

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

RICHARD D. CCHEN,

Appellant,

v.

WORLD OMNI FINANCIAL CORP.,

Appellee.

Appellate Division (Civil)

Case No.: 502008AP000059XXXXMB

L.T. Case No. 502000CC000124XXXXNB

Division: "AY"

Opinion filed: January 25, 2010

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

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

✓ For Appellee: Mitchel Chusid, Esq., Ritter, Chusid, Bivona & Cohen, LLP
5850 Coral Ridge Dr., Ste. 201, Coral Springs, FL 33076

PER CURIAM

REVERSED AND REMANDED.

Appellant seeks reversal of the trial court's Order on World Omni's Motion for Entitlement to Additional Attorney's Fees and Costs Since May 1, 2006 ("Original Order"), and the Corrected Order on World Omni's Motion for Additional Attorney's Fees and Costs Since May 1, 2006 ("Corrected Order"). We reverse both orders.

Since the Original Order was on appeal at the time the trial court issued the Corrected Order, the trial court lacked jurisdiction to issue the Corrected Order and, therefore, it must be

reversed. The Court notes that the Corrected Order also is erroneous because the trial court failed to comply with *Moakley v. Smallwood*, 826 So. 2d 221, 226 (Fla. 2002).¹

As the Corrected Order is not properly before the Court on appeal, this Court only considers the merits of the appeal of the Original Order. In its motion for attorney's fees and costs, World Omni requested fees under sections 768.79 and 57.105, Florida Statutes. The Original Order awarded attorney's fees pursuant to section 768.79. An award of post-judgment attorney's fees is not permitted under either section 768.79. See *Cohen v. World Omni Financial Corp.*, 14 Fla. L. Weekly Supp. 846a, (Fla. 15th Cir. Ct. June 21, 2007). Neither section 768.79 nor section 57.105 authorizes attorney's fees in the instant case. See *Patsy v. Patsy*, 666 So. 2d 1045, 1046 (Fla. 4th DCA 1996). Therefore the Original Order must be reversed.

Accordingly, the Original Order and the Corrected Order are hereby REVERSED and the matter is REMANDED to the lower court. If the trial court is awarding attorney's fees in an exercise of its inherent authority to award fees, then the trial court's order must contain findings that comply with the requirements of *Moakley*. If the trial court's basis for awarding attorney's fees is either 768.79 or 57.105, then World Omni's Motion for Additional Attorney's Fees and Costs Since May 1, 2006 must be denied.

ROSENBERG, FRENCH, AND GARRISON, JJ., concur.

¹ See also, *Shniderman v. Fitness Innovations and Technologies, Inc.*, 994 So. 2d 508, 514 (Fla. 4th DCA 2008).