

>> ORDER IN THE COURT.  
THE SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.

THE CHIEF JUSTICE CHARLES T  
CANNADY PRESIDING.

>> WELCOME TO THIS SESSION OF  
THE FLORIDA SUPREME COURT.

I WOULD LIKE TO EXTEND A  
SPECIAL WELCOME TO THE SUPREME  
COURT.

WE ARE DELIGHTED THAT YOU ARE  
ON THE COURT, DELIGHTED TO HAVE  
YOU AS A COLLEAGUE.

WE WELCOME YOU AND LOOK FORWARD  
TO WORKING WITH YOU.

AND A SPECIAL CEREMONY THAT  
HAS NOT BEEN PLANNED YET AND A  
SPECIAL CELEBRATION, YOU ARE  
JOINING THE CORE.

HE DID TURN TO THE FIRST CASE  
ON OUR DOCKET WHICH IS ON A  
PORTFOLIO RECOVERY ASSOCIATES.

>> MAY IT PLEASE THE COURT, MY  
NAME IS LOUIS ROSENBLOOM AND I  
REPRESENT THE PETITIONERS, I  
PREVIOUSLY RESERVED 5 MINUTES.  
THE QUESTION IS WHETHER SECTION  
57.1057, THE RECIPROCAL,  
APPLIES TO AN ACTION BROUGHT TO  
THE THEORY OF ACCOUNT STATED.  
THEY ARE BROUGHT BY CONSUMER  
DEBT BUYER AGAINST TWO HOLDERS  
OF BANK CREDIT CARDS.

A CONTRACT BETWEEN THE ORIGINAL  
CREDIT CARDS AND THE CUSTOMERS  
THAT CONTAINED A UNILATERAL FEE  
PROVISION ALLOW FOR ATTORNEYS  
FEES FOR COLLECTION ACTIONS  
ONLY TO THE BANK.

THE FIRST DISTRICT AND THE HAM  
CASE, THE CASE BELOW, THE  
STATUTE DID NOT APPLY TO CAUSES  
OF ACTION WHILE IN THE BUSHNELL  
CASE, THE SECOND DISTRICT READS  
THE OPPOSITE CONCLUSION.

THERE ARE NO DISPUTED ISSUES OF  
FACT, NEITHER SIDE CONTENDS THE  
STATUTE IS AN AMBIGUOUS, WITH  
THE COURT'S INDULGENCE I WOULD  
LIKE TO PROCEED WITH PARSING

THE LANGUAGE OF THE STATUTE, IT IS VERY NECESSARY.

THE STATUTE IS ONE SENSE, IT CONTAINS TWO CLAUSES, THE FIRST CLAUSE IS WHAT THE GRAMMARIANS CALL A SUBORDINATE CLAUSE BEGINS WITH THE WORD IF.

THAT SIGNALS IT IS -- THE CLAUSE READS IF A CONTRACT CONTAINS A PROVISION ALLOWING ATTORNEYS FEES TO A PARTY WHETHER HE OR SHE IS REQUIRED TO TAKE ANY ACTION TO ENFORCE THE CONTRACT.

STOPPING THERE, WHAT THIS CLAUSE STATES IS YOU LOOK TO THE CONTRACT, NOT THE CAUSE OF ACTION THAT WAS FILED, YOU LOOK TO THE CONTRACT TO SEE IF IT CONTAINS A PROVISION ALLOWING FEES TO ENFORCE THE CONTRACT AND IN THIS CASE, OF COURSE, IT DID.

THERE IS A CLAUSE IN THE CREDIT CARD AGREEMENT WHICH ALLOWS FOR FEES TO COLLECTION ACTIONS. ONCE YOU SATISFY THAT CLAUSE YOU TURN TO THE SECOND OR THE MAIN CLAUSE AND THAT SAYS THE COURT MAY ALLOW A REASONABLE ATTORNEY FEES TO THE OTHER PARTY WHEN THAT PARTY PREVAILS IN ANY ACTION WITH RESPECT TO THE CONTRACT.

WITH RESPECT TO THE CONTRACT IN OUR JUDGMENT THE KEY TO THE CASE SO THE ISSUE IN THIS CASE, WHETHER IT STATED CAUSES OF ACTION TO ENFORCE THE CONTRACT BUT WHETHER THEY WERE ACTION RESPECT TO THE CONTRACT.

PORTFOLIO IS REPEATEDLY, AND IN THE FIRST CLAUSE ENFORCING THE CONTRACT.

SO YOU WOULD NEVER HAVE AN ACTION TO ENFORCE THE CONTRACT THAT WASN'T ALSO AN ACTION WITH RESPECT TO THE CONTRACT.

THERE ARE SEVERAL REASONS, THE ACCOUNT STATED CAUSES OF

ACTION, WITH RESPECT TO THE CONTRACT.

THE LANGUAGE ITSELF WITH RESPECT TO MUCH BROADER THAN BREACH OF CONTRACT RELATED TO, ASSOCIATED WITH.

FOR PORTFOLIO, THE PLAINTIFF IN THESE CASES CANNOT PROVE THE ELEMENT FREE ACCOUNT STATED CAUSES OF ACTION WITHOUT RELYING ON THE CONTRACT.

BY HIGHLIGHTING THE ALLEGATIONS THAT IS IN THE HAM OPINION IN PAGE 455.

