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COURT OF APPEALS
STATE OF NEW YORK

MARK CENTI,

Respondent,

-against-

No. 105

MICHAEL MCGILLIN,

Appellant.

20 Eagle Street
Albany, New York
November 20, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 105, Centi v.
3 McGillin.

4 Good afternoon, counsel.

5 MR. FLINK: Good afternoon. If it pleases the
6 court, I'm Edward Flink, and I would like to reserve two
7 minutes for rebuttal, please.

8 CHIEF JUDGE DIFIORE: Yes, sir.

9 JUDGE GARCIA: Counsel, what's the - - - as
10 succinctly as possible, could you articulate what is the
11 public policy reason we would overturn this agreement?

12 MR. FLINK: To not allow a criminal who has
13 garnered illegal money to use the courts to collect that
14 money.

15 JUDGE GARCIA: So let's say it was fifty percent
16 gambling proceeds and fifty percent lawful earnings, what
17 would we do?

18 MR. FLINK: I think that that would be a closer
19 question, but if in this case it's a hundred percent and it
20 was admitted to be a hundred percent gambling proceeds - -
21 -

22 JUDGE GARCIA: Yeah, but what's our rule going to
23 be? Does it have to be a hundred percent, does it have to
24 be at least eighty percent? Because it seems to me, one,
25 as you know, and we've recently reiterated, it has to be a



1 very strong public policy articulation in order for us to
2 override an agreement between consenting parties, right?
3 So I could see a case where the transaction itself was
4 designed to disguise the proceeds of illegal activity: I'm
5 going to pay this money, and we'll arrange it so it looks
6 like it's coming from X when it's really coming from
7 gambling. And then you'll pay me back, right - - -

8 MR. FLINK: Which is exactly - - -

9 JUDGE GARCIA: - - - and then I'll wash the
10 money. But that's not what you're saying here. You're
11 saying, as I understand it, the fact that - - - and let's
12 assume a hundred percent of the proceeds here were proceeds
13 of gambling activity, that whatever arrangement I enter
14 into, it could be with, you know, a local bank but, because
15 it's the proceeds of this gambling activity, that, for
16 public policy reasons, is going to void whatever agreement
17 I've entered into.

18 MR. FLINK: It's going to deprive the - - - in
19 this case the - - - the lender, from the opportunity to
20 come to the courts to collect the - - - the debt, yes.

21 JUDGE STEIN: Don't you have a problem because
22 findings were made that in fact this was a loan and not
23 some, you know, I'm going to let you hold my money and you
24 can give it back to me a little bit at a time? Doesn't - -
25 - doesn't that affect your argument?



1 MR. FLINK: I don't think so, Judge. And I think
2 this court, in McConnell v. Commonwealth Pictures, where
3 the very same issue was presented, there the money the
4 plaintiff sued was the fruit of an admitted crime, and the
5 court held, following - - -

6 JUDGE STEIN: Well, in McConnell, the - - - the
7 contract itself led to illegal contact - - - conduct. Here
8 there was illegal conduct on the part of both parties, I
9 might add, and - - - and then there was this contract,
10 which, now there have been findings, was to make a loan to
11 somebody. So - - - so how - - - how is the - - - how is
12 the contract itself, I'm going to loan you money to build a
13 house and you're going to repay me, how does that, in
14 itself, involve illegal conduct?

15 MR. FLINK: I thought, actually, in McConnell the
16 underlying contract was not illegal, in and of itself. I
17 may have misread that decision, but I - - -

18 JUDGE STEIN: Well, but it was executed through
19 illegal activity. That's what I'm saying, that - - - that
20 they had a contract, and then one person went out, and in
21 order to fulfill the contract, did something illegal. So
22 that's a little different from what we have here, I think.

