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

Case No.: 3D2024-0901
L.C. Case No.: 20-9987-CA-01

ASSOULINE & BERLOWE, P.A.

Appellant,

v.

801 HIALEAH DRIVE, LLC, et al.

Appellees.

On Appeal from the Circuit Court of the Eleventh Judicial Circuit in and for
Miami-Dade County, Florida

APPELLANT'S INITIAL BRIEF

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ISSUE PRESENTED

1. Whether the Circuit Court erred by concluding that the payment adjudicated due under a certain note and held in an attorney trust account, was not a litigation recovery subject to a charging lien as a matter of law where that payment was the direct result of counsel's litigation defense of the note?

STATEMENT OF THE CASE AND FACTS

A. The Underlying Controversy: The Parties Dispute Payment Under a Note and Mortgage with Three Possible Outcomes — Cancellation, Basic Payment, and Accelerated Payment

This case began with 801 Hialeah Drive, LLC, suing SHEDDF2-FL1, LLC, (“SHEDD”) seeking to cancel a \$1,775,750.02 promissory note and related agreements. (R.52-57). The agreements called for 36 months of interest-only payments totaling \$9,542.42 before a balloon payment. (R.52-54). Due to an alleged payment default, SHEDD accelerated the balance and provided a payoff amount which included a default interest rate of 25%, which 801 Hialeah claimed to be in addition to a previous 0.65% charge. (R.54). In other words, the underlying case is simply a dispute between a lender (SHEDD) and a borrower (801 Hialeah), where the borrower first sought to avoid payment altogether and the lender then sought to recover payment of principal and interest.

801 Hialeah’s first count requested a declaratory judgment that it “has not defaulted under the loan and that Defendant [SHEDD] has charged

usurious interest in violation of § 687.071(2), Fla. Stat.” (R.55). The second count was for “criminal usury” seeking “cancellation of Defendant’s mortgage...” (R.56-57).

SHEDD Counterclaimed for reestablishment of a lost note (R.135-137), breach of the promissory note for failure to make payments (R.137-139), mortgage foreclosure (R.139-142), enforcement of assignment of leases and rents (R.142-144), and breach of a guaranty by Beatriz Guerra (R.145). SHEDD sought the principal sum under the note as well as default interest. (R.139). The affirmative defenses to those claims included usury as well as several other defenses preventing enforcement. (R.471-478).

B. Through Counsel's Efforts, SHEDD Avoids Complete Cancellation and Wins Basic Payment.

801 Hialeah moved the court to make its payments into the court registry. (R.129). An agreed order directed 801 Hialeah to make the payments into the trust account of its attorney Matthew Estevez. (R.404).

SHEDD moved for partial summary judgment. (R.795-831). At the hearing, 801 Hialeah voluntarily dismissed its criminal usury count without prejudice. (R.2195, 2198, 3982). The Court granted SHEDD’s summary judgment motion in part. (R.2197-2202).

Following a bench trial, the Circuit Court found that SHEDD “failed to prove by the greater weight of the evidence that the unexecuted Forbearance

Agreement that it is asking this Court to enforce contained the same terms as the Forbearance Agreement executed by the parties.” (R.4145). The Circuit Court further concluded that, even if SHEDD had met its burden, “801 and Beatrice Guerra have established by the greater weight of the evidence that the Forbearance Agreement [SHEDD] is attempting to enforce is procedurally and substantively unconscionable and therefore unenforceable.” (R.4145). These findings were specifically directed at the allegations of a default that would have triggered acceleration and default interest. (R.4140-4145).

A Final Judgment followed, which: (1) entered judgment in favor of 801 Hialeah and Guerra; (2) released any *lis pendens*; (3) required 801 Hialeah to, within 30 days, “pay into the Trust Account of Matthew Estevez the sum of \$56,500.72, constituting that amount due to SHEDD under the original Replacement Promissory Note and Mortgage Documents through March 30, 2021”; and (4) required 801 Hialeah to, within 90 days, “pay into the Trust Account of Matthew Estevez the principal sum of \$1,330,184.30 through March 30, 2021, plus per diem interest ... through the day of payoff.” (R.4171-4172). In sum, Assouline & Berlowe, as counsel to SHEDD, defeated the defenses to enforcement of the note and secured a valuable

recovery in the amount of \$1,386,685.02¹ for SHEDD. Neither side hit the home run they sought; 801 Hialeah did not cancel the debt altogether and SHEDD got basic repayment and note-rate interest, not accelerated payment and default interest. This Court later issued a *per curiam* affirmance as to this Judgment. (R.6105); see also Case No. 3D2022-0029.

