

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT**

Case No. 1D2024-1207

LEGACY CONDOMINIUM ASSOCIATION, INC.,

Appellant,

vs.

LEGACY TOWNHOME ASSOCIATION, INC.,

Appellee.

On Appeal from the First Judicial Circuit
Walton County Circuit Court Case No. 2021-CA-000262

APPELLEE'S ANSWER BRIEF

JOHN P. TOWNSEND

Florida Bar No.: 0321370

Hand Arendall Harrison Sale LLC

35008 Emerald Coast Parkway, Fifth Floor

Destin, FL 32541

jtownsend@handfirm.com

EServiceFL@handfirm.com

ktownsend@handfirm.com

Counsel for Appellee

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF CITATIONS	3
STATEMENT OF THE CASE AND OF THE FACTS.....	4-6
SUMMARY OF ARGUMENT	6-7
I. STANDARD OF REVIEW.....	6
II. THE TRIAL COURT’S RULING THAT THE PARTIES EQUALLY PREVAILED WAS NOT ERRONEOUS	6-7
III. LEGACY TOWNHOME ASSOCIATION PREVAILED ON A SIGNIFICANT ISSUE IN THE CASE	7
ARGUMENT	7-12
I. STANDARD OF REVIEW.....	7-8
II. THE TRIAL COURT’S RULING THAT THE PARTIES EQUALLY PREVAILED WAS NOT ERRONEOUS	8-11
III. LEGACY TOWNHOME ASSOCIATION PREVAILED ON A SIGNIFICANT ISSUE IN THE CASE	11-12
CONCLUSION	13
CERTIFICATE OF SERVICE	14
CERTIFICATE OF COMPLIANCE	15

TABLE OF CITATIONS

Cases	Pages
<i>Animal Wrappers and Doggie Wrappers v. Courtyard Distribution Center, Inc.</i> , 73 So.3d 354 (Fla 4 th DCA 2011)	8
<i>Beverages Holdings, Inc. v. Merkin</i> , 902 So.2d 288 (Fla. 3d DCA 2005)	6
<i>Global Xtreme, Inc. v. Advanced Aircraft Center, Inc.</i> 122 So.3d 487 (Fla. 3d DCA 2013)	6, 7, 8
<i>Moritz v. Hoyt Enterprises, Inc.</i> , 604 So.2d 807 (Fla. 1992)	8
<i>Universal Beverages Holdings, Inc. v. Merkin</i> , 902 So.2d 288 (Fla. 3d DCA 2005)	6, 7, 8, 11
Rules	Pages
Fla. R. App. P. 9.210(c)	4, 5
Florida Rule of Appellate Procedure 9.045(e).....	15
Florida Rule of Appellate Procedure 9.210(a)(2)(E)..	15

STATEMENT OF THE CASE AND OF THE FACTS¹

Fla. R. App. P. 9.210(c) provides: “(c) Contents of Answer Brief. The answer brief must be prepared in the same manner as the initial brief, provided that the statement of the case and of the facts may be omitted, if the corresponding section of the initial brief is deemed satisfactory. If a cross-appeal has been filed or the respondent identifies issues on cross-review in its brief on jurisdiction in the supreme court, the answer brief must include the

¹ Citations to the Record on Appeal appear as follows: “R. __.” denoting the corresponding page number in the Record on Appeal, as prepared by the Trial Court Clerk. Where appropriate, pin cites to specific paragraphs on particular pages of the pleadings in the Record on Appeal appear as follows: “R. __, ¶ __.” denoting the corresponding page number in the Record on Appeal, as prepared by the Trial Court Clerk and the paragraph number of the particular pleading. Citations to a transcript in the Record on Appeal appear as follows: “R. __, L. __.” denoting the corresponding page number in the Record on Appeal, as prepared by the Trial Court Clerk and the line number of the particular transcript. References to Appellant’s Initial Brief filed in this Appeal on July 17, 2024 appear as follows: “IB. __.” denoting the corresponding page number in Appellant’s Initial Brief. Appellant, Legacy Condominium Association, Inc. is referred to in this Answer Brief as “Condominium Association” or by proper name as the context may require. Appellee, Legacy Townhome Association, Inc. is referred to in this Answer Brief as “Townhome Association” or by proper name as the context may require.

issues presented in the cross-appeal or cross-review, and argument in support of those issues.”

Townhome Association deems the “STATEMENT OF CASE AND FACTS” section of Appellant’s Initial Brief (IB. 4-8.) satisfactory with the following exception:

-In subsection III of the “STATEMENT OF CASE AND FACTS” section titled “The Prevailing Party Disposition”, Condominium Association states as fact, but without any citation to support in the record: “However, the most significant issue in the case was the scope of the Beach Access Easement provided for under the Shared Use Agreement. The Trial Court’s determination on this issue would dictate whether the Town home Association members and guests have a right to use/occupy the private beach owned by Legacy Condo.” (IB. 6-7.) This statement, without citation to support in the Record on Appeal, is simply argument and is not properly included as a “Statement of Fact” or “Statement of the Case”.

