Law Office of David J. Stern, P.A. v. Security National Servicing Corp.

SC06-361

THE NEXT CASE ON THE DOCKET THIS
MORNING IS THE CASE OF THE LAW
OFFICE OF DAVID STERN P.A.
VERSUS SECURITY NATIONAL.,,
>> MAY IT PLEASE THE COURT,
COUNSEL, ROBERT KLEIN, FOR THE
LAW OFFICES OF DAVID STERN.
FOR MANY, MANY YEARS, THIS
STATE, LIKE THE VAST MAJORITY OF
THE OTHER STATES IN THE UNION,
HAVE PRECLUDED ASSIGNMENTS OF
LEGAL MALPRACTICE CASES.
>> LET'S GET IN TO THE FACTS OF
THIS CASE.
AND WHY DON'T YOU -- WE ALL HAVE
READ WHAT THE DISTRICT COURT AND
WHAT THE BRIEFS SAY ABOUT THE
FACTS, BUT WHY DON'T YOU
PINPOINT WHAT YOU THINK THE
MATERIAL FACTS OF THIS
PARTICULAR SITUATION IS.
THAT ARE NOT DETERMINATIVE
WITH -- IN THE 4th DISTRICT'S
OPINION.
WHY WAS THE 4th DISTRICT WRONG
UNDER THE FACTS AS THEY --
>> I THINK FOR SEVERAL REASONS.
FIRST OF ALL, THE -- THERE WAS A
KEY ELEMENT THAT WAS PRESENT IN
THIS COURT'S DECISION IN THE
REASON WITS MATTER THAT WAS
ABSOLUTELY ABSENT IN THIS CASE
AND THAT WAS THE RELIANCE BY
THIRD PARTIES, WHICH THIS COURT
FELT WAS COMPELLING AND MADE A
POINT OF NOTING, AND IN THAT
PARTICULAR CASE, THE LEGAL
SERVICES THAT WERE PROVIDED BY
THE LAW!!!!!!!! LAW FIRM WERE DIRECTED AT
THIRD PARTIES WHO NECESSARILY
RELIED UPON THEIR WORK PRODUCT
AND THERE WAS NO ISSUE OF
CONFIDENTIAL INFORMATION BEING
DISDLOASED.

-- DISCLOSED.
IN IT PARTICULAR CASE, THERE'S
NO SUGGESTION OF THAT.
THIS WAS A ROUTINE, MORTGAGE
FORECLOSURE ACTION THAT WAS
HANDLED BY THE FIRM ON BEHALF OF
ANOTHER ENTITY AT THE TIME THAT
THE MALPRACTICE OCCURRED.
SUBSEQUENT TO THE MALPRACTICE,
IN FACT, SUBSEQUENT TO THE POINT
IN TIME WHEN A JUDGMENT WAS
ACTUALLY ENTERED, ADD!!!!!!!! ADVERSE TO THE
NOTE HOLDER, THE NOTE WAS
ASSIGNED AGAIN AND IT IS THAT
PARTY WHO NOW BRINGS THIS CLAIM.
SO THE SUGGESTION THAT THE PARTY
TOOK BY ASSIGNMENT A CAUSE OF
ACTION THAT HAD ALREADY EXISTED
ON DAMAGE THAT HAD ALREADY
ACCRUED PRIOR TO THE POINT IN
TIME WHEN THE CLAIM WAS PURSUED,
IS ENTIRELY INCONSISTENT WITH
THE NOTION THAT I BELIEVE THIS
COURT EXPRESSED IN THE LEBOWITZ
CASE WHERE YOU HAVE THAT LIMITED
ELEMENT OF RELINES AND
PRIVILEGES, THE ATTORNEY-CLIENT
PRIVILEGE IS REALLY NOT HAND
ISSUE AND THE BULK SALE OF PRO
TENSION CAUSE OF ACTIONS FORMAL
PRACTICE IS NOT AN ISSUE.
SURE.
[INAUDIBLE]
[INAUDIBLE]
[INAUDIBLE]
>> I UNDERSTAND.
AND I THINK THAT'S SOMETHING
THAT TROUBLED THE 4th DISTRICT,
I THINK THEY DEALT WITH THE
QUESTION OF IS THERE A WRONG
HERE WITHOUT A REMEDY AND I
THINK THE PROBLEM WITH THAT
REASONING IS TWOFOLD.
NUMBER ONE, THERE IS NO QUESTION
ABOUT THE FACT THAT E.M.C., THE
PARTY THAT HELD THE NOTE AT THE
TIME, COULD HAVE BROUGHT A CAUSE
OF ACTION HAD IT BEEN ADVISED
THAT IN FACT, THE SECOND ACTION
WAS UNTIMELY, THE FIRST ACTION
HAD BEEN DID YOU SAY MISSED,
AND -- DISMISSED, AND IT COULD
HAVE CEASED ALL LITIGATION AT
THAT POINT AND AGAIN OBVIOUSLY

I'M TALKING HYPOTHETICALLY, BUT
WE NEED TO ADDRESS THAT BECAUSE
OF THE SUGGESTION THAT THERE WAS
NO REMEDY AVAILABLE.
IF SOMEONE COMES INTO THE
E.M.C., A NEW GROUP OF LAWYERS
AND SAID BY THE WAY, WE'RE GOING
TO DISMISS THIS ACTION, BECAUSE
IF THE SECOND ACTION WAS FILED
UNTIMELY, THERE IS NO QUESTION
IN MY MIND E.M.C. COULD HAVE
IMMEDIATELY BROUGHT A CLAIM
AGAINST THE FIRM FOR IMPAIRING
ITS COLLATERAL, BECAUSE THE
RESPONDENT'S SEES IN ITS BRIEF
THAT AT THAT POINT IN TIME THEY
COULDN'T RECOVER ON THE
MORTGAGE, THEY COULDN'T
FORECLOSE ON THE MORTGAGE, AND
THAT THE OWNER OF THE NOTE WAS
IN RECEIVERSHIP.
IF YOU TAKE THEIR REASONING, ONE
STEP FURTHER, AND SAY THAT THE
ACTUAL CAUSE OF ACTION FOLLOWS
THE NOTE, WHICH WE DISAGREE
WITH, BUT ASSUMING FOR THE SAKE
OF ARGUMENT THAT'S TRUE, AT THE
POINT IN TIME WHEN NAMC ACQUIRED
THE NOTE, THAT'S WHEN THE CAUSE
OF ACTION ACCRUED, THAT'S WHEN
THE SUMMARY JUDGMENT WAS
ENTERED.
AND THAT'S WHEN A FINAL JUDGMENT
WAS ENTERED.
NAMC COULD HAVE TURNED AROUND AT
THAT POINT AND SUED STEARNS.
IT CHOSE NOT TO.
>> WHAT WAS THE EFFECT THEN OF
THE APPEAL THAT WAS TAKEN IN
THIS CASE?
WASN'T THE ACTION ACTUALLY FINAL
ONCE THE APPEALS COURT DECIDED
THE ISSUE?
>> THAT IS PROBABLY ONE OF THE
MOST CONFUSING ASPECTS OF THE
AVE CRUEL ISSUE IN -- ACCRUAL
ISSUE IN THIS STATE THAT YOU CAN
FIND WHEN YOU READ THE OPINION
AND THE SHORT ANSWER IS NO.
IF YOU LOOK AT THE CASE -- I
ARGUED THE VERY FIRST CASE OF
ABANDONMENT, PENNSYLVANIA
INSURANCE GUARANTEE ASSOCIATION
VERSUS PIKES AND IN THAT CASE

