

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Inna Johnson v. Carroll Oaks Homeowners Association, Inc., and
Split Second Towing & Transport, Inc.

No. 2D2024-0631 (Fla. 2d DCA Apr. 23, 2025) · No. 2D2024-0631 · Decided April 23, 2025

SUMMARY

The Florida Second District Court of Appeal reversed an attorneys' fee award to Carroll Oaks Homeowners Association in litigation arising from the towing of Inna Johnson's vehicle. The court held that the fee provision in the association's recorded declaration did not authorize fees because Johnson's action concerned statutory notice requirements for towing rather than enforcement of the declaration or its restrictions. A specially concurring judge agreed, emphasizing strict construction of the fee provision and the separate parking agreement's lack of an attorneys' fee clause.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	NORTHCUTT, Judge; Northcutt, J.; Kelly, J.; Silberman, J.
JURISDICTION	Florida District Court of Appeal, Second District
DECIDED	April 23, 2025
DOCKET	2D2024-0631
DISPOSITION	reversed
PROCEDURAL POSTURE	Johnson appealed the county court's post-summary-judgment award of attorneys' fees to Carroll Oaks in litigation concerning the towing of Johnson's vehicle.
STANDARD OF REVIEW	The appellate court reviewed the legal basis for the attorneys' fee award and the interpretation and application of the contractual fee provision de novo.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Inna Johnson v. Carroll Oaks Homeowners Association, Inc., Split Second Towing & Transport, Inc.

TOPICS

- real estate
- contracts
- remedies
- statutory interpretation
- appellate procedure

PRACTICE AREAS

real estate

contracts

remedies

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether Carroll Oaks was entitled to recover attorneys' fees under the recorded declaration's provision authorizing fees for proceedings enforcing restrictions imposed by or pursuant to the declaration.
2. Whether the underlying statutory towing-notice litigation constituted enforcement of the declaration or its restrictions for purposes of the contractual attorneys' fee provision.

HOLDINGS

1. Carroll Oaks was not entitled to attorneys' fees because Johnson's action concerned compliance with a statutory towing-notice obligation, not enforcement of restrictions imposed by or pursuant to the declaration.

KEY QUOTATIONS

"We reverse because there was no legal basis for the fee award." (p. 2)

"We caution that because the variation in the wording of attorney's fees provisions is virtually limitless, our decision today does not eliminate the responsibility of courts to scrutinize the language of a particular attorney's fees clause to determine whether fees are appropriate." (705 So. 2d at 1364)

"Rather, it involved the statutory obligation of any property owner to notify any vehicle owner that the latter's vehicle is parked in a location that subjects it to being towed." (p. 3)

FACTUAL BACKGROUND

Johnson purchased a unit in the Carroll Oaks residential community with an assigned parking space. Shortly after moving in, she parked in her assigned space while displaying a guest parking hang tag because she had not yet received a resident parking sticker, and Carroll Oaks had her vehicle towed. Johnson sued under Florida's towing-notice statute, while Carroll Oaks defended by asserting that Johnson had received personal notice of the parking restrictions through documents supplied before closing. After prevailing on summary judgment, Carroll Oaks obtained an attorneys' fee award based on a recorded declaration provision authorizing fees for enforcement of restrictions.

PROCEDURAL HISTORY

Johnson sued Carroll Oaks under section 715.07(2)(a)(5), Florida Statutes (2020), alleging that the association failed to post the required towing notice. The county court granted Carroll Oaks summary judgment after finding that Johnson had received personal notice of the parking restrictions through documents provided before closing. The county court then awarded Carroll Oaks attorneys' fees under a recorded declaration provision concerning enforcement of community restrictions. Johnson appealed the fee award; she did not appeal the underlying adverse judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The attorneys' fee award to Carroll Oaks is reversed. No further remand instruction is expressly stated.

