO IS
GOING TO BE DRIVING, WHO IS
GOING TO BE FIXING IT.

WHY ISN'T THAT THE SAME CASE
WITH REGARD TO CONSIGNING IT

TO SELL THE VEHICLE?

>> BECAUSE THIS COURT HAS SAID THAT ENDOWMENT SITUATIONS, IN THE CASE WHICH I CITE FROM THIS COURT 2000 SAYS IF IT IS BELLMENT SITUATION, THE OWNER REMAINS LIABILITY, NO MATTER WHO IS DRIVING THE CAR.

AND TO BE CONSISTENT, THIS IS A SITUATION, THE OWNER MUST REMAIN LIABILITY.

I AM PERSONALLY DISAGREEING WITH YOUR SHOP RULE EXCEPTION.

I DON'T THINK IT MAKES ANY SENSE BECAUSE --

>> WHAT IS THE MAJORITY RULE ON THAT?

>> PARDON ME.

>> WE ADOPTED BASICALLY THE RATIONAL CASTILLO AND HEARD FROM THE CASE FROM THE FIRST DCA, THEY RELIED ON THE MAJORITY RULE.

WHAT IS THE MAJORITY RULE IN THE JURISDICTION OUTSIDE OF THE STATE OF FLORIDA, US WHAT THE MAJORITY RULE?

>> RIGHT.

OUTSIDE OF THE STATE OF FLORIDA, THIS DOESN'T EXIST. THE OWNER, THE OWNER IS LIABILITY FOR THE OPERATION OF THE CAR UNTIL HE LETS SOMEONE ELSE DRIVE IT.

A WE ARE UNIQUE IN FLORIDA IN HAVING THE DANGEROUS INSTRUMENTALITY DOCTRINE AT ALL.

>> IT IS A GREAT DOCTRINE. IT MAKES SENSE.

IT IS A KILLING MACHINE.

NO, YOU ARE PUTTING A KILLING MACHINE OUT THERE THAT CAN KILL ANYBODY.

>> FOR A LONG TIME HAD THIS SHOP DOWN THUN THE 4th DISTRICT, THERE IS THE CASE ON THE VALLET PARKING AND VALLET PARKING AND IT SEEMS TO ME, THAT MAKES SOME SENSE THAT YOU TAKE YOUR CAR IN TO A RESTAURANT AND TURN IT

OVER TO THE VALLEY PARKER
AND THEY HIT SOMEBODY, AS
THEY ARE PARKING YOUR CAR
THAT THIS CONTRACTOR OUGHT
TO HAVE PRIMARY
RESPONSIBILITY.

>> ANOTHER CASE UNDER THE
5th ON THE AUCTION.

>> THAT IS RIGHT.

>> WE HAVE WELL-ESTABLISHED
LAW.

IF YOU ARE ASKING THIS COURT
TO THROW THAT OUT THE
WINDOW.

>>

>> I AM ASKING THE COURT TO
LOOK AT THE RATIONAL
ORIGINALLY ON THE DANGEROUS
INSTRUMENTALITY DOCTRINE AND
WHEN YOU START MAKING
EXCEPTIONS TO IT, IT MAKES
NO SENSE IN MY HUMBLE
OPINION.

>> SO YOU ARE ARGUING
CONSENT IN CASTILLO.

>> EXACTLY.

>> IT MAKES NO SENSE.

THE VALET PARKER COULD BE
18-YEAR-OLD KID WHO DECIDES
TO OPEN UP YOUR OWN BUS N
YEAH, GO PARK MICAH, HE KIM
IS.

YOU ARE SAYING, GEE, I AM
SORRY, THE RESTAURANT SAID
HE IS PENT CONTRACTOR.

WE NEVER SAID, THOUGH, IF WE
ARE GOING WITH PRECEDENT,
VALLEY PARKING AUCTION, THAT
IS WHY YOU ARE TRYING TO
TELL US TO DUMP THIS WHOLE
THING BECAUSE YOU CAN'T
DISTINGUISH IN GOOD FAITH
THOSE SITUATIONS FROM THIS
CONSIGNMENT WHICH IS WHETHER
IT IS WRITTEN OR NOT IS MUCH
MORE, TO ME, CLOSER TO THE
AUTOMOBILE SERVICE THAN
VALET OR VALET PARKING
SITUATION IT.

