Florida Law Review

Volume 47 | Issue 1 Article 4

January 1995

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Recommended Citation

William T. Hennessey, *Agency Law: Extending the Common Knowledge Doctrine*, 47 Fla. L. Rev. 147 (1995).
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CASE COMMENT

AGENCY LAW: EXTENDING THE COMMON KNOWLEDGE DOCTRINE

Mobil Oil Corp. v. Bransford, 648 So. 2d 119 (Fla. 1995)

*William T. Hennessey**

Respondent was assaulted by an employee[1] at a gasoline station owned by petitioner but leased to a franchisee.[2] He filed suit against petitioner arguing that petitioner had effectively established an apparent agency relationship[3] with the franchisee station operator.[4] As proof that petitioner had represented the station as its agent, respondent alleged that petitioner's products were sold in the station, that its trademarks and logos were used throughout the station,[5] and that the station's employees were required to wear uniforms bearing petitioner's corporate logos.[6] The trial court granted petitioner's motion for summary judgment,[7] holding that respondent had failed to offer facts sufficient

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* This Comment is dedicated to my dearest friend, Cathy, for her constant love, support, and understanding, and to my loving parents for always encouraging me to pursue excellence.

1. Mobil Oil Corp. v. Bransford, 648 So. 2d 119, 120 (Fla. 1995). The employee pled nolo contendere to criminal charges and was sentenced to one year probation. *Id.* at 122 (Shaw, J., dissenting).

2. *Id.* at 120.

3. Actual agency, whether express or implied, is a consensual relationship. HAROLD G. REUSCHLEIN & WILLIAM A. GREGORY, THE LAW OF AGENCY AND PARTNERSHIP § 12 (2d ed. 1990). An actual agency relationship is created "only when one person manifests an intention that another shall act in his behalf and the other person consents to represent him." *Id.* In contrast, an apparent agency relationship can be created simply by representing to third persons that another is his agent. *See* RESTATEMENT (SECOND) OF AGENCY § 8 cmt. a (1957). No consensual relationship is necessary. *See id.* Although apparent agency is "entirely distinct" from actual agency, the power to deal with third persons and the liability which results therefrom may be identical. *Id.*

4. *Bransford*, 648 So. 2d at 120. Respondent's complaint alleged that petitioner was negligent for failing to provide adequate security at the station and for failing to remedy a foreseeable danger. Bransford v. Berman, 601 So. 2d 1306, 1307 (4th DCA 1992), *quashed sub nom.*, Mobil Oil Corp. v. Bransford, 648 So. 2d 119 (Fla. 1995). Respondent also filed suit against the franchisee. *Id.*

5. *Bransford*, 648 So. 2d at 120.

6. *Id.* at 122 (Shaw, J., dissenting). The employee was wearing a uniform and hat bearing petitioner's logo and corporate name when he assaulted respondent. *Id.* (Shaw, J., dissenting).

7. *Id.* at 120. Petitioner contended that respondent had failed to allege facts sufficient to support a claim of apparent agency. *Id.* at 120-21. The pertinent rule provides:

Published by UF Law Scholarship Repository, 1995

to support a claim of apparent agency.[8] Reversing the trial court, the Fourth District Court of Appeal held that petitioner might be liable under a theory of apparent agency because petitioner owned the station property and prominently displayed its signs and logos there to induce customers to patronize the station.[9] The Florida Supreme Court granted review,[10] and in reversing the decision of the district court, HELD, that respondent failed to allege the level of representation necessary to create an apparent agency relationship.[11]

Traditionally, courts have applied the master-servant analysis of agency law to determine if a franchisor could be held liable for the acts of a franchisee.[12] However, the widespread growth of advertising and

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> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FLA. R. CIV. P. 1.510(c).

8. *Bransford*, 648 So. 2d at 120.

9. *Berman*, 601 So. 2d at 1307. The district court held that petitioner might be liable for failing to provide adequate security and for failing to remedy a foreseeable danger. *Id.* The district court stated that it was aware of an earlier case, Sydenham v. Santiago, 392 So. 2d 357 (Fla. 4th DCA 1981), "which might lead to a contrary result." *Id.* However, the court distinguished *Sydenham* because in that case the oil company neither owned nor controlled the station. *Id.* Writing separately from the court, Judge Stone argued that Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322 (4th DCA 1991), did not extend liability to franchisors simply because the franchisor contracted with a truly independent contractor for use of its signs, logo, uniforms, products, or method of operating. *Id.* (Stone, J., concurring in part and dissenting in part).

