

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

Deutsche Bank National Trust Company, as
Trustee for American Home Mortgage Assets
Trust 2007-1 Mortgage-Backed Pass-Through
Certificates, Series 2007-1,

Plaintiff,

Case No. 29-2009-CA-003898

v.

Atlantic Condo Partners III, LLC; Patrick Sullivan,
Individually and as Managing Member of
Atlantic Condo Partners, LLC,

Defendants.

OBJECTION TO ATTORNEYS' FEES AFFIDAVITS

Defendants, by and through their undersigned counsel, hereby object to this Court's consideration of the issue of attorneys' fees by affidavit, particularly at the summary judgment stage of this case, and would show:

1. In its Motion for Summary Judgment, Plaintiff attempts to tax attorneys' fees and costs. In support, Plaintiff provides an affidavit of its counsel and an affidavit of an alleged expert.

2. The affidavit of this "expert" lacks facts and is conclusory in nature. Under the circumstances, Defendants want to cross-examine this alleged "expert" as to the factual basis of the affidavit.

3. Under controlling law, attorneys' fees may be awarded upon presentation of affidavits, without live testimony, if the party opposing the entry of fees does not object. See DM Records, Inc. v. Turnpike Commercial Plaza, 894 So. 2d 1030 (Fla. 4th DCA 2005); Ins. Co. of North America v. Julien P. Benjamin Equip. Co., 481 So. 2d 511 (Fla. 1st DCA 1985).

4. In this case, however, Defendants are objecting to the use of affidavits in lieu of live testimony. As such, an evidentiary hearing on the Motion is required. See Dvorak v. First Family Bank, 639 So. 2d 1076 (Fla. 5th DCA 1994); Dhondy v. Schimpeler, 528 So. 2d 484 (Fla. 3d DCA 1988); Soundcrafters, Inc. v. Laird, 467 So. 2d 480 (“the trial court erred in permitting Laird’s sole expert to testify by way of affidavit over Soundcrafters’ objection.”); Terrazzo, Inc. v. Altman, 372 So. 2d 512 (Fla. 3d DCA 1979); Geraci v. Kozloski, 377 So. 2d 811 (Fla. 4th DCA 1979) (“In an adversary proceeding such as this the determination of an attorneys fee for the mortgagee based upon affidavits over objection of the mortgagor is improper. Evidence should be adduced so that the full range of cross examination will be afforded both parties.”).

5. As evidence is not permissible at a summary judgment hearing, see Fla.R.Civ.P. 1.510, it would be reversible error to award attorneys’ fees via summary judgment. See cases, supra.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Thomas McFadyen, Esq., 4630 Woodland Corporate Blvd., Suite 100, Tampa, FL 33614 and Henry Portner, Esq., 1005 Indiantown Road, Suite 105, Jupiter, FL 33458 on this 8th day of September, 2010.

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