>> WELL, RIGHT, THE PARKING
IS NOT A SERVICE TO THE CAR
WHICH THIS COURT SAYS IS
EXCESS.

IT IS SERVICE TO THE OWNER.

>> RIGHT.

WE HAVE OR HAVE NOT HELD THE OWNER LIABLE IN THE PARKING SITUATION?

>> YOU HAVE MOT.

THE APPELLATE COURT HAS.

>> THATS THERE WAN AN EXCEPTION.

>> YES.

>> THE ONLY CASE THAT HOLDS THAT.

>> THAT IS SUPPOSEDLY IN THE SHOP SERVICE, THERE IS NO, THERE IS CERTAINLY NOT A SERVICE, I MEAN, IN OTHER WORDS, THAT WOULD BE A CASE THAT IF WE FOLLOW YOUR, AT LEAST, DISTIPTION TO KEEP IT VERY NARROW, FOR EXAMPLE, TO THE USUAL SERVICE, YOU WOULDN'T HAVE CLEANING, YOU KNOW, CAR CLEANING SERVICES, YOU WOULD NT HAVE ALETS WITHIN THIS EXCEPTION AT LEAST.

>> BECAUSE I THINK THE PARAMOUNT PUBLIC POLICY ANNOUNCED BY THE COURT IS, THE OWNER MUST BE FINANCIALLY RESPONSIBLE TO PROTCK THE VICTIM, THE OWNER CAN THEN TURN AROUND AND SUE THE CLEANING SERVICE, THE CAR DEALERSHIP FOR THE NEGLIGENT OPERATION, BUT IT IS ONLY THE OWNER THAT REALLY CARES ABOUT AND IS CHARGED WITH THE RESPONSIBILITY TO MAKE SURE HIS CAR IS ENSURED FINANCIAL RESPONSIBLE FOR THE DAMAGE OF THE VICTIM, I THINK THE COURT NEEDS TO LOOK AT THE VICTIM'S POINT OF VIEW, THAT THE OWNER, THEY CAN FIGHT AMONGST EACH OTHER, WHO IS PRIMARILY AND SECOND ARY, THAT KILLING MACHINE, SOMEBODY NEEDS TO BE FINANCIALLY SEE, COULD YOU RESPONSEK, ONLY THE OWNER US THE ONE THAT CARES ABOUT THAT.

>> DO YOU CONCEDE IN THE INSTANCE THAT THERE WAS A

CONSIGNMENT AGREEMENT?

>> THERE WAS AN ORAL
CONSIGNMENT AGREEMENT.
>> THAT WAS NEVER SIGNED BLY
YOUNGBLOOD WITH EXTREME.

>> WHAT IS -- TAKING IT
THEIR PERSPECTIVE, WHAT DO
YOU -- WHAT WERE THE TERMS
OF THEIR CONSIGNMENT
AGREEMENT?

>> THE CONSIGNMENT AGREEMENT
WAS MR. YOUNGBLOOD ONLY
WANTED HIS INTERESTED AS
GETTING OFF THE NOTE ON THE
CAR HE WAS SOLELY
RESPONSIBLE.

>> 165?

>> CORE REB.

WHICH HE ACTUALLY GOT OFF OF
IT BECAUSE THE CREDIT UNION
HAD ITS OWN INSURANCE, PAID
OFF THE LOAN.

>> YEAH.

>> SO HE IS NOT A VICTIM.
THE APONTE WAS GOING GET
COMMISSION NO MATTER WHAT
THE CAR SOLD FOR BUT NEVER A
STANDING IN HOW MUCH THE
COMMISSION WOULD BE.

FURBER AUTO SALES GOING TO
GET A PIECE OF THE COME MIX,
BECAUSE IT REFERRED THE CAR
OVER TO APONTE.

>> ANYTHING ON THE RECORD
ABOUT THAT?

