



# County Court Update

Jurisdiction, Practice Type and Recent Reported Decisions

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## Section 34.01, Florida Statutes (2020)

- Jurisdiction of county court.
- (1) County courts shall have original jurisdiction:
  - (a) In all misdemeanor cases not cognizable by the circuit courts.
  - (b) Of all violations of municipal and county ordinances.
  - (c) Of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:
    1. If filed on or before December 31, 2019, the sum of \$15,000.
    2. If filed on or after January 1, 2020, the sum of \$30,000.
    3. If filed on or after January 1, 2023, the sum of \$50,000.
  - (d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.



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- Filing Fees
  - Effective January 1, 2020, although the county courts will now have jurisdiction over cases demanding between \$15,000 and \$30,000, the current circuit court filing fee of \$395 will still apply based on the amount demanded
  
- County to Circuit Appeals
  - Administrative Rule for a three judge panel



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## Section 83.60(2)

- In an action by the landlord for possession of a dwelling unit, if the tenant interposes *any defense other than payment*, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.



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- ***Keeota Realty, Inc. v. Hogan*** – 17<sup>th</sup> Judicial Circuit - Judge Ellen Feld
  - Court finds that Plaintiff is not an active corporation having been dissolved ten years prior and therefore lacks standing to bring a cause of action for eviction based on non-payment of rent.
- ***Garden Isles Apartments 2, Inc. v. Aucella*** – 17<sup>th</sup> Circuit Judge Florence Barner
  - Plaintiff's complaint to evict occupants from a cooperative apartment was dismissed for lack of subject matter jurisdiction.
- ***Bonnie Altro Cohen v. Costell*** – 17<sup>th</sup> Circuit Appellate Division – Trial Judge Jill Levy, Appellate Panel Judges Levenson, Pearlman and Powell.
  - Plaintiff's complaint for eviction was answered with a motion to quash for improper service of process. The trial court enters an order requiring Defendant to post rent to the court registry and after Defendant's failure to do so, the court enters a default in favor of Plaintiff.



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- ***Miami Solar Management Corp. v. Hernandez*** – 11<sup>th</sup> Juridical Circuit in and for Miami Dade County – Judge Tanya Brinkley.
  - Seven day notice to cure and thirty day notice to quit were fatally defective for failing to advise homeowner of the specific rule violations and code violations allegedly committed. Complaint dismissed without leave to amend.
- ***Suarez v. Valladolid*** – 11<sup>th</sup> Judicial Circuit in and for Miami Dade County – Judge Lawrence D. King.
  - Where a landlord owes fees to a homeowner's association, which has demanded that tenant pay rent to association, only the association may bring eviction action against tenant. Landlord's complaint for eviction is dismissed without prejudice to file a new complaint when debt to the association has been paid.



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- *Charnesky v. Orefice* – 7<sup>th</sup> Judicial Circuit in and for Volusia County

- Three day notice was defective where notice contained no proof of service, demanded payment on a weekend, and did not contain landlord's name, address or telephone number. Further, action must be brought under some legal theory other than non payment of rent because the Court determined previously that there was an agreement to pay rent of \$0 per month.

- *Famsun Invest v. IRVI International* - 17<sup>th</sup> Judicial Circuit in and for Broward County – Judge Robert W. Lee.

- Where a landlord / Plaintiff in an action for possession regains possession after filing and Plaintiff dismisses suit after Defendant returns keys, tenants are not the prevailing party entitled to attorney fees under the lease or statute.



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- Toxic Mold Exposure Cases

- Asserted as a defenses or counterclaim to an action for possession.
- Insurance Policy and Coverage

- Writs of Possession

- Residential versus Commercial

- Questions?



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County Court Updates – Jurisdiction, Practice Tips and Recent Caselaw  
By Thomas D. Oates, Esq.

OUTLINE  
(for CLE application)  
(Course materials will include additional information)

50 Minutes

A. New County Court Jurisdiction

1. Review of recent legislation affecting the county court jurisdiction
2. 34.01 Jurisdiction of county court.
  - (1) County courts shall have original jurisdiction:
    - (a) In all misdemeanor cases not cognizable by the circuit courts.
    - (b) Of all violations of municipal and county ordinances.
    - (c) Of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:
      1. If filed on or before December 31, 2019, the sum of \$15,000.
      2. If filed on or after January 1, 2020, the sum of \$30,000.
      3. If filed on or after January 1, 2023, the sum of \$50,000.
    - (d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.
3. This is the first change in county court jurisdiction amounts since 1992.

Adjusted for inflation the 1992 \$15,000 limit would be \$26,822.03 in today's dollars.
4. The amendments to the jurisdiction of a court made by the bill apply with respect to the date of filing the cause of action, regardless of when the cause of action accrued.
5. Does not affect small claims rules.
  - a. County court operating under a small claims procedures.
  - b. Continues to be claims less than \$5000 since 1997
6. **Filing Fees**—The bill adjusts the filing fees in sections 28.241 and 34.041, Florida Statutes, with the intent to maintain the current applicable filing fees and their statutory distribution to various funds, based on the case's monetary value. Specifically, effective January 1, 2020, although the county courts will now have jurisdiction over cases demanding between \$15,000 and \$30,000, the current circuit court filing fee of \$395 will still apply based on the amount demanded. Likewise, although circuit courts will now have appellate jurisdiction over cases

demanding between \$15,000 and \$30,000, the current district court of appeal filing fee of \$400 will continue to apply based on the amount demanded.

7. Concerns:
  - a. Could divert thousands of civil cases from Circuit to County Court.
  - b. Auto repossessions, credit card debt cases.
  - c. Regional Order for assignment of cases by zip.
  - d. Regional court house are unequipped for a lot of additional traffic, parking, large trials, etc.
  
8. Benefits:
  - a. Counterclaims were used to transfer venue.
  - b. Commercial tenancies that exceeded disputed amounts in excess of \$15,000 are now safe up to the new limits.
  
9. Appeals – Circuit Court still have appellate jurisdiction over the county court
  - a. for any order declaring a statute or constitutional provision invalid
  - b. Or for certifying a question of great public importance.
  - c. Review of a County to Circuit appeal is handled by a writ of cert to the DCA.
  
10. What else may be coming?
  - a. The senate’s legislative analysis indicates that there may be a change coming to the small claims amounts.
  
  - b. Zip code filing - Rules requiring filing of actions for possession according to zip code of the property; similar to the order requiring the filing of cases in the satellite closest to the filing attorney.
  
11. County to Circuit Appeals
  - a. Administrative Order – Assigning a three judge panel.
    - i. Seems to be working
    - ii. Email address for issues
    - iii. Used to be you would email the chief judge
  
  - b. Appeals for possession cases are without prejudice and therefore you just file again.

## B. Practice Tips

1. Failure to post rent into the Court registry *as it becomes due*

- a. § 83.60(2) requires payment of the accrued rent alleged in the complaint, and all rent as it accrues, into the court registry.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes **any defense other than payment**, including, but not limited to, the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating.

