

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2015AP000084XXXXMB
L.T. NO.: 2014SC006827XXXXMB

AZIZ ABDULLAH,
Appellant,

v.

LEE SANTOMAURO and HYPOLUXO'S MARINERS
CAY CONDOMINIUM ASSOCIATION, INC.,
a Florida not-for-profit corporation,
Appellees.

Opinion filed: **SEP - 9 2016**

Appeal from the County Court in and for Palm Beach County,
Judge Ted Booras

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Appellant, Aziz Abdullah ("Abdullah"), appeals a final judgment awarding Appellee, Hypoluxo's Mariner's Cay Condominium Association, Inc. ("the Association"), \$9,350.00 in

attorney's fees and costs. The underlying case is a small claims action filed by Abdullah against the Association and one of its directors, Lee Santomauro ("Santomauro"), seeking damages for defamation. Abdullah is not a unit owner of a condominium in the Association; rather, he is an invitee of a unit owner. Abdullah got into a verbal altercation with one of the Association's staff members, following which the Association's attorney sent Abdullah's attorney a letter informing him about the altercation and demanding, among other things, that Abdullah "stop any and all harassing or intimidating conduct." This letter was the basis of Abdullah's defamation action.

On appeal, Abdullah argues that the trial court erred in awarding attorney's fees pursuant to the Declaration of Condominium ("the Declaration") because (1) attorney's fees may not be awarded for or against a non-party to a contract; and (2) the relevant portion of the Declaration only applies to proceedings relating to the enforcement of the rules and regulations governing the condominium. We find that the trial court erred in awarding attorney's fees to the Association because neither section 718.303(1), Florida Statutes, or the Declaration—alone or together—entitle the Association to attorney's fees in this case.

Florida courts have adopted the "American Rule" with respect to awarding attorney's fees to a prevailing party in litigation. Under the "American Rule," attorney's fees may be awarded only where specifically authorized by contract or statute. *Key W. Polo Club Developers, Inc. v. Towers Const. Co. of Panama City*, 589 So. 2d 917, 918 (Fla. 3d DCA 1991). Contractual and statutory provisions for attorney's fees must be strictly construed. *See Dade County v. Pena*, 664 So. 2d 959, 960 (Fla. 1995); *Hurley v. Slingerland*, 480 So. 2d 104, 107 (Fla. 4th DCA 1985).

As a preliminary matter, the Association attempts to establish entitlement by conflating section 718.303(1), Florida Statutes (2015), and the Declaration. Section 718.303(1) provides in

part:

Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association
- (b) A unit owner
- (c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer
- (d) Any director who willfully and knowingly fails to comply with these provisions
- (e) Any tenant leasing a unit, and any other invitee occupying a unit

The prevailing party in any such action . . . is entitled to recover reasonable attorney's fees.

§ 718.303(1), Fla. Stat. (2015) (emphasis added). The Association argues that the first sentence of section 718.303(1) requiring invitees to "comply" with the Declaration binds Abdullah to the attorney's fee provision in the Declaration, which states:

In any proceeding arising because of an alleged default, act, failure to act, or violation by the unit owner or the Association . . . the prevailing party shall be entitled to recover the costs of the proceedings, including reasonable attorney's fees.

Article 6.1, Declaration of Condominium of Hypoluxo's Mariners Cay Condominium. Essentially, the Association argues that a single sentence from section 718.303(1) should be read together with the Declaration, and that these two discrete provisions together create an entitlement to attorney's fees. However, finding entitlement based upon such a reading would require a liberal reading of the provisions, instead of the strict construction which is required. *See Pena*, 664 So. 2d at 960; *Hurley*, 480 So. 2d at 107.

Thus, section 718.303(1) must be read as a whole to determine whether the statute or the Declaration, alone, establishes an entitlement to attorney's fees in this case.

The parties appear to agree that section 718.303(1), alone, is not applicable to this case as it pertains to attorney's fees because Abdullah is neither the Association nor a unit owner and because the action did not seek damages or injunctive relief for failure to comply with the Declaration. The parties further agree that Abdullah, as an invitee, was required to comply with the provisions of the Declaration. Thus, the issue in this case is whether the Association was entitled to attorney's fees based on the Declaration.

Abdullah asserts that the trial court erred in awarding attorney's fees pursuant to the Declaration because (1) attorney's fees may not be awarded for or against a non-party to a contract; and (2) the relevant portion of the Declaration only applies to proceedings relating to the enforcement of the rules and regulations governing the condominium. Each of these arguments are addressed in turn.

