ORAL ARGUMENT — 2/3/98
97-0161
CALDWELL V. BARNES

PAMPAS: This case is a very important case, at least in my opinion, because of the fact it impacts the issue of due process and what is really meant by the issue of due process and how this court is going to address judgements in this particular state. And whether or not it's going to tell Texas judges in this particular state that when a case is decided and the judgment is entered whether or not something that can happen in another state is going to affect the validity of the judgment in this state.

There are three undeniable truths in this particular case that I think couch the entire argument. One is that my client was never served with process in this particular case, way back in 1989. The second thing is that the entire case is couched on the fact that the respondent in this case and their agent of service filed a fraudulent affidavit which created service in this particular case, and allowed the court in Hidalgo County to...

BAKER: In the briefs, respondent is characterized as the fraud feasor. Was it really based on what the affidavit filed by the person who completed the service that, "I, certify that I've served this person," and that's where that claim comes from?

PAMPAS: Yes it does.

BAKER: Is a fair statement to say that the respondent didn't have personal knowledge that that was improper service if that is the case?

PAMPAS: We are not necessarily making that allegation. We don't really know one way or the other. We have not made that allegation.

BAKER: Well is it true that the respondent didn't sign the affidavit that said, "I personally served this person?"

PAMPAS: That is true. The third fact that I think is important to couch this entire argument is the fact that my client did not find out about this judgment until two years after the entry of the judgment, some 23 months after the fact. And he only found out about it because of the fact that the judgment that was entered in Texas on December 6, 1989, was domesticated in the State of Colorado, and an enforcement proceeding at that point in time.

Given those particular facts there is a couple of issues that the TC and the CA failed to understand, which is why we are here today. And that is first of all when my client attacked the entry of that judgment down here in Hidalgo County in 1993 to disavow and set aside that

judgment. He did so without having any legal remedies: motion for new trial; appeal, or writ of error to attack it. Under Texas law he was left with only one remedy, and that was a bill of review.

HANKINSON: Does the record reflect why Mr. Caldwell did not contest domestication of the Texas judgment in Colorado when it was first filed?

PAPAS: The record indicates by affidavit that Mr. Caldwell in the summary judgment that we filed in the lower court that he attempted to do so in open court at the first instance when he had the opportunity in Colorado. But the court at that point in time indicated to him that it was not a matter that he could take up.

HANKINSON: Is there record proof of that? Is there affidavit proof? Is there any record of what he said in open court in Colorado? What the judge said as part of the summary judgment record in this case that's pending before us?

PAPAS: Other than the affidavit of my client at the summary judgment level in the State of Texas when the bill of review was filed, I don't think there's anything in this record.

HANKINSON: And that affidavit does not reflect why he did what he did or did not do in Colorado at any point in time?

PAPAS: It only reflects that he indicated that in open court in the Colorado domestication proceeding that he went and said, "I was not served with process." And the court at that point in time according to his affidavit in the summary judgment indicated, "I'm sorry, that's not a matter we can take up at this point in time."

ABBOTT: Clarify that for me, because I thought I had read several things indicating that the reason why he didn't contest it initially in Colorado and not for some time down the road is because he didn't know until he had the proof from the person who filed the affidavit that the guy that filed the affidavit in fact did not serve Mr. Caldwell?

PAPAS: Your question illustrates the real problem here. And that is, that while he certainly did in open court say that he wasn't served, he believed he couldn't do anything about it. The undeniable fact of Texas law and the law of the State of Colorado interestingly enough is that unless the judgment is void on its face, and there are several distinctions that the TC and the CA failed to make, unless it is void on its face, you won't be able to laterally attack it. And the reason is very clear, is because this state and certainly this court in 1969, *Akers v. Simpson* indicated that you cannot attack a judgment collaterally when it's not void on its face because the recitals in the judgment are given absolute _____. In other words you can't bring in any extrinsic evidence to say that that judgment was void. A court can only look at the record. So consequently when he went to the court in Colorado and said in open court, "Hey, I can't contest this judgment," the court said, "simply we can't address it because the full faith and credit clause says, that notwithstanding

any errors or irregularities in the judgment, I have to give this full faith and credit unless it's void on its face."

ABBOTT: Is there any document or any page reference in the record indicating at what point in time he did inform any court that the reason he was contesting jurisdiction is because he was not served as opposed to saying that the process server guy didn't serve him?