- b. § 83.60(2) was held constitutional in *Karsteter v. Graham Companies*, 521 So. 2d 298 (Fla. 3d DCA) rev. denied, 529 So. 2d 694 (Fla.1988).
- c. *Stanley v. Quest Intern. Inv., Inc.*, 50 So.3d 672 (Fla. 4th DCA 2010) affirmed default judgment of eviction holding that residential tenant was required to deposit the undisputed rent into the court registry in order to raise defense of defective three-day notice, despite tenant's contention that a proper three-day notice was a condition precedent to landlord's removal action. Notice requirement was unnecessary to establish subject matter jurisdiction and statute defining tenant's responsibilities in a lawsuit with LL made failure to pay rent into the court registry an absolute waiver of all defenses other than payment.
- d. *First Hanover v. Vasquez*, 848 So. 2d 1188, (Fla. 3d DCA 2003) held that despite T's fraud in the inducement claim, T is required to deposit rent as a condition of remaining in possession, "irrespective of their defenses and counterclaims."
- e. *Park Adult Residential Facility, Inc. v. Dan Designs, Inc.*, 36 So.3d 811, (Fla. 3d DCA 2010) Default was held to be appropriate in a commercial lease under § 83.232(5) even where the failure to deposit was not the defendant's fault; "Although we may have 'rachmones' for Tenant, see *Lerner v. Brill*, 608 So.2d 519 (Fla. 3d DCA 1992), the law is the law. It is not our job to carve exceptions into an otherwise clear and imperative statute."
- f. *Stetson Management Co., Inc. v. Fiddler's Elbow, Inc.*, 18 So.3d 717 (Fla. 2d DCA 2009). Under the mandatory terms of §83.232(5), the trial court lacked discretion to stay the final judgment of possession upon "good cause" where commercial tenant had failed to deposit accrued rent and landlord was entitled to immediate possession of the property.

g. Other Recent Reported Decisions

C. Discussion of Various Eviction and Possession Reported Cases

- a. ***Keeota Realty, Inc. v. Hogan*** – 17<sup>th</sup> Judicial Circuit - Judge Ellen Feld
  - i. Court finds that Plaintiff is not an active corporation having been dissolved ten years prior and therefore lacks standing to bring a cause of action for eviction based on non-payment of rent.
  - ii. Legal aid case.
  - iii. Plaintiff may have argued that its corporate status was irrelevant if the action for possession was in furtherance of winding up its affairs as if to sell the property, etc.
  
- b. ***Garden Isles Apartments 2, Inc. v. Aucella*** – 17<sup>th</sup> Circuit Judge Florence Barner
  - i. Plaintiff's complaint to evict occupants from a cooperative apartment was dismissed for lack of subject matter jurisdiction.
  - ii. Any guesses on the reasoning?
  - iii. Legal Aid case
  - iv. This case involved a proprietary lease on a cooperative apartment and as the lessee of the coop, the Defendant had ownership in the property and therefore the Plaintiff's action does not fall within Chapter 83.
  
- c. ***Bonnie Altro Cohen v. Costell*** – 17<sup>th</sup> Circuit Appellate Division – Trial Judge Jill Levy, Appellate Panel Judges Levenson, Pearlman and Powell.
  - i. Plaintiff's complaint for eviction was answered with a motion to quash for improper service of process. The trial court enters an order requiring Defendant to post rent to the court registry and after Defendant's failure to do so, the court enters a default in favor of Plaintiff.
  - ii. Circuit court reverses and remands
  - iii. Lack of personal jurisdiction.
  - iv. On a defense alleging lack of service of process / lack of personal jurisdiction it is the Plaintiff's burden to prove proper service.
  - v. Service under Chapter 47 – the return of service has a presumption of correctness so long as it appears complete on its face.
  - vi. Make sure the mail out copies are done by the clerk's office.
  - vii. Fees were granted to Appellant from the appeal conditioned on Appellant prevailing in the trial court.
  
- d. ***Miami Solar Management Corp. v. Hernandez*** – 11<sup>th</sup> Juridical Circuit in and for Miami Dade County – Judge Tanya Brinkley.



- i. Seven day notice to cure and thirty day notice to quit were fatally defective for failing to advise homeowner of the specific rule violations and code violations allegedly committed. Complaint dismissed without leave to amend.
  - ii. Chapter 723 Mobile Home Park –
  - iii. Notices – all my notices follow the same general rules:
    - 1. Your lease says ....
    - 2. You are presently in default of your lease for the following noncompliance.
    - 3. You can remedy this material breach by doing the following
    - 4. You must remedy all the material breaches in XX days.
    - 5. If the same or similar material breach occurs again in the next 12 months, your tenancy will be terminated immediately without further notice and an action for possession will be filed against you.
- e. ***Suarez v. Valladolid*** – 11<sup>th</sup> Judicial Circuit in and for Miami Dade County – Judge Lawrence D. King.
- i. Where a landlord owes fees to a homeowner’s association, which has demanded that tenant pay rent to association, only the association may bring eviction action against tenant. Landlord’s complaint for eviction is dismissed without prejudice to file a new complaint when debt to the association has been paid.
- f. ***Charnesky v. Orefice*** – 7<sup>th</sup> Judicial Circuit in and for Volusia County
- i. Three day notice was defective where notice contained no proof of service, demanded payment on a weekend, and did not contain landlord’s name, address or telephone number. Further, action must be brought under some legal theory other than non payment of rent because the Court determined previously that there was an agreement to pay rent of \$0 per month.
  - ii. This is sort of an aboration.
  - iii. I see all sorts of strange opinions about substantial compliance with the three day notice section.
    - 1. Cannot claim amounts other than rent without magic language
    - 2. No proof of service on the face of the notice.
    - 3. Notice demanded payment on a weekend or holiday
    - 4. Did not contain landlord’s name
    - 5. Landlord’s address
    - 6. Landlord’s phone number
  - iv. The moral of this story is the Plaintiff should have filed an unlawful detainer action.

- g. **Famsun Invest v. IRVI International** - 17<sup>th</sup> Judicial Circuit in and for Broward County – Judge Robert W. Lee.
  - i. Where a landlord / Plaintiff in an action for possession regains possession after filing and Plaintiff dismisses suit after Defendant returns keys, tenants are not the prevailing party entitled to attorney fees under the lease or statute.

- h. Toxic Exposure / Mold Cases

- i. Landlord's liability policies are starting to exclude any coverage
  - ii. Alt. they have a very small sublimit
  - iii. Have the tenant provide a renter's policy naming landlord as an additional insured.

- D. Writ of possession for commercial versus residential.

Sheriff's department is still the weak link  
Used to be expediated service of process.

- E. Q&A – Discussion of various issues raised by the participants

Select Year:

## The 2019 Florida Statutes

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Title V  
JUDICIAL BRANCH

Chapter 34  
COUNTY COURTS

[View Entire Chapter](#)

**CHAPTER 34**  
**COUNTY COURTS**

- 34.01 Jurisdiction of county court.
- 34.011 Jurisdiction in landlord and tenant cases.
- 34.017 Certification of questions to district court of appeal.
- 34.021 Qualifications of county court judges.
- 34.022 Number of county court judges for each county.
- 34.031 Clerk.
- 34.032 Power of clerk to appoint deputies.
- 34.041 Filing fees.
- 34.045 Cost recovery; use of the county court for ordinance or special law violations.
- 34.07 Sheriff to be executive officer.
- 34.08 Compensation of sheriff.
- 34.13 Method of prosecution.
- 34.131 To be open for voluntary pleas of guilty.
- 34.161 Persons convicted in county court allowed 48 hours to pay fine before being worked.
- 34.171 Salaries of bailiffs.
- 34.181 Branch courts.
- 34.191 Fines and forfeitures; dispositions.

**34.01 Jurisdiction of county court.—**

<sup>1</sup>(1) County courts shall have original jurisdiction:

- (a) In all misdemeanor cases not cognizable by the circuit courts.
- (b) Of all violations of municipal and county ordinances.
- (c) Of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which

the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:

1. If filed on or before December 31, 2019, the sum of \$15,000.
2. If filed on or after January 1, 2020, the sum of \$30,000.
3. If filed on or after January 1, 2023, the sum of \$50,000.

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

By February 1, 2021, the Office of the State Courts Administrator shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must make recommendations regarding the adjustment of county court jurisdiction, including, but not limited to,

IN THE CIRCUIT COURT OF THE SEVENTEENTH  
JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

*Administrative Order No. 2019-13-CO*

**ADMINISTRATIVE ORDER ESTABLISHING LOCATIONS FOR FILING  
OF COUNTY CIVIL ACTIONS AND THE HEARING OF SMALL CLAIMS  
CIVIL ACTIONS**

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(a) Florida Rule of Judicial Administration 2.215 (b) (3) states the Chief Judge shall “develop an administrative plan” and “shall, considering available resources, ensure the efficient and proper administration of all courts within [this] circuit.”