With the foregoing exception, Townhome Association deems the “STATEMENT OF CASE AND FACTS” section of Appellant’s Initial Brief (IB. 4-8.) satisfactory and, pursuant to Fla. R. App. P.

9.210(c), omits any further statement of the case and of the facts in this Appellee's Answer Brief.

SUMMARY OF ARGUMENT

I. STANDARD OF REVIEW

“The standard of review for an award of attorney’s fees, whether based on contract or statute, is abuse of discretion. *Universal Beverages Holdings, Inc. v. Merkin*, 902 So.2d 288, 290 (Fla. 3d DCA 2005).” *Global Xtreme, Inc. v. Advanced Aircraft Center, Inc.* 122 So.3d 487, 489 (Fla. 3d DCA 2013.)

II. THE TRIAL COURT’S RULING THAT THE PARTIES EQUALLY PREVAILED WAS NOT ERRONEOUS

There were two significant issues in this case. One significant issue was the claim made by the Townhome Association regarding its right to use of the Beach owned by the Condominium Association (the “Beach Issue”), and the other was the claim made by the Condominium Association seeking injunctive relief against the Townhome Association regarding the “Parking Issue”.

There has been no demonstration by the Appellant here, the Condominium Association, that Judge Green’s findings are clearly

erroneous. Appellant Condominium Association’s appeal should be denied, and the final order being appealed should be affirmed.

III. LEGACY TOWNHOME ASSOCIATION PREVAILED ON A SIGNIFICANT ISSUE IN THE CASE

The Condominium Association argues in this appeal that the Townhome Association did not prevail on any significant issue in this case. (IB. 17-24.) That argument is completely without merit. Appellant Condominium Association’s appeal should be denied, and the final order being appealed should be affirmed.

ARGUMENT

I. STANDARD OF REVIEW

“The standard of review for an award of attorney’s fees, whether based on contract or statute, is abuse of discretion. *Universal Beverages Holdings, Inc. v. Merkin*, 902 So.2d 288, 290 (Fla. 3d DCA 2005).” *Global Xtreme, Inc. v. Advanced Aircraft Center, Inc.* 122 So.3d 487, 489 (Fla. 3d DCA 2013.)

II. THE TRIAL COURT’S RULING THAT THE PARTIES EQUALLY PREVAILED WAS NOT ERRONEOUS

The Condominium Association argues that the Trial Court in this case “. . . erred by omitting any explanation or justification as

to “compelling circumstances” that are required for a trial court to depart from the general rule that one party should be determined to be the prevailing party.” (IB. 11.) In support of that argument the Condominium Association relies on *Animal Wrappers and Doggie Wrappers v. Courtyard Distribution Center, Inc.*, 73 So.3d 354 (Fla 4th DCA 2011) for the position that “. . . the court generally does not have discretion to rule that neither party prevailed,” and on *Moritz v. Hoyt Enterprises, Inc.*, 604 So.2d 807 (Fla. 1992), for the position “. . . that the party prevailing on the “significant issues” in the litigation is the party that should be considered the prevailing party.” (IB.11.)

The Condominium Association’s argument appears to be that Judge Green (the Trial Court judge in this case) failed to determine either party to be the prevailing party and that such alleged failure is what is alleged to be the purported error. (IB. 11-16.) That argument is without merit, as Judge Green’s Order did not fail to determine either party to be the prevailing party but, to the contrary, expressly found “. . . that each of the Parties equally prevailed on the significant issues in this case.” (R. 1858-1859.)

There were two significant issues in this case. One significant issue was the claim made by the Townhome Association regarding its right to use of the Beach owned by the Condominium Association (the “Beach Issue”), and the other was the claim made by the Condominium Association seeking injunctive relief against the Townhome Association regarding the “Parking Issue”. (See: Townhome Association’s Complaint: (R. 29-43, ¶¶ 1-28); and Condominium Association’s Answer and Counterclaim: (R. 246-253, ¶¶ 1-23; R. 254-289, ¶¶ 1-63.)

At the February 15, 2024 hearing before the Trial Court on the competing motions for attorney fees (R. 1860-1874), the following comments were made:

MR. TOWNSEND: Yes, Your Honor. I’m not going to go into the history of the case. I’m sure The Court is well aware of the history and in all likely has reviewed the motions and the memorandum as well.

THE COURT: I have. Let me just tell you before we go too far, I’m really inclined to call it even because I think each of you prevailed on significant issues that were pretty much equal in stature. So having said that, and I’ll be glad to hear you persuade me otherwise if either of you feels inclined to do so.

(R. 1863, L. 15-25; R. 1864, L. 1-2.)

THE COURT: Very well. Taking into consideration all of the case along the way and the way the significant

issues played out during the course of the proceedings, I would continue to believe that the parties equally prevailed on the significant issues of the case, and I would deny fees to both parties.

(R. 1869, L. 21-25; R. 1870, L. 1-2.)

