Gartner v. Reverse Mortg. Solutions, Inc.

Court of Appeal of Florida, First District

June 30, 2021, Decided

No. 1D20-772

Reporter
2021 Fla. App. LEXIS 9846 *; 2021 WL 2678388

JOHN GARTNER JR., Appellant, v. REVERSE MORTGAGE SOLUTIONS, INC., Appellee.

Notice: NOT FINAL UNTIL DISPOSITION OF ANY TIMELY AND AUTHORIZED MOTION UNDER *FLA. R. APP. P. 9.330* OR *9.331*.

Prior History: [*1] On appeal from the Circuit Court for Bay County. John L. Fishel, II, Judge.

Core Terms

attorney's fees, reverse mortgage, foreclosure, mortgage, prevails, trial court, reciprocity, award of attorney's fees, provisions, unilateral, action to enforce, contracts, lender, account stated, terms, credit card, borrower, fee provision, non-recourse, costs, sale of property, district court, final judgment, decisions, foreclose

Case Summary

Overview
HOLDINGS: [1]-Although it was undisputed that the loan agreement between the parties provided for the recovery of an award of attorney's fees in the event of the mortgagee's success in a foreclosure action, under the reciprocity provision contained in § 57.105(7), Fla. Stat., because the mortgagor was the prevailing party he was eligible to recover his attorney's fees, despite the non-recourse nature of the note and mortgage. The trial court erred in denying the mortgagor's motion for an award of attorney's fees.

Outcome
Reversed and remanded.

LexisNexis® Headnotes

Governments > Courts > Judicial Precedent

HN1[] **Courts, Judicial Precedent**

When there is no binding precedent from the supreme court or the district court of appeal in which the court sits, a trial judge is bound to follow decisions of other district courts of appeal.

Governments > Courts > Judicial Precedent

HN2[] **Courts, Judicial Precedent**

The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by the Supreme Court of Florida. Thus, in the absence of interdistrict conflict, district court decisions bind all Florida trial courts.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN3[] **Reviewability of Lower Court Decisions, Preservation for Review**

The court must apply the law as it exists at the time of the appeal.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > English Rule

HN4[] Basis of Recovery, English Rule

Under the rule of reciprocity in § 57.105(7), Fla. Stat. (2018), if a contract provides for attorney's fees for a party when that party is required to take any action to enforce the contract, then attorney's fees are authorized for the other party if that party prevails in any action with respect to the contract.

Governments > Legislation > Interpretation

HN5[] Legislation, Interpretation

In interpreting a statute, the court follows the supremacy-of-text principle—namely, the principle that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.

Governments > Legislation > Interpretation

HN6[] Legislation, Interpretation

Every word employed in a legal text is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it. The goal of interpretation is to arrive at a fair reading of the text by determining the application of the text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued. This requires a methodical and consistent approach involving faithful reliance upon the natural or reasonable meanings of language and choosing always a meaning that the text will sensibly bear by the fair use of language.

Governments > Legislation > Interpretation

HN7[] Legislation, Interpretation

The use of the word respecting in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

HN8[] Attorney Fees & Expenses, Reasonable Fees

The reciprocal fee statute, § 57.105(7), Fla. Stat. (2018), manifests a purpose to help level the playing field.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > English Rule

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

HN9[] Basis of Recovery, English Rule

Section 57.105(7), Fla. Stat. (2018), applies when (1) the contract includes a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, and (2) the other party prevails in any action, whether as plaintiff or defendant, with respect to the contract.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > English Rule

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

HN10[] Basis of Recovery, English Rule

To the extent Suchman Corporate Park, Inc. v. Greenstein holds that, as a matter of law, the reciprocity provision of § 57.105(7), Fla. Stat. (2018), cannot apply to authorize an award of attorney's fees to a prevailing borrower on an underlying nonrecourse loan, such a holding has been implicitly overruled by the Florida Supreme Court's recent decision in Page v. Deutsche Bank Tr. Co. Ams.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > English Rule

HN11[] Basis of Recovery, English Rule

The statutory language of § 57.105(7), Fla. Stat. (2018), addresses a prevailing party's ability to recover attorney's fees, not a losing party's obligation to pay attorney's fees.

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Terrance W. Anderson of Nelson Mullins, Boca Raton, for Appellee.

Judges: JAY, J. RAY, C.J., and LEWIS, J., concur.

Opinion by: JAY

Opinion

JAY, J.

This is an appeal from a final order denying Appellant John Gartner Jr.'s motion for an award of attorney's fees incurred from his defense of an underlying foreclosure action. While this appeal was pending, the Florida Supreme Court rendered its decision in Ham v. Portfolio Recovery Associates, LLC, 308 So. 3d 942 (Fla. 2020). We conclude that *Ham* decisively resolves the issue presented in the instant appeal and, accordingly, we reverse.

I.

In November 2012, Gartner executed a promissory note and reverse mortgage on his home through One Reverse Mortgage, LLC. Pursuant to the terms of the note and mortgage, the loan was a "non-recourse" loan, meaning Gartner would not bear any personal liability upon default on the note. Instead, the lender could only enforce the debt through the sale of the property. Attached to the promissory note was an allonge specifying that the note, "WITHOUT RECOURSE," was payable to Appellee Reverse Mortgage Solutions, Inc. ("Reverse Mortgage").

Both the promissory **[*2]** note and the mortgage contained unilateral provisions for the payment of costs and attorney's fees to the lender. For instance, the note specified that if the lender "required immediate payment-in-full," the debt, as enforced through the sale of the property, "may include costs and expenses including reasonable and customary attorney's fees for enforcing" the note. Likewise, the mortgage provided that should the lender foreclose on the property, it "shall be entitled to collect all expenses incurred . . . including, but not limited to, reasonable attorneys' fees and costs of title evidence."

