

>> ALL RISE.

[INAUDIBLE CONVERSATIONS]

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.

PLEASE BE SEATED.

>> OUR LAST CASE FOR THE DAY IS BASULTO V. HIALEAH AUTOMOTIVE. YOU MAY PROCEED.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, TIM BLAKE REPRESENTING THE PETITIONERS, ROBERTO BASULTO AND HIS WIFE, RAQUEL GONZALEZ -- HUSBAND AND WIFE -- RESPONDENTS BELOW.

THE TRIAL COURT, CITING THE CASE OF AMERICAN HERITAGE, STATED THAT THE PUBLIC POLICY FAVORING ARBITRATION DOES NOT COME INTO PLAY UNTIL THERE HAS BEEN A THRESHOLD DETERMINATION AND MADE WHETHER THERE'S A VALID ARBITRATION AGREEMENT AND WHETHER A VALID ARBITRATION AGREEMENT EXISTS.

SO THE TRIAL COURT, AFTER AN EVIDENTIARY HEARING, MADE THE FINDINGS OF FACT IN LAW THAT UNDER CONTRACT LAW, BASIC CONTRACT LAW, THERE WAS A FAILURE, THERE WAS NO MEETING OF THE MINDS, NO MUTUAL CONSENT. AND THE TRIAL COURT FOUND THAT THE COURT WOULD NOT COMPEL ARBITRATION AND WOULD ALLOW IT TO PROCEED TO A JURY TRIAL.

>> MR. BLAKE, ARE THERE CASES THAT SEEM TO SUGGEST THAT EVEN THE ISSUE OF DISTANCE OF CONTRACT OUGHT TO BE SUBMITTED? ON THAT --

[INAUDIBLE]

WITH ALL THESE CASES?

HOW DO YOU VIEW THAT?

>> THE CASE IS THE SUPREME COURT CASE WHICH SAYS THE FIRST QUESTION THE SUPREME COURT HAS TO ASK IS THERE A VALID ARBITRATION AGREEMENT, AND DOES THE AGREEMENT EXIST.

AND THE FEDERAL ARBITRATION ACT AS WELL AS SEIFFERT SAY THAT THE BASIC DETERMINATION OF WHETHER A CONTRACT EXISTS IS, IS THERE A MEETING OF THE MINDS, IS THERE A MUTUAL --

>> BUT THE SEIFFERT CASE WAS A TORT.

SOMEONE WHO WAS INJURED, AND AS I READ SEIFFERT, NOT RISING OUT OF THE CONTRACTUAL RELATIONSHIP, BUT A TORT IN THE NATURE OF A WARRANTY KIND OF CLAIM OR A NEGLIGENCE CLAIM WHICH WAS NOT SOMETHING THAT WAS EVEN CONTROLLED BY THE CONTRACT.

IS THAT NOT A VALID DISTINCTION, OR HOW DO YOU SEE THAT?

>> THAT WAS DEALING WITH THE SECOND QUESTION IN SEIFFERT WAS, IS THE MATTER ARBITRATEABLE. AND SO THAT'S WHAT THE COURT WENT OFF ON IN THAT DECISION, AND IT WAS A TORT CASE.

BUT THE COURT OUTLINED THE BASIC WAY THAT YOU ASSESS THE VALIDITY OF AN ARBITRATION AGREEMENT, AND YOU HAVE THESE THREE. AND ALL THE DISTRICT COURTS ADMIT FOLLOW SEIFFERT ON THAT ISSUE, THAT THESE THREE QUESTIONS ARE AT ISSUE.

NOW, THIS ENTIRE CASE JUST DEALS WITH QUESTION ONE ABOUT VALIDITY AND WHETHER OR NOT UNDER BASIC --

>> WHAT IS THE HOLDING IN THIS CASE THAT IS IN CONFLICT WITH THE HOLDING IN SEIFFERT?

>> OKAY.

THAT'S WHY WE'RE HERE.

[LAUGHTER]

>> I UNDERSTAND.

>> AND IT'S VERY, VERY STRAIGHTFORWARD.

THE THIRD DISTRICT IN REVIEWING DID NOT DETERMINE THE VALIDITY OF THE CONTRACT BASED ON CONTRACT LAW SUCH AS DURESS, MEETING OF THE MINDS --

>> BUT THEY LEFT THAT QUESTION OPEN.

IF I UNDERSTAND WHY THEY'RE DOING IT, I'LL ADMIT IT'S A LITTLE CONVOLUTED.

BUT IT SEEMS TO ME THAT THEY HAVE LEFT THE QUESTION OF WHETHER THERE WAS A VALID AGREEMENT TO ARBITRATE AS AN OPEN QUESTION THAT'S TO BE ADDRESSED ON REMAND.

BECAUSE THEIR DETERMINATION THAT THERE ARE FACTUAL DETERMINATIONS THAT STILL HAD TO BE MADE BY THE TRIAL COURT ON THAT ISSUE.

>> WELL --

>> ISN'T THAT WHAT IT SAYS THERE AT THE END OF THE LITTLE PART ABOUT ON THE MOTION FOR REHEARING?

>> WE CONTEND THAT THE TRIAL COURT DID MAKE FINDINGS OF FACT --

>> WELL, OKAY.

I UNDERSTAND.

>> OKAY.

>> BUT THAT'S NOT THE, THAT'S NOT THE QUESTION I'M ASKING.

>> THE --

>> I'M ASKING HOW, WHAT THE THIRD DISTRICT HAS HELD HERE --

>> OKAY, THE THIRD --

>> HOW IT'S IN CONFLICT WITH THE HOLDING IN SEIFFERT.

>> WENT DIRECTLY TO THE ISSUE OF UNCONSCIONABILITY AND RELIED ON THEIR MURPHY CASE AND SAID THAT IN ORDER TO DECLARE IT INVALID, YOU HAVE TO HAVE UNCONSCIONABILITY, PROCEDURAL AND --

>> BUT THAT'S NOT ACCURATE. THEY RECOGNIZE THAT THIS QUESTION ABOUT THE VALIDITY OF THE AGREEMENT TO ARBITRATE WHETHER THERE WAS A, WHETHER THERE WAS NO AGREEMENT TO ARBITRATE IS STILL AN OPEN QUESTION.

>> WELL --

>> THEY DON'T, THEY DON'T SHORT
CIRCUIT THAT, THEY DON'T IGNORE
IT.

THEY SAY THAT'S STILL AN OPEN
QUESTION THAT HAS TO BE
FACTUALLY, THERE ARE FACTUAL
DETERMINATIONS THAT STILL HAVE
TO BE MADE.

THAT'S REALLY AT THE VERY END OF
THE LITTLE OPINION ON THE MOTION
FOR REHEARING, ISN'T IT?

>> THAT'S PARTIALLY TRUE.

BECAUSE THE THIRD DISTRICT JUST
IGNORED SEIFFERT AND WENT RIGHT
TO UNCONSCIONABILITY.

AND BEFORE YOU CAN GET TO
UNCONSCIONABILITY, BEFORE YOU
CAN GET TO THESE OTHER ISSUES,
YOU HAVE TO DEAL WITH WHETHER OR
NOT THERE WAS A VALID AGREEMENT
EXISTED.

NOW, IN THIS PARTICULAR CASE
IT'S VERY INTERESTING, THE
BACKGROUND.

THE BUYERS WERE SENIOR CITIZENS
WHO COULD NOT READ OR WRITE
ENGLISH.

THEY WERE RECENT IMMIGRANTS FROM
CUBA.

THEY WORKED AT A -- HE WORKED AT
A LATHE MACHINE SHOP AND HADN'T
GRADUATED FROM ELEMENTARY
SCHOOL.

THE WIFE WAS A SEAMSTRESS.

THEY WATCHED SPANISH CHANNEL 23,
AND THEY SAW A CAR FOR SALE.

THEY WENT IN TO BUY IT.

THEY SAID THAT CAR'S NOT
AVAILABLE, AND THEY TALKED THEM
INTO BUYING A MORE EXPENSIVE
CAR.

AND THEN THEY GOT IN A BIG
DISPUTE ABOUT WHAT THE VALUE OF
THE TRADE-IN WOULD BE.

NOW, THEY KNEW THEY COULDN'T
SPEAK ENGLISH, THEY KNEW THEY
DIDN'T UNDERSTAND ANY OF THE
DOCUMENTS THAT WERE BEFORE THEM,
AND SO THEY ATTEMPTED TO TELL
THEM WHAT WAS IN THE DOCUMENTS.