10. *Bransford*, 648 So. 2d at 120. The court based review on an apparent conflict between *Berman* and Orlando Executive Park, Inc. v. Robbins, 433 So. 2d 491 (Fla. 1983). *Id.* The court claimed jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution. *Id.*

11. *Id.* at 120-21. The instant court retreated from its holding in *Orlando Executive Park* to the extent that case suggested that logos or other trademark symbols alone can create an apparent agency relationship. *Id.* at 121.

12. The Restatement (Second) of Agency § 267 provides:

> One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.

RESTATEMENT (SECOND) OF AGENCY § 267 (1957).

In Mercury Cab Owners' Assn. v. Jones, 79 So. 2d 782 (Fla. 1955), the Florida Supreme Court applied § 267 of the Restatement (First) of Agency. The language of § 267 of the Restatement (First) is identical to that of the Restatement (Second). For a discussion of the way courts nationwide have analyzed theories of liability to determine whether an oil company

corporate franchising presented courts with relationships which appeared to transcend the traditional notions of master and servant, and principal and agent.[13] Injured plaintiffs argued that the defendant corporation should be estopped from denying liability under the theory of apparent agency,[14] because it "represented" to the public that the franchisee was its agent through the use of advertising and display of corporate logos.[15]

Initially, Florida courts were receptive to this argument.[16] In *Economy Cabs, Inc. v. Kirkland*,[17] the Florida Supreme Court extended the doctrine of apparent agency to the franchise context.[18] The plaintiff in *Economy Cabs* brought suit against a cab company contending that it was liable under the doctrine of respondeat superior for the negligence of the driver of a cab which she believed the company owned.[19] The cab company argued that the cab in question was independently owned by a third party; therefore, the driver could not be considered its employee.[20]

The *Economy Cabs* court held that under these facts, the law will presume as to the plaintiff, and the public generally, that the defendant cab company operated the cabs which bore its name.[21] The court reasoned that corporations should not be permitted to "parade under a

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should be liable for the torts of its service station operators, see Robert N. Davis, Jr., Comment, *Service Station Torts: Time for the Oil Companies to Assume Their Share of the Responsibility*, 10 CAL. W. L. REV. 382, 383-91, 396-401 (1974).

13. *See generally* Michael R. Flynn, Note, *The Law of Franchisor Vicarious Liability: A Critique*, 1993 COLUM. BUS. L. REV. 89 (arguing that traditional agency principles are fundamentally inappropriate as courts apply them to franchise relationships, and suggesting possible alternatives to agency principles).

14. *See supra* note 3.

15. *See* David Brittain, Note, *Franchisor's Liability for Acts of Franchisees: A Risk Administration Perspective*, 32 U. FLA. L. REV. 603, 610-11 (1980) (discussing the evolution of plaintiff's theories of recovery from actual agency to apparent agency); *supra* note 12 and accompanying text.

16. The theory of apparent agency was first adopted by the Florida Supreme Court in 1911. *See* T.G. Bush Grocery Co. v. Conely, 55 So. 867, 869 (Fla. 1911) (holding that where a principal has voluntarily placed an agent in a situation in which a person of ordinary prudence is justified in believing that the agent has authority to perform a particular act, and the person relies on that belief in dealing with the agent, the principal is estopped from denying the agent's authority).

17. 174 So. 222 (Fla. 1937).

18. *See id.* at 224.

