

IN THE DISTRICT COURT OF APPEAL
FOR THE THIRD DISTRICT OF FLORIDA

ORANGE REALTY MIAMI, INC.,
Plaintiff/Appellant,

v.

EL CHIOGGIOTTO CONDOMINIUM
ASSOCIATION, INC., et al.,
Defendants/Appellees.

Case No.: 3D18-0245

LT Case No.: 2017-004627-CA-10

**PLAINTIFF/APPELLANT'S AMENDED NOTICE
TO INVOKE DISCRETIONARY REVIEW**

NOTICE IS GIVEN that Plaintiff/Appellant ORANGE REALTY MIAMI, INC., through undersigned counsel, and pursuant to Rules 9.030(a)(2)(A)(iv) and 9.120 of the Florida Rules of Appellate Procedure, appeals to the Supreme Court of Florida for a discretionary review of the order of this court rendered May 29, 2018. The nature of the order is a final order denying Appellant's motion for rehearing of an order rendered May 16, 2018 granting Defendants/Appellees EL CHIOGGIOTTO CONDOMINIUM ASSOCIATION, INC., et al.'s Motion for Attorney's Fees based on contract.

Appellant's basis for invoking the Supreme Court's jurisdiction is that both orders expressly and directly conflict with the Fourth District Court of Appeal's decision in *Nationstar Mortgage LLC v. Glass*, 219 So. 3d 896 (Fla. 4th DCA 2017), currently under review by the Supreme Court under case no. SC17-1387 (Fla. Feb. 13, 2018), on the legal question of whether a defendant in a contract action who prevails by arguing they are not a party to the contract, may nevertheless be awarded

RECEIVED 06/26/2018 FLORIDA SUPREME COURT

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attorney's fees based on an attorney fee provision in the contract to which they are not a party, in derogation of common law.

Respectfully submitted,

The Law Offices of Mario G. Menocal, P.A.
Attorneys for *Plaintiff/Appellant*

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Miami, Florida 33155

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Email: service.address@mgmpa.com

By: /s/ Mario G. Menocal

Mario G. Menocal, Esq.

Florida Bar No.: 99048

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 26, 2018, a true and correct copy of the foregoing was served on Joel A. Bello, Esq. of Bello & Martinez, P.L.L.C., attorney for Appellees, via email to *jbello@bmrlawgroup.com* and *receptionist@bmrlawgroup.com*.

By: /s/ Mario G. Menocal

Mario G. Menocal, Esq.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

MAY 29, 2018

ORANGE REALTY MIAMI, INC., etc.,
Appellant(s)/Petitioner(s),

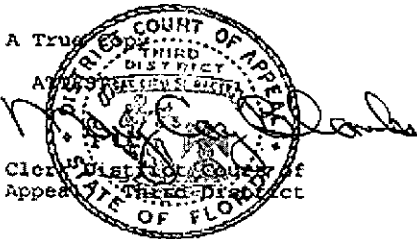
CASE NO.: 3D18-0245

vs.

L.T. NO.: 17-4627

EL CHIOGGIOTTO CONDOMINIUM
ASSOCIATION, INC., et al.,
Appellee(s)/Respondent(s),

Upon consideration, appellant's motion for rehearing on appellees' motion for appellate attorney's fees is hereby denied. ROTHENBERG, C.J., and LAGOA and LOGUE, JJ., concur.



cc: Joel A. Bello

Mario G. Menocal

la

Third District Court of Appeal

State of Florida

Opinion filed May 16, 2018.

Not final until disposition of timely filed motion for rehearing.

No. 3D18-245

Lower Tribunal No. 17-4627

Orange Realty Miami, Inc., etc.,
Appellant,

vs.

El Chioggiotto Condominium Association, Inc., et al.,
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Peter R. Lopez, Judge.

The Law Offices of Mario G. Menocal, P.A., and Mario G. Menocal, for appellant.

Bello & Martinez, PLLC, and Joel A. Bello, for appellees.

Before ROTHENBERG, C.J., and LAGOA and LOGUE, JJ.

PER CURIAM.

Affirmed.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

MAY 16, 2018

ORANGE REALTY MIAMI, INC., etc.,
Appellant(s)/Petitioner(s),

CASE NO.: 3D18-0245

vs.

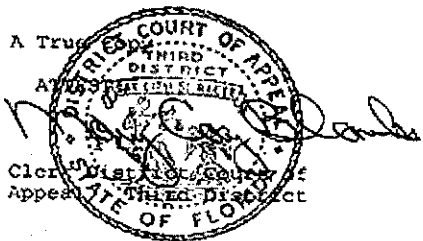
L.T. NO.: 17-4627

EL CHIOGGIOTTO CONDOMINIUM
ASSOCIATION, INC., et al.,
Appellee(s)/Respondent(s),

Upon consideration of appellees' motion for appellate attorney's fees,
it is ordered that said motion is conditionally granted and remanded to the trial
court to fix amount.

Appellant's motion to tax appellate attorney's fees is hereby denied.

ROTHENBERG, C.J., and LAGOA and LOGUE, JJ., concur.

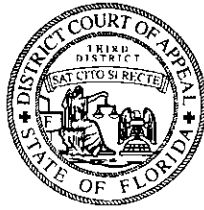


cc: Joel A. Bello
Miami-Dade Clerk

Mario G. Menocal

Hon. Peter R. Lopez

ns



LESLIE B. ROTHENBERG
CHIEF JUDGE
RICHARD J. SUAREZ
BARBARA LAGOA
VANCE E. SALTER
KEVIN EMAS
IVAN F. FERNANDEZ
THOMAS LOGUE
EDWIN A. SCALES, III
ROBERT J. LUCK
NORMA LINDSEY
JUDGES

DISTRICT COURT OF APPEAL
THIRD DISTRICT
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MIAMI, FLORIDA 33175-1716

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CHIEF DEPUTY CLERK
MARIA MIHAIC
CHIEF DEPUTY MARSHAL

TELEPHONE (305) 229-3200

June 26, 2018

Re: Orange Realty Miami, Inc., etc.,
v.
El Chiggiotto Condominium Assoc., Inc., et al.,
Appeal No.: 3D18-245
Trial Court No.: 17-4627
Trial Court Judge: Peter R. Lopez

Dear Mr. Tomasio:

Attached is a certified copy of the Notice invoking the discretionary jurisdiction of the Supreme Court pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

- The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this Court and is also attached.
- The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this Court.
- Petitioner/Appellant has previously been determined insolvent by the circuit court or our court in the underlying case.
- Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee is required because:

- Summary Appeal (Rule 9.141)
 Unemployment Appeal Commission
 Habeas Corpus
 Juvenile Case
 Other:

If there are any questions regarding this matter, please do not hesitate to contact this Office.

Sincerely,

MARY CAY BLANKS
Clerk, Third District Court of Appeal

By: Barbara Kelle