

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed October 8, 2014.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D13-2769  
Lower Tribunal No. 05-22072

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**Magic Tinting Window & Car Alarm, Inc.,**  
Appellant,

vs.

**Scottsdale Insurance Company,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Lisa S. Walsh,  
Judge.

Stabinski & Funt, P.A., and Todd J. Stabinski, for appellant.

Conroy, Simberg, Ganon, Krevans, Abel, Lurvey, Morrow, & Schefer, P.A.,  
and Hinda Klein and Thomas Regnier (Hollywood), for appellee.

Before ROTHENBERG, LOGUE and SCALES, JJ.

SCALES, J.

This case is before us on Scottsdale Insurance Company's (Scottsdale) amended motion for appellate attorney fees filed pursuant to Florida Rule of Appellate Procedure 9.400. Scottsdale's claim for fees is based upon section 768.79, Florida Statutes (2013) (Florida's "Offer of judgment and demand for judgment" statute); Scottsdale served a proposal for settlement on Magic Tinting Window & Car Alarm, Inc. (Magic Tinting) on or about March 21, 2006.

Scottsdale prevailed below and obtained a final judgment in its favor on October 2, 2013. Magic Tinting filed its notice of appeal of the final judgment with this court on October 29, 2013. Before any briefing, Magic Tinting voluntarily dismissed its appeal on August 18, 2014.

We deny Scottsdale's amended motion for appellate attorney fees. See Sanchez v. State Farm Fla. Ins. Co., 997 So. 2d 1209, 1209 (Fla. 3d DCA 2008) (denying motion for appellate attorney fees when appellate record reflected "de minimis" activity).<sup>1</sup>

Motion denied.

ROTHENBERG, J., concurs.

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<sup>1</sup> On the basis of Sanchez, we are constrained to deny Scottsdale's amended motion for appellate attorney fees. If we were writing on a clean slate, however, we would grant Scottsdale's motion for fees consistent with Chief Judge Shepherd's dissent in Sanchez and our sister courts' conclusions in Braxton v. Grabowski, 125 So. 3d 936 (Fla. 2d DCA 2013), and First Real Estate, LLC v. Grant, 88 So. 3d 1073 (Fla. 1st DCA 2012).

LOGUE, J., concurring.

I would simply deny Scottsdale's amended motion for appellate attorney fees. See Sanchez v. State Farm Fla. Ins. Co., 997 So. 2d 1209 (Fla. 3d DCA 2008).