077 OA. 5-5-93

IN THE SUPREME COURT OF FLORIDA

MOBIL OIL CORPORATION,

Petitioner,

vs.

JEREMY BRANSFORD,

Respondent.
_____/

Case No.: 80,310

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA
CASE NO.: 91-2147

RESPONDENT'S BRIEF ON THE MERITS

MARK R. McCOLLEM, ESQUIRE
Florida Bar No.: 370606
CHIDNESE & McCOLLEM
201 Southeast 12th Street
Fort Lauderdale, Florida 33316
(305) 462-8484

February 17th, 1993

TABLE OF CONTENTS

TABLE OF CITATIONS

I. STATEMENT OF THE FACTS

On March 21st, 1990, the Respondent, JEREMY BRANSFORD, (hereinafter referred to as BRANSFORD) entered a Mobil Mini Mart gas station owned by MOBIL and operated by ALAN BERMAN (hereinafter referred to as BERMAN) to purchase some retail items. While on the premises, he was attacked and beaten by BERMAN'S employee, HYMAN DALE STETHEM (hereinafter referred to as STETHEM). (R-302-311)

The Mini Mart was a Mobil Oil Corporation franchise (hereinafter referred to as MOBIL). (R-552-605) As such, BERMAN sold MOBIL Gas and MOBIL Oil products (R-192), exclusively used Mobil logos and advertising products (R-193), and required his employees to wear MOBIL uniforms at all times. (R-203.) MOBIL representatives routinely came it the Mini Mart to discuss business operation, pricing, appearance and advertising. (R-202.) This service was never requested by BERMAN, but was provided as part of the franchise agreement. (R-202.) MOBIL also owned the station that was leased to BERMAN.

On the night of the incident in question, STETHEM, was a full time employee of BERMAN (R-205), and was always required to wear a MOBIL uniform (R-206.) Neil Berman, the owner's son, also worked at the Mini Mart as Assistant Manager. (R-74.)

STETHEM was an ex-Army Ranger and Vietnam Veteran trained in a lethal form of Martial Arts known as Dim-Mac,

which in his words in illegal in the United States and causes "instant death". (A-18-19.) He is also a recovered heroin addict and always carries a two foot jungle knife or machete with him while at work. (A-7, 17, 24.) STETHEM has been knifed twice and shot once and in his own words does not tolerate threats. (A-35.)

STETHEM either kept the machete in his pants or behind the counter depending upon whether or not he was working one of the more "dangerous" night-shifts. (A-22.) The Assistant Manager also knew STETHEM brought the machete to work with him. (A-20, 23.)

STETHEM has a history of beating up customers and liked to refer to hitting people as "lighting them up", a phrase he uses to describe what he did to BRANSFORD. (A-10-15.) The Assistant Manager actually witnessed one previous incident involving a customer and the owner also had previously disciplined STETHEM for his prior pugilistic conduct. (A-16.) STETHEM had free reign of the store during his shift and was allowed to leave his enclosed booth in the event he felt it necessary. (A-34.) The Assistant Manager testified that it was alright for STETHEM to leave the booth even if a customer was in the store. (R-883.)

On the night of the incident, BRANSFORD, entered the Mobil Mini Mart to purchase some sandwiches. While paying for some merchandise, STETHEM and BRANSFORD began to engage in accusatorial name calling. (A-43.) This eventually resulted in STETHEM leaving the booth enclosure and

approaching BRANSFORD. STETHEM indicates BRANSFORD began to approach him in a threatening manner which made it necessary for STETHEM to protect himself and the premises. (A-46.) When STETHEM thought BRANSFORD was going to hit him, he "lit him up." The entire incident was captured by a store security video camera.

II. STATEMENT OF THE CASE

The Respondent, BRANSFORD, accepts the Petitioner's recitation of the Statement of the Case as contained within its Initial Brief.

III. SUMMARY OF ARGUMENT

THE 4TH DISTRICT COURT OF APPEAL CORRECTLY FOUND MOBIL TO BE RESPONSIBLE UNDER AN APPARENT AGENCY CLAIM GIVEN THE FACTUAL CIRCUMSTANCES OF THIS CASE.

The 4th District Court of Appeal found that MOBIL might be liable given the facts of this case under the theory of apparent agency for either failing to provide adequate security or failing to remedy a foreseeable danger. Bransford v. Mobil, 601 So.2d 1306, 1307 (Fla. 4th DCA, 1992). The 4th District Court's decision in this regard does not represent a departure from the essential requirements of the law and is compatible with this Court's holding in Orlando Executive Park, Inc. v. Robbins, 433 So.2d 491 (Fla. 1983)

The Petitioner makes much ado about the fact that MOBIL, being an oil company, should be subject to a different standard than any other entrepreneur in the State of Florida. Surely MOBIL enjoys no special exceptions or exemptions from the law merely because it sells petroleum products rather than hotel services as did Howard Johnsons in the Robbins case. MOBIL can direct us to no viable rationale for carving out an exception in the law for oil companies other than its misplaced reliance upon Sydenham v. Santiago, 392 So.2d 357 (Fla. 4th DCA 1981), and this

Court's discussion of Sydenham in the Robbins decision. As can be seen from a concise reading of Robbins, however, this Court believes that Sydenham and other oil company cases should be limited to their facts, and specifically disapproved of extending Sydenham into any other case. Id at 494. This Court in Robbins further illuminated the important reminder that "the existence of an agency relationship is ordinarily a question to by determined by a jury in accordance with the evidence produced at trial . . . ." Id at 494.

