

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Melissa Woodman, et al. v. Brickell Mar, LLC

No. 3D25-0470 (Fla. 3d DCA Dec. 31, 2025) · No. 3D25-0470 · Decided December 31, 2025

SUMMARY

The Florida Third District Court of Appeal reversed the denial of Melissa Woodman and Timothy Enriquez’s motion for attorney’s fees and costs after Brickell Mar, LLC voluntarily dismissed its small-claims action. The court held that Green v. Sun Harbor Homeowners’ Ass’n, rather than Stockman v. Downs, controlled because the appellants were not required to file a responsive pleading and timely asserted their fee claim within thirty days after dismissal.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Gordo, J.; Logue, J.; Bokor, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	December 31, 2025
DOCKET	3D25-0470
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellants appealed the County Court's denial of their motion for attorney's fees and costs after the appellee voluntarily dismissed its small-claims action.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Melissa Woodman, Timothy Enriquez v. Brickell Mar, LLC

TOPICS

- attorney fees
- costs
- motions to dismiss
- appellate procedure
- civil procedure

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Attorney's fees and costs

QUESTIONS PRESENTED

1. Whether defendants in a small-claims action who were not required to file a responsive pleading waived a claim for attorney's fees by failing to state the claim in a motion to dismiss.

2. Whether the appellants' motion for attorney's fees and costs, filed within thirty days after dismissal, adequately preserved their claim.

HOLDINGS

1. A defendant's failure to state a claim for attorney's fees in a motion to dismiss does not waive the claim when the case has not proceeded to the point at which a responsive pleading is required.
2. A defendant may claim attorney's fees either in the motion to dismiss or by filing a separate motion within thirty days following dismissal of the action.

KEY QUOTATIONS

“A motion to dismiss is not a pleading.” (2)

“we require that a defendant’s claim for attorney fees is to be made either in the defendant’s motion to dismiss or by a separate motion which must be filed within thirty days following a dismissal of the action.” (2)

FACTUAL BACKGROUND

Brickell Mar, LLC filed a claim against Melissa Woodman and Timothy Enriquez in the Small Claims Division and voluntarily dismissed the claim. The appellants sought attorney's fees and costs within thirty days after the final judgment, but the trial court denied the request because it concluded they had not properly placed Brickell Mar on notice of their intent to seek fees.

PROCEDURAL HISTORY

Brickell Mar voluntarily dismissed its claim against the appellants in the Small Claims Division. The County Court for Miami-Dade County denied the appellants' motion for attorney's fees and costs on the ground that they had failed to provide adequate notice of their intent to seek fees. The Third District Court of Appeal reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the determination that the appellants did not waive their claim for attorney's fees and costs.

CASES CITED

- Stockman v. Downs, 573 So. 2d 835, 837-38 (Fla. 1991)
- Green v. Sun Harbor Homeowners' Ass'n, 730 So. 2d 1261, 1262-63 (Fla. 1998)
- French Vill. Condo. Ass'n, Inc. v. Flynn, 403 So. 3d 854, 856 (Fla. 4th DCA 2025)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed December 31, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D25-0470 Lower Tribunal No. 22-14075-SP-25 _____ Melissa Woodman, et al., Appellants, vs. Brickell Mar, LLC, Appellee. An Appeal from the County Court for Miami-Dade County, Jacqueline Woodward, Judge.

Kula & Associates, P.A., and Elliot B. Kula and William D. Mueller, for appellants. Welbaum Guernsey, and Robert J. Black, for appellee. Before LOGUE, GORDO and BOKOR, JJ. GORDO, J. Melissa Woodman and Timothy Enriquez (“Appellants”) appeal the trial court’s denial of their motion for attorney’s fees and costs following Brickell Mar, LLC’s, (“Brickell Mar”) voluntary dismissal of its claim in the Small Claims Division against the Appellants.

We have jurisdiction. Fla. R. App. P. 9.030(b)(1)(A). We reverse and remand. The trial court in this case applied *Stockman v. Downs*, 573 So. 2d 835, 837–838 (Fla. 1991), and determined the Appellants failed to properly place Brickell Mar on notice of the intent to claim attorney’s fees. This case is instead controlled by *Green v. Sun Harbor Homeowners’ Ass’n*, 730 So.

2d 1261 (Fla. 1998) and *French Vill. Condo. Ass’n., Inc. v. Flynn*, 403 So. 3d 854 (Fla. 4th DCA 2025). “This case presents a situation different from that in *Stockman*.” *Green*, 730 So. 2d at 1262. “In *Stockman*, there had been a responsive pleading (an answer) and also a trial before the defendant moved for attorney fees.” *Id.* “In this case, there had been only a complaint and a motion to dismiss before the defendant moved for attorney fees.” *Id.* “This case had not proceeded to the point at which the defendant was required to answer.” *Id.* “A motion to dismiss is not a pleading.” *Id.* at 1263. “[T]he failure to set forth a claim for attorney fees in a motion does not constitute a waiver.” *Id.* “[W]e require that a defendant’s claim for attorney fees is to be made either 2 in the defendant’s motion to dismiss or by a separate motion which must be filed within thirty days following a dismissal of the action.” *Green*, 730 So.

2d at 1263; *French Vill. Condo. Ass’n., Inc.*, 403 So. 3d at 856. Because the Appellants were not required to file a responsive pleading and they properly advanced their claim for attorney’s fees within thirty days of the final judgment, we reverse the trial court’s decision and remand for further proceedings. Reversed and remanded. 3