C. SHEDD Renegotiates Attorney’s Fees Based on Appellate Success, Reneges, and Refuses Payment

Both parties claimed “prevailing party” status and sought fees. (R.4146-4149, 4205-4208, 4277-4279, 6107-6109). SHEDD, represented by new counsel (R.6178), opposed 801 Hialeah’s request for fees by arguing it was a prevailing party due to obtaining a “net judgment in its favor” because of the various payment obligations imposed on 801 Hialeah by the Final Judgment. (R.6248); see also (R.6433) (“The final judgment makes clear we prevailed on the note.”).

The Circuit Court ultimately determined 801 Hialeah to be the “prevailing party” and awarded 801 Hialeah its attorney’s fees. (R.6256). At the hearing on those motions, the Circuit Court stated that counsel for SHEDD did a “great job” at trial but that the Circuit Court simply “didn’t find your client [SHEDD] to be credible, to be quite candid...” (R.6439).

¹ \$1,330,184.30 + \$56,500.72 = \$1,386,685.02

While the attorney's fees were being litigated by subsequent counsel, Appellant filed a Notice of Charging Lien and Retaining Lien. (R.6206-6208). Additionally, SHEDD sought to enforce the Final Judgment. (R.6191-6194). The Circuit Court resolved the motion to enforce the Final Judgment by allowing Mr. Estevez to disburse the funds in his trust account to the trust account of Shedd's new counsel while requiring Shedd's new counsel to hold back, *inter alia*, \$72,290.37 plus 15 months of statutory interest pending resolution of Appellant's charging lien. (R.6253).

Leading up to that, SHEDD did not dispute the validity of Appellant's charging lien. Instead, SHEDD proactively affirmed the charging lien as SHEDD's new counsel explained to the Court: "We [SHEDD] had an agreement with him [Peter Berlowe] and we told him [Peter Berlowe] we would agree to put in an order to protect his charging lien, and that would also be retained in trust.". (R.6465-66). The Circuit Court agreed to this as well so that Assouline & Berlowe would not "have to go running around trying to find – trying to collect on [its] charging lien." (R.6466). An evidentiary hearing was then scheduled which appeared to be focused on the amount of the lien. (R.6466-6476). The Circuit Court even encouraged the parties to agree on an amount in anticipation of such a fee hearing. (R.6474-75) ("Mr. Berlowe, what I was saying is, is that there's no reason why you have to wait

on your lien – enforcement of your lien.... If you're unable to resolve the matter, you don't have to wait until November in order for that to be resolved.").

Additionally, emails between Appellant and SHEDD's principal, Rafael Serrano, reflected an agreement where Appellant agreed to discount its fees and hold off on collecting them pending the resolution (not success) of the then-pending appeal from the Final Judgment, but that the fees would be paid in full (without a discount) if the appeal is successful. (R.7014-7016). However, the lien proceedings subsequent to the appeal made clear that SHEDD had no intention of keeping these promises.

D. The Lien Proceedings: The Circuit Court Declines an Evidentiary Hearing, Concluding as a Matter of Law that there is No Lienable "Recovery"

The Circuit Court ultimately denied Appellant's charging lien as a matter of law on the basis that there was no "recovery" to lien. (R.7203). The Circuit Court began the hearing under the impression that the matters being argued had already been resolved, which SHEDD denied, now claiming that the evidentiary hearing that the parties had previously agreed to was unnecessary. (April 1, 2024 Tr. at pg. 4-5). SHEDD argued that there was no longer a need for an evidentiary hearing because "one of the core issues is whether or not [Appellant], as Counsel, ... obtained recovery on behalf of

their clients from which the attorney’s fees could be recouped...” and according to counsel for SHEDD – making an argument contradictory to what he argued at the earlier fee hearings (R.6248) -- “[t]here has been no recovery whatsoever.” (April 1, 2024 Tr. at pg. 5)²; see also (R.6248, 6433) (arguing SHEDD was the “prevailing party” based on the recovery).

The lien took on added importance because, as Appellant explained, SHEDD was “closing down” and had stated “it was running out of money.” (April 1, 2024 Tr. at pg. 24); see also (*Id.* at pg. 40-42) (arguing the liened money is the sole source of recovery). This is corroborated by emails between the parties memorializing their agreement as to fees which listed this fact as a reason for the agreement. (R.7015). The Circuit Court acknowledged that Appellant had delayed its recoupment of fees and continued representing SHEDD based on this recovery. (April 1, 2024 Tr. at pg. 25).

