

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

SUNSHINE WIRELESS CO., INC.

Appellant,

v.

REFLECTIONS OF BOCA, INC.,

Appellee.

CASE NO.: 502009AP000070XXXXMB
CIVIL APPELLATE DIVISION "AY"
L.T. Case No. 502007SC015396XXXXSB

Opinion filed: *October 8, 2010*

**Appealed from the County Court in and for Palm Beach County, Florida
Judge James Martz.**

For Appellant: James A. Herb, Esq. 2200 Corporate Blvd. N.W., Suite 315, Boca Raton,
FL 33431

For Appellee: Edward B. Cohen, Esq., 54 S.W. Boca Raton Blvd., Boca Raton, FL 33432

PER CURIAM

REVERSED and REMANDED

The appellant, Sunshine Wireless Company, Inc. ("Appellant"), along with six other similarly situated tenants/defendants, was sued for violations of the terms of a lease agreement entered into with the appellee landlord, Reflections of Boca, Inc. ("Reflections"). The cases were consolidated for purposes of discovery and trial. After a bench trial before County Court Judge James L. Martz, judgment was entered against all seven defendants. The sole issue on appeal is whether the trial court's entry of separate orders which held each tenant/defendant jointly and severally liable for Reflections' attorney's fees was appropriate. After considering the relevant case law, we hold that the trial court's entry of joint and several awards was erroneous.

In the trial court's Judgment for Attorney Fees and Costs, entered separately in each of the seven cases, the trial judge cited Parton v. Palomino Lakes Prop. Owners Ass'n, 928 So. 2d 449 (Fla. 2d DCA 2006), to support the joint and several nature of the award. In Parton, the appellate court approved a joint and several award of attorneys' fees in a case involving multiple parties to a *single* action that had arisen from an alleged breach of a covenant to which *all* parties were bound. In this case, there were multiple cases consolidated for trial rather than a single action. Further, unlike the covenant in Parton, the terms of which bound all parties and could be enforced by any party/parties against any other(s), the damages sought in the underlying cases arose from seven separate lease agreements that each tenant individually entered into with Reflections. The Court in Parton reasoned that it was the unified nature of the action and the underlying claim, in addition to the difficulty in apportioning the total amount, which led the Court to conclude that:

[J]oint and several liability is appropriate for the award of fees and costs against the other owners for breach of the deed restrictions. All four of the other owners are subject to the deed restrictions... All four of the other owners blockaded the entrance to the subdivision to prevent the delivery of the Parton's modular home. The deed restrictions state, "If in the event the court finds that these restrictions have been violated, the judgment of the court shall include the assessment of *all costs and attorney fees* against the person violating these restrictions as part of the damages." (Emphasis added).

Parton at 453 (citing Garvin v. Squires, 502 So. 2d 47 (Fla. 2d DCA 1987)). Thus, the significant circumstances which led the court to hold that a joint and several award of attorneys' fees and costs was appropriate in Parton are not present in the instant case.

Principles of consolidation further prohibit courts to take any actions which alter the substantive rights of the individual parties. St. Mary's Hosp. v. Brinson, 685 So. 2d 33, 35 (Fla. 4th DCA 1996) ("consolidation does not merge the suits into a single cause; rather, each suit maintains its independent status with respect to the rights of the parties involved"); Wagner v.

Nova Univ., 397 So. 2d 375, 377 (Fla. 4th DCA 1981) (holding that the purpose of consolidation "is to permit trial convenience and economy in administration... it should not be used to deprive a party of any substantive rights which would be denied unless the actions proceeded separately") (internal citations omitted). In holding that issues related to attorney's fees are substantive in nature, the court in Shores Supply Co. v. Aetna Casualty & Surety Co., 524 So. 2d 722, 725 (Fla. 3d DCA 1988), extended these basic principles of consolidation to awards of attorney's fees as well. Taken together, these cases represent a clearly established principle of law which protects parties to a consolidated action from any adverse impacts to their substantive rights and/or financial interests resulting solely from the consolidated posture of the suit itself. Here, had each case proceeded to trial independently, each defendant could only have been held responsible for its individual share of attorney's fees and costs; however, due to the consolidated nature of these cases, tenant/Appellant was subject to a heightened degree of liability for attorney's fees than it would have had otherwise. In light of the applicable case law, such an adverse change to the substantive rights of Appellant was impermissible.

In light of the factors which distinguish the instant case from the case relied upon by the trial court, the trial court's joint and several award of attorney's fees was inappropriate. Accordingly, the awards for attorney's fees are hereby REVERSED and the matter is REMANDED to the trial court to address the issue of appropriate apportionment of attorney's fees as to each individual defendant/tenant. Appellee's Motion for Leave to File Motion to Assess Appellate Attorney's Fees is DENIED as untimely. See Fla. R. App. P. 9.400(b) ("a motion for attorneys' fees may be served not later than the time of service of the reply brief").

ROSENBERG and KELLEY, J.J. concur. HAFELE, J., recused.