

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

VICTORIA LANEY,

Appellant,

v.

**THE HAMMOCKS HOMEOWNERS
ASSOCIATION OF ORANGE COUNTY, INC.,**

Appellee.

_____ /

Appeal from the County Court, for Orange County,
Wilfredo Martinez, County Judge.

David S. Wood, Esquire, for Appellant.

Thomas R. Slaten, Jr. Esquire, for Appellee.

Before ROCHE, THORPE, APTE, J.J.

PER CURIAM.

**FINAL ORDER AFFIRMING IN PART AND REVERSING IN PART
TRIAL COURT'S FINAL JUDGMENT**

Appellant, Victoria Laney ("Laney") timely appeals the trial court's order of Final Judgment rendered on February 24, 2010 in favor of Appellee, The Hammocks Homeowners Association of Orange County, Inc. ("HOA"). This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Facts and Procedural History

This case involves the HOA's small claims action to confirm an arbitration award against Laney. The underlying arbitration proceeding dealt with the HOA's recall action removing Laney from the HOA board. On March 5, 2009, an arbitrator with the Department of Business and Professional Regulation ("DBPR") issued an order in favor of the HOA and awarded the HOA attorney's fees and costs incurred by the HOA in the arbitration proceeding. Laney did not pay the HOA the attorney's fees and costs as ordered. On August 6, 2009, the DBPR arbitrator denied Laney's Amended Motion for Rehearing on the grounds that there was no record of the motion or amended motion ever being filed with DBPR and the hand delivered copy of the amended motion was not delivered timely.

On June 5, 2009, the HOA filed a Statement of Claim to enforce the arbitration order in county court. On September 11, 2009, Laney filed a Petition for Trial De Novo for review of the March 5, 2009 arbitration order. She also filed a Motion to Vacate, Modify or Correct the Arbitration Award on November 12, 2009. The HOA filed its Motion for Summary Disposition to confirm the arbitration award on December 7, 2009.

On February 24, 2010, Judge Martinez held the hearing to address the pending motions and granted the Motion for Summary Disposition, confirming the arbitration award. He also granted the HOA's motion for the additional attorney's fees and costs incurred in the county court action and reserved ruling as to the amount of the fees and costs. On March 25, 2010, Laney filed her Notice of Appeal of the order. Subsequently,

on June 21, 2010, Judge Martinez entered an order as to the amount of the attorney's fees and costs incurred in the county court action.¹

Standard of Review

The issue in this case is whether the trial court erred in granting the HOA's motion for summary disposition. The standard of review for summary judgment is de novo. *Krol v. City of Orlando*, 778 So. 2d 490, 491 (Fla. 5th DCA 2001). Accordingly, this Court must determine if there is any genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Id.* at 491-92, citing Fla. R. Civ. P. 1.510(c).

Upon review of the court record, there are no genuine issues of material fact in the lower case to preclude the rendering of the trial court's Final Judgment. Therefore, the correctness of the trial court's order is a matter of law which is subject to the de novo standard of review. *State v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006); *Delta Fire Sprinklers, Inc. v. OneBeacon Ins. Co.*, 937 So. 2d 695 (Fla. 5th DCA 2006).

Arguments on Appeal

Laney first argues that her Motion for Rehearing, Amended Motion for Rehearing, Petition for Trial De Novo, and Motion to Vacate, Modify or Correct the Arbitration Award were timely. She then argues that the county court erred by confirming the March 5, 2009 arbitration award because the award of attorney's fees and costs in the arbitration proceeding was not proper in a recall action and the arbitrator exceeded his authority by treating the action as an election dispute where the award of attorney's fees and costs is allowed. Laney also argues that the county court's Final Judgment incorrectly awarded

¹ Laney's appeal of the June 21, 2010 order was dismissed as untimely on July 11, 2011 in case # 2010-CV-45.

interest on prejudgment interest equating to the unlawful compounding of interest on interest.

Conversely, the HOA argues that Laney's motions were untimely and the arbitration award and the county court's confirmation of the award were proper pursuant to Chapters 682, 718, and 720 of the Florida Statutes, and Rule 61B-80.123 of the Florida Administrative Code. The HOA concurs with Laney that interest should not be awarded on prejudgment interest and requests that the judgment amount be modified accordingly.

This Court's Analysis and Findings

The crux of this appeal is whether Laney timely challenged the arbitrator's Final Order on Attorney's Fees and Costs entered on March 5, 2009 either through her Petition for Trial De Novo or her Motion to Vacate, Modify or Correct the Arbitration Award.