TOOK THE POSITION THAT UNTIL THE APPEAL WAS ARGUED, AND UNLESS THE APPEAL WAS PURSUED, THE CLIENT ABANDONED THE CAUSE OF ACTION.
THE CASES THAT HAVE COME DOWN SINCE HAVE SAID THAT ONLY HOLDS TRUE IF THE ERROR WAS -- OR THE DAMAGE WAS CAUSED BY JUDICIAL ERROR, AND THERE ARE MANY CASES WHICH WE'VE SOOUTED IN OUR BRIEF -- CITED IN OUR BRIEF THAT SAY YOU'RE NOT REQUIRED TO TAKE AN APPEAL.
>> BUT SINCE THEY DID, AND IF THEY HAD GOTTEN RELIEF OUT OF THE APPELLATE COURT, YOU WOULDN'T HAVE THIS ACTION AT ALL AND SO I'M STILL LOOKING AT THIS -- THIS WAS AN ONGOING SITUATION.
THE ACTION WAS DISMISSED IN THE SUMMARY PROCEEDINGS, THE APPEAL WAS TAKEN, MAYBE THERE COULD HAVE BEEN RELIEF IN THE APPEAL PROCESS.
SO WHY DON'T WE HAVE TO WAIT UNTIL THEN?
>> AND CERTAINLY THAT POSSIBILITY EXISTS, BUT THE CASE LAW IN FLORIDA IS THERE ARE DOZENS OF CASES DEALING WITH DOWNSTREAM PERSONS WHO ARE CAUSED HARM BY A LAWYER'S NEGLIGENCE.
UNINTENDED THIRD PARTY BENEFICIARIES AND THE COURTS HAVE INVARIABLY SAID, THAT'S UNFORTUNATE, BECAUSE PRIVITY IS PRIVITY, BECAUSE WE NEED TO RECOGNIZE THE SANCTITY OF THE ATTORNEY-CLIENT RELATION SHOP, AND IF SOME PERSON ON DOWN THE ROAD IS HARMED, --
>> BUT ISN'T THE RELATIONSHIP REALLY THE ATTORNEY HAS THE RELATIONSHIP WITH THE HOLDER OF THE NOTE?
>> AT THE TIME THAT HE PURSUED THE CLAIM, CERTAINLY.
>> AND THROUGHOUT THE LITIGATION HERE, IT WAS THE HOLDER OF THE NOTE THAT REALLY HAD THE INTEREST IN THE LITIGATION, AN

EVEN THOUGH WE END UP WITH SOME THIRD HOLDER OF THE NOTE DOWN THE LINE, IT SEEMS TO ME THAT UNLESS THE PERSON HAS ALL OF THESE INTERESTS THAT GOES WITH THE NOTE, INCLUDING THE CAUSES OF ACTION, THAT WE'RE --
>> BUT THAT PRESUMES THAT THE CAUSE OF ACTION FLOWS WITH THE NOTE.
AND MY POINT SIMPLY IS, IT'S THE HARM THAT GENERATES THE RIGHT OF ACTION.
WHAT'S TROUBLING, YOU KNOW, SOME OF THE JUSTICES IS THE NOTION THAT NAMC DIDN'T BRING THE ACTION AND SIMPLY ASSIGNED THE NOTE.
NAMC HAD HAND ABSOLUTE RIGHT OF ACTION AT THAT POINT IN TIME.
AND THE FACT THAT IT DIDN'T PURSUE AND ASSIGN WHAT WAS THEN AND I'VE REFERRED TO IN THE BRIEF, AS A WORTHLESS NOTE, AND UNDERSTAND, THESE ARE BULK SALES, THESE ARE NOT SINGLE NOTE.
THIS IS PART OF A BULK SALES TRANSACTION, SO THEY ASSIGN A NOTE ON A CLAIM THAT HAS ALREADY BEEN RULED TO BE EFFECTIVELY NO GOOD ON THAT ONE PARTICULAR NOTE AND AT THAT POINT M TIME SECURITY COMES TO IT PRESUMABLY LIKE ANY OTHER PURCHASER HAVING DONE DUE DILIGENCE, THERE IS ON THE RECORD A SUMMARY JUDGMENT AGAINST THEM ON THAT NOTE, SO AT A MINIMUM, THERE IS A DIMINISHED VALUE TO THAT NOTE.
[INAUDIBLE]
>> SURE.
[INAUDIBLE]
>> I THINK IT'S THWARTED IN A DRAMATIC WAY.
IN TWO WAYS.
NUMBER ONE, THE ATTORNEY-CLIENT PRIVILEGE.
IF YOU LOOK AT EACH AND EVERY CASE SAVE ONE AND THAT'S THE CASE OUT OF RHODE ISLAND THAT ARE CITED BY ALL THE CASES THAT SAY THERE ARE MAJORITY CASES THAT ALLOW THE ASSIGNMENT OF A

CAUSE OF ACTION FOR LEGAL MALPRACTICE, IN EACH AND EVERY ONE OF THEM, THERE WAS A ONE-ON-ONE ASSIGNMENT BY THE PARTY THAT HELD THE ATTORNEY-CLIENT RELATIONSHIP TO THE PARTY THAT BOUGHT THE CAUSE OF ACTION WITH EITHER AN EXPRESS UNDERSTANDING THAT THERE WAS AN ONGOING OR A POTENTIAL CAUSE OF ACTION FOR LEGAL MALPRACTICE, SO THERE'S A KNOWING WAIVER ON THE PART OF THE CLIENT OF ANY ATTORNEY-CLIENT PRIVILEGE.

>> WELL UNDER THIS CASE, I MEAN, I'M LOOKING AT THE POLE AT THIS REASONS -- POLICY REASONS THAT WERE EXPRESSED IN CAPLAN, IT SEEMS TO ME THAT A MORTGAGE FORECLOSURE IS THE LEAST OF ANYTHING THAT INVOLVES THIS -- IT'S MERELY A JUDICIAL ACCOUNTING, DID YOU OWE, DID YOU PAY?

AND THAT DOES NOT INVOLVE THE KINDS THINGS THAT WERE INVOLVED FOR EXAMPLE IN A CONFIDENTIAL-TYPE RELATIONSHIP THAT AN ATTORNEY AND A CLIENT WOULD HAVE IN YOUR MEDICAL MALPRACTICE CLAIMS FOR EXAMPLE THAT YOU DEAL WITH.

AND IN OTHER TYPES OF CLAIMS, AND THAT'S WHAT TROUBLES ME, IS CAPLAN SAYS THIS IS WHY, YOU KNOW, WE'RE DOG THIS, AND ALSO, WHEN YOU'RE TALKING ABOUT FLOWING IN THE SAME -- ALONG THE SAME LINES OF WHAT YOU'RE SELLING, SEEMS TO ME THAT'S ALL PART OF IT, AS YOU GO THROUGH.

WHATEVER IS CONNECTED WITH THAT MORTGAGE, THAT'S WHAT I'M TROUBLED WITH, I THINK YOU'RE HEARING ACROSS THE BOARD WITH CAPLAN.

>> I THINK YOU PUT YOUR FINGER ON PART OF THE PROBLEM.

IT'S WHAT YOU'RE SELLING.