SHEDD (and ultimately the Court) relied on *Pasin v. Croo*, 412 So. 2d 43 (Fla. 3d DCA 1982), which SHEDD represented to be “an almost

² SHEDD is seeking to supplement the record with the transcript of this hearing and has filed the transcript with the Circuit Court, but it has yet to be made part of the official Record on Appeal. Citations to this transcript are made based on the assumption that SHEDD’s record supplementation efforts will be successful.

identically analogous case...” (April 1, 2024 Tr. at pp. 6-7, 15-16). This claim is refuted, in detail, in the argument below at pg. 17-18. In fact, the existence of a recovery was the only argument against the charging lien SHEDD advanced at the hearing because, as its counsel repeatedly acknowledged, any of its other arguments required an evidentiary hearing:

[Counsel for SHEDD:] The argument that I’ve made thus far has been strictly on this legal basis because I didn’t want to get into any sort of factual dispute because I thought that would be a way to – to short-circuit having to have an evidentiary hearing.

(April 1, 2024 Tr. at pg. 34).

The Circuit Court ultimately agreed that there was no recovery to lien: “The court is going to find that there ... was no recovery of funds from which the fees can be paid.” (*Id.* at pp. 44-45). The Circuit Court emphasized that it was making no finding one way or the other as to whether Appellant is entitled to its fees but was only concluding that the charging lien was not the proper method to recover those fees because of this supposed legal defect. (*Id.* at pg. 45).

Appellant timely appealed from the denial of its charging lien. (R.7200-7205).

SUMMARY OF ARGUMENT

SHEDD led the Circuit Court to err as a matter of law by applying this Court's decision in *Pasin v. Kroo* to deny a charging lien without an evidentiary hearing. Charging liens require counsel to have produced a "recovery" – sometimes called "tangible fruits." *Pasin* rejected a charging lien where counsel defended a specific performance suit, lost entirely, yet tried to lien the purchase price tendered to his losing client when the client was forced to sell. There is no question that there was no "recovery" or "tangible fruits" in *Pasin*. But, here, Assouline & Berlowe did produce a recovery or "tangible fruits" in the form of defending the financial instrument at issue against the borrower's complaint and affirmative defense to counterclaim seeking its cancellation. Those efforts did not yield the "home run" sought by SHEDD (accelerated payment with default interest), but still secured SHEDD \$1,386,685.02 placed into trust. That is a "recovery." That is "tangible fruits" subject to a charging lien. To read *Pasin*, as SHEDD and the Circuit Court did, to reject recovery where a litigation result is not the full amount sought (i.e. the "home run" result) is plain legal error. It is also inconsistent with considerable other Florida caselaw showing that recovery can take the form found here. The Court should write to correct this error and remand for an evidentiary hearing to set the amount of the lien.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO

The Circuit Court denied Appellant's charging lien without an evidentiary hearing by concluding as a matter of law there was no recovery to lien. Because this decision turned on law rather than fact, it is reviewed *de novo*. See *Morales v. Morales*, --- So. 3d ----, 49 Fla. L. Weekly D74 n.3 (Fla. 3d DCA Jan. 3, 2024) ("A trial court's grant of a charging lien is reviewed *de novo*." (citing *Duhamel v. Fluke*, 295 So. 3d 880, 882 (Fla. 2d DCA 2020))); *Greenberg Traurig, P.A. v. Starling*, 238 So. 3d 862, 864 (Fla. 2d DCA 2018) ("We review the trial court's order [striking a charging lien for lack of jurisdiction] *de novo*."); see also *Eco-Tradition, LLC v. Pennzoil-Quaker State Co.*, 137 So. 3d 495, 496 (Fla. 4th DCA 2014) ("Because the trial court did not conduct an evidentiary hearing but instead granted injunctive relief on a motion for summary judgment, we apply the *de novo* standard of review.").

II. THE \$1,386,685.02 RECOVERED IS A "TANGIBLE FRUIT" OF APPELLANT'S LABOR SUBJECT TO A CHARGING LIEN, AND PASIN V. KROO ONLY APPLIES TO COMPLETE LITIGATION FAILURE.

