

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

HEARTLAND FERTILIZER COMPANY, )  
a Florida corporation, )  
 )  
Appellant, )  
 )  
v. )  
 )  
RUENN HWA CARPENTER, )  
 )  
Appellee. )  
\_\_\_\_\_)

CASE NO. 2D02-622

Opinion filed October 16, 2002.

Appeal from the Circuit  
Court for Manatee County;  
Charles E. Williams, Judge.

John D. Hawkins of Grimes, Goebel,  
Grimes, Hawkins, Gladfelter &  
Galvano, P.A., Bradenton, for  
Appellant.

Susan L. Ojeda and Robert K. Eddy of  
Robert K. Eddy & Associates, P.A.,  
Tampa, for Appellee.

WHATLEY, Judge.

Heartland Fertilizer Company appeals a final judgment and an award of attorney's fees entered in favor of Ruenn Hwa Carpenter in Heartland's action to enforce a personal guaranty. We affirm the final judgment, as we agree with the trial

court that the guaranty was not enforceable against Carpenter, individually. However, we reverse the award of attorney's fees.

We conclude that the award of attorney's fees must be reversed for two reasons. First, Carpenter failed to plead entitlement to attorney's fees. See Green v. Sun Harbor Homeowners' Ass'n, 730 So. 2d 1261, 1263 (Fla. 1998) ("Complaints, answers, and counterclaims are pleadings pursuant to Florida Rule of Civil Procedure 1.100(a). A motion to dismiss is not a pleading."); Stockman v. Downs, 573 So. 2d 835, 837 (Fla. 1991) (holding that "a claim for attorney's fees, whether based on statute or contract, must be pled" and that the failure to do so waives such claim); see also Bruce v. Barcomb, 675 So. 2d 219, 221 (Fla. 2d DCA 1996). Second, Carpenter's motion for attorney's fees was premised upon the attorney fee provision set forth in the guaranty agreement. Since Carpenter, individually, was not a party to the guaranty agreement, she cannot use that agreement to seek fees.

Accordingly, we affirm the trial court's order finding that Carpenter has no individual liability in this cause, and we reverse the award of attorney's fees to Carpenter.

Affirmed in part, reversed in part.

ALTENBERND and STRINGER, JJ., Concur.