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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA

KIRK BROWN,

Plaintiff,

v. CASE NO.: 2018-CA-000727

STEVEN W. VEHMEIER and
GEORGANN VEHMEIER,

Defendants.
_____/

STEVEN W. VEHMEIER and
GEORGANN VEHMEIER,

Third-Party Plaintiffs,

v.

THE LANDINGS OF THE WITHLACOOCHEE
CONDOMINIUM ASSOCIATION, INC.,
a Florida Corporation,

Third-Party Defendant.
_____/

ORDER ON THIRD-PARTY DEFENDANT THE LANDINGS OF THE WITHLACOOCHEE CONDOMINIUM ASSOCIATION, INC.'S MOTIONS FOR ATTORNEY'S FEES AND COSTS

THIS CAUSE came before the Court on Defendant, The Landings of The Withlacoochee Condominium Association, Inc's, Motion for Attorney's Fees and Costs and Third-Party Defendant The Landings of The Withlacoochee Condominium Association, Inc's, Motion for Award of Attorney's Fees and Costs and Supporting Memorandum of Law, filed on May 13, 2026, and Plaintiff Kirk Brown's Response in Opposition. The Court, having reviewed the Motions and the Response, the court file, and the applicable law, and being otherwise fully advised in the premises, finds as follows:

Background

Plaintiff, Kirk Brown, filed this action for injunctive relief against Defendants, Steven W. Vehmeier and Georgann Vehmeier, alleging that the Vehmeiers made unauthorized alterations to a limited common element in violation of the Declaration of Condominium. Brown asserted no claim against the Association.

The Vehmeiers filed an Amended Third-Party Complaint against the Association seeking indemnification and attorney's fees. The Association was brought into this action solely as a Third-Party Defendant on that pleading; it asserted no claim against Brown.

Following a non-jury trial, the Court, by Order dated April 13, 2026, granted the Association's renewed ore tenus Motion for Involuntary Dismissal, dismissed the entire action, including the Vehmeiers' Amended Third-Party Complaint against the Association, with prejudice, and reserved jurisdiction to consider post-trial motions for attorney's fees and costs.

The Association's Motions seek an award of attorney's fees and costs against Brown and the Vehmeiers, jointly and severally, under section 718.303(1), Florida Statutes; Article 18, Section H of the Declaration of Condominium; section 57.105(7), Florida Statutes; and section 57.041, Florida Statutes.

Applicable Standards

Attorney's fees may be awarded only where authorized by statute or contract, and the prevailing party for fee purposes is the party who prevailed on the significant issues in the litigation. *Moritz v. Hoyt Enters., Inc*., 604 So. 2d 807 (Fla. 1992). That determination requires a court-ordered material alteration of the legal relationship between the party seeking fees and the party charged with them. *Torruella v. Nationstar Mortg., LLC,* 308

So. 3d 674 (Fla. 5th DCA 2020). A claim for attorney's fees, whether based on statute or contract, must be pled, and failure to do so constitutes a waiver of the claim. *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991).

Ruling as to Plaintiff Kirk Brown

The Association is not entitled to recover attorney's fees or costs from Brown. Brown asserted no claim against the Association, and the Association asserted no claim or defense against Brown; the two litigated no issue against one another. There was accordingly no material alteration of the legal relationship between Brown and the Association, and the Association is not a prevailing party as to Brown. *Torruella v. Nationstar Mortg., LLC,* 308 So. 3d 674 (Fla. 5th DCA 2020).

Article 18, Section H of the Declaration authorizes recovery of the Association's enforcement expenses only "against the defaulting unit owner." Brown neither defaulted on any obligation to the Association nor litigated any issue with the Association under the Declaration. The provision affords the Association no recovery against Brown.

Section 718.303(1) authorizes a prevailing-party fee award in an action for failure to comply with the Condominium Act or a declaration; no such action was litigated between Brown and the Association. *Moritz v. Hoyt Enters., Inc.*, 604 So. 2d 807 (Fla. 1992). Section 57.105(7) makes a one-sided contractual fee provision reciprocal only between parties who are adverse under that provision, which Brown and the Association were not. Section 57.041 authorizes costs only for a "party recovering judgment," and no judgment was entered between Brown and the Association; a third-party defendant not brought into the case by the plaintiff may not tax its costs against that plaintiff. *Lynch v. Broward Cnty.,* 572 So. 2d 19 (Fla. 4th DCA 1990).

Independently, the Association did not plead entitlement to attorney's fees against Brown. Entitlement asserted only against the Vehmeiers, or raised for the first time by motion, does not satisfy the pleading requirement or place Brown on notice, and is therefore waived as to Brown. *Stockman v. Downs,* 573 So. 2d 835 (Fla. 1991)**;** *Green v. Sun Harbor Homeowners' Ass'n, Inc*., 730 So. 2d 1261 (Fla. 1998)**.**

Ruling as to the Vehmeiers

The Vehmeiers stand in a different posture. They affirmatively sued the Association on the Amended Third-Party Complaint, that pleading was dismissed with prejudice, and the Association pled its entitlement to fees against the Vehmeiers. As between the Association and the Vehmeiers, the Association is the prevailing party. *Moritz v. Hoyt Enters., Inc.*, 604 So. 2d 807 (Fla. 1992). The Association is therefore entitled to recover its reasonable attorney's fees and costs from the Vehmeiers. As the party recovering a judgment of no liability on the third-party claim, the Association is entitled to its taxable costs against the Vehmeiers under section 57.041. The reasonable amount of fees shall be determined at a subsequent evidentiary hearing applying the lodestar factors set forth in *Florida Patient's Compensation Fund v. Rowe*.

Accordingly, it is ORDERED AND ADJUDGED that:

1. The Motions are DENIED to the extent they seek an award of attorney's fees or costs against Plaintiff, Kirk Brown.

2. The Motions are GRANTED IN PART as to entitlement: the Association is entitled to recover its reasonable attorney's fees and taxable costs from Defendants/Third-Party Plaintiffs, Steven W. Vehmeier and Georgann Vehmeier.

3. The Court reserves jurisdiction to determine the reasonable amount of attorney's fees and costs to be awarded against the Vehmeiers following an evidentiary hearing, and to enter such further orders as may be necessary.

DONE AND ORDERED in Chambers at Marion County, Florida, this 31st day of July, 2026.

LISA HERNDON
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished by electronic mail through the Florida Courts E-Filing Portal this 31st day of July, 2026, to the following:

Fernando A. Prego, Esq., and Yenifer Formoso, Esq., Perez Mayoral, P.A., 999 Ponce de Leon Blvd., Suite 705, Coral Gables, FL 33134 (*Counsel for Plaintiff, Kirk Brown*);

John N. Redding, Esq., Redding & Associates, P.A., 113 South MacDill Ave., Suite A, Tampa, FL 33609 (*Counsel for Defendants/Third-Party Plaintiffs, the Vehmeiers*);

Shawn G. Brown, Esq., Shawn G. Brown, P.A., 3825 Henderson Boulevard, Suite 605B, Tampa, FL 33629 (*Counsel for Third-Party Defendant, the Association*); and

Carolin A. Pacheco, Esq., Marshall Dennehey, P.C., 315 E. Robinson Street, Suite 550, Orlando, FL 32801 (*Counsel for Third-Party Defendant, the Association*).

Judicial Assistant