THE FIRST ELEMENT OF THE CAUSE OF ACTION LED BY A PORTFOLIO IS THAT THE DEBTOR HAD BUSINESS RELATIONS WITH THE BANK.

ALL OF THE CASES GOING BACK 100 YEARS HOLD THAT FOR AN ACCOUNT STATED CLAIM TO GO FORWARD YOU JUST HAVE TO HAVE A BUSINESS RELATIONSHIP WITH THE DEFENDANT.

THE ONLY WAY PORTFOLIO CAN PROVE THEY HAVE A BUSINESS RELATIONSHIP WITH CREDIT CARD HOLDERS IS THE CONTRACT ITSELF. THAT ESTABLISHED THE BUSINESS RELATIONSHIP.

THE SECOND ELEMENT OF THE CAUSE OF ACTION HIGHLIGHTED BY THE HANGING COURT WAS THAT THE DEBTORS OBTAINED AND USED CREDIT CARDS TO MAKE PURCHASES RELATING IN UNPAID BALANCES.

AGAIN, THE ONLY WAY THE DEBTORS COULD USE A CREDIT CARD AND INCUR BALANCES IS BASED ON THE LANGUAGE OF THE CONTRACTS.

>> CAN I ASK YOU A QUICK QUESTION, THE CONTRACTS WITH RESPECT TO THE CONTRACTS REFERRED TO AN ACTION TO ENFORCE THE CONTRACT.

WOULD YOU STILL BE ABLE TO PREVAIL, ARE YOU SAYING ESSENTIALLY, THIS IS AN ACTION TO ENFORCE THE CONTRACT OR DO WE HAVE TO TAKE A BROADER VIEW

WITH RESPECT TO THE CONTRACT  
RATHER THAN ENFORCING THE  
CONTRACT.

>> WITH RESPECT TO THE CONTRACT  
WHICH IS INDEED BROADER THAN  
THE LANGUAGE ENFORCE THE  
CONTRACT.

THE LANGUAGE ENFORCE THE  
CONTRACT REFERS THE CONTRACT  
ITSELF, NOT THE NATURE OF THE  
CAUSE OF ACTION.

THE THIRD ELEMENT HIGHLIGHTED,  
THE BANK RENDERED BILLING  
STATEMENTS TO THE DEBTORS THAT  
WERE NOT OBJECTED TO.

THE ONLY REASON TO SEND THE  
DEBTORS A BILLING STATEMENT IS  
THEY HAD A CONTRACT WHERE THEY  
AGREED TO PAY THE UNPAID  
BALANCES.

THE BILLING STATEMENTS  
THEMSELVES WERE ATTACHED TO THE  
COMPLAINT BY PORTFOLIO AND IT  
IS INTERESTING BECAUSE THEY NOT  
ONLY INCLUDE THE UNPLAYED  
BALANCES BUT LATE FEES, \$35  
APIECE, THEY INCLUDE INTEREST  
CHARGES.

IT WAS 29.99% AND IN MISS  
FOXHALL'S CASE 26.99%.

THESE WERE NOT PULLED OUT OF  
THIN AIR.

THEY ARE RIGHT OUT OF THE  
CONTRACT.

THIS CONTRACT CALLS FOR 29.99%  
INTEREST AND A \$39 LATE FEE AND  
STEPHEN AKE INITIALLY WHAT HAS  
VERY WILL INTEREST RATE.

>> LOUIS ROSENBLUM, WITH THEIR  
CLAIM FOR ATTORNEYS FEES BY THE  
CREDITOR?

>> THERE WAS NOT.

IF I COULD ADDRESS THAT, THEY  
SAY WE WOULDN'T BE ENTITLED TO  
IT.

I WOULD SUGGEST TO THE COURT  
THE STRATEGY THAT PORTFOLIO AND  
OTHER DEBT BUYERS HAVE BEEN  
EMPLOYING IS PRETTY OBVIOUS.  
THEY WANT TO PLEAD ACCOUNT

STATED IS POSSIBLY A WAY TO AVOID PAYING PREVAILING PARTY ATTORNEYS FEES AND IF THEY ASK FOR ATTORNEYS FEES THEMSELVES THEIR STRATEGY WOULD FALL APART.

>> IN THAT REGARD, WHEN THE FIRST DCA SAYS PORTFOLIO PREVAILED AT THE TRIAL LEVEL IT WOULD NOT HAVE BEEN ENTITLED TO FEES UNDER THE CREDIT CONTRACTS, THEY DIDN'T PLEAD ENTITLEMENT TO FEES UNDER THE CASE LAW, IT SEEMS LIKE IT IS BROAD ENOUGH THAT IF THEY WANTED FEES FOR THIS THEY COULD HAVE GOTTEN IT.

>> THE FIRST DCA WAS INCORRECT WHEN THEY MADE A STATEMENT THAT THEY NEVER WOULD HAVE REQUESTED, THAT WOULD HAVE RUINED THEIR STRATEGY. THAT BRINGS US TO THE COURT'S DECISION, COFFEE VERSUS CAN TELL WHICH THEY ARE IN DISAGREEMENT ABOUT, TO BE INEXTRICABLY INTERTWINED, INTERPRETED ATTORNEYS -- USING THE LANGUAGE ARISING OUT OF WHETHER THE FEE AGREEMENT COVERED ACTION FOR FRAUDULENT MISREPRESENTATION AND IN LANGUAGE THAT HAS BEEN REPEATED IN ALL THE COURT CASES AROUND THE STATE AND IN THE BRIEFS, THIS COURT SAID HAD THERE BEEN NO CONTRACT THE ENSUING MISREPRESENTATION WOULD NOT HAVE OCCURRED.