THEY VOLUNTARILY AGREED TO EXPLAIN THESE DOCUMENTS. BUT IN THE EVIDENTIARY HEARING, IT BECAME VERY APPARENT TO THE TRIAL COURT THAT THE SALESPERSON, SALESWOMAN COULDN'T INTERPRET FROM THE ENGLISH TO THE SPANISH AND HAD GREAT DIFFICULTY EXPLAINING ANYTHING. THEN THE F AND I MANAGER EXPLAINED AND SAID SOMETHING LIKE YOU HAVE TO GIVE UP THE RIGHT TO GO BEFORE A JUDGE, YOU HAVE TO GO BEFORE AN ARBITRATOR --

>> BUT WHAT YOU'RE SAYING IS ALL IN THE THIRD DISTRICT OPINION. NOW HERE, YOU KNOW, AS I'M LOOKING AT WHAT THEY'VE SAID ON REHEARING, IT IS A, IT'S A CONFUSING OPINION.

IT SEEMS TO ME THE TRIAL JUDGE MADE APPROPRIATE FINDINGS THAT WOULD HAVE SUPPORTED WHAT YOU'RE JUST SAYING, THAT THERE WAS NO MEETING OF THE MINDS ON AN AGREEMENT TO ARBITRATE AND NOT NEED TO GET TO PROCEDURAL AND SUBSTANTIVE UNCONSCIONABILITY. THAT'S WHAT YOU'RE ARGUING.

>> YES.

>> BUT, IF -- BUT THEN THE FOUR CORNERS OF THIS OPINION, HOW IS IT APPARENT WHEN THEY SAY ON REHEARING YOU CAN GO BACK AND HAVE THE JUDGE MAKE FINDINGS ON WHETHER THERE'S AN AGREEMENT TO ARBITRATE EVEN THOUGH THE JUDGE ALREADY ADMITTED THOSE FINDINGS?

>> YES, THAT'S --

>> HOW IS THAT A MISAPPLICATION OF A CONFLICT WITH SEIFFERT? I THINK THAT'S -- YOU KNOW, I VOTED FOR JURISDICTION, BUT I SEE THAT, AND IT SEEMS LIKE THEIR OPINION IS JUST OFF BASE. BUT IS IT IN CONFLICT WITH SEIBERT IF THEY'RE SAYING GO BACK AND MAKE A DECISION AS TO WHETHER THERE WAS AN AGREEMENT

TO ARBITRATE.

>> THE VERY, VERY BASIS OF SEIFFERT IS THAT YOU CANNOT COMPEL IT IF IT IS INVALID --

>> I UNDERSTAND.

BUT APPARENTLY ON REHEARING THEY SAID YOU ARE FREE TO GO BACK TO THE TRIAL COURT AND GET THAT FINDING.

AND IF YOU GET THAT FINDING, WHICH, I MEAN, I ASSUME YOU ARGUED ON REHEARING WE ALREADY HAVE THAT FINDING.

>> WE HAVE -- THE JUDGE, THE LAST PAGE --

>> NO QUESTION.

BUT WE'RE NOT HERE, WE CAN'T DECIDE THE CASE UNLESS THERE'S CONFLICT WITH SEIBERT.

SO THE ISSUE IS JUST BECAUSE THE OPINION IS SCREWY BASED ON THE, BASED ON WHAT THE JUDGE DECIDED AS WE LOOK AT THE RECORD, IT MAKES, YOU KNOW, ESSENTIALLY MAKES NO SENSE, THAT PART ISN'T CLEAR THAT THE JUDGE ACTUALLY DID DECIDE IT IN THE OPINION.

IN OTHER WORDS, IT DOESN'T SAY, WELL, THE JUDGE FOUND THERE WAS NO AGREEMENT TO ARBITRATE, BUT WE DON'T CARE, WE'RE GOING TO SKIP TO PROCEDURAL UNCONSCIONABILITY.

I MEAN, THAT'S THE PROBLEM THAT JUSTICE CANADY'S POINTING OUT.

>> THE WHOLE ISSUE OF PROCEDURAL UNCONSCIONABILITY IS PART -- NO MEETING OF THE MINDS, NO MUTUAL CONSENT AS PART OF UNCONSCIONABILITY.

>> WHAT YOU'RE ARGUING AND, AGAIN, THE QUESTION IS WHETHER IT'S IMPLICIT, IT'S EXPLICIT WITHIN THE FOUR CORNERS, THAT THEY WENT RIGHT TO -- THEY EQUATED THE NO MEETING OF THE MINDS AND PUT IT INTO THE PROCEDURAL UNCONSCIONABILITY --

>> YES.

>> -- BOX INSTEAD OF TAKING THE

NO MEETING OF MINDS AND APPLYING CONTRACT LAW TO SAY THERE WAS NO AGREEMENT TO ARBITRATE.

>> THE THIRD DISTRICT WAS REVIEWING THE TRIAL COURT ORDER. THE TRIAL COURT ORDER INITIALLY BASED HIS ENTIRE OPINION ON THE FACT THAT THERE WAS NO VALID AGREEMENT.

AND HE -- I WOULD LIKE TO JUST POINT OUT TO YOU --

>> I APPRECIATE -- BUT I WANT YOU TO GO TO THE MEANING OF WHAT WAS SAID ON REHEARING.

BECAUSE IN LOOKING AT THAT, THE PART WHERE IT SAYS AS STATED, THE TRIAL COURT FOUND THE UNCONSCIONABILITY ISSUE TO BE DISPOSITIVE.

NOW, ACTUALLY, IT LOOKED TO ME LIKE HE FOUND THERE WAS NO AGREEMENT TO ARBITRATE WAS DISPOSITIVE, BUT THAT'S WHAT THEY SAY.

AND FOUND IT UNNECESSARY TO RESOLVE THE TESTIMONIAL CONFLICT.

BECAUSE WE HAVE REVERSED IN PART ON THE ISSUE OF UNCONSCIONABILITY, THE TESTIMONIAL CONFLICT IS NOW RIPE FOR THE TRIAL COURT CONSIDERATION.

THE BUYERS -- THAT'S YOU -- ARE FREE ON REMAND TO REQUEST A RULING ON THE CLAIM THAT THE ARBITRATION CLAUSE WAS NEVER MENTIONED WHEN THE CONTRACTS WERE TRANSLATED AND THAT THERE WAS NO AGREEMENT TO ARBITRATE.

NOW, AGAIN, I APPRECIATE THE TRIAL COURT DECIDED THAT.

BUT WE'RE DEALING WITH WHETHER IF SOMEONE WAS READING THIS, THEY WOULD KNOW THAT THE THIRD DISTRICT VIOLATED SEIFFERT WITHOUT HAVING THE TRIAL COURT ORDER IN FRONT OF THEM.

>> WELL, THE THIRD DISTRICT STATED JUST ABOVE THAT: WHILE

THE TRIAL COURT STATED THAT IT FOUND THE BUYERS TO BE VERY CREDIBLE, THE COURT DID NOT EXPLICITLY RESOLVE THE CONFLICTS OF TESTIMONY IN FAVOR OF THE BUYERS.

THAT IS INCORRECT.

THAT IS ABSOLUTELY INCORRECT.

>> THE FACT THAT IT'S INCORRECT IS NOT A BASIS FOR CONFLICT.

>> WELL --

>> LET'S GO BACK TO --

>> OKAY.

THE BASIC OPINION IN THE THIRD DISTRICT WAS THAT UNCONSCIONABILITY GOVERNS EVERYTHING, AND THAT YOU HAVE TO HAVE PROCEDURAL, AND YOU HAVE TO HAVE SUBSTANTIVE.

AND THE COURT SAID THAT WHETHER OR NOT THE AGREEMENT IS VALID OR NOT IS NOT IMPORTANT, ONLY --

>> BUT THAT IS INCONSISTENT, WHAT YOU'RE SAYING IS NOT CONSISTENT WITH WHAT IT SAYS ON THE MOTION FOR REHEARING, WHAT JUSTICE PARIENTE JUST READ TO YOU.

NOW, I UNDERSTAND THAT YOU WANT TO WISH THAT PART OF IT AWAY, BUT IT'S THERE.

THE THIRD DISTRICT SAID I -- SAID IT.