The Circuit Court erroneously concluded that the partial victory secured by Assouline & Berlowe was not a lienable "recovery" despite the generation of \$1,386,685.02 in funds. The instant situation is not comparable

to this Court's decision in *Pasin v. Kroo* where counsel sought a lien despite losing and suffering their client to be ordered to specifically perform a real estate contract. Assouline & Berlowe – unlike the losing counsel in *Pasin* – won in part and defended their client's note/mortgage position against the complaint and affirmative defense to counterclaim that would have nullified it. The firm is entitled to payment for services rendered, and their request for a charging lien is fully consistent with Florida lien law and not controlled by *Pasin*. Indeed, applying *Pasin* to bar liens where counsel are only partially successful is a severe departure from Florida charging lien doctrine – one that this Court should not permit. Placing *Pasin* and the instant facts in the broader context of Florida's charging lien caselaw makes this clear.

“Generally speaking, a charging lien gives an attorney the right to recover his fees and costs from the funds recovered through his services.” *Conroy v. Conroy*, 392 So. 2d 934, 935 (Fla. 2d DCA 1980). They arise from the principle “that a litigant should not be permitted to walk away with his judgment and refuse to pay his attorney for securing it.” *Litman v. Fine, Jacobson, Schwartz, Nash, Block & England, P.A.*, 517 So. 2d 88, 91 (Fla. 3d DCA 1987), quoting *In re Warner's Estate*, 35 So.2d 296, 298–99 (Fla. 1948). They also extend to funds held in trust in the course of litigation. See

Law Office of Michael B. Brehne, P.A. v. Porter Law Firm, LLC, 268 So. 3d 854, 855 (Fla. 5th DCA 2019).

The requirements for charging liens “have developed in case law which has delineated the equitable nature of the lien.” *Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertrnik, P.A. v. Baucom*, 428 So. 2d 1383, 1385 (Fla. 1983). Among those requirements is that there must “be an understanding, express or implied, between the parties that the payment is either dependent upon recovery or that payment will come from the recovery.” *Id.* “As this Court has explained, it is not necessary that the agreement provide that the fees be paid from the recovery.” *Litman*, 517 So. 2d at 91. “It is not enough, however, to support the imposition of a charging lien that an attorney has provided his services; the services must, in addition, produce a positive judgment or settlement for the client, since the lien will attach only to the tangible fruits of the services.” *Id.* at 91-92.

Numerous Florida courts have reiterated that charging liens only attach to the “fruits” of the lawyer’s services. *See, e.g., id.; Duhamel*, 295 So. 3d at 883 (“The law clearly provides that a charging lien only attaches to the ‘fruits’ flowing from the attorney’s efforts.” (collecting authority)); *Mineo Salcedo Law Firm, P.A. v. Cesard*, 333 So. 3d 222, 233-34 (Fla. 4th DCA 2022)

(“Under Florida law, a charging lien attaches only to the ‘tangible fruits’ of the attorney’s services.” (citation omitted)).

However, “[w]hether an attorney’s services produced ‘tangible fruits’ is an issue of proof.” *Joel M. Weissman, P.A. v. Abou-Sayed*, 107 So. 3d 1163, 1164 (Fla. 4th DCA 2013). Such an “issue of proof” cannot be resolved without an evidentiary hearing.

Rebecca J. Covey, P.A. v. Am. Imp. Car Sales, 944 So. 2d 1202 (Fla. 4th DCA 2006), is on point and demonstrates that *Pasin* cannot create a bar based on partial recovery without contradicting extensive prior precedent. In that case, an attorney’s charging lien on a settlement with one defendant was not negated by a subsequent loss against a co-defendant that resulted in the client losing money. In other words, the attorney was still entitled to the tangible fruits of the “battle” despite losing the “war.”

There, Rebecca Covey had represented Diana Stevens in a case about a defective vehicle. *Id.* at 1202. The original case was against Jumbo Auto and Truck Sales, which sold the vehicle, as well as SouthTrust Bank, which financed the sale. *Id.* at 1203. A settlement was reached regarding the claim against Jumbo in the amount of \$35,000.00 plus attorney’s fees and costs which amounted to \$30,000.00. *Id.* SouthTrust remained in the case, prevailed on summary judgment and successfully pursued a counterclaim

against Stevens for \$4,012.59 in damages and \$18,155.00 in attorney's fees. *Id.* SouthTrust sought to recover the money it was owed from the \$35,000 in settlement proceeds which were being held in trust. *Id.* Covey claimed priority over SouthTrust's lien based on a charging lien which consisted of \$49,000 in fees she had incurred at the time of the settlement. *Id.*

After a hearing, the trial court rejected Covey's charging lien based on the following grounds:

The Court further finds that Plaintiff's counsel did not properly perfect a charging lien against the interpleaded funds because the law of the State of Florida requires that there must be a positive result for the client in order for an attorney to impose a charging lien. Plaintiff's counsel did not create such a fund. The net result of the lawsuit brought by counsel was a net loss for the Plaintiff and the Plaintiff did not recover anything. The Court finds that there cannot be a lien where nothing was recovered on behalf of the Plaintiff.

