

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

STATE FARM FIRE AND CASUALTY COMPANY,
Petitioner,

v.

REMBRANDT MOBILE DIAGNOSTICS, INC.
a/a/o **NERECE FRANCOIS,**
Respondent.

No. 4D12-2169

[August 1, 2012]

PER CURIAM.

In this petition for second-tier certiorari, the petitioner argues that the circuit court, in its appellate capacity, departed from the essential requirements of the law in denying the petitioner's motion for entitlement to recover a conditional award of appellate costs and attorney's fees under the proposal for settlement statute, section 768.79, Florida Statutes (2011). We agree and grant the petition.

In the appellate proceedings before the circuit court, the respondent conceded that the court should grant the motion. The court, however, concluded that the petitioner was not entitled to recover its appellate costs and attorney's fees because the petitioner's success in obtaining a reversal of the county court order on appeal was not itself a money judgment.

The instant petition followed. The respondent concedes in this court that the circuit court's conclusion departed from the essential requirements of the law. We agree. The plain and mandatory terms of the proposal for settlement statute encompass all costs and attorney's fees incurred leading up to a final judgment. The statute provides, in pertinent part:

In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant *shall* be entitled to recover reasonable costs and attorney's fees

incurred by her or him . . . if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award.

§ 768.79(1), Fla. Stat. (2011) (emphasis added). *See also Motter Roofing, Inc. v. Leibowitz*, 833 So. 2d 788, 789 (Fla. 3d DCA 2002) (“This Court, along with all district courts in Florida, has ruled that Section 768.79 also applies to fees incurred on appeal. . . . Thus, the circuit court, sitting in its appellate capacity, departed from the essential requirements of law by denying the petitioner’s request for appellate attorney’s fees.”) (internal citations omitted).

Accordingly, we grant the petition and quash the circuit court’s order denying the petitioner’s motion for entitlement to recover a conditional award of appellate costs and attorney’s fees under the proposal for settlement statute. If the proposal for settlement statute ultimately is satisfied, then the petitioner shall be entitled to recover its appellate costs and attorney’s fees. We direct the circuit court to enter an order on the petitioner’s motion consistent with this opinion.

Petition granted.

POLEN, HAZOURI and GERBER, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jack B. Tuter, Judge; L.T. Case No. CACE 09-62075 19.

Nancy W. Gregoire of Kirschbaum, Birnbaum, Lippman & Gregoire, PLLC, Fort Lauderdale and Matthew D. Hellman of Matt Hellman, P.A., Plantation, for petitioner.

Marlene S. Reiss of Marlene S. Reiss, P.A., Miami, for respondent.

Not final until disposition of timely filed motion for rehearing.