

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed August 5, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-398  
Lower Tribunal No. 09-65741

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**Jackelin Gutierrez,**  
Appellant,

vs.

**Royal Caribbean Cruises LTD., et al.,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Pedro P. Echarte, Jr., Judge.

Isicoff Ragatz, Eric D. Isicoff and Christopher M. Yannuzzi, for appellant.

Lipcon, Margulies, Alsina & Winkleman, P.A., Jason R. Margulies and Michael A. Winkleman, for appellee Lipcon, Margulies, Alsina & Winkleman, P.A.

Before SCALES, MILLER and GORDO, JJ.

*ON MOTION FOR REHEARING*

PER CURIAM.

We grant Appellant’s motion for rehearing; withdraw the opinion of June 24, 2020; and substitute the following opinion in its place.

Affirmed. See § 57.105(4), Fla. Stat. (2019) (“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21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.”); Montgomery v. Larmoyeux, 14 So. 3d 1067, 1072 (Fla. 4th DCA 2009) (“Section 57.105(4) could not be clearer in its requirement that a motion seeking sanctions may not be filed with or presented to the court within twenty-one days of service of the motion.”); Anchor Towing, Inc. v. Fla. Dep’t of Transp., 10 So. 3d 670, 671–72 (Fla. 3d DCA 2009) (“Section 57.105(4) . . . must be strictly construed as it awards attorney’s fees in derogation of the common law.” (citing Kittel v. Kittel, 210 So. 2d 1, 3 n.7 (Fla. 1968))).