

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

LUCIANA ELISEU,

Plaintiff,

v.

Case No. 2020-CA-007570-O
Division 43

CONCEPT DESIGN LE, LLC,
et al.,

Defendants.

_____ /

**ORDER DENYING
PLAINTIFF'S MOTION FOR ATTORNEYS' FEES**

THIS MATTER came before the Court on Plaintiff's Motion for Attorneys' Fees and to Amend Final Judgment filed July 24, 2024 and noticed as fully briefed on July 11, 2025 ("Plaintiff's Motion for Attorneys' Fees"). The Court, having reviewed the file, the parties' respective submissions relating to the motion, and being otherwise fully advised of the premises, finds as follows.

BACKGROUND

After some litigation, the parties reached a settlement agreement ("Settlement Agreement"). The Settlement Agreement signed by parties contained the following provision:

Attorneys' Fees. In the event any party is required to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to payment of their reasonable attorneys' fees and costs by the non-prevailing party, incurred before, during, and after suit is filed in appellate proceedings, and in bankruptcy including fees and costs incurred litigating the reasonableness and amount of such fees and costs.

(Settlement Agreement at ¶ 17) (no emphasis added). As a result of the settlement, on May 31, 2023 the Court entered an Agreed Order of Dismissal with Prejudice (“May 31 Order”), which provided, in relevant part:

2. No party is the prevailing party in this action and each party shall bear their own respective attorney's fees and costs.

3. The Court reserves jurisdiction to enforce the Mutual Release and Settlement Agreement signed by the parties in this case, and enter any orders as may be necessary for its enforcement.

(May 31 Order at ¶¶ 2, 3.) Plaintiff subsequently filed a motion to enforce the Settlement Agreement. After completion of an evidentiary hearing on the motion to enforce the Settlement Agreement, on November 14, 2023 the Court entered its Order Granting Amended Motion to Set Aside Dismissal and Enforce Mutual Release and Settlement Agreement (“November 14 Order”). The November 14 Order provided, in relevant part:

3. If Defendants fail to satisfy all of the terms of the Mutual Release and Settlement Agreement (dated March 12, 2022), as specified herein, an automatic judgment will be entered in favor of Plaintiff, the only requirement being that Plaintiff submit an affidavit as to the amount due on the Card, without the need for a further evidentiary hearing.

8. The Court reserves ruling on the issue of attorney fees to a later date.

(November 14 Order at ¶¶ 3, 8.)

Pursuant to Paragraph 3 of the November 14 Order as quoted above, Plaintiff subsequently filed Plaintiff’s Affidavit of Indebtedness. As a result on January 26, 2024, the Court entered a Final Judgment in Plaintiff’s favor in the amount of \$96,103.22 – representing the total balance of the credit card which was the subject of the parties’

Settlement Agreement (“Final Judgment”). The Final Judgment reserved jurisdiction to compel compliance with fact information sheet requirements, but did not contain any language regarding entitlement to attorneys’ fees.

On February 1, 2024, Plaintiff filed Plaintiff’s Ex Parte Motion for Order to Show Cause (“Plaintiff’s Motion for Order to Show Cause”). Plaintiff’s Motion for Order to Show Cause provided, in relevant part:

3. Plaintiff has retained the law firm of Korshak & Associates, P.A. as its attorneys in this action and is obligated to pay a reasonable fee for their services.

8. Plaintiff is entitled to an award of its attorney’s fees **as a sanction for defendants’ contempt**. *See Eve’s Garden, Inc. v. Upshaw & Upshaw, Inc.*, 801 So. 2d 976, 979 (Fla. 2d DCA 2001). **And because this motion seeks attorney’s fees as a sanction**, Plaintiff is also entitled to what are sometimes called fees on fees—an award of the fees incurred in litigating the amount of fees due. *Bennet v. Berges*, 50 So. 3d 1154, 1160-61 (Fla. 4th DCA 2010)

10. If any Defendant fails to appear, or appears but fails so show cause why he should not be held in contempt, Plaintiff respectfully requests that this Court:

(g) Award Plaintiff its attorneys’ fees incurred **in connection with seeking contempt, including fees for litigating the amount of fees due**.

