

This is an unofficial transcript derived from video/audio recordings

Supreme Court of Texas.

Thomas Eugene Norris, Sr. and Karen Lynn Norris, Appellants,  
v.

Johnny W. Thomas, Trustee, Appellee.  
No. 05-0476.

November 15, 2005

Appearances:

Melvin R. Blumberg (argued), San Antonio, for appellants.  
Johnny W. Thomas (argued), Law Office of Johnny W. Thomas, San Antonio, for appellee.

Before:

Don R. Willett, Wallace B. Jefferson, Nathan L. Hecht, Harriet O'Neill, Dale Wainwright, David M. Medina, Paul W. Green, Phil Johnson, Scott A. Brister

CONTENTS

ORAL ARGUMENT OF MELVIN R. BLUMBERG ON BEHALF OF THE PETITIONER  
ORAL ARGUMENT OF JOHNNY W. THOMAS ON BEHALF OF THE RESPONDENT

JUDGE: Please be seated. The Court is ready to hear argument in 05-0476, Thomas Eugene Norris Sr. and Karen Lyn Norris versus Johnny W. Thomas, trustee.

COURT ATTENDANT: May it please the Court. Melvin Blumberg, to present argument to the Court. He will reserve zero minutes for rebuttal.

ORAL ARGUMENT OF MELVIN R. BLUMBERG ON BEHALF OF THE PETITIONER

MR. BLUMBERG: May it please the Court. There is this no Texas Case directly on point, stating that boat can be claimed as a homestead. But there is every reasonably, the Texas Court should aside-- should afford the same protection to a boat uses or as a residence as to any other personal property used as a, as a residence.

JUDGE: There are some state that make that very clear. Right?

MR. BLUMBERG: That's correct.

JUDGE: More than in, and Texas doesn't?

MR. BLUMBERG: That's correct.

JUDGE: And so why should we go your way and, and rather than defer to legislature if, if they want to make that yacht a homestead then they can.

MR. BLUMBERG: With-- the legislature has a specifically in the Texas Administrative Code in the TMF, TMF program. It says, 'The homestead and surrounding real party; any structure including a

houseboat or motor home that the household used as a residence is excluded, as, as, as long as it has been used as a residence.'

JUDGE: But Mr. Thomas says, this is only a definition of resources. It doesn't really define what a homestead is.

MR. BLUMBERG: But, but it still is apparently authorized by the Texas Legislature-- out and we-- is our contention. This, this is an extension of the legislature intent.

JUDGE: About the same take in the Texas Tax Code excludes-- it doesn't say anything about houseboats, so just talks about motor homes.

MR. BLUMBERG: It doesn't exclude it and it doesn't include it. The a-- for example you can have the-- a missile silo there that was reaffirmed it-- refurbished, redecorated into a, into a home and, and that you later that missile silo can be considered a homestead.

JUDGE: Fixed the way of, of silo

MR. BLUMBERG: Yes, that would be in fixed to the land. In our, in our case, the, the yacht is-- has always been a docked. It was docked originally in Port of Aransas and, and lately in, in Corpus Christi, Texas at a Marina and a dock. The, the, the yacht physically attaches the-- attaches the dock which of course, the dock goes out into the ground. So if you want to say it's, it's touching the ground that's an umbilical cord coming from the dock, that carries water, electricity, sewage and telephone directly into the house.

JUDGE: What if did they ...

JUDGE: A piece on mobile homes-- on, on-- mobile homes.

MR. BLUMBERG: Yes.

JUDGE: We've never spoken as to mobile homes constitute as homestead, I understand that Courts of Appeals or one Court of Appeals has determined that mobile homes did qualify as homestead.

MR. BLUMBERG: That's how I understand it, yes.

JUDGE: Are, are there any Courts of Appeals that have held that they are not?

MR. BLUMBERG: Not to my, not to my knowledge. I think, some, in some limited cases, recreational vehicles has been held as homesteads. Of course, there is-

JUDGE: In Texas?

MR. BLUMBERG: Yes, in Texas.

JUDGE:: How would you're-- again attached that to the land? Isn't, isn't that mobile home statute indicate the, the wheels have to be removed from the home? So that that it -

MR. BLUMBERG: There-- there's, that in case that it also has to be a ...

JUDGE: So that the home is affixed can't roll off as a -

MR. BLUMBERG: Yes.

JUDGE: - perhaps a yacht can sail off. Isn't that a significant difference?

