

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE No. 4D2023-2861
L.T. CASE NO. 502016CA008995

COLUMNA, INC.,

Appellant,

v.

ANDREA COWART and
CIGNA HEALTH AND LIFE
INSURANCE COMPANY,

Appellees.

_____ /

**APPENDIX TO APPELLANT'S RESPONSE IN OPPOSITION TO
APPELLEE'S MOTION FOR APPELLATE ATTORNEYS' FEES**

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Florida Courts e-Filing Portal and thereby served in compliance with Florida Rule of General Practice and Judicial Administration 2.516(b)(1) on this 11th day of December, 2024 upon:

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT

CASE NO. 4D18-1762

COLUMNA INC.,

Petitioner,

-vs-

ANDREA COWART,

Respondent.

_____ /

MOTION FOR APPELLATE ATTORNEYS' FEES

Respondent, ANDREA COWART, by and through undersigned counsel, hereby files this Motion for an Attorneys' Fees for services provided in this proceeding.

There are two grounds for an award of attorneys' fees in this case. First, the "Financial Policy," a document Petitioner drafted and required Cowart to execute, contains a provision that states (A45):

If this account is assigned to an attorney for collections and/or suit, the prevailing party shall be entitled to reasonable attorneys' fees and costs of collection.

It is undisputed that, here, Cowart's account was assigned for collection, as the improper collection activity is one of the subjects of this litigation. Therefore, if

Cowart is the prevailing party, she should be entitled to an award of appellate attorneys' fees under that contractual provision.

Additionally, in Count IV of the Second Amended Complaint, Cowart has alleged Columna violated the Consumer Collection Practices Act, Fla. Stat. §559.72, et. seq. Fla. Stat. §559.77(2) specifically authorizes an award of attorneys' fees to the Plaintiff in a successful action against any person who violates the statute. Therefore, if Respondent is successful in this proceeding, she should be entitled to an award of attorneys' fees on that statutory basis as well.

WHEREFORE, for the reasons stated above, Respondent respectfully requests that this Court award her appellate attorneys' fees if she is successful in this proceeding.

WE HEREBY CERTIFY that a true copy of the foregoing was furnished to BERNARD LEBEDEKER, ESQ. (bal@reidburmanlaw.com), 222 Lakeview Avenue, Suite 1160, West Palm Beach, FL 33401; DEAN T. XENICK, ESQ. (dtx@reidburmanlaw.com), 4600 Military Trail, Suite 212, Jupiter, FL 33458 and SHARI GERSON, ESQ. (shari.gerson@gray-robinson.com), 401 E. Las Olas Blvd., Suite 1000, Fort Lauderdale, FL 33301 by e-mail on January 14, 2019.

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Florida Bar No. 285862

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

February 25, 2019

CASE NO.: 4D18-1762, 4D18-2527

L.T. No.: 502016CA008995XXXXMB

COLUMNA, INC.

v. ANDREA COWART and CIGNA HEALTH
AND LIFE INSURANCE COMPANY

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that this court's February 22, 2019 order is amended as follows:

ORDERED that petitioner's petitions for writ of certiorari are dismissed; further,

ORDERED that the respondent's, **Andrea** Cowart, January 14, 2019 motion for attorney's fees is granted conditioned on the trial court determining that respondent is the prevailing party and, if so, setting the amount of the attorney's fees to be awarded for this appellate case. If a motion for rehearing is filed in this court, then services rendered in connection with the filing of the motion, including but not limited to preparation of a responsive pleading, shall be taken into account in computing the amount of the fee.

MAY, LEVINE and CONNER, JJ., concur.

Served:

cc: Dean T. Xenick
Bernard A. Lebedeker
Clerk Palm Beach

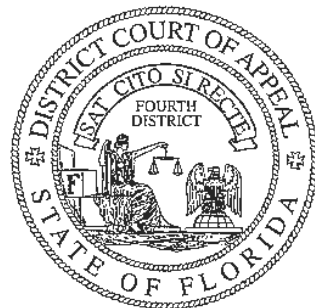
Philip M. Burlington
Shari Gerson
Hon. Donald W. Hafele

Jeffrey M. Liggio
Geoff S. Stahl

dl



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

ANDREA COWART,

Plaintiff,

CASE NO. 502016CA008995XXXXMB

v.