(Plaintiff’s Motion for Order to Show Cause at ¶¶ 3, 8, 10[g]) (emphasis added). The Court issued an order to show cause pursuant to which the parties appeared before the Court on March 6, 2024. The Court Minutes for the March 6, 2024 order to show cause hearing reflect that all parties were present and indicated that they “worked out the order to show

cause issue, the only matter left are attorney's fees and costs, and Court shall enter a Higbee Order."¹ The Court issued a Higbee Order, setting a Scheduling Conference for July 25, 2024. The Higbee Order provided as follows:

[o]n March 6, 2024, the parties appeared for a Rule to Show Cause hearing when Parties informed the Court that they worked out the compliance issue. The matter of Attorney Fee and Cost only remain.

(Higbee Order at p. 1.) Pursuant to the requirements of the Higbee Order, on July 22, 2024 the parties filed a Joint Statement of the Case ("Joint Statement"), which was electronically signed by counsel for the respective parties, and which provided, in relevant part:

SETTLEMENT EFFORTS [Para. 6(a)]

Counsel for the Parties certify they have discussed the potential of settlement related to the claim by Plaintiff for attorney fees and costs. The Parties disagree about the scope of attorney fees and costs awardable which makes compromise difficult. **This is in part because entitlement to fees has never been granted.** Presently, the Parties are too far apart in their settlement values to have any hope of achieving resolution absent adjudication by the Court.

ISSUES OF LAW TO BE DECIDED [Para 6(f)]

Whether Plaintiff is entitled to an award of her costs and fees incurred in this action and, if so, the scope of awardable costs and fees.

(Higbee Order at pp. 1; 4) (emphasis added).

The day before the Scheduling Conference required by the Higbee Order, Plaintiff filed Plaintiff's Motion for Attorneys' Fees, which is at issue here. The Court Minutes for

¹A Higbee Order is a scheduling order commonly used in this circuit for the efficient adjudication of the amount of attorneys' fees and costs once entitlement to attorneys' fees and costs has been determined.

the July 25, 2024 Scheduling Conference required by the Higbee Order provides, in relevant part:

[p]arties appeared for the scheduling conference, there is a dispute as to the entitlement of cost and fees. Plaintiff filed Motion for Attorneys' fees and amend the final judgment on 07/24/2024. Court to reschedule final hearing pending ruling on the motion and issue as to entitlement to fees.

Thereafter on July 29, 2024, the Court entered its Order on Scheduling Conference, memorializing that “[t]here is a dispute concerning the scope and entitlement of attorneys’ fees and costs” and that “[o]n July 24, 2024, Plaintiff filed its Motion for Attorney Fees and to Amend Final Judgment.”

ANALYSIS

Florida Rule of Civil Procedure 1.525 provides as follows:

[a]ny party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party.

Fla. R. Civ. P. 1.525. “[A] motion for attorney's fees must be filed within thirty days of entry of final judgment to permit a trial court to award such fees.” *Kalb v. Nack Holding, LLC*, 79 So. 3d 175, 176 (Fla. 3d DCA 2012) *citing Saia Motor Freight Line, Inc., v. Reid*, 930 So. 2d 598, 600 (Fla. 2006); *Amerus Life Ins. Co. v. Lait*, 2 So. 3d 203, 207–08 (Fla. 2009). “The only recognized exception to this requirement is when the trial court has already, **in the judgment**, determined entitlement to attorney's fees as part of the relief granted to the prevailing party.” *Id.* (no emphasis added) *citing Lait*, 2 So. 3d at 207; *Ramle Int'l Corp. v. Greens Condo. Ass'n.*, 32 So. 3d 647, 648 (Fla. 3d DCA 2010). *See also Berg v. Scurry*, 412 So. 3d 139, 143 (Fla. 2d DCA 2025)(finding in judgment that movant was

“prevailing party” insufficient to constitute a finding of entitlement for Rule 1.525 purposes).