CASES CITED

- *Careers USA, Inc. v. Sanctuary of Boca, Inc.*, 705 So. 2d 1362 (Fla. 1998)
- *Sanctuary of Boca, Inc. v. Careers USA, Inc.*, 691 So. 2d 596, 598 (Fla. 4th DCA 1997)
- *Caufield v. Cantele*, 837 So. 2d 371 (Fla. 2002)
- *Dolphin LLC v. WCI Communities, Inc.*, 715 F.3d 1243, 1250 (11th Cir. 2013)
- *Bushnell v. Portfolio Recovery Associates*, 255 So. 3d 473, 477 (Fla. 2d DCA 2018)
- *Pici v. First Union National Bank of Florida*, 705 So. 2d 50, 51 (Fla. 2d DCA 1997)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT INNA JOHNSON, Appellant, v. CARROLL OAKS HOMEOWNERS ASSOCIATION, INC., and SPLIT SECOND TOWING & TRANSPORT, INC., Appellees. No. 2D2024-0631 April 23, 2025 Appeal from the County Court for Hillsborough County; Miriam V. Valkenburg, Judge. Eduardo A. Maura and Luis F. Quesada of Ayala Law, P.A., Miami, for Appellant.

Gregory S. Grossman of Greenberg Nikoloff, P.A., Dunedin, for Appellee Carroll Oaks Homeowners Association, Inc. No appearance for Appellee Split Second Towing & Transport, Inc. NORTHCUTT, Judge. The court below awarded attorneys' fees to Carroll Oaks Homeowners Association following its litigation against Inna Johnson.

We reverse because there was no legal basis for the fee award. Johnson purchased a unit in a residential community managed by Carroll Oaks. The unit came with an assigned parking space, and association rules required residents to park in their own spaces and to display corresponding parking stickers. Shortly after Johnson moved into her new home, Carroll Oaks had her car towed.

She had parked in her assigned space but used a hang tag intended for guest parking because she had not yet been given a resident parking sticker. Johnson sued Carroll Oaks based on the latter's failure to post a notice prescribed by section 715.07(2)(a)(5), Florida Statutes (2020), before towing her car.

However, the statute does not require posting a notice if the owner has been personally notified that the area in which the vehicle is parked is unauthorized and that the vehicle is subject to being towed at the owner's expense. *Id.* Carroll Oaks prevailed by summary judgment based on the

county court's conclusion that Johnson received personal notice of the parking restrictions when she was given a trove of the community's governing documents prior to closing on the purchase of her unit.

Carroll Oaks then moved for an award of attorneys' fees, citing the community's recorded "Declaration of Easements." The Declaration included a provision that gave Carroll Oaks the right to "enforce, by any appropriate proceeding whether at law or in equity" restrictions imposed pursuant to the Declaration. It further stated that "[t]he party enforcing the same additionally has the right to recover all costs and expenses incurred, including reasonable attorneys' fees[.]" The court below relied on this provision when awarding Carroll Oaks its fees.

It ventured that "the instant case was not just about a tow of an automobile, but the relationship of Ms. Johnson to Carroll Oaks as a member thereof and the rights and obligations stemming from that contractual relationship." 2 Thus, the court likened this case to *Careers USA, Inc. v. Sanctuary of Boca, Inc.*, in which the supreme court held that the tenant's suit for a declaratory judgment to resolve a dispute over rent obligations under its lease was within the ambit of a lease provision entitling the prevailing party to recover fees "[i]n any litigation between the parties hereto to enforce the terms and conditions of this Lease."

705 So. 2d 1362, 1363 (Fla. 1998) (quoting *Sanctuary of Boca, Inc. v. Careers USA, Inc.*, 691 So. 2d 596, 598 (Fla. 4th DCA 1997). The lower court also relied on the holding in *Caufield v. Cantele*, 837 So. 2d 371, 373 (Fla. 2002), which involved a contract provision that authorized the award of prevailing party attorneys' fees in any litigation "arising out of" the contract.

The Caufield court held that claims of fraudulent misrepresentation concerning the subject matter of a contract "arise out of the contract" for purposes of that fee provision. *Id.* at 378. In those cases, the fee provisions were not triggered simply because there happened to be a contract between the parties. Rather, in each of them the litigation clearly and directly involved the enforcement of the contract or arose from its subject matter.