THE CAUSE OF ACTION WAS INEXTRICABLY INTERTWINED, THAT FITS OUR CASE, HAD THERE BEEN NO CREDIT CARD AGREEMENT, THERE WOULD HAVE BEEN A BILLING STATEMENT ISSUED, NO ACCOUNT STATED AND THE BUSHNELL COURT WE BELIEVE CORRECTLY SAID THE TERM ARISING OUT OF, NOT MATERIALLY DIFFERENT ON THE LANGUAGE IN OUR STATUTE, I

SUBMIT THAT THE TERM WITH  
RESPECT TO EVEN BROADER THAN  
ARISING OUT OF IT.

THE NEXT ARGUMENT I WANT TO  
ADDRESS IS --

>> BEFORE YOU DO THAT, GOING  
BACK TO THE STATUTORY LANGUAGE,  
57.107.

AND THAT IS REFERRING TO A  
CONTRACT, AND THE CAUSE OF  
ACTION, IS THE LINKAGE BROADER  
THAN THAT, TAKE ANY ACTION TO  
ENFORCE THE CONTRACT RATHER  
THAN FILE A CONTRACT CAUSE OF  
ACTION.

THE ACTION IN CONTEXT WITH WHAT  
PROCEEDED, ANY ACTION THAT IS  
LIMITED TO THE LEGAL CAUSE OF  
ACTION.

WHAT IS YOUR RESPONSE TO THAT?

>> MY INTERPRETATION OF THE  
STATUTE HAS EVOLVED OVER TIME.  
THE KEY LANGUAGE IS ENFORCE THE  
CONTRACT.

WE MADE THE ARGUMENTS, JUSTICE  
LAWSON, WHAT YOU SAID IS THE  
ACCOUNT WAS CONSIDERED AN  
ACTION TO THE CONTRACT AND IN  
THE CERTIFIED QUESTION TO THE  
DCA THAT I DRAFTED IT FOCUSES  
ON THE CONTRACT BUT BUSHNELL  
TAUGHT ME THAT I WAS WRONG, THE  
OPERATIVE LANGUAGE WITH RESPECT  
TO CONTRACT, AND TO SATISFY THE  
FIRST CLAUSE, WITH THAT CASE  
THEY ARE VERY BROAD, AND I WILL  
PARAPHRASE IF WE TAKE ACTION TO  
CONNECT ON YOUR ACCOUNT THEY  
GET ATTORNEYS FEES, WE WILL  
COLLECT THERE ARE NUMEROUS  
CAUSES OF ACTION TO DO THAT,  
THE ACCOUNT STATED AND I AGREE  
IT DOES NOT HAVE TO BE A BREACH  
OF CONTRACT CLAUSE OF THE  
STATUTE, THE CONTRACT YOU ARE  
LOOKING AT IN THE FIRST CLAUSE,  
NOT THE CAUSE OF ACTION ITSELF  
IN THE WAY TO ILLUSTRATE THAT  
POINT, BUSHNELL RELIED ON IS THE  
CASE IF YOU WILL RECALL THERE

WERE TWO CONTRACTS, ONE WITH A FEE CLAUSE.

AND ONE WITHOUT THE FEE CLAUSE AND THE PREVAILING PARTY ARGUED THE CAUSE OF ACTION WAS RELATED TO THE ONE THAT HAD THE FEE CLAUSE BUT THE ACTION WAS BROUGHT BY THE PLAINTIFF BASED ON THE ONE THAT DID NOT HAVE THE FEE CLAUSE AND WHEN THE DEFENDANT REQUESTED THE FEES THE DEFENDANT REQUESTED FEES FROM THE CONTRACT THAT DIDN'T HAVE THE FEE PROVISIONS SO CALL IT A PLEADING MISTAKE IF YOU WILL, BUT THE POINT IS THAT DECISION ILLUSTRATES THE FACT THAT IN THE FIRST CLAUSE YOU ARE LOOKING AT THE CONTRACT UNDER WHICH THE PREVAILING PARTY IS CLAIMING FEES, NOT NECESSARILY THE CONTRACT RELATED THE CAUSE OF ACTION THAT IS ACTUALLY BROUGHT.

>> HOW WOULD WE BE FURTHERING THE PURPOSE OF THE STATUTE IF WE SAID THE RECIPROCITY PROVISION, THE PLAINTIFF IS NOT RELYING OR SEEKING FEES?

>> ONE COURT SAID TO LEVEL THE PLAYING FIELD BETWEEN PARTIES THAT HAVE A GREAT DEAL OF POWER AND THOSE THAT ARE UNSOPHISTICATED AND HAVE NO BARGAINING POWER AND CERTAINLY A DECISION UPHOLDING BUSHNELL WOULD FURTHER THAT GOAL.