MR. BLUMBERG: Not, not that really, you could, you could have a, a mobile home, put on a barge and put it in the water and the fact that it's on the barge and in the water, it does not lose its homestead exemption.

JUDGE: Well, not necessarily because the case--it does hold mobile homes under qualified for homestead, says it's the attachment to realty that gives the personal property its homestead character. So if you took it and put it on a barge, you will lose that attachment to realty upon which the opinion is based.

MR. BLUMBERG: Our answer for that is the 1980-- '86 case Cullers versus James(1 S.W. 314), in which it was held that the-- that a homestead cannot embrace-- there is containment that homestead could

not erase personal property. The, the exemption was in terms of logs, lakes or, or land but the, the-- but the object-- the object was to secure a family home. The house is necessarily embraced in the word of homestead. If the head of the family owns a house and no interest or stay in the land or which spends, the house is a chattel. In that case the house was held as a chattel and the homestead exemption the, the, the court said he could move the house from parcel to parcel I mean, would still the-- it would still be a homestead.

JUDGE: The 'Capitol Aggregates' (448 S.W.2d 830) interpreted that to be is the attachment to the land and not necessarily owns the land that makes it a homestead.

MR. BLUMBERG: Well, of course, it's our contention that it does not have to be physically attached to the land. Specifically, 'cause only of the mobile home provision. We-- it's our contention again, not to be redundant with it is by being apparent in vocal cord with all these utility services which also comply with the urban with the definition of the urban what you have, have three hour out of a like, five or six items: water, electricity, and phone and sewer services that, that, that, that yacht touching that dock is it gives it enough of the within the land provision to designated it as a, as homestead. Florida, Arizona, and there's the identical, identical case in this which we're using in the bankruptcy court before former Judge Park which specifically held that, that it was a with-- that the yacht was a homestead.

JUDGE: But there constitution didn't have the, the land and acreage language that our's did.

MR. BLUMBERG: I, I, I, I won't recall the case but I did cite it during the hearing ...

JUDGE: Let me ask you.

MR. BLUMBERG: Yes?

JUDGE: What's the difference between a travel trailer and a mobile home? a Double Wide? One's lot of easier to move from the other? One's intended for travel? One's intended for permanent residence?

MR. BLUMBERG: Yes.

JUDGE: Isn't there are also same difference between a houseboat and a yacht. Yacht after all is considered a houseboat. If you're tide up on Lake Washington in Seattle, people live there permanently. Yachts are not normally bought so one can leave them tied up to the wharf, they're normally bought, so you can sail them around.

MR. BLUMBERG: Again, it is a matter of-- rich people have living in yachts and poor people are living house boats. But still ...

JUDGE: Well, of course, and that-- of course, Congress, but of course, is not wild about the states like Texas that tend give rich debtors away from their creditors. They've been cracking down on that, is this what you arguing for?

MR. BLUMBERG: You, you, you would be correct if, if and, and, in our pleadings we show that Mr. Norris did from time to time take rest. He went to various other places but for the-- since he sold his restaurant. He for whatever reason his parents were over sick, his wife's parents were sick. They stayed in that yacht and lived on it for, for period of years and they contend that, that is their homestead. Is not any difference than a, than a mobile home or house or, or anything else. That, that it was, it was in the-- it was in the Marina and while is in Marina that was their homestead and, and, and do not, not grant them the Homestead exemption is, is potentially a discriminatory practice.

JUDGE: Are there any limitations on the exemption your seeking

could have boat it any value, any size be shielded from presence?

MR. BLUMBERG: It be-- I guess it could be a tent or a row boat or, or a yacht. I, I don't, I don't think you can unless the legislator would choose to, with the-- what we're presently looking at there would be any distinction.

JUDGE: How, how is this a discriminatory-- how could just be a discriminatory practice?

MR. BLUMBERG: Because that-- because everybody else gets an exemption. You have a house that's attached to the land, your, your-- you, you get to the exemption.

JUDGE: What everybody else doesn't get to use a, a yacht as a homestead so the law is applied equally. There's no, no separate law for people that live on homes or live elsewhere. ...

MR. BLUMBERG: Yes, but, but specifically, as to whether it's homestead or not. Presently, a yacht is not considered a homestead surprisingly in Texas. And it's out to Mr. Norris's contention that he lived in that house, it was his-- it was within the tenure of the Lord the, the-- if you looked at the very reason of having a homestead and, and for that homestead would be exempt that, that was his home and therefore, it's exempt.

JUDGE: Is there a-- does the Constitution set a 'floor' or does it provide exclusive means of, of protecting a homestead or deciding what is a 'Protectible Homestead?'

