

**IN THE SIXTH DISTRICT COURT OF APPEAL  
IN AND FOR THE STATE OF FLORIDA**

---

**Appellate Case No. 6D23-4201  
Orange County Court Case No. 2023-CC-000193**

---

**JASMINE FREEMAN,  
Appellant**

**v.**

**SARCON, LLC, ET. AL.  
Appellee.**

---

**On Appeal from the Ninth Judicial  
Circuit in and for Osceola County, Florida**

---

**INITIAL BRIEF OF APPELLANT  
Appeal from a Final Order of the County Court**

---

By: /s/ Christopher Hixson, Esq.

**Christopher Hixson, Esq. – FBN 41158**

**Hixson Law Group**

**18167 US Hwy 19 N, Suite 250**

**Clearwater, FL 33764**

Phone: (833)-203-5294

Primary: [chris@hixlawgroup.com](mailto:chris@hixlawgroup.com) - Attorney

Secondary: [nykelle@hixlawgroup.com](mailto:nykelle@hixlawgroup.com) - Paralegal

Attorney for Appellant

Table of Contents	
Table of Contents .....	i
<b>Table of Authorities</b> .....	ii
<b>STATEMENT OF JURISDICTION</b> .....	1
PARTIES AND REFERENCES .....	1
STATEMENT OF CASE AND FACTS .....	1
SUMMARY OF ARGUMENT .....	4
STANDARD OF REVIEW.....	5
ARGUMENT .....	5
<i>I. FCCPA APPLIES TO CREDITORS/PERSON NOT JUST DEBT COLLECTORS</i>	5
a. STATEMENT OF PRESERVATION – ADMIN. ORDER 24-01	5
b. <i>RENT IS A HOUSEHOLD DEBT</i> .....	6
c. <i>COURT DISMISSED ON NON-PLEAD GROUNDS...</i>	9
<i>II. FCCPA AND FLTA CLAIMS WERE NOT COMPULSORY</i>	11
a. STATEMENT OF PRESERVATION – ADMIN. ORDER 24-01	11
b. <i>DECISION TO DISMISS THE FLTA AND BREACH OF CONTRACT BASED UPON DISMISSAL OF A FCCPA CLAIM IS IMPROPER</i>	11
CONCLUSION .....	15
CERTIFICATE OF FONT AND WORD/PAGE COMPLIANCE .....	16

## Table of Authorities

### Federal Court Opinions

Page(s)

<u>Agrelo v. Affinity Mgmt. Servs., L.L.C.</u> , 841 F.3d 944 (11th Cir. 2016) .....	8
<u>Bacelli v. MFP, Inc.</u> , 729 F. Supp. 2d 1328 (M.D. Fla. 2010) .....	8
<u>Balan v. Vestcor Fund XXII, Ltd.</u> , CASE NO. 3:19-cv-351-J-34JBT, 2020 U.S. Dist. LEXIS 216593 (M.D. Fla. Nov. 2, 2020) .....	12
<u>Deutsche Bank Nat'l Tr. Co. v. Foxx</u> , 971 F. Supp. 2d 1106 (M.D. Fla. 2013) .....	8
<u>Lawrence v. FPA Villa Del Lago, LLC</u> , No. 8:20-cv-1517-VMC-JSS, 2021 U.S. Dist. LEXIS 109246 (M.D. Fla. June 10, 2021) .....	8
<u>No. 3:10CV392-MW/EMT</u> , No. ?DOCKET?, 2014 WL 12515345 (N.D. Fla. July 17, 2014) ..	8
<u>Reynolds v. Gables Residential Servs.</u> , 428 F. Supp. 2d 1260 (M.D. Fla. 2006) .....	7
<u>Vignoli v. Clifton Apts., Inc.</u> , CASE NO. 12-cv-24508-KING, 2014 U.S. Dist. LEXIS 167666, 2014 WL 6850778 (S.D. Fla. Dec. 3, 2014) .....	12
<u>Vignoli v. Clifton Apts., Inc.</u> , No. 12-24508-CIV-KING/TORRES, 2014 U.S. Dist. LEXIS 149286, 2014 WL 6850775 .....	13-14, 14
<u>Vignoli v. Clifton Apts., Inc.</u> ,	

