>> THE CASE OF TERRI PAGE VERSUS DEUTSCHE BANK.
COUNSEL FOR THE PETITIONER PLEASE PROCEED.
>> NICOLE MOSKOWITZ ON BEHALF OF TERRI PAGE.
WE ARE HERE BECAUSE THE FOURTH DCA SAID THAT IF THERE'S A FORECLOSURE CASE DISMISSED FOR LACK OF STANDING SHE CAN NEVER GET HER ATTORNEYS FEES.
THIS IS AN OVERLY BROAD WILL THAT IGNORES IMPORTANT FACTS AND LEADS TO INEQUITABLE RESULTS.
LET'S LOOK AT THE FACTS OF THIS CASE.
IT IS UNDISPUTED THAT RESPONDENT HAD STANDING.
NOT ONLY WERE THEY LITERALLY HOLDING THE NOTE BUT BY VIRTUE OF THAT FACT THE MORTGAGE WHICH FOLLOWS THE NOTE CAME TO BE, THE RESPONDENT WAS A PARTY TO THAT MORTGAGE.
IT IS UNDISPUTED THAT IN 2017 THE RESPONDENT FILED A NEW FORECLOSURE ACTION WITH THE SAME NOTE, SAME MORTGAGE, SAME DEFENDANT CLAIMING TO BE A HOLDER OF THE NOTE AND ASKING ATTORNEYS FEES AND THE ENTIRE TIME THE CASE WAS PENDING, CLAIMING IN THIS LAWSUIT THAT MISSED PAGE IS NOT ENTITLED TO ATTORNEYS FEES BASED ON THE SAME MORTGAGE.
IT WOULD DEFIED REASON AND CREDIBILITY IF THE RESPONDENT WERE TO STAND IN FRONT OF YOU TODAY AND SAY IN EITHER OF THESE TIMES THERE WAS NO STANDING AND NO CONTRACT.
IT IS ALSO NOTEWORTHY TO POINT OUT IN THE PAGE OPINION, THE FOURTH SAID TWO TIMES THAT THERE WAS STANDING AT TRIAL, THE FOURTH HOLDING TO A SIMPLE EQUAL ASIAN --
>> DOES YOUR POSITION DEPENDS ON THE STANDING FOUND IN TRIAL.

>> MY POSITION --
>> WE WOULD BE IN A DIFFERENT SITUATION?
>> I MISSED THE FIRST PART.
>> OF STANDING HADN'T BEEN ESTABLISHED BY THEN WE WOULD BE IN A DIFFERENT SITUATION?
>> MY POSITION IS YOU DON'T NEED STANDING TO HAVE A CONTRACT.
THE FACT THAT THERE WAS STANDING AT THE TIME OF TRIAL AND BECAUSE IT WAS BY VIRTUE OF THE ENDORSED NOTE, BOTH WERE PARTY TO THE MORTGAGE CONTRACT.
>> YOU AGREE IT HAS TO HAVE BEEN ESTABLISHED THAT BOTH PARTIES WERE PARTIES TO THE CONTRACT?
>> YES.
BEING PARTY TO THE CONTRACT WHETHER THERE ARE STANDING AND THE FOURTH BOIL DOWN IS HOLDING TO A SIMPLE EQUAL ASIAN THAT NO STANDING ISSUES NOW ATTORNEYS FEES AND THEY ARE EQUALLY LACK OF STANDING TO THE NONEXISTENCE OF A CONTRACT.
HOWEVER, STANDING IS MUCH MORE COMPLEX TO THAT AND THE TRUST FAILURE TO PROVE STANDING TURNED ON THE VERY SPECIFIC PROOF REQUIREMENT INVOLVED IN FORECLOSURE.
THIS GOES TO WHY STANDING IS DIFFERENT FROM THE FORMATION OF A CONTRACT.
WHEN YOU LOOK AT STANDING IN THE CONTEXT OF FORECLOSURE THERE ARE RULES YOU PROBABLY DON'T SEE ANOTHER CAUSES OF ACTION.
FIRST OF ALL EVEN THOUGH STANDING IS AN AFFIRMATIVE DEFENSE IT BECOMES PART OF THE PLAINTIFF'S CASE.
THEY HAVE TO ALLEGED THE BASIS UPON WHICH THEY ARE ENFORCING THE NOSE IN THE COMPLAINT AND THAT HAS TO BE PROVED AT TRIAL.
>> WHEN WE TALK ABOUT STANDING THE QUESTION IS WHETHER THE PLAINTIFF HAS ADEQUATELY PROVED

STANDING.
ANOTHER QUESTION.
>> RIGHT.
THEY HAVE TO PROVE STANDING.
>> THAT IS CONSISTENT WITH YOUR POSITION.
THEY MAY ACTUALLY BE IN A POSITION WHERE THE FACTS ARE SUCH THAT THEY COULD ESTABLISH STANDING BUT IF THEY BUMBLE AND JUST DON'T DO IT THAT IS ON THEM, RIGHT?
>> EXACTLY.
A LOT OF TIMES STATUTE 673.301 ONE GIVES YOU THREE WAYS TO ALLEGED THE BASIS TO ENFORCE A NOTE.
YOU COULD SAY YOU ARE A HOLDER WHEN IN ACTUALITY ARE A NON-HOLDER BUT IF YOU WERE A HOLDER, IT DOESN'T MEAN THERE WAS NO CONTRACT THE BANKS WERE RECEIVING BENEFITS OF HAVING THE MORTGAGOR THE PLAINTIFF RECEIVED THE BENEFITS OF HAVING THAT AND --
>> FOCUS ON THE TEXT OF THE STATUTE.
IT SEEMS THE STANDING, TO BORROW A PHRASE FROM THE FOURTH DCA IT IS A RABBIT HOLE AND THE QUESTION IS HOW DOES WHAT WAS GOING ON HERE FIT IN WITH THE STATUTE?
>> THE TEXT OF 571057 STATES OF THE CONTRACT CONTAINS A PROVISION ALLOWING ATTORNEYS FEES TO A PARTY WHEN HE OR SHE IS REQUIRED TO TAKE ACTION TO ENFORCE THE CONTRACT THE COURT MAY ALLOW REASONABLE ATTORNEYS FEES TO THE OTHER PARTY WHEN THAT PARTY PREVAILS AND ANY ACTION WHETHER IT IS PLAINTIFF OR DEFENDANT WITH RESPECT TO THE CONTRACT.
WHAT WORD DON'T WE SEE IN SECTION 7?
WE DON'T SEE THE WORD STANDING.
THEY HAVE INTERJECTED THIS EXTRA