ARE WE GOING TO CREATE A MARKETPLACE FOR LEGAL MALPRACTICE CASES BUT LET ME STAY WITH THE LITIGATION INCIDENT JUST FOR ONE MOMENT AND

THEN I WANT TO GIVE YOU OTHER EXAMPLES.
I'M HANDLING A PIECE OF MORTGAGE FOES CLOAR USE -- FORECLOSURE LITIGATION FOR MY CLIENT.
MY CLIENT GIVES ME INCORRECT INFORMATION ON THE MORTGAGOR, MY CLIENT FAILS TO GIVE ME HAND APPROPRIATE ADDRESS, I FILE IN THE WRONG JURISDICTION.
THERE ARE ANY MANNER OF COMMUNICATION THAT IS CAN OCCUR BETWEEN A CLIENT AND THE NOTE HOLDER THAT COULD CAUSE THE LAWYER TO DO SOMETHING INAPPROPRIATE.
THE LAWYER HAS A RIGHT TO DEFEND HIMSELF.
AM I GOING TO BE ALLOWED TO DISCLOSE MY CLIENT'S CONFIDENCES AS PART OF MY DEFENSE WHEN THAT CLIENT MAY BE THREE CLIENTS REMOVED DOWNSTREAM AT THE TIME THAT I COMMITTED THIS MALPRACTICE, HAS NO IDEA THAT I'M ABOUT TO DISCUSS ALL OF THESE COMMUNICATIONS THAT MAY PROVIDE ME WITH DEFENSES IN THIS CASE.
[INAUDIBLE]
>> AND THAT'S WHERE I SAY YOU'VE GOT TO LOOK AT ALL OF THE CASES THAT HAVE ALLOWED ASSIGNABILITY.
IN EACH AND EVERY ONE F THOSE CASES, THEY -- EVERY ONE OF THEM TOUCHES ON THAT ISSUE, BECAUSE EVER 1 IS CONCERNED ABOUT THAT ISSUE.
EVERY ONE OF THOSE CASES SAY WE UNDERSTAND THAT THE ATTORNEY-CLIENT RELATIONSHIP IS CRITICAL.
BUT TO THE EXTENT THAT YOU HAVE KNOWINGLY GIVEN UP YOUR RIGHT TO THAT CLAIM THROUGH THE ASSIGNMENT OR IN THE CASE OF A TRUSTEE, THAT HE NOW STANDS IN THE SHOES OF THE FORMER CLIENT, WE DON'T HAVE THOSE CONCERNS.
THAT'S NOT WHAT YOU'VE GOT HERE WHEN YOU'VE GOT A BULK SALE OF NOTES.
>> LET ME ASK YOU THIS.
I HAVE A THRESHOLD QUESTION ON

THE ISSUE OF HOW WE GOT THIS CASE.
THIS IS HERE ON EXPRESS AND DIRECT CONFLICT WITH CAPLAN?
>> IT IS.
>> WHAT TROUBLES ME IS THAT I THINK YOU CAN CONCEDE THAT THE 4!!
4th DISTRICT ALLOWED ITS OPINIONS, QUOTES OUR OPINION IN CAPLAN, CITES IT SEVERAL TIMES AND APPARENTLY TRIED VERY HARD TO APPLY OUR DECISION.
HOW CAN WE FIND EVEN IF WE DISAGREE WITH THE RESULTS THAT THE 4th DISTRICT REACHED, HOW CAN WE SAY THE OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH CAPLAN WITH CLEARLY THE 4th!!!!!!
4TH D.C.A. WAS TRYING TO APPLY IT IN THE BEST MANNER IT COULD?
>> WELL AND THEY CERTAINLY WERE.
BUT I THINK, UNLESS I'M GROSSLY MISREADING YOUR OPINION IN THE WAY IT WAS CRAFTED AND -- IF YOU LOOK AT THE WAY, YOU KNOW, THE VERY FIRST PARAGRAPH OF THE OPINION THAT YOU DRAFTED, YOU TALKED SPECIFICALLY ABOUT THE FACT THAT IN A CONTEXT WHERE THE LAWYER'S WORK PRODUCT WAS TARGETED AT THIRD PARTIES, THOSE CONCERNS DON'T APPLY.
THE ISSUES OF CONFIDENTIALITY DON'T APPLY.
THE ISSUES OF THE PUBLIC POLICY CONCERNS DON'T APPLY, AND THE LAWYER HAS NO RIGHT TO ALLEGE AS A PUBLIC POLICY BASIS AGAINST THE ASSIGNMENT.
THE ISSUE THAT THERE'S SOME KIND OF AN ATTORNEY-CLIENT RELATION SHOP THAT'S GOING TO BE BREACHED, MORE IMPORTANTLY, THE CONFIDENTIALITY.
THEY MAY HAVE TRIED TO FOLLOW THE DICTATES OF LEBOWITZ, I JUST DON'T THINK THEY WERE SUCCESSFUL.
TO THE CONTRARY, I THINK THEY'VE OPENED UP THE DOOR TO ANY MANNER OF CLAIMS WHICH -- AND I WANTED TO GET BACK TO THAT POINT WITH JUSTICE LEWIS, WHAT HAPPENS IF

THEY BUY A BULK SALE OF NOTES, AS WAS DONE HERE, AND THE NOTE HOLDERS, THE NEW NOTE HOLDER COMES IN AND REVIEWS ALL OF THE NOTE FILE TO DETERMINE HOW MANY INCLUDE COLLATERAL THAT WAS NOT PROPERLY PERFECTED OR SECURITY INTERESTS?
CAN THEY ALL BRING CLAIMS?
WHAT HAPPENS IF THEY DETERMINE THAT THEY HAVE 18 NOTES OUT OF THE 100 WHERE THERE WERE FILED IN THE WRONG JURISDICTION?
CAN THEY BRING CLAIMS?
ACCORDING TO THIS DESOMETHING'S, ANY AND ALL MANNER OF THOSE TYPES OF CLAIMS WOULD BE AVAILABLE, SO AS A PURCHASER, A DOWNSTREAM PURCHASER OF BULK SALES, I COULD LITERALLY TAKE THEM, TURN THEM OVER TO A LAW IF YOU REMEMBER FOR REVIEW, -- LAW FIRM FOR REVIEW, NO MATTER WHO HAD THEM ORIGINALLY AND GO THROUGH THEM HAND SEE IF THERE WERE FILING DEFECTS OR ANYTHING ELSE ALONG THOSE LINES.
>> AND WHAT WOULD BE WRONG WITH BRINGING A CLAIM, IF THERE ARE FILING DEFECTS OR OTHER PROBLEMS WITH THE NOTES THAT WERE THE DIRECT RESULT OF ATTORNEY INACTION OR INATTENTION OR WHATEVER?
>> IT WOULD PLAY HAVOC WITH THE ATTORNEY-CLIENT RELATIONSHIP AND GIVE RISE -- YOU WANT TO TALK ABOUT A MARKETPLACE, JUSTICE QUINCE.
IF YOU THOUGHT OF THE WAY THESE NOTES ARE BUNDLED AND SOLE, THIS IS A COMMON COMMERCIAL PRACTICE.
THESE COMPANIES BUY NOTES THAT ARE ALREADY IN DEFAULT, WHERE THEY HAVEN'T BEEN ABLE TO RECOVER FROM THE BORROWERS.
THEY'RE BUYING DISCOUNTED BUNDLES AT PENNIES ON THE DOLLARS.
TENS OF THOUSANDS OF THEM AT A TIME.
YOU NOW TURN THEM OVER --
>> I GUESS MY PROBLEM WITH THAT IS THE PERSON WHO ORIGINALLY HAD