19. *Id.* at 223. The plaintiff was injured in an automobile accident involving a cab in which she was a passenger. *Id.* Prior to the accident, the plaintiff had telephoned the cab company for a taxi. *Id.* The responding cab bore the insignia of Economy Cabs. *Id.*

20. *Id.*

21. *Id.* at 224.

flag of truce" to earn a profit and then deny liability for damages inflicted.[22] The court found that third parties who own taxicabs, but operate them "in the name of the company at the call of the company and under the colors of the company will be treated as the company."[23]

Although the presumption enunciated by the *Economy Cabs* court could have been logically extended to most franchise relationships, courts were reluctant to do so in many situations.[24] Most notably, very few recoveries were allowed in oil company cases because of what commentators have referred to as the "common knowledge" doctrine.[25] Courts held that no one could reasonably believe that a service station operator was the employee of the oil company because it was a matter of common knowledge that the signs and the uniforms worn by employees merely announced that the oil company's products were for sale at the station.[26]

The Florida Second District Court of Appeal implicitly adopted the common knowledge doctrine in *Cawthon v. Phillips Petroleum Co.*[27] In *Cawthon*, the plaintiff brought suit against an oil company for injuries that occurred in an accident after an employee at a service station negligently repaired his automobile.[28] The oil company argued that the owner of the service station was an independent contractor, and that the

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22. *Id.* The court also stated that "[o]ne of the first principles of hornbook law we were taught in the law school was that for every wrong the law provides a remedy. If the law is to be circumvented by litigants as proposed here, then we were taught a futile lesson." *Id.*

23. *Id.*

24. *See generally* Robert W. Emerson, *Franchisors' Liability When Franchisees Are Apparent Agents: An Empirical and Policy Analysis of "Common Knowledge" About Franchising*, 20 HOFSTRA L. REV. 609, 639 n.112 (1992) (citing numerous cases which rejected application of an apparent agency presumption and sent the issue to the jury).

25. *See* Emerson, *supra* note 24, at 645. The common knowledge doctrine was first enunciated by the Iowa Supreme Court in 1939. *See* Reynolds v. Skelly Oil Co., 287 N.W. 823 (Iowa 1939). The *Reynolds* court held that "[i]t is a matter of common knowledge that [oil company signs] are displayed throughout the country by independent dealers." *Id.* at 827; *see also* John F. Stuart, Comment, *A Franchisor's Liability for the Torts of His Franchisee*, 5 U.S.F. L. REV. 118, 130 (1970) (arguing that with "one sweeping generality," the *Reynolds* court destroyed any possibility of recovering from a gasoline franchisor).

26. *See, e.g., Reynolds*, 287 N.W. at 827. *But cf.* Emerson, *supra* note 24, at 613 (citing empirical evidence which suggests that the general population is in fact ignorant about franchising and does not understand the basics about franchising law such as who owns and operates the property).

27. *See* 124 So. 2d 517, 521 (Fla. 2d DCA 1960).

28. *Id.* at 518. The plaintiff's claims were based on theories of actual agency and apparent agency. *Id.* at 519. The *Cawthon* court refused to recognize the claim of actual agency because the plaintiff did not allege any control by the oil company over the franchisee service station. *Id.* The plaintiff claimed that the oil company had created an apparent agency relationship with the service station by advertising extensively in newspapers that it and its dealers provided competent mechanics for automobile repairs. *Id.*

signs and advertisements merely indicated that the station carried the oil company's products for sale.[29]

On appeal, the *Cawthon* court held that in order for the theory of apparent agency to apply, the injured party must not only have been misled by the franchisor, but also must have relied on that misrepresentation to his detriment.[30] The court found that service station signs and advertisements only show that the oil company's products are sold at the station, and not that the service station is an agent for the oil company with respect to any standard of service or car repair.[31] Thus, the court found that it was unreasonable to assume that these advertisements conferred upon the service station an apparent agency relationship with the oil company.[32]

After *Cawthon*, the question remained whether Florida courts would extend the common knowledge doctrine into other franchise situations, or whether oil company cases were somehow different.[33] Addressing these and other issues in *Orlando Executive Park v. Robbins*,[34] the Florida Supreme Court adopted a three-prong test for apparent agency.[35] The plaintiff in *Orlando Executive Park* was attacked by an unidentified man while she was a guest at an independently owned Howard Johnson's motel.[36] Similar to the plaintiffs in *Economy Cabs*[37] and *Cawthon*,[38] she brought suit under an apparent agency theory.[39]

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29. *Id.* at 518. The oil company's motion for summary judgment was granted by the trial court. *Id.* at 519. The trial court premised its holding on the fact that the plaintiff did not allege that the oil company controlled the methods of operation or the hiring of employees at the service station, and that the plaintiff presented no evidence of actual or apparent agency which would impose liability upon the oil company. *Id.*

30. *Id.* at 520 (citing Gulf Ref. Co. v. Wilkinson, 114 So. 503 (Fla. 1927)).