MR. BLUMBERG: There, there is no, there's no guidelines it just, it just say's tenant or whether it's urban or whether it's rural as a ten acres for an urban 200 acres for, for ...

JUDGE: Let, let me rephrase the question. Can the legislature provide for homestead protection, that goes beyond what the Constitution provides? Neither, neither brief for Court to address this but I have a question. Can the legislature provide for homestead protection beyond what the constitution provides?

MR. BLUMBERG: I, I think reading in to-- yeah, this the Constitution is-- has been around for years and they, they didn't-- weren't in high tech society ...

JUDGE: We, we, we know that Counsel.

MR. BLUMBERG: They, they weren't-- they, they weren't in a high tech society and nobody-- you can't spell out everything in the Constitution-- every potential facts.

JUDGE: It was amended a hundred times as well, -

MR. BLUMBERG: That's right.

MR. JUDGE: certainly, certainly, to legislature wanted this to apply, it would have been amended but it seems to me ...

MR. BLUMBERG: But this is, is such as apparently just as a simple thing that, that all houses are exempt and all, all yachts or row boat's or houseboat's that are in, in a Marina should be exempt.

JUDGE: So your answer to my question is, 'Yes, the legislature can provide for greater homestead protection in the Constitution.' Constitutional protection is just that 'floor'?

MR. BLUMBERG: I would, I would agree to that. I think that, that, that there's enough room in the-- in that wording to enact, and I re-contend that there's enough wording for you all to the whole with the, that a, a, a yacht a houseboat is, is exempt on the, on the Texas homestead rules and the ...

JUDGE: In the bankruptcy, in the Bankruptcy Courts looked to state law, doesn't have any State Constitution law?

MR. BLUMBERG: That's, that's, that's correct.

JUDGE: The Constitution doesn't define what a homestead is. It, it

talks about limitation on the amount of the land that may be included in urban versus-- versus a rural homestead but it doesn't define what a homestead is. Does it?

MR. BLUMBERG: You're, you're correct. There's no, there's no, there's no guidelines that you can use a ...

JUDGE: In 1986, you sought the case Cullers versus James -

MR. BLUMBERG: Yes.

JUDGE: - that said that, the home does not have to have an attachment to land.

MR. BLUMBERG: Yes.

JUDGE: The personal chattel and-- it's still as protected by the homestead even if the owner of the home has no interest, whatsoever, in the land under it.

MR. BLUMBERG: That's correct and that's what the court held.

JUDGE: And that's-- you think supports to your argument about the houseboat-- you call it a houseboat opposing Counsels calls it yacht.

MR. BLUMBERG: We, we think that is the-- under pending of our, of our contention, that, that, that, that, that, that, that case has been cited over 60 times as best we can tell. It is never been overruled but we haven't found any case that, that's held that a, that a ...

JUDGE: When he raised the anchor, is it still a homestead?

MR. BLUMBERG: Is, is what?

JUDGE: When he raised the anchor and heads out into the gulf, is it still his homestead?

MR. BLUMBERG: I, I would say that if it's temporarily and he's gone for a week or so and comes back, that it would not, it would not vacate, if it's out there for 3 to 4 months or a year, I think at some point that it would lose, that it would lose his homestead exemption. But in this case, he's been there for a number of years and there's no, there's no question of, of his, of his ...

JUDGE: Well, we're not going to be able draw that or we don't-- how are we going to draw a line that say's, 'Well, a month is too long or 6 months is enough.' I mean, we're going to have say, yachts are or aren't homestead. So your, your position is he could be sailing around the Caribbean, several weeks a year as long as he comes back and stays for some substantial period of time -

MR. BLUMBERG: That's correct.

JUDGE: - It's still a homestead.

MR. BLUMBERG: That, that is his home and, and his living in it and that's where he gets his mail, where he has his business contacts, and it's, it's like any other, the only difference is-- it's on a dock. No, if, if the house, if, if a week before he filed his Bankruptcy Petition, he picked up the boat off and put it in dry-docked, put it on, on the land, then there's no question. It would have been exempt. But he didn't do that because I suspect, it's quite expensive and, and he felt that, that it was, was with the petition this to Court. ...

JUDGE: Does the record reflect whether he pays the ad valorem taxes?

MR. BLUMBERG: It does-- it is not in the pleadings. I have no, no knowledge -- I'm sure the City of Corpus Christi or the marina attached either by the ad valorem taxes comes out the rental that he pays or it's paid direct. I have no, I have no direct knowledge.

