

Florida Supreme Court Reverses No Standing No Fees

The Florida Supreme Court released an opinion in *Glass v. Nationstar*, SC17-1387 with widespread implications in contract litigation, and mortgage foreclosure litigation in particular, as it relates to attorney's fee entitlement. In *Nationstar Mortgage LLC v. Glass*, 219 So. 3d 896 (Fla. 4th DCA 2017) the Fourth District Court of Appeal held that where a borrower prevails on the issue of standing, the borrower cannot utilize the attorney's fee provisions of the note and mortgage to secure prevailing party attorney's fees. The rationale for this decision seemed simple, if the plaintiff is not the proper party to enforce the note and mortgage, then the note and mortgage cannot be enforced against the plaintiff for the purpose of obtaining attorney's fees.

In a surprising opinion, the Florida Supreme Court determined that the Fourth DCA's opinion "both misstates the basis of the trial court's ruling on Glass's motion for dismissal and fails to address Glass's motion for appellate attorney's fees based on the voluntary dismissal." Notably, the Florida Supreme Court found that the trial court had dismissed the case based on pleading defects in the Complaint, not based on an express finding that Nationstar was not in privity with the note and mortgage.

Of help to lenders and foreclosure Plaintiffs, the Florida Supreme Court distinguished on its fact, but did not reject the logic, of *Bank of New York Mellon Trust Co. v. Fitzgerald*, 215 So. 3d 116 (Fla. 3d DCA 2017), wherein the district court held that because no contract existed between the bank and Fitzgerald, she could not invoke the reciprocity provisions of section 57.105(7). Thus, it certainly appears that where there is an adjudication on standing that finds the absence of privity of contract between the lender and the borrower, the borrower cannot turn around and use that same contract to obtain attorney's fees from the lender. However, the opinion concludes with the seemingly contradictory statement:

"In the instant case, a reverse mortgage contract clearly existed between Glass and Countrywide Mortgage Company, which was assigned from its successor in interest, Bank of America, to Nationstar Mortgage. Even if we assume that Glass prevailed on her standing argument, the

contract was merely unenforceable by Nationstar because it failed to demonstrate that it was the rightful successor in interest. We, therefore, conclude that, had the issue been presented as an issue on appeal to the Fourth District, Glass would be entitled to attorney's fees at the trial level."

It is difficult to reconcile the seemingly contradictory statements in this paragraph, which all but ensures that this issue will come before the Florida Supreme Court again in the not too distant future. The best reading seems to be that **THE FLORIDA SUPREME COURT HAS REVERSED THE *GLASS* DECISION BECAUSE THERE WAS IN FACT PRIVITY OF CONTRACT BETWEEN GLASS AND THE FORECLOSING PLAINTIFF.**