No. 12-24508-CIV-KING/TORRES, 2014 WL 6850775 (S.D. Fla. Oct. 2, 2014) ..... 12

**Florida State Opinions**

Amiri v. McGreal,  
323 So. 3d 242 (Fla. 2d DCA 2021) ..... 14-15

Camena Invs. & Prop. Mgmt. Corp. v. Cross ,  
791 So. 2d 595 (Fla. 3d DCA 2001) ..... 12, 13

Haratz v. Dental Team of Atlantis, L.L.C.,  
372 So. 3d 282 (Fla. 4th DCA 2023) ..... 5

Scovell v. Delco Oil Co.,  
798 So. 2d 844 (Fla. 5th DCA 2001) ..... 14

**Florida State Statutes**

§ 559.55, Fla. Stat. .... 6, 7

§ 559.72, Fla. Stat. .... 7, 8

§§ 559.55, 559.77, Fla. Stat. .... 6

**United States Code**

15 U.S.C. § 1692 ..... 6

15 U.S.C. § 1692, (e) ..... 6

**Rules**

Fla. R. App. P. 9.030 ..... 1

Fla. R. App. P. 9.210 ..... 16

**Other**

Patterson v. Hamm, 2019-SC-3479  
(Duval Cty. Ct. May 27 2021) ..... 9

## **STATEMENT OF JURISDICTION**

The jurisdiction of this Court to hear this this appeal stems from Fla. R. App. P. 9.030(b)(1)(A) which requires this Court review final orders of the trial courts. The matter being appealed is an Order Dismissing a Complaint with Prejudice rendered on November 13, 2023, [R. 89-90].

## **PARTIES AND REFERENCES**

There are two parties to this matter. The Appellant, JASMINE FREEMAN will be referenced as Appellant, Freeman, or Plaintiff. The Appellant, SARCON, LLC, will be referred to as Appellant, SARCON or Defendant.

## **STATEMENT OF CASE AND FACTS**

This matter involves the trial court's improper dismissal of Appellants' causes of action under the Florida Consumer Collection Practices Act ("FCCPA") and Florida Landlord Tenant Act ("FLTA") initially and without leave to amend. [R. 89-90].

The first interactions between these two parties was when, in October 2022, SARCON, LLC sought eviction against FREEMAN not in this matter but a separate matter entitled SARCON LLC v.

FREEMAN, 2022-CC-004080 EV. [R. 31-32, 95: ln. 6-11]. On December 20, 2022, a Default Judgment and Final Judgment of Possession was entered against FREEMAN with her filing a Motion to Determine Rent and Motion to Dismiss for failing to properly comply with the 3 day notice, but no filing of an answer, affirmative defenses or counterclaims. [R. 32, 43, 95: ln. 15-19].

After this history occurred, FREEMAN filed this instant trial court action on January 12, 2023. [R. 9-27]. In this underlying matter, FREEMAN filed a lawsuit against SARCON not for the filing of the eviction, but for other actions that occurred during the landlord tenant relationship between them, including a) changing the passcode and not allowing access to the property, [R. 12, ¶25], b) removal of property after forceful entry, [R. 12, ¶26], c) the shutting of an essential utility, electric, to the property, [R. 12, ¶27], and d) refusing entry to the property, [R. 13, ¶28]. These actions were then the basis of one count of a violation of the FCCPA, [R.13-14, ¶¶29-34], and 3 counts of violations of the FLTA, [R. 14-17, ¶¶35-52]. After SARCON filed an initial Motion to Dismiss, [R. 31-45], and FREEMAN's response to such, [R. 46-54], the Court dismissed

the initial Complaint, without explanation in the written order. [R. 55].