NOW --

>> ALL I CAN DO IS CITE THE TRIAL COURT ORDER WHICH IS PART OF THE RECORD WHICH IS TOTALLY INCONSISTENT WITH THAT.

>> BUT THAT DOESN'T -- WE DON'T LOOK AT THE TRIAL COURT ORDER TO DETERMINE WHETHER WE HAVE JURISDICTION.

WE LOOK AT THE FACE OF THE OPINION FROM WHAT THE THIRD DISTRICT HAS SAID.

TO DETERMINE IF WHAT THEY HAVE SAID IN A HOLDING IS IN CONFLICT WITH A HOLDING OF SOME OTHER DISTRICT COURT OR OF OURS.

AND --

>> THIS COURT --
>> THE QUESTION I STARTED OFF WITH, WHAT'S THE HOLDING THEY HAVE HERE THAT'S IN CONFLICT WITH THE HOLDING IN SEIFFERT, I STILL HAVEN'T HEARD THAT ARTICULATED.
>> THEY IGNORED SEIFFERT, PERIOD.
ALTOGETHER.
>> BUT I THINK WHAT YOUR ARGUMENT REALLY, AT LEAST IT SEEMS TO ME THAT WHAT YOU ARE SAYING IS THAT SEIFFERT WOULD HAVE REQUIRED THEM TO LOOK AT WHETHER OR NOT THERE WAS A VALID ARBITRATION AGREEMENT BEFORE THEY WENT INTO ALL THE BUSINESS ABOUT PROCEDURAL AND SUBSTANTIVE UNCONSCIONABILITY.
>> YES.
>> AND BECAUSE THEY DID NOT DO THAT EVEN THOUGH ON REHEARING THEY SAID YOU CAN GO AND DO THAT, THAT IT IS A VIOLATION OF SEIFFERT.
THAT'S YOUR BASIC ARGUMENT.
>> YES, YOUR HONOR.
AND IT'S A THRESHOLD DETERMINATION.
YOU DON'T EVEN GET TO UNCONSCIONABILITY IF YOU DON'T HAVE A VALID AGREEMENT TO ENFORCE.
IF IT DOESN'T EXIST.
YOU DON'T GO ANY FARTHER.
>> WELL, BUT THE REALITY IS AND THE LEGAL ANALYSIS OF THOSE QUESTIONS IT COULD BE DETERMINED THAT SOMETHING IS UNCONSCIONABLE, AND YOU'D NEVER REACH THE OTHER QUESTION.
BECAUSE YOU DON'T NEED TO -- IF IT'S UNCONSCIONABLE ON BOTH PRONGS, IT MAY BE A MORE DIFFICULT QUESTION TO DECIDE --
>> THE POINT IS WELL TAKEN, YOUR HONOR.
BUT LET ME EXPLAIN TO YOU THAT JUDGE COPE IN HIS OPINION IN

FOOTNOTE FOUR MADE A VERY INTERESTING COMMENT --
>> WELL, I THINK IT'S WHERE JUDGE COPE IS SPEAKING JUST FOR HIMSELF.
>> THAT'S RIGHT, HE IS. AND HE SAYS WE SHOULD BE FOLLOWING STEINHARDT, NOT MURPHY.
WE SHOULD BE FOLLOWING, IN ESSENCE, SEIFFERT AND NOT MURPHY BECAUSE THE CASE OF STEINHARDT DOESN'T HOLD THAT YOU NEED BOTH. IT ONLY SAYS THAT IT'S AN APPROACH, AND IT'S NOT THE LAW AND THAT WHAT YOU NEED TO DO IS TAKE IT INTO CONSIDERATION BECAUSE UNCONSCIONABILITY IS AN INFLEXIBLE REMEDY FOR THE COURT TO ENFORCE JUSTICE AND NOT --
>> BUT YOU YOU'RE GOING -- WE MAY -- IT'S NOT IN CONFLICT AT THIS POINT WITH ANYTHING THIS COURT HAS SAID; THAT IS, THAT THE STATEMENT -- AND WE'VE HAD THIS COME UP IN A FEDERAL CONTEXT OF THE 11TH CIRCUIT CASE, HAVING BOTH SOME DEGREE OF PROCEDURAL AND SUBSTANTIVE UNCONSCIONABILITY IS REQUIRED. SO THAT STATEMENT IS NOT IN CONFLICT WITH THE DECISION OF THIS COURT, IS IT?
>> YES, IT IS.
>> WHAT --
>> THIS COURT HAS NEVER HELD THAT YOU NEED --
>> WELL, THAT'S NOT IN CONFLICT IF WE HAVEN'T DECIDED THE CASE. THERE'S NO CONFLICT ON IT.
>> THIS COULD BE THE CASE. THIS COULD BE THE CASE.
>> IF THEY HAD CERTIFIED THE QUESTION, THIS COULD BE THE CASE.
BUT IT CAN'T BE THE CASE UNLESS THERE'S CONFLICT ON THE DECISION OF OUR COURT.
>> ISN'T REALLY WHAT WE'RE TALKING ABOUT HERE THE BASIS FOR

THE JURISDICTION IS
MISAPPLICATION OF SEIFFERT?
BECAUSE SEIFFERT INSTRUCTS THAT
YOU DETERMINE WHETHER YOU EVEN
HAVE AN AGREEMENT BEFORE YOU
EVEN START LOOKING TO PROCEDURAL
OR SUBSTANTIVE
UNCONSCIONABILITY?

>> YES, YOUR HONOR.

>> I MEAN, ISN'T THAT -- I MEAN,
IT'S REALLY STRAIGHT, SIMPLE,
STRAIGHTFORWARD.

THAT CASE DOESN'T, THE CASE
BELOW DOES NOT SAY THAT SEIFFERT
IS BAD LAW OR WE DISAGREE WITH
SEIFFERT OR ANYTHING LIKE THAT,
BUT IT'S THE MANNER IN WHICH
THEY APPLY THE LAW OF THIS
COURT --

>> YES.

>> AND IT WOULD REQUIRE EVEN
THOUGH YOU DON'T HAVE A CONTRACT
THAT YOU STILL ADDRESS
PROCEDURAL AND SUBSTANTIVE
UNCONSCIONABILITY AS A MATTER OF
COURSE.

ISN'T THAT --

>> YES, THE APPROACH AND NOT THE
LAW --

>> AND THERE HAD TO BE A FINAL
JUDGMENT BEFORE YOU COULD HAVE
THE CASE BELOW, CORRECT?

>> ABSOLUTELY.

>> AND THAT FINAL JUDGMENT FOUND
THAT THERE WAS NO CONTRACT.

I MEAN, ON THE FACE OF IT.

>> AND THE REASON WHY --

>> WELL, I MEAN, IS THAT
CORRECT?

>> YES.

THERE WERE TWO --

>> AND DOES THE COURT BELOW SET
FORTH THAT THIS IS AN APPEAL OF
THAT FINAL JUDGMENT?

DOES THE THIRD DISTRICT SAY THAT
THIS IS AN APPEAL FROM THAT
FINAL JUDGMENT?

>> YES.

>> THE REVIEW OF IT?

>> YES, ABSOLUTELY.

>> AND THAT'S THE CONTRACT THAT HELD THAT THERE'S NO -- I MEAN, AN ORDER THAT HELD THAT THERE'S NO CONTRACT.

>> YES.

>> AND YET THEY WENT AHEAD AND WENT OFF ON A TANGENT OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS CONTRARY TO SEIFFERT.

>> AND EVEN IF --

>> IS THAT CORRECT?

>> YES, YOUR HONOR.

ABSOLUTELY.

AND THE INTERESTING ISSUE HERE IS THAT THERE WERE TWO ARBITRATION AGREEMENTS HERE.

THERE WAS A ONE-PAGE, STAND-ALONE, MULTI-PARAGRAPHED ARBITRATION AGREEMENT.

AND THEN THERE WAS THIS PARAGRAPH, LENGTHY ON THE BACK OF THE RETAIL INSTALLMENTS FINANCING CONTRACT, THERE WERE SEVEN AREAS OF INCONSISTENT -- IRRECONCILABLE INCONSISTENCY. AND EVEN WHEN THE DEALERSHIP'S EMPLOYEES, IF THEY EXPLAINED ALL OF THAT, THEY COULDN'T BE MAKING A TRUTHFUL DISCLOSURE TO THE BUYERS BECAUSE THERE ARE SO MANY CONFLICTS, THEY COULDN'T TELL WHICH TOOK PLACE AND WHICH GOVERNED THE ARBITRATION AGREEMENT.