JUDGE: You've referenced Section 11.13 in the Property Tax Code, in which the legislatures determined that a residents homestead is exempt from ad valorem taxes. That's a tax statute should-- should we necessarily conclude that, that, the legislature defined a homestead for taxation purposes that is the same as excluding it, protecting it

from creditors?

MR. BLUMBERG: We, we hold that it, it doesn't include a yachts or a home a or houseboats and doesn't-- it doesn't include it or exclude it, it just does mention it-- the Texas Law does not mention it.

JUDGE: But that wouldn't-- that the rules of statutory construction would, would work against you on that wouldn't it.

MR. BLUMBERG: That, that it would, that it would. Black Stone wrote the, the most universal and effective way of discovering the true meaning of law with the words are dubious is by considering the reason and spirit of it; or the cards which meant-- mean, the legislature unite it. The court is repeatedly dealt with much liberality upon the human policy in design of this pro-- provision, by a Constitution and it is believed the same course of reasoning will protect a homestead in this case. This, this comes out of a case of ...

JUDGE: So 1876 drafters wanted to make sure that the yacht owners didn't get tossed out of their homes when they put that in the.

MR. BLUMBERG: Absolutely, in fact it would read in this ...

JUDGE: He took [inaudible] yachts in 1876?

Mr. BLUMBERG: No, no. I don't, I don't think they did. They probably had canoes then at the best, but again it goes out-- they, they couldn't have perceive every, every possible thing and they really--that the real virtue of the thing is that it-- that it looks to what is your home. If you lived in the, in the boat then that's your home and it's exempt. In the, in the 1886 case it held that a family owns a house and no interest in the estate or, or on the land on which it stands. The house is a chattel if you occupies it with this family it is their home, he may be compelled to move from it from one lot to another but the, the case has been cited to grant homestead protection to a mobile trailer home, and attached bliss land only by the law of gravity and fractional adhesion. The homestead exemption was founded upon some-- upon the principles of the soundness policy cannot be questioned. It's designed was not only to protect citizens and their family's from the miseries and dangers or destitution but also the cherish and support in the blessing of individuals those feelings of sublime independence which are so essential to the maintenance of free institutions. These are noble objects and such construction is consistent with the spirit of the provision to be given as we promote and secure the purposes of the tenant. This is from them a case cited by Mr. Thomas and it's on 18-- 1857 case even before the James case of 1896.

JUDGE: Counsel, those are, those are all compelling arguments that certainly draft as a Constitution, couldn't contemplate everything, just like the drafters of the United States Constitution couldn't contemplate the world that we live in today. But it seems to me, just based on the history of our, our Texas Constitution that the legislature wanted to make a yacht a homestead that it be so written and it's just not there, and I am having a problem following that, that logic there because if it there we should extended it and broaden statute include that perhaps anything imaginable.

MR. BLUMBERG: My only answer to that is the the Texas Administrative Code. If you apply for Food Stamps specifically says, houseboats are exempt. So if they made it-- if they legislature's saying that houseboats are, are exempt, you know, the determining whether you get Food Stamps or not, that's a legislative intent and you can't have it one way and not the other way if it's, if it's valid for, for predicate-- Food Stamps then it's, valid to be a homestead in exact often creditors.

JUDGE: I'm not, I'm not following your, your argument. What is that statute have to do with those case?

MR. BLUMBERG: Well, In, in a Texas Administrative Code Rule 372.356 Homestead is running real property any construction including a houseboat or a motor home that the household uses as resi-- is excluded as long as it been used as a residence is excluded from, from the exemption that in, in, in obtaining food stamps. That this legislative it's a rule going down by to the legislature. The rules are based on legislative content and therefore if it's, if it's, if it's good enough from, from exclusion for Food Stamps and then it's good enough for, for to be, to be homestead you can't have it both ways. That it'd not be a homestead but yet would, would, would, would be extend for, for, for Food Stamps. Any other questions? I appreciate your, your, your time and we appreciate it. Thank you.

JUDGE: Thank you, counsel. The Court is ready to hear argument from the appellee.

ORAL ARGUMENT OF JOHNNY W. THOMAS ON BEHALF OF THE RESPONDENT

COURT ATTENDANT: May it please the Court. Mr. Johnny Thomas will present the argument for the Appellees.