FREEMAN filed an Amended Complaint with more detail, [R. 56-75], to which SARCON filed another Motion to Dismiss, [R. 76 - 86]. The matter went to a hearing on November 7, 2023, [R. 87, 92-108]. During that hearing, the focus of argument was if the claims are under the FCCPA and if these actions were compulsive counterclaims to the eviction action. [R. 92-105].

FREEMAN provided the trial court direct contrary law to SARCON'S compulsive counterclaim issue by citing the Camena v. Property Management and Scovell v. Delco Oil Corp. cases which are directly on point with the issue hereto, stating that due to the summary procedures and a lack of posting rent, the counterclaims were not required. [R. 99: ln 9-25, 100, 101]. Upon SARCON being provided the ability to cite some more cases, the Court took the matter under advisement. [R. 107: ln. 17-20].

The Court issued its Order Dismissing Granting the Motion to Dismiss with prejudice, [R. 89-90], stating that the counterclaims (presented here as claims) were compulsory, [R. 89], and that as the

eviction case was only for possession the basis for the instant case (that did not say FREEMAN was suing for filing the eviction) was not suing for a debt and thus there was no FCCPA basis. [R. 90].

FREEMAN did not file a motion for rehearing and filed a timely appeal on December 4, 2023. [R. 117-120].

### **SUMMARY OF ARGUMENT**

The trial court committed fundamental reversible error in granting the dismissal with prejudice as the basis of this action, violations of the FCCPA and FLTR while the parties were in privity of contract, were not compulsive counterclaims to be made during the eviction proceeding and that the Court misinterpreted the basis of the current claims being the basis of the FCCPA as being the underlying eviction action, and not that of changing locks, disposing of property and shutting off electric to the unity. This error is based upon authority to contrary which results in a requirement to reverse the order, reinstate the action as plead or to permit and amendment to such, and remand the matter to proceed in compliance with the above reversal.

## **STANDARD OF REVIEW**

A trial court's dismissal of a claim with prejudice is reviewed de novo as the purpose of a motion to dismiss is to test the legal sufficiency of the complaint, not to determine factual issues. Haratz v. Dental Team of Atlantis, LLC, 372 So3d 282 (Fla. 4<sup>th</sup> DCA 2023).

## **ARGUMENT**

### **I. FCCPA APPLIES TO CREDITORS/PERSON NOT JUST DEBT COLLECTORS**

The trial court fundamentally erred in granting the Motion to Dismiss with Prejudice when it agreed with MARTIN's incorrect assertion that if MARTIN was not a debt collector the statute does not apply.

#### **a. STATEMENT OF PRESERVATION – ADMIN. ORDER 24-01**

FREEMAN preserved its argument in the record in its Response to Motion to Dismiss, [R. 47-49], which is the same basis as the Motion to Dismiss Amended Complaint, [R. 76-86], and at the hearing on the Motion to Dismiss, [R. 96-68]. The Court

reserved ruling orally, [R. 107: ln. 17-20], and issued its decision in written form in the Order being appealed, [R. 89-90].

*b. RENT IS A HOUSEHOLD DEBT*

One error in this case comes from SARCON's and the trial court's fundamental misunderstanding of what consumer debt is under that body of FDCPA and FCCPA law.

The FCCPA is a state consumer protection statute, modeled after the FDCPA, a statute designed to prohibit unfair, deceptive, and abusive practices in the collection of consumer debts as well as to protect against the invasion of individual privacy. 15 U.S.C. §§1692(a) and (e); Fla. Stat. §§559.55 and 559.77(5). The FDCPA imposes civil liability on any debt collector – and the FCCPA imposes liability on any creditor/person as well as any debt collector – who “regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another” and both statutes prohibit in engaging violative conduct in connection with collecting consumer debts. 15 USC §1692(a)(6); Fla. Stat. §559.55(5).