FOR EXAMPLE, ONE OF THEM SAID WHAT LAW, WHAT RULES APPLY.

ONE SAID THE AMERICAN ARBITRATION ASSOCIATION RULES APPLY.

THE OTHER ONE SAID, WELL, WHOEVER ELECTS ARBITRATION GETS TO PICK THE RULES.

IT DOESN'T EVEN SAY WHAT RULES. COULD BE FEDERAL, STATE.

THEN THERE'S VENUE.

WHAT'S THE VENUE?

ONE SAYS STATE, ONE SAYS THE SOUTHERN DISTRICT.

>> YOU ARE IN YOUR REBUTTAL TIME.

>> EXCUSE ME.

>> GOOD MORNING.

MARK GOLDSTEIN FOR THE
RESPONDENT, HIALEAH AUTOMOTIVE.
WANT TO START OUT SAYING WHAT AN
HONOR IT IS TO APPEAR BEFORE
YOU.

I'VE BEEN PRACTICING 22 YEARS,
AND THIS IS MY FIRST TIME I'VE
BEEN PRIVILEGED TO BE HERE.
WITH THAT SAID, HERE'S WHAT THIS
CASE WAS ABOUT --

>> WAS THERE A FINAL JUDGMENT
ENTERED IN THE TRIAL COURT?

>> NO FINAL JUDGMENT.

>> THERE WAS NO FINAL -- HOW DID
YOU GET AN APPEAL TO THE THIRD
DISTRICT?

>> THERE'S A SPECIFIC PROVISION
IN THE RULES OF APPELLATE
PROCEDURE THAT ALLOW, UM, AN
APPEAL FOR DENIALS OF MOTIONS TO
COMPEL ARBITRATION.

>> SO THIS IS, THIS WAS SIMPLY
AN INTERLOCUTORY --

>> CORRECT.

IT'S ONE OF THE AUTHORIZED
INTERLOCUTORY ORDERS THAT MAY BE
APPEALED UNDER THE RULES.

>> HERE IS THE PROBLEM, AND I
CERTAINLY ASK QUESTIONS THAT
WOULD INDICATE I WAS CONCERNED
ABOUT JURISDICTION, BUT IT IS
CLEAR THAT SEIFFERT SAYS THE
THRESHOLD QUESTION SAYS WHETHER
THERE'S A VALID AGREEMENT TO
ARBITRATE.

ON THE FACE OF THIS OPINION, IT
STATES: THE TRIAL COURT OF THE
STATES HAS LONG BEEN RECOGNIZED
THAT IN THE STATE IF ONE IS
INDUCED NOT TO READ A CONTRACT
OR HERE NOT TO OBTAIN OUTSIDE
ASSISTANCE IN READING THE
CONTRACT AND HE SIGNS AN
ENTIRELY DIFFERENT PAPER FROM
WHAT THE OPPOSING PARTY HAS
REPRESENTED THE PAPER TO BE, THE
PARTY SO SIGNED IS ENTITLED TO
BE RELIEVED OF HIS OBLIGATIONS.

ALTHOUGH IF THE ARBITRATION WAS MENTIONED, IT WAS NOT MENTIONED IN AN UNDERSTANDABLE WAY.

AND THEN THEY SAY: UNDER EITHER ANALYSIS, PROCEDURAL UNCONSCIONABILITY WAS ESTABLISHED.

NOW, WHAT I'M HEARING JUSTICE LEWIS SAID AND WHAT I WOULD UNDERSTAND IS WHEN THOSE FINDINGS WERE MADE, THAT IS ENOUGH TO SHOW THAT THERE WAS NO VALID AGREEMENT TO ARBITRATE, THAT YOU DON'T NEED TO GET TO -- THEY PUT PROCEDURAL UNCONSCIONABILITY IN SOME OTHER CATEGORY RATHER THAN LOOKING AT WHAT HE, WHAT THE JUDGE WAS SAYING WHICH IS THERE'S NO AGREEMENT TO ARBITRATE.

AND DOESN'T THAT ORDER APPEAR IN THE FACE OF, IN THE RECORD?

SO WHAT WAS THE, WHAT WAS THE THIRD DISTRICT DOING IN GOING, JUMPING TO PROCEDURAL UNCONSCIONABILITY WHEN THE FIRST QUESTION WAS, WAS THERE A VALID AGREEMENT TO ARBITRATE?

>> WELL, I THINK THE THIRD DISTRICT IN THEIR SECOND TO LAST OPINION --

>> AND I APOLOGIZE TO FORMER JUDGE COPE FOR SAYING IT WAS A SCREWY OPINION.

[LAUGHTER]

MAYBE IT WAS RIGHT BEFORE HE WAS GOING TO LEAVE OR SOMETHING, THE COURT.

>> THAT'S A NEW LEGAL THEORY, SCREWY OPINION.

[LAUGHTER]

>> UM, I BELIEVE THAT THE SECOND TO LAST OPINION OF THE THIRD DCA WAS THE CORRECT OPINION.

THE ONE THAT FOUND THAT IT WAS PROPER TO COMPEL ARBITRATION OF THE MONETARY CLAIMS.

>> NOW, CAN YOU -- SO YOU'RE JUMPING OVER JURISDICTION. IF YOU ARE FOR RIGHT NOW, I

DON'T UNDERSTAND THAT.
I DON'T UNDERSTAND HOW THERE'S
PROCEDURAL UNCONSCIONABILITY IN
THE ENTIRE, YOU KNOW, THIS IS A
CONTRACT THIS IS PROCEDURALLY
UNCONSCIONABLE, I MEAN, IF YOU
ACCEPT THE TRIAL JUDGE'S
FINDINGS AS THERE COULD BE.
WHERE IS THERE SUBSTANTIVE
UNCONSCIONABILITY FOUND AS TO
INJUNCTIVE RELIEF BUT NOT AS TO
MONETARY DAMAGES?
I DON'T EVER, I DON'T UNDERSTAND
THAT REASONING.
>> IT LOOKED STRANGE TO ME AT
FIRST WHEN I SAW IT, BUT IT
ACTUALLY MAKES SENSE IF YOU
THINK ABOUT IT --
>> YOU HAD TO CONVINCE YOURSELF
A FEW TIMES?
>> THE INJUNCTIVE RELIEF CLAIM
IS NO LONGER -- IT'S MOOT AT
THIS POINT.
>> SO THAT WAS NICE.
THEY WERE GIVING THE PLAINTIFFS
THE ABILITY TO ARBITRATE A CLAIM
THAT WAS MOOT?
>> NOT AT THE TIME.
>> I MEAN, TO GO TO COURT ON A
CLAIM THAT WAS MOOT?
>> NOT AT THE TIME.
THE DEALERSHIP WENT OUT OF
BUSINESS IN '09.
SO I DON'T BELIEVE THAT IT WAS
PART OF THE RECORD AT THAT POINT
IN TIME.
BUT THE ISSUE IS --
>> WELL, IS THAT IN OUR RECORD
NOW?
>> I DON'T THINK SO.
>> WELL, THEN, YOU KNOW, REALLY
AND TRULY?
>> OKAY.
>> SO IF THEY'RE OUT OF
BUSINESS, DOES IT MATTER IF THEY
ARBITRATE OR GO TO COURT?
THEY'RE NOT GOING TO PAY THE
JUDGMENT, IS THAT WHAT YOU'RE --
>> THERE WAS A DEALER BOND,
THAT'S WHAT THIS CASE IS ABOUT,