THE NOTE, COULD HAVE BROUGHT THAT KIND OF ACTION, ASSUMING THAT WHATEVER THE DEFECT IS, WAS THE RESULT OF SOME KIND OF MALPRACTICE.
SO WHY WOULDN'T THE NEXT PERSON WHO BOUGHT THE NOTE BE ABLE TO MAKE THAT SAME ASSERTION?
>> AND I THINK THAT'S THE!!!!!!!! THE CEREBUS CASE.
IF THAT ASSIGNMENT HAD BEEN MADE WITH FULL KNOWLEDGE OF THE FACT THAT THAT CLAIM EXISTED, AND THAT CLIENT SAID, I'M GOING TO TAKE $50 ON MY $100, BECAUSE MY NEW LAWYERS TOLD ME THIS CLAIM IS DEAD, AND I HAVE NO COLLATERAL, IF YOU WANT TO GO AFTER THE LAWYER, THAT'S OK WITH ME, THEN THERE'S A KNOWING WAIVER OF ATTORNEY-CLIENT PRIVILEGE.
TO SUGGEST THAT THIS KIND OF THING JUST FOLLOWS BULK SALES AS AUTOMATICALLY, I THINK DOES TREMENDOUS VIOLENCE TO THE ATTORNEY-CLIENT RELATIONSHIP AND IT GIVES ALL OF THE PEOPLE THAT -- AND PARTICULARLY THE ORIGINAL CLIENT OR THE CLIENT WHO EXISTED AT THE TIME, WHO EITHER HASN'T SUSTAINED ANY DAMAGE, SO HE HAD NO CLAIMS, WE'RE NOW GIVING A RIGHT OF ACTION TO PEOPLE THAT HAD NO ATTORNEY-CLIENT RELATIONSHIP, WE'RE NOT INTENDED THIRD PARTY BENEFICIARIES AND CREATE THIS HORRIFIC MARKETPLACE, AND THIS IS NOT -- NOT, YOU KNOW, SOMETHING THAT'S BEYOND IMAGINATION, WHERE YOU CAN LITERALLY HAVE A NEW REASON TO BIEP THESE NOTES IN BULK, BECAUSE YOU CAN SHIP THEM OUT AND HAVE THEM ALL REVIEWED FOR OTHER POTENTIAL CLAIMS THAT THE CLIENT THEMSELVES DIDN'T WISH TO PURSUE.
>> LET'S GO BACK TO, YOU'RE TALKING ABOUT THE CONFIDENTIALITY ISSUES.
WELL, CERTAINLY IN CONNECTION WITH THESE PLACEMENT OFFERINGS,

THERE IS AN INITIAL
ATTORNEY-CLIENT RELATION SHOP,
AND THAT THAT CAN BE VERY, VERY
IMPORTANT.
SO I MEAN, IT'S DESTROYED AND
CAPLAN HAS TAKEN THAT -- THERE
ARE THINGS THAT OVERRIDE THAT,
AND -- SO HERE, AS JUSTICE
QUINCE WOULD QUESTION, HOW ABOUT
IF THE DAMAGE HAS NOT OCCURRED
YET.
YOU HAVE THE ATTORNEY-CLIENT
RELATIONSHIP, THAT HAS BEEN HEY
SIGNED, BUT THE DAMAGE HASN'T
OCCURRED, SO THERE IS NO CAUSE
OF ACTION UNTIL IT'S IN THE
HANDS OF ANOTHER PARTY, BECAUSE
THAT WHEN THE HARM OCCURS, SO IT
SEEMS TO ME HAS IF YOU'RE TAKING
A REEGD OF -- I'M NOT SURE IF
I'M SAYING THIS CORRECTLY,
CAPLAN, THAT CASE WITH THE LONG
DISCUSSION OF CAUSES OF ACTION
AND ASSIGNABILITY AND WHAT'S
OCCURRED DOESN'T VIOLATE THE
PRINCIPLES THAT ARE DISCUSSED
THERE.
HELP ME UNDERSTAND THAT.
>> I DO BELIEVE IT DOES.
AND AGAIN, I HAVE TO GO BACK TO
THE ISSUE OF THE ANALOGY IN
CAPLAN WHICH WAS DISCUSSED AT
GREAT LENGTH, TO THE DECISION IN
THE KPMG CASE AND THEN GOING
BACK TO THE PRIOR CASE.
THE PRIMARY RATIONALE, AS I
UNDERSTOOD CAPLAN, FOR THAT
DESOMETHING'S, AND
UNFORTUNATELY, I WAS CIRCLING
THE ERROR -- THE AIR IN ATLANTA
AT THE TIME THE ORAL ARGUMENT
WAS GOING, I WAS ON MY WAY HERE
AS ONE OF CO-COUNSEL ON THAT
MATTER, I NEMP GOT TO HARING IT,
MY NAME -- I NEVER GOT TO ARGUE
IT, MY NAME IS ON THE OPINION,
BUT WHEN YOU LOOK AT THAT CASE
AND YOU LOOK AT THE LENGTHY
DISCUSSION OF THE REASONS FOR
THE DECISION, IT IS A STEP --
THE NEXT LOGICAL STEP FROM WHAT
I READ OF THE OPINION, THE NEXT
EVOLUTIONARY STEP FOLLOWING
KPMG.

IN KPMG, THIS COURT TALKED ABOUT THE FACT THAT AUDITORS HAVE AN INDEPENDENCE FROM THEIR CLIENTS, THEY STAND APART FROM THEIR CLIENTS AND THAT THE INFORMATION THAT THEY'RE IMPARTING TO THE PUBLIC IS INTENDED TO BE RELIED UPON BY THE PUBLIC.
SO THIS COURT THEN DETERMINED IN LEBOWITZ THAT IT IS LOGICAL TO ALLOW AN ASSIGNMENT, AND IT DOESN'T DO JUSTICE, DO VIOLENCE TO THE NOTION OF THE ATTORNEY-CLIENT RELATIONSHIP, WHERE THE VERY INFORMATION THAT IS BEING SUED UPON WAS DESIGNED TO BE TRANSMITTED TO THE PUBLIC AND DESIGNED TO PROMOTE THE PUBLIC'S RELIANCE ON THAT INFORMATION.
NONE OF THOSE ELEMENTS EXIST HERE.
>> I PROEHLIZE THAT YOU'VE -- REALIZE THAT YOU'VE USED YOUR TIME, BUT I'M CONCERNED ABOUT YOUR ANSWER TO JUSTICE LEWIS' QUESTION NOW BECAUSE I'M AFRAID THAT OPENS UP, YOU KNOW, ANOTHER ISSUE AT LEAST TO ME, IN TERMS OF THE GIFT BRINGING OF THESE CLAIMS, AND THAT IS -- LEGITIMATE BRINGING OF THESE CLAWMS AND THAT IS CLEARLY ON ITS FACE, ONE OF THE THINGS WE SEE HERE IS SORT OF THE CHRONOLOGICAL ASSIGNMENT THAT WE'RE REALLY GETTING FAR DISTANT, YOU KNOW, FROM THE ORIGINAL CLIENT.
NEVERTHELESS, IN THE COMMERCIAL MARKET THAT WE HAVE HERE, IT CERTAINLY IS POSSIBLE THAT YOU COULD BE 10 ASSIGNMENTS DOWN THE ROAD, FOR ALL LEGITIMATE BUSINESS ASSIGNMENTS FOR FULL VALUE, YOU KNOW, WITHOUT DISCOUNTS, AND THAT THE MORTGAGE WENT RIGHT ALONG, BUT WE'RE 25 YEARS DOWN THE ROAD AND NOW A FORECLOSURE ACTION IS BROUGHT, AND STILL WITH HIGH VALUES AND FOR THE FIRST TIME, THE WORK OF THE LAWYER IS DISCOVERED.
TO HAVE BEEN A FLAW THAT