23 MR. FLINK: Well, in - - - in the Kirschner case,
24 the court also talked about the idea that you have two
25 wrongdoers in pari delicto, they're not going to allow the



1 plaintiff to come in and - - - and use the courts. And
2 this is criminal conduct. This was - - -

3 JUDGE WILSON: That would seem - - -

4 MR. FLINK: This - - - but this was - - -

5 JUDGE WILSON: That would seem maybe if the two
6 of you had been in business together, Centi and McGillin,
7 in a bookmaking business together, and they had had an
8 internal dispute about who was entitled to what share of
9 the profits, and they came into court and said, you know,
10 we had an oral agreement as to how - - - you know, who
11 owned what share of the business, and it's a gambling
12 business where you enforce it, we might then say, no, we're
13 not going to do that. But this is different from that, no?

14 MR. FLINK: Well, I think, because there's a
15 matter of law in legal interpretation, Judge Egan joined in
16 by Judge Lynch, felt that because the proceeds were
17 garnered illegally, that this was in fact money laundering.

18 JUDGE FEINMAN: How is it money laundering? How
19 does this meet the elements of money laundering, because
20 I'm not following that?

21 MR. FLINK: Well, under 470.05, money laundering
22 in the fourth degree, and I - - - the - - - a person is
23 guilty of money - - - money laundering in the fourth
24 degree, an E felony, when: "Knowing that the property
25 involved in one or more financial transactions represents



1 the proceeds of criminal conduct" - - - I think we meet
2 that - - - "he or she conducts one or more such financial
3 transactions which in fact involve the proceeds of
4 specified criminal conduct." I think we meet that. "(ii)
5 Knowing" - - - knowing - - - "that the transaction or
6 transactions in whole or in part are designed to: (A)" - -
7 - capital A - - - "conceal or disguise the nature,
8 location, the source ... of the proceeds of the criminal" -
9 - -

10 JUDGE STEIN: So there's an intent - - -

11 JUDGE FEINMAN: But there's the problem - - - I'm
12 sorry.

13 JUDGE STEIN: Go ahead.

14 JUDGE FEINMAN: - - - is in that last thing that
15 you just read. Where's the concealment? Where's the - - -
16 they both know what the source is.

17 MR. FLINK: No, it's - - - it's - - -

18 JUDGE FEINMAN: They both know because they're in
19 it together.

20 MR. FLINK: It's conceal - - -

21 JUDGE FAHEY: You mean conceal - - -

22 MR. FLINK: Conceal from the public, the
23 authorities.

24 JUDGE FAHEY: Yes.

25 JUDGE GARCIA: How is this designed to do that?



1 Usually that's where the money is going through something
2 so that the source of it is disguised. Here he's taking it
3 out of whatever, an apartment or somebody's house or
4 suitcase, or whatever, giving them to somebody. It's - - -
5 it's a loan on its face. There's no attempt to disguise
6 where that money came from.

7 So if there had been an agreement on paper with
8 the other party saying, you know, this money that you've
9 gotten from X, which wasn't true, or I'm going to do this
10 through a foreign bank account. But this is just I'm
11 taking the money out of my house and I'm giving it to you.
12 I think it was in cash, right? So how was that transaction
13 disguising where that money came from?

14 MR. FLINK: Well, it's not just that transaction,
15 it's then the payback of those proceeds in 1,600-dollar
16 increments every four weeks which then Centi uses for his
17 spending money or walking-around money, and therefore - - -

18 JUDGE STEIN: But couldn't he have just taken it
19 out of the safe and spent it on his spending money or
20 walking-around money? How would that be any different?

21 MR. FLINK: Well, I guess he wouldn't have then
22 been in this situation, and he would have had the money all
23 along.

24 JUDGE WILSON: Why wouldn't that be money
25 laundering, though? Suppose he bought a bunch of stuff on



1 a credit card and used the money in the safe to pay the
2 credit card bill - - -

3 MR. FLINK: Well, that would - - -

4 JUDGE WILSON: - - - there was a contract with
5 the credit card company to repay it, why isn't that money
6 laundering also?

