

ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

JOANNE DESIMONE,

Petitioner/Appellant,
v.

SMALL CLAIMS #05-008878SC-44
CIRCUIT APPEAL #07-000041AP-88B ✓

CLEARVIEW OAKS MANAGEMENT, INC.,
a Florida Corporation,

Respondent/Appellee.

ORDER AND OPINION

THIS CAUSE came before this Court pursuant to the Notice of Appeal filed hereon on August 7, 2007. The Court having reviewed the file, including the pleadings, the Final Summary Judgment, the Initial Brief of Appellant, and the Answer Brief of Defendant-Appellee,


FINDS AND ORDERS the following:

1. This Court has jurisdiction of this appeal.
2. This case originated on December 7, 2005, when the Appellant filed her Statement of Claim alleging a breach of contract against her condominium management company. Specifically, the Appellant alleged that the Appellee breached their written contract by its failure to adequately trim or maintain a tree adjacent to the Appellant's condominium unit.
3. On May 25, 2007, the Appellee filed its Motion for Summary Judgment and Memorandum of Law, and on June 25, 2007, the Appellant filed her Affidavit in Opposition to Motion for Summary Judgment. On July 11, 2007, the trial court entered its Final Summary Judgment, which was filed on July 13, 2007.
4. In its Final Summary Judgment, the trial court determined that there are three elements of a breach of contract, to-wit: (1) a valid contract; (2) a material breach; and (3) damages. The trial court then ruled that the "...failure of Defendant to trim the tree at issue or to trim the tree to Plaintiff's arborist's specifications has not caused damage to Plaintiff. As there is no question of material fact as to lack of damages, as a matter of law, Plaintiff is unable to prove all the elements of a breach of contract claim." The trial court then went

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on to state that, "Plaintiff argued actual damages were not necessary in a breach of contract action; if there is a breach, then nominal damages are required. Plaintiff has not provided any case law to support such argument and this Court was unable to find any case law to support such." Based on its finding on the lack of damages, the trial court determined that it was not necessary to address the remaining issues and thereupon entered its Final Summary Judgment.

5. In the prayer for relief in her Statement of Claim, the Appellant sought either the award of "damages," or that the court enter an order directing the Defendant to provide appropriate tree trimming, or authorizing the Plaintiff to procure such services with the Defendant paying for same.
6. The law in Florida appears to provide that where damages may be insufficient to cover a non-breaching party's interest because the loss caused by the breach is too difficult to ascertain, nominal damages may be awarded. In other words, where the plaintiff establishes a legal wrong, nominal damages may be awarded notwithstanding that there is no evidence as to actual damages. In the case of Onontario of Florida, Inc. v. R. P. Trucking Co., 399 So.2d 1117 (Fla. 4th DCA 1981), the trial court directed a verdict because the appellant failed to prove any damages. On appeal, the Court cited the case of Muroff v. Dill, 386 So.2d 1281 (Fla. 4th DCA 1981) for the proposition that a party is entitled to nominal damages once a breach of contract is established, notwithstanding the absence of evidence regarding the correct measure of damages. This opinion cites other cases in support of this general proposition. See also: MSM Golf, L.L.C. v. Newgent, 853 So.2d 1086 (Fla. 5th DCA 2003).
7. As indicated in Paragraph 4 above, the trial court expressed that Plaintiff had not provided any case law to support its nominal damages claim; however, the cases cited by Plaintiff in her Appellant brief clearly indicated support for her argument.
8. It thus appears that a legal basis may exist for an award of nominal damages in the event the Appellant can prove a breach of contract; or, in the alternative, for an order directing the Appellant to perform tree trimming or authorizing Appellant to assume same with a cost reimbursement.
9. In view of the foregoing, the Final Summary Judgment is hereby reversed, and this cause is hereby remanded to the trial court for consideration of the foregoing.

 **DONE AND ORDERED** in Chambers at St. Petersburg, Pinellas County, Florida, this
day of August, 2008.

Original opinion entered by Circuit Judges J. Thomas McGrady, Peter Ramsberger, and Amy M. Willi

Copies:

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