

SUPREME COURT OF FLORIDA

CCM Condominium Association, Inc., etc. v. Petri Positive Pest Control, Inc., etc.

No. SC19-861, Supreme Court of Florida (September 9, 2021)

SUMMARY

In this Florida Supreme Court decision, the court held that post-offer prejudgment interest must be excluded from the "judgment obtained" when calculating whether a plaintiff has met the 25% threshold for attorney's fees under Florida's offer of judgment statute, section 768.79. The court answered the certified question in the affirmative, approving the Fourth District's decision and disapproving conflicting decisions from the Third and First Districts. The ruling reaffirms the "White formula" established in **White v. Steak & Ale of Florida, Inc.**, which requires that the judgment obtained be compared to the settlement offer as if the judgment were entered on the date of the offer, thus including only pre-offer costs, fees, and prejudgment interest.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Polston, J.; LABARGA; MUÑIZ; COURIEL; GROSSHANS
JURISDICTION	Florida
DECIDED	September 9, 2021
DOCKET	SC19-861
DISPOSITION	approved
PROCEDURAL POSTURE	Review of a decision of the Fourth District Court of Appeal on a certified question of great public importance and certified conflict.
STANDARD OF REVIEW	The court applied the standard for receding from precedent: whether the precedent is clearly erroneous.
PRECEDENTIAL VALUE	Published
PARTIES	CCM Condominium Association, Inc. v. Petri Positive Pest Control, Inc.

TOPICS

- civil procedure
- attorney fees
- statutory interpretation

PRACTICE AREAS

Offer of Judgment

Attorney's Fees

Prejudgment Interest

QUESTIONS PRESENTED

1. FOR PURPOSES OF CALCULATING WHETHER A PLAINTIFF HAS MET THE THRESHOLD AMOUNT OF DIFFERENCE BETWEEN AN OFFER OF JUDGMENT AND THE JUDGMENT ENTERED FOR PURPOSES OF SECTION 768.79, FLORIDA STATUTES, MUST POST-OFFER PREJUDGMENT INTEREST BE EXCLUDED FROM THE AMOUNT OF THE 'JUDGMENT OBTAINED'?

HOLDINGS

1. Post-offer prejudgment interest is excluded from the 'judgment obtained' that is compared to a rejected settlement offer when determining entitlement to attorneys' fees under section 768.79.

KEY QUOTATIONS

"We hold that post-offer prejudgment interest is excluded from the 'judgment obtained' that is compared to a rejected settlement offer when determining entitlement to attorneys' fees under section 768.79."

"Because this Court's precedent is not clearly erroneous, we decline to recede from the White formula."

"In determining both the amount of the offer and whether to accept the offer, the party necessarily must evaluate not only the amount of the potential jury verdict, but also any taxable costs, attorneys' fees, and prejudgment interest to which the party would be entitled if the trial court entered the judgment at the time of the offer or demand."

FACTUAL BACKGROUND

In 2013, CCM sued Petri for negligence and breach of contract regarding a termite control contract. CCM served a \$500,000 offer of judgment under section 768.79, which Petri rejected. After trial, the jury awarded CCM \$551,881 in damages. The trial court entered a final judgment including \$84,295.60 in prejudgment interest, for a total of \$636,326.90. CCM moved for attorney's fees, arguing that the judgment exceeded the offer by more than 25%. The trial court concluded that the White formula did not require exclusion of post-offer prejudgment interest and awarded fees. The Fourth District reversed, holding that post-offer prejudgment interest must be excluded.

PROCEDURAL HISTORY

The Fourth District reversed the trial court's award of attorney's fees under section 768.79, holding that post-offer prejudgment interest should be excluded from the 'judgment obtained.' The Fourth District certified conflict with Perez and Phillips and certified a question of great public importance.

DISPOSITION

approved

CASES CITED

- Petri Positive Pest Control, Inc. v. CCM Condominium Ass'n, 271 So. 3d 1001 (Fla. 4th DCA 2019)
- Perez v. Circuit City Stores, Inc., 721 So. 2d 409 (Fla. 3d DCA 1998)
- Phillips v. Parrish, 585 So. 2d 1038 (Fla. 1st DCA 1991)
- White v. Steak & Ale of Florida, Inc., 816 So. 2d 546 (Fla. 2002)
- Shands Teaching Hospital & Clinics, Inc. v. Mercury Insurance Co. of Florida, 97 So. 3d 204 (Fla. 2012)
- State Farm Mutual Automobile Insurance Co. v. Nichols, 932 So. 2d 1067 (Fla. 2006)
- Danis Industries Corp. v. Ground Improvement Techniques, Inc., 645 So. 2d 420 (Fla. 1994)
- Scottsdale Insurance Co. v. DeSalvo, 748 So. 2d 941 (Fla. 1999)
- State v. Poole, 297 So. 3d 487 (Fla. 2020)
- United States v. U.S. Gypsum Co., 333 U.S. 364 (1948)
- Branch v. Sec'y, Fla. Dep't of Corr., 638 F.3d 1353 (11th Cir. 2011)
- Tropical Jewelers Inc. v. Bank of Am., N.A., 19 So. 3d 424 (Fla. 3d DCA 2009)
- Palmentere Bros. Cartage Serv. v. Copeland, 277 So. 3d 729 (Fla. 1st DCA 2019)
- R.J. Reynolds Tobacco Co. v. Lewis, 275 So. 3d 747 (Fla. 5th DCA 2019)
- Diecidue v. Lewis, 223 So. 3d 1015 (Fla. 2d DCA 2017)
- UCF Athletics Ass'n v. Plancher, 121 So. 3d 616 (Fla. 5th DCA 2013)
- Nilo v. Fugate, 30 So. 3d 623 (Fla. 1st DCA 2010)
- Segundo v. Reid, 20 So. 3d 933 (Fla. 3d DCA 2009)
- Segui v. Margill, 864 So. 2d 518 (Fla. 5th DCA 2004)
- Amador v. Walker, 862 So. 2d 729 (Fla. 5th DCA 2003)
- First Specialty Ins. Co. v. Caliber One Indem. Co., 988 So. 2d 708 (Fla. 2d DCA 2008)
- Golub v. Golub, 336 So. 2d 693 (Fla. 2d DCA 1976)
- Cason v. Fla. Dep't of Mgmt. Servs., 944 So. 2d 306 (Fla. 2006)
- Olmstead v. F.T.C., 44 So. 3d 76 (Fla. 2010)