7 MR. FLINK: Oh, that - - - I think that would be
8 money laundering, yes.

9 JUDGE WILSON: Oh, so your rule really is that if
10 you've got illegally-obtained money, you can't spend it.

11 MR. FLINK: No, if you have - - - yeah, if you
12 have illegally-gained money and you then commit money
13 laundering - - -

14 JUDGE WILSON: Spend it. You spend it.

15 MR. FLINK: - - - you can't go into the court and
16 ask to have the court help you collect it back. And - - -

17 JUDGE FAHEY: Of course there's limits on how
18 much you can spend it, right? If you walk in a bank with
19 15,000 dollars in cash, they're going to want to know where
20 that money came from, right?

21 MR. FLINK: Correct.

22 JUDGE FAHEY: Once it was over 10,000 dollars.
23 So - - - so these are - - - I don't know if they're - - -
24 they're realistic solutions to the disbursement of money.

25 The interesting thing is when you look at - - -



1 and I've only done some preliminary research on this, but
2 when you look at contracts that violate public policy, it
3 seems to be there's eighteen different categories that I've
4 identified so far in research on it. And it - - - it
5 always seems to involve a basic breach and - - - of the
6 public good, but also a breach that tends to - - - an
7 action that tends to promote the breach of the law.

8 So the question for us would be - - - I think
9 Judge Feinman made a good point on concealment. I don't
10 know if this exactly fits into the money laundering
11 statute. I think that's a legitimate point. The question
12 is does it involve a situation where we would be
13 establishing a rule where illegally-obtained funds could be
14 spent in Montgomery County if they're spent on specific
15 types of economic transactions? So someone from anywhere
16 in the world could come and bring their drug money and
17 spend it in Montgomery County, and the State of New York,
18 as long as they said I got this money from an illegal drug
19 transaction and they were up front about it is - - - it
20 seems to me that that's the problem here. Isn't that the
21 public policy that we're concerned about not - - - because
22 otherwise I think you're required to come to us and say
23 these sections of the penal law are being violated because
24 that's one of the clear eighteen categories so far. And
25 you haven't done that for us, have you?



1 MR. FLINK: Meaning I haven't - - -

2 JUDGE FAHEY: You haven't told us any other
3 category, besides money laundering, that violates public
4 policy under the penal law.

5 MR. FLINK: I'm just handling this one case, and
6 I - - -

7 JUDGE FAHEY: Well, judging by the name, I
8 figured that, you know?

9 MR. FLINK: And - - -

10 JUDGE FAHEY: In fairness to you, I thought that
11 - - -

12 MR. FLINK: And I appreciate the question, Judge,
13 and I - - - I think you're not - - - I don't think I'm
14 disagreeing with the basic premise here.

15 JUDGE FAHEY: No, go ahead.

16 MR. FLINK: And I guess what I'm saying is that
17 when you have - - - I'm dealing with this case. Obviously
18 we all are. I'm not disputing that the determination was
19 made that this was a loan. I'm past that. I - - -

20 JUDGE FAHEY: So there's no statute-of-frauds
21 argument?

22 MR. FLINK: No, correct.

23 JUDGE FAHEY: Okay.

24 MR. FLINK: And it's not reviewable by this court
25 anyhow, and that was - - - we're past that.



1 JUDGE FAHEY: All right.

2 MR. FLINK: And I'm not going to spend the time
3 talking about whether or not there was sufficient proof as
4 opposed to the weight of the evidence. I'm glad that we're
5 at least talking about the fact it seems like this court
6 feels that it has jurisdiction to decide this issue because
7 I think, as a threshold proposition, we have to decide that
8 this is a legal question as opposed to a question of fact.

