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Arnold Matheny & Eagen v. First American Holdings

SC07-1136

ALL RISE.
SUPREME COURT IS BACK IN
SESSION.
>> THE FINAL, THE FINAL CASE
ON OUR CALENDAR THIS MORNING
IS ARNOLD
EtATQ0V1E0S10=50tiNO
CARRIERRINGCONNECT 115200+++bbwNO CARRIERRINGCONNECT 115200RINGCONNECT,,
A.
>> THE FUNDS GOT DEPOSITED
IN YOUR FUND'S ACCOUNT WHEN
I TRACTED LAW WE HAD TO WAIT
TEN DAYS TO MAKE SURE THAT
CHECK CLEARED BUT YOUR
CLIENTS WROTE THEMSELVES AN
ATTORNEY'S CZECHLOSLOVAKIA
THAT SAME DAY DEPOSITED IN
THEIR ACCOUNT THE VERY SAME
DAY BEFORE THE FUNDS HAD
CLEARED THEIR OWN TRUST
ACCOUNT HAD WRITTEN A CHECK
AND HAND DELIVERED IT TO
THEIR CLIENT.
FURTHER, IN TERMS OF THIS
THAT YOU HAVE IN ATTORNEYS,
YOUR CLIENT HAD FOUR DAYS
BEFORE ACTUALLY TOLD THIS
CREDITOR THAT THERE WAS AN
OUTSTANDING DEBT, I'M NOT
SURE WHY THEY ANSWERED THAT
WAY BUT THEY SAID THAT 40 --
THAT THEY WERE, THAT THERE
WAS A DEBT BUT THE DEBT WAS
FROM THE JUDGMENT DEBTOR TO
YOUR CLIENT.
AND THEN IN THIS ANSWER SAYS
NO, THERE'S NO MONEY.
WOULDN'T IT MORE HONEST
RESPONSE HAVE BEEN, AND I
DON'T KNOW IF
LIABILITY UNDER THAT, WE
RECEIVE THE FUNDS WE'VE
WRITTEN A CHECK AND
THEREFORE, YOU KNOW, THAT
THEN LEAVES THE PERSON WHO'S
SERVING THE WRIT OF
GARNISHMENT WITH THE OPTION
OF THEN GOING TO THE BANK
AND GARNISHING THE FUNDS
FROM THE BANK.
SO THAT'S A LONG QUESTION
BUT YOU ARE SAYING ABOUT ALL
THIS PRIDE I WANT TO
UNDERSTAND.
>> YES, MA'AM.
>> IN THIS CASE, HOW WHAT
YOUR CLIENT'S DID WAS HONEST
AND FORTHRIGHT WITH THIS
THIRD PARTY.
>> ALL RIGHT.
YES, MA'AM, AND I SEE THAT
IN TWO PARTS, IF I MAY
APPROACH IT.
THE TEN-DAY REQUIREMENT YOU
MENTIONED AND THE OTHER
ISSUE IS ADVISING OF A
CLIENT'S FUNDS.
AND LET ME DO THE TEN DAYS.
YES, IT'S FAIRLY STANDARD
PRACTICE IN THE INDUSTRY, IN
OUR INDUSTRY, AS ATTORNEYS,
TO WAIT TEN DAYS AND THAT'S
BECAUSE USUALLY THE, THE
COMMERCE GOES THROUGH A
CHECK WHEN IT NORMALLY GOES
THROUGH IT'S USUALLY TEN
DAYS.
THERE'S NO HARD AND FAST
RULE AND THAT'S NOT WRITTEN
IN THE RULES AND IN FACT
THERE NO GUARANTEE THE MONEY
WILL GET THROUGH.
>> ISN'T THERE A BAR RULE
THAT SAYS IF YOU HAVE THE
REASONABLE BELIEF THAT IF
FUNDS ARE GOING TO CLEAR YOU
CAN DISBURSE.
ISN'T THERE SOMETHING LIKE
THAT.
>> 5-1.1.
IT WAS AT THE TIME IN JUNE.
IT WAS I, NOW IT'S J
FUNDAMENTALLY THE SAME
DIFFERENCE IN THE COMMENTS.
BUT TO RESPOND TO THAT.
IF THERE ARE EXCEPTIONS ONE
IS CASHEER'S CHECK.
ONE IS LAWYER'S TRUST
ACCOUNT CHECK.
>> I DON'T UNDERSTAND YOUR
ARGUMENT ABOUT LACK OF
CONTROL.
YOU KNOW, AND THE SIMPLEST
EXAMPLE IS IF, IF THE CHECK
IS DRAFTED BY YOUR
COMPTROLLER OR WHOEVER THE,
THE PERSON IS IN THE FIRM,
YOU KNOW, THAT DOES THAT
KIND OF THING, AND THEN, YOU
KNOW, THE SHORTLY THAFR,
IT'S DISCOVERED THAT --
THEREAFTER, IT'S DISCOVERED
THAT INCLIENT BEING ENTITLED
TO $20,000 THAT THE CHECK
WAS FOR $50,000 AND YOU KNOW
THAT IT, IT INCLUDES
EVERYTHING THAT WAS IN THERE
ON THEIR ACCOUNT OR
SOMETHING.
AND YOU CATCH THAT AND YOU,
THE FIRST THING YOU THINK OF
OTHER THAN CALLING THE
CLIENT, GETTING IT
STRAIGHTENED OUT MIGHT BE
WAIT A MINUTE.
WE ARE GOING TO STOP PAYMENT
ON THAT CHECK AND ISSUE THE,
YOU KNOW, THE LESSER AMOUNT,
YOU KNOW, TO THE CLIENT.
AND IT SEEMS TO ME THAT THE,
YOU HAVE ABSOLUTE CONTROL IN
THAT SITUATION.
SO I'M HAVING TROUBLE
FOLLOWING ANY ARGUMENT ABOUT
NOT HAVING CONTROL.
WOULDN'T YOU AGREE YOU DO
HAVE CONTROL.
>> THERE IS AN EXCEPTION TO
THE STOP PAYMENT
REQUIREMENTS EVEN FOR
CASHIER'S CHECK IF THERE'S
FRAUD OR THERE IS AN ERROR.
AND THAT'S WHAT YOU'RE
REFERING TO.
YES, IN THAT CASE YOU CAN
TRY TO STOP PAYMENT F. THE
CHECK --
>> WELL YOU HAVE CONTROL.
THE WHOLE POINT IS, YOU, YOU
ARE ABLE TO AFFECT THE, THE
DISHONORING OF THAT
PARTICULAR CHECK.
YOU KNOW, THE, THE REASON
IT'S DIFFERENT BUT YOU DO
HAVE THE ABILITY TO DO THAT.
YOU MIGHT MAKE A MISTAKE.
WHO KNOWS WHAT THE, THE
SITUATION MIGHT BE.
BUT AS FAR AS CONTROL IS
CONCERNED, I'M HAVING
DIFFICULTY WITH YOU SAYING
YOU DON'T HAVE CONTROL.
IT'S THE DEFINITION OF
POSSESSION AND CONTROL THAT
IT CONTROLS, THAT CONTROLS
THE INTERPRETATION HERE.