MR. Thomas: May it please the Court. On the facts outlined in the record the court is falling with the certified question from the US Fifth Circuit Court of Appeals. Does motorized waterborne vessel used as a primary residence and otherwise fulfill all of the requirement of the homestead exemption except attachment to land qualify for homestead exemption under Article XVI Section 50 and 51 of the Texas Constitution? And, I would argued the Constitution exception does not apply to a boat. The intention is outlined by the Fifth Circuit seems to be the on one hand the Texas Constitution Property Code and other cases by this Court and other Courts referred to a homestead estate, as an estate in land. On the other hand, the duty of the courts in Texas and the Fifth Circuit; the duty to construe the homestead exempt-- exception literally and due to the novelty of the question as briefed and what has fall to this Court. Concerning Texas Constitution Article 16 Section 50, it does provide a homestead of a family of a single person should be protected before a sale without any guidance being provided on what homestead is. The only guidance provided is that in Section 51 that there other than a rural homestead to 200 acres an urban homestead to 10 acres, and so forth. The earliest record of this Texas exemptio was 1839 the Statute of January 26, 1839 from the Republic of Texas First Section of Third Congress and a lot of legislative history as outlined in Inwood as also Woods versus Alvarado(19 S.W.2d 35) , Inwood North Homeowners' Association versus Harris(736 S.W.2d 632) and as Judge Maur-- Mauzy stated in that case the passage of the Statute of January 26, 1839 it's the direct result in the United States Panic of 1837 and the economic depression that resolved from them. Throughout the nation, the families lost homes and farms and the Texas business becomes stagnant money and-- money scarce, credit unavailable and according to the commentators Texans were already familiar with chattel exemptions from the family clo-- clothing, furniture, tools of the trade, and so forth under the Colonial Law as also the Law of Mexico from force payments. And as authors of the interpreter commentator, the Tax Constitution of 1976

wrote it was no great step to extend the concept to land but note that even in ninth-- in the 1800's the concept was that the legislative intent was to treat homestead in land different and specifically from homestead as impersonal property.

JUDGE: Well, except for Cullers versus James and that the same to say that chattels can be homestead?

MR. THOMAS: That's correct, and I was addressing the legislative intent. The legislature-- legislature never go on the far but in the speaking to Cullers versus James I'll note that they we're-- he was talking. That the court was talking about a house, and they didn't talk about a covered wagon or anything mobile, a house they talk about moving-- we have to assume be to this manner and we get moving to a different lot that in any case is attached to the land is just like any other house. I don't think the court just ...

JUDGE: I think the difference is that more than just a house. The, the case talks about in the terms of a home there's the, the family considered it there home not just, just a house and, and we note that the legislature because we spoken about a moment ago protects houseboats because the, the statute references that protects them from Food Stamp purposes. Do you think a houseboat can be a, a homestead? If somebody thinks that is their home?

MR. THOMAS: I think it can be a home, yes, Sir. That the legislature to me has considered that. And they limited to the DHS determination for Food Stamps they will look at it.

JUDGE: So some circumstances a house boat can be a home for, for homestead. Well, for exemption purposes.

MR. THOMAS: Un, under different-- in different circumstances.

JUDGE: So it can be home if it benefits the state and not a home if it benefit's someone who wants to call this castle a boat?

MR. THOMAS: No, I think the issue is what is the legislature trying to address. So they trying to address the issue of homelessness with this Homestead Statute in our in the Constitution?

JUDGE: Obviously not 'cause they exempted million dollar homes. Decades and decades ...

MR. THOMAS: That, that's correct.

JUDGE: So it's while they perhaps are motivated by protecting poor people. In fact, they've always protected very rich people.

MR. THOMAS: Well, I think all have been include and, and it's been very extensive in has from the very beginning from 1839 until the present has been very extensive and as you mentioned earlier it's something that bothers a lot of other states as this be in, being a haven for people who just want to seek that exemption. And so then for the court to take another step to extended to chattel-- movable chattel on the water, on the land or whatever. I think it would be a great step that I believe the legislature is already considered that they limited it to land. I think that was very good reason to -

JUDGE: Counsel.

MR. THOMAS: - they didn't talk about wagons.

JUDGE: When we-- Going back to Cullers versus James, the way I read the language there it say's if the head house hold family owns a house and no interest or state in the land the house would be chattel. So this Court in 1869 or 1886 said that's a chattel. If he occupies it with his family it's a home. So we have a chattel that's a home maybe compelled to move it from one lot to another as fast as legal process can oust them. Still though ambulatory this is un-- unsatisfactory to some of us, so we have a chattel it's a home that the court so languish say's ambulatory and, and declare and say's it a, a homestead how do



we, how do we differentiate that language in your text. You have a chattel that's a home, moves from place to place, no interest in land. How, how do we differentiate your case from this without just saying 1896 and all the years since, we were wrong? ...