(b) The Broward County Board of County Commissioners has established four (4) courthouses in Broward County. The Broward County Central Judicial Complex is located at 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301 (“Central Courthouse”). The North Regional Courthouse is located at 1600 West Hillsboro Boulevard, Deerfield Beach, Florida 33442 (“North Regional Courthouse”). The South Regional Courthouse is located at 3550 Hollywood Boulevard, Hollywood, Florida 33021 (“South Regional Courthouse”). The West Regional Courthouse is located at 100 North Pine Island Road, Plantation, Florida 33324 (“West Regional Courthouse”). For purposes of this Administrative Order, the Central Courthouse, North Regional Courthouse, South Regional Courthouse, and West Regional Courthouse will collectively be referred to as “the “Broward County Courthouses.”

(c) County Court civil actions are assigned to the Broward County Courthouses, and a fair and equitable distribution of the caseload is required.

(d) In accordance with the authority vested in the chief judge by Florida Rule of Judicial Administration 2.215, it is hereby **ORDERED**:

(1) Effective **Monday, February 11, 2019**, all County Court civil division cases, excluding civil infractions that are assigned to a Traffic Hearing Officer, shall be filed and assigned pursuant to the zip code designations provided below:

**A. COURTHOUSE LOCATIONS**

(2) **WEST REGIONAL COURTHOUSE** – **100 North Pine Island Road, Plantation, Florida 33324**, shall be assigned all County Court civil division cases within zip codes:

33313	Lauderhill
33314	Fort Lauderdale/Davie
33317	Plantation
33318	Plantation
33319	Sunrise/Tamarac/Lauderhill
33321	Fort Lauderdale/Tamarac
33322	Plantation
33324	Davie/Plantation
33325	Davie/Sunrise
33326	Weston
33327	Weston
33328	Cooper City/Davie
33329	Davie
33330	Davie/Southwest Ranches
33331	Weston/Southwest Ranches
33332	Weston/Southwest Ranches
33345	Sunrise
33351	Sunrise/Lauderhill

(3) NORTH REGIONAL COURTHOUSE – 1600 West Hillsboro Boulevard, Deerfield Beach, Florida 33442, shall be assigned all County Court civil division cases within and zip codes:

33060	Pompano Beach
33061	Pompano Beach
33062	Pompano Beach/Lauderdale-by-the-Sea
33063	Margate/Coconut Creek
33064	Hillsboro Beach/Lighthouse Point/Pompano Beach
33065	Coral Springs
33066	Coconut Creek
33067	Coral Springs/Parkland
33068	Margate/North Lauderdale
33069	Pompano Beach
33071	Coral Springs
33073	Coconut Creek
33076	Coral Springs/Parkland
33077	Coral Springs
33093	Margate
33309	Fort Lauderdale/Tamarac
33441	Deerfield Beach

33442 Deerfield Beach  
ALL ZIP CODES OF PALM BEACH COUNTY

(4) SOUTH REGIONAL COURTHOUSE – 3550 Hollywood Boulevard, Hollywood, Florida 33021, shall be assigned all County Court civil division cases within zip codes:

33008	Hallandale Beach
33009	Hallandale Beach
33020	Hollywood
33021	Hollywood
33023	Miramar/West Park/Pembroke Park
33024	Cooper City/Hollywood/Pembroke Pines
33025	Miramar
33026	Cooper City/Pembroke Pines
33027	Miramar
33028	Pembroke Pines
33029	Pembroke Pines
33081	Hollywood
33082	Pembroke Pines
33084	Pembroke Pines

ALL ZIP CODES OUTSIDE OF THE TRI-COUNTY (Broward County, Miami-Dade County, and Palm Beach County) AREA

(5) CENTRAL COURTHOUSE – 201 S.E. 6th Street, Fort Lauderdale, Florida 33301, shall be assigned all County Court civil division cases within zip codes:

33004	Dania Beach
33019	Hollywood
33301	Fort Lauderdale
33302	Fort Lauderdale
33303	Fort Lauderdale
33304	Fort Lauderdale
33305	Fort Lauderdale/Wilton Manors/Lazy Lake
33306	Fort Lauderdale/Sea Ranch Lakes
33308	Fort Lauderdale/Lauderdale-by-the-Sea
33310	Fort Lauderdale
33311	Fort Lauderdale/Oakland Park
33312	Fort Lauderdale/Dania Beach

33315 Fort Lauderdale  
33316 Fort Lauderdale  
33323 Sunrise  
33334 Fort Lauderdale/Oakland Park/Wilton Manors  
33335 Fort Lauderdale  
33394 Fort Lauderdale  
ALL ZIP CODES OF MIAMI-DADE COUNTY

### **B. SPECIAL INSTRUCTIONS**

(6) Except as provided for in paragraph (1) above, all County Court civil division cases shall be filed based upon the zip code of the plaintiff unless represented by counsel, in which case, the primary street address of the physical office location of the attorney shall be utilized.

(7) Upon the filing of a new County Court civil division case, the Clerk of the Court shall review the filing and ensure it is filed in and assigned to the appropriate courthouse location as set forth herein.

(8) A zip code listed in this Administrative Order may cover cities or locations other than those specifically noted herein. Regardless of the city or location designated on the filing, the zip code listed on the filing shall control and the action filed in and assigned to the appropriate courthouse location as set forth herein.

(9) An attorney whose primary street address (excluding a post office box location) of his or her physical office location is not located in Broward County may not circumvent the application of this Administrative Order by retaining local counsel to cover his or her hearing, nor by opening a satellite office or post office box/mail drop that is not the attorney's primary street address of his or her physical office location.

(10) All County Court civil division cases filed absent a zip code shall be assigned to the Central Courthouse and may be reassigned pursuant to the provisions of this Administrative Order.

(11) If a County Court civil division case is not filed in accordance with this Administrative Order, the presiding judge on his or her own motion or upon the duly filed motion of either party can transfer the action to the appropriate courthouse location. The presiding judge may, *sua sponte*, impose sanctions, as permitted by law, for failure of the filer to comply with this Administrative Order.

### **C. HEARING OF SMALL CLAIMS CIVIL ACTIONS**

(12) The small claims dockets shall be set by the Clerk of the County Court as follows:

(a) The Clerk of the Courts shall assign small claims cases to all County Court civil divisions.

(b) Small claims cases shall be assigned to dockets as follows:

(i) Central Courthouse small claims dockets shall continue to be set on Tuesdays with dockets at 9:00 a.m. and 1:30 p.m. All personal injury protection ("PIP") and other insurance cases shall be set on the 1:30 p.m. docket. The Administrative Judge for the County Court shall provide the Clerk of the Courts with the schedule of when the County Court civil judges located at the Central Courthouse will be hearing small claims cases so that the cases may be assigned to the appropriate division and may also make necessary adjustments to the number of cases set per docket.

(ii) Satellite courthouse locations (North Regional Courthouse, South Regional Courthouse, and West Regional Courthouse) small claims cases shall be equally distributed to the County Court judges and the dockets set as directed by the judge assigned to the county civil division unless otherwise directed by the Administrative Judge of the County Court.

(13) This Administrative Order vacates and supersedes 2019-7-CO on Monday, February 11, 2019.

**DONE AND ORDERED** at Fort Lauderdale, Broward County, Florida, this 8th day of February, 2019.

/s/Jack Tuter  
Jack Tuter, Chief Judge



**25 Fla. L. Weekly Supp. 760b**

**Online Reference: FLWSUPP 2508KHOG**

**Landlord-tenant -- Eviction -- Corporate plaintiff lacked status to bring suit where its corporate status was inactive**

KEEOTA REALTY, INC., Plaintiff, v. KIMBERLY HOGAN, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COWE 17-11050 (83). July 5, 2017. Ellen Feld, Judge. Counsel: Patrice Paldino, Legal Aid Service for Broward County, for Defendant.