AND IF YOU TAKE THE ABSOLUTE
CONTROL, EVEN IN THE
CASHIER'S CHECK, THE, THE
BANK HAS CONTROL AND CAN
STOP THE MONEY FROM GOING
OUT IF IT WANTS TO BUT
INTERPRETATION OF THE
POSSESSION AND CONTROL AND
SAYING THAT IT IS BASICALLY
CLEARS FUNDS ZMAS YOU
DELIVER IT YOU HAVE FOE MORE
POSSESSION AND CONTROL AND
GOING BACK TO JUSTICE
LEWIS'S ARGUMENT THAT IT CAN
HANDED TO A THIRD PARTY
HOLDER IN DUE COURSE THAT
YOU HAVE NO CONTROL OVER
THAT YOU DO NOT HAVE THE
LEVEL OF CONTROL.
>> WITH COMMERCE TODAY I
WOULD SUSPECT IF YOU MAKE
THE RIGHT ARRANGEMENT A BANK
WILL HONOR THE CHECK
IMMEDIATELY.
THAT IS THAT, YOU KNOW, WITH
THE ABILITY THAT THEY HAVE
THAT, AS, AS POSED TO, YOU
KNOW, GOING BACK IN TIME,
WHERE WE ALL KNOW THERE,
THERE WADS BUILT IN TIME.
BUT I'M, I'M STILL, SOMEWHAT
SOME WOULD ASK YOU THE
QUESTION WOULDN'T IT HAVE
BEEN A MORE RESPONSIVE
ANSWER TO SAY WE ISSUED A
TRUST ACCOUNT CHECK ON SUCH
AND SUCH A DATE.
IN RESPONSE TO THIS, AND
THEN LET THE CHIPS FALL
WHERE THEY MAY?
>> NO, SIR, I DON'T AGREE
WITH THAT WITH ALL DUE
RESPECT AND LET ME READ FROM
FLORIDA BAR ETHICS OPINION
60-34.
IT IS IMPROPER FOR A CLIENT
THAT HE HOLDS FUNDS DUE TO
THE CHRIPT SOY THAT SUCH
CREDITOR MAY PROCEED AGAINST
THEM NOR IS IT PROPER FOR
THE LAWYER TO INTERPLEAD
SUCH FUNDS.
IT IS THE LAWYER'S DUDEY TO
REPRESENT HIS CHRIND WITH
UNDIVIDED FIDELITY AND TO
PRESERVE HIS CONFIDENCE.
>> IS THAT THE SAME THING
FOR A REAL ESTATE BROKER
WITH THE ESCROW ACCOUNT?
>> I DON'T THINK THEY HAVE
THE SAME, THEY'RE HELD TO
THE SAME STANDARDS THAT WE
ARE, NO, SIR.
>> THEN WHY --
>> JUSTICE CANTERO HAD A
QUESTION.
>> I'M HAVING THIS TROUBLE
WITH THE DISTINCTION TEEN
LAWYER'S TRUST ACCOUNTS AND
OTHER NONBANK ACCOUNTS T.
SEEMS TO ME UNDER THE CHIEF
JUSTICE'S SCENARIO IF A
CHECK IS GIVEN TO A AND THEN
HE WRITES IT OVER TO B,
THERE'S NO, THERE'S NO MORE
CONTROL OVER THAT CHECK.
THAT WOULD SEEM TO APPLY TO
NONLAWYERS AS WELL.
IT WOULD JUST SAY FOR
NONBANK ENTITIES AS SOON AS
THE CHECK IS WRITTEN,
CONTROL IS LOST OVER THAT
CHECK.
>> MY CLIENT TAKES THE
POSITION THAT THIS COURT
SHOULD ADOPT THE MAJORITY
RULE, WHICH IS WHAT YOU ARE
SAYING, JUSTICE, AND THAT
APPLIES BACK TO HERE.
WHAT DOING IS ADDING A LAYER
TO THAT AND SAYING
ESPECIALLY WHEN YOU HAVE A
TRUST ACCOUNT CHECK THAT
TRAVELS THROUGH COMMERCE
WITH A HIGHER LEVEL OF
RESPECT AND CERTAINTY AND.
>> SO YOU WERE SAYING
SOMETHING ABOUT THIS BAR
ETHICS OPINION.
I WOULD HAVE TO STOP YOU
THERE BECAUSE THE FIRST WRIT
THEY ANSWERED WHILE
GREENLIFE IS INDEBTED TO
PRECLUDE AME DID NOT
CURRENTLY HOLD ANY FUNDS
BELONGING TO PRECLUDE SO
THEY ALREADY, YOU KNOW, LET
THE BEANS SPILL IN THE FIRST
ANSWER THEY SAID HEY THERE
IS MONEY OUT THERE.
WE JUST DON'T HAVE THEM
RIGHT NOW.
>> THERE WERE TWO WRITS,
YES, MA'AM.
AND ARNOLD MATHENY WAS
ABUNDANCE OF CAUTION WAS.
>> WHY WON'T AN ABUNDANCE OF
CAUTION ANSWERED TO A SECOND
WRIT SAYING THE FUNDS WERE
RECEIVE ADCHECK WAS WRITTEN
AND THEY DO NOT KNOW THE
STATUS OF WHETHER THE FUNDS
ARE STILL IN THE BANK OR
NOT?
>> WITH ALL DUE RESPECT, THE
STATUTE SAYS TELL -- PLEASE
ADVISE YOU'RE REQUIRED OR
YOU HAVE PENALTIES TO TELL
WHAT FUNDS YOU HAD AT THE
TIME YOU RECEIVED THE WRIT
TO THE TIME YOU ANSWER.
AND IN THEIR INTERPRETATION,
BASICALLY TRANSACTION
LAWYERS AND ALWAYS RELYING
ON TRUST ACCOUNT CHECKS THEY
HAVE TO COMMERCE IN $30
MILLION CHECKS THEY'VE
ACCEPTED IT.
GOING TO COMMERCE THEY
BELIEVED THAT WHEN THEY
PROVIDED THAT CHECK,
DELIVERED IT TO THE CLIENT,
WHICH WAS THE CLIENT'S FUNDS
THAT THEY NO LONGHAIR THE
FUNDS.
>> ALL THEY HAD TO DO WAS
CALL THE BANK AND SAY OF
THESE FUNDS STILL -- ARE

THESE FUNDS STILL IN MY BANK
ACCOUNT OR NOT, RIGHT?
>> THEY COULD'VE MADE --
>> I'M DISTINGUISHING
BETWEEN WHETHER THEY HAD A
DUDEY TO STOP PAYMENT AND
WHETHER THEY AT LEAST HAD
THE OBLIGATION TO ANSWER
THAT EVEN THOUGH THE CHECK
WAS WRITTEN FUNDS ARE STILL
IN MY ACCOUNT.
>> YES, MA'AM.
THEIR BELIEVED, THEY STILL
BELIEVE, AND I BELIEVE, BUT
THE COURT WILL DECIDE, THAT
AS SOON AS THEY HANDED THAT
CHECK TO THE CLIENT, THEY
DID NOT HAVE ANY FUNDS, EVEN
THOUGH THERE IS A CONTROL
YOU COULD CALL THE BANK AND
SAY THAT STOP PAYMENT
DOESN'T MEAN IT'S
APPROPRIATE ANYMORE IT'S
APPROPRIATE FOR A CASHIER'S
CHECK.