THAT REMAINS IN PLACE.
HERE'S THE ISSUE AND THE LOGIC
BEHIND THE THIRD DISTRICT.
THE ACTUAL AGREEMENT TO
ARBITRATE SAID THEY COULD NOT
ARBITRATE BECAUSE IT RESTRICTED
THE ARBITRATOR FROM WRITING AN
OPINION.
AND THEY SAID THAT THAT WAS NOT
PROPER.
YOU CAN'T SEND SOMETHING TO AN
ARBITRATOR IF THERE'S NO ABILITY
TO WRITE AN OPINION.
BUT THAT DIDN'T INFLUENCE
WHETHER THEY FOUND THAT IT
SHOULD GO, THE MONETARY CLAIM
SHOULD GO TO THE ARBITRATOR.
THAT WAS THE SPECIFIC REASON WHY
THEY FELT THAT THE INJUNCTIVE
RELIEF CLAIM WHICH --
>> WHAT ABOUT DEFEATING THE
REMEDIAL PURPOSE OF FDUPTA?
>> THERE ARE PLENTY OF CASES
THAT HOLD THAT FDUPTA AND
MONETARY AND INJUNCTIVE RELIEF
CLAIMS BOTH GO TO ARBITRATION.
THERE'S A TON OF CASES THAT SAY
THAT.
WHAT I'D ASK THE COURT TO LOOK
AT IS THE SPRING LAKE CASE, A
RECENTLY-DECIDED DECISION.
MY ESTEEMED COLLEAGUE AND I
DISAGREE.
HE DOESN'T LIKE THE DECISION, I
DO.
BUT I THINK IT SETS FORTH THE
PROPER STANDARD IN THESE TYPES
OF CASES.
IT INVOLVED A 92-YEAR-OLD LADY
WITH A FOURTH GRADE EDUCATION.
THE SECOND DCA SAID WHEN YOU
SIGN A CONTRACT, THAT'S BINDING.
THAT'S THE END OF IT.
CONTRACT EXISTS.
THEY ALSO CITED TO THE THIRD DCA
CASE WHERE IT HELD THAT A BLIND
WOMAN WAS BOUND TO A CONTRACT --
>> IN THIS CASE WHAT'S YOUR
UNDERSTANDING OF WHAT THIRD DCA
DID WITH THE TRIAL COURT'S

RULING THAT THERE WAS NOT A CONTRACT IN EXISTENCE?

>> MY OPINION OF THAT, THE THIRD DCA IN THEIR SECOND TO LAST OPINION NOT THE ORDER CLARIFYING IT HELD THAT, IN FACT, THAT THERE WAS A CONTRACT.

OTHERWISE, IF YOU DON'T FIND THAT THERE WAS A CONTRACT, YOU DON'T EVEN GET TO THE UNCONSCIONABILITY --

>> WE'RE ON -- WE'RE NOT ON THE SECOND TO LAST OPINION, ARE WE? IT'S THE FINAL WORD OF THE THIRD DCA THAT WE HAVE TO LOOK AT. I MEAN, THAT MAY BE WHAT YOU PREFER, BUT THAT'S NOT WHAT THEY DID, IS IT?

>> AND THAT MAY BE WHY THERE'S NO JURISDICTION.

BECAUSE IF YOU JUST LOOK AT THAT LAST OPINION, YOU CAN'T READILY ASCERTAIN A CONFLICT WITH SEIFFERT.

>> ON REMAND DIDN'T THE COURT ON MOTION FOR REHEARING REMAND WHETHER OR NOT THERE WAS AN AGREEMENT TO ARBITRATE? AND SO THE WHOLE ISSUE OF WHETHER THERE'S A VALID CONTRACT OR NOT OR THE EXISTENCE OF A CONTRACT JUST WENT BACK TO THE TRIAL COURT FOR DETERMINATION?

>> THAT'S MY UNDERSTANDING OF THE LAST OPINION OF THE THIRD DISTRICT.

THAT'S CORRECT.

>> THEY SENT THAT ISSUE, WHETHER A CONTRACT EXISTS OR NOT, BACK TO THE TRIAL COURT.

>> THAT'S MY UNDERSTANDING OF THE --

>> BUT THE FIRST, SEIFFERT SAYS THE FIRST ISSUE TO BE DECIDED -- WHICH IS CLEAR IT WAS DECIDED WHEN I, FROM THE PORTION OF THE ORDER THAT I READ TO YOU THAT'S IN THE OPINION -- WAS THAT THERE WAS NO VALID MEETING OF THE MINDS TO ARBITRATE.

THAT THEY WERE GIVEN A BLANK CONTRACT, AND THEN IT WAS EXPLAINED TO THEM IN SPANISH, AND IT WAS NO QUESTION THAT THEY DID NOT SPEAK ENGLISH, AND THE PEOPLE THAT EXPLAINED TO THEM DIDN'T EVEN UNDERSTAND ARBITRATION.

>> THE POINT IS, IS THAT WE'RE REWARDING THESE INDIVIDUALS FOR GOING TO A DEALERSHIP, RUSHING THROUGH A TRANSACTION. THEY CLEARLY SIGNED THESE DOCUMENTS, THEY CLEARLY BY THEIR SIGNATURES AGREED TO ARBITRATE THEIR CLAIMS.

>> WELL, THROUGHOUT LEGAL HISTORY IN THE COMMON LAW IF I HAND YOU A PIECE OF PAPER AND SAY I'D LIKE TO HAVE YOUR AUTOGRAPH AND IT TURNS OUT THAT YOU'RE ENDORSING A CHECK TO ME, THAT THAT'S FRAUDULENT INDUCEMENT, ISN'T IT?

I MEAN, AND THERE WAS NEVER AN AGREEMENT.

SO THAT'S NOT A NEGOTIABLE INSTRUMENT, CORRECT? EVEN THOUGH IT MAY APPEAR ON ITS FACE TO BE.

>> CORRECT.

BUT IF YOUR HONOR WOULD -- JUSTICE, IF YOU WOULD INDULGE ME --

>> I CERTAINLY WILL.

>> HERE'S FROM PAGE 35 OF THE HEARING TRANSCRIPT, QUESTION TO THE BUYER: WHEN YOU FIND THE BUYER'S ORDER TO ARBITRATE OTHER DOCUMENTS AT THE DEALERSHIP, YOU KNEW YOU WERE SIGNING A LEGALLY-BINDING DOCUMENT.

YES.

NOBODY AT THE DEALERSHIP FORCED YOU TO SIGN ANY OF THESE DOCUMENTS WITHOUT YOU HAVING THE ABILITY TO GET SOMEONE WHO KNOWS HOW TO READ ENGLISH TO HAVE ANYTHING YOU WANTED EXPLAINED, RIGHT?

ANSWER: SINCE WE WANTED TO BUY THE CAR AND EVERYTHING HERE IS IN ENGLISH, WE DECIDED TO SIGN IT AND TAKE IT.

QUESTION: SO YOU ELECTED TO TAKE YOUR CHANCES BY SIGNING A DOCUMENT THAT YOU DIDN'T UNDERSTAND.

>> BUT YOU ARE NOW, NOW WHAT YOU'RE DOING -- YOU MIGHT NOT THINK THIS IS THE BEST EXPERIENCE AFTER WE --

[LAUGHTER]

YOU'RE STILL ENJOYING IT?

[LAUGHTER]

THAT YOU'RE TAKING FINDINGS THAT THE TRIAL COURT MADE THAT THEY DIDN'T KNOW WHAT THEY WERE SIGNING, FINDINGS THAT THE THIRD DISTRICT MADE WHICH TOOK PROCEDURAL UNCONSCIONABILITY AND BASICALLY SAID THE WAY IT WAS EXPLAINED TO THEM THERE WAS NO, THERE WAS NO WAY THAT THEY WOULD UNDERSTAND IT, AND NOW YOU WOULD BE ASKING US TO SAY BUT REALLY READ MORE OF THIS TRANSCRIPT, AND YOU'LL REALIZE THAT THEY DON'T HAVE CLEAN HANDS, AND THEY REALLY KNEW WHAT THEY WERE DOING.

IS THAT WHAT YOU'RE, IS THAT WHAT YOU'RE SUGGESTING FROM THAT PORTION OF THE TRANSCRIPT?

>> I AM SUGGESTING THAT THEY KNOWINGLY AND VOLUNTARILY SIGNED THIS AGREEMENT KNOWING THEY WERE SIGNING LEGAL DOCUMENTS --

>> NOW, IS THAT NOT IN, IS THAT WHAT YOU ARGUED IN FRONT OF THE THIRD DISTRICT?

>> AMONGST MANY THINGS.

>> OKAY.

BUT THE THIRD DISTRICT DISAGREED WITH YOU.

>> NOT NECESSARILY.

THEY DID COMPEL ARBITRATION ON THE RETAIL INSTALLMENT CONTRACT PROVISION.

SO IMPLICITLY THEY FOUND THE

EXISTENCE OF A ENFORCEABLE CONTRACT, OTHERWISE THEY WOULDN'T HAVE GONE INTO THE --
>> WHAT IS YOUR, WHAT WOULD YOU DO WITH THE LAST PARAGRAPH THAT JUSTICE CANADY'S POINTED OUT TO YOU AND TO YOUR OPPOSING COUNSEL ABOUT WHAT COULD HAPPEN ON REMAND?