Id. at 1204.

On appeal, the Fourth DCA reviewed several Florida cases, including one from this Court, to reverse the trial court's ruling. *Id.* at 1205-06. The court held that Covey had established a valid charging lien, specifically rejecting the argument that the net loss to the client negated the prior charging lien against the earlier recovery:

The existence and superiority of Covey's charging lien is not altered by the fact that although she obtained a positive recovery through settlement with Jumbo she also exposed Stevens to a negative judgment resulting from SouthTrust's counterclaims. As

demonstrated in *Litman*, there can be multiple, separate recoveries, and an attorney is entitled to attorney's fees for any positive recovery which the attorney produced through her legal services.

Id. at 1206.

One of the cases analyzed by the Fourth DCA in *Rebecca Covey* was this Court's decision in *Litman*, 517 So. 2d at 88. *Litman* stemmed from an earlier lawsuit in which Podhurst Orseck had obtained a substantial money judgment in a breach of contract action for Bernard Litman. *Id.* at 90. Bernard Litman had a brother named Seymour Litman who claimed he was owed \$216,000.00 of that judgment pursuant to a contract he had with his brother to render legal services in the matter. *Id.* Podhurst Orseck initiated an interpleader action, and Bernard was represented by the firm of Fine Jacobson in that interpleader action. *Id.* Bernard prevailed in the interpleader action but then failed to pay Fine Jacobson for its services. *Id.*

Fine Jacobson sought a charging lien, which Bernard Litman opposed, arguing that "Fine Jacobson's efforts on Litman's behalf did not, as is required, produce a positive judgment for Litman, but merely preserved that which had been recovered by Litman's former attorneys." *Id.* Following an evidentiary hearing, the trial court ruled in favor of Fine Jacobson, but Bernard Litman appealed. *Id.* In determining Fine Jacobson had a valid charging lien, this Court specifically rejected "Bernard Litman's contention

that Fine Jacobson merely preserved that which had been recovered by Podhurst Orseck.” *Id.* at 93-94. The Court reasoned:

Bernard Litman was not entitled to the interpleaded funds, even though they originated from the initial breach of contract action, until Seymour Litman’s claim of entitlement was favorably resolved through the efforts of Fine Jacobson. Thus, Fine Jacobson produced for Bernard Litman a second positive judgment, against which their charging lien can be enforced.

Id. at 94.

The arguments rejected by the Fourth DCA in *Rebecca J. Covey* and by this Court in *Litman* are similar to the arguments advanced by SHEDD here. SHEDD’s argument that essentially Appellant won a battle but lost the war is inconsistent with Florida caselaw. (April 1, 2024 Tr. at pg. 13). Even accepting SHEDD’s categorization that the “war” was about default interest and acceleration, the cases above make clear that attorneys can impose a charging lien against the tangible fruits of their “battles” regardless of the outcome of any broader “war.” In other words, like both *Rebecca J. Covey* and *Litman*, Appellant’s loss on a subsequent issue (*i.e.*, accelerated payment and default interest) does not negate the fact that Appellant nevertheless obtained a recovery (*i.e.*, the avoidance of cancellation and the payment of money into the trust account). Additionally, *Litman* confirms that preserving a sum of money can also give rise to a charging lien against that sum of money. *Litman*, 517 So. 2d at 93-94.

The idea that a partial recovery can still be liened as a recovery is also consistent with how Florida courts have applied charging liens in marital dissolution cases. See, e.g., *id.* at 92 n.5 (“Likewise, in dissolution actions, property awarded as an equitable distribution of property rights is a ‘proceed’ to which a lien can attach....”); *Walia v. Hodgson Russ LLP*, 28 So. 3d 987, 989 (Fla. 4th DCA 2010) (same). Equitable distribution inherently involves property going to both parties. But courts do not look at it in the aggregate to determine whether one party “won” the equitable distribution to determine whether there is a “recovery” for the attorneys to lien. Instead, courts recognize that any recovery of money is a “recovery” for purposes of a charging lien, regardless of whether a party could have recovered more.