This Court was further impressed with the fact that in Robbins, Howard Johnsons had apparently represented to the public that it could find a certain level of service at the motel, based upon the fact that the Howard Johnson's logo was present. Surely the same can be said for BRANSFORD with respect to the representations MOBIL made by its logos, uniforms, marquee and products at the station owned by it.

The Robbins decision seemed to create for the first time in Florida a cause of action for failure to provide adequate security. Petitioner's citation to Cardounel v. Shell Oil Co., 397 So.2d 328 (Fla. 3rd DCA 1981), is therefore misplaced inasmuch as the negligent security claim brought within that case preceded this Court's Opinion in Robbins. Since Robbins, this Court has decided a veritable plethora of decisions which clearly lay to rest any precedential authority contained within Cardounel.

MOBIL'S reliance upon Robbins for the proposition that

one can never sustain an apparent agency claim against an oil company in the State of Florida represents an extremely myopic view of the logic contained within that decision. MOBIL's further attempt to bootstrap the District Court's language in Sydenham and this Court's citation to that case in Robbins as support for its argument that an oil company should enjoy exclusive immunity from suit under an apparent agency theory also represents a dangerous expansion of this Court's limiting language in Robbins.

The single most important distinction between the case sub judice and Sydenham is the fact that MOBIL owned the property upon which BERMAN ran this Mini Mart. Howard Johnsons did not even own the property upon which the hotel in the Robbins case was operated, however, this Court found a mere presence of its national logo, uniformity of building design and color schemes sufficient to hold Howard Johnsons responsible under an apparent agency theory. Not only did MOBIL own the service station in this case, it also required that BERMAN use a Mobil marquee, sell Mobil products, display Mobil uniforms and further routinely provided on site directions and support for the day to day operation of the business located on its property. Respondent would argue that ownership by MOBIL of the property in question is a sufficient distinction to avoid running aground upon the rocks of Sydenham. When considering the other participation of MOBIL at the property in question, it becomes even more apparent that the 4th District was correct in holding that

MOBIL could be responsible for failure to provide adequate security and/or failure to remedy a foreseeable danger either on the property or with regard to the actions of BERMAN'S employee.

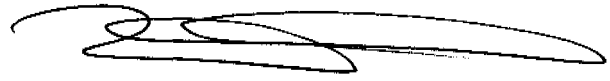
WHEREFORE, BRANSFORD requests that this Honorable Court affirm the decision of the 4th District Court of Appeal and remand this case back to the Trial Court for proceedings consistent with that Opinion.

V. CONCLUSION

The Fourth District Court of Appeal correctly found that MOBIL could be liable under an apparent agency doctrine given the facts of this case. Obviously this is a question that must be decided on a case-by-case basis and given the factual circumstances of MOBIL's involvement in the Mini Mart in question, the District Court was correct to find a jury issue on this point.

Respectfully submitted.

CHIDNESE & McCOLLEM
Attorneys fof Respondent
201 Southeast 12th Street
Fort Lauderdale, Florida 33316
(305) 462-8484



By: _____
MARK R. McCOLLEM
Florida Bar No.: 370606

VI. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 17th day of February, 1993 to: RICHARD ADAMS, ESQUIRE, Concord Building, Suite 1000, 66 West Flagler Street, Miami, Florida 33130, and ROGER S. KOBERT, ESQUIRE, Capital bank Building, 1221 Brickell Ave., Suite 1780, Miami, Florida 33131.

CHIDNESE & McCOLLEM
Attorneys for Respondent
201 Southeast 12th Street
Fort Lauderdale, Florida 33316
(305) 462-8484

BY: 
MARK R. McCOLLEM

MRM/kp

IN THE SUPREME COURT OF FLORIDA

MOBIL OIL CORPORATION,

Case No.: 80,310

Petitioner,

vs.

JEREMY BRANSFORD,

Respondent.
_____/

APPENDIX TO
THE REPLY BRIEF ON THE MERITS OF
RESPONDENT, JEREMY BRANSFORD

MARK R. McCOLLEM, ESQUIRE
Florida Bar No.: 370606
CHIDNESE & McCOLLEM
201 Southeast 12th Street
Fort Lauderdale, Florida 33316
(305) 462-8484

TABLE OF CONTENTS TO APPENDIX