PREVENTS PEOPLE FROM GETTING
FULL VALUE OF WHAT THEY THOUGHT.
SO WE'VE GOT THE DIRECT EFFECT,
THE LAWYER'S MALPRACTICE NOT
BEING FELT INTO A NUMBER OF --
UNTIL A NUMBER OF ASSIGNMENTS
LATER, LEGITIMATE LIVE.
I'M CONCERNED THAT YOU'RE
SAYING, WELL, SO WHAT.
WE'RE FAR REMOVED AND THE LAWYER
HAD NO RESPONSIBILITY TO THAT
FIVE, SUCTION,!!!!!!!!!!!!!!!!! SIX, SEVEN, EIGHT TIMES.
>> AS THE COURTS IN ALL 50
STATES.
THERE'S ALL KINDS OF PEOPLE WHO
MAY BE IMPACTED BY A LAWYER'S
NEGLIGENCE AT SOME POINT, BUT
THE NOTION --
>> I MEAN, LAWYERS ARE WELL
AWARE OF THE FACT, AS YOU SAID
HERE, WHEN YOU KEEP DESCRIBING
THE MARKETPLACE, THAT NOT ONLY
IS THIS DONE, IT'S ALMOST
ROUTINE BUSINESS PRACTICE.
THE LAWYER KNOWS THAT ONCE HE
DOES THAT, THAT THIS PARTICULAR
ENTITY THAT HE'S DOING SOMETHING
FOR IS GOING TO ASSIGN, YOU KNOW99!!!!!!
KNOW, RIGHT OUT THAT THAT'S THE
PRACTICE.
>> BUT IN THIS CASE, JUSTICE
ANSTEAD, THERE IS NO QUESTION OF
THAT, REGARDLESS OF THE
ASSIGNMENT AND THIS IS WHERE WE
GET BACK TO THE ORIGINAL NOTION
OF WHAT HE WAS DOING IN THIS
CASE.
THERE'S NO QUESTION THAT
REGARDLESS OF THE ASSIGNMENT,
NAMC HAD FILED A LAWSUIT, IF
THEY FILED ONE TOMORROW AND SAID
WE SOLD THIS LOAN AT A DISCOUNT,
BECAUSE WE KNEW OUR COLLATERAL
WAS IMPAIRED, THEY'D HAVE A
RIGHT OF ACTION.
>> WELL, YOU'RE TALKING ABOUT A
PARTICULAR CASE.
>> THEY WERE THE CLIENT.
>> WE'VE GONE WELL OVER.
>> WE'RE WELL OVER, BUT IF YOU
CAN MAKE SURE YOU CAN GET A
CAPSULE ANSWER TO JUSTICE
ANSTEAD'S QUESTION.
>> I THINK THE ATTORNEY-CLIENT

RELATIONSHIP HAS ALWAYS BEEN
PARAMOUNT IN THOSE KINDS OF
CASES WHERE THERE'S HARM TO
UNINTENDED PARTIES THAT ARE NOT
THE LAWYER'S CLIENT AT THE TIME
OF THE MALPRACTICE.
THAT LAW HAS NOT CHANGED
ANYWHERE THAT I KNOW OF.
BUT EXCEPT FOR THIS NEW NOTION
OF ASSIGNING CLAIMS.
>> THANK YOU.
>> GOOD MORNING, YOUR HONOR.
NANCY GREG!!!!!!!!!! GREGOIRE SUPPORT THE
RESPONDENT, SECURITY NATIONAL.
>> ISN'T MR. KLEIN CORRECT WHEN
HE SAYS OUR DECISION IN CAPLAN
WAS EXTREMELY NARROW AND
ESSENTIALLY SAID THAT ATTORNEYS
PREPARING PRIVATE PLACEMENT
MEMORANDA ARE IN THE SIMILAR
SITUATION TO ACCOUNTANTS
CONDUCTING AUDITS AND THAT'S WHY
WE SAID, THIS IS LIKE A KPMG
CASE, THIS IS LIKE A -- WE'RE
NOT GOING TO EXPAND NOW THE
ASSIGNABILITY OF LEGAL
MALPRACTICE CLAIMS TO EVERYBODY,
BUT THIS IS SO SIMILAR TO AN
ACCOUNTANT, THAT IT WOULD REALLY
BE UNFAIR TO DRAW AN ARTIFICIAL
DISTINCTION IN THESE KINDS OF
CASES?
>> THAT'S CORRECT, YOUR HONOR,
THAT'S WHAT THIS COURT SAID IN
CAPLAN, BUT AS THE 4th D.C.A.
CORRECTLY CONSTRUED CAPLAN, WHAT
THE CAPLAN COURT WAS ALSO, AT
LEAST INDICATING, WAS THAT THERE
WAS NOW NO LONGER IN THE STATE
OF FLORIDA AN ABSOLUTE
PROHIBITION TO THE ASSIGNMENT OF
LEGAL MALPRACTICE CLAIMS.
THE RATIONALE FOR THAT IN CAPLAN
WAS THE FACT THAT THERE WAS THE
FORESEEABILITY THAT THERE WOULD
BE RELIANCE AT SOME POINT DOWN
THE LINE ON THE WORK THAT WAS
DONE.
THIS CASE HAS THE SAME EXACT
PRONG.
>> BUT HOW DOES THE ATTORNEY
REPRESENTING THE MORTGAGEEE I
THINK IT IS, IN MORTGAGES,
ANTICIPATE THAT SOMEWHERE DOWN

THE LINE, THIS -- THIS NOTE IS GOING TO BE ASSIGNED AND SOMEBODY ELSE IS GOING TO HAVE IT AND THEREFORE HE'S RESPONSIBLE NOT ONLY TO THIS MORTGAGEE BUT TO SOME OTHER ASSIGNEE OF THE MORTGAGE?
>> I THINK COUNSEL FOR STERN ACKNOWLEDGED THAT THESE ARE COMMONLY -- THESE MORTGAGES ARE LIKE FLEET FINANCING THAT ARE PASSED FROM LENDER TO LENDER TO LENDER.
THEY'RE FACTORED OUT COMMONLY.
>> SO THEN THAT WOULD HAPPEN WITH ALL KINDS OF CONTRACTS THAT ARE ENGAGED IN -- THAT ARE LATER ASSIGNED TO SOMEBODY ELSE, SOMETIMES LEASES ARE ASSIGNED FROM ONE LESSOR TO ANOTHER LESSOR, THEN ARE ATTORNEYS THEN GOING TO BE LIABLE TO THE ASSIGNEE OF LEASES?
>> THAT COULD BE, YOUR HONOR. AT SOME FUTURE CASE, AT SOME FUTURE TIME, BUT THE COURT ISN'T ASKED TO DECIDE THAT TODAY HAND THE COURT USUALLY DECIDES ON THE FACTS BEFORE IT AND AS NARROWLY AS POSSIBLE TO DO JUSTICE.
>> HOW ABOUT THE FACTS BEFORE US, DON'T WE HAVE AN ASSIGNEE HERE THAT'S ON FULL NOTICE BEFORE THEY HAVE TALK THE ASSIGNMENT -- THEY TAKE THE ASSIGNMENT OF THESE ASSETS AND HOW FAR DOWN THE LINE AND HOW BAD CAN IT GET BEFORE AN ASSIGNEE DOESN'T FAIL TO RECOGNIZE THAT THEY'RE KNOWINGLY BUYING A PIG AND A POKE, INCLUDING THE REASON THAT IT'S TAKING THE POKE, LAWYER MISCONDUCT WAY BACK HERE AND YET STILL SAY, WELL, I DON'T CARE, THE FLORIDA SUPREME COURT SAID AT ONE TIME THAT WE MAY BE PART OF THAT TRAIL, MY GOSH, HOW MANY TRANSACTIONS WERE THERE IN THIS CASE?
>> WELL, THE ONES THAT COUNTED FOR US, YOUR HONOR, WERE FOUR. IT WENT FROM ONE MORTGAGEEE TO ANOTHER TO ANOTHER AND THEN TO

