

IN THE DISTRICT COURT OF APPEAL STATE OF FLORIDA, FOURTH DISTRICT	
BERGERON ENVIRONMENTAL AND RECYCLING, LLC, A Florida Limited Liability Company, Appellant, v. LGL RECYCLING, LLC, A Florida Limited Liability Company, WASTE MANAGEMENT INC. OF FLORIDA, A Florida Corporation, ANTHONY LOMANGINO, An Individual, CHARLES GUSMANO, An Individual, and JOHN CASAGRANDE, An Individual. Appellees. _____ /	CASE NUMBER: 4D22-2159 Consolidated with 4D22-3155 L.T.: CACE-16-000158

REPLY OF APPELLEES, LGL RECYCLING, LLC, ANTHONY LOMANGINO, CHARLES GUSMANO, AND JOHN CASAGRANDE TO APPELLANT'S RESPONSE TO APPELLEES' MOTION FOR ATTORNEYS' FEES

Appellees, LGL Recycling, LLC ("SUN"), Anthony Lomangino ("Lomangino"), Charles Gusmano ("Gusmano"), and John Casagrande ("Casagrande")¹, (collectively, "SUN Appellees") reply to

¹ Lomangino, Gusmano and Casagrande shall be referred to as the "Individual Defendants."

Appellant, Bergeron Environmental and Recycling, LLC's ("BERI") Response to SUN Appellees' Motion for Attorneys' Fees (the "Response"), as follows:

In its Response, BERI requests that SUN Appellees' Motion for Attorneys' Fees be denied stating that (1) "SUN is entitled to an award of attorneys' fees for this appeal contingent only upon SUN ultimately prevailing in the trial court, result at trial which is at least 25% less than the amount of the offer, and a finding of a reasonable fee" (Response, p.2); and (2) that the Individual Defendants "are not entitled to attorneys' fees pursuant to the Sun-Bergeron Joint Venture Agreement ... [because] [t]hey are not signatories to the agreement" (*id.*). Neither is a valid ground to deny the Motion for Attorneys' Fees yet these are the only two reasons that BERI has set forth in its Response.

As to the first ground, a motion under *Fla.R.App.P.* 9.400(b) must be made in the appellate court to enforce a proposal for settlement. *Respiratory Care Services, Inc. v. Murray D. Shear, P.A.*, 715 So. 2d 1054 (Fla. 5th DCA 1998). A trial court is precluded from making an award of appellate fees. *Id.* BERI's argument is without merit.

As to the second ground, the Individual Defendants do not seek an award of attorneys' fees pursuant to the Joint Venture Agreement between SUN and BERI. The Individual Defendants seek attorneys' fees pursuant to proposals for settlement made during the proceedings below. As stated in Sun Appellees' Motion for Attorneys' Fees (the "Motion"):

3. Lomangino, Gusmano, and Casagrande are entitled to recover attorneys' fees pursuant to their proposals for settlement served on May 31, 2018 (R. 36524-26542).

Motion, p.2. Because the Individual Defendants are not seeking an award of attorneys' fees pursuant to the Joint Venture Agreement, BERI's argument is without merit.

WHEREFORE, SUN Appellees request that SUN Appellees' Motion for Attorneys' Fees be granted.

Respectfully Submitted,

By: /s/ Roy E. Fitzgerald, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been electronically filed with the Fourth District Court of Appeal via the Florida Court's e-Filing Portal which will furnish same upon counsel of record as indicated in the Service List below, this 21st day of November 2023.

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