SARCON was and is a “creditor” as defined by Fla. Stat. 559.55(5). Fla. Stat. 559.55(5) states that a creditor “means any person to whom a debt is owed.” Further, a debt or consumer debt as described under Fla. Stat. 559.55(6) is “any obligation .. of a consumer to pay money arising out of a transaction in which the money, property ... which are the subject of the transaction are primarily for personal, family or household purposes.” A “consumer” as defined by Fla. Stat. 559.55(8) is “any natural person obligated ... to pay any debt.” The flow of logic here is simple, FREEMAN was alleged as consumers obligated to pay rent, which is a household debt, and thus the person they owe the money too, SARCON, is a creditor under the law, thus making the FCCPA apply to it.

The case of Reynolds v. Gables Residential Services, Inc. 428 F. Supp. 2d 1260 (M.D. Fla 2006), specifically states “[the property manager] may be subject to liability under Fla. Stat. §559.72 for actions it took **as a person or entity collecting consumer debts.**” (emphasis added) Id. at 1265.

The Reynolds court was correct in stating a property manager

may still be subject to liability under Fla. Stat. 559.72. *See also* Bacelli v. MFP, Inc., 729 F.Supp. 2d 1328, 1333 n.7 (M.D. Fla. 2010); Deutsche Bank Nat'l Trust Co. v. Foxx, 971 F.Supp. 2d 1106, 1114 (M.D. Fla. 2013); Lawrence v. FPA Villa Del Lago, LLC, No. 8:20-cv-1517-VMC-JSS, 2021 U.S. Dist. LEXIS 109246 (M.D. Fla. June 10, 2021). Further in Kelly v. Davis which cites and relies on the Reynolds decision, No. 3:10CV392-MW/EMT, 2014 WL 12515345 (N.D. Fla. July 17, 2014), the decision states that as the FCCPA applies to persons, a court is “obliged” to read the terms to apply to all “persons” which under the definition includes “individuals, children ... fiduciaries, corporations and all other groups or combinations.” Id. at \*23. Thus, being a debt collector or not is irrelevant. Id. at \*20. This argument is further pointed by the 11<sup>th</sup> Circuit Court of Appeals ruling that the FCCPA is not limited to debt collectors. Agrelo v. Affinity Mgmt. Servs., LLC, 841 F.3d 944, 953 (11<sup>th</sup> Cir. 2016).

On another trial level, and contrary to the SARCON'S assertion, the undersigned tried a matter similar to this and a county court judge arising from the Fourth Judicial District issued

a judgment in favor of the plaintiff who sued under both the landlord tenant statute as well as the FCCPA. Patterson v. Hamm, 2019-SC-3479 (Duval Cty. Ct. May 27, 2021)(“This Court further finds a reasonable amount due and owing to the Plaintiff the following: treble damages pursuant to FL Statute 83.67(6) of \$2625 and \$1000 in damages pursuant to FCCPA 559.77...”)

Obviously while the decision is not binding on this Court, this illustrates courts of competent jurisdiction have held in opposite of the SARCON’s assertions.

As a landlord is a person under the FCCPA and the debt is one for personal and household purposes, which this is a non-commercial residential lease, i.e. a household and personal purpose, the allegations to a FCCPA claims are made FREEMAN adequately plead the required language under the FCCPA.

*c. COURT DISMISSED ON NON-PLEAD GROUNDS.*

The Court dismissed the case under the mistaken grounds that the FCCPA doesn’t apply in this case because “while the basis of the eviction action was unpaid rent, [SARCON] only filed for possession... and not any attempt to collect the debt.”

