**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY**

**MELVYN S. HOBBS and SUZANNE HOBBS,**
**Plaintiff.**

**Vs.**

**Case No: 2000CA-3867**
**Section: 08**

**CHARLES WEINKAUF, ROBERT KRUEGER, RONALD THOMPSON, EUGENE COX, AND GRENELEFE ASSOCIATION OF CONDOMINIUM OWNERS NO. 1, INC., a Florida corporation,**
**Defendant.**
_____/

**ORDER DENYING PLAINTIFF'S MOTION FOR FEES AND COSTS**

**THIS MATTER** came before the Court on the Plaintiff's , **Melvyn S. Hobbs and Suzanne Hobbs (the Hobbs)**, Motion for Fees and Costs against the Defendant, **Grenelefe Association of Condominium Owners No. 1, Inc., a Florida corporation (the Association)** on February 1, 2008. Present before the Court was **Christopher L. Griffin**, attorney for the Plaintiff, **the Hobbs**, and **Mark Ruff**, attorney for the Defendant, **the Association**. The Court, having heard the argument of counsel, having reviewed the applicable case law, and the various pleadings in this cause of action finds as follows:

**Case Background:**

This cause of action has a long and convoluted history. The case moved forward on the Plaintiff's, **the Hobbs**, Verified Amended Complaint, which contained eight separate counts against both the Defendant, **the Association**, and a number of other individual defendants who were either dismissed by the Plaintiff or the Court during the course of said litigation.

The eight counts were as follows:

Count 1: Failure to collect interest on arrearages of condominium fees and assessments.

Count 2: Failure to collect past due assessments.

Count 3: Removal and replacement of laundry equipment.

Count 4: Removal of central collection point vacuum cleaner system.

Count 5: Failure to properly amend bylaws.

Count 6: Failure to keep proper accounting records.

Count 7: Ejection from the board of directors meetings.

Count 8: Appointment of a receiver.

Ultimately, the Defendant, **the Association**, was the prevailing party on counts 1,2,3,4,5, and 8 of the above referenced cause of action.

On October 11, 2004, the Circuit Court, tried and entered a Final Judgment, in favor of the Defendant's, **the Association**, on counts 5, 6 and 7. Previously, the Court had granted a Partial Summary Judgment in favor of the Defendant's on 1, 2, 3 and 4 and a Motion for Judgment on the Pleadings as to Count 8, dismissing the Plaintiff's claims for director liability against **Charles Weinkauf, Robert Krueger, Ronald Thompson**, and **Eugene Cox.** The trial was conducted on Counts 5, 6 and 7 against the Defendant, **the Association**, only. The Court ruled in favor of the Defendant, **the Association**, in said counts, reserving ruling on the Defendant's attorney fees and court costs.

Subsequently, on May 2, 2005, the Court, granted a motion by the Defendants for attorney fees and costs in the amount of $255,253.34, against the Plaintiff, **the Hobbs**.

The Plaintiff, **the Hobbs**, appealed the October 11, 2004, ruling of the Court, and the Second District Court of Appeal reversed a portion of the Final Judgment of October 11, 2004, involving Counts 6 and 7, in favor of the Plaintiffs against the Defendant, **the Association**, only.

The order of May 2, 2005, on attorney fees and costs was not appealed to the Second District Court of Appeal.

Subsequent to said partial reversal, the Plaintiffs filed said Motion for Fees and Costs against the Defendant, **the Association**.

**Legal Analysis:**

The Plaintiffs, **the Hobbs**, believe that they should be entitled to attorney fees under several different theories of law as follows:

1. The Plaintiffs believe that they should be entitled to fees as the prevailing party on the entire litigation as a result of their prevailing on Counts 6 and 7 of the Verified Amended Complaint against the Defendant, **the Association**. The Plaintiffs appear to have taken this position based on the case of *Wayne Paint Company v. Gulf View Apartments of Marco Island, Inc.* 739 So. 2d 1259 (Fla. 2d DCA 1999), that defines the term "prevailing party" as follows: determining the entitlement to attorney fees would be the party that prevailed on significant issues on the litigation. The Plaintiffs believe they prevailed on the significant issues in this litigation as a result of being successful on appeal in Count 6, with regard to injunctive relief and Count 7, which involved an ejection from the board of directors meeting.

2. Alternatively, the Plaintiffs argue that even if they are not the prevailing party in the entire litigation, the Court should award them attorney fees and costs for prevailing on Counts 6 and 7 of the Amended Complaint. The Plaintiff's cite the case of *Zaremba Florida Company v. Klinger*, 550 So. 2d 1131 (Fla. 3d DCA 1989), for the argument that while the Defendants would be prevailing parties on all other counts, that as the prevailing party on Counts 6 and 7, the Plaintiff, **the Hobbs**, should have a recovery, which would act in essence as a set off against the previous attorney fee award in this matter.

3. Finally, the Plaintiff's have espoused a theory that as a result of the Second

District Court of Appeal's partial reversal of the October 11, 2004, Final Judgment in this cause of action as to Counts 6 and 7 of said Amended Complaint, the Trial Court, in this matter, should go ahead and simply ignore or set aside the April 2, 2005, attorney fees award.

4. This Court, having reviewed the litigation in this cause of action, and having reviewed the cases cited above and other cases provided by both parties in this cause of action determines the following:

a. The eight counts, which the Plaintiffs brought against the Defendants in this matter were separate and distinct causes of action. Unlike a breach of contract action, in which there might be several legal theories in various counts for the same actions of a particular Defendant, in this case the separate counts describe **different** actions of both the corporate defendant (**the Association**) and various individual defendants. These ranged from failure to collect interest on arrearages and past due assessments, to removal and replacement of various equipment, and a request for an appointment of a receiver.

b. As a result, the Court, having analyzed the cases in question, including the case of *Moritz v. Foyte Enterprise, Inc.* 604 So. 2d 807 (Fla. 1992), clearly agrees with the general proposition that a party prevailing on significant issues in litigation is the party that should be considered the prevailing party for attorney fees. It is clear that on the significant issues in this litigation the Defendant, **the Association**, was the prevailing party, and the individual defendants for all counts in this complaint were the prevailing party. The only issue in which the Plaintiffs prevailed was failure to keep proper accounting records, in which there has been an injunction entered on their behalf for a period of one year through December 31, 2008, and that there was a wrongful ejection from a board of directors meeting. Taken as a whole, the Plaintiff's, **the Hobbs**, can hardly be said to be the prevailing party on the significant issues of this litigation.

c. Finally, regarding the Second District's ruling, the mandate does not indicate anything about the separate order on attorney fees. In addition, for reasons that were never fully

explained to this Court at the motion hearing, the Plaintiff's did not appeal the attorney fee's award of April 2, 2005. In fact, in response to the Court's question, Plaintiff's counsel could not provide any case which would directly support the Plaintiff's proposition that the reversal in regards to counts 6 and 7 by the Second District Court of Appeal somehow nullified the October 2, 2005 fee order.

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

1. The Plaintiff's Motion for Attorney Fees and Costs in the above styled cause of action is hereby Denied.

**DONE AND ORDERED** in Chambers at Bartow, Polk County, Florida, this 3 day of ~~February~~ March, 2008.

/s/ James A. Yancey

JAMES A. YANCEY,
Circuit Court Judge

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