>> WELL, BASICALLY, IT GOES BACK TO THE TRIAL JUDGE.

THE TRIAL JUDGE MAKES A DETERMINATION AS TO WHETHER THERE IS AN ENFORCEABLE AGREEMENT OR NOT --

>> BUT WOULD YOU AS AN OFFICER OF THE COURT AND WHETHER WE TAKE THIS CASE OR NOT AGREE THAT IF YOU READ THE JUDGE'S ORDER, THE JUDGE MADE THAT DETERMINATION?

>> THE THIRD DISTRICT EVIDENTLY DIDN'T THINK SO --

>> I'M ASKING YOU.

YOU WERE APPEALING SOMETHING BECAUSE YOU SAID, NO, THERE'S CONTRARY EVIDENCE TO SHOW THAT THERE WAS A VALID AGREEMENT TO ARBITRATE.

THAT'S WHAT YOU WERE TRYING TO GET REVERSAL OF THOSE FINDINGS OF FACT.

AND INSTEAD THE THIRD DISTRICT AFFIRMED ALL THE FINDINGS OF FACT.

>> WHAT I WAS TRYING TO DO WAS GET A REVERSAL BASICALLY BECAUSE I THOUGHT THAT THERE WAS AN ENFORCEABLE AGREEMENT.

AND UNDER SPRING LAKE, SECOND DCA --

>> BECAUSE, BECAUSE THE TRIAL COURT HAS HELD THAT THERE WAS NOT AN ENFORCEABLE AGREEMENT.

>> TRIAL COURT HAD FOUND THE BUYERS TO BE MORE CREDIBLE ON THAT ISSUE.

>> BUT -- AND THAT THERE WAS NO ENFORCEABLE AGREEMENT TO ARBITRATE.

>> YOU COULDN'T TAKE AN APPEAL

UNLESS THE TRIAL COURT HAD HELD THAT.

>> WELL --

>> THERE'S NOTHING, I MEAN, EVEN THAT ISSUE IS NOT SUBJECT JUST BECAUSE A COURT WILL DISAGREE WITH YOUR ARGUMENT DOESN'T GIVE YOU APPELLATE JURISDICTION EVEN ON AN INTERLOCUTORY APPEAL.

A COURT HAS TO DECIDE SOMETHING, AND IN THIS CONTEXT IT WAS THAT NO AGREEMENT EXISTED WHICH REQUIRED ARBITRATION SO, THEREFORE, IT COULD NOT COMPEL ARBITRATION.

>> THERE WERE NUMEROUS REASONS WHY THE TRIAL COURT DENIED THE MOTION TO COMPEL ARBITRATION. AMONGST THEM THERE WAS THE UNCONSCIONABILITY ISSUE AND FINDINGS REGARDING --

>> WASN'T THAT ALTERNATIVELY? HE SAID THERE WAS NO AGREEMENT, AND THAT'S WHERE THE ANALYSIS STOPS AT THAT POINT.

YOU HAVE TO CROSS THAT HURDLE BEFORE YOU JUMP INTO UNCONSCIONABILITY, DON'T YOU?

>> WELL, I AGREE, JUSTICE PERRY, WITH WHAT YOU'RE SAYING.

BUT THE ISSUE IS NOT SO SIMPLE. THE ISSUE IS THE TRIAL JUDGE MADE AN ERROR, AND AS MY OPPOSING COUNSEL HAS SAID, THIS IS A DE NOVO REVIEW OF THESE PROCEEDINGS.

AND I BELIEVE THAT BASED ON THE FACT THAT IS CAME OUT BEFORE THE TRIAL JUDGE THAT THE THIRD DISTRICT IN THEIR SECOND TO LAST OPINION SEEMED TO REJECT THAT ARGUMENT THAT THERE WAS NO MEETING OF THE MINDS.

OTHERWISE THEY DON'T GET TO THE UNCONSCIONABILITY --

>> AND THAT'S -- I GUESS THAT'S WHERE WE GET TO.

IF THE THIRD DISTRICT, THIS IS -- SO IT'S A SCREWY CASE, RIGHT?

>> YES.

>> OKAY.

[LAUGHTER]

>> I AGREE.

>> WHERE -- THE TRIAL COURT ERRED IN YOUR VIEW IN THEIR, IN THE TRIAL COURT'S ASSESSMENT OF THE EVIDENCE, IS THAT CORRECT?

>> TRIAL COURT ERRED IN THEIR APPLICATION OF THE LAW. THE APPLICATION OF THE LAW BASED ON THESE UNDISPUTED FACTS LED THE THIRD DISTRICT TO CONCLUDE THAT THE RETAIL INSTALLMENT ARBITRATION CLAUSE WAS ENFORCEABLE.

THAT WAS THE HOLDING OF THE THIRD DCA.

MY COLLEAGUE HERE MOVED FOR A REHEARING, AND IN THE REHEARING THEY SORT OF RECEDED FROM THAT OPINION AND SAID GO BACK AND TAKE THIS UP WITH THE TRIAL JUDGE.

BUT AGAIN, I JUST DON'T SEE ANY CONFLICT WITH SEIFFERT ON THIS ISSUE.

MAYBE THE THIRD DISTRICT --

>> BUT YOU HAVE, IN MY MIND, YOU'RE SAYING TWO DIFFERENT THINGS ARE IN CONFLICT.

YOU'RE SAYING THAT THE THIRD DISTRICT SAID THAT THERE IS NO VALID CONTRACT, YET YOU AGREE THAT THE THIRD DISTRICT SAID YOU CAN GO BACK AND LITIGATE THAT ISSUE OF WHETHER IT'S A VALID CONTRACT.

WHICH IS IT?

IS THERE NO VALID CONTRACT, AND THAT'S WHAT THE SECOND -- THE THIRD DISTRICT SAID, OR DID THE THIRD DISTRICT SAY YOU GO MAKE THAT DETERMINATION SOMEPLACE ELSE?

>> THERE WERE THREE SEPARATE OPINIONS ISSUED BY THE THIRD DISTRICT, AND THIS IS SORT OF WHY THIS IS CONVOLUTED.

IN THE SECOND OPINION, THE THIRD

DISTRICT SAID THAT THERE WAS NO
SUBSTANTIVE --

>> OKAY, SO WHAT DO YOU WANT
THIS COURT TO SAY?

THAT THERE WAS NO VALID
CONTRACT, THAT THE THIRD
DISTRICT SAID THERE'S NO VALID
CONTRACT?

OR DO YOU WANT THIS COURT TO SAY
THAT'S AN ISSUE THAT SHOULD BE
DECIDED AT THE TRIAL COURT
LEVEL?

>> WELL, ONE, I THINK IT'S AN
ISSUE TO BE DECIDED AT THE TRIAL
COURT LEVEL.

ONCE THAT OCCURS AND IT GOES
BACK BEFORE THE THIRD DCA, I CAN
ARGUE MANY OF THESE LEGAL
ISSUES.

I JUST, I OPPOSED JURISDICTION
IN THIS CASE.

I FILED A RESPONSE TO THE
MOTION.

I DIDN'T BELIEVE THAT THERE WAS
CONFLICT WITH SEIFFERT.

I STILL DON'T.

AND I STILL THINK THERE'S
FURTHER LABOR ON THE PART OF THE
LOWER COURT TO DO --

>> BUT IF WE ACCEPT YOUR
ARGUMENT THAT THE THIRD DISTRICT
SAYS THAT THERE'S A VALID
CONTRACT, THEN WHAT IS IT,
WHAT'S LEFT TO DO AT THE TRIAL
COURT?

WHAT ARE THEY SENDING BACK TO
THE TRIAL COURT?

>> THAT'S SOMETHING THAT I CAN'T
KNOW OR THINK WHAT THE THIRD
DISTRICT, WHY THEY ISSUED THAT
OPINION.

I THINK IMPLICITLY IN THE SECOND
OPINION THEY FOUND THAT THERE
WAS A VALID AND ENFORCEABLE
CONTRACT, OTHERWISE YOU DON'T
EVEN GET TO THE
UNCONSCIONABILITY ISSUE.

AS JUSTICE PARIENTE SAID, THIS
IS SOMEWHAT CONVOLUTED.