> IT IS ON THE RECORD IN
APONTE'S DEPOSITION.

RIGHT, AS TO THE CONDITIONS
OF THEIR HAVING THE CAR IN
THEIR POSSESSION, WHEN IT
COULD BE USED.

>> OH, NO.

>> GOING TO BE PICKED BACK
UP.

>> NO.

>> HOW LONG THE CONSIGNMENT
AGREEMENT?

>> NOTHING.

THERE WAS ENDOWMENT TO PICK
UP THE CAR ANY TIME HE
WANTED TO TO TAKE IT BACK
OHM.

>> NO DIFFERENT THAN IF I
GOT A 17-YEAR-OLD NEIGHBOR

IS AT THE HIGH SCHOOL, I GOT
A VEHICLE THAT MAY BE HOT
FOR HIGH SCHOOL KID, I TELL
HIM TO PUT A FOR SALE SIGN
IN, THIS YOU TAKE IT AND
DRIVE IT TO SCHOOL BACK AND
FORTH, WILL CONSIGN IT TO
YOU, WE'LL SEE IF WE CAN'T
GET THAT THING SOLD?

>> IT IS NO DIFFERENT?

>> NO, THIS COURT HAS HELD
MORE THAN ONCE THAT HE OWNER
OF THE CAR IS LIABLE.

>> YOU KNOW, YOU WANT US TO
OVERRULE THIS WHOLE
EXCEPTION.

UR DON'T HAVE TO DO THAT IN
THE CASE.

I UNDERSTAND.

BUT YOU MUST THINK WE HAVE
JURISDICTION IN THE CASE,
THERE A CONFLICT?

>> THERE IS A CONFLICT WITH
THE VALLET PARKING CASE
BECAUSE THAT IS NOT SERVICE
AND REPAIR.

YOU SEE THE SECOND DISTRICT
STATED, YOU ARE PROVIDING
SERVICE TO THE OWN MER.

>> THE CASE BELOW DECIDED
NOT TO EXTEND THE SHOP
KEEPER'S EXCEPTION TO THIS
CASE AND DETERMINE THAT THE
OWNER WAS LIABLE.

>> YES.

>> RIGHT?

>> I AGRI WITH THAT.

UNDER THE EXCEPTION THAT
CONFLICT WTION THE VALLET
CASE?

>> I AM SAYING THAT THE
DECISION DISAGREES AND
CONFLICTS WITH THE VALLET
CASE, IT MAY DISAGREE,
CONFLICT WITH THE FOUGHT
CASE WHICH IS EMPLOYEE
STRIKING ANOTHER EMPLOYEE ON
THE AUCTION YARD WHERE THE
OWNER, A DEALER, HAD THE
OPTION TO DRIVE THE CAR
HIMSELF, BUT CHOSE TO LET
EMPLOYEE OF THE AUCTION YARD
DRIVE THE CAR AND HE HIT
ANOTHER EMPLOYEE.

I THINK THAT IS -- DOESN'T
FIT THE PUBLIC POLICY UNDER
CASTILLO AND SOUTHERN
COMFORT BECAUSE THAT IS TWO
MOMENTEES HURTING EACH
OTHER, BUT IT IS --

>> THROWS DIFFERENT FACTS,
HOW DOES THAT CONFLICT WITH
THIS CASE?

>> WELL, IT CONFLICT AS
LITTLE BIT BECAUSE THERE IS
NO SERVICE AND REPAIR TO THE
CAR.

>> IT MAY SEEM LIKE SOUTHERN
COMFORT.

IT IS ACTUALLY SOUTHERN CAR

--

>> I WAS WONDERING WHAT CASE
THAT WAS.

MAYBE SOMEBODY IN THIS CASE
WAS DRINKING SOUTHERN
COMFORT WHEN THE ACCIDENT
ECURED.

>> I MADE THAT MISTAKE.

>> ONE OF THE THINGS WE DO
LOOK TO IS TRY TO UNDERSTAND
HOW SOMETHING IMPACTS IN THE
REAL WORLD OF INSURANCE,
JUSTICE LEWIS WAS GIVING
REAL LIFE EXAMPLES.