>> WELL CERTAINLY THEN A
NONATTORNEY WE SHOULDN'T
HOLD, LET ATTORNEYS GET AWAY
WITH SAYING I DON'T HAVE
CONTROL AFTER A WROTE A
CHECK AND SAY TO
NONATTORNEYS BUT YOU HAVE
CONTROL.
YOU CAN STOP PAYMENT.
DO YOU AGREE THAT?
>> I AGREE WITH THE MAJORITY
RULE?
DO YOU AGREE THOUGH BECAUSE
YOU SAID TRUST ACCOUNTS
SHOULD BE IN SOME OTHER
LEVEL IF THEY HAD WAITED
TWORY 3 DAYS TO WRITE THE
CHECK.
WOULD THEY HAVE TO HAVE
RESPONDED TO THE GARNISHMENT
AND DESPITE THAT 19 SCON
OPINION AND SAY THAT THEY
WERE HOLDING FUNDS BELONGING
TO THEIR CLIENT?
>> YES, MA'AM.
AND THERE ARE CASES TO
SUPPORT THAT.
>> SO THEN THAT 1960 ETHICS
OPINION IS REALLY DOESN'T
APPLY IF THEY HAD TO ANSWER
THAT WRIT AND HOLD THOSE
FUNDS AND NOT WRITE A CHECK
IF AT THAT POINT THEY, WHEN
THEY WERE SERVED WITH THE
WRIT THEY HAD NOT ALREADY
WIN THE CHECK.
-- WRITTEN THE CHECK.
>>, THE DISTINCTION BETWEEN
THAT 1960 OPINION AND WHAT
YOU'RE REFERRING TO IS THAT
THESE FUNDS WERE, WERE IN
THE TRUST ACCOUNT AND THERE
WAS A GARNISHMENT WRITTEN TO
IT.
THE 60s OPINION I THINK
TALKS ABOUT ADVISING A, A, A
CREDITOR, HEY, I GOT SOME
MONEY.
YOU NEED TO COME GET T. NOW,
BUT --
>> THAT WAS NOT A
GARNISHMENT CIRCUMSTANCE.
1960.
>> I, I, I DON'T KNOW.
>> WELL, THERE'S NOTHING IN
THE OPINION THAT SAYS IT WAS
A GARNISHMENT CIRCUMSTANCE.
>> THAT'S CORRECT.
THAT IS CORRECT.
AND, AND I'M NOT SAYING IT'S
EXACTLY A GARNISHMENT
PROVISION.
AND QUITE FRANKLY, NONE OF
THE ETHICS OPINIONS AND NONE
OF THE RULES ARE GARNXSHMENT
AND WE'RE JUST EXTRAPOLATING
AND TAKING DIFFERENT PARTS
TO MAKE A DECISION AND I
STRONGLY URGE THE COURT TO
MAKE A DECISION ON THIS.
>> YOU ARE WELL INTO YOUR
REBUTTAL SO YOU KNOW HOW YOU
WANT TO USE YOUR TIME.
>> I WOULD LIKE RESERVE
IT.
>> OKAY.
>> THANK YOU.
>> MAY IT PLEASE THE COURT
JEFFREY TODD HODGES FOR
FIRST AMERICAN HOLDINGS
FIRST AMERICAN INVESTMENT
BANKING CORPORATION, THE
STATUTORY POLICY OF CHAPTER
77 IS TO STRONGLY FAVOR
GARNISHORS!!$$!!!!!!!!!!!!!!!!!!
GARNISHORS.
>> WHY DON'T THEY SAY IN
THERE THAT IF FOR CONTROL
FOR PURPOSES OF THIS STATUTE
MEANS THAT IF FUNDS HAVEN'T
CLEARED -- BECAUSE I REALLY
THINK I HAVE TO TELL YOU
UNTIL I READ THIS CASE, AND
I PRACTICE LAW FOR YOU KNOW
ALMOST 20 YEARS, I WOULD
HAVE THOUGHT IF I HAD
WRITTEN -- EVEN, PERSONALLY,
THAT WHEN I WRITE A CHECK,
MY FUNDS ARE GONE, I MEAN
YOU KNOW, CERTAINLY, SO THE
IDEA THAT I THINK THAT --
DMON!!$$!!!!!!
COMMON SENSE IDEA I STILL
HAVE CONTROL OVER IT BECAUSE
MAYBE UNDER CERTAIN
CIRCUMSTANCES COULD I STOP
PAYMENT, SEEMS TO ME, A
STRETCH OF CONTROL, WHAT
POSSESSION OR CONTROL MEANS.
>> I UNDERSTAND, THE POINT
YOUR HONOR, HOWEVER IT IS
THE POWER TO STOP PAYMENT ON
THAT CHECK THAT GIVES ANY
ACCOUNT HOLDER POSSESSION
AND CONTROL OVER --
>> ISN'T THAT YOU AGREE THAT
THE STATUTORY CONSTRUCTION,
ARGUMENT --
>> I THINK I THINK THAT IS
-- A STATUTORY CONSTRUCTION
UNDER THE UCC.
>> BUT YOU HAVE TO THEREFORE
WHOA WE HAVE TO DO IS GO AND
SAY THAT POSSESSION OR
CONTROL, IT IS NOT DEFINED,
IT MEANS THIS, BUT WE HAVE
TO -- THEN DETERMINE WHETHER
THE ABILITY TO TOP SPAIMENT
UNDER CERTAIN CIRCUMSTANCES,
IS CONTROL FOR PURPOSES OF
THE GARNISHMENT STATUTE.
>> YES AND I THINK, THERE
ARE A NUMBER OF CASES THAT
SAY THEY SAY POSSESSION AND
CONTROL OF THESE FUNDS.
>> OKAY, THAT IS -- WE ARE
HERE.
>> YES.
>> IF THERE WERE CASES THAT
SAID IT IN THIS COURT WE
WOULDN'T BE HERE.
>> THERE ARE NOT CASES FROM
THIS COURT THAT SAY THAT,
HOWEVER!!$$!!!!!!!!!!!!
HOWEVER, ABBAL ANALOGOUS
CONTEXT A BURNS HE --
BANKRUPTCY CASES SAY IF THEY
COULD STOP PAYMENT THEY HAD
POSSESSION AND CONTROL OF
THE FUNDS THEREFORE
OBLIGATED TO TURN FUNDS OVER
TO THE BANKRUPTCIES TRUSTEE.
>> THAT THAT IS A WHOLE
DIFFERENT STATUTE UNDER
BANKRUPTCY.
>> I UNDERSTAND BUT THE
STANDARDS THEY USE EXACTLY
THE SAME UCC ANALYSIS.
>> THE -- ACCORDING TO THE
UCCANALYSIS!!$$!!!!!!!!!!!!!!!!!!!!!
UCCANALYSIS, 637.3101, SO
THAT YES.
>> AND 6734111.
>> OKAY.
>> AND ME TO DIFFERENCE --
>> 42131 AND 4303.
>> OKAY, THE -- UCC, A CHECK
IS NOT DEEMED PAYMENT.
IT IS A IT IS STRICTLY A
CONDITIONAL PAYMENT.
>> SUSPENDED OBLIGATION.