This is a fundamental misreading of the initial and amended complaint which did not state that SARCON violated the FCCPA based upon a filing of an eviction action. FREEMAN filed a lawsuit against SARCON not for the filing of the eviction, but for other actions that occurred during the landlord tenant relationship between them, including a) changing the passcode and not allowing access to the property, [R. 12, ¶25; R. 59, ¶26], b) removal of property after forceful entry, [R. 12, ¶26; R. 59, ¶27], c) the shutting of an essential utility, electric, to the property, [R. 12, ¶27; R. 60, ¶28], and d) refusing entry to the property, [R. 13, ¶28, R. 60, ¶29]. FREEMAN further alleged that there was a landlord, tenant relationship on the basis of paying rents pursuant to a lease and the violations of the FCCPA were “because of the lack of the lack of rent payments” and in furtherance of collecting those rent, [R.13-14, ¶¶29-34; R. ¶¶17-19; R. 59-24-27; R. 60, ¶¶28-29; R. 61, ¶35].

As such, the basis for the claim was not the filing of the eviction but was on other grounds as described above, the trial court erred in dismissing with prejudice as to those grounds. As such, reversible fundamental error exists.

II. FCCPA AND FLTA CLAIMS WERE NOT COMPULSORY

The trial court fundamentally erred in granting the Motion to Dismiss with Prejudice as to both the FCCPA and FLTA cases based upon being compulsory counterclaims.

a. STATEMENT OF PRESERVATION – ADMIN. ORDER 24-01

FREEMAN preserved its argument in the record in its Response to Motion to Dismiss, [R. 47-49], and Supplemental Memorandum Regarding Motion to Dismiss, [R. 52-54], which are the same basis as the Motion to Dismiss Amended Complaint, [R. 76-86], and at the hearing on the Motion to Dismiss, [R. 99-101]. The Court reserved ruling orally, [R. 107: ln. 17-20], and issued its decision in written form in the Order being appealed, [R. 89-90].

b. DECISION TO DISMISS THE FLTA AND BREACH OF CONTRACT BASED UPON DISMISSAL OF A FCCPA CLAIM IS IMPROPER

The Court dismissed the entire matter because FREEMAN’s “claims in this action are compulsory claims that the claims arise out of the same transaction or occurrence and should have been brought in the eviction action.” [R. 89].

First and foremost, as argued to the court at the first motion to dismiss on this issue, "under Florida law, there is no res judicata effect for a summary eviction proceeding.' *Vignoli v. Clifton Apartments, Inc.*, Case No. 12-24508-CIV, 2014 WL 6850775, at \*12 (S.D. Fla. Oct. 7, 2014), report and recommendation adopted, 2014 U.S. Dist. LEXIS 167666, 2014 WL 6850778 (S.D. Fla. Dec. 3, 2014)." Balan v. Vestcor Fund XXII, Ltd., No. 3:19-cv-351-J-34JBT, 2020 U.S. Dist. LEXIS 216593, at \*5 (M.D. Fla. Nov. 2, 2020).

SARCON's entire notion that these items should have been plead in the Eviction matter is contrary to longstanding case law. The Third District Court of Appeal interpreted the factual situation we have here in interpretation of the FDCPA and FCCPA. In that in a summary proceeding matter for eviction for possession only, the landlord doesn't have to bring damages claims at that time, "while the tenant may assert all equitable defenses in a landlord tenant dispute, **there is no obligation to do so in the summary procedure action.**" (emphasis added). Camena Invs. & Prop. Mgmt. Corp. V. Cross, 791 so2d 595 (Fla. 3<sup>rd</sup> DCA 2001). There is

no dispute the underlying matter was summary proceeding eviction action for possession only and that FREEMAN didn't assert any of the claims here in that matter. SARCON at the hearing argued that because SARCON did not now sue for the rest of the rent due, the counterclaims available at the time of the eviction, the ones in this matter, cannot be raised. The base this on the language in the decision that the "tenant may await the landlord's action for damages to assert any monetary claims by way of affirmative defenses or counterclaims." Id. That would not logically flow that a party must await a new lawsuit to assert the matter as if the party can bring a counterclaim, it can bring a case on its own.