PAPAS: I think probably the most well-illustrated portion is when he attacked it in Colorado under a 60b motion in the execution proceeding up there, and then also when a proceeding was filed down here in Texas in the TC, which was for all intensive purposes a bill of review. Subsequently, a declaratory judgment action was filed by the respondent. We responded in kind, filed a counterclaim that alleged the bill of review elements as set forth in *Alexander v. Hagedorn*, and of course subsequently we filed bill of review. They were all merged together. So at that point in time we are looking at May 1993, June of 1993, which of course goes to the parent law when you apply the law of the State of Texas for this particular case. What it says is that in order to file the bill of review the only thing that you have to do is 1) you have the meritorious defense, that's a standard; 2) you will not have been able to bring your claim because of fraud action on mistake of the other side. We have those two met because as we know under the case of *Peralta v. Heights Medical Center* that was taken up by the US SC. They stated that, "when you have no service of process, then in those instances not only do you not have to show a meritorious defense, but the other two elements are also done away with as well. And that court's opinion was also stated in *Doue v. Texarkana* as well. And certainly the various law review articles that have written about it have agreed that simply all that my client had to show was that he was not served with process, and then summary judgment would have been proper.

The caveat to that, and certainly we would admit, is that if he had legal remedies, an appeal, motion for new trial, a writ of error if it was appropriate, then at that point in time then he would have been able to bring them. But as we go back to the previous fact, he did not find out about it until two years after the fact. At which point in time what the TC and the CA failed to understand is we have a 4-year statute of limitations on bills of review. This court of course has certainly enunciated that fact in its case of *Williams v.* _____ with regard to 16.05(1) of the Texas Civil Practice & Remedies Code.

So what has happened is that under Texas law because we found out when we did, we had four years to bring it from the date of finding out the judgment, we did so. And so consequently there was a right under Texas law to bring this bill of review when we did.

Now what the opposing side of course argues and their claim is twofold: 1) you didn't bring it in time in Texas; and 2) you waived it because of your failure to attack in Colorado. Now those arguments are patently inadequate on their face. First of all, this court has enunciated in the case of *Harris v. Lowe* (now I didn't address this particular issue) it's the only case in this state on the issue of laches in its purest form, not laches with regard to whether or not you

sought to seek these remedies, but laches just simply because of the passage of time. And that case said, "That when you are not served with process that laches is not an applicable defense in a bill of review case." In fact the head note is "Doctrine of laches has no application to bill of review seeking to set aside prior judgment during the period after expiration of time for filing for motion of new trial." That's the only case that's ever discussed laches with regard to time. And the reason is very simply because we have a statute of limitations that gives you four years. And certainly this case is a perfect example of why, because in this particular case my client was prohibited. We have not been able to find out about not being served with the process because he couldn't prove it. He certainly couldn't have done anything in Colorado because there the judgment was valid on its face. There was an affidavit on the record that said he was served. So Colorado had to give it absolutely verity under the full faith and credit clause. He could have done nothing there.

This court has also indicated that even when you look at the remedies that are available they have to be adequate. They simply can't be a remedy, which is what the respondents are arguing. They are saying, "We can have this remedy up in Colorado. Why don't you take it?" The fact is it has to be an adequate remedy. *Tice v. The City of Pasadena* has indicated it has to be an adequate remedy.

Also the case of *Griffith v. Conrad* out of the Dallas court in 1991, indicated the very same thing. In that particular case, the judgment debtor had a right and found out in time to bring a claim under the writ of error within six months of the date of the judgment. But unfortunately the judgment like in this case was not void on its face. So consequently what it said was, "This is not an adequate remedy, you must bring a bill of review." Which is exactly what has happened in this case. The fact that what we did going to Colorado if we attacked it there or we didn't attack it there, is really irrelevant. Of course we claimed that we did. But nevertheless, even if we didn't, it would have not been an adequate remedy to attack the Texas default judgment because it wasn't void on its face.

ABBOTT: What about the inequities to the other side, who apparently spent at least $275,000 in trying to pursue this?