>> A SUSPENDED OBLIGATION,
THE REASON FOR THAT IS
BECAUSE, THE DRAWER OF THE
CHECK, I.E., BANK POVRS
CUSTOMER, ALWAYS HAS THE
ABSOLUTE RIGHT TO STOP
PAYMENT -- SO A CHECK, IS
NOT PAYMENT, IT IS NOT AN
ASSIGNMENT OF THE FUNDS IN
THE ACCOUNT, UNTIL THE
DRAWER'S BANK THE DRAWE,
ACTUALLY PAYS THE CHECK.
>> ONLY THAT THE POINT IN
TIME IS THERE AN ASSIGNMENT
OF FUNDS, AND -- TRANSACTION
CLOSE --
>> TALKING ABOUT PAYMENTS,
WHETHER IT IS A PAYMENT, AT
LEAST IT IS A PRESUMPTION OF
PAYMENT WHATEVER YOUR BILLS
ARE DUE WHEN YOUR MORTGAGE
PAYMENT IS DO YOU BY THE
FIFTH OF THE MONTH, WHEN
THEY RECEIVE THE CHECK, THAT
IS PRESUMPTIVELY PAYMENT
ALSO IN LATER ON THE FUNDS
DON'T CLEAR.
BUT THEY DON'T WAIT TILL THE
FUNDS CLEAR TO SAY WELL NOW
YOU PAID.
>> THAT IS CORRECT, THAT IS
WHY IT IS TREATED AS A
CONDITIONAL PAYMENT, IN
FLORIDA.
YOU SEE, IT IS BECAUSE, THE
RECEIPT OF THE CHECK IS
CONDITIONAL PAYMENT TO THE
OBLIGEE!!$$!!!!!!!!!!!!
OBLIGEE, WHO DEPOSETS CHECK
IN ORDINARY COURSE OF
BUSINESS IF AS IN 99.99% OF
THE CASES THE CHECK CLEARS.
>> AS STATUTE SAYS A
SUSPENDED BLAKES AS OPPOSED
TO CASHIER$$'S CHECK FULFILLED
OBLIGATION.
>> THAT IS CORRECT, IN.
>> IF THE LAW FIRM HAD
RESPONDED AND SAID WE
RECEIVED BECAUSE THE FIRST
TIME THEY RESPONDED SAID
SOMEBODY ELSE WAS INDENTED
TO THEM, AND YOUR CLIENT
COULD HAVE GONE AHEAD AND --
>> MY CLIENT -- HOOD DONE
THAT.
>> TRIED TO GARNISH, OKAY,
THE SECOND O TIME AROUND HE
THEY ANSWER IT THEY DON'T
STOP YOU KNOW THEY ARE JUST
GETTING THE -- THEY GO, WE
RECEIVED THE FUNDS, BUT WE
WROTE THE CHECK.
>> YES.
>> WOULD THAT HAVE BEEN A
SUFFICIENT ANSWER?
IN OTHER WORDS, WHOA I'M
SEEING IS A SCENARIO WHERE
THEY WASN'T FORTHCOMING
HERE, MAYBE.
AND THEY MAY DISAGREE BUT --
AND BUT WITH THEE PERSON
ANSWERING IT THAT THE POINT
THEN YOUR CLIENT WOULD HAVE
GO AND GARNISH THE MONEY
FROM THE BANK IF IT WAS
STILL THERE
>> ACTUALLY, NO.
ACTUALLY!!$$!!!!!!!!!!!!!!
ACTUALLY, TO THAT WOULD HAVE
BEEN A SUFFICIENT ANSWER
HOWEVER!!$$!!!!!!!!!!!!
HOWEVER, GARNISHMENT STATUTE
IMPOSES TWO OBLIGATIONS ONE
IS ANSWER AND DISCLOSE,
REPORT IS HOW THE STATUTE
READS.
THE ON THE OTHER IS
REPAYING -- AND WHEN YOU
HAVE POSSESSION AND CONTROL
YOU MUST NOT ONLY REPORT
THAT YOU MUST ALSO REPAY --
>> NOT A DIFFERENCE BETWEEN
RETAINING IT -- AND
RECALLING IT OR DOING ONE
OTHER STEP THINK THAT IS
WHERE IT IS GOING, TAKE
OWING!!$$!!!!!!!!
OWING.
>> IN OTHER WORDS -- I THINK
NOW WE MY BE ONTO SOMETHING.
>> I THINK THE ANSWER IS NO.
I THINK THAT YOU IF YOU HAVE
IT IN YOUR POSSESSION FOR
EXAMPLE!!$$!!!!!!!!!!!!
EXAMPLE, IF I HAD --
MR. BARREL'S LEGAL PAD IN MY
POSSESSION AND HIS CREDITOR
GARNISHES ME I SAY I HAVE
HIS LEGAL PAD.
MR. BAILS SAYS GIVING ME MY
LEGAL PAD BACK I HAND IT TO
HIM I HAVE VIOLATED THE
RETAIN SAME THING IF I
LOOFRNT!!$$!!!!!!!!!!!!LEAVE
IT SITTING HERE WALKWAY HE
COMES OVER AND TAKES IT.
>> ON THE OTHER HAND, IF YOU
HAD IF IT WAS HIS LEGAL PAD.
>> YES?
>> -- AND YOU -- BUT YOU
SAID I'M GIVING TO IT YOU
FOR AN HOUR.
>> YES?
>> -- IN THAT HOUR YOU GOT
SERVE D WITH A WRIT YOU

WOULDN'T HAVE TO SAY NOW
GIVE ME BACK MY --
>> IF I HAD A GIVEN HIM THE
LEGAL PAD, PRIOR TO GETTING
SERVICE OF THE WRIT I AGREE
WITH YOU.
THAT IS NOT WHAT HAPPENED IN
THIS CASE.
>> IN THIS CASE YOU AGREE
THAT IF TO THAT -- IF THE
ATTORNEYS HAD GOTTEN A
CASHIER!!$$!!!!!!!!!!!!
CASHIER'S CHECK, ALL FOR
THEIR ACCOUNT GIVING GIVEN
IT TO THEIR CLIENT YOU
WOULDN'T.
WE ARE I WAS HOPING WOULD
YOU ASK THAT QUESTION, AND
THE ANSWER IS CORRECT.
AND THE REASON FOR THAT IS
IN THE HISTORIC NATURE OF
CASHIER!!$$!!!!!!!!!!!!
CASHIER'S CHECKS, WHEN YOU
GO TO THE BANK ACKNOWLEDGED
BUY A CARB!!$$!!SHIER!!$$!!!!!!!!!!!! CASHIER'S CHECK THE
BANK TAKES THE MONEY OUT OF
YOUR ACCOUNT AT THAT MOMENT
THEY WILL NOT ISSUE IT UNDER
ANY OTHER CONDITION, THAT IS
PRECISE!!$$!!!!!!!!!!!!
PRECISELY WHY.
THEY C.C. TREATS CASHIER$$'S
CHECKS DIFFERENTLY FROM
EVERY OTHER CHECK IN THE
WORLD, INCLUDING, ATTORNEY
TRUST ACCOUNTS CHECKS.
>> OUR TRUST ACCOUNT CHECKS
ARE JUST CHECKS.
>> MY CONCERN ABOUT IT IS
THIS, THERE ARE OBLIGATIONS
TOWARDS A CLIENT, AND NOW
THAT LAW FIRM KNOWS.
>> YES?