REQUIREMENT OF STANDING INTO
WHAT IS NOT WRITTEN INTO THE
LANGUAGE.
>> IS YOUR POSITION THAT ANY
ACTION TAKEN HERE CAN INCLUDE --
CANNOT INCLUDE FILING A LAWSUIT
WHERE THE DEFENDANT, THE
PLAINTIFF DOESN'T HAVE STANDING
EVEN IF STANDING IS DEVELOPED
LATER EVEN IF EVIDENCE OF
STANDING IS DEVELOPED LATER?
IN OTHER WORDS, WHAT IS ANY
ACTION IN TERMS OF THE STATUTE?
WHAT SUFFICES AS ACTION?
>>
>> IT IS WHAT IT IS, FILING A
LAWSUIT WHETHER THEY WIN OR LOSE
IS ANY ACTION.
BEFORE A LAWSUIT IS FILED YOU
WILL SEE ATTORNEYS FEES BECAUSE
THEY HAD TO RUN TITLE OR DO
SOMETHING ELSE OR GET CERTAIN
LETTER BUT ANY ACTION WITH
RESPECT TO THE CONTRACT BUT THE
FACT THERE IS NO STANDING
DOESN'T HAVE TO DO WITH WHETHER
THERE ARE PARTIES TO THE
MORTGAGE CONTRACT.
>> I JUST WANT TO MAKE SURE I
UNDERSTAND IT IS YOUR POSITION
THAT IF A PARTY WERE TO TAKE
EVEN THE ACTION OF FILING OR NOT
FILING, SENDING A DEMAND LETTER
THAT WOULD CONSTITUTE ACTION FOR
THE PURPOSES OF 570157?
>> YOU LOOK AT THE LANGUAGE IT
TALKS ABOUT PREVAILING ATTORNEYS
FEES YOU DO HAVE TO HAVE A
LAWSUIT.
>> ANY ACTION REFERS TO AN
ACTION LIKE A LAWSUIT.
>> YES.
>> THE CONTRACT, THE FIRST
CLAUSE REQUIRES YOU TO LOOK
CONTRACT AND WHAT THE CONTRACT
SAYS.
IT HAS NOTHING TO DO WITH WHAT
HAPPENED.
THE SECOND PART OF THE STATUTE
IS OKAY THERE HAS BEEN A LAWSUIT

BUT IN TERMS OF THE TRIGGER FOR
THE POSSIBILITY OF RECIPROCAL
ATTORNEYS FEES YOU LOOK AT THE
WORDS OF THE CONTRACT.
DOES THE CONTRACT GIVE ONE PARTY
OR ANY PARTY THE RIGHT TO FEES
IF THEY TAKE ANY ACTION AND THAT
ACTION COULD BE A LAWSUIT OR
WRITING A LETTER OR TO ENFORCE
THE CONTRACT.
ISN'T THAT WHAT THE STATUTE
SAYS?
>> YES, THAT IS WHAT IT SAYS BUT
YOU CAN'T JUST LOOK AT THE FIRST
PART.
>> THE FIRST PART WE LOOK AT THE
CONTRACT AND IT SEEMS THE
QUESTION IS ARE BOTH OF THESE
ENTITIES PARTIES TO THIS
CONTRACT?
>> I AGREE WITH YOU.
THE HARRIS CASE GIVES THAT A
SORT OF DIFFERENT POINT OF VIEW
BECAUSE THEY TALK ABOUT THE
ASSIGNMENT OF MORTGAGE AND BY
VIRTUE OF THE ASSIGNMENT OF
MORTGAGE THE PARTIES BECAME
PARTIES TO THE MORTGAGE CONTRACT
IT SELF AND IT IS IMPORTANT TO
REMEMBER THE MORTGAGE CONTRACT
WHERE THE FEES ARE, IT IS A
SEPARATE DOCUMENT YOU COULD
BECOME A PARTY OF BECAUSE YOU
DON'T PROVE THE NEGOTIABLE HE OF
THE NOTE THE MORTGAGE ITSELF
THERE COULD BE DIFFERENT
PARTIES, A SPOUSE WOULD SIGN A
MORTGAGE AND THAT SPOUSE WOULD
BE ENTITLED TO FEES UNDER ONLY
THE MORTGAGE CONTRACT.
IT ALSO HAS CONDITIONS ON
PARAGRAPH 22 WHICH IS WHERE THE
FEES ARE FOUND.
SO THE MORTGAGE CONTRACT
PROVIDES FEES AND THERE ARE
OTHER WAYS BESIDES PAGE WHERE
YOU HAVE ENDORSED NOTES, YOU CAN
SEE IN HARRIS BY VIRTUE OF
ASSIGNMENT OF MORTGAGE YOU
BECOME A PARTY TO THE CONTRACT

AND TO THAT END AS I DISCUSSED
IN THE BRIEF ALL SECTION 7
REQUIRES IS A CONTRACT THAT
PROVIDES PREVAILING PARTY
ATTORNEYS FEES THAT BOTH THE
MOVEMENT AND OPPONENT ARE
PARTIES TO THE CONTRACT AND THE
MOVEMENT PREVAIL.
NONE OF THIS IS UP FOR DEBATE IN
THIS CASE AND AS I STATED WHEN
WE LOOK AT THE VERY IMPORTANT
FACTS IT IS OBVIOUS THERE WAS A
CONTRACT.
WHEN SOMEONE, BANK'S WITNESS WAS
LITERALLY HOLDING THE ENDORSED
NOTE IN ITS HAND, BECAME PARTY
TO THE MORTGAGE CONTRACT BY
VIRTUE OF THAT AND MISS PAGES
ENTITLED TO ATTORNEYS FEES.
I KNOW THE RESPONDENT BROUGHT UP
IN HIS BRIEF THAT YOU NEED TO
LOOK TO THE SUBSTANCE OF THE
LITIGATION BUT THE SUBSTANCE OF
THE LITIGATION DOESN'T JUST STOP
WHEN YOU GET TO STANDING.
YOU HAVE TO LOOK AT COMPLETE
SUBSTANTIVE LITIGATION WHICH
WOULD BE ALL THE FACTS WHEN THE
JUDGE THAT DAY OF TRIAL
RECOGNIZED THE ENDORSED NOTE WAS
IN THE RECORD AS OF 2012
RECOGNIZE THAT IT WAS IN COURT
AND MADE A COMMENT THIS DOESN'T
MAKE THE ARGUMENT WITH RESPECT
TO STANDING AS STRONG BUT
BECAUSE THEY DIDN'T HAVE THE
NOTE ON THE DAY THEY FILED THE
COMPLAINT THERE IS NO STANDING.
>> BACK TO THE WORDS OF THE
STATUTE, WAS IT AN ACTION WITH
RESPECT TO THE CONTRACT?
>> YES, NO QUESTION.
>> I'M NOT DISAGREEING, I'M
TRYING TO UNDERSTAND THE
CONTEXTUAL PART OF THIS.
WHAT MADE THIS AN ACTION WITH
RESPECT TO THE CONTRACT?
>> IT IS NOT A TRICK QUESTION.
>> ARE YOU SAYING IF THERE WAS
NO STANDING?