1. Attorney's Fees May Not be Awarded Against Abdullah because he is Not a Party to the Declaration

"A declaration of condominium possesses 'attributes of a covenant running with the land' and operates as a contract **among unit owners and the association**, 'spelling out mutual rights and obligations of the parties thereto.'" *Cohn v. Grand Condominium Ass'n, Inc.*, 62 So. 3d 1120, 1121 (Fla. 2011) (quoting *Pepe v. Whispering Sands Condo. Ass'n*, 351 So.2d 755, 757 (Fla. 2d DCA 1977)) (emphasis added). Given this contractual relationship between a unit owner and the association, an invitee of a unit owner cannot be considered a party to the declaration of condominium. With respect to attorney's fees, a non-party to a contract cannot recover prevailing party's fees, nor can such fees be assessed against him. *Fielder v. Weinstein Design Group, Inc.*, 842 So. 2d 879, 880 (Fla. 4th DCA 2003). Because Abdullah is a not a party to the Declaration, attorney's fees cannot be assessed against him.

Although the Association argues that the Court should not consider this issue because

Abdullah failed to raise it below, the Court finds that this issue is inherent in a de novo review to determine whether the trial court erred in finding entitlement to attorney's fees. Accordingly, this Court finds that the trial court erred in determining that the Association was entitled to attorney's fees pursuant to the Declaration.

2. The Attorney's Fee Provision of the Declaration Only Applies to Proceedings Relating to the Enforcement of the Rules and Regulations Governing the Condominium

The Association asserts that, unlike section 718.303(1), the Declaration does not limit the attorney's fees provision to suits between an association and a unit owner. Thus, based on the language of the Declaration, the Association argues that the award of attorney's fees was appropriate because this proceeding arose from an alleged act by the Association, i.e. the alleged defamation. Such a reading would authorize attorney's fees under the Declaration in all actions sounding in both contract and tort for essentially any "act" by either the Association or a unit owner.

"A court should arrive at a contract interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties." *Thompson v. C.H.B., Inc.*, 454 So. 2d 55, 57 (Fla. 4th DCA 1984). "Words should be given their natural meaning or the meaning most commonly understood in relation to the subject matter and circumstances, and reasonable construction is preferred to one that is unreasonable." *Id.* In this case, it would be unreasonable to interpret the language of the Declaration to provide an award of attorney's fees in **any** action involving the Association, regardless of whether it pertains to the rules and regulations of the Condominium. As acknowledged by the Association in its Answer Brief, the purpose of requiring invitees to comply with the Declaration is to bind all individuals residing or visiting to certain community standards, thereby enhancing the attractiveness of the community. Given the

subject matter of the Declaration, it logically follows that the language regarding attorney's fees would apply to lawsuits arising out of the Declaration, not to a defamation action having nothing to do with the rules and regulations of the community.

Further, principles of contract interpretation suggest that the language of the attorney's fees provision in the Declaration should not be read so broadly as to provide fees for any act whatsoever. Based on the rule against surplusage, if the terms "act" and "failure to act" were to be construed as broadly as the Association suggests, then it would be unnecessary to also include the terms "default" and "violation" in the attorney's fee provision because, "act" and "failure to act" would encompass those terms. Additionally, the principle of "ejusdem generis," requiring a list of terms to be read as belonging to the same class, suggests that "act" and "failure to act" would relate to the terms of the Declaration because the inclusion of "default" and "violation" refer to the Declaration. Therefore, the Court finds that the language of the Declaration did not provide a basis for the trial court to award attorney's fees to the Association in this case.

Accordingly, we REVERSE the lower court's Final Judgment awarding attorney's fees to the Association.

COLIN, BLANC, and BRUNSON, JJ. concur.

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LEE SANTOMAURO and HYPOLUXO'S MARINERS
CAY CONDOMINIUM ASSOCIATION, INC.,
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Appellees. Appo

Appealed: November 25, 2015

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	DISSENTING:	CONCURRING SPECIALLY:
	With/Without Opinion	With/Without Opinion
<i>Catherine M. Brown</i> 9/7/16		
<i>ABM</i> 9/7/16	J.	J.
<i>Ben</i> 9/9/16	J.	J.
J.	J.	J.