

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**STOLPER, LLC,**  
Appellant,

v.

**HERMAN JEFFER,**  
Appellee.

No. 4D05-3230

[January 9, 2008]

POLEN, J.

Appellant Stolper, LLC timely appeals the trial court's order denying its motion for attorney's fees. We reverse.

Appellee Herman Jeffer filed a complaint against Stolper for collection of a promissory note. The complaint was voluntarily dismissed before an answer was filed by Stolper, but after the answer was due. Stolper filed a motion for attorney's fees and costs within 30 days after the dismissal.

In *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991), the Supreme Court of Florida answered in the negative the following question certified by this court to be of great public importance:

May a prevailing party recover attorney's fees authorized in a statute or contract by a motion filed within a reasonable time after entry of a final judgment, which motion raises the issue of that party's entitlement to attorney's fees for the first time?

*Stockman*, 573 So. 2d at 836. The fundamental concern was one of notice. *Id.* at 837. Modern pleading requirements serve to notify the opposing party of the claims alleged and prevent unfair surprise. *Id.* (citing 40 Fla. Jur. 2d *Pleadings* § 2 (1982)).

The court held that a claim for attorney's fees, whether based on statute or contract, must be pled. *Id.* The court later clarified that the

phrase “must be pled” is to be construed in accord with the Florida Rules of Civil Procedure. *Green v. Sun Harbor Homeowners’ Ass’n*, 730 So. 2d 1261, 1263 (Fla. 1998). “Complaints, answers, and counterclaims are pleadings pursuant to Fla. R. Civ. P. 1.100(a).” *Id.* *Stockman* is to be read to hold that the failure to set forth a claim for attorney’s fees in a complaint, answer, or counterclaim, if filed, constitutes a waiver. *Id.*

In *Green*, however, the court stated that the failure to set forth a claim for attorney’s fees in a motion does not constitute a waiver. *Id.* The court stated:

Until a rule is approved for cases that are dismissed before the filing of an answer, we require that a defendant’s claim for attorney’s fees is to be made either in the defendant’s motion to dismiss or by a separate motion which must be filed within thirty days following a dismissal of the action. If the claim is not made within this time period, the claim is waived.

*Id.*

Stolper argues that it has complied with the language in *Green* by filing a motion for attorney’s fees within 30 days of the voluntary dismissal. This court agrees. We reverse and remand with instructions that the trial court reconsider Stolper’s motion for attorney’s fees.

*Reversed and remanded with instructions.*

KLEIN and MAY, JJ., concur.

\* \* \*

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Robert R. Makemson, Judge; L.T. Case No. 04-989 CA.

Eric C. Christu and Edward J. Welch of Elk, Bankier, Christu & Bakst LLP, West Palm Beach, for appellant.

Herman Jeffer, Tequesta, pro se.

***Not final until disposition of timely filed motion for rehearing.***