>> -- THAT AND PROBABLY TOLD
THEIR CLIENT YOU KNOW THESE
PEOPLE ARE AFTER YOU, WOULD
I HAVE RESPOND THIS MONEY
WAS DUE YOU, WHEN OUR CHECK
COMES IN WE ARE GOING TO
IMMEDIATELY DISPERSE IT,
ANYBODY AND BETTER GET
YOURSELF TO MY BANK AND PAY
IT WITHOUT THAT BE IMPROPER.
>> I WOULD HOPE P THEY SAID
THAT.
IF THEY DIDN'T SAYx,,
I DON'T KNOW.
BUT THEY SHOULD HAVE SAID
THAT.
BUT THE BOTTOM LINE IS,
PRECLUDE DIDN'T FOLLOW THOSE
INSTRUCTIONS.
THEY WAITED A WEEK.
THEY HELD THE CHECK.
THE MONEY STAYED IN THE
ACCOUNT.
>> THE THING THAT WE HAVE TO
BE CONCERNED WITH, I REALLY
RECOGNIZE THE UCC AND THOSE
IMPLICATIONS BUT I ALSO SEE
SOME PRACTICAL IMPLICATIONS.
ARE THERE OTHER AREAS THAT
WE'RE GOING TO BE IMPACTING
BY WHATEVER WE DECIDE WITH
REGARD TO WHEN SOMEONE HOLDS
SOMETHING AND YET, IT'S NOT
REALLY THERE, SOMETHING LIKE
A CHECK?
I'M NOT SURE I KNOW WHAT IT
IS.
WHERE THEY HAVE SORT OF
ALREADY TENDEREDDED
SOMEPLACE ELSE FOR WHATEVER
THE RIGHT WORD IS ARE WE
GOING TO BE IMPACTING OTHER
AREAS OF THE LAW IN WHAT
WE'RE DOING HERE?
>> NOT AT ALL.
>> OTHER AREAS SIMILAR TO
THIS.
>> THE REASONS FOR THAT ARE
CONTAINED IN THE GARNISHMENT
STATUTE.
I'D LIKE TO REFER BACK TO
YOUR EXAMPLE FROM EARLIER
WHERE I WRITE A A CHECK, A
NEGOTIATES THE CHECK TO B
WHO IS HOLDER.
>> RIGHT.
>> B, NOW HAS A CLAIM,
THEORETICALLY, FOR ME
STOPPING PAYMENT ON A CHECK
TO A.
ACTUALLY B HAS NO CLAIM
AGAINST ME FOR STOPPING
PAYMENT ON THE CHECK TO A.
BECAUSE, WHEN A ANSWERS THE
GARNISHMENT WRIT OR WHEN I
ANSWER THE GARNISHMENT WRIT,
I SAY, I WROTE A CHECK TO A.
A ENDORSED THE CHECK TO B.
B MAY CLAIM AN INTEREST IN
THIS MONEY.
A MAY CLAIM AN INTEREST IN
THIS MONEY.
I MAY CLAIM AN INTEREST IN
THIS MONEY.
ALL THE PARTIES GET BROUGHT
BEFORE THE COURT.
>> IT'S PRIORITY ISSUE.
>> COURT GETS TO DECIDE WHO
GETS THE MONEY.
>> THE QUESTION, REALLY AS I
UNDERSTAND YOUR ARGUMENT IN
GARNISHMENT IS, WHERE THE
FUNDS ARE AS OPPOSED TO
WHERE THE CHECK IS.
>> YES.
IT'S PHYSICAL POSSESSION OF
THE CHECK IS OF NO
CONSEQUENCE.
>> IT'S NO CONSEQUENCE WHO
IT'S BEEN NEGOTIATED TO OR
ANYTHING ELSE BECAUSE
GARNISHMENT ACTUALLY
ATTACHES TO THE ACCOUNT, TO
THE MONEY?
>> YES.
YOU SEE, TO GET BACK TO
JUSTICE PARIENTE'S QUESTION
EARLIER I COULDN'T GO TO
ANE'S BANK EVEN IF I KNEW
THEY HAD WRITTEN A CHECK,.
>> BECAUSE THEY DIDN'T HAVE
A ACCOUNT IN PRECLUDE'S
NAME.
ALL THEY HAD WAS ACCOUNT IN
AME'S NAME.
BY GARNISHING AME I WENT AS
FAR AS I COULD CONCEIVABLY
GO.
>> I HAD A FOLLOW-UP
QUESTION TO YOUR ANSWER TO
THE CHIEF JUSTICE WHICH IS,
YOU SAID IF YOU WRITE A
CHECK TO A, TO B, AND
EVERYBODY GETS BROUGHT
BEFORE THE COURT, THAT SEEMS,
AT THE TIME YOU ANSWER
YOU'RE ASSUMING THAT YOU
KNOW THAT A ENDORSED THE
CHECK OVER TO B BUT YOU
DON'T NECESSARILY KNOW THAT.
>> YOU DON'T NECESSARILY
KNOW THAT.
AS SOON AS YOU FIND OUT CAN
YOU AMEND YOUR ANSWER AND
MAKE THAT DISCLOSURE.
AS THE GARNISHOR'S JOB TO
BRING B BEFORE THE COURT
ONCE YOU SAY I LEARNED ABOUT
B.
>> WELL, SEEMS THEN, IN
ANSWER TO WHAT, YOU ANSWERED
TO JUSTICE WELLS, AS I WAS
ASKING, AREN'T WE
INTERPRETING CONTROL?
BUT YOUR, SEEMS TO ME THAT
YOUR NOW ARGUING OR COULD BE
ARGUING, NO, BECAUSE IT'S
NOT POSSESSION OR CONTROL.
THIS ISN'T ISSUE OF CONTROL.
SO THE ABILITY TO STOP
PAYMENT HAS NOTHING TO DO
WITH IT AT THE OUTSET.
THE ISSUE IS THAT POTENTIAL,
WHAT POTENTIAL MEANS.
AND, THEREFORE, IF IT'S
SIMPLY IS, THE FUNDS ARE
STILL IN THE PERSON'S
ACCOUNT THEY'RE STILL IN
POSSESSION OF IT.
IS THAT --
>> I THINK YOU'RE ACCURATE
BUT I THINK IT IS A QUESTION
OF POSSESSION OR CONTROL.
>> SO WHICH ONE ARE YOU
ARGUING?
>> I'M ARGUING BOTH.
IN THIS PARTICULAR CASE I'M
ARGUING BOTH.
>> NOW, DO YOU SEE A
DIFFERENCE, I GUESS I NOW
UNDERSTAND WHAT YOU'RE
SAYING IN TRUST ACCOUNT.
BUT IN ORDINARY SITUATION
WHERE OUT OF STATE CASES AND
HAVE MADE A DISTINCTION WITH
THE BANK, DOES THE BANK HAVE,
WAY I SAW THE DISTINCTION IS
THE BANK CAN LOOK AND SEE
THE FUNDS ARE EITHER THERE
IN THE ACCOUNT OR NOT.
I MEAN THEY DON'T HAVE, THEY
DON'T EVEN KNOW IF THE
CHECK'S BEEN WRITTEN,
CORRECT?
>> THAT IS CORRECT.
THEY DON'T KNOW IF CHECK
NUMBER 13450 IS WRITTEN.