WHAT PORTFOLIO, IN ONE OF THEIR AMICUS, RULING IN THEIR FAVOR WILL CREATE A SLIPPERY SLOPE, BUT THERE WILL BE MUCH LITIGATION ABOUT ATTORNEYS FEES THAT I WOULD SAY IF THESE DEBT BUYERS BRING MERITORIOUS CAUSES OF ACTION, THEY COULD PROVE IN COURT WITH ADMISSIBLE EVIDENCE THEY'VE GOT NOTHING TO WORRY ABOUT.

THIS CASE IS A GOOD EXAMPLE. PORTFOLIOS TO MY CLIENT AND

THEY WENT TO TRIAL FOR THE COUNTY JUDGE AND COULDN'T PROVE THEIR CASE, THEY BROUGHT A WITNESS THAT DID NOT HAVE ANY ADMISSIBLE EVIDENCE, FOR THAT REASON THE COUNTY COURT INJURED JUDGMENT IN FAVOR OF THE DEFENDANT.

>> YOU CONSUMED HALF OF YOUR REBUTTAL TIME BUT I WANT TO POINT THAT OUT TO YOU.

>> I WANT TO RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL, THANK YOU VERY MUCH.

>> COUNSEL?

>> GOOD MORNING, CHIEF JUSTICE, MAY IT PLEASE THE COURT, MY NAME IS DIANE DEWOLF AND I REPRESENT PORTFOLIO RECOVERY ASSOCIATES.

IF YOU WILL PERMIT ME A MINUTE OR TWO AT THE BEGINNING, IT WOULD BE IMPORTANT FOR THIS COURT TO UNDERSTAND THE ELEMENTS OF AN ACCOUNT STATED HAZMAT CHECK.

IN OUR BRIEFS WE CITED CASES FROM THIS COURT AND ALL FIVE DISTRICT COURT OF APPEAL FROM 1914 UP UNTIL THE PRESENT CASES OF 2018 THE CAUSE OF ACTION FOR ACCOUNT STATED IS NOT ANTIQUATED OR OBSOLETE AND CERTAINLY NOT NOVEL.

FROM THE CASES WE CITED IN OUR BRIEFS THE FOLLOWING CONCEPTS APPLY.

THE ACTION FOR ACCOUNTS STATED IS BASED ON AGREEMENT BETWEEN THE PARTIES TO PAN AMOUNT BASED ON ACCOUNTING.

THE ACCOUNT STATED IS NOT BASED ON ANY CONTRACTS.

A CONTRACT IS NOT NECESSARY TO THE CAUSE MATCH AND.

CAUSE OF ACTION CAN APPLY, THERE IS NOT A CONTRACT BETWEEN PARTIES.

THE ORIGINAL CAUSE FOR INDEBTEDNESS NEED NOT BE STATED

IN THE CAUSE OF ACTION.  
THE PROMISE TO PAY, FROM  
ACCOUNTS STATED IS FOUND WHEN  
PRIOR HISTORY OF BUSINESS  
RELATIONSHIPS WHEN BILLING  
STATEMENTS ARE RENDERED TO ONE  
PARTY AND NO OBJECTION MADE,  
THE ACCOUNT IS CORRECT AND --  
>> LET ME ASK YOU THIS.  
DON'T YOU HAVE TO SHOW THERE  
HAD BEEN PRIOR DEALINGS BETWEEN  
THE PARTIES?

A CREDIT CARD COMPANY WITH WHOM  
I HAVE NO CREDIT CARD, NO  
RELATIONSHIP AT ALL COULDN'T  
SEND ME A BILL STATEMENT, WE  
COLLECT ON THAT BECAUSE WE  
THREW IT AWAY BECAUSE THIS IS  
NOT MINE, NO RELATIONSHIP WITH  
THESE THINGS.

AND WE ESTABLISH ACCOUNT STATED  
WITHOUT SHOWING THERE HAD BEEN  
SOME PREEXISTING RELATIONSHIP.

>> ABSOLUTELY NOT.

THAT'S ONE OF THE ELEMENTS OF  
ACCOUNT STATED.

THERE MUST BE A SHOWING OF A  
PRIOR BUSINESS RELATIONSHIP.

>> IS IT THE BASIS FOR THE  
PRIOR RELATIONSHIP THAT  
ESTABLISHED THE CREDIT CARD  
AGREEMENT.

>> THE PRIOR BUSINESS  
RELATIONSHIP IS SHOWN BY THE  
BILLING STATEMENTS, THAT IS  
WHERE THIS --

>> THE BILLING STATEMENT THAT I  
RECEIVED IN MY HYPOTHETICAL  
WHERE I HAVE NO RELATIONSHIP  
THAT COMES IN OUT OF THE BU --  
OUT OF THE BLUE, AND THAT SHOWS  
SENT ME A BILLING STATEMENTS.  
I'M NOT FOLLOWING YOUR  
REASONING.

>> IN THIS PARTICULAR CASE WE  
HAD 12 MONTHS OF BILLING  
STATEMENTS SENT TO THE SAME  
ADDRESS TO THE SAME PARTY, THE  
PORTFOLIO PURCHASED THE ACCOUNT  
THAT NOTICE WAS SENT TO THE

SAME ADDRESS, THE FURTHER COMMUNICATION BY PORTFOLIO LISTEN TO THE SAME ADDRESS AND WHEN SERVICE WAS NECESSARY THEY RECEIVED FROM SERVICE OF PROCESS WENT TO THE SAME ADDRESS.