COLUMNA, INC.

Defendant.

_____ /
COLUMNA, INC.

Defendant/Third-Party Counterclaim Plaintiff,

v.

CIGNA HEALTH AND LIFE INSURANCE
COMPANY,

Third-Party Counterclaim Defendant.

_____ /

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR
ATTORNEY’S FEES AND COSTS**

Defendant, COLUMNA, INC. (“COLUMNA”), by and through undersigned counsel, files this its opposition to Plaintiff’s Motion for Attorney’s Fees and Costs filed December 11, 2023 (D.E. # 1207)¹, and states as follows:

Procedural Background

On November 20, 2023, this Court entered a final judgment in favor of Plaintiff/Counter-Defendant Andrea Cowart as to Count I of her Corrected Fourth Amended Complaint (the “FAC”) seeking declaratory relief and Count III for Breach of Contract. On February 23, 2023, the Court

_____ /
¹ Costs have been bifurcated and resolved by entry of a Final Judgment for Taxable Costs rendered July 5, 2024. All that remains is the issue of attorney’s fee entitlement (and amount, if any).

granted Cowart's Motion for Summary Judgment on Columna's counterclaim against Cowart for Breach of Contract. Plaintiff filed her Motion for Attorney's Fees and Costs on December 11, 2023, seeking to recover her attorney's fees and costs pursuant to language in the Financial Policy (which Columna contends is inapplicable) and pursuant to Fla. Stat. §57.105(7). Columna opposes Cowart's entitlement to attorney's fees as the prevailing party. The language in the Financial Policy executed by Cowart narrowly awards prevailing party attorney's fees upon a triggering event as further discussed below. The provision contemplates the prevailing party recovering attorney's fees if Columna assigned Ms. Cowart's delinquent account to counsel for collections and/or suit. As to Cowart's recovery pursuant to Fla. Stat. §57.105(7), Cowart cannot recover her attorney's fees pursuant to this section as it does not apply pursuant to the Florida Supreme Court decision in *Levy v. Levy*, 326 So. 3d 678 (Fla. 2021), as the prevailing party provision in the Financial Agreement is *bilateral*.

A. Cowart is not entitled to recover attorney's fees under Fla. Stat. §57.105(7) pursuant to *Levy v. Levy*, 326 So. 3d 678 (Fla. 2021).

Pursuant to Count I of the FAC for Declaratory Relief, Cowart requests the following:

E. Grant such other relief as this Court deems proper, pursuant to Fla. Stat. §86.061;

F. Retain jurisdiction over the parties and the subject matter to assess reasonable attorney's fees and costs to Plaintiff's counsel pursuant to Fla. Stats. §57.105(7), and § 559.77(2), and any and all penalties this Court deems meet and just.

(FAC at 16.)

This request is reiterated in her Motion, which, pursuant to Florida law, section 57.105(7) is inapplicable in this case. In *Levy*, the Florida Supreme Court adopted the analysis in *Sacket v. Sacket*, 115 So. 3d 1069 (Fla. 4th DCA 2013). The statute, by operation of law, converts *unilateral* fee provisions into reciprocal provisions. In *Levy*, the Court concluded that section 57.105(7) was not applicable because the attorney's fee language contained in the property settlement agreement,

in which the former wife was seeking to recover prevailing party attorney's fees, was bilateral. The Court clearly stated that section 57.105(7) "levels the playing field, but does not expand it." *Id.* at 682.

In determining the applicability of section 57.105(7), the Court must look at the plain language of the contract. In this case, the attorney's fees provision reads as follows: "if this account is assigned to an attorney for collections and/or suit, *the prevailing party shall be entitled to reasonable attorney's fees and costs of collection.*" (Emphasis added). See, Financial Policy attached hereto as **Exhibit "A"**. This provision is clearly bilateral.

