

Third District Court of Appeal

State of Florida

Opinion filed January 30, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-2664
Lower Tribunal No. 14-3389

Miami Beach Club Motel Condominium Association, Inc.,
Appellant,

vs.

RDR Seashore, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Monica Gordo,
Judge.

Shir Law Group, P.A., and Stuart J. Zoberg (Boca Raton) and Guy M. Shir
(Boca Raton), for appellant.

Coffey Burlington, P.L., and Susan E. Raffanello, for appellee.

Before EMAS, C.J., and SALTER and FERNANDEZ, JJ.

PER CURIAM.

Miami Beach Club Motel Condominium Association, Inc. (“the Association”) appeals the trial court’s order denying its motion for attorney’s fees and costs.

We affirm the trial court’s order insofar as it denied attorney’s fees. The trial court correctly determined the Association was not entitled to attorney’s fees pursuant to section 718.303(1), Florida Statutes (2014)¹ because, contrary to the

¹ That subsection provides:

(1) Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association.
- (b) A unit owner.
- (c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.
- (d) Any director who willfully and knowingly fails to comply with these provisions.
- (e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney's fees. A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other

Association’s contention, RDR Seashore, LLC was neither a “unit owner” nor “other invitee occupying a unit” under the plain language of that statute.²

However, and as RDR Seashore has conceded, we reverse that portion of the trial court’s order that denied the Association’s motion for taxable costs pursuant to section 57.041(1), Florida Statutes (2014).³ See Weitzer Oak Park Estate, Ltd., v. Petto, 573 So. 2d 990, 991 (Fla. 3d DCA 1991) (holding that pursuant to section 57.041, “every party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs, and a trial judge has no discretion to deny costs to the parties recovering judgment”). We remand to the trial court to grant the Association’s motion for costs, to determine the proper taxable costs, and for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded with directions.

remedies provided by law. Actions arising under this subsection may not be deemed to be actions for specific performance.

² We reject without further discussion the other arguments raised by the Association as bases for its motion seeking an award of attorney’s fees.

³ That subsection provides in pertinent part: “The party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment”