

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

RICHARD D. COHEN

Appellant,

v.

WORLD OMNI FINANCIAL CORP.,

Appellee.

APPELLATE DIVISION (CIVIL)
Case No.: 502008AP000016XXXXMB
L.T. No.: 502000CC000124XXXXNB
DIVISION 'AY'

Opinion filed:

October 28, 2008

**Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.**

For Appellant: Richard D. Cohen, Esq., 21870 Cartagena Drive, Boca Raton, FL 33428

For Appellee: Mitchel Chusid, Esq., Ritter Chusid Bivona & Cohen, LLP
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On June 30, 2008, Richard D. Cohen filed a Notice of Voluntary Dismissal of his appeal of the Amended Order on Defendant's (Fourth) Verified Motion for Relief from Judgment. Prior to the voluntary dismissal, World Omni Financial Corp. ("World Omni") filed a Motion for Appellate Attorneys' Fees and Costs, which is the only matter pending before the Court. World Omni seeks appellate attorneys' fees pursuant to Florida Statutes sections 768.79 and 57.105, and appellate costs pursuant to section 57.041.

The Court determines that World Omni is the prevailing party in this appeal as a result of Cohen's voluntary dismissal; however, due to the voluntary dismissal, there is no record on appeal available for the Court to review in order for it to determine whether World Omni is entitled to appellate attorneys' fees pursuant to section 768.79. Accordingly, the issue of World

Omni's entitlement to appellate attorneys' fees under section 768.79 is remanded to the trial court for determination of whether World Omni was entitled to trial level attorneys' fees pursuant to section 768.79. If World Omni was entitled to trial level attorneys' fees pursuant to section 768.79, then World Omni likewise is entitled to appellate attorneys' fees, and the trial court shall determine the amount thereof. See Frosti v. Creel, 979 So. 2d 912 (Fla. 2008); Schmidt v. Forner, 629 So. 2d 1036 (Fla. 4th DCA 1993). If World Omni was not entitled to trial level attorney fees pursuant to 768.79, then World Omni not entitled to appellate attorneys' fees.

The Court finds that Cohen's appeal was supported by the then-existing law at the time it initially was presented to the Court. Accordingly, World Omni is not entitled to appellate attorneys' fees pursuant to Florida Statute section 57.105. Furthermore, World Omni's motion is denied insofar as it seeks appellate costs. This Court is not the proper forum to request an award of appellate costs. Appellate costs are taxed by the lower tribunal on motion served within 30 days after issuance of the mandate. See Fla. R. App. P. 9.400(a).

HOY, COX, and ROSENBERG, JJ., concur.