Consequently, based on the plain language of the Financial Policy, the prevailing party provision is bilateral, and section 57.105(7) is inapplicable. Thus, Cowart is not entitled to recover her attorney's fees for prevailing on her Count for Declaratory Relief pursuant to section 57.105(7).

B. Cowart is not entitled to recover her attorney's fees based on the plain language of the Financial Policy.

In this case, the Financial Policy executed by Cowart was for medical services. In the event medical services were rendered and there was a balance owed by the patient and Columna was forced to *assign* the balance to an attorney for collections and/or suit to recover said balance, *then* the prevailing party would be entitled to reasonable attorney's fees and costs.

"Contracts, if written clearly and without ambiguity, are to be considered and interpreted as written. *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So.2d 528, 532 (Fla.2005). Such contractual language should be given its plain and ordinary meaning and read in the context of the document as a whole. *Gen. Star Indem. Co. W. Fla. Village Inn, Inc.*, 874 So.2d 26, 30 (Fla. 3d DCA 2004). If possible, conflicting provisions of a contract are to be read in such a way as to give a reasonable interpretation and effect to all provisions. *Cont'l Ins. Co. v. Collinsworth*, 898

So.2d 1085, 1087 (Fla. 5th DCA 2005).” See, *Discover Property & Cas. Ins. Co. v. Beach Cars of West Palm Beach, Inc.*, 929 So. 2d 729 (Fla. 4th DCA 2006).

Moreover, Florida’s appellate courts follow the “supremacy-of-text principle”. See *Boyle v. Samotin*, 337 So. 3d 313, 317 (Fla. 2022) (“This Court adheres to the ‘supremacy-of-text principle’ that ‘the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.’ ”) (citation and brackets omitted). This principle applies here as to an attorney’s fee provision in a contract. See *Ham v. Portfolio Recovery Associates, LLC*, 308 So.3d 942, 946 (Fla. 2020). The Florida Supreme Court also adheres to Justice Joseph Story’s view that “every word employed in a legal text is to be “expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.” *Id.* at 946-47 (citations omitted). The goal of interpreting the fee provision is to arrive at a “fair reading” by “determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Id.* at 947, citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* at 33 (2012). As the Florida Supreme Court has explained, “This requires a methodical and consistent approach involving “faithful reliance upon the natural or reasonable meanings of language” and “choosing always a meaning that the text will sensibly bear by the fair use of language.” *Id.* at 947, citing Frederick J. de Sloovere, *Textual Interpretation of Statutes*, 11 N.Y.U. L.Q. Rev. 538, 541 (1934), quoted in Scalia & Garner, *Reading Law* at 34.

The plain language of the Financial Policy is clear that the prevailing party provision is triggered by narrow events related to efforts to collect. Although Columna initiated collection activity against Cowart through an authorized collection agent, Columna did not assign the claim or employ an attorney to collect or institute a suit as set forth in the Financial Policy. Moreover,

Cowart initiated this lawsuit, not Columna. In fact, when Cowart first initiated this lawsuit, she sued Columna, Cigna Health and Life Insurance Company (“Cigna”), and Gulf Coast Collection Bureau, Inc. (“Gulf Coast”). Cowart settled with Cigna and Gulf Coast. On April 21, 2017, Columna filed a compulsory counterclaim against Cowart for Breach of Contract and Unjust Enrichment. This lawsuit was not a collections case initiated by Columna to recover the balance owed by Cowart as contemplated by the contract, but to recoup the sums paid to Cowart by third parties, including the very insurer who should have issued payment for the surgery to Columna, not Cowart.

