

THE COURT WILL PREPARE  
TO TAKE UP THE  
FOURTH AND FINAL CASE ON  
TODAY'S DOCKET.

>> THE COURT WILL PROCEED TO  
HEAR ARGUMENT IN THE CASE OF  
LEVY VERSUS LEVY.

>> MY NAME IS EVAN ABRAMOWITZ.  
I REPRESENT SAMUEL SOLOMON  
LEVY.

IT IS WELL-SETTLED AND  
WELL-ESTABLISHED THAT FLORIDA  
STATUTE SECTION 57.105  
SUBSECTION 7, THE UNILATERAL  
PREVAILING PARTY AND MAKES THEM  
BILATERAL.

IN THIS CASE THE ATTORNEY  
CLAUSE IS A BILATERAL PARTY  
ATTORNEYS FEES CLAUSE, IT IS  
OUR POSITION THAT THE DECISION  
OF THE THIRD DISTRICT COURT OF  
APPEAL FINDING THAT 57105  
SUBSECTION 7 APPLIES IN THIS  
CASE SHOULD BE QUASHED.

THIS CASE STEMS FROM A  
DISTILLATION OF MERITS  
PROCEEDING OF THE ATTORNEYS  
FEES CLAUSE IN QUESTION IS  
CONTAINED IN A PROPERTY  
SETTLEMENT AGREEMENT AS WELL AS  
A CHILD CUSTODY AGREEMENT.

THERE'S TWO BUT THE CLAUSES ARE  
IDENTICAL OF EACH OF THE  
AGREEMENTS IN THIS CASE.

OF CRITICAL IMPORTANCE IS THE  
ATTORNEYS FEES CLAUSE IN THIS  
CASE ALLOWS QUOTE EITHER PARTY  
TO TAKE LEGAL ACTION AGAINST  
THE OTHER AND ONLY THE PARTY  
THAT IS FOUND TO BE IN, QUOTE,  
VIOLATION MAY HAVE ATTORNEYS  
FEES AWARDED AGAINST THEM IN  
SUCH AN INSTANCE.

>> I WILL INTERRUPT WITH A  
HYPOTHETICAL.

TO START OFF.

EVERY ATTORNEY LIKES TO HEAR.  
IN THIS TYPE OF CASE I DO  
UNDERSTAND YOUR ARGUMENT.

YOU ARE ESSENTIALLY SAYING THE  
PARTY IS A PARTICULAR ENTITY  
AND A PARTICULAR ENTITY SUCH AS  
THE LENDER OR THE CREDIT CARD

COMPANY, THE RIGHT TO ATTORNEYS FEES, 57105 SUBSECTION 7 MAKES THAT BILATERAL.

THE CASE LAW IN MANY OF THE CASES WE HAVE DEAL WITH THAT TYPE OF PROVISION, DEFINES A PARTICULAR PARTY BUT WHAT WOULD PREVENT IF WE THINK YOUR INTERPRETATION IS CORRECT AND IN THIS CASE DOES -- DOESN'T ACT TO MAKE THE CAUSE GO INTO EFFECT, WHAT WOULD PREVENT A MORTGAGE COMPANY FROM CHANGING THE LANGUAGE OF THEIR CONTRACT TO MATCH THIS, IN THE EVENT EITHER PARTY TAKES ACTION AGAINST ANOTHER, FAILURE TO ABIDE BY THIS AGREEMENT AND THE PARTY WILL PAY TO THE OTHER PARTY THOSE EXPENSES.

CLEARLY IT IS USUALLY THE MORTGAGE COMPANY BRINGING THE CLAIMS, VERY RARELY THE OTHER SIDE.

WHAT PREVENTS THAT FROM HAPPENING WHICH SEEMS TO GO AGAIN AGAINST 57105 IS SUPPOSED TO DO.

HOW IS IT USED IN THESE PARTICULAR SITUATIONS.

>> IT IS ABOUT A TYPE OF CONTRACT WE ARE DEALING WITH IN THESE SPACES, I CAN'T IMAGINE WHERE A CONSUMER IN THESE CONTRACT WE ARE TALKING ABOUT AT THE BANKS OR CORPORATE ENTITIES, AND THE CORPORATE ENTITY, ALWAYS THE BANK SEWING THE CONSUMER UNDER THAT CLAUSE SO I WOULD THINK IN A CONTRACT OF THAT NATURE THAT A RULING FROM THIS COURT WOULD NOT APPLY IN THAT SITUATION OF THE RULING OF THE COURT WERE TO AGREE WITH OUR POSITION.