**FINAL JUDGMENT OF DISMISSAL**

THIS CAUSE came to be heard on June 30, 2017, upon conclusion of a Final Hearing on Tenant Eviction and the Court having taken testimony of the parties and their witnesses and having heard argument of Counsel, hereby finds as follows:

1. Plaintiff filed a Complaint for Tenant Eviction on May 17, 2017, alleging Defendant failed to pay the rent due for May 1, 2017. Defendants filed responsive pleadings and motions on May 22, 2017, and amended pleadings and motions on June 1, 2017.
2. A Final Hearing was set for June 30, 2017.
3. The Court finds that, Keeota Realty, Inc. is not an active corporation in the State of Florida since September 14, 2007.
4. The Court finds that Pursuant to Fla. Stat. 607.1622(8), Plaintiff lacked standing to bring the present suit.

**THEREUPON**, the Court hereby **ORDERS AND ADJUDGES** as follows:

- a) Plaintiff's Complaint for Tenant Eviction is hereby dismissed for lack of standing to bring suit in Florida based upon the corporate status as inactive.

\* \* \*

26 Fla. L. Weekly Supp. 145a

Online Reference: FLWSUPP 2602AUCE

**Landlord-tenant -- Eviction -- Jurisdiction -- Action against record owner of premises subject to proprietary lease in cooperative apartment not within scope of Chapter 83 -- Motion to dismiss granted**

GARDEN ISLES APARTMENTS 2, INC., A Florida not-for-profit corporation, Plaintiff, vs. JACQUELINE A. AUCELLA, UNKNOWN TENANT #1 AND UNKNOWN TENANT #2, Defendants. County Court, 17th Judicial Circuit in and for Broward County. Case No. COCE 17-002430 (54). April 20, 2018. Florence Taylor Barner, Judge. Counsel: Patrice Paldino, Legal Aid Service of Broward County, Inc., Plantation, for Defendant.

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE**

**FINAL JUDGMENT AND FOR DISMISSAL DUE**

**TO LACK OF SUBJECT MATTER JURISDICTION**

THIS CAUSE, having come before the Court on April 19, 2018 on the Defendant's Motion For to Set Aside Final Judgment and for Dismissal Due to Lack of Subject Matter Jurisdiction, and the Court having heard argument of counsel, reviewed the Motion and the court file hereby finds, orders and adjudges :

1. Plaintiff filed a complaint to evict the residents of the subject premises due to allegations of misconduct.
2. The premises subject of this matter involve a proprietary lease in a co-operative apartment.
3. Ms. Aucella is the record owner of the premises according to the Broward County Property Appraiser and receives a homestead exemption on the premises.
4. This is not a landlord/tenant relationship and therefore does not fall within Chapter 83. As such, this court does not have jurisdiction over this matter.
5. The Motion is GRANTED. This matter is dismissed ~~with prejudice~~.

\* \* \*

26 Fla. L. Weekly Supp. 558a

Online Reference: FLWSUPP 2607COHE

**Landlord-tenant -- Eviction -- Trial court erred in requiring tenant to deposit rent into court registry and entering default final judgment based on her failure to do so before ruling on tenant's motion to quash service**

BONNIE ALTRO COHEN, Appellant, v. BRIAN ADAM COSTELL, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE15-018980 (AP). L.T. Case No. CONO15-005983. August 16, 2018. Appeal from the County Court of the Seventeenth Judicial Circuit, Broward County, Jill K. Levy, Judge. Counsel: Scott M. Behren, Behren Law Firm, Weston, for Appellant. Brian Adam Costell, MD., Pro Se, Parkland, Appellee.

**OPINION**

(PER CURIAM.) Bonnie Altro Cohen (“Cohen” or “Appellant”) appeals a Default Final Judgment for Removal of Tenant entered in favor of Brian Adam Costell (“Costell” or “Appellee”). Having carefully considered the brief, the record, and the applicable law, this Court dispenses with oral argument and the default judgment is hereby REVERSED and the case REMANDED as set forth below:

In the proceedings below, Costell filed a complaint for tenant eviction on July 24, 2015. On July 31, 2015, Cohen filed a Motion to Quash Service, alleging that service of process upon her was improper, and not in compliance with section 48.183, Florida Statutes. Before ruling on the Motion to Quash, the trial court entered an order requiring Cohen to post past due rent into the court registry. Cohen failed to post the past due rent into the court registry and the trial court eventually entered a Default Final Judgment for Removal of Tenant against Cohen. Cohen timely appealed.

This Court reviews the decision of personal jurisdiction *de novo*. See Anthony v. Gary J. Rotella & Associates, P.A., 906 So. 2d 1205 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1740b]; see also Wendt v. Horowitz, 822 So. 2d 1252 (Fla. 2002) [27 Fla. L. Weekly S572a]. “The standard of review of a trial court's application and interpretation of Florida law is *de novo*.” Anthony v. Gary J. Rotella & Assocs., P.A., 906 So. 2d 1205, 1207 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1740b] (citing Gilliam v. Smart, 809 So. 2d 905, 907 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D622a]). “The standard of review for the issue of personal jurisdiction over a non-resident is also *de novo*.” *Id.* (citing Greystone Tribeca Acq., L.L.C. v. Ronstrom, 863 So. 2d 473, 475 (Fla. 2d DCA 2004) [29 Fla. L. Weekly D267a]).

“The burden of proving the validity of the service of process is on the plaintiff.” Anthony, 906 So. 2d at 1207. “Absent strict compliance with the statutes governing service of process, a court lacks personal jurisdiction over a defendant.” *Id.* “Statutes that govern service of process are to be strictly construed to insure that a defendant receives notice of the proceedings.” *Id.* Cohen asserted in her Motion to Quash Service and in her Affidavit filed in support of this motion that service was improper, and therefore that the trial court did not have personal jurisdiction. Before ruling on Cohen's Motion to Quash however, the trial court ordered Cohen to deposit monies into the court registry. The trial court erred in not ruling on the Motion to Quash, thereby establishing whether service had in fact been proper under section 48.183, Florida Statutes, before entering a Default Final Judgment for Removal of Tenant.

“A total lack of service of process renders a judgment void, not voidable[,]” while “[d]efective service of process, renders a judgment voidable.” *Kathleen G. Kozinski, P.A. v. Phillips*, 126 So. 3d 1264, 1268 (Fla. 4th DCA 2013) [38 Fla. L. Weekly D2410b], *see also Sewell v. Colee*, 132 So. 3d 1186 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D206a]. When service does not comply with section 48183, Florida Statutes, and there are allegations in an affidavit supporting that service was improper, courts have held that remanding for an evidentiary hearing as to the allegations of defective or improper service of process is proper, as if proven, the allegations could void the judgment in question. *Sewell*, 132 So. 3d at 1187. “[A]llegations of defective service of process in [a] Verified Motion to Quash Service of Process, if proven, could void the judgment in question.” *Id.*

Absent strict compliance with service of process requirements, a trial court lacks personal jurisdiction over a defendant. *Anthony*, 906 So. 2d at 1207. As such, the trial court should have ruled on Cohen's Motion to Quash Service, as there is no proof that service was proper in the Record on Appeal, and both the Motion to Quash filed with the trial court and the Affidavit in support of the motion indicate that service was improper. Until service was determined to be proper, the court did not have personal jurisdiction over Cohen. Cohen was entitled to a determination regarding her Motion to Quash Service, establishing whether service had in fact been proper under section 48.183, Florida Statutes, before the trial court required her to deposit money into the court registry and entered a Default Final Judgment for Removal of Tenant when she did not deposit such monies.

Accordingly, the final default judgment in favor of Appellee is hereby REVERSED and this case is REMANDED to the trial court for further proceedings consistent with this opinion. Appellant's Motion for Appellate Attorneys' Fees is hereby GRANTED, as to fees, conditioned on Appellant prevailing in the trial court. (LEVENSON, PERLMAN, and POWELL, JJ., concur.)