MR. THOMAS: Judge, I, I think the language is rather broad in Cullers versus James but I think it still gets to the same point that what they were talking about was a house. It was a fixture and still a house.

JUDGE: Their, their talking about a home, they said the house is the home. Now, we're going -

MR. THOMAS: We're speak ...

JUDGE: - pass the fact that it is a house so that the home is what we talking about and we [inaudible] ...

MR. THOMAS: It is a home and ...

JUDGE: Chattel, ambulatory, moves from place to place, it's a home. Well, how is that, how is that different from what your situation is.

MR. THOMAS: I think in that case they were talking about a home, the structure was a building, and it was attached to the land but he didn't own the land. Therefore, it was-- as I understood the court may presumed that to be chattel and it was built for the benefit of owner of the land. In that, in that since then, it's a chattel, and it's ambulatory to the say any house can be moved if it wasn't attached to the land. It can be removed without damaging the land then the-- it's just like any other house. Houses can be moved, apparently those were houses that could be taken down and boarded into a-- wagon of some type and moved down the street -

JUDGE: Mr. Thomas.

MR. THOMAS: But I don't think that deals with the mobility of the house that you put on wheels, put on waters, just take all of [inaudible].

JUDGE: Mr. Thomas what if there was a prolong drought. A boat becomes a dry in dock?

MR. THOMAS: Yes.

JUDGE: At that point does a man's cabin cruiser or yacht or houseboat become his castle?

MR. THOMAS: I don't think so for this reason. I, I think we get into the question of how long does it have to be on dry land? How long does it have to be out in the sea? 186 days out of a year, 360 days a year, at what point-- what, what is the court opening itself up to if it is dry for 3 months. Does make it a homestead for 3 months? I think those are the sort of questions that make it too the ambiguous to really enforce and certainly it ought to be something that the legislature ought of work out -- look at.

JUDGE: Mr. Thomas.

JUDGE: We need Mr. Blumberg's got an umbilical cord argument about of a boat is physically attached, tethered to the land, attached to the land, docked, affixed, getting water, getting sewer, getting phone service from dry land.

MR. THOMAS: I, I see the case law specially care for arguments as, as looking for some sort of, of, of permanent attachment. Were you going to be there or were you not? And they did not address wagons and so forth but they want some sort of permanent attachment; even when they talked in 1969 in Capitol Aggregates, about the traders, they talked about cement blocks and so forth which is, is attached just as much as any other house, whether it's on cement post or was cement blocks and so forth so that, that is how they, they quoted Cullers and

that's how they read as to talk about something permanent as opposed to something mobile.

JUDGE: So, so somebody decides to build a house on some land that they're leasing, they own the land, and they build a house that looks exactly like a 68 foot Chris Craft, homestead or not?

MR. THOMAS: If it's on center blocks, I think court in Capitol Aggregates and so forth I think that be a good ...

JUDGE: I think that, that picked up, I think that picked that house up and put it in the water and tied it up, still be entitled or would it lose homestead character even though it-- once had that.

MR. THOMAS: I would think it would lose its homestead character due to that because then it becomes mobile but, but boat's on land and he mentioned the sailor(spellcheck) and so forth. The tax to land a forth it's going to ...

JUDGE: It's okay to become noble according to Cullers he didn't-- he can move it from track to track.

MR. THOMAS: And I think the movements from track to track then you, you take that homestead with you but it doesn't say waters that statute's not affirmed about the finding in, in terms of water or mobility.

JUDGE: So you're saying before the, before the flood waters Noah's Ark was a homestead on dry land. When the flood waters came, it came mobile drifted away and lost that character?

JUDGE: Prior to that no one's homestead -.

MR. THOMAS: Is it build with two hands.

JUDGE: No, it was animals.

JUDGE: Yeah, he, he did build in as a boat. In anticipation of the water. Does use to. It, it would be on land and it would be a homestead. And I think that might be a little bit different because that, that certainly wasn't his intention now. That, that was somebody else's intention but if you, if you're planning on, on the mobility and you want to just sit on land for a while and then go out to sea and come back and forth. I just don't understand how the court or the legislature to write a law and to keep up with it.

JUDGE: Mr. Thomas, do you believe this legal issue could be decided under the Constitution or under statutes?