THIS IS THE ARGUMENT THAT WILL BE MADE FOR BILATERAL CONTRAST FOR EITHER PARTY TO SUE THE OTHER BUT THERE IS A MEANS BY WHICH EITHER PARTY -- THERE'S MANY DIFFERENT ISSUE, WE HAD PROPERTY DISTRIBUTION, CUSTODIAL CHILDREN, SUPPORT. BOTH PARTIES HAD ISSUES THEY

COULD POTENTIALLY SUE THE OTHER UPON AND BECAUSE BOTH OF THEM HAVE THE ABILITY TO DO THAT THE CONTRACT IS BILATERAL.

I WOULD THINK TO ANSWER YOUR QUESTION THE CONTRACT, THE BIG CONSUMER, THE BIG CORPORATION AND CONSUMER WERE TO SAY LANGUAGE LIKE THIS CONTRACT BY EITHER PARTY THAT THE SAME WOULD NOT APPLY BECAUSE THEY WOULDN'T HAVE THE ABILITY TO AVAIL THEMSELVES OF IT SO MAYBE A QUALIFIER IS IT NEEDS TO SAY BOTH PARTIES AND THE ACTUAL ABILITY TO AVAIL THEMSELVES OF FILING CONNECTION AGAINST THE OTHER PARTY WHICH BOTH PARTIES IN THIS CASE DO BUT MOST LIKELY IN THE HYPOTHETICAL YOUR HONOR'S ARE DISCUSSING THE CONSUMER WOULD NOT DO BECAUSE THERE WOULD BE NO CAR THAT ACTION THE CONSUMER WOULD TAKE AGAINST THE BIG BANK OR BIG CORPORATE ENTITY.

>> THERE ARE CASES AGAINST BANKS THAT ACTUALLY WENT.

>> I UNDERSTAND THAT.

WE POINT THIS OUT IN THE BRIEF SIMILAR TO THE UNIQUENESS OF FAMILY LAW COST OF ACTION AND DISSOLUTION OF THAT.

>> I UNDERSTAND YOUR ARGUMENT ON THE MERITS AND THEY SEEM TO ME TO MAKE A LOT OF SENSE.

IT SEEMS TO ASSUME 57105 APPLIES TO THAT AND WE'RE HAVE AN ACTUAL CONTRACT THAT WAS MADE IN VIRGINIA, IN VIRGINIA COURT.

CHOICE OF LAW PRINCIPLES, WE ARE ASSUMING 57105 APPLIED TO BOTH PARTIES.

>> THE CHOICE OF LAW ISSUE WAS NEVER RAISED FOR THE LOWER COURTS.

IT IS THEREFORE NOT ADDRESSED, 57105, IF PROVISIONS CALL FOR ITS APPLICATION OR WE ARE ARGUING THAT IT DOESN'T BUT GOING BACK TO THE FAMILY LAW CAUSE OF ACTION IN THE BRIEF. THE CONSUMER CONTRACTS, WE HAVE

HERE PEOPLE WITH EQUAL BARGAINING POWER, THERE IS A GREAT DEAL OF NEGOTIATION INTO THESE AGREEMENTS, A GREAT DEAL OF THAT AND THEY AGREED TO THESE PROVISIONS FOR A REASON. A BUNCH OF CASE LAW INCLUDING CASES IN THIS COURT WHICH WE ARE SUPPOSED TO LOOK AT THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THE CONTRACTS.

IN THIS CONTRACT AND OTHER CONTRACTS HAVE THIS PROVISION. ONLY IF THEY VIOLATE.

IT IS UNDERSTANDABLE SUBSECTION 7 TAKES THE VERY BIG STEP OF REWRITING CONTRACTS IN THE STATE TO PROTECT CONSUMER WHEN IT STARTS TO REWRITE CONTRACTS LIKE THIS AND FAMILY LAW CAUSE OF ACTION BETWEEN SEVERAL SIMILARLY SITUATED PARTIES IS GOING TOO FAR AND IS REWRITING POTENTIALLY THOUSANDS OR HUNDREDS OF THOUSANDS OF CONTRACTS ACROSS THE STATE IN SITUATIONS LIKE THIS.