31. *Id.* at 521.

32. *Id.* In implicitly adopting the common knowledge doctrine, the *Cawthon* court clearly held that a third party must reasonably rely on the franchisor's representations for an apparent agency relationship to exist. *Id.* at 520; *see also* Sydenham v. Santiago, 392 So. 2d 357, 358 (Fla. 4th DCA 1981) (citing *Cawthon* for that proposition). However, the *Cawthon* court did not specify the level of representation necessary to create an apparent agency relationship. *See Cawthon*, 124 So. 2d at 521.

33. *See Bransford,* 648 So. 2d at 121 (noting that *Orlando Executive Park* appears to create some distinction between oil company cases and others).

34. 433 So. 2d 491 (Fla. 1983).

35. *See id.* at 493-94.

36. *Id.* at 492.

37. *Economy Cabs*, 174 So. at 223.

38. *Cawthon*, 124 So. 2d at 518.

39. Orlando Executive Park, Inc. v. P.D.R., 402 So. 2d 442, 445 (Fla. 5th DCA 1981). The plaintiff claimed that the franchisor and franchisee owed her a legal duty to exercise reasonable care for her safety while she was a guest on the premises. *Id.*

Howard Johnson's principal argument was that it lacked any power to control the franchisee.[40] Rejecting this argument, the *Orlando Executive Park* court agreed with the district court's finding that while Howard Johnson's control over the operation of the motel may be relevant to a claim of actual agency,[41] it has no relevance to the theory of apparent agency.[42] The *Orlando Executive Park* court held that three elements are necessary to establish an apparent agency relationship: "(1) a representation by the principal; (2) reliance on that representation by a third person; and (3) a change of position by the third person in reliance upon such representation to his detriment."[43]

The *Orlando Executive Park* court found that the district court had set out the proper standard for analyzing the element of representation.[44] The district court reasoned that there was sufficient evidence for a jury to reasonably conclude that the uniformity of signs, building design, and color scheme satisfied the element of representation because they easily led persons to believe that each hotel was under common ownership or conformed to common standards of service.[45] To the extent *Cawthon* and other oil company cases suggested that signs and advertising alone are never sufficient to create an apparent agency relationship, the *Orlando Executive Park* court limited them to their facts, and disapproved extending their language into other cases.[46] In affirming the decision of the district court,[47] the *Orlando Executive*

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40. *Id.* at 449.

41. *Orlando Executive Park*, 433 So. 2d at 494. The *Orlando Executive Park* court found that the district court set out the proper standard in finding that Howard Johnson's had sufficiently represented the franchisee as its agent. *Id.* Implicit in this finding was the adoption of the district court's analysis of Howard Johnson's defense of lack of control over the franchisee. *See id.*

42. *P.D.R.*, 402 So. 2d at 449.

43. *Orlando Executive Park*, 433 So. 2d at 494.

44. *Id.*

45. *P.D.R.*, 402 So. 2d at 450. The district court distinguished *Cawthon* by stating that signs do not make a gas station a general agent of the oil company because it is common knowledge that gas station operators are independent contractors. *Id.* In addition to the evidence pointed out by the district court, the *Orlando Executive Park* court noted that Howard Johnson's direct participation was significant because it operated a restaurant, lounge, and adult theater in the motel. *Orlando Executive Park*, 433 So. 2d at 494.

46. *Orlando Executive Park*, 433 So. 2d at 494.

47. *Id.* The *Orlando Executive Park* court also held that the district court correctly analyzed the element of reliance. *Id.* The district court found that a jury could reasonably conclude that the plaintiff believed exactly what Howard Johnson's wanted her to believe, that she was dealing with Howard Johnson's, " 'a chain that sells a product across the nation.' " *P.D.R.*, 402 So. 2d at 451. The district court also noted that the plaintiff telephoned a specifically identified establishment that she had stayed at before, as opposed to just any motel. *Id.*

Park court held that the existence of an agency relationship is ordinarily a question for the jury, and that it can be proved by the facts on a case-by-case basis.[48]