Appellee relied on *Pasin v. Croo*, 412 So. 2d 43 (Fla. 3d DCA 1982), as an example of a case where funds received by a party were determined not to be a lienable recovery. (April 1, 2024 Tr. at pp. 15-16, 17-18). *Pasin* was a defendant “in an action for specific performance of a contract to sell a condominium unit.” *Pasin*, 412 So. 2d at 44. *Pasin* hired a law firm “for the purpose of cancelling the contract.” *Id.* The contract was apparently not cancelled, and the law firm sought to impose a “charging lien on the proceeds to be paid to *Pasin* pursuant to the sales contract which *Pasin* had tried to avoid.” *Id.* This Court explained that a charging lien can only be imposed

when “the attorney has, in fact, recovered proceeds for his client” and, conversely, that “[t]he lien may not issue if no proceeds have been recovered.” *Id.* The Court found it was error to impose a charging lien because “Pasin was the losing party so there was no recovery of funds.” *Id.* It is fair to say, then, that Pasin not only lost the “war,” but also never even won a single battle along the way. Pasin simply failed in his effort to avoid specific performance.

That stands in stark contrast to the facts here. Pasin lost the only argument her attorneys were hired to make – cancellation of the contract. This Court rightly recognized that the proceeds which flowed from an unsuccessful argument were not a “tangible fruit” of the attorney’s services. Pasin won neither “war” nor “battle.” Conversely, Appellant’s efforts led to a Judgment requiring 801 Hialeah to pay \$1,386,685.02 plus interest. (R.4171-4172). This only happened because Appellant overcame 801 Hialeah’s arguments for cancellation of the note altogether. (R.55-57, 2195, 2198, 3982).

At the hearing on the charging lien, SHEDD argued that Appellant could not satisfy the recovery standard because 801 Hialeah was determined to be the “prevailing party.” (April 1, 2024 Tr. at pg. 17) (“We all know we lost because the Court ruled that the other side was the prevailing

party, and we had to pay the other side's attorneys' fees..."). But this confuses the standard. To be a "prevailing party" for attorney's-fee purposes, a party must have "prevailed on the significant issues tried before the court." *Radosevich v. Bank of New York Mellon*, 245 So. 3d 877, 880 (Fla. 3d DCA 2018). To be entitled to a charging lien, an attorney need only have produced a "tangible fruit" from their labor.

There is nothing that limits such "tangible fruits" only to "significant issues." Indeed, this Court has seemed to reject such an approach: "[Despite trial court finding attorney Feldman] did not actually help his client's position with respect to recovering insurance proceeds [i]t is undisputed that attorney Feldman provided some legal services to Bryant and that he established a charging lien relating to these services." *Feldman v. New All. Ins. Co.*, 722 So. 2d 938, 939 (Fla. 3d DCA 1998); *see also Rebecca J. Covey, P.A.*, 944 So. 2d at 1206 ("The existence ... of Covey's charging lien is not altered by the fact that although she obtained a positive recovery through settlement with Jumbo she also exposed Stevens to a negative judgment resulting from SouthTrust's counterclaims."); *In re Diagnostic Inst. of Fla., Inc.*, 07-21885-CIV, 2008 WL 3833215, at *3-*4 (S.D. Fla. Aug. 14, 2008) (finding that bankruptcy court's rejection of charging lien on the ground

that “the positive results in this case were achieved in spite of Appellant’s services, not because of them” was “not consistent with Florida law.”).

In short, the “significant issue” test for attorneys’ fees is a different standard than the one for charging liens, which only requires a “tangible fruit” of the attorney’s labor. Florida caselaw is clear that an attorney producing any recovery for their client gives rise to a lien, regardless of whether that party ultimately lost the “war.” This was thus not a basis for the Circuit Court to summarily reject Appellant’s charging lien.

CONCLUSION

Through Appellant’s efforts in avoiding cancellation of the note, SHEDD was awarded \$1,386,685.02 plus interest in the Final Judgment. (R.4171-4172). This is a “tangible fruit” of Appellant’s efforts against which a charging lien can be imposed. The Circuit Court erred in concluding otherwise as a matter of law. Thus, the Order Denying Assouline & Berlowe, P.A.’s Charging Lien should be reversed, and the matter remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on July 23, 2024, the foregoing *Appellant's Initial Brief* was emailed to:

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Rule 9.045, that this *Appellant's Initial Brief* has a word count of 4,507 words (excluding the caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, and signature block), and complies with all applicable font and word count limit requirements in the Florida Rules of Appellate Procedure.

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