

## DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

### Palm Beach Polo Holdings, Inc. v. Stewart Title Guaranty Co.

134 So. 3d 1073 (Fla. 4th DCA 2014) · No. 11-4660; 12-231 · Decided January 8, 2014

#### SUMMARY

The Florida Fourth District Court of Appeal reviewed consolidated appeals involving a title insurer's recovery of attorneys' fees and costs incurred while representing an insured under a reservation of rights, as well as sanctions under section 57.105, Florida Statutes. The court upheld the insurer's entitlement to reimbursement and found competent, substantial evidence supporting the sanctions award, but reversed and remanded because the trial court failed to make the required express finding that the insured's claims lacked a justiciable issue. The court permitted the same sanctions award to be entered after the required findings without receiving additional evidence.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Fourth District                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | MAY, J.; Ciklin, J.; May, J.; Schiff, Associate Judge; Louis, Associate Judge                                                                                                                                                                                                           |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                 |
| DECIDED               | January 8, 2014                                                                                                                                                                                                                                                                         |
| DOCKET                | 11-4660; 12-231                                                                                                                                                                                                                                                                         |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Consolidated appeal from a final judgment awarding the title insurer reimbursement of attorneys' fees and costs incurred in representing the insured in an underlying property dispute, and from an order awarding attorneys' fees as sanctions under section 57.105, Florida Statutes. |
| STANDARD OF REVIEW    | The court reviewed the necessity of express findings supporting a section 57.105 award and whether competent, substantial evidence supported the sanctions and fee amounts.                                                                                                             |
| PRECEDENTIAL VALUE    | Published Florida District Court of Appeal opinion                                                                                                                                                                                                                                      |
| PARTIES               | Palm Beach Polo Holdings, Inc. v. Stewart Title Guaranty Company                                                                                                                                                                                                                        |

#### TOPICS

insurance coverage

breach of contract

declaratory relief insurance

appellate procedure

remedies

## PRACTICE AREAS

insurance

contracts

real estate

remedies

appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court properly awarded attorneys' fees and costs as sanctions under section 57.105, Florida Statutes, despite failing to make an express finding that the insured's action lacked any justiciable issue of law or fact.
2. Whether competent, substantial evidence supported the amount of the section 57.105 sanctions.
3. Whether the insurer was entitled to reimbursement of attorneys' fees and costs incurred while representing the insured under a reservation of rights in an action later determined not to be covered.

## HOLDINGS

1. A trial court awarding fees and costs under section 57.105 must make an explicit finding on the record that the action involved a complete absence of a justiciable issue of law or fact, supported by substantial competent evidence.
2. Competent, substantial evidence supported the finding that the insured's two-count complaint was frivolous and supported the amount of the sanctions.
3. The court did not disturb the insurer's entitlement to reimbursement or the resulting fee-and-cost judgment; the reversal was limited to the technically deficient section 57.105 sanctions order.

## KEY QUOTATIONS

*“Section 57.105 requires an explicit finding by the trial court that there was a complete absence of a justiciable issue of law or fact raised by the plaintiff in the action.”* (134 So. 3d at 1078)

*“We therefore reverse on this issue only and remand the case to the trial court for the requisite findings.”* (134 So. 3d at 1079)

## FACTUAL BACKGROUND

Palm Beach Polo subdivided a parcel, leaving one parcel without access, and sought to use a private road owned by Equestrian Club Estates. After the Club denied access, Palm Beach Polo sought declaratory and injunctive relief for an implied way of necessity. The underlying court denied relief because Palm Beach Polo had created the landlocked condition through its subdivision, and Stewart Title later denied coverage and refused to finance the appeal. Stewart Title had defended the underlying action under a reservation of rights and then sought reimbursement of its fees and costs.

## PROCEDURAL HISTORY

Palm Beach Polo subdivided property, creating a landlocked parcel, and sought access over a private road. Stewart Title defended the insured under a reservation of rights, but the underlying court denied the claimed way of necessity because the insured had created the lack of access; the Fourth District affirmed that judgment in *Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Prop. Owners Ass’n*, 949 So. 2d 347 (Fla. 4th DCA

2007). Palm Beach Polo then sued Stewart Title for breach of contract and bad faith. The trial court dismissed the bad-faith claim, entered judgment on the pleadings for Stewart Title on its reimbursement counterclaim, awarded the insurer \$255,219 in fees and costs after a jury proceeding, and awarded \$54,051.20 in section 57.105 sanctions. The insured appealed both matters.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse only the section 57.105 sanctions ruling and remand for the trial court to make the requisite express finding regarding the complete absence of a justiciable issue. The trial court may impose the same sanctions award without taking additional evidence.

## CASES CITED

- Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Prop. Owners Ass'n, 949 So. 2d 347, 350 (Fla. 4th DCA 2007)
- Vasquez v. Provincial S., Inc., 795 So. 2d 216, 218 (Fla. 4th DCA 2001)
- Yakavonis v. Dolphin Petroleum, Inc., 934 So. 2d 615, 619 (Fla. 4th DCA 2006)
- Wendy's of Ne. Fla., Inc. v. Vandergriff, 865 So. 2d 520 (Fla. 1st DCA 2003)
- Peerless Elec. Co. v. Goldberger, 473 So. 2d 300 (Fla. 4th DCA 1985)
- Schwartz v. W-K Partners, 530 So. 2d 456, 458 (Fla. 5th DCA 1988)