\* \* \*

**27 Fla. L. Weekly Supp. 80b**

**Online Reference: FLWSUPP 2701LHER**

**Mobile home parks -- Eviction -- Notice -- Defects -- Seven-day notice to cure and thirty-day notice to quit were fatally defective for failing to advise mobile homeowner of specific rule violations and code violations allegedly committed -- Complaint dismissed without leave to amend**

MIAMI SOAR MANAGEMENT CORP., Plaintiff, v. LUZ HERNANDEZ, and all others in possession, Defendants. County Court, 11th Judicial Circuit in and for Miami-Dade County, Civil Division. Case No. 2018-24744-CC-05. February 27, 2019. Tanya Brinkley, Judge. Counsel: Martin Feldman, Fisher & Feldman, P.A., Hollywood, for Plaintiff. Nejla Calvo, Legal Services of Greater Miami, Inc., Miami, for Defendant.

**ORDER DISMISSING COMPLAINT**

**FOR EVICTION WITHOUT LEAVE TO AMEND**

THIS CAUSE having come before me, one of the Judges of the above-styled Court, upon the Defendant's Motion to Dismiss Complaint for Eviction on February 14, 2019, and after reviewing the file and hearing the argument of counsel for Plaintiff and for Defendant, the Court rules as follows:

1. This action was filed to evict a mobile homeowner from a mobile home park and is governed by Chapter 723 of the Florida Statutes. *See Fla. Stat. 723.061.*
2. On November 19, 2018, Plaintiff filed its Complaint for Eviction for Failure to Comply with Rules and Regulations (the "Complaint").
3. The Plaintiff gave the Defendant two distinct notices:
  - a. A "Notice to Cure Violation" dated September 20, 2018 (hereinafter the "7-Day Notice to Cure"), which demanded that the mobile homeowner either cure the alleged violations within 7 days or vacate the premises on or before October 2, 2018.
  - b. A "Notice to Quit" dated October 5, 2018 (hereinafter the "30-Day Notice to Quit"), which demanded that the mobile homeowner vacate the premises on or before November 9, 2018.
4. Fla. Stat. § 723.061(1)(c), governs evictions for alleged violations of properly promulgated park rules and regulations, rental agreement provisions, or sections of Ch. 723 Fla. Stats.
5. Pursuant to Fla. Stat. § 723.061(1)(c)(2):

*"for a second violation of the same properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months, the mobile home park owner may terminate the tenancy if she or he has given the mobile home owner, tenant, or occupant written notice, within 30 days after the first violation, which specified the actions of the mobile home owner, tenant, or occupant that caused the violation and gave the mobile home owner, tenant, or occupant 7 days to correct the noncompliance. The mobile home*

owner, tenant, or occupant must have received written notice of the ground upon which she or he is to be evicted at least 30 days prior to the date on which she or he is required to vacate. . .” (emphasis added)

6. Here, Plaintiff's 7-Day Notice to Cure dated September 20, 2018, does not comply with Fla. Stat. § 723.061(1)(c)(2) because it does not specify the actions of the mobile homeowner that caused the alleged violations and is too vague for the homeowner to know how to correct the alleged noncompliance.

7. Furthermore, Plaintiff's 30-Day Notice to Quit dated October 5, 2018, does not comply with Fla. Stat. § 723.061(1)(c)(2) because it does not specify the actions of the mobile homeowner that caused the second alleged violation of the same properly promulgated rule or regulation, rental agreement provision or Ch. 723 Fla. Stats., leading to the termination of the tenancy.

8. Plaintiff's 7-Day Notice to Cure dated September 20, 2018 states, in part, as follows:

#### **NOTICE TO CURE VIOLATION**

You are hereby notified that, within the last thirty (30) days, you have violated a rule, regulation or lease provision of this mobile home park or a section of Chapter 723, Florida Statute \_\_\_\_\_ (Cite Rule or Statute).

Specifically, you have: FAILED TO COMPLY WITH THE FOLLOWING RULE(S)  
#1-OBLIGATIONS OF TENANTS/SUBSECTION(S)(a)(b)(c) #9 ALTERATIONS #10  
SITE CARE #21 APPEARANCE OF MOBILE HOME SITE/SUB-SECTION(S)(a)(b)

MOBILE HOME PARK MAINTENANCE STANDARDS (MIAMI-DADE) MIAMI-  
DADE FIRE CODE(S)

(State the circumstances constituting the violation) HOARDING, CONCRETE YARD,  
EXTERIOR OF TRAILER PLASTER

9. Plaintiff's 30-Day Notice to Quit dated October 5, 2018 states, in part, as follows:

#### **NOTICE TO QUIT**

You are hereby notified that you are required to vacate the premises located at the above-captioned address because you have committed a second violation of a park rule, regulation, lease provision or section of Chapter 723, Florida Statute, within one year of the first violation by engaging in the following: FAILURE TO COMPLY WITH NOTICE TO CURE VIOLATION(S) #1-OBLIGATIONS OF TENANTS/SUB-SECTION(S)(a)(b)(c) #9 ALTERATIONS #10 SITE CARE #21 APPEARANCE OF MOBILE HOME SITE/SUB-SECTIONS(S)(a)(b) MOBILE HOME PARK MAINTENANCE STANDARDS (MIAMI-DADE) MIAMI-DADE FIRE CODES.

10. Plaintiff's 7-Day Notice to Cure and 30-Day Notice to Quit are vague and conclusory. For example, the Notices state that the Defendant violated “Miami-Dade Fire Code(s)” but does not cite to any specific provision of the fire code.

11. Plaintiff's 7-Day Notice to Cure and 30-Day Notice to Quit are fatally deficient on their faces, due to the Plaintiff's failure to advise the Defendant of the specific rule violations and code violations

allegedly committed. See *Ureda v. Graham*, 18 Fla. L. Weekly Supp. 623a (Broward Cty Court 2011); *Broward Community Development Corp. v. Shirley*, 9 Fla. L. Weekly Supp. 488a (Broward Circuit Court 2002)(holding that the Notice upon which Plaintiff relies is not specific enough to meet the statutory requirements as to what, when, whom, and where. Thus, Plaintiff's Complaint for Tenant Eviction is dismissed with prejudice, without leave to amend because the Notice upon which the Plaintiff relied was vague and conclusory and thus fatally defective; See also *G.A. Behr v. Jones*, 7 Fla. L. Weekly Supp. 465a (Escambia Circuit Court 2000)(concluding that seven day notice was too vague and conclusory, because it lacked the dates, times, names of victims/witnesses and/or other details that would identify the incidents sufficiently to allow a defense to be raised and/or determine if all conditions precedent have been met).

12. The Plaintiff's notices are insufficient and were not specific enough to allow the Defendant to adequately prepare a defense to the eviction action.

13. As such, Plaintiff's notices are defective, and Plaintiff has failed to comply with all conditions precedent before filing the Complaint.

14. The service of a proper, non-defective notice is a condition precedent to an action for eviction. See *Investment and Income Realty v. Bentley*, 480 So.2d 219, 220 (Fla. 5th DCA 1985).

15. A statutory cause of action cannot be commenced until Plaintiff has complied with all conditions precedent. See *Ferry Morse Seed Co. v. Hitchcock*, 426 So. 2d 958 (Fla. 1983).

16. A proper and non-defective notice is a statutory condition precedent and the service of a defective notice by Plaintiff gives the Court no power to grant a mobile home park owner relief based on the defective notice. See *Cook v. Arrowhead Mobile Home Community*, 50 Fla. Supp. 2d. 26 (Fla. 3d Jud. Cir. App. 1991); *Rolling Oaks Homeowners Assn v. Dade Cty*, 492 So.2d. 686 (Fla. 3d DCA 1986); *Heritage Financial Group, Inc. d/b/a Admiral Manufactured Housing Community v. West*, 7 Fla. L. Weekly Supp. 45a (Fla. Escambia Cty. 1999); *Bennett v. Ruggiero*, 7 Fla. L. Weekly Supp. 616a (Fla. Levy Cty. 2000); *Live Oak Estates Mobile Home Park v. Bender*, 5 Fla. L. Weekly Supp. 121a (Fla. Escambia Cty. 1997); *Ariel Gardens MHP v. Wilding*, 12 Fla. L. Weekly Supp. 960a (Fla. Orange Cty. 2005).