THE PROBLEM IN THIS CASE IN YOUR OTHER CASES CITED, THE KEY CASE --

>> MUST BE THE CASE, SOMETHING WASN'T ESTABLISHED HERE.

>> EXACTLY AND THAT IS MY POINT.

THE BUSINESS RECORDS CUSTODIAN IS NOT ABLE TO SATISFY THE BUSINESS RECORDS TO THE SATISFACTION IN COURT.

THE PRIOR BUSINESS RELATIONSHIP WAS ESTABLISHED.

WHAT HAPPENED?

PORTFOLIO LOSES THE CASE BUT DOESN'T TURN IT INTO AN ACTION UNDER THE CONTRACTS.

>> THIS IS SOMETHING THAT PUZZLED ME, MAY NOT BE A DECISIVE FACTOR BASED ON THE ARGUMENTS PRESENTED BUT I AM HAVING TROUBLE WRAPPING MY MIND AROUND YOUR ASSERTION THAT THE ATTORNEYS FEE PROVISIONS IN THESE TWO DIFFERENT CASES DID NOT ALLOW -- WOULD NOT HAVE ALLOWED THE CREDITOR TO COLLECT ATTORNEYS FEES.

THERE IS A BROAD ATTORNEYS FEE PROVISION, THE FIRST SAYS IF WE AS AN ATTORNEY TO COLLECT YOUR ACCOUNT.

I DON'T UNDERSTAND ANY THEORY OF WHICH ACTION FOR ACCOUNTS STATED WOULD NOT BE COVERED BY THE SCOPE OF THE ATTORNEYS FEE PROVISION.

>> THERE TWO ANSWERS TO THAT. I WANTED TO GIVE YOU THE HISTORY OF ACCOUNT STATED.

THE CONTRACT TO THE INTERPRETATION TO PROVING AN ACCOUNT STATED.

AND THE CONTRACT IS UNDER SEAL  
BUT WE DO KNOW THERE ARE  
CERTAIN PROVISIONS RELATED TO  
PAYMENT AND DELIVERY, DATE OF  
PAYMENT AND DELIVERY, THE CAUSE  
OF ACTION TO BRING A CLAIM  
UNDER THE CONTRACT AND BROUGHT  
IT BASED ON THE BILLING  
STATEMENTS RENDERING TO THE  
DEFENDANT IN THAT CASE AND THE  
DEFENDANT SAID YOU CAN'T DECIDE  
THIS BECAUSE WE HAVE A CONTRACT  
IN THE REPORT SAID NO.

I HAVE A BILLING STATEMENT.

>> I DID NOT UNDERSTAND HOW  
THAT WAS RESPONSIVE TO THE  
QUESTION I ASKED YOU ABOUT THE  
SPECIFIC PREVISION IN THESE  
AGREEMENTS WHICH PROVIDES, BOTH  
OF THEM PROVIDE YOU GET  
ATTORNEYS FEES, IF YOU GET A  
LAWYER THAT IS NOT YOUR  
SALARIED EMPLOYEE TO CONNECT  
THE ACCOUNT.

>> THAT WAS MY SECOND --

>> WHEN YOU SAY I DON'T KNOW  
WHAT YOU MEAN, HOW DOES THAT  
COVER THE ACTION THAT WAS TAKEN  
HERE BASED ON ACCOUNTS STATED.  
WHATEVER METHOD YOU CHOOSE TO  
COLLECT THE ACCOUNT YOU WOULD  
HAVE TO CONCEDE THAT ACCOUNTS  
STATED, ACTION IN THIS CONTEXT  
IS AN ACTION COLLECTING THE  
ACCOUNT.

>> THE CONTRACT PROVISION IS AN  
ISSUE WITH ZELINSKI WHICH  
INVOLVED TWO DIFFERENT  
DOCUMENT.

>> I'M NOT ASKING ABOUT THOSE  
CASES.

I'M ASKING ABOUT THE TEXT OF  
THESE AGREEMENTS AND WHAT IT  
MEANS AND HOW ANYONE COULD LOOK  
AT THAT AND COME TO THE  
CONCLUSION -- I AM SORRY IF I  
AM MISSING SOMETHING.  
HELP ME UNDERSTAND.

>> PORTFOLIO HAVE A CHOICE, AND  
ACTION ON THE CONTRACT OR THE

BILLING STATEMENTS UNDER  
ACCOUNTS STATED.

>> YOU CAN CHOOSE YOUR CAUSE OF  
ACTION, CAN'T CHOOSE YOUR  
ATTORNEYS FEE PROVISION OR  
TERMS OF THE STATUTE.

THERE ARE DIFFERENT THINGS HERE  
BUT I CANNOT UNDERSTAND HOW  
THIS IS COVERED.

I WILL CEASE.

>> IF I MAY FINISH.

THE BILLING STATEMENTS CONTAIN  
NO SUCH FEE PROVISION, NO SUCH  
LANGUAGE AND THIS IS THE SAME  
AS THE ZELINSKI CASE, THERE TWO  
SEPARATE DOCUMENTS.

ONE DOCUMENT HAD A FEE  
ENTITLEMENT AND DISABLING WHICH  
HERE, HIRING ATTORNEY TO  
COLLECT ON YOUR ACCOUNT.

THAT LANGUAGE APPEARED IN THE  
RISK WHICH IS THE SUMMIT SALES  
CONTRACT.