>> I'M NOT SAYING THAT.
I'M JUST ASKING YOU A QUESTION.
THEY REQUIRED THERE TO BE ACTION
WITH RESPECT TO THE CONTRACT -
HOW WAS IT AN ACTION WITH
RESPECT TO THE CONTRACT?
>> BECAUSE IT IS A MORTGAGE
FORECLOSURE.
THEY WERE NOT SUING ON THE NOTE
BUT TO FORECLOSE THE ACTUAL
MORTGAGE AND IT IS THE MORTGAGE
THAT IS THE SECURITY AGREEMENT
THAT ALLOWS HIM TO FORECLOSE.
THAT IS HOW IT WAS ACTION ON THE
CONTRACT AND SEEKING AMOUNT TO
DO PRE-SUING TO THE NOTE.
>> IT WOULD BE HARD TO THINK OF
AN ACTION THAT WOULD BE MORE
WITH RESPECT TO THE CONTRACT
THAN A MORTGAGE FORECLOSURE.
I DON'T KNOW WHAT IT COULD
POSSIBLY BE.
CAN YOU THINK OF THAT EXAMPLE?
>> THE WHOLE CAUSE OF ACTION IS
CREATED FROM THE CONTRACT WHERE
IT IS NOT BUT EVEN THAT IS
USUALLY BASED ON A CONTRACT OR
SOMETHING THAT HAPPENED.
>> I WILL ASK YOU TO STEP AWAY
FROM THE ATTORNEYS FEES ISSUE
AND LOOK MORE FUNDAMENTALLY ON
THE STANDING REQUIREMENT AND
702.0 ONE 52, DO I UNDERSTAND
CORRECTLY THAT THAT STATUTE HAS
BEEN INTERPRETED TO MEAN THAT IF
THE PLAINTIFF'S ALLEGATIONS
REGARDING ITS RIGHT TO PURSUE
THE FORECLOSURE ARE INACCURATE
THAT EVEN IF THEY DO HAVE THE
RIGHT AND THEY AMEND THE
PLEADINGS AND PROVE THAT RIGHT
AT TRIAL IT IS STILL THE
DISMISSAL BECAUSE THERE ARE
INITIAL ALLEGATIONS THAT WERE
INCORRECT?
>> I HAVE SEEN CASES WHERE THEY
IMPROPERLY ALLEGED THEIR STATUS
TO PURSUE THE NOTE AND IF THERE
HAVE BEEN PROBLEMS WITH THE
VERIFICATION OF POSSESSION OF

THE NOTE I DON'T NECESSARILY
THINK THAT IN AND OF ITSELF WILL
GET THE CASE DISMISSED
ESPECIALLY IF THEY HAVE AMENDED
THEIR COMPLAINT AT SOME POINT
BUT I DO THINK ON RULE ONE.55
WHICH REQUIRES VERIFICATION OF
POSSESSION OF THE NOTE IT
DOESN'T MATTER IF THERE ARE NO
CONSEQUENCES BECAUSE AT THE END
OF THE DAY THE BANK IF THEY LOSE
THE CASE THEY DON'T LOSE
ANYTHING IN THESE FORECLOSURES.
>> I'M LOOKING AT WHY IT MAKES
SENSE.
IN ANY OTHER CONTEXT USED TO ON
A CONTRACT AND PLEADING
REQUIREMENTS SAY YOU HAVE TO
ALLEGE YOUR PARTY TO THE
CONTRACT AND HAVE TO ATTACH THE
CONTRACT.
IT IS NOT INFREQUENT A LAWSUIT
IS FILED IN THE CONTRACT IS NOT
ATTACHED BUT THAT PLEADING
DEFECT IS CURABLE SO THERE WOULD
BE A MOTION TO DISMISS OR FILED
AND INSTEAD OF DISMISSING THE
CASE, LEAVE IS GRANTED AND THEN
WE GO FORWARD WITH THE LAWSUIT
AND EVEN WHERE THE PLEADINGS ARE
WRONG AND WE GO THROUGH TRIAL IF
THERE IS NO PREJUDICE IN EVERY
CONTEXT WE ALLOW PLEADINGS TO BE
AMENDED TO CONFORM TO THE
EVIDENCE SO PEACE CAN BE DECIDED
ON THE MERITS AND SO I WONDER
WHAT IN THE TEXT OF THE STATUTE
MAKES THIS DIFFERENT?
>> STANDING UNDER FORECLOSURE
CASES A DIFFERENT BEAST.
>> WHAT IS THE STATUTORY -- IN
THE ALLEGATIONS.
>> THE CASE LAW SAID THAT IT
BECOMES PART OF PLAINTIFFS -
>> WHAT IS THE LEGAL BASIS FOR
THAT UNDER THE STATUTE?
>> FORECLOSURE IS ALL STATUTORY.
>> IF YOU HAVE TO ALLEGE YOUR
BASIS TO ENFORCE THE NOTE IT
BECOMES PART OF YOUR BURDEN OF

PROOF.
>> A LOT OF DIFFERENT CONTEXT BUT IF YOU GET THE ALLEGATION WRONG, ANYTIME INCLUDING THE END OF THE TRIAL IN MOST INSTANCES WHAT IS THE STATUTORY BASIS BECAUSE IT SEEMS TO ME THAT IS THE PROBLEM.
IN THE END YOU HAVE A CASE WHERE IN THE ORIGINAL ALLEGATIONS THEY DON'T LINE UP WITH THE PROOF AND THERE IS NO OPPORTUNITY TO CURE IT AT ANY POINT SO YOU END UP AND THE CONSEQUENCE WHERE YOU SHOULD HAVE A RIGHT TO ATTORNEYS FEES BUT BECAUSE THE ORIGINAL ALLEGATION WASN'T QUITE CORRECT THEN THERE IS AN ARGUMENT THAT YOU DON'T SO WHY AREN'T WE LOOKING AT WHAT THE STATUTE SAYS WHICH IS YOU HAVE TO MAKE AN ALLEGATION, NOT THAT IT HAS TO BE CORRECT SO --
>> THE REALITY IS TYPICAL.
I THINK THE REASON IS A LOT OF TIMES I HAVE DONE FORECLOSURE LAW, THE PLAINTIFFS DON'T MOVE TO AMEND.
THEY PROCEED ON BEING A HOLDER OR WHATEVER THEY HAVE ALLEGED AND STICK TO THEIR GUNS.
THEY DID IN THIS CASE, NOTHING CHANGED.
YOU DON'T HAVE THAT SITUATION --
>> THE LAW AS IT EXISTS WHETHER THEY SOUGHT TO AMEND OR NOT WOULDN'T MAKE A DIFFERENCE BECAUSE THE LAW THAT IS ESTABLISHED WHICH IS NOT AN ISSUE IN THIS CASE, IF YOU DON'T HAVE STANDING YOU LOSE.
IS THAT CORRECT?
I CAN UNDERSTAND QUESTIONS ABOUT THE APPROPRIATENESS OF THAT RULE OF LAW.
I HAVE QUESTIONS ABOUT THAT MYSELF BUT THAT IS NOT THE ISSUE IN THIS CASE, CORRECT?
>> AGREED.
WE ARE PAST THAT POINT.