1. THE FINAL JUDGMENT.

Here, the Final Judgment was entered on January 26, 2024. Pursuant to Florida Rule of Civil Procedure 1.525, the latest date for Plaintiff to seek entitlement to attorneys’ fees was February 26, 2024.² Plaintiff failed to do so, instead filing Plaintiff’s Motion for Attorneys’ Fees months later on July 24, 2024. The only circumstance which would relieve Plaintiff from having to seek entitlement to attorneys’ fees within thirty (30) days from the date of the Final Judgment as required by Florida Rule of Civil Procedure 1.525 would have been if the Final Judgment had determined Plaintiff’s entitlement. However, the Final Judgment here makes no such determination.

2. THE ORDER TO SHOW CAUSE.

Plaintiff asserts that a timely request for entitlement to attorneys’ fees was made pursuant to Plaintiff’s Motion for Order to Show Cause, which was filed within thirty days of the rendition of the Final Judgment on February 1, 2024. However, the clear and unambiguous language of Plaintiff’s Motion for Order to Show Cause shows that Plaintiff’s request in that motion was related solely to Plaintiff’s Motion for Order to Show Cause. (See Motion for Order to Show Cause at ¶8, stating that “Plaintiff is entitled to an award of its attorney’s fees as a sanction for defendants’ contempt,” and that “this motion seeks attorney’s fees as a sanction;” *see also* ¶ 10(g), requesting an “[a]ward of Plaintiff’s

²Thirty (30) days from the January 26, 2024 Final Judgment fell on February 25, 2024, which is a Sunday. Pursuant to Florida Rule of General Practice and Judicial Administration 2.514, the deadline became February 26, 2024.

attorneys' fees incurred in connection with seeking contempt, including fees for litigating the amount of fees due.”)

There is nothing in Plaintiff's Motion for Order to Show Cause supporting a conclusion that Plaintiff requested entitlement to attorneys' fees pursuant to Paragraph 17 of the Settlement Agreement. This is further supported by the March 6, 2024 Court Minutes from the Show Cause hearing, as well as the language of the Higbee Order issued by the Court, both addressing the Show Cause Order only, and both silent as to any broader issues such as entitlement pursuant to the Settlement Agreement. (*See* March 6, 2024 Court Minutes reflecting that the parties “worked out the order to show cause issue, the only matter left are attorney's fees and costs, and Court shall enter a Higbee Order;” *see also* Higbee Order, providing that “the parties appeared for a Rule to Show Cause hearing when Parties informed the Court that they worked out the compliance issue. The matter of Attorney Fee and Cost only remain.”)

3. WAIVER, ESTOPPEL, LACHES, AND ACQUIESCENCE.

According to the Plaintiff, any objections to Plaintiff's Motion for Attorneys' Fees based on untimeliness under Florida Rule of Civil Procedure 1.525 are subject to waiver, estoppel, laches, and acquiescence because Defendants failed to formally lodge any objection or averment as to lack of entitlement during the course of this litigation. However, the record here shows that Defendants did object, as reflected in the Joint Statement dated July 22, 2024, and providing that part of the reason the parties were unable to reach an agreement on the issue of attorneys' fees is that “entitlement has never been granted;” and listing “[w]hether Plaintiff is entitled to an award of her costs and fees incurred in this action” as an issue of law which remained to be adjudicated. It is also noteworthy that the

Joint Statement containing the acknowledgments that the issue of entitlement had yet to be decided as of July 22, 2024 was signed by counsel for all parties, including Plaintiff. Based on this, the Court finds no grounds to conclude that waiver, estoppel, laches, or acquiescence would bar Defendants' untimeliness objection to Plaintiff's Motion for Attorneys' Fees.

4. AMENDMENT OF THE FINAL JUDGMENT.

Plaintiff asserts that the Final Judgment should be amended pursuant to Florida Rules of Civil Procedure 1.540(a) and/or 1.540(b)(1)³ to include a finding of entitlement due to a clerical mistake and/or excusable neglect. However, Plaintiff has provided no legal or factual support for the proposition that there was a clerical mistake in the Final Judgment, or that there is excusable neglect warranting amendment of the Final Judgment under the present circumstances. Moreover, to permit an amendment of a final judgment to include a finding of entitlement to attorneys' fees under the guise of a Florida Rule of Civil Procedure 1.540-motion – beyond the time contemplated by Florida Rule of Civil

³Florida Rule of Civil Procedure 1.540 provides, in relevant part:

(a) Clerical Mistakes. Clerical mistakes in judgments, decrees, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect.