FAMILY LAW IS ALSO UNIQUE IN THAT IT HAS A STATUTE LIKE 61.16 WHICH ALLOWS FOR THE AWARD OF ATTORNEYS FEES IF THERE ARE FINANCIAL INIQUITIES SO THERE ARE OTHER MEANS TO OBTAIN ATTORNEYS FEES BESIDES THE LAW LIKE THIS AND IN THIS PARTICULAR CASE IN THE LOWER COURT THE JUDGE RESERVE JURISDICTION TO DO SO AND IT IS INAPPROPRIATE FOR 57105 TO GO AS FAR.

>> DO YOU ESSENTIALLY SEE THIS AS A STATUTORY INTERPRETATION ISSUE?

>> IT IS BOTH A STATUTORY INTERPRETATION ISSUE AND CLAUSE INTERPRETATION.

>> WHAT ISSUE?

>> INTERPRETATION OF THE CLAUSE OF THE CONTRACT.

>> STATUTORY INTERPRETATION IS THERE ANY BASIS IN 57105 TO DO THINGS BETWEEN TYPES OF CONTRACTS LIKE YOU ARE ASKING US TO DO.

>> THE SPECIFIC THE MEDIATION OF THE STATUTE, CASES FROM THIS COURT AT A LONG LINE OF CASES INCLUDING RECENT CASES LIKE HAM VERSUS PORTFOLIO RESERVE -- ASSOCIATES AND WHICH BANK, DEFINING 571052 SUBSECTION TEND TO ONLY APPLY TO UNILATERAL ATTORNEYS FEE CLAUSES.

BECAUSE THE CLAUSE WE HAVE HERE IS BILATERAL, SUBSECTION 7 DOES NOT APPLY.

THE DISTINCTION AT THE STATUTE, THIS DOESN'T APPLY TO FAMILY LAW CASES.

>> I DON'T WANT TO MAKE YOUR ARGUMENT FOR YOU BUT WHEN IT SAYS THE PROVISION ALLOWING ATTORNEYS FEES TO A PARTY CAN THAT BE UNDERSTOOD IN CONTEXT TO ONE PARTY AND REFERS LATER TO THE OTHER PARTY, TO USE THAT TERMINOLOGY OF UNILATERAL PROVISION, I'M NOT SURE THAT IS EXPLICIT ANYWHERE BUT MIGHT HAVE BEEN BASED ON AN UNDERSTANDING OF WHAT THE PHRASE TO A PARTY MEANS.

AM I MISSING SOMETHING?

>> KNOW, I AGREE WITH THAT. THE STATUTE CLEARLY SAYS A PARTY, AN IDENTIFIER OF ONE PARTY AND WE ARE SUPPOSED TO READ THE STATUTE AS READS AND BE VERY CONCERNED WITH THE WAY IT IS CONSTRUCTED AND THAT IS HOW IT IS CONSTRUCTED.

WHEN YOU COMPARE THAT SOME PROVISION IN THIS CASE IN THE FOURTH DCA CASE IN CONFLICT WHICH IS SECOND VERSUS SECOND, BOTH PROVISIONS SAY EITHER PARTY, IN STARK CONTRAST TO THE PARTY REFERENCED IN THE STATUTE AND THAT IS WHY WE HAVE A DIFFERENCE BETWEEN A STATUTE REFERENCING UNILATERAL ATTORNEYS FEE PROVISIONS AND THE CLAUSES HERE BEING BILATERAL IN NATURE.

>> TWO CASES OUT OF THE FIFTH, THEY TO PARTICULARLY ANALYZE THIS QUESTION BUT SEEMED TO REACH THE OPPOSITE CONCLUSION,

NOT SURE I AM PRONOUNCING IT  
RIGHT.

WHERE YOU HAD THE ASSOCIATIONS,  
OWNERS IN EITHER PARTY TO BRING  
THE FEE BUT THEY ESSENTIALLY  
SAID THAT 57105 PROTECTION 7  
WOULD HAVE APPLIED.

HOW WOULD YOU DISTINGUISH'S  
CASES?

>> I UNDERSTAND YOUR HONOR'S  
QUESTION.

BOTH OF THOSE CASES STATE THAT  
THEY ARE UNILATERAL PROVISIONS.  
IN LOOKING AT THE ACTUAL  
PROVISIONS ESPECIALLY THE ONE  
WHERE THE PROVISIONS THEMSELVES  
ARE SOMEWHAT CONVOLUTED AND IF  
YOU READ SOME, THEY INVOLVE  
MULTIPLE PARTIES GOING BACK,  
DIFFICULT TO UNDERSTAND THE  
INTENT OF THOSE PROVISIONS TO  
BEGIN WITH.

