

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

HFC COLLECTION CENTER, INC.,

CASE NO.: 2013-CV-000032-A-O

Lower No.: 2011-CC-005631-O

Appellant,

v.

STEPHANIE ALEXANDER,

Appellee.

Appeal from the County Court, for Orange County,
Wilfredo Martinez, County Judge.

Brett H. Burkett, Esquire and
Amanda C. Rolfe, Esquire, for Appellant.

Taras S. Rudnitsky, Esquire, for Appellee.

Before LEBLANC, MYERS, JR., and S. KEST, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, HFC Collection Center, Inc. (“HFC”) timely appeals the trial court’s “Order and Judgment on Attorney Fees and Costs” entered on March 3, 2013. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

Stephanie Alexander (“Alexander”) entered into a credit card agreement (“credit agreement”) with American Express. Alexander made charges and payments on the account causing a balance on the account to accrue unpaid. Ultimately, in April 2011, HFC, as assignee of the account debt, filed a complaint against Alexander to collect the debt owed, totaling \$8,964.97 plus interest, court costs, and attorney fees and attached the credit agreement. In June 2011, Alexander filed her answer and affirmative defenses including a claim for attorney fees and costs. Thereafter, discovery ensued and in July 2011, Alexander filed a motion for summary judgment that was heard and granted on September 14, 2011. On September 25, 2011, the trial court entered final summary judgment in favor of Alexander.

On October 24, 2011, Alexander filed a motion to award attorney fees and costs pursuant to sections 57.041, 57.105(1) through (4), and (7), Florida Statutes, and the inequitable conduct doctrine, and rule 1.525, Fla. R. Civ. P. HFC then filed a response to the motion. Thereafter, a hearing was held on February 10, 2012 to address the motion as to entitlement to attorney fees and costs and on February 17, 2012, the trial court entered an order granting the motion.¹ Discovery then ensued pertaining to the amount of attorney fees and costs to award. Ultimately, an evidentiary hearing was held on November 14, 2012 to determine the amount of attorney fees and costs to award and the hearing was continued to February 12, 2013. On March 3, 2013, the trial court entered the order and judgment awarding Alexander attorney fees and costs that HFC now appeals.

¹ The hearing on February 10, 2012 is referenced in the Initial Brief and from review of the court record it appears that the hearing was held per the case summary and filings of a notice of hearing and correspondence from counsel reflecting that the hearing was held. However, this Court did not find any court minutes or transcript from the hearing in the record.

Summary of Arguments on Appeal

HFC argues that the trial court erred by awarding Alexander attorney fees under sections 57.105(7) and 57.041, Florida Statutes, because the trial court previously found that no contract existed between the parties and HFC was not a party to the contract.

Conversely, Alexander argues that the trial court properly awarded her attorney fees pursuant to the contractual fee provision and section 57.105(7), Florida Statutes, despite HFC's failure to prove standing because: 1) HFC in its pleadings admitted the existence of the contract with the fee provision; 2) HFC produced a copy of that contract; 3) HFC conclusively admitted in discovery that the contract existed; 4) HFC submitted testimony as to the existence and binding nature of the contract; and 5) HFC unequivocally admitted in writing that Alexander was entitled to recover attorney fees. Also, Alexander filed a motion for appellate attorney fees, costs, and interest per sections 57.105(7), 57.041, and 59.46, Florida Statutes, and Florida Rule of Appellate Procedure 9.400(b).

Standard of Review

A trial court's interpretation of statutes, written contracts, and procedural rules, including those pertaining to entitlement to attorney fees and costs, involve questions of law and thus, appellate review is de novo. *In re Guardianship of J.D.S. v. Dep't of Children & Families*, 864 So. 2d 534, 537 (Fla. 5th DCA 2004) (interpreting statutes); *Peacock Construction Company, Inc. v. Modern Air Conditioning, Inc.*, 353 So. 2d 840, 842 (Fla. 1977) (interpreting written contract); *Barco v. School Board of Pinellas County*, 975 So. 2d 1116, 1121 (Fla. 2008) (interpreting rule's time deadlines for serving a motion for attorney fees and costs); *Hinkley v. Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A.*, 971 So. 2d 955, 956 (Fla. 5th DCA 2007) (interpreting contractual provisions and statutes as to entitlement to attorney fees).