SECURITY NATIONAL.
>> AND AT THE TIME SECURITY NATIONAL BOUGHT IT, IT WAS -- THE LOAN WAS IN DEFAULT, SO IT WAS HEAVILY DISCOUNTED VALUE FROM ORIGINAL VALUE AT THAT TIME, SUIT HAD BEEN FILED, AND THE MORTGAGE HAD BEEN DETERMINED TO BE UNENFORCEABLE ON THE PROPERTY AT THE TIME YOUR CLIENT PURCHASED THE NOTE AND MORTGAGE, CORRECT?
>> IT WAS A NONPERFORMING LONE LOAN.
THE RECORD SHOWS THE DOCUMENTS THAT WERE ATTACHED TO THE PLEADINGS FILED, THIS WAS A NONPERFORMING LOAN, ABSOLUTELY.
>> DO YOU AGREE OR DISAGREE THAT YOUR CLIENT KNEW OR SHOULD HAVE KNOWN OF THE STATUS OF THE LOAN, OTHER THAN SIMPLY NONPERFORMANCE?
>> KNEW THAT IT WAS A NONPERFORMING LOAN.
WHETHER IT KNEW IT WAS IN LITIGATION IS NOT IN THE RECORD, JUSTICE, AND ANY DISCOUNT IS ALSO NOT IN THE RECORD.
I THINK WE CAN -- FROM A COMMON SENSE POINT OF VIEW, PRESUME THAT IT'S A NONPERFORMING LOAN.
IT HAD BEEN TO BE DISCOUNTED AT SOME POINT, BUT THAT'S --
>> BUT I GUESS MY QUESTION AND MY CONCERN IS ON THE MARKETPLACE OF THE MALPRACTICE ACTION, IS IF THERE'S A COMPLETELY DIFFERENT IN THE FACTORING OF THE PRICE, I WOULD ASSUME OF THE NOTE AND MORTGAGE, IF YOU HAVE A MORTGAGE THAT HAS BEEN DETERMINED TO BE OF NO ENFORCEABILITY.
>> VERSUS A MORTGAGE OF NO ENFORCEABILITY PLUS A MALPRACTICE ACTION TIED TO IT.
IN THE MARKETPLACE, I WOULD ASSUME THEY WOULD CARRY DIFFERENT VALUES.
>> LET ME RESPOND LIKE THIS THIS WENT OUT ON SUMMARY JUDGMENT AT THE TRIAL COURT LEVEL.
THE 4th DISTRICT WENT EXPRESSLY OUT OF ITS WAY TO SAY THAT THERE

IS NO RECORD OF ANY DISCOUNTS.
CAN WE FROM A COMMON SENSE PERSPECTIVE PRESUME THERE WAS A DISCOUNT, BECAUSE THIS WAS A NONPERFORMING LOAN WITH AN ORDER GRANTING SUMMARY JUDGMENT, FINAL JUDGMENT HADN'T BEEN ENTERED AT THE TIME IT WAS ASSIGNED TO SECURITY NATIONAL.
CAN WE PRESUME THERE WAS A DISCOUNT?
PROBABLY WE CAN, BUT FOR PURPOSES OF SUMMARY JUDGMENT, SHOULD WE HAVE PRESUME THERE WAS A DISCOUNT?
NO, WE SHOULDN'T.
>> CAN WE JUST FOLLOW ONE STEM FURTHER WITH THAT QUESTIONING. IS THERE AUTHORITY THAT GOES TO THE ISSUE WITH REGARD TO PERFORMANCE, OR THE VALUE OF WHATEVER THAT IS, AND THE RIGHT TO ASSIGN?
OR WHAT IS ASSIGNED?
IS THERE AUTHORITY THAT TOUCHES THAT, THAT SAYS NO, YOU CAN'T ASSIGN ONE OR YES, YOU CAN.
>> IN FLORIDA, NOTES AND MORTGAGES ARE ASSIGNABLE, PERIOD, AND -- IT'S A MARKETPLACE TRANSACTION.
>> HOW ABOUT OTHERS, ARE THERE OTHER STATES THAT WOULD SAY YOU CANNOT ASSIGN FOR THE QUESTIONS THAT WERE JUST PROPOUNDED TO YOU?
>> NOT OF WHICH I'M AWARE AND IN FACT IN THE THREE CASES, IN THE THREE OUT OF STATE CASES WHICH SECURITY NATIONAL RELIED, THERE WERE ASSIGNMENTS OF QUESTIONABLE VALUE BECAUSE THERE WAS THIS INFECTION AT SOME POINT BEFORE OF THE ASSIGNMENT.
>> LET ME JUST -- LET ME ASK THE REVERSE OF THE QUESTION THAT JUSTICE ANSTEAD ASKED OPPONENT, AND THAT IS, IF THESE ASSIGNMENTS CONTINUE ALONG FOR 15, 20 YEARS, AND THE LAWRP HAS -- LAWYER HAS IN A SENSE, GOTTEN OUT OF THE PICTURE AND THERE'S DISCOVERED TO BE A DEFECT, THAT CAUSE OF ACTION

AGAINST THE LAWYER THAT WAS IN EXISTENCE, BUT UNDISCOVERED CONTINUE?
>> IF THE DAMAGE DOESN'T OCCUR UNTIL THAT LATER POINT IN TIME, THN!!!!!!!!THEN I JUSTICE, DON'T SEE THAT AS INDISTINGUISHABLE FROM MEDICAL MALPRACTICE WHERE THAT HAPPENS.
>> ONE DISTINCTION I GUESS IS THAT THE LEGISLATURE HAS SAID IN MEDICAL MALPRACTICE CONTEXT, THAT HERE THE LAWYER EXPOSES THE LAWYER WHO WORKED ON THESE MORTGAGES TO UNLIMITED LIABILITY AS FAR AS TIME IS CONCERNED.
IN OTHER WORDS, THIS REPUBLIC MIND ME OF THE OLD COMP SITUATION IN WHICH YOU COME BACK, MAKE A CLAIM 20 YEARS LATER?
IF YOU THINK THAT'S POSSIBLE -- THERE'S NO -- THE LAWYERS BETTER BE AWARE OUT THERE THAT THEY'VE GOT TO KEEP THEIR TAIL ON INSURANCE.
>> THE SAME IS TRUE WITH PRENUPS, POST KNOPS, DRAFTING.
THE SIGN OUTSIDE THE DOOR SAYS COME SHARE WITH US OUR VISION OF JUSTICE AND I SUGGEST THAT FOR LAWYERS TO -- AND THIS IS ONE THE PUBLIC POLICY CONCERNS, AND I KNOW, I'M ARGUING TWO LAWYERS AGAINST PROTECTION FOR LAWYERS, BUT TO PROTECT LAWYERS AGAINST THIS MALPRACTICE, WHERE THE ENTITY THAT IS HARMED IS AT THE END OF THIS ERA OF TIME CAN --
>> THE DIFFERENCE WITH A PRENUP HAND THOSE THINGS IS THE FACT THAT THERE IS -- YOU'RE STILL DEALING WITH THE PERSON WHO YOU HAD AN ATTORNEY-CLIENT RELATIONSHIP WITH.
AND IN THE SCENARIO THAT JUSTICE ANSTEAD HYPOTHETICAL OUT LUNE, THAT PERSON HAS LONG SINCE GONE AWAY.
AS HAVE YOU, THE LAWYERS.
YOU'RE DEALING WITH SOMEBODY 20 YEARS DOWN THE ROAD.
HAS NOTHING TO DO WITH EITHER ONE OF YOU.

