

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502013AP000052  
L.T. No.: 502005SC007467

AZTIL INC.,  
Appellant,

v.

BILL'S ELECTRICAL & COMPUTER  
SERVICES  
Appellee.

---

Opinion filed: DEC 24 2014

Appeal from the County Court in and for Palm Beach County,  
Judge Robert Panse.

For Appellant: Richard W. Glenn, Esq.  
2000 PGA Boulevard, Suite 3200A  
Palm Beach Gardens, Florida 33408  
rwglenn@rwglenn.com

For Appellee: Robert C. Wagner, Esq.  
Post Office Box 19359  
Plantation, Florida, 33318  
court@lawcraftfirm.com

PER CURIAM.

Appellant, Aztil, Inc. ("Aztil"), appeals an award of prejudgment interest and court costs to the Appellee Bill's Electrical & Computer Service ("Bill's") set forth in the Final Judgment rendered on November 12, 2012. Aztil argues that 1) Bill's is not entitled to prejudgment interest because Aztil tendered payment to Bill's and Bill's rejected such payment; and 2) Bill's is not entitled to court costs because Bill's was not the prevailing party. We find no error in the trial court's award of prejudgment interest. We hold, however, that the trial court abused its discretion in finding that Bill's was the prevailing party and reverse as to the award of court costs.

A recitation of this case's long history in both the trial court and this appellate court is necessary to demonstrate why Aztil is the prevailing party in the trial court despite the judgment—with prejudgment

interest—entered in Bill's favor. Bill's filed a Complaint against Aztil for an open account, account stated, services rendered, and breach of contract for damages in the amount of \$6,379.00 plus 18% prejudgment interest accruing from January 12, 2004. The damages were for goods sold, delivered and/or services rendered pursuant to an agreement for Bill's to perform electrical services for Aztil. In its second amended answer, Aztil stated that Bill's and Aztil had an agreement that Bill's would provide the services at issue for a total of \$3,000.00. Aztil stated that it had previously paid \$1,500.00 and was entitled to a set-off for such amount. Significant to the present issues, Aztil also admitted that Aztil still owed Bill's \$1,500.00 on the \$3,000.00 agreement to which Aztil attempted to pay previously and thus, Aztil was entitled to benefit of its tender offer to avoid prejudgment interest and costs.

A final hearing on the claim was held. At the hearing, Aztil argued that there was an oral agreement that all of the work would be performed for a flat rate of \$3,000.00. There was also testimony that Aztil did attempt to pay Bill's \$1,500.00 to pay off the balance of the \$3,000.00 contract price. The payment was to be settlement in full of all work done even though Bill's informed Aztil that it owed \$6,379.00 (\$4,879.00 more than the \$1,500.00 Aztil attempted to pay). On June 20, 2007, the trial court found that Bill's failed to prove its case by the preponderance of the evidence. The trial court made no other findings. Nevertheless, the trial court directed Aztil to pay the "previously tendered" \$1,500.00 to Bill's within fifteen days of the June 20, 2007 order; failure to pay the amount within the specified period would result in a final judgment being entered against Aztil.

Aztil did not make the \$1,500.00 payment within the specified period. Bill's filed an 1) Affidavit of Non-Payment, 2) Affidavit of Costs and Interest, and 3) Motion for Prejudgment Interest and Court Costs indicating that Aztil failed to pay the \$1,500.00 in compliance with the trial court's order. The trial court entered a final judgment ordering that Bill's "take nothing from Defendant, Aztil, Inc. for the reasons set forth in this court's order dated June 20, 2007. . . ." Bill's appealed the final judgment. This Court reversed and remanded the final judgment for the trial court to enter final judgment against Aztil in the amount of \$1,500.00.