THE QUESTION HERE, AND IF IT
IS NOT IN THE RECORD, DID K
MR. YOUNGBLOOD HAVE
INSURANCE?

IN OTHER WORDS, THE WAY
INSURANCE WORK, HE DOESN'T?

>> KNOWINGLY LET IT LAPSE.

>> IF HE -- IF HE HAD
INSURANCE, WOULD A POLICY,
DO YOU KNOW, WOULD THE
POLICY COVER IT, DOES THE
POLICY COVER, FOR EXAMPLE,
WHEN SOMEBODY BRINGS A
VEHICLE TO THEIR REPAIR SHOP

--

>> ABSOLUTELY.

>> THE IDEA THAT WE WITH
ACTUALLY IN TERMS OF THAT,
IF WE ELIMINATED THE SHOP
EXCEPTION, THERE IS NOTHING
IN STANDARD OR THEIR
POLICIES THAT WOULD PREVENT
THE OWNER'S COVERAGE FROM
BEING PRIMARY IN THESE

CASES?

>> CORRECT.

>> THE CONE -- THE INSURANCE COMPANY SAYS WE PROVIDE LIABILITY COVERAGE TO YOU IN THE EVENT OF BODILY INJURED CAUSED BY YOUR INSURED VEHICLE.

OF COURSE, THERE IS EXCEPTION FOR THEFT, UNLESS THE OWNER PROVIDES THE OPPORTUNITY LIKE WE, LEFT YOUR KEYS IN IGNITION, EVEN THEN, THERE IS LIABILITY AS LONG AS IT IS A REAL THEFT, BUT THE OWNER'S NEGLIGENT FOR DOING THAT, BUT BASICALLY, NUMBER ONE IS, I WANT THE COURT TO AGREE WITH THE 2 RND DISTRICT.

THE 2nd DISTRICT WAS RIGHT. THE WORDS OF THE DECISIONS OF THIS COURT EXCEPT FOR THE DISTRICT COURT OF APPEALS IN THE VALLET PARKING, WHAT IF YOU WENT AND HAD A CHURCH CAR WASH, ONE OF THE KIDS GETS IN YOUR CAR WHILE YOU ARE TALKING TO PARENT, DRIVES THE CAR AND YOU KILLS ANOTHER KID.

OH, I AM A CAR WASH, THIS IS A CHURCH CAR WASH, I AM AT AT CAR WASH, I AM NOT LIABILITY ANYMORE?

THAT IS HOW THIS CAN GET EXTENDED?

THAT IS WHY I THINK THERE IS ALL THESE CASES, I AM TRYING TO CUT BACK THE WORK A LITTLE BIT, THAT IS WHY ALL OF THE CASES GOING AND COMING RULE, WHAT, MICHALEK, THIS COURT HELD THE REPAIR SHOP IS BRINGING THE CAR BACK TO THE OWNER AT HIS RESIDENCE, THE OWNER IS LIABILITY FOR THE ACCIDENT.

WHY?

I DIDN'T CHOOSE THE PERSON FROM THE REPAIR SHOP TO DRIVE THE CAR.

I AM SORRY, BUT --

>> THAT IS WHAT I WAS TRYING

TO FIGURE OUT.
ONCE YOU BRING IT THERE.
I DON'T UNDERSTAND WHAT KIND
OF USE WOULD OCCUR WHILE
THERE IS IF THEY ARE
SUPPOSED TO BE CLEANING YOUR
CAR.

IT DOES SEEM THAT THERE IS,
SOME INCONSISTENCY, SO AS
YOU SAY, WEAN THE SHOP
SERVICE EXCEPTION, WE DON'T
REQUIRE THAT IF YOU BRING
YOUR CAR INSTEAD OF BRINGING
IT TO THE REPUTABLE SERVICE
AGENT, IF YOU BRING IT TO
SOMEONE ELSE WHO IS A SINGLE
PERSON TO HAVE THE VEHICLE
SERVICED, THAT THIS, THERE
IS NOT A DIFFERENCE WHETHER
THE DANGEROUS
INSTRUMENTALITY IS GOING TO
BE HERE APPLIED OR NOT.