The instant court retreated from the broad language espoused in *Orlando Executive Park* which suggested that advertising and display of corporate logos alone can create an apparent agency.[49] The instant court stated that the only relevant fact in *Orlando Executive Park* was that the franchisor actually operated several components within the motel.[50] The instant court found that this fact alone demonstrated to the public that the franchisee was in substantial control of the premises.[51] Adopting the common knowledge doctrine, the instant court reasoned that in today's world, it is well understood that the use of franchise logos or other methods of advertising does not necessarily translate into actual or apparent control by the franchisor over any substantial part of the franchisee's business.[52]

Disagreeing with the district court in *Orlando Executive Park*, the instant court held that in order to create an agency relationship with a franchisee, the franchisor must have apparently or directly participated in managing or controlling the acts of the franchisee.[53] In deciding that petitioner lacked any power to control the franchisee, the instant court found it important that the contract itself expressly stated that the franchisee was an independent businessman and that nothing in the contract was to be interpreted as creating a right in petitioner to exercise control over the franchisee.[54]

The instant court agreed with the *Orlando Executive Park* court that the elements necessary to prove an apparent agency are that there has been a representation by a purported principle; a third party has relied on that representation; and the third party has changed position in reliance on that representation.[55] However, the instant court found that respondent failed to allege the minimum level of representation necessary to satisfy the first of these elements.[56] The instant court held

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48. *Orlando Executive Park*, 433 So. 2d at 494 (citing Scott v. Sun Bank of Volusia County, 408 So. 2d 591 (Fla. 5th DCA 1981)).

49. *See Bransford*, 648 So. 2d at 121 (finding that the *Orlando Executive Park* language was misleading and invited unnecessary confusion).

50. *Id.*; *see also supra* note 45 and accompanying text.

51. *Bransford*, 648 So. 2d at 121.

52. *Id.* at 120.

53. *Id.* The *Orlando Executive Park* court adopted the district court's analysis of apparent agency. *Orlando Executive Park*, 433 So. 2d at 494. The district court found that control had no relevance to the theory of apparent agency. *P.D.R.*, 402 So. 2d at 449.

54. *Bransford*, 648 So. 2d at 120-21.

55. *See id.* at 121.

56. *Id.*

that respondent alleged no genuine representation by petitioner, but merely assumed that such a representation was implicit in the use of petitioner's products and symbols throughout the station.[57]

In a strong dissent, Justice Shaw agreed with the majority that the underlying issue in the instant case was whether petitioner had control over the quality of customer service at the station.[58] However, Justice Shaw found that service was a matter of extensive contractual agreement,[59] pointing out that provisions in the contract required exemplary customer service and were enforceable by petitioner.[60] Justice Shaw also noted there was testimony that petitioner's representatives monitored the station regularly and were at times on the premises discussing business operations.[61] Justice Shaw would have affirmed the decision of the district court because he found that the record contained vast evidence supporting respondent's claims that an apparent agency relationship existed, and that summary judgment was therefore inappropriate.[62]

Retreating from the principal holding espoused by the court only twelve years earlier in *Orlando Executive Park*,[63] the instant court held that signs and logos alone are not sufficient to create an apparent agency relationship.[64] Instead, the instant court examined the contract itself to

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57. *Id.*

58. *Id.* at 123 (Shaw, J., dissenting).

59. *Id.* (Shaw, J., dissenting). The contract provided in relevant part: "'Buyer is an independent businessman, and nothing in this contract shall be deemed as creating any right in Seller to exercise any control over . . . the conduct or management of Buyer's business, *subject only to Buyer's performance of the obligations imposed under this contract.*'" *Id.* (Shaw, J., dissenting) (second alteration in original). The obligations imposed under the contract included: "Buyer agrees that while using any trademark, brand name, or other identification of Seller, Buyer shall: (a) *render prompt, fair, courteous, and efficient service to Buyer's customers*; (b) promptly investigate all customer complaints, and make such adjustments which are reasonable and appropriate . . . (d) *provide qualified attendants to render good service to customers. . . .*" *Id.* (Shaw, J., dissenting) (alterations in original).

60. *Id.* (Shaw, J., dissenting).

61. *Id.* at 122-23. (Shaw, J., dissenting) (noting that petitioner's representatives checked on the station's pricing, appearance, and advertising).

