

**MARK AND NZINGA
TALBERT**

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NO. 2007-CA-0211

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**STATE FARM FIRE AND
CASUALTY INSURANCE
COMPANY**

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STATE OF LOUISIANA

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MURRAY, J., DISSENTS WITH REASONS

I respectfully dissent. I cannot agree that the record supports the trial court's determination that the Talbert's made a material misrepresentation with the intent to deceive State Farm. The misrepresentation apparently is that the VIN number on the documentation that Mr. Talbert presented to State Farm when he insured the vehicle could not have been correct as that VIN number later was determined to be on another vehicle.

However, there is no evidence that Mr. Talbert was aware that the information he provided to State Farm was not accurate. All of the documentation that Mr. Talbert had in his possession showed the VIN number that he gave to State Farm. Mr. Offray provided Mr. Talbert with an Ohio title to a white Yukon Denali bearing the VIN number that later proved to be incorrect. There was nothing about the title that would have alerted Mr. Talbert to the fact that the information contained thereon, specifically the VIN number, was not correct. In fact, Mr. Lightfoot, the Assistant Chief of Investigations for the Ohio Bureau of Motor Vehicles, could not opine that the title was invalid. Nether Mr. Fearn nor the employees at the State Farm agency saw anything that caused them to question the validity of Mr. Talbert's documentation of ownership or the accuracy of the VIN number. Apparently, no one checked the VIN number on the white Yukon

Denali that Mr. Talbert insured, and for which he paid premiums for over a year before it was stolen.

While it appears that Mr. Offray did not, in fact, purchase the vehicle that he donated to the Talberts, there was no evidence presented that either Mr. or Mrs. Talbert was aware of that fact. The trial court and the majority opine that the Talberts should have questioned Mr. Offray about how he could have afforded the vehicle he was giving them or why the vehicle had a Georgia temporary tag and why he had a Georgia insurance card. In hindsight, with all the information that has come to light since the donated vehicle was stolen, it would have been prudent of the Talberts to question Mr. Offray. Their failure to do so, however, does not establish that they were aware that the VIN number did not match the vehicle they insured. There is absolutely no evidence that the Talberts did anything other than rely on the Ohio title that Mr. Offray presented.

Because the record does not support the conclusion that the Talberts made a material misrepresentation with the intent to deceive State Farm in obtaining coverage for the vehicle that was donated to them, I would reverse the trial court and find that the Talberts are entitled to recover \$37,300, the value of the stolen vehicle at the time of the theft, from State Farm.