THE THINGS WE SEE IN THOSE  
CASES ARE BECAUSE OF UNCLEAR  
PROVISIONS, THAT IS WHAT I  
GLEANED FROM IT BUT CERTAINLY  
BOTH CASES MAKE THE STATEMENT  
THAT THESE ARE UNILATERAL  
PROVISIONS AND AS UNILATERAL  
PROVISIONS, MAY SEND FROM THAT  
PERSPECTIVE THAT THE PROVISIONS  
ARE CONVOLUTED AND TO HIGHLIGHT  
THAT POINT CAL ATLANTIC REFERS  
TO THE CASE OF GE AND THE  
LENDING WHICH IS THE CASE IN  
THE SOUTHERN DISTRICT OF  
FLORIDA AND SAYS THE PROVISION  
IN CAL ATLANTIC IS SIMILAR TO  
PROVISION IN GE MB LINTON AND  
THE PROVISION OF GEN B LENDING  
IS CLEARLY A UNILATERAL  
PROVISION AND IT ALIGNS WITH GE  
MB WHICH SAYS THE CONTRACTUAL  
PROVISION SAYS IF YOU DEFAULT  
YOU AGREE TO PAY COSTS FOR  
COLLECTING COURT COSTS AND  
REASONABLE ATTORNEYS FEES, THE  
ULTIMATE UNILATERAL PROVISION  
SO THE FACT THAT IT RELIES ON  
GE MB REGARDLESS OF THE  
CONVOLUTION IT IS CLEAR IT IS  
FOCUSED ON A UNILATERAL  
PROVISION AND THAT IS WHY THEY  
SAY 57105.

I UNDERSTAND JUSTICE LAWSON'S QUESTION AS TO WHY THAT'S IS NOT CARVED OUT, IT IS CORRECT THEY ARE NOT BUT IF THE COURT WERE TO UPHOLD THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL, THERE WOULD BE WIDE, SWEEPING IMPACT FOR CONTRACTS IN FAMILY LAW CASES AND OTHER CONTRACTS THE HAVE TO FOLLOW BIG PARTY PROVISIONS AND RESULTING IN THAT RESULT FOR MANY CITIZENS OF THE STATE OF FLORIDA.

FOR INSTANCE WE COULD HAVE A SITUATION WHERE YOU HAVE A MOTHER WITH THREE CHILDREN WHO DOES NOT HAVE FINANCIAL MEANS, WHO HAS A PROVISION LIKE THIS ONE, MAYORAL SETTLEMENT AGREEMENT AND SEEKS SOME SORT OF ENFORCEMENT AGAINST HER FORMER HUSBAND FOR WHATEVER REASON, TECHNICAL OR OTHERWISE SHE IS NOT SUCCESSFUL.

IF WE UPHOLD THE THIRD DISTRICT COURT OF APPEALS DECISION WE PUT THAT PARTICULAR INDIVIDUAL IN A PLACE WHERE SHE CAN HAVE ATTORNEYS FEES AWARDED AGAINST HER BECAUSE SHE SAW ENFORCEMENT AND LOST FOR WHATEVER REASON.

THAT IS NOT A RESULT IN THAT PARTICULAR INDIVIDUAL BUT AGREED TO A DEFAULT THING BILATERAL PROVISION IN THE FIRST PLACE AND NOT AGREED TO A PREVAILING PARTY PROVISION.

SHE SHOULD BE ABLE TO CONTRACT WITH THE OPPOSING SIDE AND BE ABLE TO RELY UPON THE CLEAR MEANING OF THAT CONTRACT WITH NO CONCERN THAT A FLORIDA STATUTE IS GOING TO REWRITE THAT CONTRACT.

ALL OF THAT BEING SAID IF THERE IS NO FURTHER QUESTIONS AT THIS TIME I WILL BE FOR THE REST OF MY TIME.

>> COUNSEL?

>> GOOD MORNING, CHIEF JUSTICE, JUSTICES COME MAY IT PLEASE THE COURT.

