

Florida Supreme Court Awards Appellate Attorney's Fees to Borrower After Mortgagee Voluntarily Drops Appeal

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In a recent 4-3 decision, the Florida Supreme Court concluded that a borrower was entitled to her appellate attorneys' fees because she was the prevailing party in a judicial foreclosure action in which her mortgagee had voluntarily dropped the appeal. Marie Anne Glass' mortgage loan servicer filed a complaint for judicial foreclosure in December 2013. Glass moved to dismiss the case on grounds that did not challenge the default, but instead argued that her mortgagee failed to allege or demonstrate that it was the proper holder of the note. Ultimately, the trial court granted Glass' motion and dismissed the case with prejudice.

Glass' mortgagee filed a notice of appeal with the Fourth District Court of Appeal and argued that "none of the arguments offered by Glass in her motions to dismiss had merit and 'all of the possible grounds for the circuit court's order are incorrect as a matter of law.'" Following briefing, the mortgagee filed a notice of voluntary dismissal of the appeal. Thereafter, Glass renewed her demand for attorney's fees, pursuant to [Florida Rule of Civil Procedure 1.525](#), the mortgage, and Florida Statute [§ 57.105\(7\)](#), but the appellate court denied fees. The Fourth District found that Glass was not entitled to attorney's fees because she prevailed on a standing argument presented in the trial court. In addition, the Fourth District relied on [Bank of New York Mellon Trust Co. v. Fitzgerald](#), in which the Third District held that a borrower could not invoke the reciprocity provisions of § 57.105 allowing fees to a party who responds to, and prevails on, a contract enforcement action because no contract existed between the bank and the borrower.

On appeal, the Florida Supreme Court explained that "caselaw [sic] is clear that a voluntary dismissal of an appeal renders the opposing party 'the prevailing party' for the purpose of appellate attorney fees." Moreover, the Court concluded that because Glass' mortgagee maintained its right to enforce the mortgage contract through the appeal and up until dismissal, the Fourth District should have awarded Glass fees as the prevailing party to a contract enforcement action. The Court also distinguished *Fitzgerald* from the present case, because the trial court did not issue specific findings on standing and Glass alleged more than just lack of possession of the note. Glass had also alleged that the mortgagee failed to demonstrate a step in the transfer or assignment of the mortgage and note as one of four reasons the trial court should dismiss the complaint. According to the Court,

even if the trial court's dismissal was based on lack of standing, it was not based on a finding that the mortgagee did not hold the note, but rather because the mortgagee's complaint was legally insufficient for failure to demonstrate the chain of title.

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