

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2006

DELTA FIRE SPRINKLERS, INC.,

Appellant,

v.

Case No. 5D05-3177

SOUTHTRUST BANK, N.A.,

Appellee.

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Opinion filed September 8, 2006

Appeal from the Circuit Court  
for Seminole County,  
Debra Nelson, Judge.

Rosemary Hanna Hayes and Tina  
Caraballo, of Hayes & Caraballo, P.L.,  
Orlando, for Appellant.

Alfred Truesdell and J. Timothy Schulte, of  
Zimmerman, Kiser & Sutcliffe, Orlando, for  
Appellee.

EVANDER, J.

We affirm the trial court's decision awarding appellee, SouthTrust Bank, N.A., attorney's fees pursuant to section 57.105, Florida Statutes (2003). SouthTrust and others had been sued by appellant Delta Fire Sprinklers ("Delta") in an effort to be paid for its work on a construction project.

The record reflects the trial court properly entered summary judgment in favor of SouthTrust on that count of Delta's complaint directed against SouthTrust. At the time of entry of summary judgment, the trial court granted Delta leave to amend its

complaint. Delta thereafter amended its complaint in an attempt to allege a new basis for a claim against SouthTrust. However, for all practical purposes, the amended complaint suffered from the same fatal deficiencies of the prior complaint. The day after the trial court properly dismissed this claim with prejudice,<sup>1</sup> SouthTrust served its motion for attorney's fees pursuant to section 57.105.

If no further proceedings had been initiated by Delta at the trial level, the "safe harbor" provision set forth in section 57.105(4)<sup>2</sup> would have prevented an award of fees. *O'Daniel v. Board of Commissioners of Monroe County*, 916 So. 2d 40 (Fla. 3d DCA 2005). However, Delta continued to pursue its meritless claim by filing a motion for rehearing and propounding a discovery request upon SouthTrust. After denying the motion for rehearing, the trial court acted within its discretion in awarding SouthTrust its reasonable attorney's fees incurred subsequent to the date of service of its motion for attorney's fees. The record supports the trial court's conclusion that Delta was merely attempting to relitigate a claim that had already been rejected by the court in its order granting summary judgment.

AFFIRMED.

PLEUS, C.J. and THOMPSON, J., concur.

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<sup>1</sup> The trial court's order of dismissal was affirmed per curiam by this court on August 15, 2006.

<sup>2</sup> Section 57.105 provides:

(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.