The Balan court specifically addressed the SARCON argument of the compulsory counterclaim by citing to both Camena and Vignoi that "the reasoning in *Camena* applies equally to Florida's compulsory counterclaim rule. In fact, the *Camena* court specifically recognized that "the tenant does not have to assert all its defenses" in the eviction action. *See Camena*, 791 So.2d at 597. *See also Vignoli*, 2014 U.S. Dist. LEXIS 149286, 2014 WL 6850775, at \*11-12 (rejecting the defendant's argument that the plaintiffs'

"federal claims are barred by res judicata because they should have been brought as *compulsory counterclaims* in the state proceeding" in part because "there is no res judicata effect for a summary proceeding" under Florida law) (emphasis added)" and rejected that argument. Id.

As cited and brought to the trial court's attention, the Scovell decision expanded on the Camena decision, citing it in stating that "the summary procedure statutes envision an expedited process to determine the right to possession promptly without the necessity of deciding all other issues between the parties." (emphasis not added) Scovell v. Delco Oil Co., 798 So.2d 844 (Fla 5<sup>th</sup> DCA 2001).

The Second District Court analyzed this issue of claim splitting in the counter facts, meaning after the landlord gained possession by a summary proceeding, a tenant sued for a breach of lease and the landlord sued for the past due rents owing. The counterclaim was dismissed by the trial court stating it was a compulsory claim in the summary procedure eviction proceeding. The Second District reversed the trial court based upon the Camena decision, stating that it was not compulsory. Amiri v. McGreal, 323

So.3d 242 (Fla. 2<sup>nd</sup> 2021). For the same rationale and explanation in Camena, if the landlord didn't have to bring rent into the summary proceeding for eviction, the tenant didn't need to bring those claims here.

Accordingly, SARCON's position, and the trial court's adoption of it, is inappropriate, contrary to law, and not a legal basis to say these claims are barred as a compulsive counterclaim.

### **CONCLUSION**

The trial court committed fundamental reversible error when it granted the Motion to Dismiss With Prejudice when it did so by taking into account items outside of the four corners of the complaint, did not take the allegations as true, determined that the counts in this matter were compulsory counterclaims in the summary eviction proceeding and that the FCCPA claims were on the basis of filing the eviction and not the other explicitly alleged actions. These errors all result in a requirement to reverse the order, to reinstate the Counterclaim or sustain the dismissal but without prejudice with leave to amend as to all counts and remand the matter to proceed in accordance with the reversal instructions.

**CERTIFICATE OF FONT AND WORD/PAGE COMPLIANCE**

I HEREBY CERTIFY that the font used in this brief is the Bookman Old Style 14-point font and that the brief complies with the word count, page count and font requirements Florida Rule of Appellate Procedure 9.210(a)(2) and 9.045(b). The word count is 3480 and the page count is 15.

/s/Christopher Hixson, Esq.  
Attorney for Appellant

Dated April 20, 2024.

Respectfully submitted by,  
/s/ Christopher Hixson, Esquire  
Christopher Hixson, Esq. (FBN 41158)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing document has been furnished via electronic portal to all parties and to the other parties below either by e-portal or US Mail on this April 20, 2024.

Fabrikant & Associates, PLLC The Centre at Stirling & Palm 9900 Stirling Rd. Suite 300 kevinf@lath.com Attorney for Defendant, Sarcon, LLC	Young Kim, Esq. Consumer Law Attorneys 2727 Ulmerton Road, Ste. 270 Clearwater, FL 337612 litigation@consumerlawattorneys .com ykim@consumerlawattorneys.co m Attorney for Appellant
--	--

/s/ Christopher Hixson, Esq.

**Christopher Hixson, Esq. – FBN 41158**

**Hixson Law Group**

**18167 US Hwy 19 N, Suite 250**

**Clearwater, FL 33764**

Phone: (833)-203-5294

Primary: [chris@hixlawgroup.com](mailto:chris@hixlawgroup.com) - Attorney

Secondary: [nykelle@hixlawgroup.com](mailto:nykelle@hixlawgroup.com) - Paralegal

Attorney for Appellant