MR. THOMAS: I, I do not. I, I think it, it is something that has historically that has been handled by the legislature. There just so many issues that there come up, you know, how-- where do you limit it. How long do you have to be at dock? How long-- I think the facts will show that on the record you read the Judge Hubbart Rodriguez's Opinion in the Fifth Circuit states that he cruised extensively in the boat. So how long does he have to be connected to this land?

JUDGE: You think dry dock at every night. If he pulled it up on the trailer onto the land. Would you say homestead or not?

MR. THOMAS: It's-- to me it's the mobility question because then, you know, that every night or ...

JUDGE: Okay, and let me ask, let me ask you that then-- you would disagree with opposing counsel's representation that RV's are homestead. Are there big cases that determined are these are homesteads?

MR. THOMAS: I don't recall seeing that Justice, I know you mentioned that.

JUDGE: And mobile home should say: are, maybe. You said mobile homes are if they're permanently attached -

MR. THOMAS: Affixed to the land ...

JUDGE: - attached or affixed to the land.

MR. THOMAS: Even cedar post or so forth and as one Justice mentioned I, I-- it's easy to assume wheels can be put right back on and to be moved to another piece of land to it ...

JUDGE: You talk.

MR. THOMAS: I understand it if it's on cedar post or concrete it, it does qualify as sufficient attachment.

JUDGE: You talk about mobility. That's certainly seems to be significant part of your argument. What if Howard Hughes was still alive and he decided to live in this Spruce Goose, which doesn't fly anymore and it's permanently moved to someplace Long Beach, California. What, what would that be?

MR. THOMAS: Well, ...

JUDGE: There's more here than South Padre, Texas?

MR. THOMAS: All right. I, I think that's what you open the door to Justice if you allow a, a yacht on water, then, most certainly people who have kitchens and beds on airplanes can put up a tarmackle(spellcheck) on the airport and plug in for the utilities and call that homestead. Is this something is this an area the court wants to get into, is this something the legislature wants to get into and, and the legislature not wanted to get into this question and the court either does not want to get into these sorts of issues for the last-- since 1839.

JUDGE: But the Constitution does not mention protection as a homestead mobile home, a statute does. So the statutes are broader than the constitutional provision at issue. Aren't they?

MR. THOMAS: I don't think so I, I disagree with the Mr. Blumberg on that point. I think as a stated earlier.

JUDGE: And the Constitution only specifically references land -

MR. THOMAS: That's correct.

JUDGE: - I agree with you as you said and your opposing counsel that the Constitution does not define homestead but it only references land. The legislature does said in 11.13 J that a homestead includes mobile home, that's broader than the constitutional languages. Isn't it?

MR. THOMAS: That is, well, at except for first paragraph 'J' says for purpose of this statute only, this section only in other words for purposes of determining taxes. They look at a mobile home but that, that begs a question if they talk about boats with DHS, they talked about trailers with the tax code why, didn't he move it over to the property code.

JUDGE: Let's look at the rest that Subsection 1, it say's resident's homestead means a structure including a mobile home that is owned by one or more individuals designed for human or adapted for human residence. Used as a residence and occupied as a principle resident by an owner. Which of those requirements is not satisfied by the houseboat -

MR. THOMAS: The tax premises ...

JUDGE: - mobile homes is just listed as an example. It didn't say lists the, the structures that are protected from a homestead examples-

MR. THOMAS: Examples that it all structures under that tax code.

JUDGE: So which of these requirements is not satisfied by the houseboats: owned by one or more individual, designed or adapted for human residence, used as a residence, and occupied as his principal residence by an owner. Where does the house boat effect?

MR. THOMAS: I think the houseboat qualifies for the tax rulings that, that is qualified under that particular statute that purportedly deeply. That I believe the house boat would comply with that tax

statute. So making determination from the best section with tax code purposes, I think the houseboat qualifies.

JUDGE: So the answer to my question to your opposing counsel, you would say taxation treatment may be different from homestead treatment?

MR. THOMAS: I believe that is true and I don't see any problem with that. And I, I, I think when you're talking about taxes and how you tax, you know, we tax cars and they move all over the place. So when you talk about exemption from your debts and the forced sale you'd come to a, I think, an issue of mobility as being something the legislature has specifically decided not to get involved in.

JUDGE: Has the mo-

JUDGE: Where has the legislature defined 'homestead?' They talk about what it includes in 41.001 of the Property Code and 41.002 where they defined it.

MR. THOMAS: I think as the legislature and I think they're correct to say-- they look at Article XVI Sections 50-51, that is the law the land. It seems like what they did was just take the Constitution and put in statutory form that would-- they-- I guess they defined city limits and so forth, 10 acres for-- in the city and so forth and so they did at specific definition to those but they'd not chosen to expand it other than what the Constitution will.

