

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

BILL'S ELECTRICAL & COMPUTER
SERVICE, INC.,

Appellant,

Appellate Division (Civil)
Case No.: 502007AP000190XXXXMB
L.T.: 502005CC007467XXXXMB
Division: 'AY'

AZTIL, INC.,

Appellee.

Opinion filed: *December 19, 2008*

**Appeal from the County Court in and for Palm Beach County,
Judge Janis Brustares Keyser.**

For Appellant: Mark W. Rickard, Esq., Jacobson, Sobo, & Moselle, P.O. Box 19359,
Plantation, FL 33318-0359.

For Appellee: Richard W. Glenn, Esq., 11382 Prosperity Farms Road, Building F-22,
Palm Beach Gardens, FL 33410.

REVERSED and REMANDED.

Aztel, Inc. ("Aztel") hired Bill's Electrical & Computer Service, Inc. ("Bill's") to provide electrical parts and services. Bill's completed the work, and filed suit to obtain \$6,379.00 when Aztel refused to pay more than \$3,000.00, which was the amount of the estimate. Although the trial court found that Bill's failed to prove its case by a preponderance of the evidence, it was undisputed that Aztel had previously paid \$1,500.00 toward the contract price, and that it still owed Bill's the remaining \$1,500 balance on the estimate. On June 20, 2007, the lower court directed Aztel to "forward the previously tendered \$1,500.00 to [Bill's] within fifteen (15) days of this order. Upon an affidavit of non-payment of this amount filed by the Plaintiff, with a copy

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mailed to Defendant, a final judgment will be entered against the Defendant without further notice or hearing.” On June 26, 2007, Bill’s filed a Motion for Rehearing. Aztıl did not forward the funds until July 27, 2007, at which time Bill’s refused to accept the funds. Bill’s subsequently moved for a final judgment pursuant to the lower court’s June 20, 2007 order. The court found that Bill’s should take nothing from Aztıl “for the reasons set forth in this court’s order dated June 20, 2007 and stated on the record at the September 18, 2007 hearing.”

It appears, based on the transcript of that hearing, that the lower court believed that the filing of the motion for rehearing stayed the order’s fifteen day time period, and rendered Aztıl’s July 27, 2007 payment timely. Filing the motion for rehearing did not stay the time period during which the funds were to be tendered. Florida Rule of Civil Procedure 1.550(a) provides that no execution or other final process shall issue until a motion for rehearing is determined; however, the June 20, 2007 order was neither an execution nor a final process. That order did not include any language providing for execution on the \$1,500; rather, it explicitly stated that the court would enter final judgment against Aztıl in the future. Final process to enforce a judgment solely for the payment of money shall be by execution, writ of garnishment, or other appropriate process or proceedings. Fla. R. Civ. P. 1.570(a). The June 20, 2007 order was none of those things. Thus, the motion for rehearing did not toll the time for Aztıl to comply with the order, and the lower court erred by not entering final judgment against Aztıl in the amount of \$1,500, as it was undisputed that it owed Bill’s that amount. Accordingly, the cause is reversed and remanded with directions for the lower court to enter final judgment against Aztıl in the amount of \$1,500.00.

Bill’s filed a motion for appellate attorneys’ fees on October 30, 2008. Pursuant to Florida Rule of Appellate Procedure 9.400(b), a motion for appellate attorneys’ fees may be

served no later than the time for service of the reply brief. The reply brief shall be served within twenty days of service of the answer brief. Fla. R. App. P. 9.210(f). In this case, the answer brief was served on July 7, 2008. The fee request, as it was not served by July 27, 2008, and was instead served over three months late. Bill's Electrical & Computer Service's motion for appellate attorneys' fees is DENIED as untimely. Aztil's motion for appellate attorneys' fees is DENIED.

GARRISON, FINE and BARKDULL, JJ., concur.