Columna’s Third Amended Counterclaim against Cowart asserted claims for breach of contract, unjust enrichment, account stated, and conversion. Columna voluntarily dismissed Count III (“Account Stated”). (D.E. # 1040). Count II (unjust enrichment) and Count IV (conversion) were not related to collection activities but were instituted to recover the windfall Cowart received from her settlement with Cigna. Therefore, these Counts do not trigger the prevailing party provision. The breach of contract counterclaim against Cowart is for the unpaid balance for medical services.² Again, Columna did not initiate this suit, Cowart did. As a result, Columna was put in a position of either filing its counterclaim against Cowart or waiving its right to payment for medical services provided. The contract requires the account to be assigned to an attorney for collections and/or suit. It is undisputed that Columna did not assign the account to an attorney to recover the balance from Cowart. Columna assigned the account to a collection agent. Since the triggering event required in the Financial Policy did not occur (*i.e.*, Columna assigning the account

² To the extent the Court finds that Columna’s counterclaim against Cowart triggered the prevailing party attorney’s fees provision, should Columna prevail on appeal, resulting in a reversal of the Summary Judgment Orders on Cowart’s breach of contract claim against Columna and Columna’s breach of contract claim against Cowart, then Cowart will not be entitled to attorney’s fees and costs.

to an attorney for collections and/or suit), Cowart is not entitled to recover attorney's fees pursuant to the prevailing party provision.

WHEREFORE, Defendant/Counter-Plaintiff, COLUMNA, INC., respectfully requests that this Honorable Court deny Plaintiff's Motion for Attorney's Fees and Costs, and such further relief as it deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished in compliance with Rule 2.516, Fla. R. Jud. Admin., via eService Portal to all registered parties and counsel on this 11th day of July 2024.

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FINANCIAL POLICY

Acct# 32246

- **BASIC POLICY:** The patient is responsible for medical bills in our office. Our staff will help with completion of insurance forms as an accommodation and convenience to you without charge. It is the patient's responsibility to know your contract benefits, assure collection of insurance payments to us, and to negotiate with your insurance company over any disputed claims.
- **IF YOU DO NOT HAVE INSURANCE:** Our policy requires payment in full today, unless other arrangements are made. If you cannot pay in full now, we request partial payment today as you arrange for credit on your account with a payment plan agreement with our Credit and Collections Manager.
- **IF YOU HAVE INSURANCE:** Fill out the patient's section of our form. If you are covered by Medicaid, Medicare, or other insurance, please present your identification card to the receptionist at the time of your appointment.
- **WORKMAN'S COMPENSATION:** In the event it is determined by the Worker's Compensation Board that the illness or injury is not a result of a compensable Worker's Compensation Case, I hereby agree to pay the usual and customary fees for the services rendered.
- **REJECTED CLAIMS:** If your insurance company rejects your claim, or if they pay less than the total bill, our policy requires you to pay the balance in full upon receipt of your statement. If you cannot pay in full after your insurance payment, call 561-296-2450.
- **FORMS OF PAYMENT:** We accept payments in cash, check, or money order. Checks must be made payable to the individual doctor whose name is on your statement.
- **RETURNED CHECKS:** A \$25.00 handling charge is applied to all returned checks.
- **DELINQUENT ACCOUNTS:** Delinquent accounts over 90 days are turned over to our Collection Manager, unless other arrangements are made. If the bill remains unpaid and satisfactory arrangements for payment are not made, the Collection Manager will review the account with the doctor to decide appropriate legal action including placing a lien on a third party case. We reserve the right to add late charges for delinquent accounts requiring collections action and to add attorney fees, court costs, and/or collections agency fees.
- **MONTHLY STATEMENTS:** Once your insurance has paid you are responsible for the unpaid balance. You will receive an itemized monthly statement of any patient balance until your bill is paid in full. Interest of 1.5% (18% per year) will be applied to any amount not paid after 30 days with a minimum charge of \$0.50 per month.

If this account is assigned to an attorney for collections and/or suit, the prevailing party shall be entitled to reasonable attorney's fees and costs of collection.

I hereby further give a lien to Healthcare Provider for all funds owing to me from my case by way of insurance payments, judgment, verdict or other source which may be paid to my attorney or myself.

In addition to the foregoing, in order to secure my obligation to pay the amount of my Charges to Healthcare Provider, and in consideration for Healthcare Provider's agreements set forth herein, I hereby grant to Healthcare Provider, in accordance with the Uniform Commercial Code as in effect in the applicable jurisdiction, a security interest in and lien upon: (i) the Proceeds; and (ii) all proceeds thereof, in each case whether now owned or hereafter existing, acquired or arising, and wherever located. I authorize Healthcare Provider to file one or more UCC financing statements (and continuations thereof) naming me as debtor and evidencing Healthcare Provider's security interest in such collateral.

