

**IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

TRIAL PRACTICES, INC.,

CASE NO.: SC17-2058

Petitioner,

Lower Tribunal No(s).:

vs.

2D13-6051; 2D14-86;

HAHN LOESER & PARKS, LLP, as
substitute party for Jack J. Antaramian,

292006CA005366A001HC

Respondent.

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S
MOTION FOR APPELLATE ATTORNEYS' FEES**

Petitioner, Trial Practices, Inc. ("TPI"), opposes the motion of Respondent, Hahn Loeser & Parks, LLP's ("Hahn Loeser"), for appellate attorneys' fees (the "Motion") on the same grounds it opposed similar unsuccessful motions filed by Hahn Loeser in the Second District in Case No. 2D16-2284 and the consolidated Case Nos. 2D13-6051/2D14-86. The Motion argument here is a nearly verbatim copy of Hahn Loeser's prior motions for appellate attorneys' fees in the Court of Appeals which TPI opposed. In Case No. 2D16-2284, the Second District denied Hahn Loeser's motion for attorneys' fees. In Lower Tribunal Case Nos. 2D13-6051/2D14-86, the Second District held that because its disposition of the case is only a reversal in part, both appellant's and appellee's motions for prevailing party attorneys' fees are provisionally granted contingent upon the trial court's determination of which party prevails on the significant issues in the litigation. The

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Court should deny Hahn Loeser's Motion in Case No. SC17-2058 on the following grounds:

Two agreements are at the crux of Hahn Loeser's Motion: (1) the Consulting Agreement between TPI and Antaramian executed eleven years ago, on or about September 20, 2005 (R.62); and (2) the Agreement and Absolute Assignment of Judgment from Antaramian to Hahn Loeser signed in December 2014 (the "Assignment") (DCA R.651-668) See, Motion at ¶15.

TPI is the only party in this case (Case No. SC17-2058) that is a party to the 2005 Consulting Agreement relied upon by Hahn Loeser. The 2005 Consulting Agreement does not provide a non-party (Hahn Loeser) a basis to recover attorneys' fees against a party to the Consulting Agreement (TPI). Accordingly, the terms of the Consulting Agreement cited in the Motion at ¶¶19-20 do not confer any rights to attorneys' fees to Hahn Loeser.

The Motion at ¶21 quotes a paragraph from the Assignment regarding some unspecified "other rights and remedies." The lower tribunal entered an order dated April 21, 2016 which provides, in part, that "[t]he assignment [of the Judgement from Antaramian to Hahn Loeser] remains intact and effective. Accordingly, Hahn Loeser holds the rights at issue in the case and is the real party in interest." (DCA R.1122). The Assignment, however, assigned the judgment only and not the

Consulting Agreement. Accordingly, Hahn Loeser's claim to entitlement to attorneys' fees based on the 2005 Consulting Agreement fails.

Hahn Loeser's argument at ¶¶'s 14-16 that the lower court and court of appeals already determined that Hahn Loeser is the prevailing party for purposes of this appeal is plainly wrong. The lower court said no such thing, as the Second District recognized when it conditionally *granted TPI's motion for appellate attorneys' fees* on TPI's appeal which resulted in a reversal of a substantial part of the TPI judgment. (DCA-R.1541) Since the reversal was only a reversal in part, however, both appellant's and appellee's motions for prevailing party attorneys' fees were provisionally granted. *Id.* The Second District in *Trial Practices* remanded to the trial court to decide the issue of which party prevailed but that issue has not yet been briefed or argued to the lower court.

Hahn Loeser also is not entitled to recover appellate attorneys' fees under Sections 768.79, 57.115, and 726.108(1)(a)(3), Florida Statutes, and Rule 1.442, Florida Rules of Civil Procedure. See Motion at ¶¶21-24. Hahn Loeser did not make an offer of judgment or serve a proposal for settlement to TPI. Hahn Loeser, therefore, cannot recover attorneys' fees based upon the offer of judgment/proposal for settlement statutes and rule. Nor can Hahn Loeser recover based upon Antaramian's offer of judgment/proposal for settlement. TPI successfully argued to the lower court that Antaramian's offer of judgment was fatally defective and the

lower court awarded fees and costs to Antaramian only “pursuant to the terms of the Contract.” (R. 13110-13116; 13302-1303).

CONCLUSION

For all these reasons, this Court should deny Hahn Loeser’s Motion for appellate attorneys’ fees.

Dated: July 5, 2018.

Respectfully Submitted,

By: /s/ G. Donovan Conwell, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July 2018, a true and correct copy of the above and foregoing has been filed via the Florida Court's E-Filing Portal which will send an Electronic Mail notification of same to the following:

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