9 So the characterization by Judge Egan as money
10 laundering, I wish I had come up with that in the Appellate
11 Division or the trial judge, in the trial court. I didn't
12 try the case, but at the end of the day, this isn't the
13 first time that a judge has declared a - - - a rule of law
14 in declaring the whole law - - -

15 JUDGE STEIN: Of course we also have the problem
16 that it's an unpreserved issue but - - -

17 MR. FLINK: But I think - - - but that's where
18 you get into that whole law issue that this court spoke of
19 in Persky here that it's - - - as I think Judge - - - that
20 was a negotiable instrument case where: "In our review we
21 are confined to questions raised or argued at trial but not
22 to the arguments that are presented, nor is it material
23 whether the case was well presented to the court below in
24 the arguments addressed to it. It was the duty of the
25 judges to ascertain and declare the whole law upon the



1 undisputed facts spread before them; and it is our duty now
2 to give such judgment as they ought to have given." And
3 that's what Judge Egan wanted to do when he connected the
4 dots and said - - -

5 JUDGE FAHEY: Well, I understood that, but my
6 question - - - if it's all right, Judge, because I see your
7 light's on. It's okay?

8 CHIEF JUDGE DIFIIORE: Right.

9 JUDGE FAHEY: Just my concern was: is there
10 another category that you would point us to, besides money
11 laundering, as a violation of public policy, besides the
12 one that Judge Egan pointed out because public policy
13 invokes the broad equitable powers of this court, but
14 they're rarely - - - rarely, rarely invoked.

15 We're talking usually about contracts. Let's say
16 you made a contract to kill someone, or you made a contract
17 to commit treason. Those - - - those are the kind of
18 circumstances where the court has invoked the public policy
19 argument based on its own equitable power. And clearly
20 this isn't that kind of case. So that's why I'm asking you
21 to point to me where in the penal law or the broad
22 equitable principal that would be underlying. Otherwise,
23 I'll continue my research.

24 MR. FLINK: And I can't do anything more than say
25 what I did, and again, get back to the idea here that the



1 intent of - - - to launder the money, I believe, was
2 inherent in the act itself. He's putting back into the
3 economy these small amounts of money, and he's doing this
4 with the assistance of his friend, and gaining interest as
5 well, and now asking the courts to help him get his money
6 back.

7 JUDGE WILSON: But your view would be no
8 different if he'd loaned the money to me, right?

9 MR. FLINK: That's correct.

10 JUDGE FAHEY: Okay.

11 MR. FLINK: That's correct.

12 CHIEF JUDGE DIFIORE: Thank you, Mr. Flink.

13 MR. FLINK: In this case there was in pari
14 delicto, but I would agree with that, Judge.

15 CHIEF JUDGE DIFIORE: Thank you, counsel.
16 Counsel?

17 MR. CENTI: Good afternoon. May it please the
18 court. My name is Dan Centi. My client has the same
19 spelled last name, but he pronounces his name differently,
20 so we distinguish ourselves that way.

21 McConnell is cited by the dissent, and I know
22 they don't cite it as stated in the proposition of money
23 laundering here or - - - or the principle they're applying,
24 but it is a totally different type of case. It's a
25 commercial - - -



1 JUDGE RIVERA: But isn't it really a perversion
2 of the legal system? You - - - you're suing to get back
3 illegally-gained funds that you have hidden from the
4 government and - - - and the court is going to order not
5 only the repayment, but as counsel just pointed out,
6 interest on top of it. So he's doing better than just
7 hiding it under his own mattress.

8 MR. CENTI: I hope you don't view it as a
9 perversion, Your Honor, because if you look at McConnell,
10 what - - - what McConnell held - - - by the way, the case
11 was totally different; it was not only a bribery case, the
12 defendant pled facts showing legality. Plaintiff had not
13 been subject to any statutory sanctions. I'm kind of
14 listing the factors that this court uses in evaluating
15 these cases. And as Judge Stein pointed out, there was no
16 misconduct occurring in our case, as opposed to McConnell,
17 in allegedly procuring the contract sued on. And if you
18 read McConnell's holding that this court gave - - -

19 JUDGE FAHEY: So you would say that it needs to
20 be in the formation of the contract itself, not in - - - in
21 the assets that are part of the contract, unless there was
22 an attempt to conceal them in some way, and then you get
23 into statutory penal law problems.