NOBODY TRIED TO AMEND THE
COMPLAINT AND WE ARE LEFT WITH
FACTS OF WHAT THEY ARE AND THE
PLAINTIFF CAN'T JUST DISAVOW
THOSE FACTS TO MEET A POSITION
THAT WE ARE NOT ENTITLED TO
ATTORNEYS FEES BECAUSE GOING
BACK TO THE CERTIFICATION IF
THERE IS NO CONSEQUENCE AND
PLAINTIFFS KEEP REFILING THEN
YOU ARE JUST GOING DOWN THIS
ENDLESS RABBIT HOLE WHERE
THERE'S NOTHING TO STOP THEM.
>> YOU ARE NOW INTO YOUR
REBUTTAL TIME SO YOU CAN KEEP
GOING BUT YOU ARE CONSUMING
REBUTTAL TIME.
>> I WILL RESERVE MY TIME, THANK
YOU.
>> COUNSEL?
>> GOOD MORNING, MISTER CHIEF
JUSTICE.
MAY IT PLEASE THE COURT, WILLIAM
GRIMSLEY ON BEHALF OF THE
RESPONDENT.
THERE ARE THREE REASONS THIS
SHOULD APPROVE THE DISTRICT
PAGE, AS THE COURT HAS BEEN
DISCUSSING THE PLANE AND
AMBIGUOUSLY WHICH OF THE
STATUTE, 2, THE EQUITABLE ARENA
WITHIN WHICH FORECLOSURE CASES
EXIST IN 3, THE FUNDAMENTAL
CONCEPT OF JURISDICTION.
I WOULD LIKE --
>> HELP ME UNDERSTAND WHAT THE
ON AMBIGUOUS LANGUAGE OF THE
STATUTE THAT YOU ARE TALKING
ABOUT --
>> LET ME BREAK IT DOWN.
THE STATUTE PROVIDES IF THERE IS
A CONTRACT THAT PROVIDES FEES,
FEE PROVISION ALLOWS FEES TO ONE
PARTY WHEN THAT PARTY ENFORCES
THE CONTRACT, THEN 3, THE COURT
MAY ALLOW FEES TO THE OTHER SIDE
WHEN THAT OTHER SIDE PREVAILS
AND SO THE CRITICAL LANGUAGE IN
THE STATUTE IS ACTION TO ENFORCE
THE CONTRACT, TO ENFORCE THE

CONTRACT, TO TRIGGER RECIPROCITY
UNDER THE STATUTE YOU HAVE TO BE
PARTY TO THE CONTRACT AND YOU
HAVE TO HAVE THE ABILITY TO GIVE
FEES FOR ENFORCING THE CONTRACT
SO STATED ANOTHER WAY WHEN THE
OTHER PARTY THE OTHER PARTY CAN
ONLY GET FEES IF THE FIRST PARTY
CAN GET FEES FOR ENFORCING THE
CONTRACT.
>> SORRY TO INTERRUPT, YOU AGREE
THAT DETERMINATION IS MADE FROM
READING THE FOUR HORRORS OF THE
CONTRACT BEFORE ANYTHING HAPPENS
WITH ACTUAL ENFORCEMENT ACTION.
>> THE PARTICULAR PART OF THE
STATUTE THAT REQUIRES A
PROVISION THAT REQUIRES FEES FOR
TAKING ANY ACTION TO ENFORCE THE
CONTRACT IS WITHIN THE CONTRACT
AND WE HAVE THAT HERE.
OUR MORTGAGE --
>> THAT PART IS SATISFIED, YOU
AGREE BOTH THESE PARTIES ARE
PARTIES TO THE CONTRACT.
>> I WOULD AGREE AT THE TIME OF
TRIAL THE EVIDENCE REFLECTS BOTH
PARTIES WERE PARTIES TO THE
CONTRACT.
THERE IS DIFFERENT ANALYSIS FOR
PURPOSES OF 57105 BECAUSE THE
COURT DETERMINES WAS THE
PLAINTIFF COULD NOT ENFORCE THE
CONTRACT OR THE MORTGAGE SO --
>> THAT IS BECAUSE YOU DIDN'T
PROVE WHAT YOU NEEDED TO PROVE.
CONCERNING YOUR STANDING AT THE
INCEPTION OF THE LAWSUIT.
ISN'T THAT CORRECT?
DOESN'T CHANGE WHAT IS IN THE
CONTRACT.
>> IT IS AN ADJUDICATION THAT
THE PLAINTIFF IS NOT ENTITLED TO
ENFORCE THE CONTRACT AT THE
BEGINNING OF THE CASE AND --
>> THE FIRST SENTENCE OF THE
STATUTE IS NOT ABOUT WHETHER YOU
AND THE PARTICULAR POINT OF TIME
ARE ENTITLED TO DO ANYTHING BUT
WHAT THE CONTRACT SAYS.

WE AGREE ON THAT.
I HAVE HEARD AGREEMENT ON THAT
BUT I SEE THE ANALYSIS SHIFTS
AWAY FROM THAT FUNDAMENTAL
POINT.
BECAUSE THE PARTY HAS TO HAVE
THE ABILITY TO ENFORCE THE
CONTRACT TO GET FEES, AND WHAT
WE HAVE HERE IS THE PARTY, THE
PLAINTIFF, WHO WAS DETERMINED
NOT TO HAVE THE ABILITY TO
ENFORCE THE CONTRACT.
BECAUSE THE PLAINTIFFS DID NOT
HAVE THE ABILITY TO ENFORCE THE
CONTRACT, THE PLAINTIFF DOES NOT
HAVE THE ABILITY TO GET
ATTORNEYS FEES FOR ENFORCING THE
CONTRACT.
BECAUSE THE PLAINTIFF DID NOT
HAVE THAT ABILITY, THERE'S NO
RECIPROCITY.
AND BECAUSE THERE'S NO
RECIPROCITY, THE DEFENDANT IN
THIS CASE WOULD NOT BE ENTITLED
TO FEES.
>> BUT I DON'T UNDERSTAND HOW
THERE'S A LACK OF RECIPROCITY
JUST BECAUSE ONE SIDE LOSES--
[LAUGHTER]
BECAUSE THEY FAILED TO MAKE
THEIR CASE.
I JUST CANNOT FOLLOW THAT LINE
OF REASONING.
>> SO IT'S STANDING, IT IS AN
AFFIRMATIVE DEFENSE THAT MUST BE
RAISED BY THE DEFENDANT OR
WAIVED.
THE BASIC ELEMENTS OF A
FORECLOSURE CASE IS TO PROVE
ABOUT CONTRACT AND DEFAULT,
ACCELERATION AND DAMAGES.
THE STANDING WHICH PETITIONER
RECOGNIZES IN HER INITIAL, IN
THE BRIEFS, IS A DEFENSE THAT
MUST BE RAISED.
AND WHAT DOES IT MEAN TO HAVE
STANDING?
673.3011 GIVES US THAT
DEFINITION.
THAT DEFINES A PERSON ENTITLED

