

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA,  
THIRD CIRCUIT**

**CASE NUMBER 3D2024-0254**

Lower Tribunal Case Number: 2022-044774-CC-23

OSWALDO VIEIRA ABREU,

Defendant/Appellant,

v.

BONITA VILLAS CONDOMINIUM  
ASSOCIATION, INC.,

Plaintiff/Appellee.

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*On Appeal from Non-Final Order  
of the County Court for the Eleventh Judicial Circuit  
of Florida, In and For Miami-Dade County*

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**APPELLEE'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND COSTS**

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## **PREFACE**

In this Brief, BONITA VILLAS CONDOMINIUM ASSOCIATION, INC., shall be referred to as “Appellee” or “Plaintiff”.

OSWALDO VIEIRA ABREU shall be referred to as “Appellant” or “Defendant”.

The Following symbols will be used for citation:

(A) for Appendix to Appellee’s Motion for Award of Attorneys’ Fees and Costs

### **APPELLEE’S MOTION FOR AWARD OF ATTORNEYS’ FEES AND COSTS**

Appellee, BONITA VILLAS CONDOMINIUM ASSOCIATION, INC., by and through its undersigned counsel, and pursuant to Rule 9.400 of the Florida Rules of Appellate Procedure, hereby moves this Honorable Court for the entry of an order awarding its reasonable attorneys’ fees and costs incurred in defending this appeal, and states the following in support thereof:

1. This appeal arose from the Lower Tribunal’s entry of summary judgment against Appellant based upon his failure to pay his assessments as required by Appellee’s Declaration of Condominium, as well as the Lower Tribunal’s denial of Appellant’s improper attempt to avoid the payment of attorneys’ fees and costs.

2. Appellant sought this Court’s review prior to the entry of the final judgment in this matter, making this an interlocutory appeal.

3. “[I]n an interlocutory appeal, the party prevailing on the interlocutory appeal must also be the *ultimate prevailing party* in the trial court to be entitled to a

final judgment of appellate fees from the interlocutory appeal.” *Allstar Builders Corp., Inc. v. Zimmerman*, 706 So. 2d 92, 92 (Fla. 3d DCA 1998) (citing *Sabina v. Dahlia Corp.*, 678 So.2d 822, 822–23 (Fla. 2d DCA 1996)(emphasis in original)).

4. Florida Statute §718.116(6)(a) grants Appellee entitlement to recover its reasonable attorneys’ fees incurred in either a lien foreclosure or an action to recovers a money judgment for unpaid assessments.

5. Florida Statute §718.303(1) similarly states that the prevailing party in any action at law or in equity, or both, between a condominium association and a unit owner for failure to comply with the provisions of Chapter 718, the declaration, the documents creating the association, and the association bylaws, is entitled to recover reasonable attorney fees.

6. Section 13.1 of Appellee’s Declaration of Condominium (A - 19) states, in pertinent part:

A Unit Owner, regardless of how title is acquired, including a purchaser at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments and Special Assessments coming due while he is the Unit Owner.

7. Section 13.2 of Appellee’s Declaration of Condominium (A – 19-20) states, in pertinent part:

The Association has a lien on each Condominium Parcel for any unpaid Assessments and Special Assessments on such Parcel, with interest **and for reasonable attorney’s fees and costs incurred by the Association incident to the collection of the Assessments and Special Assessments** or enforcement of the lien. (emphasis added)

8. Section 13.3 of Appellee's Declaration of Condominium (A - 20) states, in pertinent part:

The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given, and **the court** shall proceed with the foreclosure action and **may award attorneys' fees and costs as permitted by law.** (emphasis added)

9. Section 19.3 of Appellee's Declaration of Condominium (A - 38) states:

In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, **the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees)** as may be awarded by the court. (emphasis added)

10. Appellee was the prevailing party in the case before the Lower Tribunal, with summary judgment being granted in favor of Appellee. The only matter remaining before the Lower Tribunal is to conduct an evidentiary hearing as to the reasonableness of Appellee's attorneys' fees and costs in the Lower Tribunal action.

11. Should this Court affirm the ruling(s) of the Lower Tribunal, Appellee will have also prevailed upon the merits regarding the significant issues in this appeal, making Appellee the prevailing party and therefore entitled to recover its

reasonable appellate attorneys' fees and costs. *Catamaran B.Y., Inc. v. Giordano*, 337 So. 3d 439, 441 (Fla. 3d DCA 2022).

12. Florida Statute §59.46 provides that any provision of statute or of contract providing for the payment of attorney's fees to the prevailing party "shall be construed to include the payment of attorney's fees to the prevailing party on appeal."

[S]ection 59.46, Florida Statutes, provides that, in the absence of an expressed contrary intent, any provision of a statute . . . providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal. Although section 742.045 is not a prevailing party attorney's fees statute, the legislative directive is clear that the Legislature intends to include attorney's fees on appeal within statutes permitting the assessment of attorney's fees, unless it specifically expresses a contrary intent.

*McPherson v. Bittner*, 126 So. 3d 1230, 1232 (Fla. 4th DCA 2012) (concurring opinion). Applying Florida Statute §59.46 to §§718.116(6)(a) and 718.303(1), this Court is authorized to and should award Appellee its reasonable appellate attorney's fees.

**WHEREFORE**, Appellee, BONITA VILLAS CONDOMINIUM ASSOCIATION, INC., respectfully requests that this Honorable Court enter an order requiring that Appellant, OSWALDO VIEIRA ABREU, reimburse Appellee for the reasonable attorneys' fees and costs incurred in defending this appeal, in an amount to be determined by the Lower Tribunal, and granting such additional relief as is just and appropriate.

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Motion was served upon all interested parties via U.S. Mail directed to **Oswaldo Vieira Abreu** at his last-known address of 14273 Southwest 120<sup>th</sup> Court, Miami, FL 33186 on this 5<sup>th</sup> day of July, 2024.

Respectfully Submitted,

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## **CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY**, pursuant to Rules 9.045(b) and (e) of the Florida Rules of Appellate Procedure that the above and foregoing computer-generated Answer Brief complies with the word count, font, and spacing requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

*/s/ Joshua W. Rosenberg*

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