

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

MELVYN S. HOBBS and SUZANNE  
HOBBS,

Plaintiffs,

vs.

Case No. GC-G-00-3867

THE GREENLEFE ASSOCIATION OF  
CONDOMINIUM OWNERS NO. 1, INC., et  
al.,

Division 8

Defendants.

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**MOTION FOR RECONSIDERATION AND/OR REHEARING**

The plaintiffs, Melvyn S. Hobbs and Suzanne Hobbs (“the Hobbs”), hereby move this Court to rehear and/or reconsider its Order of March 3, 2008 denying the plaintiffs’ motion for fees and costs. The grounds for this motion are, stated generally, that it appears that the Court combined two separate theories of fee recovery, thereby achieving a result that is inconsistent with either of those two theories.

More specifically:

1. In paragraph 4.a. of the “Legal Analysis” section of its Order, this Court found that the eight counts which the Hobbs brought against the defendants “were separate and distinct causes of action.” (Emphasis supplied.)

2. However, the Court then stated, in paragraph 4.b., that the Court 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,” and “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.” (Emphasis supplied.)

3. The combination of the legal principles set forth in paragraphs 4.a. and 4.b. results in a conclusion not permitted by the applicable law. That is, the case law is clear that, if it is determined that the claims in the litigation were “separate and distinct,” as this Court found in paragraph 4.a., then the party prevailing on any of those separate causes of action is entitled to recover its fees and costs related to those particular causes of action. See Folta v. Bolton, 493 So.2d 440, 443 (Fla. 1986); Park Lane Condominium Association, Inc. v. DePadua, 558 So.2d 85 (Fla. 1st DCA 1990) (applying the holding in Folta to an action brought pursuant to the Condominium Act).

4. As the court said in Folta:


In this case, we are not dealing with alternative theories of liability for a single injury sustained; we are dealing with five separate and distinct claims . . . . We interpret this to mean that each claim is an independent cause of action for which a separate suit could have been maintained.

If separate suits had in fact been filed and tried, the defendants would clearly have been entitled to attorney’s fees in those suits in which they prevailed. [Citation omitted.] We see no reason why this should not be the case where, as here, instead of filing multiple law suits the plaintiff joins all his claims in one suit, and loses one or more of these independent claims. In such a case, the defendant would be the “prevailing party” under section 768.56 on those claims which are determined in his favor. (Emphasis supplied.)

5. Thus, the “significant issues” principle does not obtain if there are in fact separate and distinct causes of action, which (as noted) this Court has found there were. In that regard, this Court relied on Moritz v. Hoyt Enterprises, Inc., 604 So.2d 807 (Fla. 1992) with respect to its “significant issues” determination. However, Moritz involved claims arising from one central set of facts regarding the parties’ performance of a contract for the purchase of a home. There were not -- as this Court has found there were here -- several separate and distinct causes of action each based upon separate underlying facts. Thus, and to restate, once this Court determined that the

Hobbs' complaint set forth separate and distinct causes of action, the Moritz "significant issues" analysis became inapplicable.

6. Accordingly, in light of this Court's determination in paragraph 4.a., the Folta and Park Lane analysis -- not Moritz -- is proper for determining entitlement to attorneys' fees here. Thus, in keeping with that determination, the Court should (a) rule that the Hobbs are entitled to recover attorney's fees and costs related to the separate and distinct counts upon which they prevailed (that is, Counts 6 and 7); and (b) conduct further proceedings for determination for the amount of those fees.



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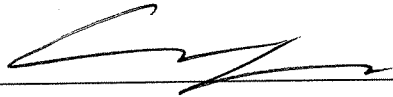
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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by facsimile and U.S. mail, first-class postage prepaid on March 13, 2008.

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