THE OTHER CONTRACT, THE  
RETAILER CONTRACT DID NOT  
CONTAIN ANY SUCH LANGUAGE AND  
THERE WAS A CHOICE WHICH  
DOCUMENT TO PLEAD AND IT PLED  
THE ROCK WHICH DID NOT INCLUDE  
THAT.

UNDER THE DEBTOR'S REASONING  
HERE ZELINSKI WOULD HAVE BEEN  
DECIDED DIFFERENTLY BECAUSE  
THERE WERE TWO DOCUMENTS AND  
THERE WAS AN UNDERLYING  
CONTRACT TO ENFORCE THE  
AGREEMENT THAT ALLOWED FOR FEES  
AND UNDER THEIR REASONING, YOU  
GET ANY FEES FROM THE CONTRACT

>> THERE TWO DIFFERENT CAUSES  
OF ACTION HERE.

>> THERE IS ONE CONTRACT.

>> THE CREDIT CARD CONTRACT,  
COMPLETELY IRRELEVANT TO THIS  
CASE AND THE ACCOUNT STATED  
CAUSE OF ACTION BASED ON THE  
BILLING STATEMENTS.

THERE ARE ALL SORTS OF REASONS  
WHY A PLAINTIFF MIGHT WANT TO  
SEE THAT AS OPPOSED TO ACTION.

>> COULD YOU FOCUS ON THE SECOND PART OF THE SENTENCE AND THE STATUTE AND EXPLAIN YOUR BEST ARGUMENT WHY THIS IS NOT AN ACTION WITH RESPECT TO THE CONTRACT BECAUSE REGARDLESS WHAT YOU THINK OF THIS CLAUSE, OR ACTION WITH RESPECT TO THE CONTRACT THAT IT DOESN'T MATTER.

>> IF YOU LOOK AT THE CASES BEGINNING WITH COFIELD THAT WERE STATED AND RELIED ON WITH RESPECT TO THE CONTRACT, ALL OF THOSE CASES, ALL OF THEM REQUIRE THE COURT TO LOOK AT THE CONTRACT TO FIGURE OUT THE CASE.

CAUFIELD WAS A FRAUDULENT MISREPRESENTATION BASED ON CONDITION OF THE PROPERTY.

>> AND A CONTRACT PURCHASE, --  
>> I'M SURPRISED BY YOUR ANSWER.

AND TO ENFORCE THE CONTRACT, LOOKING AT NONCONTRACT CAUSES OF ACTION OR FACT-BASED INQUIRY, SUFFICIENT CONNECTION BETWEEN NONCONTRACT ACTION OR THE CONTRACT.

>> AS WE ARGUED IN OUR BRIEF, 57105 APPLY TO CONTRACT CASES AND THIS IS NOT A CONTRACT CASE WE DO. 57105 AND IGNORE THE FIRST PART THERE IS NO REASON THE LEGISLATURE WOULD HAVE PUT THAT IN TO BEGIN WITH. THEY COULD HAVE STOPPED THAT BY THINK THE CONTRACT CONTAINS A PROVISION THAT PROVIDES ATTORNEYS FEES WHEN HE OR SHE IS REQUIRED TO TAKE ANY ACTION. THE CONTRACT ISN'T RELEVANT HERE BUT IF YOU ARE LOOKING AT THE SECOND PART WHICH I THOUGHT WAS THE QUESTION YOU ASKED ME WHAT ARE THESE CASES WITH RESPECT TO THE CONTRACT. IF YOU LOOK AT THESE CASES WITH RESPECT TO THE CONTRACT, IT

REQUIRES THE COURT TO LOOK AT CONTRACT TO FIGURE IT OUT AND THAT IS CAUFIELD.

>> AS OPPOSED TO CAUSE OF ACTION?

>> YOU ARE CONCEDED WE LOOK AT THE CONTRACT ITSELF, THAT IS THE SUBJECT OF THE LAWSUIT?

>> KNOW, THAT IS ALL THE SAME ANSWER.

ACCOUNT STATED CAUSE OF ACTION IS INDEPENDENT CAUSE OF ACTION, IT IS BASED ON BILLING STATEMENTS AND THE HISTORY OF TWO PARTIES HAVING BUSINESS RELATIONSHIP AND THE IMPLIED PROMISE BASED ON BILLING STATEMENTS THAT HAVE NOT BEEN OBJECTED TO.

IT IS A LUMP-SUM.

IT DOESN'T MATTER, THE SPECIFIC TRANSACTIONS DON'T HAVE TO BE ITEMIZED.

THE ACCOUNT STATED DOESN'T HAVE TO BE SO CAUFIELD IS NOT AN ACCOUNT STATED CASE.

CAUFIELD HAD A BILATERAL FEE PROVISION AND IT IS WENT TO THE FRAUDULENT MISREPRESENTATION AROSE WITH RESPECT OUT OF THE CONTRACT BUT WASN'T A 57-105 CASE.

>> THE CREDITORS CLAIM WITH RESPECT TO THE CONTRACT FOR INTEREST.

>> THE ACCOUNT STATED CAUSE OF ACTION NOW ITEMIZATION IS REQUIRED.