The Record on Appeal contains voluminous witness testimony and documentary evidence in support of Judge Green's finding that ". . . each of you prevailed on significant issues that were pretty much equal in stature." (R. 1863, L. 22-24.) As one example, in the direct trial testimony of the Condominium Association's key witness, Devon Igou, (R. 1680 – 1768), a significant portion of the testimony related to the Beach Issue and a significant portion related to the Parking Issue.

In *Universal Beverages Holdings, Inc. v. Merkin*, 902 So.2d 288 (Fla. 3d DCA 2005), the appellate court acknowledging that the standard of review for an award of attorney's fees is abuse of discretion, also said ". . . the trial judge's findings of fact are clothed with a presumption of correctness on appeal, and those findings will not be disturbed unless the appellant can demonstrate that they are clearly erroneous." (*Id.* at 290.) There has been no demonstration by the Appellant here, the Condominium

Association, that Judge Green's findings are clearly erroneous.

Appellant Condominium Association's appeal should be denied, and the final order being appealed should be affirmed.

III. LEGACY TOWNHOME ASSOCIATION PREVAILED ON A SIGNIFICANT ISSUE IN THE CASE

The Condominium Association argues in this appeal that the Townhome Association did not prevail on any significant issue in this case. (IB. 17-24.) That argument is completely without merit. See, for example, the following comments made during the February 15, 2024 hearing on the competing motions for attorney fees:

MR. TOWNSEND: Yes, Your Honor. I'm not going to go into the history of the case. I'm sure The Court is well aware of the history and in all likely has reviewed the motions and the memorandum as well.

THE COURT: I have. Let me just tell you before we go too far, I'm really inclined to call it even because I think each of you prevailed on significant issues that were pretty much equal in stature. So having said that, and I'll be glad to hear you persuade me otherwise if either of you feels inclined to do so.

(R. 1863, L. 15-25; R. 1864, L. 1-2.)

THE COURT: Very well. Taking into consideration all of the case along the way and the way the significant issues played out during the course of the proceedings, I would continue to believe that the parties equally prevailed on the significant issues of the case, and I would deny fees to both parties.

(R. 1869, L. 21-25; R. 1870, L. 1-2.)

It does not take argument to establish that the Townhome Association prevailed on a significant issue in the case, it was a finding of fact made by the Trial Court that such was the case, and that finding has not been demonstrated by Appellant Condominium Association to be clearly erroneous.

Appellant Condominium Association's argument in this appeal that the Townhome Association did not prevail on any significant issue in this case, (IB. 17-24) is completely without merit. Appellant Condominium Association's appeal should be denied, and the final order being appealed should be affirmed.

CONCLUSION

In conclusion, the Condominium Association has failed to demonstrate any error regarding the Trial Court's denial of the parties' competing motions for attorneys' fees and has failed to demonstrate that the Trial Court's findings were clearly erroneous. Appellant Condominium Association's appeal should be denied, and the final order being appealed should be affirmed.

WHEREFORE, Appellee Legacy Townhome Association, Inc. respectfully requests this Honorable Court deny the appeal of Appellant Legacy Condominium Association, Inc. and that the final order being appealed be affirmed.

Respectfully submitted this 15th day of August, 2024.

Hand Arendall Harrison Sale LLC
By: /s/ John Paul Townsend
John Paul Townsend
Florida Bar No. 0321370
Hand Arendall Harrison Sale, LLC
35008 Emerald Coast Parkway
Fifth Floor
Destin, Florida 32541
(850) 650-0010 (Office)
(850) 424-5093 (Fax)
jtownsend@handfirm.com
EServiceFl@handfirm.com
ktownsend@handfirm.com
Attorney for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail and by filing with the Florida Courts E-Filing Portal on this 15th day of August, 2024 to:

H. Lee Strayhan
Amelia H. Beard
Moorhead Law Group, PLLC
6757 Highway 98, Suite 102
Santa Rosa Beach, FL 32459
lstrayhan@moorheadlaw.com
amelia@moorheadlaw.com
apehanick@moorheadlaw.com

Hand Arendall Harrison Sale LLC

By: /s/ John Paul Townsend
John Paul Townsend
Florida Bar No. 0321370
Hand Arendall Harrison Sale LLC
35008 Emerald Coast Parkway
Fifth Floor
Destin, Florida 32541
(850) 650-0010 (Office)
(850) 424-5093 (Fax)
jtownsend@handfirm.com
EServiceFl@handfirm.com
ktownsend@handfirm.com
Attorney for Appellee

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that (i) this Appellee's Answer Brief has been composed in Bookman Old Style 14 point font, in compliance with Florida Rule of Appellate Procedure 9.045(e); and (ii) this Appellee's Answer Brief contains 1,859 words, excluding the cover sheet, table of contents/citations, counsel's signature block and certificates of service/compliance pursuant to Florida Rule of Appellate Procedure 9.210(a)(2)(E).

/s/ John Paul Townsend
JOHN PAUL TOWNSEND
Florida Bar No. 0321370