

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

APPELLATE DIVISION (CIVIL): AY  
Case No.: 50-2019-AP-00029-CAXX-MB  
L.T. NO.: 50-2017-SC-014626-XXXX-SB

MATT BOYDEN,  
Appellant,

v.

GARY SCHULER,  
CAROL COREY,  
Appellees.

Opinion filed: **DEC 03 2019**

Appeal from the County Court in and for Palm Beach County,  
Judge Marni Bryson

For Appellant: Brandon Smith  
11891 U.S. Highway One, Suite 100  
North Palm Beach, FL 33408  
(brandon@lawpalmbeach.com) (mindy@lawpalmbeach.com)  
(karen@lawpalmbeach.com)

For Appellees: Gary Schuler  
303 Gleason Street, Unit 8  
Delray Beach, FL 33483  
(Amsterdamm12@aol.com)  
  
Carol Corey  
303 Gleason Street, Unit 10  
Delray Beach, FL 33483  
(caroldelraybeach@gmail.com)

PER CURIAM.

We reverse the lower court's "Order Denying Defendant's Motion for Costs of Suit, Including Award of Attorney's Fees." We hold that Appellees effectively waived the protections of Appellant's noncompliance with section 865.09, Florida Statutes (2018) by not raising the statute until trial. *See Clifford Ragsdale, Inc. v. Morganti, Inc.*, 356 So. 2d 1321, 1322 (Fla. 4th DCA 1978); *see also Jackson v. Jones*, 423 So. 2d 972, 973-74 (Fla. 4th DCA 1982). Appellant is entitled to a reasonable amount of attorney's fees and costs by operation of the contracts. This matter is remanded to the lower court for a determination of reasonable attorney's fees and costs.

REVERSED.

KERNER, ROWE, and NUTT, JJ., concur.

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Date of Appeal: February 22, 2019

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DATE OF PANEL: NOVEMBER 13, 2019

PANEL JUDGES: KERNER, ROWE, NUTT

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
<i>Nutt Kerner</i>	)	With/Without Opinion	)	With/Without Opinion	)
<i>Nov. 20, 2019</i>	)		)		)
DATE: J. )	)		)		)
<i>J. Kerner</i>	)		)		)
<i>Nov. Dec. 2, 2019</i>	)		)		)
DATE: J. )	)		)		)
<i>[Signature]</i>	)		)		)
<i>12/2/19</i>	)		)		)
DATE: J. )	)		)		)