PURCHASING THESE ACCOUNTS FROM THE BANK TAKES THE FINAL AMOUNT AND THAT IS THE AMOUNT DUE AND IF YOU LOOK AT THE RECORD, TAKE THIS ONE OUT AND SENT THESE NOTICES TO THE GENERATORS AND THIS IS THE AMOUNT YOU HAVE, AND ACCOUNT STATED, WE SETTLE THIS, DOESN'T CHARGE ANY FEES OR INTEREST BASED ON THE CONTRACT.

IT OFFERS TO ALLOW THE DEBTOR

TO SETTLE FOR LESS MONEY.  
>> THERE WOULD BE NO AMOUNT TO  
DO BUT FOR THE CONTRACT  
PARTICULARLY THE VERY HIGH  
INTEREST RATE AND LATE FEES.  
>> THE CONTRACT, THE RELEVANT  
TO THE FINAL AMOUNT IN THE  
STATEMENT.  
THAT HAS BEEN THE CASE, THE  
WHITTINGTON CASE WE CITED IN  
OUR BRIEF.  
THE SPECIFIC ITEMS DO NOT MAKE  
THE ACCOUNT, THE ORIGINAL CAUSE  
OF THE DEBT IS NOT IMPORTANT.  
THIS IS BASED ON A FINAL  
AMOUNT, THEY ARE NOT OBJECTED  
TO.  
SO THAT PART IS NOT IRRELEVANT.  
>> COULD YOU PURSUE AN ACCOUNT  
STATED ACTION NOT SEEK THESE  
PREVAIL AND RELY ON THE COST  
PROVISION TELL THE DEBTOR I  
PREVAILED IN THIS SUIT, WITH  
THE AMOUNT OF ATTORNEYS FEES.  
THAT IS WHAT HAPPENED IN THIS  
CASE, THEY CAME INTO COURT AND  
ANSWERED THE COMPLAINT, WE  
DON'T HAVE ANY ACCOUNTS, DON'T  
HAVE A CREDIT CARD, WE DON'T  
KNOW THESE PEOPLE,  
CATEGORICALLY DENIED  
ALLEGATIONS AND COMPLAINED AND  
DEFIES ANY LOGIC, AND SAID NOW  
THAT I DENY I HAVE A CONTRACT  
OR ANY ACCOUNT WITH YOU I CAN  
GET FEES UNDER THIS CONTRACT  
BUT THAT IS SIMPLY NOT THE  
CASE.  
AND SO IT IS, LOOK AT WHAT  
HAPPENED IN THE CASE.  
COMMON-LAW CAUSE OF ACTION  
WHICH HAS NO FEE ENTITLEMENT  
AND COMES INTO COURT, AND \$800  
CLAIM, BUSINESS RECORDS  
CUSTODIAN IS UNABLE TO VALIDATE  
THESE RECORDS WITH ATTORNEYS  
FEES.  
50,\$000 IN ATTORNEYS FEES WITH  
AN \$800 STARS FOR CAUSE OF  
ACTION THAT WAS NEVER BROUGHT

IN THE FIRST PLACE.

>> IF I COULD INTERRUPT YOU  
THAT IS A SEPARATE THEORY,  
ISN'T IT?

POTENTIALLY A VALID ONE.

I HAVEN'T LOOKED AT THAT LINE  
OF CASES BUT IF YOU DENY THE  
EXISTENCE OF CONTRACT, IF IT IS  
NOT ESTABLISHED THERE WAS A  
CONTRACT AS A MATTER OF FACT  
THERE WAS A SEPARATE LINE OF  
CASES THAT YOU COULDN'T GET  
FEES, THAT'S NOT AN ISSUE IN  
THIS CASE AS FRAME FOR US.

>> BETWEEN THE PARTIES, IT IS  
NOT PART OF THE ACTIONS.

>> I UNDERSTAND THAT.

WE ARE RUNNING OUT OF TIME.  
THE FIRST PART OF THE STATUTE  
TALKS ABOUT IF A PARTY TAKES  
ANY ACTION TO ENFORCE THE  
CONTRACT AND THE SAME QUESTION,  
GETTING THIS ACTION TO MEAN  
CAUSE OF ACTION.

ARE WE WRITE ABOUT THAT?

>> ACCOUNT STATED IS A SEPARATE  
AND DISTINCT CAUSE OF ACTION.

>> IN CONTEXT, IF YOU USE THE  
PHRASE TO TAKE ANY ACTION THAT  
COULD NOT BE TALKING ABOUT A  
CAUSE OF ACTION.

A SYNONYM WOULD BE TAKE ANY  
MEASURE OR TAKE ANY STEPS, THE  
WAY ACTION IS USED IN THAT  
PHRASE.

>> I HAVE TO AGREE WITH YOU, TO  
TAKE ANY ACTION, THE CONTRACT  
WOULD NOT BE LIMITED TO  
STRICTLY BREACH OF CONTRACT TO  
TAKE ANY ACTION TO ENFORCE THE  
CONTRACT.

THE ACCOUNT STATED IS NOT ANY  
ACTION TO ENFORCE THE CONTRACT.

>> YOU ARE TELLING ME WHEN YOU  
FILE TO COLLECT MONEY THAT  
INCLUDES PAYMENTS THAT ARE DUE  
PURSUANT TO A CONTRACT  
INTEREST, OTHER FEES THAT ARE  
DUE PURSUANT TO THE CONTRACT IN  
THE BIN OCULAR, ARE YOU TAKING

STEPS TO ENFORCE THE CONTRACT  
NO MATTER WHAT CAUSE OF ACTION  
YOU USE?

