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Lease Drafting: Recover All Your Attorney Fees and Costs in an Eviction Action

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As every landlord who's successfully evicted a tenant knows, recovering all your attorney fees and litigation costs from the tenant often proves to be an unrealistic goal. Even with a creditworthy tenant or guarantor, there are costs and fees that most courts will not include in your judgment. Thanks to a recent Florida case, however, a well drafted provision in the lease can result in a judgment which includes all your fees and costs.

Most prevailing party attorney fee provisions entitle the winning party to attorney fees for the eviction, the damages claim and even for arguing over entitlement to attorney fees, but not attorney fees incurred proving the *amount* of the fee recovery and not for costs which are not listed in the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions (i.e. most costs). This shortcoming occurs in statutory fee claims (like Florida's eviction statute at Fla. Stat. §83.231) and poorly worded lease provisions. A recent case brings some clarity on how parties can make all fees and costs recoverable, including fees incurred in disputing the amount of fees.

In [*Trial Practices, Inc. v. Hahn Loeser & Parks, LLP, 2017 WL 1363916 \(Fla. 2nd DCA 2017\)*](#), the Second District Court of Appeal of Florida looked to the language of the parties' contract to permit the recovery of (1) attorney fees, (2) witness costs, and (3) all the attorney's overhead costs that were related to the action. The court's decision to

grant these fees and costs was based on the language of the fee-shifting provision in the contract. Specifically, the contract stated, in relevant part, that the

prevailing party in *any* action arising from or relating to this agreement will be entitled to recover *all* expenses of *any nature* incurred *in any way in connection with the matter*, whether incurred before litigation, during litigation, in an appeal, ... or in connection with the enforcement of a judgment, including, but not limited to, attorneys' and experts' fees.

(emphasis added). As a result, the court emphasized that the breadth of the provision "encompassed all claims that were connected in any way to the... Agreement," which permitted a broad recovery of fees incurred while litigating the amount of fees.

The court also held that the breadth of the contractual provision would permit recovery of witness preparation costs that were incurred while litigating the fee amount. While the court ultimately reversed the cost award for other reasons, the opinion emphasized that a prevailing party could recover "'certain fees charged' by the witnesses to the extent that they 'also assisted in both case and discovery preparation.'" These permissible fees included paying the fact witnesses reasonable compensation for preparation for, attendance at, and testimony at trial.

Finally, the court affirmed the award of costs to the prevailing party's counsel for overhead expenses related to the action. In fact, the court upheld awarding recovery for expenses that included postage, Westlaw research, office supplies, travel expenses, telephone calls, courier service, photocopies, and most surprisingly, an iPad. These would not have been recoverable absent a broad fee-shifting provision in the contract.

In sum, the court demonstrated a willingness to depart from the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions and award fees and costs where a fee-shifting provision is sufficiently broad. Accordingly, we encourage our landlord clients to review and revise the attorney fee provisions in their lease forms to maximize their potential recovery in any lease enforcement actions.

Jaime Austrich and April Zinober are attorneys in Shumaker, Loop & Kendrick, LLP's Commercial Landlord-Tenant practice group. Shumaker has a team of seasoned attorneys in each of its offices who specialize in commercial landlord-tenant matters. We help landlords and tenants large and small resolve the problems they face in their respective industries. At Shumaker, our attorneys bring years of experience to each matter and understand that landlords and tenants have unique circumstances and goals requiring individualized attention. Shumaker's attorneys understand the business as well as the legal needs of our landlord and tenant clients and continually strive to assure both are addressed in strategy and execution.

Shumaker's commercial landlord-tenant practice has the size and depth to represent commercial property owners and tenants in every type of transaction and dispute that impacts their business. If you have questions, please contact Jaime Austrich at jaustrich@slk-law.com or April Zinober at azinober@slk-law.com.

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