THIS IS ROBERT KOHLMAN ON

BEHALF OF THE RESPONDENT, THERE IS A QUESTION THAT WAS ASKED AT THE BEGINNING WHICH IS WHY WOULD A PARTY NOT BE ABLE TO RIDE AROUND THE 51 FEE PROVISION IF IT REQUIRED A NAMED PARTY IN ORDER TO DO THAT AND THAT QUESTION WAS ANSWERED, THE CASE WE JUST CITED WHICH I AM GOING TO QUOTE HERE LIMITING A PARTY'S ENTITLEMENT TO ATTORNEYS FEES ON THE OUTCOME OF A DISPUTE RATHER THAN CAUSE OF ACTION ASSERTED IN PLEADINGS IS CONTRARY TO THE PURPOSE OF SECTION 57.1057 TO ENABLE A DRAFTING PARTY TO CONSTRUCT ATTORNEYS FEES PROVISIONS AROUND THE SECTION 5757 RESULTING IN UNEVEN PLAYING FIELD AND DEFEATING THE PROTECTION AFFORDED BY THE STATUTE.

THE ISSUE BEFORE THIS COURT IS WHAT EVENT TRIGGERS 57.157 AS TO ALLOW FEES AROUND THE DEFENDANT AND WHAT MAKES THE FEES PROVISION UNILATERAL? IN THE ATLANTIC CASE WHICH IS EXPRESS DIRECT CONFLICT IN ADDITION TO THE LEAFY CASE THAT PROVISION ALLOWED NUMEROUS PARTIES TO BRING A CLAIM AND AWARDED THEM PREVAILING PARTY ATTORNEYS FEES AND HOW THEY PREVAIL.

IT WAS NOT JUST THE ASSOCIATION BUT ANY PERSON WHO OWNED REAL ESTATE IN THAT SUBDIVISION WAS ALLOWED TO BRING ACTION AND THEY COULD BRING THAT ACTION AGAINST ANY OTHER REAL ESTATE OWNER.

THERE IS NO NEED -- INDIVIDUAL THAT HAD TO BE THE PLAINTIFF IN THAT CASE SO THAT GETS AROUND THE IDEA THERE HAS TO BE A NAMED PLACE IN ORDER FOR THE STATUTE TO KICK IN.

IF IT WAS REQUIRED THAT THERE BE A NAMED PLAINTIFF THAT WOULD BE IN THE STATUTE ITSELF.

THE LEGISLATURE HAD THE OPPORTUNITY TO SAY THERE HAD TO

BE A PLAINTIFF.

IT DID NOT DO SO, THE  
LEGISLATURE HAD THE OPPORTUNITY  
TO SAY THE STATUTE DOES NOT  
APPLY IN FAMILY LAW CASES AND  
DID NOT DO SO.

THE COURT MADE IT CLEAR, THE  
RECENT DECISION OBTAINED, THIS  
IS UNAMBIGUOUS.

IN THE PAGE CASE THIS COURT,  
THE DECISION FROM THE FOURTH  
DISTRICT COURT OF APPEAL WHICH  
ADDED TO THE STATUTE THINGS  
THAT WERE NOT IN THE STATUTE  
ITSELF.

>> WHAT DO YOU MAKE OF THE  
SIMPLE SORT OF TEXTUAL, TO THE  
OTHER LEADER IN THE SENTENCE.  
THAT IS TO SAY GIVEN IT DEFINES  
ONE PARTY AND THE OTHER.  
HOW DO YOU READ THAT'S OTHER  
THAN PROPOSED WHICH IS TO SAY  
THEY DIDN'T HAVE TO MAKE  
SUBJECT MATTER RESTRICTIONS,  
THOSE WORDS MEAN UNILATERAL,  
YOU HAVE A SPECIFIC PARTY ON  
ONE HAND OR THE OTHER.

>> THE ANSWER IS FURTHER ON IN  
THE STATUTE, WHETHER AS  
PLAINTIFF OR DEFENDANT AND IN  
THIS PARTICULAR CASE YOU HAVE A  
SITUATION WHERE A PREVAILING  
PARTY APPLIED ONLY TO THE  
INDIVIDUAL WHO BROUGHT THE  
ACTION AND PREVAIL IN THE  
ACTION, THAT IS A BILATERAL  
PREVAILING PARTY PROVISION AND  
57.57 DOES NOT KICK IN AND IN  
THAT CASE NO CIRCUMSTANCE UNDER  
WHICH A DEFENDING PARTY WOULD  
EVER BE ENTITLED TO PREVAILING  
PARTY ATTORNEYS FEES AND COST  
UNDER THE STATUTE.