>> WOULD YOU SAY THERE, THE
BANK CLEARLY HAS POSSESSION
AT THAT POINT BECAUSE THEY
KNOW THEY CAN LOOK AND
SAY --
>> THE MONEY'S IN THE
ACCOUNT.
>> SO IS IT A STEP REMOVED,
AT LEAST WOULD YOU SAY THAT
THERE IS, COULD BE, NOT THAT
I HAD IT SHOULD BE, COULD BE
A BASIS FOR
DISTINCT POSSESSION OR
CONTROL FOR NON-BANK GARNISHEE
OWES FROM BANK GARNISH EE'S
IS THAT WHAT MAJORITY OF THE
STATES HAVE DONE.
>> MAJORITY OF DONE THAT
REPRESENTED BY CENTRAL
SECURITY ALARM THE
NEW MEXICO CASE WHICH IS
LEADING CASE FROM THOSE
JURISDICTIONS.
>> ONLY ONE ACTUALLY
EXPLAINS IT.
>> IT'S OWN ONE THAT
EXPLAINS JUDGE STONE'S
HOLDING IN THE BOXING CASE.
THEY'RE WRONG.
THEY'RE WRONG FOR TWO
REASONS.
IN FLORIDA, THERE'S NO RISK
OF DOUBLE LIABILITY.
NOT EVER.
>> ALL THE MOST OF THOSE
OTHER STATES THAT SAID HIT
IT TOO.
>> ALL THOSE OTHER STATES
SAY WE FEAR DOUBLE LIABILITY
FOR THE GARNISHEE.
WE DON'T HAVE THIS ISSUE
HERE.
>> ARE YOU SAYING THIS ISN'T
MY FIGHT, ONCE I WRITTEN
CHECK DISCHARGED MY
OBLIGATION WHY DO I HAVE TO
GET INTO THE MIDDLE OF THIS?
I THINK THAT'S REALLY, IT'S
A PSYCHOLOGICAL THING ABOUT,
WHAT, WHEN YOU THINK YOU'VE
WRITTEN A CHECK, IT'S GONE,
YOU KNOW AS JUSTICE CANTERO
SAYS, WE ALL WRITE CHECKS
EVERY DAY AND WE THINK WE'VE
PAID.
WHY TO PUT THIS PERSON WHO
ALREADY WRITTEN THE CHECK IN
THIS POSITION OF HAVING TO
BE DRAWN INTO A GARNISHMENT
ACTION THAT COULD LAST FOR,
FOR YEARS.
EVEN THOUGH THEY'RE GETTING
THEIR COSTS, REIMBURSED?
>> THEY GET THEIR COSTS
REIMBURSED.
THEY GET STATUTORY IMMUNITY
AND REALLY NOT DRAWN INTO
ANYTHING.
THEY SAY HERE'S WHAT WE'VE
GOT.
JUDGE, YOU DECIDE.
AND THEY'RE OUT.
JUST HANG ON TO IT UNTIL THE
COURT ORDERS THEM TO DO
OTHERWISE.
THAT'S ALL THEY HAVE TO DO.
NOW, LET'S TALK ABOUT THE
BURDEN.
IS IT A DIFFICULT BURDEN TO
PICK UP THE PHONE, CALL YOUR
BANKER, I BANK AT WACHOVIA.
I CAN CALL MY BANKER AND SAY,
HAS CHECK NUMBER 13450
CLEARED?
ELSAY, NO.
THEY'LL TELL ME IN
ABOUT FIVE SECONDSES.
I WILL SAY, PUT A STOP
PAYMENT ON IT.
HE WILL SAY, SEND ME AN
E-MAIL.
OKAY?
I CAN GO ON-LINE.
-- IF CHECK NUMBER 13450
HAS CLEARED.
I CAN CALL AN00 NUMBER THAT
GIVES ME DIRECT ACCESS INTO
MY BANK'S PROCESSING SYSTEM
COMPUTER, AND IT GIVES ME
VOICE RESPONSES.
AND I CAN PUNCH IN MY
ACCOUNT NUMBER.

AND PUNCH IN THE CHECK
NUMBER AND THEY WILL TELL ME
WHETHER THAT CHECK HAS
CLEARED OR NOT CLEARED.
THAT, WHAT COULD BE EASIER?
IT IS NOT APT SIGNIFICANT
BURDEN.
>> TALKING ABOUT WHAT THE
ANSWER WOULD HAVE TO SAY.
GARNISHMENT STATUTE, 77.04
AND IT TRACKS WHAT THE
ACTUAL WRIT WAS SERVED SAYS,
FIRST THEY STATE WHETHER THE
GARNISHEE IS INDEBTED TO
PLAINTIFF, COUNTER DEFENDANT,
PRECLUDE.
ON THE DATE THE WRIT WAS
SERVED WAS THE LAW FIRM
INDEBTED TO PRAY CONCLUDE?
>> NO.
>> OKAY.
THEY WOULD SAY NO THEY'RE
NOT.
WOULDN'T A REASONABLE PERSON
SAY -- AND IN WHAT SUM AND
IN WHAT TANGIBLE AND
INTANGIBLE PROPERTY IS IN
POSSESSION OR CONTROL?
READING THOSE TOGETHER, I
THINK THERE IS SOME
AMBIGUITY HERE WE'RE TRYING
TO INTERPRET THE STATUTE.
WOULDN'T THAT SAY I HAVE TO
BOTH BE INDEBTED AND IN
POSSESSION AND CONTROL?
>> NO.
ACCORDING TO THE STATUTE --
>> NOT FOR THE GARNISHMENT.
BUT FOR ANSWERING.
YOU AGREE WE HAVE MANY CASES
THAT SAY YOU LOOK IF THERE
IS AMBIGUITY YOU LOOK AT
STATUTE AS A WHOLE AND THE
SCHEME?
>> YES.
>> YOU WOULD LOOK AT THE
ANSWER TOGETHER WITH THE
OTHER 77.03 AND, I'M
WONDERING IF THAT DOESN'T
CREATE ANOTHER AMBIGUITY.
THEN I WILL KNOW THAT IT HAS
BEEN RAISED HERE BUT IF
SOMEBODY IS LOOKING AT THIS
AND THEY NO THEY'RE NOT
INDEBTED BECAUSE THEY WROTE
THE CHECK, THAT SORT OF ENDS
THEIR THINKING ABOUT THIS.
>> EXCEPT THE WRIT SAYS, ARE
YOU INDEBTED OR DO YOU
HAVE --
>> DOESN'T SAY OR.
SAYS AND.
>> THE WRIT?
>> THE WRIT.
I HAVE IT WRITE BEFORE ME.
>> SAYS, REPORT ANY DEBT AND
OR --
>> OR WAS INDEBTED AT TIME
OF SERVICE OF THE WRIT.
>> WRITE.
>> WELL IT WAS SERVED THEY
WEREN'T INDEBTED.
>> THAT'S CORRECT.
OR, POSSESS ANY TANGIBLE OR
INTANGIBLE PERSONAL
PROPERTY.
>> AND IN WHAT SUM AND.
>> AND IN WHAT SUM.
>> THAT'S WHY --
>> YOU REPORT DEBT OR
PROPERTY.
AND, WHAT SUM.