>> KNOW, YOUR HONOR,  
PURCHASING THESE ACCOUNTS, WHEN  
THOSE ACCOUNTS COME INTO  
POSITION IT COMES TO AN ACCOUNT  
STATED CLAIM FOR THE TOTAL  
ACCOUNT DO, IT DOESN'T MATTER  
WHAT PAYMENTS OR PART OF THIS  
IS INTEREST OR FEES, THE  
ORIGINAL CAUSE OF THE DEBT IS  
IRRELEVANT TO THIS CAUSE OF  
ACTION.

IT COMMON-LAW CAUSE WHICH CAN  
JUST BE BROUGHT ON THAT SIDE.

>> YOU COULD SUM UP IN 15  
SECONDS.

>> WE ASK THIS COURT TO APPROVE  
THE DECISION OF THE FIRST DCA  
AND THE DISTRICT OPINION, WITH  
GREATER RIGHTS IT ON LEVELS THE  
PLAYING FIELD AND THE PRINCIPLE  
THAT A PLAINTIFF HAS TO CHOOSE  
A CAUSE OF ACTION.

THANK YOU VERY MUCH.

>> COUNSEL?

>> MAY IT PLEASE THE COURT.  
I REALIZE THIS CASE HAS BROAD  
STATEWIDE SIGNIFICANCE.  
THERE ARE HUNDREDS OF COUNTY  
AND CIRCUIT COURT RULINGS THAT  
PRECEDED PAM AND BUSHNELL  
AROUND THE STATE.  
PROBABLY 50/50 AND WHICH THEY  
WERE DECIDED.

I'M CONCERNED ABOUT MY CASE,  
DESPITE THE BROAD IMPLICATIONS  
AND IN MY CASE, ONE THING I  
WOULD LIKE TO EMPHASIZE, THE  
COURT SUGGESTS ISN'T THERE  
ONLY, ONE AGREEMENT?  
THERE IS ONLY ONE AGREEMENT AND  
THAT IS THE CREDIT CARD  
CONTRACT.

PORTFOLIO FAILED TO PROVE THERE  
IS AN ACCOUNT STATED AGREEMENT.  
COUNSEL KEEPS TALKING ABOUT THE  
AGREEMENT, THERE IS NO  
AGREEMENT, THEY FAILED.

THE ONLY CONTRACT WE HAVE IN THIS CASE IS THE CREDIT CARD CONTRACT.

THE SECOND POINT I WANT TO MAKE IS ABOUT THE INTEREST CHARGES. FIRST OF ALL THOSE BILLING STATEMENTS WERE NOT SENT BY PORTFOLIO BUT THE BANK. PORTFOLIO HAS NO GREATER RIGHTS THAN THE BANK AS, THE BANK SENT STATEMENTS WITH INTEREST RATES ALMOST 30%.

THERE IS A STATUTE, I BELIEVE, THE NUMBER IS 68701 THAT SAYS YOU HAVE TO APPLY THE STATUTORY INTEREST RATE UNLESS YOU HAVE A SPECIAL CONTRACT.

IN THIS CASE OBVIOUSLY 29.99% IS NOT THE STATUTORY INTEREST RATE.

THERE MUST BE A SPECIAL CONTRACT, OF COURSE THERE IS, IT IS THE CONTRACT BETWEEN MISTER HAMM AND THE BANK THAT PROVIDES THAT INTEREST RATE. THE POINT I WOULD LIKE TO MAKE IS PORTFOLIO KIND OF A WOE IS ME LOOK WHAT HAPPENED IN THIS CASE, WE TRIED TO LITIGATE ACCOUNTS STATED AND ENDED UP OWING 50,000 IN ATTORNEYS FEES.

WHY DO THEY OWE SO MUCH MONEY? BECAUSE THEY SUED MY CLIENTS AND THEY COULDN'T PROVE THEIR CASE.

THEY BROUGHT A WITNESS TO COURT FROM WHEREVER, WITH THE DOCUMENTS AND SHE CLEARLY COULD NOT GET AROUND THE HEARSAY, PORTFOLIO HAS NOBODY TO BLAME BUT ITSELF.

>> IF THERE'S ANY EVIDENCE IN THE RECORD ABOUT WHETHER THE INDIVIDUAL CHARGES REFERENCED THE CARDHOLDER AGREEMENT, THEIR SEATS, IS THAT IN THE RECORD AT ALL?

>> I'M GOING TO BE HONEST WITH YOU.

I DON'T THINK THERE'S A  
TRANSCRIPT IN THE RECORD OF THE  
ORIGINAL TRIAL WHERE ALL THESE  
DOCUMENTS FROM CRAWFORD.  
THE BILLING STATEMENTS FROM  
CRAWFORD, I DOUBT SERIOUSLY IF  
THERE WAS ANY RELEVANCE THROUGH  
THE CONTRACT UNTIL AFTER THE  
COUNTY COURT ENTERED JUDGMENT  
IN FAVOR OF THE DEFENDANTS SO  
WITH THAT SAID I RESPECTFULLY  
URGE THE COURT TO QUASH THE  
HAMM CASE AND APPROVE BUSHNELL.  
THANK YOU VERY MUCH.  
>> FOR YOUR ARGUMENTS.