PAPAS: First of all, because the _____ made argument to that is that 1) that that's not an element of the bill of review claim; secondly, if you study the cases on bills of review almost every instance there has been an execution. The judgment debtor doesn't find out until his property has been sold. Certainly in *Peralta* that was the case. So what happens is in all of these instances, you've gone down the road pretty far, and consequently what happens is is that the courts have all indicated you return it all the way back. You wipe the slate clean, because the issues of due process are too important to overlook. So in that case 1) it's not a factor. However, when you talk about injustice, you must temper that with the idea that first of all it was the thought of their agent and finally the fraudulent affidavit that created this problem. And secondly, in this particular case, the execution has gone unfettered. So consequently they have executed on properties over the last 4-5 years and have obtained a tremendous amount of income from the execution. And in fact, it

satisfied their judgment through their execution proceedings because we were not able to file a supercedes bond because of the amount of this judgment, which is probably now $30 million. So consequently all the shareholders, all the people in the State of Colorado who had interest in this property have lost out as well. So when we talk about injustice we have to temper it also with the fact that there is a whole slew of other people out there that have had a tremendous amount of injustice upon them.

It's simply the CA and the TC just failed to understand something, and that is, once you lose your remedies laches simply does not apply to prohibit you from filing a bill of review from that point, just as *Harris v. Lowe* said, "Up to the time of your statute of limitations." This case illustrates why that's important. Secondly, when we went to Colorado, and this is their big argument, and they say, "You waived it." Well the fact of the matter is is that if you went to Colorado it would have been an impermissible collateral attack. Simply couldn't have done anything about it. The court would have looked at and said, "It's valid on its face, we can't do anything about it, and even if we could it would have only affected the enforcement of that proceeding in Colorado." The Colorado state SC in *Marworth v. McGuire*, which is a case they heavily rely upon, indicates that even if we could do anything about it, we could not affect the judgment down in Texas.

ABBOTT: From what I am hearing, you're saying that the judgment could not have been collaterally attacked in Colorado?

PAPAS: That's correct.

ABBOTT: I'm looking at the CA's opinion in this case, and they say on page 11, "Appellant could have collaterally attacked in Colorado if it was in fact a void judgment, or was based upon fraud."

PAPAS: And that's where they made a mistake, because there is a distinction that has to be made that void verses void on its face verses voidable they do not make that distinction. When we talk and you look through all the cases of the US SC and all the cases through this court and the CA's, they all talk about when you don't have service of process, the judgment is void. They use it loosely. What they really mean is void on its face. Because only then can a court in Colorado sitting simply say, "Well it's void on its face on the record, we don't need any extrinsic evidence to determine that fact." But even in those instances, they could do nothing more than simply say, "It's not enforceable in this state." That's all. Because we know in the case of *Marworth v. McGuire* says, "We can't address what happened in the State of Texas." This court has also said that in the case of *Moncrief v. Harvey*, where it said, "This state cannot vacate the judgment of another state." So consequently, even if we had attacked it, even if it was void on its face, making all of those assumptions of course which is not the case, they still would have done nothing more than to be able to stop the enforcement. The problem we have here and the policy that would be created by their argument, which the respondent is a judge in this state and I would say that the bigger policy issues here would be more in their interest, is if my client had property in every single state in this union

what their argument means is that he would have to go to every single state and to attack it as a precondition to being able to come back here to the State of Texas.

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RESPONDENT

MATLOCK: I represent respondent Bob Barnes, but I'm not sure I'm here on the right case. *Marworth v. McGuire* says square out in Colorado, "You can collaterally attack the judgment if the problem alleged is subject matter or personal jurisdiction." Period. That ends that issue.

SPECTOR: But wouldn't the judgment in Texas still be valid?

MATLOCK: Yes, it would be valid. And I will address the point about his argument outside the record that execution continued unfettered. The clear answer is yes. That would not affect the judgment in Texas but it would stop execution in Colorado.

SPECTOR: Could you answer his last argument, this same judgment could be domesticated in any state where defendant had property?

MATLOCK: Of course it could. And that's exactly the point. How long can he sit on his hands and not come back to Texas and say, "I was never served." That is precisely the point. We've got to have some point at which judgments become final.

PHILLIPS: There's a 4-year limitation's statute for bill of review?

MATLOCK: If a judgment is void, is void, is void, four years shouldn't apply. I can't see a 4-year statute cutting off due process rights unless there's some other overriding policy.

HECHT: There is one, finality of judgments?

MATLOCK: Exactly.

HECHT: If there's a 4-year statute why should laches cut it off sooner?