Procedure 1.525 – would render the “bright line” rule imposed by Florida Rule of Civil Procedure 1.525 meaningless.

5. NOVEMBER 14 ORDER.

The Court also rejects Plaintiff’s argument that the November 14 Order reserving ruling on the issue of attorneys’ fees permits Plaintiff to seek entitlement to attorneys’ fees under the present circumstances. “[A] court’s reservation of jurisdiction to determine fees and costs does not extend the time for service of a motion under rule 1.525.” *Barco v. School Bd. of Pinellas County*, 975 So. 2d 1116, 1124 n.4 (Fla. 2008) *citing Saia Motor Freight Line, Inc.*, 930 So. 2d at 600. The November 14 Order was entered prior to the Final Judgment, and entry of the Final Judgment was the event that started the proverbial clock ticking pursuant to Florida Rule of Civil Procedure 1.525 for Plaintiff to seek entitlement to attorneys’ fees under Paragraph 17 of the Settlement Agreement.

6. “PREVAILING PARTY”.

Lastly, Plaintiff seems to contend that her status as the prevailing party⁴ for purposes of Paragraph 17 of the Settlement Agreement somehow excuses her from seeking entitlement to attorneys’ fees within the time requirement of Florida Rule of Civil Procedure 1.525. Plaintiff has provided no legal authority supporting this position, and the Court rejects this argument. *See Kalb*, 79 So. 3d at 176 (citations omitted) (the only recognized exception to the requirement of rule 1.525 that a motion for entitlement to fees be filed within thirty days of the judgment is when the court has already, in the judgment, determined entitlement as part of the relief granted to the prevailing party.). Even if the Final Judgment itself included a “prevailing party” finding (it does not), that

⁴The Court does not make any determination in this order regarding whether Plaintiff is the prevailing party pursuant to Paragraph 17 of the Settlement Agreement.

still has been held insufficient to constitute a finding of entitlement for Florida Rule of Civil Procedure 1.525 purposes. *See Berg v. Scurry, supra.*

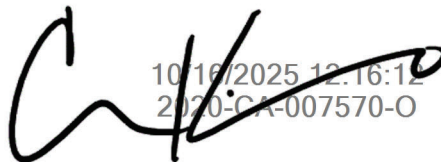
CONCLUSION

As indicated in *Berg*, “there is little question that bright-line rules can create inequities ... [b]ut as unpleasant as it is, we must uphold the requirements of rule 1.525.” *Berg*, 412 So. 3d at 145 (internal quotations omitted) *citing Gulf Landings Ass’n v. Hershberger*, 845 So. 2d 344, 346 (Fla. 2d DCA 2003). For all of these reasons, Plaintiff’s Motion for Attorneys’ Fees will be denied as it relates to entitlement pursuant to Paragraph 17 of the Settlement Agreement. Plaintiff will still be permitted to seek her attorneys’ fees and costs related to Plaintiff’s Motion for Order to Show Cause.⁵ It is accordingly

ORDERED and ADJUDGED that:

1. Plaintiff’s Motion for Attorneys’ Fees is DENIED.
2. Nothing in this order shall prevent Plaintiff from seeking recovery of her reasonable attorneys’ fees and costs related to Plaintiff’s Motion for Order to Show Cause.
3. If Plaintiff elects to pursue her reasonable attorneys’ fees and costs related to Plaintiff’s Motion for Order to Show Cause, Plaintiff shall file a motion supported by affidavits. The parties shall fully brief the motion and shall submit it to the Court for adjudication pursuant to the requirements of the Business Court Procedures.

DONE and ORDERED.



eSigned by Chad Alvaro 10/16/2025 12:16:12 MnuE93WH

Chad K. Alvaro
CIRCUIT JUDGE

⁵As demonstrated by the Court’s issuance of a Higbee Order, Plaintiff is entitled to recovery of her reasonable attorneys’ fees and costs as it relates to Plaintiff’s Motion for Order to Show Cause. The issue of the amount of attorneys’ fees and costs due remains to be determined.

Copies to Counsel of Record via
Florida's E-Filing Portal