>> I GUESS MY QUESTION IS,
BUT IT'S STILL EXTENDED
OBLIGATION.
IT'S NOT AN OBLIGATION PAID.
THIS --
>> THE CHECK WRITTEN TO
PRECLUDE, YES.
>> RIGHT.
>> ABSOLUTELY.
>> IT'S PAYABLE UPON
PRESENTMENT, UNTIL PRESENTED
IT'S STILL A SUSPENDED
OBLIGATION.
>> WELL IT'S CHRIBT
PROPERTY.
REMEMBER THIS IS --
>> A TRUST ACCOUNT.
>> A TRUST ACCOUNT.
IT WAS NOT A DEBT THAT THE
ANE OWED TO PRECLUDE.
IT WAS PROPERTY OF PRECLUDE
THAT ANE HAD IN HITS
POSSESSION AND CONTROL.
>> WHAT PART OF THE STATUTE
DO YOU RELY THEY HAVE TO
AFFIRMATIVELY TELL THE BANK
SOMETHING?
>> AFFIRMATIVELY STOP
PAYMENT ON THE CHECK.
>> RIGHT.
>> POSSESSION AND CONTROL
PART OF THE STATUTE.
I THINK IT'S 77.0 --
>> TELL THEM TO DO
SOMETHING.
CAN I UNDERSTAND THE
OPERATION AFTER STATUTE SAY
DON'T DISPURSE ANYTHING.
DON'T DO ANYTHING FURTHER.
YOU SAID STILL.
THIS CREATES AFFIRMATIVE
OBLIGATION TO GO AND DO
SOMETHING.
>> YES, IT DOES.
>> IT'S NOT JUST CHECKING
THE ACCOUNT.
YOU HAVE TO GO --
>> YOU HAVE TO STOP A
PAYMENT.
>> RIGHT.
>> THAT'S RIGHT.
>> THAT IS THE RETAIN
ELEMENT OF THE STATUTE.
IN OTHER WORDS, IN ORDER TO
RETAIN THE --
>> YOU HAVE TO GO DO
SOMETHING.
TAKE AFFIRMATIVE STEPS.
THAT'S HOW WE WOULD
INTERPRET THE STATUTE.
>> IS THERE SOME
REASONABLE --
>> LIKE I WOULD HAVE TO TAKE
A LEGAL PAD WITH ME IN MY
BRIEFCASE.
>> IT'S NOT THAT EASY.
I HAD A SITUATION JUST THIS
MONTH ON STOPPING A CHECK
AND THEY WOULDN'T DO IT BY
PHONE.
I HAD TO LEAVE THIS OFFICE
AND TWO TO THAT BANK AND,
DEAL WITH THEM, FOR THEM TO
DO IT.
SO IT'S NOT JUST THIS MATTER
OF PUSHING BUTTONS.
>> CAN YOU DO IT BY E-MAIL.
CAN YOU DO IT BY FAX.
>> NOT ALL BANKS WILL DO
THAT.
>> OKAY.
>> IS THERE SOME REASONABLE
GLOSS ON THAT?
>> THERE IS REASONABLE GLOSS
ON THAT.
>> IF THEY CLOSED THIS FILE
TWO MONTHS AGO.
AND --
>> BUT EVERYTHING IS GONE.
IT'S A DEAD FILE NOW.
OR WHATEVER.
NOW, THEY HAD THE SAME
OBLIGATION NOW TO CONTACT
THE BANK TO BE SURE THAT A
CHECK WRITTEN 60 DAYS AGO
HAS CLEARED?
>> I THINK THEY HAVE AN
OBLIGATION TO CHECK AND SEE
IF THEY STILL HAVE --
>> PARDON?
>> I THINK THEY DO HAVE AN
OBLIGATION TO CHECK AND SEE
IF THE FUNDS ARE STILL IN
THEIR ACCOUNT, YES.
>> I MEAN 60 DAYS, YOU KNOW,
WHERE YOU WOULD ASSUME, MY
GOODNESS WHY WOULDN'T THEY
BE ON SAFE GROUND 60 DAYS
AGO, TWO MONTHS AGO, YEAH WE
DID HAVE MONEY BUT NOT
ANYMORE?
>> BECAUSE FOR --
>> AREN'T THEY IN EFFECT
SEEMS TO ME NOW, STARTING TO,
WORK FOR YOUR CLIENT?
THAT IS THEY'RE STARTING NOW
TO GO BEYOND WHAT --
>> I THINK NOT.
BECAUSE WHEN IT COMES TO
BANK ACCOUNTS AND PARTICULAR
LAWYER TRUST ACCOUNTS, WE'RE
UNDER AN OBLIGATION TO
BALANCE THEM EVERY MONTH AND
TO MAKE SURE WE KNOW WHAT IS
CLEARED AND WHAT HASN'T.
>> DO WE GO 90 DAYS, SIX
MONTHS, A YEAR AGO, THAT A
CHECK WAS, WE KNOW A LOT OF
PEOPLE, GET CHECKS OR
WHATEVER, AND, THEIR
PRACTICES ARE TOTALLY BUT SO
ANY TIME IN THE PAST THAT
YOU'VE WRITTEN A CHECK
YOU'VE GOT TO BE SURE IT
CLEARED?
>> THINK YOU'VE GOT TO BE
SURE YOU'RE NOT HOLDING
CLIENT FUNDS BEFORE YOU
ANSWER THAT GARNISH MEANT,
YEAH THAT IS YOUR OBLIGATION
AS GARNISHEE UNDER CHAPTER
77.
IT'S INTERESTING YOU TALK
ABOUT THAT.
IT GETS TO THE LAST -- I'M
NOT SURE I HAVE TIME TO --
>> IT GETS TO THE LAST TIME
I SEE WITH REVERSING SECOND
DCA IF I REPRESENT A
JUDGEMENT DEBTOR AND HE'S
GOT MONEY, I TELL HIM, YOU
BETTER PUT THE MONEY IN MY
TRUST ACCOUNT.
I'LL CUT YOU CHECKS.
ACCORDING TO AME'S THEORY MY
ABILITY OF CUTTING CHECKS
THAT IS ASSIGNMENT OF THOSE
FUND.
IT'S ULTIMATE ASSET
PROTECTION DEFIES VICE FOR
MY CLIENT'S JUDGMENT
CREDITOR BECAUSE I CAN NEVER
BE GARR ISSUED.
I CAN SAY I ALL I WROTE
CHECKS.
MY CLIENT CAN'T BE GARNISHED
HE BECAUSE HE DOESN'T HAVE
THE MONEY.
HE HAS PIECES OF PAPER.
THOSE WOULD BE SUBJECT TO
REPLEVIN.
>> WHAT ABOUT THE BANK YOU
WHICH YOU DRAW THE CHECK.
>> PARDON?
>> WHAT ABOUT THE BANK WHICH
YOU DREW THE CHECK AND FUNDS
HAVEN'T CLEARED, WHY NOT
GARNISH THOSE?
>> NO.
>> WHY NOT.
>> THE FUNDS ARE IN MY NAME.
NOT MY CLIENTS NAME.
>> WITH OUR HELP YOU'VE
EXTENDED FURTHER.
PLEASE BRING IT TO
CONCLUSION IF YOU WANT TO
ADD.
VERY INTERESTING ARGUMENT.