On remand, Bill's filed a Motion for Costs, Interest, and Attorney's Fees that requested prevailing

party attorney's fees, court costs, and prejudgment interest. Bill's filed a Motion for Costs of Appeal in the amount of 1,434.50. The trial court 1) granted the motion for costs of appeal in the amount of \$1,434.50; 2) denied the motion for costs, interest, and attorney's fees as the trial court indicated that it had to strictly construe the appellate court's decision which included no directions as to costs, interest, or attorney's fees; and 3) entered a final judgment in the amount of \$1,500.00 which was ordered to "bear interest at the statutory rate and for which let execution issue."

Bill's appealed the final judgment because it did not include an award of costs, prejudgment interest, or attorney's fees. On appeal, this Court again reversed, holding that the trial court had jurisdiction to consider costs, prejudgment interest and attorney's fees. On remand, the trial court found that Bill's was entitled to prejudgment interest as payment was never tendered prior to the action. The trial court entered a final judgment in Bill's favor for 1) prevailing party suit costs in the amount of \$666.50, 2) prejudgment interest in the amount of \$924.63, and 3) appellate costs in the amount of \$493.45 for a total of \$2,084.58.

#### A. Prejudgment Interest

The trial court did not err in awarding Bill's prejudgment interest as Aztil never tendered the \$1,500.00 payment. A "'tender' is an unconditional offer of payment consisting of the actual production of a sum not less than the amount due on a particular obligation; tender must be without conditions to which the creditor can have a valid objection or which will be prejudicial to his or her rights." 28 Williston on Contracts § 72:27 (4th ed.). "A tender of sums due on a date certain under a contract will stop the accrual of prejudgment interest only when the tender is absolute and unconditional." *Ismark v. W.G. Mills, Inc.*, 899 So. 2d 1213, 1214 (Fla. 2d DCA 2005) (emphasis added).

Aztil's payment was conditional as the acceptance of the \$1,500.00 check was intended to be settlement for all work done, and Bill's believed that it was owed more for the work completed. Thus, because such attempt at payment was not unconditional and would have infringed on Bill's rights to bring a claim for the additional sum Bill's believed was due, such offer for payment was not a "tender of payment." See *Ismark v. W.G. Mills, Inc.*, 899 So. 2d 1213, 1214 (Fla. 2d DCA 2005) (holding that the plaintiff was entitled to prejudgment interest as the company's offer was not a tender offer because the

offer was conditional on releasing the company from all claims). Because the payment was never tendered, and the plaintiff is entitled to prejudgment interest upon the finding of liquidated damages, Bill's was properly awarded prejudgment interest as it was deprived of the payment for several years. Accordingly, the trial court did not err in awarding Bill's prejudgment interest.

#### B. Trial Court Costs

Despite the entry of a judgment in Bill's favor, given the specific facts of this case, we find that the trial court abused its discretion by awarding Bill's trial court costs because Bill's was not the prevailing party at trial. Costs are awarded to the party recovering judgment. § 57.041, Fla. Stat. (2005). "Court costs under section 57.041, Florida Statutes, are also "governed by the 'prevailing party' standard." *Khodam v. Escondido Homeowner's Ass'n, Inc.*, 87 So. 3d 65, 66 (Fla. 4th DCA 2012), *reh'g denied* (May 23, 2012). The test to determine the prevailing party is whether the party "succeeded on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Smith v. Adler*, 596 So. 2d 696, 697 (Fla. 4th DCA 1992). "The focus of the trial court in making the determination should be on the 'result obtained.'" *Granoff v. Seidle*, 915 So. 2d 674, 677 (Fla. 5th DCA 2005).

In this case, Bill's claimed that Aztil owed \$6,379.00 plus 18% prejudgment interest from January 12, 2004 for services rendered to Aztil. Aztil admitted in its second amended answer that it still owed Bill's \$1,500.00 and had attempted to pay such amount pursuant to the parties' contract. The trial court originally found that Bill's did not prove its case by preponderance of the evidence, but directed Aztil to pay the \$1,500.00 to which Aztil admitted to owing Bill's. When Aztil failed to comply with the order, the trial court, by mandate from this Court, entered judgment in favor of Bill's for the undisputed amount of \$1,500.00. Thus, this Court must determine whether the trial court abused its discretion by determining that Bill's entitlement to the \$1,500.00 constituted a "significant issue" in the litigation.

