

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2023-CA-001432

CHENEY BROS., INC.,
a Florida Corporation,

Plaintiff,

vs.

WESLEY RICHARDS,

Defendant.

**PLAINTIFF'S SECOND MOTION FOR SANCTIONS INCLUDING ATTORNEYS' FEES
AND COSTS PURSUANT TO SECTION 57.105, FLORIDA STATUTES**

Plaintiff, CHENEY BROTHERS INC. (hereinafter "CBI"), pursuant to Fla. Stat. §57.105, hereby moves this Honorable Court for an Order Awarding Sanctions in the form of Attorneys' Fees and Costs and states as follows:

BACKGROUND

1. CBI and Defendant, WESLEY RICHARDS (hereinafter, "Defendant" or "Richards"), became embroiled in a dispute over payment of pilot training fees in early 2023.
2. Prior to engaging in litigation, CBI sent Richards a demand letter dated February 3, 2024. See attached Exhibit "A."
3. Richards hired counsel and responded to CBI's demand on February 8, 2023 (the "Letter"). The Letter included threats that Richards would seek his attorneys' fees and costs *if* a lawsuit was filed. See attached Exhibit "B."
4. The Letter made no reference to Fla. Stat. Sec. 57.105 nor did it provide CBI with any kind of safe harbor, twenty-one (21) day notice, as provided by Fla. Stat. sec.

57.105(4).

5. The Letter was emailed before any lawsuit was ever filed by CBI.
6. CBI filed a multi-count Complaint against Defendant, on February 15, 2023.
7. Thereafter, following efforts by CBI to amend its Complaint after two (2) prior dismissals with leave to amend, CBI chose to take a voluntary dismissal of the action on January 16, 2024, rather than file a Second Amended Complaint.
8. Thereafter, Richards, on February 2, 2024 served a Motion for Attorneys' Fees (the "Motion") pursuant to Fla. Stat. Sec. 57.105 via email, and simply stated that it would be filed in 21 days. See attached Exhibits "C" and "D."
9. At the time the Defendant's Motion and email were sent, there was no longer a pending lawsuit.
10. Thereafter, Defendant filed its Amended Motion for Attorneys' Fees (the "Amended Motion") on February 26, 2024. See attached Exhibit "E."
11. The Amended Motion is just as deficient the original Motion because it simply states that Defendant is entitled to Fla. Stat. Sec. 57.105 Attorney's Fees because the Motion was timely filed under Fla. R. Civ. P. 1.525.
12. Defendant continues to ignore the procedural requirements necessary to perfect a claim for Attorney's Fees under Fla. Stat. Sec. 57.105.
13. As argued below, there is no basis in law or fact for the Amended Motion as Defendant has failed to comply with the notice and pleading requirements of Fla. Stat. sec. 57.105.
14. Richards has been placed on Notice of the deficiencies of the Amended Motion as CBI served a copy of this Motion, via email, in compliance with the applicable

Florida Rules of Civil Procedure along with the required twenty-one (21) day “safe harbor” letter as required by Fla. Stat. sec. 57.105(4). See attached Exhibit “F.”

15. Twenty-one (21) days have elapsed since the service of CBI’s safe harbor letter and proposed Motion for Attorneys’ fees and Richards has failed to withdraw or dismiss the Amended Motion, as requested in CBI’s safe harbor letter.
16. The law and facts support CBI’s position that there is no basis for Defendant’s Motion or the Amended Motion.
17. Based upon notice provided to Richards and his counsel, they knew or should have known that there was no legal or factual basis for the Motion or the Amended Motion.
18. Accordingly, CBI is entitled to its reasonable attorneys’ fees and costs, an amount to be determined after entitlement is confirmed, as a sanction for Defendant’s frivolous improper, and unsupported Motion for Fla. Stat. sec 57.105 Attorneys’ Fees and Amended Motion for Attorneys’ Fees.

ARGUMENT

Richards has failed to follow the procedures set forth in the Statute necessary to advance any claim for attorneys’ fees and costs in this case. According to the statute,

- (1) Upon the . . . motion of any party, the court shall award a reasonable attorney’s fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party’s attorney on any claim or defense *at any time during a civil proceeding or action* in which the court finds that the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - (a) Was not supported by the material facts necessary to establish the claim or defense; or
 - (b) Would not be supported by the application of then-

existing law to those material facts.

* * *

- (4) A motion by a party seeking sanctions under this section must be *served* but may not be filed with or presented to the court unless, within *21 days* after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Fla. Stat. sec. 57.105 (emphasis added).

The Statute requires strict compliance. Statutes providing for the recovery of attorney's fees are in derogation of the common law, and therefore, movants seeking recovery of fees pursuant to such statutes, and those procedural rules implementing them, must strictly comply with the requirements outlined therein. See *Anchor Towing, Inc. v. Fla. Dep't of Transp.*, 10 So.3d 670 (Fla. 3d DCA 2009); *Nathan v. Bates*, 998 So.2d 1178 (Fla. 3d DCA 2008). Pursuant to the procedure expressly outlined in the Statute, before a movant may file a sanctions motion with the court, the non-moving party must have at least twenty-one days (the "safe harbor" period) to evaluate the efficacy of the motion and to determine whether to withdraw the challenged paper, claim, defense, contention, allegation or denial. Richards has failed to comply in all respects.

There was no civil proceeding pending at the time Richards sent his alleged "Safe Harbor Letter" (the "Letter") via email to CBI on February 8, 2023 in which he claims to want to recover attorneys' fees. Indeed, the letter states that "if legal proceedings are initiated, we will defend vigorously and seek fees and costs for having to do so." *Defendant's Motion*, Exhibit D (emphasis added). Richards' letter essentially admits his non-compliance with the Statute as there was no civil proceeding pending at the time of the Letter. The facts also bear this out; CBI's Complaint was not filed until February 15,

2023. Therefore, it was an impossibility for CBI to have come under the ambit of the Statute, when there was not even a civil proceeding pending at the time Defendant sent the Letter. CBI had not filed a Complaint with the court at the time of the Letter; therefore, there was nothing to withdraw.

Moreover, the Statute requires that the Letter provide the party with twenty-one (21) days' notice to withdraw "the challenged paper, claim, defense, contention, allegation, or denial." The Letter that is attached to the Defendant's Motion makes no reference to a 21-day safe harbor period nor does it even reference the Statute. Finally, the Letter, on its face, does not reflect that it was served via email with a Motion as required by the Statute.

Finally, the Amended Motion, is equally deficient as there was never a proper preservation of the right to seek fees under Fla. Stat. Sec. 57.105. Moreover, Defendant's argument that the Motion was timely served under Fla. R. Civ. P. 1.525 is pointless because of the failure to follow the appropriate procedures as set forth *supra*. Any effort by Defendant to advance a claim under Fla. Stat. Sec. 57.105 became impossible as a result of the failure to provide a *procedurally proper* Safe Harbor Letter and accompanying Motion. Anything that happened beyond that is irrelevant. Moreover, Defendant cannot otherwise point to any contract or statute that would entitle him to recover attorney's fees under Fla. R. Civ. P. 1.525.

In short, Richards' attempt to apply the Statute by serving the Letter and Motion *after dismissal of the lawsuit* negates any possibility of compliance by CBI as the case was voluntarily dismissed before he ever served the Motion and 21-day notice on February 2, 2024. Under Richards' construction of the Statute, there is no possibly to

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.