62. *Id.* at 122 (Shaw, J., dissenting). Justice Shaw concluded that there was sufficient evidence supporting respondent's claim that petitioner represented that the station was its agent. *Id.* (Shaw, J., dissenting). Justice Shaw noted that petitioner owned the station and prominently displayed its logos, trademarks, and color schemes to stimulate the station's business. *Id.* (Shaw, J., dissenting). In addition, Justice Shaw found important the fact that the employees were required to wear petitioner's uniforms and that the employee was wearing such a uniform when he assaulted respondent. *Id.* (Shaw, J., dissenting).

63. *See supra* notes 41-48 and accompanying text.

64. *Bransford,* 648 So. 2d at 121; *see also supra* text accompanying notes 49-51 (explaining that advertising and displaying corporate logos alone cannot create apparent agency

determine if petitioner had any power to control the franchisee.[65] The district court in *Orlando Executive Park* had flatly rejected this analysis, holding that control was not relevant to the theory of apparent agency.[66]

Apparent agency is based on the "appearance" of an agency relationship and is determined by representations made by the principal to third parties.[67] Typical consumers who happen upon a business franchise are not parties to the contract and therefore should not be limited in their recovery by its terms.[68] Many consumers, in fact, believe that when they visit local franchises they are patronizing large national corporations which will stand behind their products and their service.[69] The *Economy Cabs* court boldly stated that a corporation should not be permitted to "parade under a flag of truce" to earn a profit and then deny liability for damages inflicted.[70] That court found that one of the fundamental principles of our legal system is that for every wrong, the law affords a remedy.[71]

Yet, by injecting notions of control into the law of apparent agency, the instant court would seemingly refuse to allow any plaintiff to recover from a franchisor who has represented to the public through signs, logos, trademarks, and uniforms that another is his agent, but who has, in fact, no contractual power to control the agent.[72] Even if the instant court would truly require some modicum of control, as Justice Shaw points out in dissent, the contract itself did give petitioner the power to exercise control over the franchisee.[73] Petitioner had a contractual right to enforce the provisions requiring the franchisee to

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but operation of business components by the franchisor can).

65. *Bransford*, 648 So. 2d at 120-21.

66. *P.D.R.*, 402 So. 2d at 449; *see supra* notes 40-42 and accompanying text; *see also supra* note 3 (discussing the differences between actual and apparent agency).

67. RESTATEMENT (SECOND) OF AGENCY § 267 (1957). For a description of this Restatement section, see *supra* note 12.

68. *See* Dwight Golann et al., *In Search of Deeper Pockets: Theories of Extended Liability*, 71 MASS. L. REV. 114, 128 (1986) (noting that courts have uniformly held that the parties' description of the relationship is not determinative); *see also* Fruchter v. Lynch Oil Co., 522 So. 2d 195, 200 (Miss. 1988) (holding that if a party offers its services to the public, and customers are led to believe that they are dealing with that party, an undisclosed agreement may not be used to defeat a plaintiff's action).

69. *See* Emerson, *supra* note 24, at 613 (citing empirical evidence which suggests that the general population is in fact ignorant about franchising, and does not understand the basics about franchising law, such as who owns and operates the property).

70. *Economy Cabs*, 174 So. at 224.

71. *Id.*

72. *See Bransford*, 648 So. 2d at 120-21; *supra* notes 53-54 and accompanying text.

73. *See Bransford*, 648 So. 2d at 123 (Shaw, J., dissenting). For a summary of Justice Shaw's dissenting opinion, see *supra* note 59.

provide qualified attendants to render exemplary customer service.[74] This appears to suggest that the instant court would require some level of control beyond the mere ability to enforce the provisions of the contract.

Adopting the common knowledge doctrine,[75] the instant court held that it is well known that the mere use of franchise trademarks and advertisements does not necessarily indicate that the franchisor has actual or apparent control over the franchisee's business.[76] The *Cawthon* court agreed with this basic assumption.[77] Analyzing the control issue as one of reliance, the *Cawthon* court held that it was unreasonable for the plaintiff to assume that advertisements for the oil company's products would confer any duty upon the principal to maintain a certain standard of service at the station.[78]

The instant court could easily have decided this case by following the reasoning of *Cawthon* and other oil company cases. Courts throughout the nation have consistently and uniformly rejected extending liability to oil companies for the torts of their franchisees.[79] However, by limiting itself to the issue of representation,[80] the instant court was required to either accept or reject the notion that the use of signs, logos, and corporate uniforms could be sufficient to create an apparent agency relationship. In rejecting the principal holding of *Orlando Executive Park*,[81] the instant court ignored not only common sense[82] but also explicit provisions in the contract which clearly indicated that petitioner

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74. *Bransford*, 648 So. 2d at 123 (Shaw, J., dissenting); *see supra* notes 59-60 and accompanying text (providing relevant portions of the contractual language).

