

33 Fla. L. Weekly Supp. 394a**Online Reference: FLWSUPP 3309PHAR**

Attorney's fees -- Contracts -- Account stated -- Prevailing party -- Mutuality or reciprocity of obligation -- Defendant who prevailed as result of dismissal of plaintiff's action for account stated seeking monies due on credit card account was entitled to award of attorney's fees under attorney's fees provision of underlying credit card agreement and provisions of section 57.105(7) -- Florida law is applicable where plaintiff failed to plead in complaint that foreign law applied -- Fact that action was not dismissed on merits is immaterial -- Statutory provision provides for award of fees to prevailing party irrespective of whether case is resolved on merits

PHARUS FUNDING, LLC, AS SUCCESSOR IN INTEREST TO FIRST BANK & TRUST, Plaintiff, v. AYANA HOWARD, Defendant. County Court, 10th Judicial Circuit in and for Polk County. Case No. 53-2025-SC-005442-A000-BAM2. November 14, 2025. Allison Kaylor, Judge. Counsel: Noam Cohen, for Plaintiff. Bryan A. Dangler, Power Law Firm, Altamonte Springs, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION**FOR ATTORNEY'S FEES AND COSTS**

THIS MATTER, having come before the Court on October 24, 2025 on Defendant's Motion for Attorney's Fees and Costs, and the Court having reviewed the pleadings, applicable law, and being otherwise fully advised in the premises, hereby finds as follows:

Plaintiff filed one count complaint for Account Stated to recover money allegedly owed on a credit card account. Plaintiff filed a voluntary dismissal, and the Court dismissed the case in the Defendant's favor. Defendant timely moved as the prevailing party for an award of attorney's fees and costs pursuant to the Card Agreement between the parties and Florida Statute 576.105(7). In response, Plaintiff relied on the holding in *Giles v. Portfolio Recovery*, 317 So. 3d 1287 (Fla. 1st DCA 2022) [46 Fla. L. Weekly D1354a] and argued that the Card Agreement's choice of law provision applying the law of South Dakota does not permit reciprocity of attorney's fees and therefore, the Defendant is not entitled to recover his attorney's fees under the Card Agreement.

The Court finds *Giles* both unpersuasive and inapposite given that the Florida Supreme Court together with all other District Courts of Appeal unequivocally hold that a party must plead and prove the application of foreign law. *Mills v. Barker*, 664 So 2d 1054 (Fla. 2d DCA 1995) [20 Fla. L. Weekly D2643a]; *Columbian Nat'l Life Ins. Co. v. Lanigan*, 19 So. 2d 67, 68 (Fla. 1944) (The general rule is that when the law of a foreign state is relied on as governing a given transaction it must be pleaded and proved as any other issue of fact. . ."); *Schubot v. Schubot*, 363 So. 2d 841 (Fla. 4th DCA 1978) ("the law fo the foreign state cannot be the basis for a trial court's ruling unless such law has been raised through the pleadings."); *Coyne v. Coyne*, 325 So. 2d 407 (Fla. 3d DCA 1976).

In this case the Plaintiff did attach the Card agreement to its Complaint, however the agreement was completely illegible. The Defendant argues that the illegibility of the contract does not serve its purpose of putting the Defendant on Notice of the terms of the Agreement, and the Court agrees. Further, Plaintiff operated under Florida law during the entirety of this action and did not assert the Card Agreement's choice-of-law provision until its post-dismissal response to Defendant's motion for attorney's fees and costs. Because Plaintiff did not plead and prove reliance on South Dakota law in this case, Florida law applies.

Plaintiff also argues that due to a clerical error, this complaint was duplicative of an identical complaint filed in case 2025-SC-5825, and relies on *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914 (Fla. 1990) and

Simmons v. Schimmelo, 476 So. 2d 1342 (Fla. 3d DCA 1985) to argue that Defendant is not entitled to attorney's fees because the dismissal of the instant case was not on the merits. Notably, that case was also subsequently dismissed with prejudice, thus the Plaintiff received no benefit in either action. The Court rejects Plaintiff's argument and finds that there need not be a determination on the merits in a lawsuit for purposes of a fee award if the applicable statutory provision provides for fees to a prevailing party, as it does in the instant case. See *Catamaran B.Y., Inc. v. Giordano*, 337 So. 3d 439 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D179a] and *51 Island Way Condo Ass'n v. Williams*, 458 So. 2d 364 (Fla. 2d DCA 1984); *Alhambra Homeowners Association, Inc., v. Asad*, 943 So. 2d 316 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D3118a]; *Ajax [Paving Industries, Inc., v. Hardaway Company]*, 824 So. 2d 1026 (Fla. 2d DCA 2002) [27 Fla. L. Weekly D1949c] (prevailing party rule applies even if the case has not been resolved on the merits due to a voluntary dismissal by the Plaintiff).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion for Attorney's Fees and Costs is **GRANTED**.

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