

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RUBY L. SCHMIGEL,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D05-1034

CUMBIE CONCRETE
COMPANY,

Appellee.

Opinion filed December 14, 2005.

An appeal from the Circuit Court for Leon County.

Paul M. Hawkes, Acting Judge.

Marie A. Mattox and James Garrity of Marie A. Mattox, P.A., Tallahassee, for
Appellant.

Marsha E. Rule, Martin P. McDonnell, and Harold F. X. Purnell of Rutledge,
Ecenia, Purnell & Hoffman, P.A., Tallahassee, for Appellee.

PER CURIAM.

We affirm the trial court's award of attorney's fees pursuant to sections
57.105(1)(a) and 448.104, Florida Statutes (2004). Section 57.105(4) does not
provide a 21-day safe harbor when the trial court awards fees on its own initiative, as

authorized by subsection (1), because subsection (4) applies only to “[a] motion by a party.” Appellants cannot claim lack of notice under the facts at bar, because the trial court grounded its award upon the issue appellee raised in its motion for attorney’s fees; nor can appellants claim lack of opportunity to be heard, because the trial court set forth a briefing schedule that appellants failed to utilize.

AFFIRMED.

ERVIN, DAVIS and BENTON, JJ., CONCUR.