24 MR. CENTI: Yes, I'm saying that if you look at
25 Lane Capital - - - I'm sorry, Lang Capital - - -



1 JUDGE FAHEY: Okay.

2 MR. CENTI: - - - Lloyd Capital, that we cited,
3 and this court decided - - - and that's a fairly recent
4 case, '92 - - - basically this court has said you can't
5 come in and ask us to command illegal conduct, in other
6 words, enforce the very conduct that is prohibited. And I
7 think - - - I think Judge Wilson was asking about that.
8 You can't come in and try to enforce a legal contract where
9 you - - - let's say in a gambling case you - - -

10 JUDGE GARCIA: Counsel, would it be different if
11 here - - - going back to something Judge Rivera was saying,
12 so the government has certain mechanisms for going after
13 these type of proceeds, right? There's fines in a criminal
14 case; there's asset forfeiture, right? Would it be
15 different if the transaction was designed to evade those
16 efforts?

17 MR. CENTI: Well, that's what the dissent seems
18 to be suggesting, right?

19 JUDGE GARCIA: But is there any proof of that in
20 the record in this case?

21 MR. CENTI: Oh, no. Not at all. Not at all. As
22 a matter of fact, you know, I'm really annoyed - - - pardon
23 me - - - for the fact - - -

24 JUDGE GARCIA: By the question?

25 MR. CENTI: Not by your question, by - - - by the



1 holding of the dissent saying it was money laundering. The
2 first time that was even argued in this case was before
3 you.

4 JUDGE GARCIA: But it seems to me that this whole
5 - - -

6 MR. CENTI: There is no money laundering.

7 JUDGE GARCIA: - - - argument about the
8 transaction here, if it's not designed to evade fines or
9 evade asset forfeiture, you come into court and you're
10 enforcing a contract like this where it's sort of coming
11 out that these are the proceeds - - - or at least the
12 allegations are coming out that these are the proceeds of
13 illegal activity. Certainly the government has tools at
14 its disposal to enforce whatever rights it has against the
15 proceeds of illegal activity as a separate mechanism here,
16 right? If there was still - - -

17 MR. CENTI: No question. No question.

18 JUDGE GARCIA: Right. So I think that goes back
19 again to Judge Fahey's point, the distinction, and I think
20 you were making, between a transaction that is requiring
21 the courts in some way to enforce something that's against
22 public policy versus a transaction that involves, in some
23 way, the proceeds of prior illegal activity.

24 JUDGE STEIN: Does it also matter what the nature
25 of that prior illegal activity was? I mean, you know, we



1 have these concepts of - - - of malum in se and - - - and
2 malum prohibitum.

3 MR. CENTI: Right. Right.

4 JUDGE STEIN: And - - - and you know, I guess
5 does it matter where this falls in that, because I think
6 everyone would have to agree that it's a little - - - to
7 use a colloquial term - - - yucky for courts to be wading
8 into these types of disputes no matter what.

9 But the question is is: is it so much against
10 public policy that it outweighs the public policy in favor
11 of - - - of the right to contract? So does that make a
12 difference, and if so, how?

13 JUDGE GARCIA: Proceeds of a kidnapping.

14 JUDGE STEIN: Yeah.

15 MR. CENTI: No question. I mean, I think even in
16 McConnell this court spoke of gravely immoral and illegal
17 conduct, not just immoral, gravely immoral. And they don't
18 quote the holding, the defendant here, but - - - but they -
19 - - they start talking about malum in se and malum
20 prohibitum. They say malum prohibitum means you just can't
21 enforce the thing, it's too grave or something. But malum
22 prohibitum means it's simply prohibited because it's
23 illegal. And it's not immoral.

24 And we all know - - - no one in this room, I
25 think, would say that gambling is immoral conduct. We can



1 go down to downtown Schenectady and not just do football
2 bets, like which is what they did here, but bet on any
3 sports I've never even heard of before. And public
4 officials attended their grand opening. I mean, I think
5 we're past saying it's immoral conduct; it's prohibited.
6 They inexcusably violated that prohibition, but it's not
7 immoral conduct.

