



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**Cornell v. Desert Financial Credit Union, CV-22-0071-CQ**

**PARTIES:**

*Plaintiff:* Eva Cornell (“**Cornell**”)

*Defendants:* Desert Financial Credit Union, et al. (“**Desert Financial**”)

**FACTS:**

In October 2018, Cornell opened checking and savings accounts at Desert Financial. In doing so, Cornell agreed to the terms and conditions governing the accounts. At the time, the account terms provided that Desert Financial could “change those terms and conditions from time to time.” Cornell consented to the electronic delivery of all future communications from Desert Financial, including all disclosures, notices, and account statements. At the time Cornell opened her accounts, the terms did not include an arbitration provision.

In February 2021, Desert Financial updated its terms and conditions to add an arbitration provision. The provision appeared on page five of a fourteen-page document; it was bolded and partially in capital letters to make it stand out from other portions of the document. The arbitration provision had an opt-out provision that permitted customers to choose not to be bound by the arbitration provision. Cornell did not opt out of the arbitration provision.

Desert Financial did not send the new terms directly to Cornell. Instead, it inserted a colored banner on the first page of Cornell’s March monthly account statement (the “**March Statement**”) which indicated that account terms and conditions had changed. The banner stated that changes included “how we will resolve legal disputes related to your accounts,” and stated that the full terms could be accessed at [DesertFinancial.com/Disclosures](https://DesertFinancial.com/Disclosures).

In May 2021, Cornell filed a class action complaint against Desert Financial in the U.S. District Court for the District of Arizona. The District Court ordered the parties to address whether the March Statement, and its addition of the arbitration provision, was a valid contract modification under Arizona law.

As a factual matter, the court found that Cornell had twice seen the March Statement: first, when she downloaded it through the Desert Financial mobile banking app on her phone; and second when a customer service representative electronically sent it to Cornell via a third-party service called DocuSign. The District Court found that it was “clear that Plaintiff saw (however briefly) a copy of the March 2021 statement containing the blue-and-orange notice at some point before she forwarded the DocuSign materials” to a car dealership. The court also found that there was no evidence the Cornell had “ever visited the URL identified in the blue-and-orange banner notice to review the updated version of the Terms,” and that she was

“subjectively unaware that Desert Financial had modified the Terms . . . to add an arbitration provision.”

Before the District Court, Cornell argued that she was not bound by the changes to the account terms because under *Demasse v. ITT Corp.*, 194 Ariz. 500 (1999), Arizona law would not permit “modification of an already-existing contract only when there is something more than just inquiry or constructive notice,” and instead would require “an affirmative act of assent by both parties.” In contrast, Desert Financial contended that *Demasse* was not controlling and that Arizona would follow section 3 of the tentative draft of the Restatement of Law, Consumer Contracts, which established that “a standard contract term in a consumer contract is modified if the consumer receives reasonable notice of the proposed modification term.”

The District Court stated that no Arizona case clarified whether “under Arizona law, it is enough for a party seeking to modify a contract to send notice of the proposed modification to the offeree through a communication channel to which the offeree previously consented or whether the offeror must also show that the offeree had actual, subjective knowledge of the proposed modification.” Consequently, the District Court issued an order certifying the first two questions listed below to this Court. This Court accepted certification and ordered the parties to address the third question listed below as well.

**QUESTIONS PRESENTED:**

1. Does an effective modification of a consumer contract occur when the offeror sends notice of the proposed modification to the offeree, through a communication channel to which the offeree previously consented, even if the offeree fails to respond?
2. If not, what additional showings (such as actual receipt of the notice of proposed modification, subjective understanding of the proposed modification, or affirmative consent to the proposed modification) are necessary to achieve an effective contract modification in this circumstance?
3. [T]he parties should address the effect, if any, of the Arizona Electronic Transaction Act, A.R.S. §§ 44-7001 to -7061.

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*