As such, those authorities have no bearing here. Contrary to the county court's assertion, the underlying litigation in this case did not turn on the parties' contractual relationship. Rather, it involved the statutory obligation of any property owner to notify any vehicle owner that the latter's vehicle is parked in a location that subjects it to being towed.

Carroll Oaks' defense of Johnson's action was not an enforcement of its rules; it simply involved 3 proving that it had given Johnson personal notice as contemplated in the statute.¹ When holding that a declaratory judgment suit may constitute enforcement of a lease for purposes of a prevailing party attorneys' fee provision, the *Careers USA* court included a caveat: "We caution that because the variation in the wording of attorney's fees provisions is virtually limitless, our decision today

does not eliminate the responsibility of courts to scrutinize the language of a particular attorney's fees clause to determine whether fees are appropriate."

705 So. 2d at 1364. Consistent with that admonition, we conclude that the language of the attorneys' fee provision at issue here did not entitle Carroll Oaks to a fee award in this case. Reversed. KELLY, J., Concur. SILBERMAN, J., Concur specially with opinion 1 The documents given to Johnson when she purchased her unit contained two references to towing.

One was in a "Summary of Carroll Oaks Regulations, Restrictions and Rules," which stated that residents may only park in designated parking spaces and must have a parking permit sticker on their vehicles. It observed that "[a]ll vehicles in violation of the above[-]mentioned rules are subject to towing at the owner's expense." But the document also emphasized that it was merely a summary.

It referred the reader to the "original association documents" for "more complete and detailed information regarding these and other regulations as well as the interpretation of the same." The only germane "original association document" given to Johnson was a single sheet entitled "Parking Rules & Regulations." Its only reference to towing was as follows: "Owners are not permitted to park in guest parking.

If a vehicle that is registered to the property is caught in a guest spot, the vehicle will automatically be towed at the owner's expense." Johnson did not appeal the adverse judgment in her lawsuit, but it is debatable whether those documents reasonably notified her that her vehicle would be towed if she parked in her assigned space with a guest permit. 4 SILBERMAN, Judge, Specially concurring.

I agree with the result reached by the majority based on the circumstances here and the specific wording of the attorney fee provision in the Declaration of Easements, Covenants, Conditions and Restrictions of Carroll Oaks.

The Declaration's attorney fee provision states that the Association or any owner has the right to enforce by any appropriate proceeding whether at law or in equity or before the Board, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by, or pursuant to, the provisions of this Declaration or any Amended or Supplemental Declaration or both.

The party enforcing the same additionally has the right to recover all costs and expenses incurred, including reasonable attorneys' fees for all negotiations and trial and appellate proceedings, if any. If the Association enforces the provisions of this Declaration against any owner, the costs and expenses of such enforcement, including such reasonable attorneys' fees, may be assessed against such owner's lot, as provided in Article V. There is no "arising out of," "relating to," or "with respect to" language in the fee provision of this Declaration.

See *Dolphin LLC v. WCI Cmtys., Inc.*, 715 F.3d 1243, 1250 (11th Cir. 2013) (holding that where the attorney fee provision in a contract contains "arising out of" language, courts must determine if claims are "inextricably intertwined with the contract" (citing *Caufield v. Cantele*, 837 So. 2d 371, 379 (Fla. 2002))); see also *Bushnell v. Portfolio Recovery Assocs.*, 255 So.

3d 473, 477 (Fla. 2d DCA 2018). Courts must strictly construe a contract's attorneys' fee provision. *Pici v. First Union Nat'l Bank of Fla.*, 705 So. 2d 50, 51 (Fla. 2d DCA 1997). Here, the action pertains to a document titled Parking Rules and Regulations, which is a separately signed parking agreement that does not contain an attorneys' fee provision. It also does not proclaim to be an amendment or supplement to the 5 Declaration, which could invoke the original Declaration's fee provision.

Thus, because this action does not fall within the terms of the Declaration's fee provision, Carroll Oaks is not entitled to an award of attorneys' fees. Opinion subject to revision prior publication. 6