8 And certainly if this was a bank robbery
9 situation, and they got back to their lair and divided up
10 the proceeds and he gave a loan to him of the stolen
11 proceeds, I don't know what would happen in that case, but
12 it sounds like a significantly different case than what we
13 have here. And - - -

14 JUDGE RIVERA: How is it significantly different?

15 MR. CENTI: Because we don't have any gravely
16 immoral conduct in obtaining the proceeds or in deriving
17 the proceeds. What we have is illegal conduct.

18 And this court said, as far back in 1920 - - - as
19 1921, that in enunciating public policy, the court is
20 reluctant to do that. This is the Messersmith case that
21 your field is - - -

22 JUDGE RIVERA: But you - - -

23 MR. CENTI: - - - narrow when there are
24 sanctions.

25 JUDGE RIVERA: But you are limiting the conduct



1 to the bookmaking on its own, as opposed to the hiding the
2 proceeds from the government, lying about the proceeds that
3 you have.

4 MR. CENTI: There's nothing in the record that my
5 client lied about proceeds.

6 JUDGE FAHEY: Well, he didn't pay taxes on them,
7 I'm assuming.

8 MR. CENTI: He - - -

9 JUDGE FAHEY: I've never - - -

10 MR. CENTI: There - - -

11 JUDGE FAHEY: - - - met a bookmaker who pays
12 taxes.

13 MR. CENTI: My - - - the record shows he pled the
14 Fifth when he was asked about taxes. But - - -

15 JUDGE FAHEY: Okay.

16 MR. CENTI: - - - under the case law, that is not
17 considered; it has no probative value as to the - - -

18 JUDGE FAHEY: You understand my point, though?

19 MR. CENTI: - - - contract to be enforced.

20 JUDGE FAHEY: You understand my point - - - it's
21 self-evident - - -

22 MR. CENTI: Yes.

23 JUDGE FAHEY: - - - which is that: all right,
24 you're taking the money, you're not paying taxes on it,
25 there are illegal means that you haven't paid taxes on.



1 And then you give it to your friend who builds a house, and
2 he pays you back over eleven years. And over that eleven
3 years then all of that money that's paid back is legal.
4 And it wasn't legal before, and you hid it because you
5 didn't pay any taxes on it. So this is - - - this is not
6 the work of an upstanding citizen. It may not be a mass
7 murderer, but on the other hand, it isn't one of nature's
8 finest either.

9 MR. CENTI: I - - - I think the court has dealt
10 with those issues before, though, and - - -

11 JUDGE FAHEY: Well, that's the question then
12 really.

13 MR. CENTI: Yeah.

14 JUDGE FAHEY: How bad is it, right? The question
15 really for us is, as a matter of public policy, does it
16 fall within those categories that would affect broader
17 societal goals, which are always difficult to earmark. But
18 it's an interesting question.

19 MR. CENTI: In answer to your question, Your
20 Honor, in that Capital case that I just mentioned, this
21 court said that if we're not commanding illegal conduct,
22 then the overriding general policy is that we will not
23 allow the defendant to get something for nothing.

24 JUDGE FAHEY: So that's why it goes to the
25 formation of the contract itself. That - - - that will be



1 your argument.

2 MR. CENTI: Right.

3 JUDGE FAHEY: Okay.

4 MR. CENTI: And you know, that was relied on by
5 the trial court too. The overriding general policy
6 applied. There are competing policies in a lot of cases,
7 but that's the overriding one.

8 JUDGE RIVERA: What about commanding the
9 interest? Why not just pay back the exact amount owed on
10 the loan, but the interest?