>> THERE IS NO DIFFERENCE.
IT JUST DESTROYS ALL THE
DECISION, THE BASIS OF
THE DECISION, STRICT
LIABILITY, YOU ALL KNOW, YOU
ARE THE ONE THAT HAS THE
BEST POSITION TO PROVIDE
FINANCIAL RESPONSE.
IT DESTROYS IT.

>> THAT WAS ORIGINALLY FOUND
ON RESPONDEAT SUPERIOR, THAT
DOESN'T EXIST IN THE CASE?

>> IN THE CASE?
YOU KEEP GOING BACK TO
ORIGINAL DOCUMENT, WE NEED
TO GO BACK TO THE ORIGINAL
DOCTRINE, THAT ORIGINAL
DOCTRINE WAS IN THOSE
THINGS YOU WERE JUST
MENTIONING BECAUSE THE
RESPONDEAT SUPERIOR
RELATIONSHIP.

>> CORRECT.
CORRECT.
THEN THE COURT SAID IT IS
NON-DELLABLE DUTY, STRICT
LIABILITY.

>> BASED ON THE
RELATIONSHIP?

>> CORRECT.
CORRECT.
CORRECT.

BUT IN OUR BOX IN 2000, THIS COURT SAID IT WAS APPEARANCE, IF IT IS ABELMONT, THE OWNER IS LIABILITY.

THIS IS DEFINITELY ONE, THE 2nd DISTRICT AGREED WITH, THAT HELD THAT WAY, I DON'T SEE HOW YOU MAKE AN EXCEPTION NOW WHEN ALL YOUR PRIOR DECISIONS SAID THE OWNER IS LIABLE FOR THE CAR, THE NEGLIGENT OPERATION OF THE CAR.

>> THERE IS WITH SERVICE AND REPAIR, TOO. RIGHT?

>> WHICH CAUSES MY CONFUSION.

I MEAN, IT IS -- IT IS LIKE EVERY CASE IS DIFFERENT ANALYSIS AND YOU CAN REALLY, YOU CAN'T PUT THEM ALL TOGETHER AND SAY THIS IS COHERENT.

THAT ISY WAS SO BOLD TOLL SAY, YOU KNOW, LOOK AT THE EXCEPTION.

I MAKES NO SENSE, REALLY, IN MY HUMBLE OPINION, IT MAKES NO SENSE BECAUSE YOU CAN TAKE IT TO THE GARAGE MECHANIC, VERSUS THE BIG DEALERSHIP, THIS COURT SAID, IT MAKES NO DIFFERENCE WHAT KIND OF SERVICE, BUT THE 2nd DISTRICT IS ABSOLUTELY CORRECT.

THIS IS NOT SERVICE AND REPAIR.

I AM PROVIDING A SERVICE OF SELLING YOUR CAR.

I AM GOING TO MAKE MONEY ON THAT.

YOU ARE GOING TO MAKE MONEY ON THAT.

THAT IS A BUSINESS VENTURE.

THAT IS WITH THE BEST EXAMPLE, THERE IS NO RECEPTION RESTRICTION ON PICK UP THE CAR.

YOU CAN COME BACK ANY TIME.

THERE IS NOTHING WRITTEN.

>> WE HAVE USED UP ALL OF YOUR TIME.

WE THANK YOU.

>> THANK YOU VERY MUCH.

>> OKAY.

>> WE'LL GIVE HOW MUCH TIME
DO WE HAVE LEFT?

>> I DON'T THINK I HAD ANY,
YOUR HONOR.

>> WELL, WE'LL GAUF LITTLE
TOOIL.

>> WELL, I WANTED TO FOLLOW
UP ON WHAT JUSTICE BELL WAS
SAYING, THAT IS THIS THING.
WHENEVER THE DANGEROUS
INSTRUMENTALITY DOCTRINE IS
INVOKED EVERYBODY FORGETS
WHAT THE BASIS WAS FOR.
IT WAS RESPONDEAT SUPERIOR,
THE REASON WHY THAT IS
CENTRAL TO THE ANALYSIS IN
THIS CASE BECAUSE IT IS ALL
ABOUT TURNING OVER CONTROL
OF THE VEHICLE.

