County Civil Court: ATTORNEY'S FEES – Section 57.105, Fla. Stat. (2013). A letter threatening to seek attorney's fees does not satisfy the requirement under §57.105(4), Fla. Stat., that a party seeking sanctions under that section must serve a *motion* seeking sanctions at least 21 days prior to an award of fees. The threatening letter was not a motion as required by statute. Order granting Appellee's Attorney's Fees reversed. *Seekell v. Crown Eurocars, Inc.*, No. 13-0041AP-88B (Fla. 6th Cir. App. Ct. February 6, 2014).

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

STEPHONIE SEEKELL,
Appellant,

v.

Case No. 13-0041AP-88B
UCN: 522013AP000041XXXXCI

CROWN EUROCARS, INC.,
Appellee.
_____/

ORDER AND OPINION

THIS CAUSE is before the Court on appeal from a Final Judgment for Attorney's Fees entered on April 26, 2013. Appellant, Stephonie Seekell, was ordered to pay attorney's fees under §57.105, Fla. Stat. Because Appellee, Crown Eurocars, Inc., failed to follow the procedural requirements of the statute, we reverse.

Statement of Facts

Appellant is a professional singer and performed at Appellee's holiday parties in 2010 and 2011. Appellant claimed to have an oral contract to perform at the holiday party held on December 8, 2012. On or about the week of November 6, 2012, Appellee informed Appellant of its intention to hire another party to perform and cancelled any contract with Appellant. After failing to book another performance on the same date, Appellant filed a pro-se claim for breach of the oral agreement in small claims court on January 16, 2013.

Appellee received notice of the claim on January 18, 2013, and responded with a letter denying the claim and threatening to seek attorney's fees. The letter was sent to Appellant on January 24, 2013, and included an attached copy of §57.105, Fla. Stat. The morning of the pre-

trial conference, Appellant hired the attorney who now represents her. At the pre-trial conference on February 7, 2013, Appellee's Motion for Summary Disposition was granted. A total of 22 days elapsed between the filing of Appellant's complaint and the pre-trial conference where her claim was dismissed.

Appellee's Motion for Attorney's Fees was filed with reference to §57.105, Fla. Stat., on March 11, 2013, and Appellant's response was filed a week later on March 18, 2013. While there was no mention of the "Safe Harbor" provision found in Appellee's motion, Appellant's response noted that the letter sent on January 24, 2013, was not a motion as required by the statute, and that Appellant was not given the full 21-day safe harbor period to withdraw or appropriately amend her complaint. After a hearing, the lower court granted Appellee's Motion for Attorney's Fees on April 18, 2013. There was no mention of the safe harbor statute in the order. This appeal followed.

Standard of Review

The standard of review for the award of attorney's fees under §57.105, Fla. Stat., is typically abuse of discretion. *Salazar v. Helicopter Structural & Maint.*, 986 So.2d 620 (Fla. 2d DCA 2007). However, when the award of attorney's fees is contingent on statutory interpretation, the award is subject to a de novo standard of review. *Allstate Ins. Co. v. Regar*, 942 So.2d 969, 971 (Fla. 2d DCA 2006).

Law and Analysis

Appellant argues that Appellee failed to follow the "Safe Harbor" procedural requirements of §57.105(4), Fla. Stat. The relevant portion reads as follows:

> A *motion* by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the *motion*, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. (emphasis added)

In response to this argument, Appellee claims that compliance with the statute was impossible, because the pre-trial hearing was set only 20 days after Appellee was notified of the claim. However, regardless of whether Appellee could provide the full 21 days of statutory notice, Appellee failed to serve a proper motion any time before the claim was dismissed.

Appellee's letter in response to Appellant's claim was not a motion as required by the statute. A letter threatening to seek attorney's fees does not satisfy the service of a motion for the purpose of the statute. *Anchor Towing Inc. v. FL. Dept. of Trans.*, 10 So.3d 670, 672 (Fla. 3d

DCA 2009). In *Anchor Towing*, the party seeking sanctions sent a detailed letter to the opposing party demanding it withdraw a frivolous objection to a bid for work with the Florida Department of Transportation. *Id.* at 671. Despite its reference to §57.105, Fla. Stat., the court found that the letter did not constitute sufficient notice under the statute. *Id.* The court drew a clear distinction between a letter threatening to seek attorney's fees, and a motion filed with the court. Like the movant in *Anchor Towing*, Appellee failed to serve a motion, and instead, sent a threatening letter to Appellant. Because the statute plainly requires a motion and not a letter, Appellee did not satisfy the requirements of the statute.

Accordingly, it is

ORDERED AND ADJUDGED that the decision of the lower court granting Appellee's Motion for Attorney's Fees is REVERSED.

DONE AND ORDERED in Chambers in St. Petersburg, Pinellas County, Florida, this ____ day of _____, 2014.

Original order entered on February 6, 2014, by Circuit Judges Peter Ramsberger, Jack Day, and Pamela A.M. Campbell.

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