

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502016AP900283CAXXMB
L.T. NO.: 502016CC001939XXXXMB

DAWN ALBA,
Appellant,

v.

PUROCLEAN OF NORTH BROWARD, INC.,
Appellee.

Opinion filed: APR 24 2018

Appeal from the County Court of Palm Beach County, Judge Ted Booras

For Appellant: Dawn Alba, *pro se*
3714 South Olive Avenue
West Palm Beach, FL 33405

For Appellee: Joshua Widlansky
3837 NW Boca Raton Blvd., Suite 200
Boca Raton, FL 33431

PER CURIAM.

Pro se appellant Dawn Alba (“Alba”) appeals from a Final Judgment against her in the amount of \$2,427.61. The trial court found that Alba breached a contract with appellee, Puroclean of North Broward, Inc. (“Puroclean”), when she failed to pay for emergency water remediation services. We find no error and AFFIRM the trial court.

We write to discuss Alba's argument that her promise to pay Puroclean lacked consideration because Puroclean was already obliged to remediate her condominium under an alleged separate contract with a third party.¹

To create a valid, enforceable contract, the parties must provide consideration. *See* 11 Fla. Jur. 2d Contracts § 76 (2017) (citing *Kaufman v. Harder*, 354 So. 2d 109 (Fla. 3d DCA 1978)). Consideration is defined as "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." 11 Fla. Jur. 2d Contracts § 76 (2017) (citing *Shaffer v. Ricci*, 603 So. 2d 566, 567–68 (Fla. 4th DCA 1992)).

The preexisting duty rule provides generally that performance of a preexisting duty to a promisor is not consideration. *Slattery v. Wells Fargo Armored Service Corp.*, 366 So. 2d 157, 159 (Fla. 3d DCA 1979). However, performance of a preexisting duty may be consideration if the duty is not owed to the promisor, but is instead owed to a third party, even if that performance is the same. *Scherer v. Laborers' Int'l Union of N. Am.*, 746 F. Supp. 73 (N.D. Fla. 1988) (citing Restatement (Second) of Contracts § 73, comment d). In such three-party cases, courts have found consideration by reasoning that the promisee gives up the opportunity to attempt to avoid performance of the duty to the third party. *See Morrison Flying Service v. Deming National Bank*, 404 F. 2d 856, 860 (10th Cir. 1968).

In this case, we find the preexisting duty rule to be inapplicable. Puroclean was not under a preexisting duty to Alba when Alba promised to pay for the remediation, but instead owed a duty to the third party. By promising to provide its services in exchange for Alba's promise to pay, Puroclean forwent the opportunity to seek to avoid performance vis-a-vis the third party. Thus,

¹ The trial court declined to find whether there was a contract between Puroclean and the third party. For the purposes of this appeal only, we assume such a contract existed.

Puroclean suffered a “detriment” or “loss.” Alba received the “benefit” of Puroclean’s fulfillment of its contractual duty to restore her condominium. Accordingly, Alba’s promise to pay Puroclean was enforceable, and the trial court’s ruling to that effect was not error.

Puroclean’s Motion for Attorney’s Fees is GRANTED, and the matter is remanded to the trial court to determine and award a reasonable amount of appellate attorney’s fees.

ROWE, SMALL, NUTT, JJ., concur.

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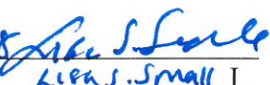
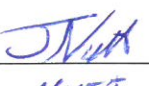
Date of Appeal: November 21, 2016

_____/_____
DATE OF PANEL: APRIL 16, 2018

PANEL JUDGES: ROWE, SMALL, NUTT

AFFIRMED/REVERSED/OTHER: AFFIRMED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
<u>4/23/18</u> )))
DATE: <u>Rowe</u> J.	)	J.	)	J.)
<u>4/24/18</u> )))
DATE: <u>Small</u> J.	)	J.	)	J.)
<u>4/24/18</u> )))
DATE: <u>NUTT</u> J.	)	J.	)	J.)