TO ENFORCE THE CONTRACT.
EVERY FORECLOSING PLAINTIFF MUST SATISFY 673.3011, ONE OF THOSE SUBSECTIONS, IN ORDER TO PROCEED IN ITS CASE.
THAT IS WHY STANDING IS SO SIGNIFICANT TO THE ANALYSIS HERE FOR RECIPROCITY.
IF IT IS DETERMINED THAT THE PLAINTIFF DOES NOT SATISFY 673.3011, THEN THE PLAINTIFF IS NOT ENTITLED TO ENFORCE THE NOTE.
SO WHEN A DEFENDANT PREVAILS ON A DEFENSE OF STANDING, A SPECIFIC DEFENSE OF STANDING AT INCEPTION OF THE CASE, THEN THE DEFENDANT HAS THE BURDEN UNDER 57.1057 AT A SEPARATE ENTITLEMENT HEARING TO ESTABLISH THAT, ONE, BOTH PARTIES ARE PARTIES TO THE CONTRACT.
AND THIS IS THE IMPORTANT ONE, NUMBER TWO, THAT THE PLAINTIFF CAN GET FEES FOR ENFORCING THE CONTRACT.
NOW--
>> YEAH, BUT WHAT-- THAT IS NOT IN THE STATUTE.
>> RIGHT.
>> WHERE IS THAT IN THE STATUTE, COUNSEL?
>> THE PART OF THE--
>> WHERE?
>> THE PART OF THE STATUTE THAT SAYS ACTION TO ENFORCE THE CONTRACT.
IF YOU CAN'T ENFORCE THE CONTRACT, YOU CAN'T GET FEES.
>> BUT THAT, AGAIN, YOU HAVE AGREED, I THOUGHT, THAT WHEN WE LOOK AT THAT PROVISION, THAT PROVISION OF THE STATUTE, THAT REQUIRES US TO LOOK AT THE TEXT OF THE CONTRACT.
NOT WHAT HAPPENED SUBSEQUENTLY, BUT WHAT THE CONTRACT SAYS.
I'M KIND OF BAFFLED BY YOUR ARGUMENT AND SHIFTING AWAY FROM THAT WHAT YOU'VE ALREADY AGREED

TO.
>> NO, I AGREE THAT THE LANGUAGE OF THE CONTRACT PROVIDES FOR FEES FOR THE PARTY WHEN ENFORCING THE CONTRACT.
THE PROBLEM HERE IN OUR POSITION HERE IS THE COURT SAID WE CAN'T ENFORCE THE CONTRACT.
IF WE CAN'T ENFORCE THE CONTRACT, THEN WE CAN'T GET FEES.
>> COUNSEL, CAN I ASK YOU A QUESTION?
>> SURE.
>> IS THERE A DIFFERENCE WHEN A DEFENDANT SAYS THERE'S NO STANDING BECAUSE THE PLAINTIFF DIDN'T COMPLY WITH THE STATUTORY REQUIREMENT TO DO X, Y OR Z VERSUS SAYING THERE'S NO STANDING BECAUSE THERE'S NO CONTRACT BETWEEN US?
>> IF I UNDERSTAND YOUR HONOR'S QUESTION, A PARTICULAR STATUTE OR FORECLOSURE STATUTE?
>> WELL, IT SEEMS LIKE IF I'M FOCUSING ON 57.105, YOUR ARGUMENT WOULD BE MORE ATTRACTIVE IF THE DEFENDANT WAS SAYING THERE IS NO CONTRACT BEFORE US AND THEN TURNING AROUND AND SAYING, OH, I NOW WANT ATTORNEYS FEES, BUT THAT DOESN'T SEEM LIKE THAT'S WHAT'S GOING ON IN THIS PARTICULAR CONTEXT BECAUSE OF THESE PLEADING REQUIREMENTS WHERE, BECAUSE OF THE UNIQUE ARENA THAT WE'RE DEALING WITH, THIS CONCEPT OF IN PROVING STANDING IN YOUR INITIAL ALLEGATIONS PROVED, YOU KNOW, AT THE BEGINNING OF THE LAWSUIT, THAT THAT DOESN'T REQUIRE THE DEFENDANT TO SAY THAT THERE IS NO CONTRACT.
>> SO I'LL JUST NOTE THIS IS A 2009 CASE WHICH PREDATES THE IMPLEMENTATION OF VERIFICATION OF THOSE PLEADING REQUIREMENTS.
AND THAT'S JUST A NOTE.

BUT BY TAKING THE POSITION THAT A PLAINTIFF DOESN'T HAVE STANDING AT THE BEGINNING OF THE CASE AS THE PETITIONER DID IN THIS CASE, THAT THE PLAINTIFF IS NOT ENTITLED TO ENFORCEMENT AT THE BEGINNING OF THE CASE.
THE PLAINTIFF-- I MEAN, THE DEFENDANT IS NECESSARILY TAKING THE POSITION THAT THE PLAINTIFF IS NOT A PARTY TO THE CONTRACT.
IF THE PLAINTIFF WERE A PART TO THE CONTRACT, THEN THE PLAINTIFF COULD UNQUESTIONABLY ENFORCE THE CONTRACT AS A PARTY TO THE CONTRACT, BUT THAT'S NOT WHAT THE PETITIONER DID HERE.
AND SO STANDING AS THE PETITIONER CONCEDES IN THE BRIEF, STANDING IS SOMETHING THAT CANNOT BE CURED POST-FINDING.
SO IF YOU HAVE A FAILURE OF STANDING AT THE BEGINNING OF THE CASE, THEN THAT CAN'T BE CURED WITHIN THE FOUR CORNERS OF THIS CASE.
THAT IS AN ADJUDICATED FACT THAT THE COURT MAKES THAT LASTS THE ENTIRETY OF THE CASE.
SURE, A PLAINTIFF CAN REFILE ANOTHER CASE, BUT THE PLAINTIFF CAN THEN ESTABLISH STANDING IN ANOTHER CASE AND INVOKE THE COURT'S JURISDICTION AT THAT POINT.
BUT IT HAS BEEN ADJUDICATED THAT THE PLAINTIFF IS NOT ENTITLED TO ENFORCE THE NOTE.
IT MAY APPEAR AT TRIAL THAT THE PLAINTIFF IS A PARTY TO THAT NOTE, BUT BECAUSE OF THE FINDING--
>> WELL, BUT, COUNSEL, I THINK I UNDERSTAND WHAT YOU'RE SAYING.
BUT THE REALITY HERE IS THAT THE BANK DRAGS THE BORROWER INTO COURT, AND, YOU KNOW, MAYBE IF THE BANK DID WHAT IT WAS SUPPOSED TO DO, THE BANK WOULD

