

**NOT FINAL UNTIL TIME EXPIRES FOR  
REHEARING AND, IF FILED, DETERMINED**

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

**Case No.: 13-000070AP-88A  
UCN: 522013AP000070XXXXCI**

**TIMOTHY C. GRESSETT,  
Appellant,**

**v.**

**STANEK VINYL WINDOWS FLORIDA  
CORP. and AAA SERVICES OF  
CENTRAL FLORIDA, INC.,  
Appellees.**

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Opinion Filed \_\_\_\_\_

Appeal from Final Judgment  
Pinellas County Court  
Judge Edwin B. Jagger

Aubrey O. Dicus, Jr., Esq.  
Caitlin C. Docherty, Esq.  
Attorneys for Appellant

Jeffrey E. Baughman, Esq.  
William M. Hurter, Esq.  
Attorneys for Appellee

**PER CURIAM.**

Appellant, Timothy C. Gressett, seeks review of the final order denying his request for attorney's fees.<sup>1</sup> Upon review of the briefs and the record on appeal, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm.

Mr. Gressett brought an action in the Small Claims Division of the County Court against Stanek Vinyl Windows Florida Corporation and AAA Services Of Central

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<sup>1</sup> Mr. Gressett did not present an argument concerning the portion of the trial court's order denying costs.

Florida, Inc., for breach of contract in the installation of a window in his residence. Mr. Gressett and Stanek settled the case and each party agreed to pay their own costs. The matter proceeded to trial against AAA only. Mr. Gressett prevailed at trial and damages for the breach of contract were awarded against AAA.

With regard to Mr. Gressett's request for attorney's fees, the contract between Mr. Gressett and AAA provides in pertinent part:

6. Attorney Fees: In the event of litigation hereunder the prevailing party shall be entitled to reimbursement of all its expenses incurred in connection with collecting any amounts due, including without limitation, its reasonable attorney's fees. . . .

(Emphasis added).

On August 8, 2013, the trial court entered the final order denying Mr. Gressett's Motion for Attorney's Fees and Costs. In denying the request for attorney's fees, the trial court relied upon and cited to Florida Hurricane Protection and Awning, Inc. v. Pastina, 43 So. 3d 894 (Fla. 4th DCA 2010)(en banc), review denied, 69 So. 3d 278 (Fla. 2011).

When entitlement to attorney's fees is based on the interpretation of a contractual provision, it presents a question of law that is reviewed de novo. Civix Sunrise, GC, L.L.C. v. Sunrise Road Maint. Ass'n, Inc., 997 So. 2d 433, 434-35 (Fla. 2d DCA 2008).

This Court concludes that the trial court correctly found that the majority holding in Florida Hurricane is controlling in this matter. There is no other binding precedent that is directly on point for the issue raised.<sup>2</sup> The trial court properly held that Mr. Gressett's action for breach of contract was not an action "in connection with collecting any amounts due" under the contract.

Further, the trial court did not violate the mutuality or reciprocity requirements of section 57.105(7), Florida Statutes (2013), because in the present case the "prevailing party" is entitled to recover attorney's fees under the terms of the contract.

The final Order Denying Plaintiff's Motion for Attorney's fees and Costs is affirmed.

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<sup>2</sup> Mr. Gressett's reliance on Walls v. Quick & Reilly, Inc., 824 So 2d 1016, 1017 (Fla. 5th DCA 2002), is misplaced. The Fifth District Court of Appeal specifically declined to express its opinion in *dicta* with regard to the issue of whether fees should have been awarded in that case under section 57.105(5), Florida Statutes (2001)(now section 57.105(7)). Id. at 1018 n.2.

Affirmed.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this  
1<sup>st</sup> day of ~~November~~ <sup>December</sup>, 2014.

Original Order entered on December 1, 2014, by Circuit Judges Linda R. Allan,  
John A. Schaefer, Jack R. St. Arnold.

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