BUT I THINK THE TAKE FROM THE

THIRD DCA'S OPINION, THE SECOND ONE, IS THERE IS A VALID CONTRACT HERE.

AND THEN MR. BLAKE SAID, WELL, YOU KNOW, WE WANT TO -- WE DON'T THINK THERE IS.

AND THEY SAID, OKAY, GO BACK TO THE TRIAL COURT.

>> LET ME ASK YOU THIS ANOTHER WAY THEN.

AS I UNDERSTAND THE OPINION, THEY AFFIRMED IN PART AND REVERSED IN PART.

WHAT WERE THEY REVERSING?

>> OKAY.

REALLY IT'S PRETTY STRAIGHTFORWARD.

THE THIRD DISTRICT IN THE SECOND OPINION, WHICH IS THE SUBSTANTIVE OPINION IN THIS CASE, HELD THAT YOU COULD NOT COMPEL INJUNCTIVE RELIEF IN AN ARBITRATION.

THAT ASPECT HAD TO GO BEFORE THE TRIAL JUDGE.

THE THIRD DISTRICT ALSO HELD THAT THERE'S TWO ARBITRATION CLAUSES.

ONE OF THEM, THE AGREEMENT TO ARBITRATE, WAS UNENFORCEABLE. BUT THE OTHER ONE IN THE RETAIL INSTALLMENT SALES CONTRACT WAS ENFORCEABLE AND WAS NOT SUBSTANTIVELY UNCONSCIONABLE. BASED ON THAT REASONING, THE THIRD DISTRICT SAID GO AHEAD AND MONITOR THE DAMAGES CLAIMED, AND THAT WAS THE HOLDING UNTIL THE LAST DECISION OF THE THIRD DISTRICT CAME OUT.

I THINK, FRANKLY, THE SECOND DECISION OF THE THIRD DISTRICT WAS THE CORRECT ONE, AND THEY SHOULD HAVE STUCK WITH THAT. IT SORT OF DIDN'T MAKE SENSE, CANDIDLY, THEIR LAST OPINION WHEN THEY SENT IT BACK TO THE TRIAL JUDGE ON THIS ISSUE.

I THINK THEY GOT IT RIGHT IN THE SECOND OPINION.

>> SO WE'RE -- SO IN THE FINAL ANALYSIS WHAT THE THIRD DISTRICT SAYS IS ON MONETARY DAMAGES YOU NEED TO ARBITRATE.

AND ANYTHING ELSE CAN GO TO COURT.

>> THEY DID THAT ONLY BECAUSE THEY -- THE WAY THE AGREEMENT WAS WRITTEN THE ARBITRATION DID NOT, THE ARBITRATOR DID NOT HAVE THE RIGHT TO WRITE A WRITTEN OPINION, AND THEY FOUND THAT VIOLATED CHAPTER 501 OF FLORIDA STATUTES.

THAT WAS SORT OF WHY THEY MADE A SPLIT DECISION --

>> BUT THERE'S NOTHING IN FLORIDA LAW THAT SAYS YOU CAN'T HAVE INJUNCTIVE RELIEF BY AN ARBITRATION BECAUSE --

>> I AGREE.

I AGREE.

AND I ARGUED THAT UNTIL I WAS BLUE IN THE FACE, BUT I LOST, AND I ACCEPT IT.

AT THIS POINT, YOU KNOW, IT DOESN'T MATTER FOR THE REASONS I MENTIONED.

>> THE OTHER ODD THING ABOUT IT IS BY DEALING WITH UNCONSCIONABILITY, THEY'RE TALKING ABOUT REALLY THE VALIDITY OF THE CONTRACT WHICH IS EXPLICITLY PART OF THE ARBITRATION AGREEMENT.

SO IT WOULD SEEM ON THE FACE OF THE ARBITRATION AGREEMENT THAT SHOULD BE PERFORMED AT EVALUATION AND ARBITRATION, NOT BY THE COURT.

>> UNDER A LOT OF THE RECENT U.S. SUPREME COURT DECISIONS WHICH GAVE MORE AUTHORITY TO ARBITRATORS TO DECIDE THOSE TYPES OF ISSUES, I WOULD AGREE.

>> BUT THAT WASN'T YOUR ARGUMENT BELOW.

>> WE DIDN'T GET THAT FAR.

>> AND ISN'T, AGAIN, IT MAY BE THAT THIS IS TRUMPED LIKE SO

MANY OTHER THINGS BY FEDERAL LAW.
BUT THAT'S WHY I THINK THE FIRST QUESTION OF SEIFFERT, STILL GOOD LAW?
>> I BELIEVE --
>> DIDN'T SEIFFERT DEAL WITH THE SCOPE OF ARBITRATION AGREEMENT? THAT'S REALLY WHAT IT WAS TALKING ABOUT, RIGHT? WHETHER THOSE TORT CLAIMS AND WHAT WAS PRESENTED THERE WAS ABSOLUTELY PART OF THE SCOPE OF THE AGREEMENT?
>> I WOULD AGREE --
>> THAT HAD NOTHING TO DO WITH WHETHER OR NOT A CONTRACT ACTUALLY EXISTED OR NOT, RIGHT?
>> CORRECT.
>> THAT'S WHAT CHECK CASHING WAS ALL ABOUT.
>> CORRECT.
>> BUT SEIFFERT, I MEAN, THE QUESTION WAS, WAS IT NOT, WHETHER THE CONTRACT EVEN COVERED TORT CLAIMS?
>> I THINK THAT WAS ONE OF THE ISSUES, YES.
>> AND THAT THERE WAS NO AGREEMENT TO -- WHETHER YOU DISCUSS IT IN TERMS OF SCOPE OR I DON'T HAVE -- YOU MAY HAVE A CONTRACT TO TAKE MONEY TO THE BANK OR POLISH YOUR CAR, BUT IF I DON'T HAVE A CONTRACT IN EXISTENCE, THEN YOU CAN'T REFER TO THAT CONTRACT TO ADDRESS THE CLAIM, CAN YOU?
OR HAS ALL OF OUR LAW BEEN TURNED UPSIDE DOWN?
THAT'S MY FIRST QUESTION TO MR. BLAKE, HAVE WE GONE TO THE POINT THAT NO MATTER WHAT THAT ARBITRATORS ARE SUPPOSED TO BE THE PLACE?
ALL YOU HAVE TO DO IS SHOW A PIECE OF PAPER THAT SAYS ARBITRATION IN IT, AND WHETHER SOMEONE SIGNED IT OR DIDN'T, SEND IT TO AN ARBITRATOR?

>> I WOULD ASK THE COURT TO LOOK AT THE SPRING LAKE CASE, THE 2013 DECISION I CITED IN MY BRIEF.

WHEN PARTIES SIGN A CONTRACT, A BINDING CONTRACT EXISTS WHETHER THEY UNDERSTOOD IT OR NOT.

THERE ARE TWO EXCEPTIONS.

ONE, IF THEY WERE PREVENTED FROM READING IT.

THERE'S NO EVIDENCE IN THIS CASE THEY WERE PREVENTED FROM READING IT --

>> BUT IF THEY COULDN'T READ ENGLISH, I DON'T UNDERSTAND, HOW DOES THAT WORK?

>> GOOD QUESTION.

HERE'S THE ISSUE.

THE ISSUE IS WHO ASSUMES THE RISK IF YOU DON'T READ THE LANGUAGE.

YOU'RE CREATING A SLIPPERY SLOPE IF YOU GO DOWN THERE.

BECAUSE, FOR EXAMPLE, THE THIRD DCA UPHELD IN THE CASE AGAINST AN ARBITRATION CLAUSE HELD IT TO BE VALID IN THE FACE OF AN INDIVIDUAL WHO WAS BLIND.

CLEARLY, THEY COULDN'T READ THE AGREEMENT.

THAT'S NUMBER ONE.

CASE LAW IN FLORIDA AND ALL THE FEDERAL COURTS IS REplete THAT WHEN YOU SIGN SOMETHING, YOU'RE BOUND.

IT'S YOUR PROBLEM IF YOU'RE SIGNING AGREEMENTS IN A FOREIGN LANGUAGE, THAT'S WHAT I WOULD LIKE THE COURT TO TAKE FROM THIS.

THESE PEOPLE CAME IN, RECKLESSLY SIGNED AN AGREEMENT.