WIN.
BUT THE REALITY IS THAT THE BANK
DRAGS THE BORROWER INTO COURT
AND DOES NOT HAVE-- THE BANK
DOESN'T HAVE ITS DUCKS IN A ROW.
IT CAN'T PROVE WHAT IT NEEDS TO
PROVE.
AND, THEREFORE, THE BORROWER HAS
BEEN JUST DRAGGED INTO COURT IN
THIS FAILED ATTEMPT BY THE BANK,
AND I'M HAVING TROUBLE SEEING
ANYTHING, ANY REASON WHY THAT
THE BORROWER'S NOT IN THOSE
CIRCUMSTANCES THE PREVAILING
PARTY UNDER 57.105, AND IT'S
ESTABLISHED IN THE LITIGATION
THAT IS UNDENIABLE THAT BOTH
PARTIES, BOTH THE BANK AND THE
BORROW OR WERE PARTIES TO THIS
CONTRACT.
SO I'M JUST HAVING TROUBLE
UNDERSTANDING WHY-- BECAUSE,
YOU KNOW, THE REALITY IS THE
BANK BROUGHT THIS ON ITSELF.
AND WHY THE BANK, HAVING BROUGHT
ABOUT THIS-- AND, AGAIN, I
UNDERSTAND THERE ARE COMPLICATED
REASONS WHY ALL THESE THINGS
HAPPEN, AND THESE ARE, IT'S A
BIG INDUSTRY AND ALL THAT.
BUT HAVING BROUGHT THIS ABOUT,
WHY THE BANK SHOULDN'T HAVE TO
PAY IT OFF TO THE PREVAILING
PARTY.
>> AND THE DEFENDANT HAS BEEN,
QUOTED, DRAGGED INTO THE COURT
BECAUSE OF A FAILURE TO PAY THE
MORTGAGE PAYMENTS.
BUT AGAIN--
>> I THINK I INDICATED THAT.
>> RIGHT.
>> BUT THEN THEY'VE BEEN DRAGGED
INTO THIS FAILED PROCEDURE, THIS
FAILED LAWSUIT BECAUSE THE BANK
DIDN'T DO WHAT IT WAS SUPPOSED
TO DO, ISN'T THAT CORRECT?
>> THERE WAS A DEFENSE THAT WAS
ESTABLISHED.
AND SO BECAUSE THAT DEFENSE WAS
ESTABLISHED, THE DEFENDANT

OBTAINED A DISMISSAL.
BUT BECAUSE THE DECISION OF THE COURT, THE ADJUDICATION OF THE TRIAL COURT THAT THE PLAINTIFF WAS NOT ENTITLED TO FORCE THE BEGINNING OF THE CASE, THAT IS THE THROUGHOUT THE CASE THE FACT IS ESTABLISHED THAT THE BANK CANNOT ENFORCE THIS NOTE WITHIN THIS CASE.
THEY CANNOT AMEND.
TYPICALLY, IT RELATES BACK TO INITIAL PLEADINGS.
WHICH TAPS INTO THE JURISDICTIONAL ARGUMENT WE MADE, AND IT IS A THRESHOLD QUESTION THAT IS APPROPRIATE FOR THIS COURT TO MAKE EVEN THOUGH THE FOURTH DISTRICT NOTED IT DIDN'T ADDRESS THAT ISSUE, HERE STANDING IN FORECLOSURE CASES HAS BECOME JURISDICTIONAL.
YOU CANNOT CURE STANDING BY AMENDMENT WHEN TYPICALLY IN CASES YOU COULD.
AND SO WHY THAT IS, WHY THIS ARGUMENT IS SO IMPORTANT HERE IS ROOTED IN LAW FROM THIS COUNT, THE LEATHER CASE, THE ROBERTS CASE AND THE BYRON CASE.
THEIR SUBJECT MATTER JURISDICTION IS THE INHERENT AUTHORITY TO ADJUDICATE A CERTAIN CLASS OF CASES.
BUT THERE IS A COMPONENT OF SUBJECT MATTER JURISDICTION THAT THIS COURT TALKS ABOUT IN LOVETTE THAT IS MISSING HERE, AND THAT'S JURISDICTION OVER THE PARTIES.
IN ORDER FOR THE JURISDICTION OF THE COURT TO BE LAWFULLY INVOKED, IT HAS TO HAVE THE PROPER AND NECESSARY PARTIES.
>> COUNSEL, I'M SORRY TO INTERRUPT YOU.
SO DO YOU AGREE THAT THIS WAS AN ACTION WITH RESPECT TO THE CONTRACT?
FOR PURPOSES OF THE SECOND--

>> YOU WOULD AGREE THAT THIS IS AN ACTION WITH RESPECT TO THE CONTRACT, BUT I WOULD SUBMIT THAT IT IS, THAT THE PLAINTIFF CANNOT ENFORCE THE CONTRACT BECAUSE OF THE FINDING OF THE COURT.
BECAUSE THE PLAINTIFF CANNOT ENFORCE THE CONTRACT, IT IS NOT AN ACTION ENFORCING THE CONTRACT THAT WOULD ENTITLE THIS FORECLOSURE PLAINTIFF IN THIS CASE TO GET FEES.
AND BECAUSE THIS FORECLOSURE PLAINTIFF IN THIS CASE COULD NOT GET FEES, THEN THE RECIPROCITY PROVISION UNDER 57.1057 IS NOT TRIGGERED.
>> SO FOR YOU TO WIN, WE WOULD HAVE TO AGREE WITH YOUR INTERPRETATION OF THE FIRST CLAUSE OF THIS STATUTE HERE.
NOT-- THE SECOND CLAUSE YOU AGREE THAT THIS IS AN ACTION WITH RESPECT TO THE CONTRACT.
>> IT IS AN ATTEMPTED ACTION, YES, YOUR HONOR.
BUT THE FAILURE HERE UNDER THE STATUTE IS THE ABILITY TO ENFORCE THE CONTRACT.
AND UNDER THE SECOND POINT WE MAKE IN OUR BRIEF, THIS TAPS INTO EQUITABLE NATURE OF FORECLOSURE PROCEEDINGS.
AND STANDING AGAIN AS AN AFFIRMATIVE DEFENSE.
AND WHEN THAT, WHEN A DEFENDANT PREVAILS ON AN AFFIRMATIVE DEFENSIVE STANDING AT INCEPTION, THE DEFENDANT CAN'T TAKE A CONTRARY, INCONSISTENT POSITION LATER IN THE CASE.
THAT IS THE DOCTRINE OF ESTOPPEL AGAINST INCONSISTENT PRECISIONS.
UNDER THAT DOCTRINE A PLAINTIFF WHO GAINS A DISMISSAL BY FIRST ASSERTING THE BANK HAS NO STANDING TO ENFORCE THE NOTE CANNOT GAIN MORE, I.E. ATTORNEYS FEES, BY ASSERTING A SECOND