75. *See supra* notes 25-26 and accompanying text.

76. *Bransford*, 648 So. 2d at 120.

77. *See Cawthon*, 124 So. 2d at 521.

78. *Id.*; *see supra* notes 30-32 and accompanying text.

79. *See, e.g.*, Wood v. Shell Oil Co., 495 So. 2d 1034, 1039 (Ala. 1986) (noting that the majority of courts have refused to find an apparent agency relationship between a service station operator and an oil company because it is common knowledge that service stations are owned by independent dealers); Pitts v. Ivester, 320 S.E.2d 226, 228 (Ga. Ct. App. 1984) (finding no apparent agency where a service station employee threatened a customer with a gun); Sherman v. Texas Co., 165 N.E.2d 916, 917 (Mass. 1960) (holding that the oil company's signs only indicated that its gasoline products were sold at the station); Watkins v. Mobil Oil Corp., 352 S.E.2d 284, 287 (S.C. Ct. App. 1986) (reasoning that the plaintiff's claim of apparent agency must fail because he patronized the service station on the basis of its proximity to his house and not because of representations by the oil company).

80. *See Bransford*, 648 So. 2d at 121.

81. *Id.* The *Orlando Executive Park* court held that a franchisor is clearly representing to the public that a certain level of service can be found there when it allows a franchisee to use its uniform building design, color scheme, and logos. *See Orlando Executive Park*, 433 So. 2d at 494; *supra* notes 44-47 and accompanying text.

82. *See supra* note 69 and accompanying text.

was using these representations to distinguish its product and foster public confidence in its service stations.[83]

Thus, rather than leaving a well-settled doctrine undisturbed, the instant court chose to address *Orlando Executive Park,* finding that the holding in that case was misleading and invited unnecessary confusion.[84] In so doing, however, the instant court may have made a sweeping change to the doctrine of apparent agency in Florida. If the holding of the instant case is extended beyond oil company cases and into other franchise situations, the instant court may have eliminated injured plaintiffs' most successful and potent argument.[85] By examining the terms of the contract,[86] the instant court would apparently allow a franchisor to effectively absolve itself from liability by carefully drafting provisions disclaiming any power to control the franchisee. This outcome clearly would contradict the policy[87] behind the theory of apparent agency by binding third party consumers to the terms of an unfamiliar contract,[88] and easily could lead to unconscionable results in the future.

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83. *See Bransford,* 648 So. 2d at 123 (Shaw, J., dissenting); *see also supra* notes 59-61 and accompanying text (discussing petitioner's role in the operation of the service station).

84. *Bransford,* 648 So. 2d at 121.

85. Generally, plaintiffs claim the existence of an apparent agency relationship rather than an actual agency relationship because the control exerted by the franchisor over the franchisee will not be deemed sufficient to support a claim of actual agency. *See* Randall K. Hanson, *The Franchising Dilemma: Franchisor Liability for Actions of a Local Franchisee,* 19 N.C. CENT. L.J. 190, 198 (1991) (noting that there are an increasing number of cases which impose liability upon franchisors under an apparent agency theory when the plaintiff cannot offer sufficient evidence of control to support a finding of actual agency).

86. *Bransford,* 648 So. 2d at 120; *see supra* text accompanying notes 53-54.

87. The *Economy Cabs* court recognized the inherent unfairness in such situations, holding that corporations who represent franchisees as their agents should be estopped from denying liability for damages perpetrated, regardless of whether the corporation has any actual power or control. *See Economy Cabs,* 174 So. at 224; *see also supra* notes 21-23 and accompanying text (explaining the reasoning of the *Economy Cabs* court).

88. *See supra* note 68 and accompanying text.