The trial court entered final judgment in favor of Bill's for \$1,500.00; therefore, at first blush, Bill's appears to be the prevailing party.<sup>1</sup> See generally *Granoff v. Seidle*, 915 So. 2d 674, 677 (Fla. 5th DCA

---

<sup>1</sup>It is noted that the standard to award costs under to section 57.041, Florida Statutes, is split among district courts. Specifically the First District Court of Appeal and Second District Court of Appeal have held that under section 57.041,

2005) (recognizing that the focus of the trial court should be on the results obtained in the trial court). However, under the unique facts of this case, the trial court abused its discretion in determining that Bill's was the prevailing party. Bill's was only awarded damages of \$1,500.00, which Aztil did not dispute it owed and had previously attempted to pay. Viewing the record as a whole, it is clear that Bill's entitlement to the \$1,500.00 was not a significant issue in the case. Rather, the issue litigated at Bill's trial was entitlement to the amount in excess of \$1,500.00, totaling \$6,379.00. Bill's failed to prove that Aztil owed any money beyond the undisputed \$1,500.00; consequently, Bill's was only awarded \$1,500.00. Thus, although Bill's obtained, in part, the result it sought, the \$1,500.00 was not a significant issue. *See Port-A-Weld, Inc. v. Padula & Wadsworth Const., Inc.*, 984 So. 2d 564, 568 (Fla. 4th DCA 2008) (holding that the trial court abused its discretion when it found that both parties prevailed when it was clear that the appellant prevailed and recovered virtually all the damages requested even though the appellant's damages were set off by damages the appellant caused to the appellee). Therefore, Bill's was not the prevailing party on the significant issues of the case as Bill's did not prove that Aztil owed it anything beyond the undisputed amount. Accordingly, the trial court abused its discretion in awarding Bill's trial court costs as Bill's was not the prevailing party as to the significant issue in the case.

### C. Appellate Costs

The trial court did not abuse its discretion in awarding appellate costs as Bill's was the prevailing party in the second appeal. Similar to cost awards at the trial court level, the test to determine whether to award appellate costs is whether the party prevailed on the significant issues on appeal. *Varveris v. Carbonell*, 785 So. 2d 576, 577 (Fla. 3d DCA 2001).

In the second appeal, Bill's appealed the trial court's denial of entry of court costs and prejudgment interest because the trial court ruled that such an award was beyond the scope of this Court's directive. This Court reversed and remanded the trial court's decision and held that the trial court had jurisdiction to

---

Florida Statutes, any party recovering judgment shall recover costs, and the prevailing party standard should not be applied. *Bessey v. Difilippo*, 951 So. 2d 992, 996 (Fla. 1st DCA 2007); *Wolfe v. Culpepper Constructors, Inc.*, 104 So. 3d 1132, 1137 (Fla. 2d DCA 2012).

rule on Bill's requests for court costs and prejudgment interest. Although this Court did not decide whether Bill's should be awarded costs or interest, this Court reversed and remanded because the trial court improperly believed that it could not address such issue. Thus, Bill's prevailed on the significant issue on appeal that the trial court could address the issue of court costs and prejudgment interest. *See Dahly v. Dep't of Children & Family Servs.*, 845 So. 2d 350, 351 (Fla. 2d DCA 2003) (holding that the appellant was the prevailing party on appeal when the court reversed and remanded entry of summary judgment for the trial court to include factual findings and conclusions of law in its order even though the appellate court made no determination as to whether the entry of summary judgment was error). Accordingly, the trial court did not abuse its discretion awarding Bill's appellate costs.

Therefore, this Court **AFFIRMS** the trial court's Final Judgment as to prejudgment interest and award of appellate costs, and **REVERSES** the trial court's Final Judgment as to trial court costs as Bill's was not the prevailing party on the significant issue at trial **AND REMANDS** for the trial court to enter a final judgment consistent with this opinion.

BROWN, HAFELE, and OFTEDAL, JJ., concur.