THERE IS NO DOUBT IN THIS
CASE, JUST LIKE IN A REPAIR
SHOP, JUST LIKE IN A VALLET
SERVICE, JUST LIKE IN THE
CASE.

>> YOU WOULD NEVER HAVE IT
FOR ANY, EVER?

>> NO, THE BAIL AM, IN FACT,
THE JURY INSTRUCTION SAYS
THERE IS VICARIOUS
RESPONSIBILITY FOR BAILMENT
EXCEPT, THERE IS A
COMEMENTS, IT SAYS, EX SET
IN THE CASTILLO-MICHALEK
SITUATION, BECAUSE CONTROL
HAS BEEN TURNED OVER TO THIS
ENTITY FOR SOME PURPOSE
OTHER THAN DRIVING THE CAR
AROUND TOWN AND THAT IS WHEN
IT IS NO LONGER A RESPONDEAT
SUPERIOR SITUATION.

IT IS INDEPENDENT CONTRACTOR
SITUATION.

THAT IS HOW THE RULE GRURX
IT CAME WERE THE '60s IN
CASES LIKE FRYE-PETTITTE
SAID, LOOK, THIS IS
DIFFERENT FROM WHAT CREATED
THE DANGEROUS
INSTRUMENTALITY DOCTRINE.
THAT WAS ADOPTED BY HARFRED,
IT WAS ADOPTED BY THIS

COURT, IT WAS DEFINED BY MY CHAL LEG, FURTHER DEFINED BY THE VALLET CASE AN ON THE CASE AND FORM AS COHERENT RULE THAT IS BASED ON THAT CONTROL AND THIS CASE LIES ON THE DEAD CENTER OF IT. IT IS NOT DIFFERENT.

THEREFORE, IT IS IN CONFLICT.

>> THE SAME THING WOULD APPLY, THE EXAMPLE THAT I ASKED.

I HAVE A 17-YEAR-OLD NEIGHBOR, I WANT HIM TO ADVERTISE IT FOR HIM.

I WANT TO COON SIGN IT FOR ME HE CAN TAKE TO IT HIGH SCHOOL.

I WANT YOU TO RUN AROUND WITH THE FOLKS, WITH THE FOR SALE SIGN, THAT WOULD THEN BE PROTECTED UNDER THIS SCENARIO?

>> I DON'T THINK SO BECAUSE I THINK THE LANGUAGE OF THE RULE, IT IS AUTO SERVICE AGENCY.

I THINK THAT IMPLIES WITH THE COMMERCIAL.

I THINK THAT IS FAIR.

>> NOW AGAIN, THAT ISY SAY WE HAVE NEVER DONE THAT FOR SERVICE REPAIR YOU CAN BRING YOUR VEHICLE, THE JIMMY, YOU KNOW, DOWN THE BLOCK, AND WE ARE STILL APPLYING IT, SO I GO BACK TO THAT IF WE ARE GOING TO LOOK AT THIS IN THIS CASE, IT WOULD SEEM THAT WE NEED TO STRENGTH IN THE ISSUE OF THE NATURE OF THE ENTITY THAT IT IS BEING, IT YOU DOING WHATEVER IT IS BEING DONE TO YOUR VEHICLE. IN ORDER TO SHIFT THAT RESPONSIBILITY.

>> MY CLIENT WITH WOO HAVE NO PROBLEM, YOUR HONOR, THIS IS CLEARLY AN ARM'S LINK TRANS ACTION WITH A CAR LOT.

>> WITH OUR ASSISTANCE, YOU ARE ABOUT FIVE MINUTES OVER. WE APPRECIATE THE ARGUMENT, WELLS'S TALK THE KANSDER

ADVISEMENT.
THE COURT WILL TAKE THE
MORNING RECESS.
>> ALL RISE.