>> ONE OF THE THINGS THAT I TRIED TO EXPLAIN IN MY BRIEF IS THAT THERE WERE TWO REASONS THAT WE ARGUED TO THE 4th DISTRICT THAT THE SUMMARY JUDGMENT AT THE TRIAL COURT SHOULD BE OVERTURNED.
AND ONE WAS THAT HERE THERE IS THE ATTORNEY-CLIENT RELATION SHOP.
-- RELATIONSHIP.
SECURITY NATIONAL WAS STERN'S CLIENT.
THIS COURT COULD DRAFT JUST AS IN CAPLAN AND KPMG COULD CRAFT A VERY NARROW DECISION THAT ALLOWS FOR THIS CONCERN OF YOURS, JUSTICE WELLS, WHILE DOES JUSTICE FOR THE END USER.
>> HET ME SPEAK AS TO THE JUST TOSS ISSUE.
-- TO THE JUSTICE ISSUE.
IT GOES TO THE PROXIMATE CAUSE MAYBE AND THE DAMAGE.
BUT THE DAMAGE OCCURRED IN THIS CASE WHEN THE ACTION WAS DISMISSED IN PART.
THE REAL DAMAGE WHEN THE FINAL JUDGMENT WAS ENTERED BY THE TRIAL COURT, CORRECT?
>> THE NEGLIGENCE OCCURRED WITH THE DISMISS HALL.
THE DAMAGE OCCURRED WHEN THE SECOND D.C.A. AFFIRMED THE FINAL JUDGMENT THAT THE TRIAL COURT HAD ENTERED AGAINST SECURITY NATIONAL.
>> SO IT'S YOUR POSITION THAT THERE WAS NO CAUSE OF ACTION AVAILABLE TO MANC UNTIL THE FINAL JUDGMENT WAS ENTERED?
>> THAT'S EXACTLY RIGHT.
>> JUSTICE PARIENTE HAD A QUESTION.
[INAUDIBLE]
>> THERE'S BB A --
>> WHAT THEY PAID IS THEIR DAMAGE.
>> BUT THEN THAT WOULDN'T BE AN ASSIGNMENT, THEN YOU HAVE YOUR OWN CLAL.
IF THEY'RE THE ASSIGNEE OF THE CLAIM, WHY WOULDN'T THEY HAVE THE ASSIGNOR'S DAMAGES --

>> BECAUSE IN A COMMERCIAL CONTEXT, THE ASSIGNMENT IS FOR VALUE.
EACH ONE OF THESE MORTGAGES, AS IT'S ASSIGNED, IS ASSIGNED A VALUE, AND IT MAY BE A DISCOUNTED VALUE AND IT MAY NOT BE A DISCOUNTED VALUE AND THAT'S NOT IN THE RECORD.
>> JUSTICE PARIENTE.
[INAUDIBLE]
>> THAT WAS THE FIRST QUESTION.
THE SECOND QUESTION GOES TO PUBLIC POLICY --
[INAUDIBLE]
>> I THINK THAT IT'S A DUAL ANSWER.
FIRST, THERE MUST BE, IN A CASE LIKE THIS, WHERE STERN CONTINUED AS LAWYER ALL ALONG, THE ATTORNEY-CLIENT PRIVILEGE TRAVELED FROM MORTGAGEE TO MORTGAGEE AND THAT'S CERTAINLY THE VAI NARROW CONTEXT -- VERY NARROW CONTEXT HERE, BUT SECOND, MORE BROADLY VIEWING THIS, IF AN ASSIGNOR ASSIGNS ALL RIGHTS ATTENDANT TO A CONTRACT, A MORTGAGE, TO AN ASSIGNEE, THEN THERE IS A PRESUMPTION.
I DISAGREE THAT IT HAS TO BE EXPLICITLY STATED THAT I'M ALSO, YOU KNOW, ASSIGNING THE ATTORNEY-CLIENT PRIVILEGE.
OR WAIVING.
THERE IS A PRESUMPTION THAT IF YOU HAVE ALL RIGHTS ATTENDANT TO THIS ENTITY, VEHICLE, WHATEVER IT IS, YOU ALSO HAVE THE RIGHT TO KNOW WHAT HAPPENED.
[INAUDIBLE]
>> AND THAT -- YES, THAT IS CORRECT, JUSTICE, AND THAT'S WHAT HEADLAND AND RICHTER AND CYBRUS DECIDED.
[INAUDIBLE]
[INAUDIBLE]
>> I THINK IF NEMC HAD TERMINATED STERN AT THAT POINT AND SUED FOR MALPRACTICE, STERN WOULD HAVE HAD AN EXCELLENT DEFENSE THAT EMC HAD NOT PURSUED ITS APPELLATE REMEDY AS IT WAS OBLIGATED TO DO UNDER BLOOMBERG

AND WAS BARRED FROM PURSUING A MALPRACTICE CLAIM.
AND THAT'S THE -- THAT'S THE WHOLE RATIONALE BEHIND THE 4th!!!!!! 4TH D.C.A.'S OPINION.
[INAUDIBLE]
[INAUDIBLE]
>> AND THAT'S WHAT YOUR HONOR SAID IN BLOOMBERG.
TO GIVE THE ATTORNEY AN OPPORTUNITY TO CURE THE DEFECT FIRST BEFORE YOU PURSUE THE ATTORNEY.
THE 4th D.C.A. SAID IF STERN'S ARGUMENT ON THIS, YOU COULD HAVE SUED THEN, YOU DIDN'T HAVE TO TAKE AN APPEAL, IS ACCEPTED AT THIS TIME, IT MAKES STERN'S ARGUMENT TO THE 2nd D.C.A. BORDERLINE FRIVOLOUS, BECAUSE TO THE 2nd D.C.A., STERN ARGUED VIGOROUSLY THAT THE FINAL JUDGMENT AGAINST THE MORTGAGEEE WAS INCORRECT.
>> LET'S ME ASK YOU A QUESTION THAT ALSO ARISES OUT OF THE CONTEXT OF SOME OF THESE CASES, AND THAT IS THAT WHEN WE HAVE EXTENDED, OK, RIGHTS OR BEEN FITS TO THIRD PARTIES OR COLLATERAL PARTIES OR OF WHAT!!!!!!!! WHAT, -- OR WHATEVER, ALMOST IMPLICIT IN OUR REASONING IS THE INNOCENCE OF THIRD PARTIES.
HOW DOES THAT FACTOR IN THIS CASE IN TERMS OF THE KNOWLEDGE OF YOUR CLIENT WITH REFERENCE TO THE STATE?
OR HEALTH OF THIS MORTGAGE AT THE TIME?
DOES YOUR CLIENT FALL INTO THIS CATEGORY OF BEING INNOCENT PURCHASER OF ASSIGNEE OF THIS MORTGAGE?
>> ONE OF THE REASONS THAT FLORIDA COURTS ARE CHERRY ABOUT SUMMARY JUDGMENT IS QUESTIONS LIKE THOSE REMAIN UNANSWERED.
>> SO AS FAR AS WHAT YOUR CLIENT KNEW AT THE TIME, THE RECORD IS CLOSED --
>> THE 4th D.C.A. EMPHASIZED THAT THERE IS NOTHING IN THE RECORD THAT SUGGESTS THAT ANY