INCONSISTENT POSITION THAT IS
PLAINTIFF IS ENTITLED TO ENFORCE
THE NOTE LATER IN THE CASE, THAT
THE PLAINTIFF-- OR THAT THE
DEFENDANT COULDN'T HAVE
MAINTAINED UNDER THE FIRST
POSITION.
AND THAT'S EXACTLY WHAT WE HAVE
HERE.
THAT'S THE EQUITABLE PROBLEM
HERE IS YOU'VE GOT A DEFENDANT
ON THE ONE HAND SAYING YOU CAN'T
ENFORCE THIS CONTRACT, BUT ON
THE OTHER HAND AT THE END OF THE
CASE SAYING THAT, YES, YOU CAN
ENFORCE THIS CONTRACT.
AND THE DOCTRINE OF ESTOPPEL
AGAINST--
>> COUNSEL, IT SEEMS LIKE THEIR
POSITION MAY BE THAT YOU CANNOT
ENFORCE THE CONTRACT IN THIS
CASE BECAUSE YOU DIDN'T MAKE THE
APPROPRIATE PLEADINGS AT THE
OUTSET.
NOT THAT YOU CAN NEVER ENFORCE
THE CONTRACT BECAUSE YOU'RE NOT
PARTIES TO THE CONTRACT, BUT YOU
LOSING THIS CASE.
IT SEEMS LIKE THE INTERPRETATION
THAT YOU WANT TO PRESENT AND ASK
US TO ADOPT TURNS 57.1057 ON ITS
HEAD.
BECAUSE THE BANK HAS A CONTRACT
THAT PROVIDES FOR ATTORNEY FEES
TO THE BANK, NOT TO THE
BORROWER.
BUT BY VIRTUE OF THE STATUTE, IT
GIVES THEM ATTORNEY FEES.
BUT IT SEEMS LIKE YOUR
INTERPRETATION WILL AWARD FEES
TO THE BORROWER ONLY IF THE BANK
IS ABLE TO WIN.
AND THAT GETS YOU RIGHT BACK TO
THE ORIGINAL POSITION THAT THE
BANK HAD WITHOUT THE STATUTE.
>> AND THE POSITION HERE DOES
NOT INTERFERE WITH THE
LEGISLATIVE INTENT OF THE
STATUTE OF LEVELING THE FIELD.
IT JUST REQUIRES THAT THE

LANGUAGE OF THE STATUTE THAT WE SUBMIT IS THE ONE PARTY WHO HAS THE RIGHTS UNDER THE CONTRACT HAS TO HAVE THE ABILITY TO ENFORCE THAT.
AND IN THIS CASE-- NOW, IN ANOTHER CASE PERHAPS THE BANK CAN ENFORCE IT.
BUT WITHIN THIS CASE ONCE IT IS ESTABLISHED, ONCE THE COURT HAS ADJUDICATED THAT THE BANK DOESN'T HAVE STANDING-- I.E., DOESN'T HAVE ABILITY TO ENFORCE THE CONTRACT-- THEN THAT'S STUCK FOR THE REST OF THE CASE INCLUDING THE ENTITLEMENT HEARING AT THE END OF THE CASE.
AND THAT GOES BACK TO THE JURISDICTIONAL PROBLEM THAT PLAINTIFF FACES.
YOU CAN'T FIX IT WITHOUT FILING A NEW CASE.
AND IF YOU CAN'T FIX IT BECAUSE IT'S JURISDICTIONAL, THAT MEANS THAT YOU NEVER HAD THE PROPER KEY TO THE COURTHOUSE, YOU NEVER HAD THE PROPER KEY TO START THE IGNITION IN THE COURT.
AND, THEREFORE, THE COURT HAD TO REMAIN AT REST ONCE IT DETERMINED THERE WAS NO JURISDICTION.
AND BECAUSE THE COURT HAD TO REMAIN AT REST UNTIL THE PROPER PARTY INVOKED ITS JURISDICTION IN A SEPARATE LAWSUIT, IT COULD NOT HAVE AWARDED INDEPENDENTLY A FEE JUDGMENT AS THE JUDGE DID IN THIS CASE.
>> WELL, NOW, IN THIS CASE, I MEAN, YOU'RE CHARACTER USING WHAT THE COURT DID AS DETERMINING IT HAD NO JURISDICTION.
THE COURT NEVER ACTUALLY SAID THAT.
>> THE COURT NEVER DID SAY THAT, CORRECT, YOUR HONOR.
>> BUT THAT'S YOUR CHARACTERIZATION AND, I MEAN, I

UNDERSTAND WHAT YOU'RE ARGUING,
BUT THAT'S NOT-- THAT'S YOUR
GLOSS ON WHAT THE COURT DID.
>> THAT IS.
BUT A FINDING OF STANDING IS,
RESULTS IF, FIRST OF ALL, IT
CAN'T BE CURED, IT RESULTS IN
DISCUSS MISSAL, SO IT HAS TO BE
JURISDICTIONAL.
THERE ARE CASES OUT THERE THAT
HAVE DESCRIBED STANDING IN
FORECLOSURE CASES AS
JURISDICTIONAL.
AND STANDING, AS IN THE LOVETTE
CASE, DESCRIBED YOU HAVE TO BE
THE NECESSARY PARTY TO INVOKE
THE COURT'S JURISDICTION.
AND UNTIL THAT PROPER PARTY
INVOKES IT--
>> WELL, THE COURT HAS
JURISDICTION EVEN--
[LAUGHTER]
JURISDICTION IS NOT EQUIVALENT
TO STANDING.
>> BUT THE JURISDICTION OF THE
COURT HAS TO BE TRIGGERED BY THE
PROPER PARTY.
AND WHEN THE PROPER PARTY
DOESN'T, WHEN THE COURT SAYS
THIS IS NOT THE PROPER PARTY
BECAUSE YOU CAN'T ENFORCE THIS
NOTE, YOU MUST DISMISS THE CASE,
THEN THE JURISDICTION HASN'T
BEEN INVOKED.
SO THE PLAIN LANGUAGE OF THE
CONTRACT, YOUR HONOR, DOES
PROVIDE FOR FEES WHEN A PARTY
HAS TO ENFORCE THE CONTRACT.
THE PROBLEM THERE UNDER THE
STATUTE IS THAT THE PARTY HAS TO
HAVE THE ABILITY TO ENFORCE THE
CONTRACT.
>> BUT IT SEEMS LIKE, I MEAN, IT
SEEMS LIKE BY CONCEDING THE
FIRST PART OF WHAT YOU JUST SAID
AND BY CONCEDING THIS WAS AN
ACTION WITH RESPECT TO THE
CONTRACT, YOU'VE BASICALLY
CONCEDED THAT THE PETITIONER
HERE SHOULD WIN.