17. Plaintiff is not granted leave to correct defective notice and amend its Complaint because termination of the tenancy is a statutory pre-requisite to an action for eviction and must be satisfied prior to filing the eviction action. *Oakridge Apartment Complex, Inc. v. Perry*, 13 Fla. L. Weekly Supp. 839c (Alachua Cty. 2006); *Live Oak Villas Mobile Home Park v. Andrews*, 5 Fla. L. Weekly Supp. 469a (Fla. Suwannee Cty. 1998).

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

1. Defendant's Motion to Dismiss Complaint for Eviction is GRANTED;
2. Plaintiff's Complaint for Eviction is dismissed WITHOUT LEAVE TO AMEND;
3. Defendant's Counterclaim remains pending;
4. The Court retains jurisdiction over the issue of attorney's fees and costs.

\* \* \*

**27 Fla. L. Weekly Supp. 82a**

**Online Reference: FLWSUPP 2701SUAR**

**Landlord-tenant -- Eviction -- Standing -- Where landlord owes fees to homeowners association, which has demanded that tenant pay rent to association, only association may bring eviction action against tenant -- Landlord's eviction complaint is dismissed without prejudice to filing new complaint when debt to association has been paid**

ENRIQUE SUAREZ, Plaintiff, v. MARIA VALLADOLID, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 19-1499-CC-26. March 18, 2019. Lawrence D. King, Judge. Counsel: Jeffrey M. Hearne, , Legal Services of Greater Miami, Inc., and Nestor Perez, Certified Legal Intern, University of <i>i>iami School of Law Tenants' Rights Clinic, for Defendant

**ORDER DISMISSING CASE**

**THIS CAUSE** came before the Court during a hearing on March 8, 2019. The Court being fully advised on the premises makes the following findings: It is undisputed that Plaintiff owes fees to his Homeowner's Association; that on December 6, 2018, the Association demanded that Defendant pay it the monthly rent; and, that as of the date of this hearing, Plaintiff's debt to the Association remains unpaid. Therefore, pursuant to Florida Statute §720.3085(8) only the Association may bring a claim for eviction against Defendant and Plaintiff has no right to bring this claim for eviction against Defendant until he becomes current with the money owed to the Association. It is --

**ORDERED and ADJUDGED** that Plaintiff's Complaint for Eviction is dismissed without leave to amend and without prejudice to filing a new eviction action, if and when Plaintiff pays his debt to the Association. The court retains jurisdiction to award attorney's fees and costs, if sought.

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**27 Fla. L. Weekly Supp. 386a**

**Online Reference: FLWSUPP 2704JCHA**

**Landlord-tenant -- Eviction -- Non-payment of rent -- Three-day notice was defective where notice contained no proof of service, demanded payment on a weekend, and did not contain landlord's name, address, or telephone number -- Further, action must be brought under some legal theory other than non-payment of rent given court's previous ruling that tenancy was based upon agreement to pay \$0 per month**

JOHN CHARNESKY, Plaintiff, v. BETSY OREFICE, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2019 13042 CODL, Division 73. June 19, 2019. A. Christian Miller, Judge. Counsel: John Charnesky, Pro Se, for Plaintiff. Michael Koch, Community Legal Services of Mid-Florida, Inc., for Defendant.

**ORDER OF DISMISSAL WITH PREJUDICE**

This cause came before the Court on the Defendant's Motion to Dismiss. Upon consideration of the Motion, and the arguments and other submissions of the parties at the hearing on June 13, 2019, the court finds as follows:

1. The Plaintiff's action in eviction was premised upon the alleged non-payment of rent.
2. At the hearing to determine rent due, based upon the evidence presented, this court determined that rent in the amount of zero dollars was due each month.
3. However, the three-day notice in this case demanded payment of \$100.00 in allegedly delinquent rent.
4. A three-day notice which demands monies other than delinquent rent is defective and fails to terminate the tenant's rental agreement. See *Cappelier v. Mahoney*, 17 Fla. L. Weekly Supp. 662a (Fla. 18th Cir. Ct. 2010); *Hanna v. Freckleton*, 11 Fla. L. Weekly Supp. 967d (Fla. 11th Cir. Ct. 2004); *Wright v. Brown*, 20 Fla. L. Weekly Supp. 700b (Fla. Orange Cty. Ct. 2013).
5. Additionally, the three-day notice was also facially defective in several respects.
6. The notice contained no proof of service rendering it defective. See *Dan v. Litt*, 14 Fla. L. Weekly Supp. 983b (Fla. Broward Cty. Ct. 2007); *Rodriguez v. Serra*, 17 Fla. L. Weekly Supp. 129a (Fla. Broward Cty. Ct. 2009).
7. The notice demanded payment on a weekend rendering it defective. See *2000 Washington, Inc., v. Coaches*, 8 Fla. L. Weekly Supp. 581b (Fla. Broward Cty. Ct. 2001); *95-45 Roosevelt Ave Corp. v. Research Sample Bank, Inc.*, 13 Fla. L. Weekly Supp. 844a (Fla. Broward Cty. Ct. 2006).
8. The notice did not contain the landlord's name rendering it defective. See *Benoit v. Wilson*, 17 Fla. L. Weekly Supp. 224a (Fla. Broward Cty. Ct. 2010); *Adkins v. Mompremier*, 17 Fla. L. Weekly Supp. 44a (Fla. Broward Cty. Ct. 2009).
9. The notice did not contain the landlord's address rendering it defective. See *Hulac v. Cox*, 19 Fla. L. Weekly Supp. 1105d (Fla. Lee Cty. Ct. 2012); *Beapot v. Mccullough*, 18 Fla. L. Weekly Supp. 296c

(Fla. Osceola Cty. Ct. 2010); Luise v. Flores, 18 Fla. L. Weekly Supp. 295b (Fla. Volusia Cty. Ct. 2010); Jasiurkowski v. Harris, 17 Fla. L. Weekly Supp. 1253a (Fla. Broward Cty. Ct. 2010).

10. The notice did not contain the landlord's phone number rendering it defective. See Greenview Apartments v. Roger, 8 Fla. L. Weekly Supp. 513a (Fla. Broward Cty. Ct. 2001); Nadeau v. Solares, 13 Fla. L. Weekly Supp. 502b (Fla. Broward Cty. Ct. 2006).

11. The Court is cognizant that the Florida legislature amended effective July 1, 2013 Sec. 83.60(1)(a) to provide that “[i]n an action by the landlord for possession of a dwelling unit based upon nonpayment of rent. . . [t]he landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.”

12. Here however, because this Court had previously ruled at a hearing to determine rent that the tenancy was based upon an agreement to pay \$0 per month, it would be impossible for the Plaintiff to cure the defective notice or to bring the action for non-payment of rent. [27 Fla. L. Weekly Supp. 385a]

13. So, while the instant action was framed and pled under an allegation of non-payment of rent, there was no basis for the Plaintiff to bring such action. That is, under the facts of this case, the court finds that the action must have been brought under some legal theory other than the non-payment of rent.

14. In this situation, it would be errant for the landlord to be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action. Accordingly, Plaintiff's Complaint must be dismissed without leave to amend. See Orozco v. Estrada, 23 Fla. L. Weekly Supp. 490a (Fla. Miami-Dade County Ct. 2015); Desha v. Smith 24 Fla. L. Weekly Supp. 238a (Fla. Manatee Cty. Ct. 2016).

Therefore, it is ORDERED AND ADJUDGED as follows:

A. Plaintiff's Complaint is dismissed with prejudice.

B. Defendant, as the prevailing party in this action, **is entitled to recover costs and attorney's fees** from Plaintiff under the prevailing party attorney's fees statute. § 83.48, Fla. Stat. and Fla. R. Civ. P. 1.420(d).

C. If the parties are unable to stipulate to the amount of fees and costs, either party may set a hearing to determine the reasonable amount of fees and costs to be awarded.

D. The Court also retains jurisdiction to determine the reasonable amount and to tax attorneys' fees and costs against the Plaintiff.