ONE OF THE ASSIGNEES KNEW WHAT
WAS GOING ON.
SHOULD THEY HAVE?
MAYBE THEY SHOULD HAVE, BUT
THAT'S NOT THE KIND OF QUESTION
THAT SHOULD BE ANSWERED ON
SUMMARY JUDGMENT.
>> AND THERE'S NO INFORMATION
ABOUT THAT IN HOUR RECORD?
>> NOTHING WHATSOEVER, JUSTICE.
>> A 14 DATIONAL QUESTION AND
I'M CONCERNED THAT --
FOUNDATIONAL QUESTION AND I'M
CONCERNED THAT YOU'VE CONCEDED
AWAY YOUR CAUSE OF ACTION THIS
MORNING.
EUROPE SIGNIFICANCE HAS SAID
THAT CAPLAN DOESN'T SAKE US
WHERE THIS CASE IS.
I THOUGHT I HEARD YOU SAY THAT
CAPLAN WAS NOT ON POINT.
BUT THE 4th DISTRICT SAID THE
SIGNIFICANCE OF CAPLAN IS NOT A
NARROW POINT, PERTAINING TO THE
ATTORNEY-CLIENT PRIVILEGE, BUT
RATHER A MORE BROAD VIEW THAT
THE DOOR IS NOW OPEN TO
ASSIGNMENT OF LEGAL MALPRACTICE
ACTIONS INCEPTIONAL CASES WHICH
DO NOT FULLY IMPLICATE THE CORE
POLICY CONCERNS UNDERLYING THE
GENERAL RULE, SO IS CAPLAN WRONG
OR IS CAP -- IS CAPLAN BROAD OR
SPECIFIC?
>> CAPLAN OPENED THE DOOR.
THE NARROW HOLDING OF CAPLAN IS
THAT YOU CAN SUE AN ACCOUNTANT
FOR AUDITING IN A PUBLIC
CONTEXT.
THE BROADER VIEW OF CAPLAN --
>> IT'S NOT BASED ON THE POLICY
CONCERNS AS EXPRESSED BY THE 4th99!!!!
4TH DISTRICT, SO YOU DISAGREE
WITH THE 4th DISTRICT OPINION?
>> NO, JUSTICE, I DON'T.
CAPLAN SAID THE EXCEPTIONAL
CASES ARE NOT NOW BARRED BY THE
ANTI-ASSIGNMENT LAW.
>> SO IT IS BROADER HE THEN.
>> WE'RE ARGUING THAT THIS IS
ONE OF THOSE EXCEPTIONAL CASES.
AND THE 4th DISTRICT WENT -- YOU
KNOW, THE PRIMARY REASON FOR THE
ANTI-ASSIGNMENT RULE IS THE

PUBLIC POLICY CONCERNS, THE MARKETPLACE CONCERNS, AND THE CONFIDENTIALITY CONCERN.
THE 4th DISTRICT ANALYZED EACH ONE OF THE PUBLIC POLICY CONCERNS AND IT DOESN'T EXIST HERE, AND THAT'S WHY WE ARGUED, ON THE JURIES DUCKSAL LEVEL, WE ARGUED THAT THERE WAS NO CONFLICT FOR THIS COURT, THAT THE COURT SHOULDN'T ACCEPT CONFLICT.
>> WELL, IF CAPLAN IS REALLY A VERY NARROW POINT, WHY IS CAPLAN NOT MISHEY PLIED BY THE 4th DISTRICT HERE?
>> BECAUSE, IN CAPLAN, YOUR DISSENT, CHIEF JUSTICE, SAID WE SHOULDN'T GO THERE --
>> WE HAVE.
WE DID.
>> EXACTLY, YOU DID.
WHAT CAPLAN SAID IS THERE IS NOW A CRACK THROUGH WHICH EXCEPTIONAL CASES MY TRAVEL FOR A COURT TO DETERMINE WHETHER THIS IS AN EXCEPTIONAL CASE.
THE TRIAL COURT DIDN'T DO THAT HERE.
THE TRIAL COURT APPLIED KPMG, WHICH THE COURT SPECIFICALLY RECEDED FROM IN CAPLAN, TO SAY NO, YOU JUST -- AND THE COURT WAS TROUBLE BY THAT.
THE COURT SAID I ESSENTIALLY DON'T THINK THIS IS THE RIGHT RESULT, BUT I FEEL THAT I'M BOUND, AND AT THE 4th LEVEL, WE HAD ASKED FOR A STAY PENDING ISSUANCE OF THE DECISION IN CAPLAN BECAUSE WE KNEW THAT CAPLAN WAS GOING TO HAVE SOME EFFECT ON THIS CASE, AND IN FACT, IT HAS.
WE BELIEVE THAT THE 4th DISTRICT'S OPINION IS ABSOLUTELY CONSISTENT WITH CAPLAN.
>> IF YOU WOULD BRING YOUR ARGUMENTS TO A CONCLUDE.
>> FOR THAT REASON WE RESPECTFULLY REQUEST THAT THE COURT APPROVE THE 4th D.C.A. OPINION.
ALL TARNIVELY THAT THE COURT --

ALTERNATIVELY THAT THE COURT FIND THAT IT WAS WITHOUT CONFLICT RESOLUTION IN THE FIRST PLACE.
>> IF YOU COULD SAY CONCISELY WHAT YOU NEED TO SAY.
>> REALLY JUST TWO POINTS. BOTH OF THEM GO TO THE -- ONE GOES TO THE MARKETPLACE ISSUE. IF SOMEONE IS DISCOUNTING AND A PARTY THAT PURCHASES RECEIVES A DISCOUNTED PRICE AND THAT DISCOUNT IS WHOLLY OR IN PART DUE TO THE FACT THAT THE COLLATERAL HAS BEEN IMPAIRED, THAT PERSON HAS A CAUSE OF ACTION, AND NOBODY HAS ADDRESSED THE POINT THAT NAMC NIP COULD COME IN HERE HAND SAY WE SOLD THIS PARTICULAR NOTE AT A DISCOUNT BECAUSE OF THE FACT THAT THERE WAS A SUMMARY JUDGMENT ENTERED AGAINST US AND WE DIDN'T WANT TO PURSUE IT.
>> DOESN'T REALLY GO TO THE ASSIGNABILITY ISSUE, IT GOES TO DAMAGES OR SOME OTHER ASPECT, DOESN'T IT?
>> IT GOES TO THE NOTION THAT THERE WAS NO CAUSE OF SOME%%--ppOTHER ASPECT.%%--pp>> IT GOES TO THE NOTION%%--ppTHERE WAS NO CAUSE OF ACTION%%--ppCOULD BE ASSERTED UNTIL THE%%--ppAPPEAL WAS OVER.%%--ppTHEY HAD A RIGHT ACTION%%--ppINVESTED AT THAT THE POINT%%--ppIF YOU LOOK AT THE DECISION%%--ppWE CITED IN OUR BRIEF.%%--ppOUR CASE SHOULD KNOT%%--ppREQUIRED TO SUFFERS A LOSS%%--ppAND ATTRIBUTES LOSS TO LEGAL%%--ppMALPRACTICE TO DETERMINE%%--ppFINE APPELLATE%%--ppDETERMINATION.%%--ppTHEY HAD A RIGHT OF ACTION.%%--pp>> THANK YOU VERY MUCH.%%--ppFOR THIS VERY INTERESTING%%--ppPROBLEM.%%--ppEXCELLENT ARGUMENTS.%%--ppI WOULD LIKE TO TAKE%%--ppOPPORTUNITY THIS MORNING TO%%--ppWELCOME TO THE COURT, THE%%--ppSTUDENTS FROM THE LEGAL%%--ppBUSINESS, ENVIRONMENTAL%%--ppCLASS AT FLORIDA A&M%%--ppUNIVERSITY.%%--ppWE'RE GLAD YOU'RE HERE.%%--ppWE COAL YOU.%%--ppWE INVITE YOU BACK FROM TO%%--ppTIME.%%--ppI DON'T KNOW WHETHER THIS%%--ppMEANS YOU ONLY DEAL WITH%%--ppBUSINESS CASES THAT INVOLVE%%--ppENVIRONMENTAL ISSUES AS.%%--ppTHIS MORNING WAS A BUSINESS%%--ppKIND OF CASE AND I THINK IT%%--ppWAS VERY APPROPRIATE.%%--ppFOR YOU TO BE HERE.%%--ppSO WE WELCOME YOU.%%--ppPLEASE COMEBACK.%%--ppWE'LL TAKE OUR MORNING%%--ppRECESS.%%--pp>> > PLEASE RISE