JUDGE: Would you agree that saying that a rural versus an urban homestead is limited to X amount of land is not necessarily a definition but limitations on how broadly a homestead can extend? And I'm-- I don't see a definition of 'homestead' in the Constitution or the statutes that you all have cited.

MR. THOMAS: I, I think as Ms. Blumberg stated, it was written broadly in such a way that it's left-- it is still a land-based as well, they we're concerned about it. I think that's what the legislature was mainly considered about this. It's land-based when you look at a home or a residence in the ports of-- pretty much going from there, using as a basis what the structure and whether or not it's land-based.

JUDGE: May I-

JUDGE: If the purpose of the constitutional provision is to prevent homelessness, why do we care what it is the family lives in?

MR. THOMAS: I, I think we care that the-- As I read the legislative intent, we care because we're protecting homestead as attached to land, I think so. That's the difference between Florida, Illinois, Alabama and all these statutes. The Texas Statute talks about homestead right being an interest in land and a lot of courts have read this as in fact as in stated land compared to large tenancy and so forth. And I think that's the difference.

JUDGE: I understand that argument you're making but if the purpose is to prevent homelessness, that argument doesn't really advance that purpose. Bu-- It partially does but I mean it-- why do we care what someone lives in if we don't want it-- them to be without a home?

MR. THOMAS: All right. I don't think we care, I think that the legislature has made a decision that that should be limited to-- that should be a land-based procedure

JUDGE: Of course, it-- And if they're on a yacht, they can get away from their creditors in a way that somebody attached to land cannot-

MR. THOMAS: Well, that's true and, and I, and I think the idea of, of creating stability is not just a state concern, it's a federal concern, and so forth. I mean, one of the biggest tax deductions we have is still in their homestead so that the federal interest and state

interest is stability within the countryside and having a home within the countryside. I, I don't know if they even thought about a yacht or a boat in the open sea.

JUDGE: Let me just-- One final question: At state-- Nationwide, do you know how many states allow boats as homesteads and how many don't? I understand that constitution language is different, statutes are different. But do you know that-- what the breakdown is?

MR. THOMAS: I've seen cases out of three states; Delaware, Alabama and, and Florida seems to go back and forth, there's something peculiar to their statute.

JUDGE: Well, Florida seems to say if you-- if it's-- if the boat is intended to be lived in as a houseboat it is; and if it's not, if it's just recreational, it's not. That-- It looks it looks to the character of the boat.

MR. THOMAS: Right.

MR. THOMAS: But, but just across the country, do you have any idea about how many boats come in?

MR. THOMAS: Again, just the settlements in three places. In, in Florida, I, I know in Judge Rodriguez's opinion or, or order, he cites a Florida opinion that talks about that mobility issue. Mobility seems to be what Florida turns on also.

JUDGE: Counsel, mobility seems central to your view of what's a homestead and what's not. For purposes of constitutional analysis, where does mobility fit in? Why is mobility material to the consideration? Practically, it may have impact whether you can find the person or how easy it is to find the person. But for purposes of constitutional analysis, why is mobility important to what a homestead is? Certainly, the words not the Constitution.

MR. THOMAS: It, it-- It's not. I just think that when you look at what the legislature, in 1839 to the present, when they talk about the homestead, they talk about an interest in land. The courts have always-- Most courts-- Most Texas Courts have interpreted that as an interest or the the stake in land, whether that be a, a-

JUDGE: But this Court in 1886 said that was not necessary. The court your inferring to our Courts of Appeals.

MR. THOMAS: I believe in Inwood. I believe that's correct, Judge. And, and cer-- or, or review was not accepted in any of those cases and they've been the law of the land. But I believe in Inwood the Court talks about its stake in land, as well as Woods versus Alvarado, I think those two cases talk about the fact that statutes [inaudible]. And even, even Cullers versus James in paragraph of its numbers of its readings starts out by saying the statute is a land-based statute. And, and again going back to Cullers, I think that the main difference, the main distinction in Cullers versus James is that they're talking about a house, and not something that roams around the country and moves with the population.

JUDGE: Thank you, Mr. Thomas. That'd conclude the argument and it was all arguments put back. And the Marshall will now address the Court.

COURT MARSHALL: All rise. Oyez! Oyez! Oyez! The Honorable Supreme Court of Texas now stands adjourned.

2005 WL 6165263 (Tex.)