\* \* \*

**24 Fla. L. Weekly Supp. 889a**

**Online Reference: FLWSUPP 2410FAMS**

**Landlord-tenant -- Eviction -- Attorney's fees -- Prevailing party -- Voluntary dismissal -- Where landlord voluntarily dismissed eviction action after tenants vacated leased property and delivered keys to landlord's agents, tenants are not prevailing party entitled to attorney's fees under lease or statute**

FAMSUN INVEST LLC, Plaintiff, vs. IRVI INTERNATIONAL LLC, et al., Defendants. County Court, 17th Judicial Circuit in and for Broward County. Case No. 15-17757 COCE (53). December 9, 2016. Robert W. Lee, Judge. Counsel: Mark J. LaBate, Fort Lauderdale, for Plaintiff. Alex P. Rosenthal, Weston, for Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR  
ENTITLEMENT TO ATTORNEY'S FEES

THIS CAUSE came before the Court on December 9, 2016 for hearing of the Defendant's Motion for Attorney's Fees [entitlement only], and the Court's having reviewed the Motion, the entire Court file, and the relevant legal authorities; having heard argument; having made a thorough review of the matters filed of record; and having been sufficiently advised in the premises, the Court finds as follows:

This is an eviction action involving commercial property. The Plaintiff filed a voluntary dismissal after the Defendants vacated the property and delivered the keys to the Plaintiff's agents. The Defendants then timely moved for an award of attorney's fees under both the lease and the statute, claiming that it was the prevailing party.

The Court finds that the instant case falls outside that general rule that when a plaintiff voluntarily dismisses an action, the defendant is the prevailing party. The rule is not without exceptions. In this case, the Plaintiff obtained the relief it sought -- the Defendants vacated the premises after initiation of the lawsuit and then delivered the keys to the Plaintiff's agents, which triggered the Plaintiff to file its voluntary dismissal. Defendant's actions effectively rendered moot Plaintiff's lawsuit, but in no way can be said that the Defendant "prevailed," much less "substantially prevailed." *Kelly v. BankUnited FSB*, 159 So.3d 403, 406-07 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D684a]; *Tubbs v. Mechanik Nuccio Hearne & Wester, P.A.*, 125 So.3d 1034, 1041-42 (Fla. 3d DCA 2013) [38 Fla. L. Weekly D1611d]; *Padow v. Knollwood Club Ass'n*, 839 So.2d 744, 745-46 (Fla 4th DCA 2006) [28 Fla. L. Weekly D123d]. As was the case in *Kelly*, the case of *Alhambra Homeowners Ass'n v. Assad*, 943 So.2d 316 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D3118a] is clearly distinguishable. To rule otherwise would, in the Court's view, encourage gamesmanship. Accordingly, it is hereby

ORDERED and ADJUDGED that the Defendant's Motion for Entitlement to Attorney's Fees is DENIED.

\* \* \*

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

*Administrative Order 2019-6-Gen*

**ADMINISTRATIVE ORDER UPDATING PROCEDURES FOR CIRCUIT  
COURT APPEALS AND PETITIONS FOR EXTRAORDINARY WRITS**

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(a) Pursuant to Article V, section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice.

(b) Florida Rule of Judicial Administration 2.215(b)(3) states the chief judge “shall, considering available resources, ensure the efficient and proper administration of all courts within [this] circuit.”

(c) The Circuit Court is charged with the responsibility of hearing and ruling on appeals and petitions for extraordinary writs from the County Court and local administrative bodies. To ensure the proper use of judicial resources and efficient disposition of such cases, it is necessary to update the Circuit’s appellate procedures.

(d) In accordance with the authority vested in the chief judge by Article V, section 2(d) of the Florida Constitution, section 43.26, Florida Statutes, and Florida Rule of Judicial Administration 2.215, it is hereby **ORDERED**:

**(1) Assignment of Civil Appeals and Petitions for Extraordinary Writs.**

(a) All county civil appeals and appeals from local administrative bodies to the Circuit Court shall be assigned by the Clerk of the Court (“Clerk”) to Division AP.

(b) Petitions for writs seeking certiorari, habeas corpus, mandamus, quo warranto, or prohibition filed with the Clerk, including any petition arising out of a county criminal case, shall be assigned to Division AW.

(c) Petitions for extraordinary writs relating to a circuit criminal case are not to be assigned to Division AW.

- i. The Clerk shall immediately forward all petitions for extraordinary writs relating to a circuit criminal case to the assigned division consistent with the Clerk's protocol for notifying the Court as to the filing of post-conviction motions in circuit criminal cases.
- ii. The Clerk shall file the petition as a docket entry in the circuit criminal case.

(2) **Assignment of Criminal Appeals.** All county criminal appeals and civil traffic infraction appeals to the Circuit Court shall be assigned by the Clerk to Division AC.

(3) **General Procedures for Circuit Appeals.**

(a) There shall be a three-judge panel of circuit court judges to consider all circuit civil appeals and a separate three-judge panel to consider all circuit criminal appeals. Petitions for extraordinary writs will be assigned to Division AW, but the Administrative Judge of the Circuit Civil Division may transfer the petition to the circuit criminal panel or general circuit civil division, when appropriate based on the nature of the petition.

(b) The Administrative Judge of the Circuit Civil Division shall assign three judges to serve on the circuit civil appellate panel and shall appoint one of the three judges as the presiding judge of the panel. The Administrative Judge of the Circuit Criminal Division shall assign three judges to serve on the circuit criminal appellate panel and shall appoint one of the three judges as the presiding judge of the panel. The term of the appointment shall be for six (6) months, unless extended by the Administrative Judge of the Circuit Civil Division or Administrative Judge of the Circuit Criminal Division, as appropriate, or the Chief Judge. Assignments shall be made by memorandum.

(c) If a judge assigned to a panel recuses himself or herself, the Administrative Judge of the Circuit Civil Division or Administrative Judge of the Circuit Criminal Division, as appropriate, or the Chief Judge, shall assign a judge to be the third member of the panel. Assignments shall be made by a memorandum.

(d) The presiding judge shall:

- i. Discharge the administrative duties of the panel, including scheduling conferences at least once a month, and oral argument sessions, when necessary;
  - ii. Preside at all sessions;
  - iii. Set a schedule for duty assignments among the panel members to determine all non-dispositive motions and other issues raised by the parties or the Court *sua sponte*;
  - iv. Assign the writing of opinions among the panel members when the presiding judge is in the majority; however, when the presiding judge is in the minority, the most senior judge on the panel shall discharge this responsibility for the majority.
- (e) If the presiding judge is unavailable, then one of the two other panel members may discharge his or her responsibilities. If all members of a panel are unavailable, then the Administrative Judge of the Circuit Civil or Circuit Criminal Division, as appropriate, may discharge the presiding judge's responsibilities. If the administrative judges are unavailable, then the circuit civil or circuit criminal duty judge, as appropriate, may discharge the presiding judge's responsibilities.
- (f) Oral Arguments.**
  - i. Requests for oral argument made by a party will be granted only in those cases where a majority of the appellate panel genuinely believes it is necessary for disposition of the cause.
  - ii. Oral arguments shall be scheduled on any case when requested by two members of the appellate panel, even if not requested by the parties.
- (g) After oral argument, or after the discussion of a case in conference, the panel shall take a preliminary vote. Cases shall be decided by majority vote.
- (h) En banc matters shall comply with Florida Rule of Appellate Procedure 9.331. The references to the judges of the district court of appeal shall be read as judges of the circuit civil or circuit criminal division for the purposes of this Administrative Order. The judges sitting en banc are limited to those judges eligible for assignment to an appellate panel.
- (i) All motions for rehearing must comply with Florida Rule of Appellate Procedure 9.300.