>> AGAIN, I THINK THAT THE
SECOND DCA MADE THE RIGHT
CALL ON THIS CASE.
THERE IS NO POLICY REASON TO
TREAT BANK GARNISHEES THAN
NON-BANK GARNISH EE'S.
AND CERTAINLY NO REASON TO
TREAT LAWYER TRUST ACCOUNT
GARNISHEES AS ANY DIFFERENT
FROM ANY OF THEM.
>> THANK YOU VERY MUCH.
>> THANK YOU.
>> REBUTTAL?
>> YES, SIR.
OBVIOUSLY WE THINK THE
SECOND DISTRICT COURT DID
MAKE THE WRONG DIGS
DECISION.
>> COULD YOU GIVE THAT.
THAT'S TROUBLESOME THING.
IF YOUR LEGITIMATE DEBT YOUR
CLIENT'S CLIENT OWED AND
SOMEHOW WAS FRUSTRATED, THE
$26,000.
SO IS IT TRUE THAT
ESSENTIALLY IF WE HOLD THIS
WAY THE, CREDITOR WOULD
NEVER BE ABLE TO GET THE
FUNDS?
>> DISAGREE WITH THAT
WHOLEHEARTEDLY.
>> WHERE COULD THE WRIT HAVE
BEEN SERVED THAT IT WOULD
HAVE --
>> THEY HAVE SEVERAL
CHOICES.
THEY COULD GO GET THE CHECK
IF THEY WANTED TO.
ACTUAL CHECK BACK IF THEY
WANT TO.
I THINK THEY CAN GARNISH
THOSE FUNDS.
I DISAGREE WITH OPPOSING
COUNSEL.
>> FROM THE BANK.
>> YES.
>> THAT THEY COULD GARNISH
THE TRUST ACCOUNT?
>> YES.
AND I THINK THE BANK
WOULD --
>> THE WHOLE IDEA OF

GARNISHMENT IS THAT IT IS A
DIRECT ATTACHMENT TO FUNDS.
IT'S NOT GOING INTO REPRIEVE
VIN CHECKS.
NOT CHASING PEOPLE.
YOU IDENTIFY WHERE THE MONEY
IS.
YOU SERVE THE PERSON IN
CONTROL OF THAT MONEY WITH A
WRIT OF GARNISHMENT.
IT PUT AS BURDEN UNDER THE
GARNISHMENT ON THAT PERSON
TO SEE IF THEY HAVE FUNDS IF
THEY DON'T HAVE FUNDS.
IF THEY DO HAVE FUNDS, THEN
THEY HAVE TO TURN THEM OVER.
>> I AGREE WITH THAT, JUDGE,
WHOLEHEARTEDLY.
THE ISSUE IS THE MAJORITY
RULE, ONCE YOU HAVE
DELIVERED CHECK TO A PARTY,
DO YOU HAVE POSSESSION AND
CONTROL UNDER THAT TERM AS
DEFINED?
AND I, MUST ADD IN, THAT MY
BANK WILL NOT ALLOW ME TO
STOP PAYMENT ON A CHECK.
THEY HAVE A FORM THAT FILLS
OUT.
MAKES ME WAIT TWO DAYS.
YOU HAVE YOU WILL HAVE ISSUE
BEFORE IF YOU DECIDE THAT MY
OPPOSING COUNSEL, MY ABLE
OPPOSING COUNSEL OPINION IS
RIGHT.
WHAT IS REASONABLE TIME FROM
THE TIME YOU GET RID OF THE
GARNISHMENT IS STOP PAYMENT?
WAS IT BASED ON HOW LONG THE
BANK REQUIRES TO YOU STOP
PAYMENT ON THE CHECK?
>> IS THERE ANY DEVELOPMENT
OF THAT ISSUE IN THIS
RECORD.
>> NO.
I WAS JUST FOLLOWING THE
LINE OF QUESTIONING WHICH
I'LL MOVE PAST.
THE HYATT CASE IS ONLY ONE
DIRECTLY ON POINT.
IT'S WRITTEN IN STYLE THAT
IS LONG PAST BUT IT'S SAYING
THAT, IF, IN ESSENCE FSHS A
LAWYER'S HOLDING FUND OF
ANOTHER PERSON, IT'S VERY
SIMILAR, WITH UP DUE RESPECT
AS CASHIER'S CHECKS.
YOU'RE SAYING THESE FUNDS
ARE GOOD.
WHEN YOU'RE DOING THAT,
YOU'RE NOT DOING THAT FOR
YOURSELF YOU'RE DOING THESE
FUNDS ARE GOOD AND POTENTIAL
POSSESSION AND CONTROL IS
GONE AND IT'S PASSED.
LIMITED LIABILITY ISSUE I
WANT TO EMPHASIZE TO THE
COURT THERE ARE MANY COURTS
THAT BELIEVE MAJORITY RULE
HAVE LIMITED LIABILITY.
GEORGIA VERY SIMILAR TO US.
IN THEIR BRIEF, KANSAS, WELL
THE EXACT ONES, ARE IN HERE.
BUT THEY BELIEVE IN SAME
REASON.
THEY BELIEVE THERE SHOULD BE
DOUBLE PROTECTION FOR
SIMPLEST WAY TO DO IT GO
WITH THE MAJORITY RULE, SAY
NON-BANK GARNISH EE'S WHEN
THEY DELIVER THE CHECK IT'S
GONE.
IF THE COURT DOESN'T WANT TO
GO THAT FAR, I DO BELIEVE,
STRENUOUSLY BELIEVE, FORGIVE
ME THAT ATTORNEY TRUST
ACCOUNT CHECKS SHOULD BE
HELD TO HIGHER STANDARD.
IT IS USED IN COMMERCE AND
IT SHOULD BE APPLIED.
IN CLOSING --
>> WITH BRING IT TO
CONCLUSION.
>> YES, SIR.
THE DELIVERED ATTORNEY TRUST
ACCOUNT CHECK SHOULD BE
SUBJECT TO GARNISHMENT.
THIS IS IN HARM ANY TO THE
GARNISHMENT STATUTE JUST AS
DELIVER -- ATTORNEYS MORE
IMPORTANTLY CLIENT RELY ON
ATTORNEY TRUST ACCOUNT
CHECKS TO TRANSACT BUSINESS.
THIS TRUSTED ACCOUNT --
>> YOU HAVE MADE YOUR POINT
VERY WELL.
LET ME SAY ON BEHALF OF THE
COURT IT'S A PLEASURE TO
RECEIVE QUALITY ARGUEMENTS
FROM QUALITY LAWYERS AND
MAKES ME PROUD TO BE A
LAWYER WHEN I RECEIVE THESE
THINGS.
BUT YOU'VE GONE OVER YOUR
TIME.
WE TAKE THIS DIFFICULT
QUESTION UNDER ADVISEMENT.
THIS QUESTION OF, FIRST
IMPRESSIONS.
AND WE THANK YOU BOTH.
>> THANK YOU.
REALLY ENJOYED THIS, THANK
YOU.
THANK YOU FOR YOUR TIME.
>> WE'RE GLAD TO HEAR THAT.
>> COURT WILL STAND IN
RECESS UNTIL 8:30 TOMORROW
MORNING.
>> ALL RISE.
>> IT'S MY FIRST ONE.
>> MINE TOO.
>> THANK YOU.