THEY DECIDED THEY WANTED TO RUSH, THEY DECIDED THEY WANTED TO BUY THE CAR THAT NIGHT WITHIN A PERIOD OF 45 MINUTES, AND I WOULD ASK THE COURT TO AFFIRM THE SECOND DECISION OF THE THIRD DCA THAT THE MONETARY CLAIMS HAVE TO BE ARBITRATED AND TO

SPECIFICALLY APPLY THE SPRING LAKE STANDARDS.

THANK YOU VERY MUCH.

>> THANK YOU.

>> STILL AN HONOR TO BE HERE.

>> THANK YOU.

REBUTTAL?

>> LEAVE THEM SMILING.

>> YES, YOUR HONOR.

IF YOU READ THE REHEARING REALLY CLOSE, YOU'LL FIND OUT WHY IT'S IN VIOLATION OF SEIFFERT.

IT SAYS BECAUSE WE HAVE REVERSED IN PART ON THE ISSUE OF UNCONSCIONABILITY WHICH IS IN VIOLATION OF SEIFFERT.

THEN HE GOES ON TO SAY THE TESTIMONY CONFLICT IS NOW RIPE FOR TRIAL CONSIDERATION.

THE COURT HAD ALREADY MADE A FINDING OF ALL THE FACTS IN HIS ORDER.

SO HE'S, YOU KNOW, GIVING THE DEFENDANTS ANOTHER SHOT TO GO BACK AND RELITIGATE THE FACTUAL ISSUES IN THE EVIDENTIARY HEARING.

EVIDENTIARY HEARING, WE TOOK TESTIMONY FROM EVERYBODY LIVE BEFORE THE JUDGE, AND HE GOT TO JUDGE THEIR CREDIBILITY.

AND WHEN HE SAID THAT, YOU KNOW, THAT THESE PEOPLE KNEW WHAT THEY WERE DOING, THEY WERE NEVER TOLD THAT THEY COULD GO GET SOMEBODY TO HELP THEM UNDERSTAND WHAT THESE DOCUMENTS WERE.

WHAT THEY GOT, IN FACT, WAS THE WRONG, INCORRECT, UNRECOGNIZABLE INTERPRETATION OF THESE AGREEMENTS BY EMPLOYEES WHO'D HAD INSUFFICIENT KNOWLEDGE TO EVEN EXPLAIN WHAT WAS THERE BECAUSE THERE WERE IRREFUTABLE CONFLICTS, AND THEY COULDN'T EVEN UNDERSTAND THAT.

AND THE JUDGE SAW THAT WHEN THE JUDGE ASKED THEM, WHAT DID YOU SAY ABOUT IT?

AND WHEN ASKED IF THE F AND I

GUY SAID DID YOU EXPLAIN ALL THE PARAMETERS OF THIS LONG ARBITRATION AGREEMENT OR ANY OF THE TERMS AND CONDITIONS?

HE SAID, NO.

ALL I SAID WAS YOU DON'T GO TO A JUDGE, AND YOU HAVE TO SETTLE -- WHICH IS BIZARRE -- YOU HAVE TO SETTLE YOUR CASE BEFORE AN ARBITRATOR.

NOW, THEY DON'T KNOW WHAT ARBITRATION IS.

THEY BOTH TESTIFIED NEVER HEARD THE WORD BEFORE.

THE DEALERSHIP NEVER EVEN SAID THE WORD, PERIOD, AND THEY HAVE NO CONCEPT OF WHAT PUNITIVE DAMAGES IS OR CLASS ACTION OR ANYTHING ELSE.

NOW, THIS HOLLOWAY CASE --

>> WELL, THAT WOULD BE TRUE IF IT HAD BEEN IN ENGLISH, WOULDN'T IT?

>> YES.

YES, TECHNICALLY IT WOULD.

>> WELL, IT SEEMS LIKE YOUR ARGUMENT PROVES A LITTLE BIT TOO MUCH BECAUSE IT MEANS ANYBODY SIGNING THIS WHO DOESN'T HAPPEN TO UNDERSTAND ANYTHING IN A SENTENCE CAN GET OUT OF IT. THAT'S NOT THE WAY IT WORKS, I DON'T THINK.

>> WELL, THAT'S GETTING TO UNCONSCIONABILITY.

BUT THE JUDGE RULED AS A MATTER OF LAW EARLY AND DECISIVELY THAT IT'S INVALID AND DOESN'T EXIST, THE CONTRACT IS NOT TO BE ENFORCED.

NOW, THIS HOLLOWAY CASE, YOU HAVE TO REALLY LOOK AT THIS CASE.

THIS IS A REALLY BAD CASE. THIS CASE SAYS THAT UNDER OUR MODERN ECONOMY --

>> ONE OF OURS?

[LAUGHTER]

>> IT'S THE SECOND DISTRICT.

[LAUGHTER]

IF THERE'S A MEETING OF THE MINDS THAT REQUIRES AN INDIVIDUAL TO UNDERSTAND ASPECTS, THAT STANDARD IS GONE. THE CORPORATE POLICY NOW TRUMPS PUBLIC POLICY THAT'S BEEN ENACTED THROUGH THE ARBITRATION CODE OF THE STATE OF FLORIDA BY THE LEGISLATURE, SIGNED BY THE GOVERNOR.

THEY'RE SAYING THAT NO MATTER HOW I GOT YOUR SIGNATURE ON, LET ME TELL YOU, YOU'RE BOUND.

IF YOUR NAME'S ASSOCIATED WITH THIS CONTRACT, YOU'RE BOUND. WHATEVER HAPPENED TO DURESS, UNDUE INFLUENCE, FRAUD IN THE INFLUENCE?

WHAT HAPPENED HERE WHERE THERE WAS NO VALID AGREEMENT TO BEGIN WITH?

THEY'RE ASKING THEM TO SIGN THINGS THAT THEY'RE MISREPRESENTING.

THE PEOPLE CASE THAT I CITED IN MY BRIEF SAYS THAT THEY'RE SIGNING A DOCUMENT THAT THEY THOUGHT SAID ONE THING, BUT IT WAS EXPLAINED IT SAID SOMETHING ELSE.

THAT'S NO MEETING OF THE MINDS. THAT'S BASIC CONTRACT LAW.

SO THEY'RE JUST THROWING ALL OF THE COMMON LAW OF FLORIDA OUT, THE SECOND DISTRICT.

THEY'RE SAYING, FORGET IT. WHAT'S MORE IMPORTANT IS THE FACT THAT WE'VE GOT TO MOVE THE ECONOMY ALONG.

AND OUR MODERN ECONOMY JUST CAN'T DO WITH THINGS LIKE MEETING OF THE MINDS OR ANYTHING LIKE THAT.

WE'VE JUST GOT TO MOVE ON FOR THE BENEFIT OF CORPORATE AMERICA.

>> YOU'RE OUT OF TIME.

IF YOU COULD BRING IT TO A CONCLUSION.

>> WHAT WE WOULD ASK IS THAT

THIS COURT, UM, REINSTATE THE TRIAL COURT'S DECISION BASED ON THE FACT THAT THERE IS NO VALID ARBITRATION AGREEMENT THAT EXISTS SO NONE CAN BE ENFORCED AND SHOULD THE COURT SO DESIRE COULD EXPLAIN SEIFFERT, QUESTION NUMBER ONE, IN A MORE INSTRUCTIVE WAY TO SOME OF OUR DISTRICT COURTS TO SAY WE HAVE ISSUES OF PUBLIC POLICY, ISSUES OF FORMATION AND WHETHER OR NOT THERE'S A VALID CONTRACT, WE HAVE ISSUES OF, AS THIS COURT SAID IN I THINK IT'S SCHATZ, THAT THE STATE CONTRACT LAW SHOULD GOVERN, AND WHATEVER ELSE THIS COURT WOULD LIKE TO EXPLAIN TO THE DISTRICT COURTS BECAUSE THEY'RE ALL OVER THE CASE INCLUDING UNCONSCIONABILITY. ALL THE DISTRICTS SAY YOU NEED BOTH.

AND STEINHARDT SAID YOU DON'T, BUT NOW STEINHARDT IS CITED IN ALL THE OTHER DISTRICT COURTS THAT YOU DO NEED IT.

IN REALITY, YOU DON'T NEED IT. AND THAT WAS A BACK-UP ARGUMENT THAT THE COURT FOUND.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. COURT IS ADJOURNED.

>> ALL RISE.