**(4) Clerk of the Court Duties.**

- (a) The Clerk shall perform all functions, and discharge all duties, traditionally fulfilled by the clerk of the Fourth District Court of Appeal.
- (b) The Clerk shall accept electronically filed notices of appeal and petitions for extraordinary writs as prescribed by law.
- (c) If the Clerk assigns a case to a division not in compliance with this Administrative Order, the Administrative Judge of the Circuit Civil or Circuit Criminal Division, as appropriate, may enter an order directing the Clerk to transfer the case to the appropriate division or court. The Clerk shall forthwith change the division coding to reflect the proper division on its case maintenance software.
- (d) The Clerk shall prepare the index to the record on appeal and transmit the record on appeal for county to circuit court appeals as required by the Florida Rules of Appellate Procedure. If the Clerk is not able to comply with the times set forth in Florida Rule of Appellate Procedure 9.200 for the preparation of the index and transmission of the record on appeal, the Clerk shall file a notice indicating the additional time required to prepare the index and transmit the record on appeal. Such additional time shall not exceed fifty (50) days. If the Clerk requires in excess of fifty (50) days, a motion shall be filed with the Court.
- (e) It is the obligation of the appellant or petitioner to ensure the Clerk complies with the duties as established by Florida Rule of Appellate Procedure 9.200.
- (f) The Clerk shall issue a mandate as required by Florida Rule of Appellate Procedure 9.340. Upon issuance of a mandate, the Clerk shall provide a copy of the mandate and opinion or order disposing of said case to Florida Law Weekly Supplement and the Broward County Law Library.
- (g) The Clerk shall return the record on appeal to the county court no later than ten (10) court business days after the issuance of the mandate or dismissal of the appeal.

(5) **Extensions of Time.**

- (a) In lieu of a motion pursuant to Florida Rule of Appellate Procedure 9.300(a), parties or counsel may agree to no more than two (2) extensions of time to file an initial brief that, in the aggregate, shall not exceed a combined total of 120 days. Parties or counsel may agree to no more than two (2) extensions of time for the filing of the answer brief that, in the aggregate, shall not exceed a combined total of sixty (60) days. Any notice or motion for extension of time must be filed before the expiration date of the time period. Any motion for additional time must be for a period of sixty (60) days or less. The nonmoving party shall have ten (10) days to file an opposition, if any.
- (b) Cases in Division AP shall have an automatic thirty (30) day extension of time from the date of service of the index to the record on appeal if the Clerk files a notice seeking additional time.
- (c) No order shall issue from the Court on any agreed extension or automatic Clerk extension.
- (d) The notice as set forth in Exhibit A shall be filed with the Clerk by the parties to the appeal. Any notice of agreement of extension of time to file a brief that is in excess of the times authorized by this Administrative Order may be stricken by the Court.
- (e) **This provision for extension of time for briefs does not apply to expedited appeals, emergency appeals, or petitions for extraordinary writs.** If the parties do not agree to an extension, or a party seeks an extension of time in excess of the times authorized herein, the party seeking the extension shall file a motion, pursuant to Florida Rule of Appellate Procedure 9.300(a), that sets forth the total time granted by agreement or by order of this Court. If a party has filed a motion seeking an extension and the Court's ruling on the pending motion is still outstanding, the party should not file a subsequent motion seeking an extension.

(6) **Mandatory Electronic Courtesy Copies.**

- (a) The appellant or petitioner shall add the Court to the service list at the time of creating the appellate case in the Florida Courts E-Filing Portal using the following email address: [appeals@17th.flcourts.org](mailto:appeals@17th.flcourts.org). Service via this email address is to provide a courtesy copy to the Court.



- (b) Any self-represented party may register with the Florida Courts E-Filing Portal to send and receive filings. If a self-represented party does not provide electronic copies, then the party shall provide a paper courtesy copy to the Court. The paper courtesy copies for the Court must be timely delivered to Appellate Division c/o Office of the General Counsel at the Office of the Trial Court Administrator, 201 S.E. 6th Street, Suite 20170, Fort Lauderdale, Florida 33301. This address should only be used for providing courtesy copies of documents already filed with the Clerk.
- (c) It is the responsibility of the attorney or self-represented litigant submitting an electronic copy to remove any metadata prior to transmission. All electronic copies shall comply with applicable Florida Rules of Judicial Administration, including rules 2.420, 2.425, and 2.526.
- (7) **Proposed Orders.**
- (a) Proposed orders shall not be submitted to the chambers of a panel member.
- (b) Any proposed order(s) shall be submitted to the Court at [appeals@17th.flcourts.org](mailto:appeals@17th.flcourts.org) in either a Word or Rich Text Format. All other electronic copies of documents submitted to the court shall be submitted in PDF format.
- (8) **Requests for Emergency Treatment.**
- (a) Pleadings and motions filed as emergencies disrupt court procedures and interrupt work on cases that are currently pending. Consequently, an attorney or party who seeks “emergency” review or treatment of a motion or appellate matter loses credibility when the court determines there is no true emergency. *See USAA Cas. Ins. Co. v. Pembroke Pines MRI, Inc.*, 24 So. 3d 588 (Fla. 4th DCA 2009).
- (b) For purposes of this Administrative Order, an “emergency” is a matter that will cause irreparable harm, death or result in a manifest injury if immediate relief is not afforded. Matters that do not meet this definition shall not be submitted to the Court as an “emergency.” An exigency that is caused by the lack of diligence of the moving party shall not constitute an “emergency.”

(c) A party requesting emergency treatment for any motion, appeal, or petition shall file a separate document entitled "Request for Emergency Treatment." The separate "Request for Emergency Treatment" (herein "Request") shall be filed simultaneously with the motion, appeal, or petition for which emergency treatment is sought. The Request shall not exceed two (2) pages in length and shall state succinctly:

- i. The nature of the emergency;
- ii. The date the order at issue was entered; and
- iii. The date of the event that constitutes the basis for request emergency treatment, *i.e.*, the deadline.

Both the Request and matter sought to be treated as an emergency shall be filed with the Florida Courts E-filing Portal, with a copy served on the Court at [appeals@17th.flcourts.org](mailto:appeals@17th.flcourts.org).

(d) Self-represented parties may register with the Florida Courts E-filing Portal and file the Request with the Florida Courts E-filing Portal. The party shall bring the receipt of the filing to the Clerk of Court. The Clerk of Court shall locate the Request in the pending queue and if appropriate, immediately accept the document or advise the filing party of deficiencies to be corrected for acceptance. If a self-represented party does not file the Request and corresponding motion with the Florida Courts E-filing Portal then the party shall bring the original motion and Request to the Clerk of Court for filing. Upon acceptance of the filing, the Clerk of Court shall hand deliver a hard copy to the Office of the General Counsel in the Office of the Trial Court Administrator to be forwarded to the appellate division for appropriate action.

(e) If the party seeks a stay, the Request and corresponding motion shall indicate whether it has applied for relief in the trial court and the date and outcome of any ruling on such motion(s). The attorney or self-represented party requesting emergency treatment shall certify that the request for emergency treatment is made in good faith.

(f) No matter shall be afforded emergency treatment unless the Court determines that an emergency exists.

(e) Any party or attorney who requests emergency treatment without an objectively reasonable basis for doing so is subject to sanctions pursuant to

section 57.105, Florida Statutes, or any other sanction as authorized by law, rule of procedure, or case law.

(9) **Opinions.** The court will provide electronic copies of orders and opinions to the attorneys of record and registered self-represented litigants via the E-Filing Portal. A self-represented litigant will receive a copy of an order or opinion by regular U.S. mail if the individual has not provided an email address to the Court.

(10) **Communications with the Appellate Division.** All parties must review and comply with the Guidelines for Communications with the Appellate Division.

(11) **Self-Represented Parties.**

(a) All self-represented parties are referred to The Self-Represented (Pro Se) Appellate Handbook.<sup>1</sup>

(b) A hard copy of The Self-Represented (Pro Se) Appellate Handbook may be viewed in the Appeals Division of the Clerk of Court, Room 4140 of the Broward County Courthouse-West Wing, 201 S.E. 6th Street, Fort Lauderdale, Florida 33301.

(12) This Administrative Order vacates and supersedes Administrative Order 2018-93-Gen.

**DONE AND ORDERED** in Chambers, Fort Lauderdale, Florida this 7th day of January, 2019.

/s/Jack Tuter  
Jack Tuter, Chief Judge

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<sup>1</sup> <http://prose.flabarappellate.org/default.asp>