

FLA APPEALS COURT AWARDS ATTORNEY'S FEES AFTER BANK'S DISMISSAL OF FORECLOSURE

Florida's Fourth District Court of Appeal recently [reversed](#) a trial court's denial of reciprocal attorney's fees to two homeowners who were sued for foreclosure by a national bank, after the bank voluntarily dismissed the action. The decision came on the bank's motion for rehearing.

The borrowers' answer to the bank's foreclosure action asserted the affirmative defense of standing. They also claimed entitlement to attorney's fees under a Florida law which states that attorney's fees provisions in a contract are reciprocal; thus, if a party seeking attorney's fees prevails and is a party to a contract containing a fees provision, it is entitled to those fees.

Here, the foreclosing bank alleged in its complaint that it was entitled to enforce the note and mortgage; in opposing the motion for attorney's fees, it also argued that homeowners could not recover fees after denying the bank was a party to the contract rather than proving the bank was a party to the contract. However, the bank voluntarily dismissed the case before a judicial determination was made as to whether it or the homeowners were parties to the contract.

The court held that where no judicial determination has occurred regarding the existence of a contract between the parties—here, due to the bank's dismissal of the case—the prevailing homeowners are entitled to attorney's fees.

This decision relies on a 2018 ruling of the same court in [Wells Fargo Bank, N.A. v. Elkind](#), which held that a borrower who raised lack of standing as an affirmative defense was nonetheless entitled to prevailing party attorney's fees under the note and mortgage after the foreclosing bank in that case voluntarily dismissed the case, despite having alleged that the bank was not entitled to enforce the note and mortgage.

The instant opinion was issued on rehearing because the court had previously come to the same conclusion in reliance upon the Florida Supreme Court's initial opinion in the [Glass case](#). The Florida Supreme Court withdrew that opinion, as we have [previously reported](#), and the Fourth District Court of Appeal subsequently issued the instant opinion in place of its previous decision.