MATLOCK: It's not merely laches. Opposing counsel said and he cited *Harris v. Lowe* case, which seems to say that laches doesn't cut off your bill of review rights merely because of the passage of time. But what we have here is not merely passive sitting on my hands waiting for the passage of time between September of 1991 and May of 1993 when he first raised the claim. What we have here are guns blazing, creditors billed in equity all out attempt to collect the judgment in Colorado. We spent by affidavit $275,000 worth of lawyer time on it. He spent by affidavit $300,000 worth of lawyer time fighting the creditors bill in equity. And he acknowledges that he said, "I was never served." He said it in open court. He acknowledged that he had that remedy and,

yet, instead of using the remedies available in Colorado to stop the executions, instead of coming back to Texas and filing his bill of review, he continued to fight the collection on the merits. He acknowledged the validity of that judgment.

OWEN: What did he have at that point in time to attack the judgment with? He didn't have proof that the affidavit in the file was fraudulent.

MATLOCK: I am sorry, he could have so testified. Of course, he had proof. He could have put himself under oath and said, "I was never served." He says he had no proof.

OWEN: In a bill of review doesn't it have to appear from the face of the record?

MATLOCK: No. It has to be clear, but there would have been nothing to stop him from filing for example...he said he couldn't collaterally attack it in Colorado. He ultimately did by his rule 60 motion. And what his excuse for waiting the 19 months is, "I couldn't prove it." But there would have been nothing keeping him from putting forth his own testimony that, "I was never served." And it certainly makes common sense that the judge in Colorado would have abated those collection proceedings to give him time to muster his evidence. The bottom line is, what he did in Colorado for 19 months was sit on his hands, and wait until it was convenient for him and frankly until we were closing in on collecting on the judgment until he formerly raised the claim.

Let me point out further that he never initiated any bill of review in Texas. We are here not on his bill of review, we are here on my request for declaratory judgment that by his conduct in Colorado treating the judgment as valid, he waived his right to complain about the judgment in Texas.

We have the time line here, and this is in the record. The underlying case involves a loan. Barnes loaned Caldwell $1.25 million in January 1986. He had previously made a smaller loan. The smaller one was rolled in. We are here on Cause No. 1558 filed in April 1989. Interlocutory default judgment, the final to be called Judgment Dec. 1989. We domesticated it in Colorado Sept. 1991. He was served in Colorado. He admits it. He had lawyers at that point.

GONZALEZ: Wasn't the bill of review and your suit earlier filed for declaratory judgment consolidated for trial?

MATLOCK: They were.

GONZALEZ: So we are here on both issues?

MATLOCK: Yes. My point is, he never initiated any action in Texas. He chose to sit on his hands and not do anything.

GONZALEZ: Well on 9/29/93 by your time line, Caldwell files equitable bill of review?

MATLOCK: He finally filed a stand alone equitable bill of review in Texas. But if you look at Caldwell's affidavit, the affidavit of Allen Hanson the Colorado lawyer, you will see that this collection suit involved thousands of documents, court hearings, testimony, and once again, he acknowledged in court in Colorado, "By the way, I was never served," and the judge in Colorado indicated, "Well you can't do anything about it now."

HANKINSON: Does this record show on its face now that it's undisputed that Mr. Caldwell was not served with the original Texas suit, and that in fact, the affidavit filed was not truthful?

MATLOCK: Absolutely not, and I was going to address that. At best, what we have here, is a Mr. Process Server Perdue, "Were you lying then, or are you lying now?" At best or worst, depending on one's point of view it's a fact question whether or not he was served.

HANKINSON: And that's the fact question that's generated by the return of service showing where Mr. Perdue said, "He did serve?" And then what proof is there in an affidavit or other proof of Mr. Purdue saying he didn't? Where is our fact issue?

MATLOCK: Yes, but not quite. When we hired the process server, he sent back the standard Texas form: "Yes, I served him such and such a day, such and such a place." To use the currently fashionable phrase, if you parse his words in the affidavit that he filed saying that he didn't serve in Colorado, the later affidavit doesn't say, "I never served Caldwell with the Texas papers." What it says is, "I never served Caldwell with a summons and complaint." If you look at the original affidavit, it's a checklist and it is typed on there, and checked off. In his affidavit by contrast, he does not say, "I didn't serve him with citation and petition." What it says is, "I didn't serve him with summons and complaint."