THAT READING, DEFENDANT  
LANGUAGE AND THE STATUTE,  
STATUTORY CONSTRUCTION, YOU ARE  
TO MAKE, YOU ARE TO USE EVERY  
SINGLE WORD OF THE STATUTE AND  
GIVEN EFFECT IN THAT STATUTE SO  
THAT IS THE ANSWER TO THE  
QUESTION THEN IN THIS CASE  
THERE IS NO QUESTION THE FORMER  
HUSBAND --

>> LET ME FEEDBACK ON THAT.

I AM NOT SURE IT DOES BECAUSE  
WHETHER IT IS PLAINTIFF OR  
DEFENDANT SPEAKS TO WHETHER THE  
PARTY IS REQUIRED TO TAKE ANY  
ACTION TO ENFORCE THE CONTRACT  
AS PLAINTIFF OR DEFENDANT.

IS THAT CORRECT?

>> I AM AT A LOSS.

IF THE PARTY WAS REQUIRED TO  
TAKE ACTION TO ENFORCE THE  
CONTRACT THAT WOULD BE AS THE  
PLAINTIFF.

IT MIGHT BE A CROSS-CLAIM.

>> THERE ARE WAYS THE DEFENDANT  
CAN TAKE ACTION TO ENFORCE THE  
CONTRACT.

I AM NOT SURE I AGREE WITH THE  
ARGUMENT THAT INCLUSION OF THE  
PLAINTIFF OR DEFENDANT IS  
EVISCERATED BY THE PROPOSED  
READING BEFORE US.

>> THE ONLY THING I CAN SAY IS  
IF YOU ARE GOING TO TAKE ANY  
SORT OF ACTION TO RECOVER UNDER  
A CONTRACT YOU ARE PROSECUTING  
THAT ACTION.

IN ORDER TO SHOW THERE'S  
VIOLATION OF THE CONTRACT.  
WHETHER THAT IS AS CROSS-CLAIM  
AS A COUNTERCLAIM YOU ARE  
TAKING AFFIRMATIVE ACTION AND  
IN THAT CONTEXT BEING THE  
PLAINTIFF.

THIS, WHAT WE ARE TALKING ABOUT  
HIS DEFENSIVE POSTURE WHERE WE  
ARE SEEING THAT THE FORMER WIFE  
WHO WAS ACCUSED OF BREACHING  
THIS AGREEMENT AFTER ANY DAY  
TRIAL AND WAS SHOWN SHE DID NOT  
BREACH THE AGREEMENT, WHEN SHE  
WAS IN DEFENSIVE POSTURE AND  
PREVAIL 57.157 ALLOWS HER TO  
RECEIVE THE PREVAILING PARTY  
ATTORNEYS FEES, THE QUESTION  
RAISED BY THE FORMER HUSBAND IN  
THIS CASE IS THERE HAS TO BE A  
CONDITION, WITH THOSE FEES  
WHICH IS AN INDIVIDUAL PARTY  
HAS 2 RAISE THE ISSUE OF  
BREACHES OF CONTRACT AND SHOW  
THERE WAS A BREACH OF THE  
CONTRACT BUT THAT IS NOT WHAT  
THE STATUTE SAYS.

IT KICKS IN WHEN EITHER PARTY

WHEN HE OR SHE IS REQUIRED TO ENFORCE THE CONTRACT.  
IT IS NOT A FINDING OF VIOLATION OF THE CONTRACT THE TRIGGERS THE STATUTE BUT WHEN HE OR SHE IS REQUIRED TO TAKE ANY ACTION.  
AND ALSO IT TALKS ABOUT ACTION SINGULAR.  
IT DOESN'T TALK ABOUT ACTIONS PLURAL.  
THE FORMER HUSBAND MADE THE ARGUMENT THAT IT IS RECIPROCAL BECAUSE AT A FUTURE HYPOTHETICAL DATE THE FORMER WIFE CAN FILE AN ACTION AS WELL AND IF SHE PROVES THAT THERE'S VIOLATION BY THE FORMER HUSBAND THAT SHE COULD GET ATTORNEYS FEES CROSSING THAT SUBSEQUENT ACTION.  
THAT'S NOT WHAT THE STATUTE SAYS.  
WHAT STATUTE SAYS IS ANY ACTION SINGULAR, NOT PLURAL, SINGULAR, THERE'S ALWAYS GOING TO BE PREVAILING PARTY FEES TO THE PARTY THAT WINS.  
THE FORMER HUSBAND HAD HE WON WOULD HAVE BEEN ENTITLED TO FEES.  
THE FORMER WIFE WON.  
UNDER THE LANGUAGE OF THIS PARTICULAR AGREEMENT, PREVAILING PARTY PROVISION SHE DID NOT, SHE WAS NOT ENTITLED TO FEES.  
THAT IS WHAT MAKES IT UNILATERAL.  
THAT IS WHY THE STATUTE APPLIES.  
IF IT DIDN'T APPLY WE WOULD BE IN A POSITION WHERE THE FORMER HUSBAND COULD AT ANY TIME BRING THIS ACTION, CAUSE THE FORMER WIFE TO INCUR THESE FEES AND WOULD NOT BE ENTITLED TO THE PROTECTIONS OF THE STATUTE,  
YES, YOUR HONOR?  
THE THING THEY TALK ABOUT, THE PUBLIC POLICY, THIS IS NOT AN ARMS LENGTH TRANSACTION, THIS IS A VIRGINIA AGREEMENT.  
IF YOU LOOK AT THE VIRGINIA