1. Laney's Petition for Trial De Novo: Sections 720.311 and 720.303 of the Florida Statutes govern HOA recall actions and require that disputes be arbitrated by DBPR in accordance with procedures under sections 718.112(2)(j) and 718.1255 of the Florida Statutes. Under section 718.1255(4)(k), an arbitration decision becomes final unless 1) the parties agreed to be bound by the decision or 2) the complaint for trial de novo is filed within 30 days from when the arbitration order was mailed to the parties. There is nothing in the court record showing that the parties agreed to be bound by the arbitration award. Therefore, the question becomes whether the Petition for Trial De Novo was timely.

Florida Administrative Rule 61B-45.043(2), requires that "The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which

shall show the date of mailing of the final order to the parties. The date of mailing of the final order shall be the date used to calculate the deadline for appeal by trial de novo.”

In *Cypress Bend Condominium I Ass’n., Inc. v. Dexner*, 705 So. 2d 681 (Fla. 4th DCA 1998), the Court found that the requirement that a suit seeking trial de novo upon entry of adverse arbitration order be filed within 30 days of the mailing of the order is a jurisdictional precondition to bringing suit. Therefore, the Fourth District held that Rule 61B-45.043(2) prevailed over the general rule adding five days for mailing. *Id.*; Fla. R. Civ. P. 1.090(e).

The certificate of service in the Final Order on Attorney’s Fees and Costs was on the same date it was entered, March 5, 2009. Laney failed to demonstrate that she timely filed a motion for rehearing of the March 5, 2009 Final Order. Therefore, the Petition for Trial De Novo should have been filed by April 6, 2009. Laney’s petition was not filed until September 11, 2009. Accordingly, Laney’s Petition for Trial De Novo was untimely.

2. Laney’s Motion to Vacate, Modify or Correct the Arbitration Award: Per section 682.13(2) of the Florida Statutes, a Motion to Vacate, Modify or Correct the Arbitration Award must be filed within 90 days after delivery of a copy of the award to the movant, except that if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known. Laney did not claim that corruption, fraud or other undue means was involved in rendering the arbitration order. Therefore, Laney had 90 days from the date of delivery of the order to file the motion. The deadline to file the motion was June 3, 2009. Because she did not file her motion until November 12, 2009, her motion was untimely.

Based upon review of the court record and the applicable statutes and case law, Laney's Petition for Trial De Novo and Motion to Vacate, Modify or Correct the Arbitration Award were not timely filed. Therefore, Judge Martinez properly confirmed the arbitration order. See §§ 682.12, 13, and 14, Fla. Stat.(2009); *Moya v. Board of Regents, State University System of Florida*, 629 So. 2d 282, 284 (Fla. 5th DCA 1993).

3. Interest Award in Final Judgment: As conceded by the HOA, the trial court improperly awarded interest on pre-judgment interest. The Final Judgment ordered that the HOA recover from Laney \$2,934.00 plus \$171.70 pre-judgment interest for a total amount of \$3,105.70. The pre-judgment interest included in the award is subject to post-judgment interest. Compounding of interest on interest is unlawful. *United Services Auto Ass'n v. Smith*, 527 So. 2d 281 (Fla. 1st DCA 1988). Therefore, the award of fees must be amended.

4. HOA's Motion for Appellate Attorney's Fees and Costs: On February 23, 2011, the HOA filed its amended motion for appellate attorney's fees and costs pursuant to sections 718.1255(4)(m) and 720.311 of the Florida Statutes, that provide for an award of attorney's fees and costs incurred to enforce an arbitration award. On March 4, 2011, Laney filed a response opposing the HOA's request for attorney's fees.

The HOA as the prevailing party is entitled to attorney's fees pursuant to sections 718.1255(4)(m) and 720.311. The HOA is also entitled to have costs taxed in its favor by filing a proper motion with the trial court pursuant to Florida Rule of Appellate Procedure 9.400(a).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED:**

1. The Final Judgment entered on February 24, 2010 is **AFFIRMED**, except as to the interest on pre-judgment interest award.

2. The Final Judgment entered on February 24, 2010 as to the award of interest on pre-judgment interest is **REVERSED** and remanded to the lower court to amend the award of fees accordingly.

3. Appellee's Amended Motion to Tax Attorneys' Fees and Costs filed February 23, 2011 is **GRANTED** as to the appellate attorney's fees and the assessment of those fees is **REMANDED** to the trial court.

4. Appellee is entitled to have costs taxed in its favor by filing a proper motion with the trial court pursuant to Florida Rule of Appellate Procedure 9.400(a).

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 14th day of December, 2011.

/S/

RENEE A. ROCHE
Circuit Judge

/S/

JANET C. THORPE
Circuit Judge

/S/

ALAN S. APTE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail to: **David S. Wood, Esquire**, Akerman Senterfitt, 420 S. Orange Avenue, Suite 1200, Orlando, Florida 32801 and **Thomas R. Slaten, Jr., Esquire**, Larsen & Associates, P.A., 300 South Orange Avenue, Suite 1200, Orlando, Florida 32801 on this 14th day of December, 2011.

/S/ _____
Judicial Assistant