HANKINSON: This case is before us on the grant of a summary judgment, and the denial of your opponent's summary judgment?

MATLOCK: Correct.

HANKINSON: But we have a disputed fact issue in the case as to whether or not there was service originally in the lawsuit?

MATLOCK: Yes. I have an affidavit from Purdue saying, "I did serve him." We've got an affidavit from Caldwell and Purdue saying, "I didn't serve him." So it's a fact issue.

ABBOTT: If that's the case why shouldn't all summary judgments be overturned?

MATLOCK: Ours should not be overturned because the finding that Caldwell elected to

treat the judgment as valid by his conduct in Colorado choosing to fight the collection on its merits does not depend on whether or not he was served. If we look at the restatement of judgments, all I am asking the court to do is apply either the restatement of judgments or the third prong of *Pegadore*(?)...

HANKINSON: Why don't we have a fact issue on whether or not he did accept the validity of the judgment since Mr. Caldwell has filed an affidavit in which he says that he told the trial judge in Colorado in the domestication proceedings, "I wasn't served, and I want to contest," and the trial judge said, "No, because we do have affidavit proof on that." Why don't we have a fact issue on your waiver question as well?

MATLOCK: Because he didn't avail himself of formal Colorado remedies. Under Colorado law, he had the opportunity to file a rule 12(b) motion contesting jurisdiction. He had the ability under Colorado law to file a motion for new trial. He had the ability under Colorado law to appeal. He always had the ability under Colorado law to file the Rule 60(b) motion, which he ultimately did, and at any time he could and in fact under rules of equity should have come back to Texas and filed his bill of review.

HANKINSON: So it's not really his actually litigating in the collection matter that you're saying constituted the waiver. It's the fact that he did not pursue legal remedies to challenge the judgment collaterally in Colorado?

MATLOCK: With due respect it's both. We've got the passive concept outlined in *Hagedorn* that is one has to demonstrate that one was not guilty of lack of negligence or lack of diligence. But we also have a more active concept as set forth in the restatement of judgments that not only did he passively sit back and not do anything, he very clearly in Colorado chose to fight the collection on the merits when under circumstances any reasonable person would have said, "This is not a valid judgment."

GONZALEZ: I know you are trying to collect on the judgment, but what is the status of the original loan?

MATLOCK: He didn't pay.

GONZALEZ: To date it has not been paid?

MATLOCK: To date it's not been paid. Let me point out a couple of other things. They are outside the record, but he raised it, and I've got to point it out. He said that there are shareholders in Colorado with interest in this property that we've collected, that there is a lot of other people who have an interest in it, that is wrong, wrong, wrong.

PHILLIPS: That's not necessary for us to decided that? That's really a Colorado court

problem.

MATLOCK: That's a Colorado court problem, but it's part of this poor herald, poor shareholders, this person in Texas has taken advantage of this poor little Gerbil in the land of the wolves. I've been litigating with Caldwell, and this is in the record, the first lawsuit that I filed against Mr. Caldwell on behalf of Judge Barnes was in 1985. I've only been a lawyer 23 years, and I've been fighting with him going on 14 of them. He is not a babe in the woods, and that is in the record.

The basic underlying lawsuit was because Caldwell has failed to pay the $1.25 million.

SPECTOR: How did that become a $15 million default judgment?

MATLOCK: Because he didn't pay the $1.25 million. He had his common law wife file a fraudulent suit in Cameron county to steal the collateral. Barnes had the property, the collateral sold, contract for deed. He filed two fraudulent bankruptcies in Denver Colorado, and this is on the record, which prevented the sale of the collateral. He forced Bob Barnes into bankruptcy. That's how we get to $15 million. It's not just the failure to pay the $1.25 million. It's the attempt to steal the collateral and the fraudulent filing of bankruptcy to prevent Bob from selling the collateral.

Judgements must at some point be accorded finality. And this is an absolutely perfect example on the facts of what can happen when judgments are not accorded finality.

HANKINSON: Was Mr. Caldwell served with the original lawsuit?

MATLOCK: Perdue, the process server says he was. Perdue later comes back and says he wasn't served with summons and complaint. Mr. Caldwell is guilty of perjury, has been found guilty of perjury by the bankruptcy court. And the answer is, I believe he was, but there's no proof of it.