AGREEMENT, AT THAT PARTICULAR TIME, SHE DIDN'T HAVE THE PROTECTIONS OF 6116 TO LEVEL THE PLAYING FIELD.

IT WAS THE FORMER HUSBAND'S COUNSEL WHO DRAFTED THE AGREEMENT.

THERE IS STATUTORY CONSTRUCTION THAT SAYS ANY AGREEMENT IS DETERMINED TO BE DRAFTED BY THE PARTIES BUT LET'S BE REAL HERE.

THERE'S A DIFFERENCE BETWEEN A PARTY THAT HAS THE ABILITY TO PAY FOR AN ATTORNEY TO REVIEW TWO AGREEMENTS 30 PAGES LONG AT A LITIGANT FOR WHOM ENGLISH IS A SECOND LANGUAGE SO I DON'T THINK THAT THE PUBLIC POLICY ARGUMENT IS VERY STRONG IN THIS CASE AND IS AGAINST THE TEXT ITSELF.

THE LEGISLATURE WANTED TO MAKE AN EXCEPTION FOR THIS TYPE OF CASE IT WOULD HAVE DONE SO. IT DID NOT.

AND ALSO THE PREVAILING PARTY FEES PROVISION IN THIS CASE IS CLEARLY IN LINE WITH THIS DECISION IN THE HAMM CASE AND THE PAGE CASE DECIDED IN DECEMBER OF 2020 IN LINE WITH THE ATLANTIC DECISION WHICH IS VERY WELL THOUGHT OUT.

ALSO IN LINE WITH THE LENDING CHASE WHICH IS THE SOUTHERN DISTRICT CASE DECIDED BY MY OPPOSING COUNSEL AND ALL THOSE CASES THERE WAS SPECIFIC, TALKED ABOUT A DEFAULT PARTY, THE GMB LENDING CASE, THE COURT SAID CLEARLY THAT IT IS NOT A REQUIREMENT THE ONE PARTY PREVAILED TO INVOKE 57105.

THE GMB LENDING, NOT TO DEFAULT ANYTHING TO TRIGGER THE STATUTE.

THIS COURT AFFIRMED THE DECISION IN LEVY VERSUS LEVY AND QUASHED THE DECISION AND I WILL YIELD MY TIME FOR OTHER QUESTIONS.

>> THIS MAY HAVE BEEN DISMISSIVE BUT 6116, ATTORNEYS FEES PROVISION APPLIED TO THIS

ACTION.

>> YES.

HAD THERE NOT BEEN A PROVISION  
IN THE CONTRACT TO PROVIDE  
PREVAILING PARTY FEES.

THAT CASES 6116 DOES NOT APPLY.

IF YOU HAVE ATTORNEYS FEES  
PROVISION IN THE SETTLEMENT  
AGREEMENT.

HAD IT NOT BEEN IN THERE THEN  
6116 WOULD APPLY BUT IN THIS  
CASE BECAUSE PARAGRAPH 13 DOES  
DISCUSS ENFORCEMENT AND  
ATTORNEYS FEES, AVAILABLE  
ENFORCEMENT ACTION 6116 DOES  
NOT APPLY.

>> IF THERE ARE NO FURTHER  
QUESTIONS I RELY UPON MY  
BRIEFS.

THANK YOU VERY MUCH.

>> WE WILL HEAR REBUTTAL.

>> THANK YOU.