Analysis

The issues in this appeal primarily center on the interpretation and applicability of section 57.105(7), Florida Statutes (2012), that states:

If a contract contains a provision allowing attorney's fees to a party when he or she is required to take **any action to enforce the contract**, the court may also allow reasonable attorney's fees to the other party when that **party prevails in any action**, whether as plaintiff or defendant, **with respect to the contract**. This subsection applies to any contract entered into on or after October 1, 1988. [*Emphasis added*]

From the plain meaning of the statute, the language "any action to enforce the contract" and "prevails in any action...with respect to the contract" means that the award of attorney fees applies to a prevailing party in any action arising or involving a contract. "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931); *Fla. Dep't of Revenue v. New Sea Escape Cruises, LTD.*, 894 So. 2d 954, 960 (Fla. 2005) (applying plain meaning of the statute and quoting *A.R. Douglas*); *Osorio, Sr. v. Board of Professional Surveyors and Mappers*, 898 So. 2d 188, 190 (Fla. 5th DCA 2005) (applying plain meaning of the statute).

In the "Final Summary Judgment for Defendant" entered on September 25, 2011, the trial court ruled that HFC lacked standing as the real party-in-interest as there was a lack of proof of HFC's ownership of Alexander's account. Among the trial court's findings were: 1) a break in the chain of assignments proffered by HFC; 2) several of the purported assignments did not identify Alexander's account as an account that was transferred; 3) the assignments were subject to the terms and conditions of assignment agreements that were not part of the record in this case; and 4) In HFC's affidavit, HFC expressly stated that it was not provided with the list of

accounts sold between the prior owners of the account; further, at the hearing, HFC's counsel did not dispute that statement.

HFC's argues that Alexander is not entitled to attorney fees under sections 57.105(7) and 57.041, Florida Statutes, because the trial court previously found that no contract existed between the parties and HFC was not a party to the contract. From review of the trial court's findings and record, this Court finds that HFC's argument is misplaced. None of the trial court's findings state that there was no contract, but instead, state that HFC lacked standing to pursue the action against Alexander. Further, per the record and as discussed in the trial court's findings in the order granting Alexander entitlement to attorney fees and costs, the existence of the credit agreement with the fee provision was referenced and attached in HFC's complaint and admitted in discovery and testimony. In summation, the result in the lower case was not that the credit agreement did not exist, but instead that it could not be enforced by HFC to collect debt from Alexander.

Accordingly, notwithstanding HFC's lack of standing, it is reasonable to find that the debt that HFC sought to collect from Alexander derived from the credit agreement and section 57.105(7), Florida Statutes, is applicable; thus, entitling Alexander to an award of attorney fees as the prevailing party. Also, applying common sense, this Court notes that had the credit agreement not existed, no credit would have been extended to Alexander to use the credit card and to incur debt that included the assessment of finance charges and interest only authorized per the credit agreement. *See Portfolio Recovery Associates, LLC v. Allman*, 22 Fla. L. Weekly Supp. 512a (Fla. 9th Cir. Ct. Dec. 18, 2014).

Further, the allegations in HFC's complaint focus on Alexander's obligations per the terms and conditions of the credit card agreement that is also attached as an exhibit to the

complaint. Thus, it appropriate to find that HFC is estopped from challenging the award of attorney fees to Alexander by conversely arguing that no contract existed between it and Alexander. *See MCG Financial Services, LLC v. Technogroup, Inc.*, 149 So. 3d 118, 120 (Fla. 4th DCA 2014) (explaining that a party is estopped from asserting the existence of a contract to pursue its claims and then changing its position when losing on the contract and also holding in that case, that ABS was estopped from arguing, in opposition to the contractual provision for attorney's fees, the completely inconsistent position that MCG and Mason were not parties to the contract). Lastly, in the instant case, HFC's failure, when bringing this lawsuit, to provide sufficient proof as to the assignment of the debt that originally arose from the credit card agreement, should not be the catalyst to avoid payment of attorney fees and costs to Alexander for successfully defending this lawsuit.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED:**

1. The trial court's "Order and Judgment on Attorney Fees and Costs" entered on March 3, 2013 is **AFFIRMED**.

2. Alexander's "Appellee's Motion for Attorney Fees and Costs" filed on June 25, 2013 is **GRANTED** as to the appellate attorney fees and the assessment of those fees is **REMANDED** to the trial court. Also, Alexander is entitled to have costs taxed in her favor by filing a proper motion with the trial court pursuant to 9.400(a), Fla. R. App. P.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 5th day of March 2015.

/S/ _____
BOB LEBLANC
Presiding Circuit Judge

MYERS, JR. and S. KEST, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Brett H. Burkett, Esquire and Amanda C. Rolfe, Esquire**, Rolfe & Lobello, P.A., 233 E. Bay Street, Suite 720, Jacksonville, Florida 32202; **Taras S. Rudnitsky, Esquire**, Rudnitsky Law Firm, 145 Middle Street, Suite 1111, Lake Mary, Florida 32746; and the **Honorable Wilfredo Martinez, Orange County Judge**, 425 N. Orange Avenue, Orlando, Florida 32801, on this 5th day of March, 2015.

/S _____
Judicial Assistant