What Caldwell did during this period of time was by his conduct mislead the litigants, that's us, and the courts in Colorado in the collection case, the courts in Colorado in the condemnation case on some of the property referred to in Mr. Hanson's affidavit, and by his general conduct in fighting on the merits the collection case acknowledging in open court that he was making the claim that he was never served and yet, never formerly availing himself of the myriad of remedies available to him: the 12(b) motion in Colorado he could have filed at the outset, the appeal, the motion for new trial, the ability to come back down here in Texas. Instead he chose to fight the collection case on his merits.

I want to point out that to hold for respondent Barnes in this case does not involve making new law. It doesn't involve writing on a blank tablet. All it involves is applying prong number 3 of the *Alexander v. Hagedorn* test that is, that one who is asking for equity in an

equitable bill of review must demonstrate that he himself is not guilty of lack of diligence in asking for equity.

PHILLIPS: The US SC wasn't real impressed with our *Alexander v. Hagedorn* test?

MATLOCK: In the *Peralta* case?

PHILLIPS: Yes.

MATLOCK: That's a smokescreen if I may your honor. *Peralta* doesn't have anything to do with this. *Peralta* involved a dead citation, a citation that was served more than 90 days later. And all *Peralta* says is, if it's a service or jurisdiction type issue, you don't have to allege a meritorious defense which you were prevented from arguing or raising by some wrongdoing of the other side. I have no doubt that any creative lawyer can create a meritorious defense and make a sufficient allegation that he was prevented from raising it by the other side to get over those first two prongs. Where he loses is, that he demonstrated not only a lack of diligence in attacking the underlying Texas judgment, but also by his conduct he demonstrated affirmatively that he was choosing not to fight the merits of the judgment but to fight collection.

Sooner or later, we do have litigants, society as a whole, courts have to have some finality in judgments. If their argument is accepted, and they make it square out in their brief, if no service is the problem, then that argument can be raised at any time. You point out that there is a 4-year statute. If it's void, void, void, void, four years should not do it. The argument is made, "Well you can't breathe life into a void judgment," that's not what we're doing here. What we're doing here is saying that by your conduct, Mr. Caldwell, under these circumstances both your passive conduct and your active conduct, you have so misled the litigants and the courts that it should not lie in your mouth to now say, "the judgment is invalid, or I'm not subject to it."

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REBUTTAL

PAMPAS: The merits of this case have not been litigated. At no point in time has any testimony been taken on the merits of this particular case, the note or anything else. This was a default judgment. $15.5 million quite frankly came out of thin air. The other thing is that what they would require my client to do, is require him to submit and he said in his own testimony "extrinsic evidence" which this court and every court that has addressed that issue has said, "is impermissible when the judgment is not void on its face." And it wasn't here, because you had the affidavit showing service.

So what they are trying to say is that notwithstanding all the law and notwithstanding what you had to do in Texas or in Colorado, you still should have just gone out there even though the court could have never considered and would have never accepted any extrinsic

evidence. The best evidence is the fact that he brought the action.

Moreover, as everybody has admitted here, the fact is that anything that happened in Colorado still wouldn't have affected anything down here. This court needs to reverse this case, remand it back, reverse and render on our summary judgment, or, alternatively, say, "Was there service of process on this case?"

HANKINSON: Is there a fact issue on the question of whether Mr. Caldwell was served?

PAMPAS: It is our position and we briefed that, the fact that they did never attach the original affidavit by the processor over to their motion for summary judgment. So therefore, under the law of the state, the only thing that was in front of the court at the time he entered his summary judgment was our affidavits and the affidavits of several other people indicating there was no service of process. We believe on that basis, that summary judgment could be rendered in our favor. However, if in fact if you've got a fact issue naturally it's got to be sent back. And if there is no service of process, the fact of the matter is this case needs to be reversed. That's exactly what *Peralta* said. Because it says to address the issue of meritorious defense and indicated that when there is no service of process, the other second and third elements of *Alexander v. Hagedorn* may not be met.

What we have here when you look at the restatement that to treat the judgment as valid silence is not an issue. We have here that he did make the statement. But silence is not an issue. That does not make the judgment valid. Caldwell did what he could under the circumstances he had. That's why he has a 4-year statute of limitations. What he's asking you to do is to say, "No, there's no 4-year statute of limitations." In this particular case, because we did find out within four years, we brought the claim within four years. It would certainly be a different question and a different case indeed if we found out after four years. But that's not the question we have before us.