11 MR. CENTI: I think that would come under that
12 overriding general policy of getting something for nothing,
13 if he doesn't pay, which wasn't an exorbitant interest rate
14 at all, 3.9 - - -

15 JUDGE RIVERA: No, no, no, it's - - - you're
16 using stolen money - - -

17 MR. CENTI: No.

18 JUDGE RIVERA: - - - that you're not - - - excuse
19 me.

20 MR. CENTI: Okay.

21 JUDGE RIVERA: Okay. You're using gambling money
22 - - -

23 MR. CENTI: Right.

24 JUDGE RIVERA: - - - okay, but illegally-gained
25 profits; we can agree to that phrase?



1 MR. CENTI: Well, they both testified there was
2 no profits.

3 JUDGE RIVERA: We can agree to that phrase - - -

4 MR. CENTI: Profits.

5 JUDGE RIVERA: - - - illegally-gained profits
6 that he's then using to gain more money from those profits
7 that he's not reporting to government and he's hiding from
8 the government. Why - - - how - - - how is it in
9 furtherance of public policy to involve the court in
10 signing off a judgment and order that requires that he pay?
11 I assume if he doesn't pay he's going to be in contempt.

12 MR. CENTI: Well - - -

13 JUDGE RIVERA: And I assume there may be even
14 more legal action against him if he doesn't pay. At any
15 point - - - at any point now are we perhaps in the sphere
16 where this becomes just perhaps we're just afraid he was
17 going a bridge too far and now it really does become a
18 violation of public policy?

19 MR. CENTI: Well, I think those are why - - -
20 those are the rules that we've been living by and that
21 we've been guided by, the trial court was guided by, the
22 Appellate Division majority was guided by.

23 JUDGE RIVERA: If he doesn't pay, can the
24 plaintiff use legal process to take away his house - - -

25 MR. CENTI: There's - - -



1 JUDGE RIVERA: - - - to enforce the judgment?

2 MR. CENTI: I think there's a strong public
3 policy encouraging people to use the legal system and not
4 use extralegal means to obtain - - -

5 JUDGE RIVERA: To garnish wages, if he was
6 working?

7 MR. CENTI: Yes.

8 JUDGE RIVERA: To access his bank account?

9 MR. CENTI: Yes, Your Honor.

10 JUDGE RIVERA: Okay.

11 MR. CENTI: Okay.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 MR. CENTI: All right. Thank you.

14 CHIEF JUDGE DIFIORE: Counsel?

15 JUDGE WILSON: Thank you, Judge.

16 CHIEF JUDGE DIFIORE: Um-hum.

17 MR. FLINK: Just by way of quickly, there was no
18 waiver. The illegality defense was all over the case.
19 Judge Sise decided there was no waiver.

20 I don't know where you're going to draw the line
21 on public policy and at what point the courts are going to
22 wade into this, but I do agree that there is something, to
23 use the legal term, yucky about this court and the courts
24 in general not - - - stepping into this and not just
25 leaving them where they lie. The reality is this



1 conclusion of law that there was money laundering; I submit
2 if you look at 470.05, it is money laundering. And where
3 you are laundering money and using these - - -

4 JUDGE RIVERA: If we disagree, do you lose?

5 MR. FLINK: Excuse me?

6 JUDGE RIVERA: If we think it's not money
7 laundering, do you lose?

8 MR. FLINK: I think it's a closer question,
9 Judge, I have to admit that. I have to admit that. But I
10 do still believe that the same rule about - - - announced -
11 - - announced by this court in - - - in the Stone case, as
12 well as thereafter in McConnell, about leaving the parties
13 where they lie and not using the courts to allow somebody
14 to regain the illegally-garnered proceeds, is a public
15 policy in and of itself. But I do acknowledge that if it's
16 not money laundering it's a different issue. And I can't -
17 - -

18 JUDGE RIVERA: If we just see it as he's got
19 money made off the gambling - - -

20 MR. FLINK: I still think - - -

21 JUDGE RIVERA: - - - and he loaned it - - -

22 MR. FLINK: I still think the public - - -

23 JUDGE RIVERA: - - - and he wants to be repaid,
24 then you're saying you lose?

25 MR. FLINK: I don't say I lose, but I think that



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it's a closer question.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. FLINK: I would have to acknowledge it. I don't - - - I don't know that just because it - - - but I do believe it's money laundering, but I do agree that it's a closer question, and it's a public policy issue that's not as clear.

CHIEF JUDGE DIFIORE: Thank you, counsel.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the court of Appeals of The Mark Centi v. Michael McGillin, No. 105, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

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