To the extent necessary to determine liability for payment and to obtain reimbursement, I authorize disclosure of portions of the patient's record.

I hereby assign all medical and/or surgical benefits, to include major medical benefits to which I am entitled, including Medicare, private insurance, and other health plans to: Thomas Roush, M.D.

This assignment will remain in effect until revoked by me in writing. A photocopy of this assignment is to be considered valid as an original. I understand that I am financially responsible for all charges whether or not paid by said insurance.

I have read and agree to the Financial Policy of this office.

X Andrea Colwell
Signature (Parent if Minor)

04-24-12
Date

ASSIGNMENT OF BENEFITS AND INSTRUCTION TO ESCROW BENEFITS

Acct# 32246

I, ANDREA COWERT hereby knowingly, voluntarily and intentionally irrevocably assign to Thomas Roush, M.D. and/or Columna, Inc. any and all rights or benefits under any and all applicable policies of insurance, indemnity agreements, or any other collateral source as defined in Florida Statutes, for any and all services rendered to me by Thomas Roush, M.D. or associates. The insurance company is hereby directed to make payment directly to Thomas Roush, M.D. and/or Columna, Inc.

In the event that the charges of Thomas Roush, M.D. and/or Columna, Inc. are disputed by any insurance company for any reason, I authorize Thomas Roush, M.D./Columna, Inc. to stand in my shoes and pursue any and all legal recourse to secure full payment, including, but not limited to, filing a lawsuit.

In the event that the charges of Thomas Roush, M.D. and/or Columna, Inc. are reduced, denied, partially paid or disputed for any reason, including, but not limited to reasonableness, relatedness or medical necessity, I hereby instruct the insurance company, attorney or third party payor to set aside, or escrow, the full amount of benefits claimed by Thomas Roush/Columna, Inc. and not to disburse the claimed benefits until the dispute is resolved.

A photocopy or facsimile copy of the ASSIGNMENT OF BENEFITS and INSTRUCTION TO ESCROW BENEFITS shall be deemed as valid, true, genuine, binding and effective as the original.

X *Andrea Cowert*
**Patient's/Insured Signature, or
Signature of Parent/Guardian if a**

ANDREA COWERT
Patient's/Insured Printed Name

04-24-12
Date

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502016CA008995XXXXMB AI

ANDREA COWART,

Plaintiff,
vs.

CIGNA HEALTH AND LIFE INSURANCE
COMPANY, COLUMNA, INC., and GULF
COAST COLLECTION BUREAU, INC.,

Defendants.

COLUMNA, INC.,

Third-Party Counterclaim-Plaintiff,
vs.

CIGNA HEALTH AND LIFE INSURANCE
COMPANY,

Third-Party Counterclaim-Defendant.

ORDER ON PLAINTIFF’S MOTION FOR ATTORNEY’S FEES AND COSTS

This cause came before the Court on Plaintiff/Counter-Defendant Cowart’s Motion for Attorney Fees and Costs. Having reviewed the parties’ submissions, heard argument of counsel, and being otherwise advised in the premises, it is

ORDERED AND ADJUDGED that the Motion is granted; Plaintiff/Counter-Defendant Cowart is entitled to an award of attorney’s fees based on Fourth District Court of Appeal’s Order dated February 25, 2019, constituting the law of the case. The Court also determines that §57.105(7), Fla. Stat., does not apply since the attorney’s fee provision contained within the contract between the parties is bilateral. The Court reserves ruling on the scope of the fees recoverable by Cowart under the attorneys’ fees provision.

DONE AND ORDERED in Chambers, at West Palm Beach, Plam Beach County, Florida.

50-2016-CA-008995-XXXX-MB 08/30/2024

G. Joseph Curley, Jr. Circuit Judge

50-2016-CA-008995-XXXX-MB 08/30/2024

G. Joseph Curley, Jr.

Circuit Judge

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