>> NO, YOUR HONOR.
WE-- OUR CONCESSION IS SIMPLY RECOGNIZING THAT THE LANGUAGE IN THE CONTRACT THAT PROVIDES FEES TO A PART FOR ENFORCING THE CONTRACT.
OUR POSITION IS THAT BECAUSE THE COURT ADJUDICATED THE FACT THAT THIS PARTICULAR PLAINTIFF CANNOT ENFORCE THE CONTRACT, THEN THAT PARTICULAR PLAINTIFF CANNOT GET FEES PURSUANT TO THE CONTRACT.
BECAUSE THAT PLAINTIFF CANNOT GET FEES TO THE CONTRACT, 57.1057 IS NOT TRIGGERED AND, THEREFORE, THERE'S NO RECIPROCITY.
SO WHEN FACTORING IN THE PLAIN LANGUAGE AS WE HAVE SUBMITTED TO THE COURT, THE EQUITABLE NATURE HEAR AND THE DOCTRINE AGAINST INCONSISTENT POSITIONS AND, OF COURSE, THE JURISDICTIONAL CONCEPT, THE COURT SHOULD APPROVE THE DECISION OF THE FOURTH DISTRICT.
IF THERE ARE NO FURTHER QUESTIONS FROM THE PANEL, THEN WE WOULD ASK THE COURT TO APPROVE THE DECISION OF THE FOURTH DISTRICT.
THANK YOU.
>> ALL RIGHT.
THANK YOU, COUNSEL.
REBUTTAL ARGUMENT.
>> COUNSEL, CAN I ASK YOU A QUICK QUESTION?
SO IS THERE, SO WHEN YOUR CLIENT IN THEIR CAPACITY AS THE DEFENDANT HERE, WHEN THEY ALLEGED THAT THERE WAS NO STANDING, IS THAT DIFFERENT FROM SAYING THERE IS NOT A CONTRACT BETWEEN US AND THE PLAINTIFF, BANK?
>> YES.
STANDING HAS TO DO WITH THE NEGOTIABILITY OF THE NOTE, WHETHER OR NOT THEY HAD POSSESSION OF IT THE DAY THAT

THEY FILED THE LAWSUIT AND
WHETHER OR NOT IT WAS ENDORSED.
HERE THE COURT ADJUDICATED THERE
WAS NO PROOF THAT IT WAS
ENDORSED ON THE DAY THAT THE
LAWSUIT WAS FILED.
>> SO IF THE DEFENDANT HAD
ARGUED, HEY, THERE'S NO CONTRACT
BETWEEN US, THEY'VE GOT THE
WRONG PERSON OR THIS IS THE
WRONG BANK OR WHATEVER, ARE
YOU-- WOULD IT BE, WOULD THIS,
WOULD THAT BE DIFFERENT?
WOULD THAT THEN PREVENT YOU FROM
COMING AROUND AFTER PREVAILING
ON THAT AND SAYING, OH, BY THE
WAY, THERE IS A CONTRACT, AND I
WANT FEES BECAUSE OF THIS
RECIPROCAL PROVISION?
>> YEAH.
I MEAN, THAT'S A COMPLETELY
DIFFERENT SCENARIO, AND GLASS
RELIES ON THE HFC CASE, THE
ALEXANDER CASE, AND IN THOSE
CASES THERE WAS AFFIRMATIVE
PROOF THERE WAS NO CONTRACT, OR
IN ALEXANDER THERE WAS AN
AFFIRMATIVE FINDING BY THE COURT
THAT IT WAS NEVER SIGNED BY THE
PLAINTIFF.
HERE THERE WAS AN ACKNOWLEDGMENT
BY THE COURT THAT THEY HAD THE
CONTRACT IN 2012 AND THAT IT
DIDN'T MAKE MY CASE AS STRONG.
THAT'S NOT WHAT'S AT ISSUE IN
THIS CASE.
AND I THINK WHEN COUNSEL'S
TALKING ABOUT THE ENFORCEABILITY
OF THE NOTE, HE'S IGNORING THE
KATZ CASE FROM THIS COURT THAT
SPECIFICALLY SAYS YOU'RE STILL
ENTITLED TO ATTORNEYS FEES EVEN
WHEN A CONTRACT IS FOUND TO BE
UNENFORCEABLE.
AND THIS ISN'T A CASE WHERE
WE'RE TAKING AN INCONSISTENT
POSITION BECAUSE STANDING, AS
I'VE EXPLAINED, IS DIFFERENT
THAN TO FORMATION OF A CONTRACT.
IN HARRIS, YOU SAW THE CONTRACT

BEING FORMED BY THE ASSIGNMENT
OF MORTGAGE, AND THE MORTGAGE
CONTRACT HAD BEEN ASSIGNED TO
THE PLAINTIFF, SO THEY HAD A
CONTRACT.
AND, YOU KNOW, WHEN YOU LOOK AT
FORECLOSURE CASES, THE BANKS ARE
THE ONES WITH ALL THE KNOWLEDGE.
THEY KNOW WHERE THE NOTE IS
STORED, WHETHER OR NOT IT'S
ENDORSED, THEY KNOW EVERYTHING.
AND WHEN THEY FILE A LAWSUIT,
THEY BETTER HAVE THEIR DUCKS IN
A ROW, AS THE CHIEF JUSTICE
SAID, BECAUSE THEY'RE THE ONLY
ONES WITH THIS INFORMATION.
THAT'S THE REASON WHY THIS
COURT, AND THERE'S A STATUTE
THAT YOU HAVE TO VERIFY HAVING
POSSESSION OF THE NOTE WAS TO
STOP CASES FROM GOING ON AND
PEOPLE BEING DRAGGED INTO COURT
FOR 11 YEARS, YOU KNOW?
AND WHEN YOU DON'T HOLD THEIR
FEET TO THE FIRE AND HAVE ANY
SORT OF CONSEQUENCE FOR THEIR
FAILURE TO PROVE THEIR CASE
BECAUSE STANDING IS PART OF THE
PLAINTIFF'S PRIMA FACIE BURDEN,
THAT'S WHAT MAKES IT DIFFERENT
IN FORECLOSURE CASES, THEN
THERE'S NO CONSEQUENCE.
LIKE I SAID, THEY CAN JUST KEEP
FILING AND FILING.
IT'S INEQUITABLE NOT TO ALLOW
FOR--
>> COUNSEL, YOU'RE, I THINK YOUR
TIME IS UP, BUT YOU CAN-- I'LL
LET YOU GO ON FOR ABOUT 30
SECONDS, YOU'LL JUST SUM UP.
>> THANK YOU.
WHEN THE FOURTH DECLINED TO GO
DOWN THE RABBIT HOLE AND IGNORE
THE FACTS AND IGNORE THE
EQUITIES, IT DIDN'T GIVE THIS
COURT ANY BASIS TO MAKE THE SAME
DETERMINATION AS THE FOURTH.
AND I RESPECTFULLY ASK THAT THIS
COURT RESOLVE THE CONFLICT IN
THE SAME MAN OR AS THE SECOND

AND THE FIFTH.
THANK YOU.
>> ALL RIGHT.
WE THANK YOU, COUNSEL.
WE THANK BOTH OF YOU FOR YOUR ARGUMENTS IN THIS CASE TODAY.
THAT'S THE LAST CASE ON THE DOCKET FOR THIS ORAL ARGUMENT WEEK.
SO THE COURT WILL NOW STAND IN RECESS.