JUSTICE LAWSON TO ADDRESS THE  
QUESTION SPECIFICALLY, 6116  
DOES APPLY.

CASE LAW, THE FOURTH DISTRICT  
COURT OF APPEALS IS 6116 DOES  
NOT APPLY IF THERE'S A  
CONTRACTUAL PROVISION THAT  
ALLOWS RECOVERY OF ATTORNEYS  
FEES BY THE PARTY, BASED ON OUR  
ARGUMENT BECAUSE THE FORMER  
WIFE IN THIS CASE CANNOT COVER  
ATTORNEYS FEES BECAUSE IT IS A  
BILATERAL PROVISION SHE CAN  
PREVAIL HERSELF THE REQUEST FOR  
FEES UNDER 61.16 AND AS A  
MATTER OF FACT THE VERY ORDER  
UNDER APPEAL TODAY THE GENERAL  
MAGISTRATE IS HEARING THE CASE,  
WE SERVED JURISDICTION FOR HER  
TO DO SO SO SITTING HERE RIGHT  
NOW HAS THE ABILITY TO SEEK  
FEES BASED ON NEED AND ABILITY  
STANDARD PURSUANT TO STATUTE  
61.16.

TO BRIEFLY ADDRESS COVID POLICY  
ARGUMENT MADE BY OPPOSING  
COUNSEL THAT THIS WASN'T AN  
ARMS LENGTH TRANSACTION THE  
POINT IS IN THESE BIG CONSUMER  
AGREEMENTS WHERE WITH BIG  
CORPORATIONS WHERE WE TYPICALLY  
SEE PREVAILING PARTY'S LOSSES

THEY ARE FORMED CONTRACTS WHERE  
CLIP UNDER THE NOSE OF THE  
CONSUMER AND THE CONSUMER HAS  
NO CHOICE BUT TO SIGN THEM AND  
IN MOST CASES THE CONSUMER DOES  
NOT EVEN READ THEM.

THIS IS A CONTRACT THEY NEED TO  
SIGN IN ORDER TO GET THE  
PRODUCT, THE MONEY, THE  
MORTGAGE AND COMPLETELY  
DIFFERENT THAN THE MARITAL  
SETTLEMENT AGREEMENT WHERE  
THERE IS A LOT OF THOUGHT PUT  
INTO NEGOTIATION AND DRAFTING  
OF THE AGREEMENT.

TO FINISH, YES, THE PLAINTIFF  
OR DEFENDANT REFERENCING  
STATUTE, NO MORE THAN  
IDENTIFYING.

I DON'T THINK IT DOES ANYTHING  
TO AFFECT THE MEANING OF THE  
STATUTE WHICH AS YOU SAID SAYS  
A PARTY AND THE OTHER PARTY.  
THAT IS THE MOST IMPORTANT  
READING OF THE STATUTE, THE  
MOST IMPORTANT LANGUAGE AND  
WHEN YOU CONTRAST THAT WITH THE  
LANGUAGE OF THE PROVISION IN  
THIS CASE AND THE PROVISION OF  
SACKETT WHERE IT SAYS EITHER  
PARTY OR BOTH PARTIES CAN FILE  
THESE ACTIONS AGAINST EACH  
OTHER AND IN OUR CASE BOTH  
PARTIES FILED THESE ACTIONS  
AGAINST EACH OTHER AND THOUGHT  
ATTORNEYS FEES YOU SEE THE  
CONTRAST BETWEEN THE UNILATERAL  
PROVISIONS 57105 SUBSECTION 7  
IS MEANT TO ADDRESS AND THE  
BILATERAL PROVISION IN THIS  
CONTRACT AND THE CONTRACT, FOR  
THAT REASON WE ASK THAT YOUR  
HONOR'S CLAWS THE DECISION AND  
ACCEPT THE DECISION OF THE  
FOURTH DISTRICT COURT OF APPEAL  
IN SACKETT AND FIND THAT 57105  
SUBSECTION 7 DOES NOT APPLY TO  
BILATERAL PROVISIONS LIKE THE  
ONE WE HAVE IN THIS CASE AND I  
THANK YOU FOR YOUR TIME IF  
THERE IS NO FURTHER QUESTIONS.  
>> WE THANK YOU FOR YOUR  
ARGUMENTS IN THIS CASE TODAY,  
THAT IS THE FINAL CASE ON OUR

DOCKET SO THIS ENDS SESSION OF  
THE FLORIDA SUPREME COURT.