On May 1, 2017, Reverse Mortgage filed a foreclosure complaint against Gartner alleging that it was accelerating his debt because he had failed to pay insurance as required by the mortgage. It demanded immediate payment in full and asserted that it was "entitled to recover its attorneys' fees pursuant to the express terms of the note and mortgage." Gartner failed to file an answer, and Reverse Mortgage obtained a clerk's default. Reverse Mortgage submitted a proposed In Rem Final Judgment of Foreclosure, which included a $2150 award of attorney's fees. Following a non-jury trial, the court entered **[*3]** final judgment in favor of Reverse Mortgage, but struck the proposed fee award for lack of supportive proof. The final judgment was recorded in the public records, and Reverse Mortgage filed proof of publication of the Notice of Foreclosure Sale in the local newspaper.

Thereafter, Reverse Mortgage purchased Gartner's property at the foreclosure sale and later filed a Motion to Grant Writ of Possession for [Gartner's] Failure to Vacate the Premises. The trial court granted the motion and entered a Writ of Possession, commanding the sheriff to remove all persons from the property. The next day, Gartner submitted a pro se handwritten letter to the court requesting a stay and asserting that he at no time knew there was a foreclosure on his property. The trial court construed Gartner's letter as a "motion to stay writ of possession" and entered an "Order Staying Writ of Possession and Notice of Hearing."

Once Gartner obtained counsel, he filed a motion to set aside the foreclosure final judgment and foreclosure sale, asserting that Reverse Mortgage had not properly served him with its foreclosure complaint. He maintained he had a meritorious defense—that he had in fact paid the insurance **[*4]** at issue. He also requested an award of attorney's fees and costs.

Reverse Mortgage responded by claiming it had properly served Gartner and that he failed to provide any proof that he had paid the subject insurance. The trial court ultimately ruled against Reverse Mortgage and on May 9, 2018, entered an Order Granting Motion to Set Aside Foreclosure Final Judgment and Foreclosure Sale. It did not, however, address Gartner's request for attorney's fees and costs.

Thereafter, in June, Gartner served his answer and affirmative defenses, again asserting that he had paid the insurance at issue, and, again, requesting that the trial court "award attorney's fees (including a multiplier) to [him] pursuant to the terms of the loan documents and *Florida Statutes Section 57.105* (regarding the reciprocal right to contractual attorney's fees)."

Reverse Mortgage filed a Reply and/or Motion to Strike [Gartner's] Affirmative Defenses, which the trial court denied on September 17, 2018. Discovery, an unsuccessful mediation, and incidental filings ensued for almost another year as the case wound its way toward a hearing scheduled for September 4, 2019. Just one week prior to the hearing, however, on August 28, 2019, Reverse Mortgage **[*5]** filed a Notice of Voluntary Dismissal of its Foreclosure Complaint asserting that it was "due to a settlement in th[e] matter."

Gartner subsequently filed a Motion for an Award of Attorney's Fees. He asserted that he was entitled to an award of fees and taxable costs from Reverse Mortgage based on the fees and costs provisions in the loan documents, and on *section 57.105, Florida Statutes*, as earlier pleaded in his answer and affirmative defenses.

In its response in opposition to Gartner's motion, Reverse Mortgage nowhere cited, discussed, or otherwise acknowledged the above-quoted attorney's fees provisions in the note and mortgage. Instead, it focused only on the non-recourse provisions of those documents. For instance, paragraph 4(C) of the note provides that Gartner "shall have no personal liability for payment of this Note." Reverse Mortgage was limited to "enforc[ing] the debt only through sale of the Property covered by the Security Instrument[.]" The mortgage contained a similar provision. Reverse Mortgage asserted that since it could not recover "any monies" from Gartner in this or in any future action under the note and mortgage—its only relief being "in rem" against the property—Gartner, likewise, should **[*6]** "not be entitled to recover any monies from [Reverse Mortgage]" including attorney's fees. In support of this proposition, Reverse Mortgage relied on the Third District's memorandum opinion in *Suchman Corporate Park, Inc. v. Greenstein, 600 So. 2d 532 (Fla. 3d DCA 1992)*.

In *Suchman*, the Third District reversed a summary judgment entered in favor of the defendant/mortgagees. It also reversed the award of attorney's fees to the mortgagees, not only because of the reversal of the summary judgment, but also because the underlying note and mortgage—which provided for the fee award—specifically stated that

the obligations thereunder were "without recourse" against the individual plaintiffs/mortgagors who had "'no personal liability' under either instrument." *Id. at 533*. Instead, any eventual award of fees to the mortgagees would be "limited to an increase in the principal amount of any judgment of foreclosure." *Id.* More to the point, the Third District also ruled that

> because the mortgagors [were] not individually liable for fees, even if they [won], they are themselves unable to recover fees, as they claim, under [then numbered] *section 57.105(2), Florida Statutes* (1991) ("*If* a contract contains a provision allowing attorney's fees to a party when he is required to take any action to enforce the contract, the **[*7]** court may also allow reasonable attorney's fees to the other party when that party prevails in any action . . .").

Id. (emphasis in original).

Here, following a hearing on the matter, the trial court entered its Order Denying Motion for an Award of Attorney's Fees. After reciting the provisions of *section 57.105(7), Florida Statutes* (2018), the trial court ruled:

> Pertinent to the underlying matter are also the provisions of the loan agreement, according to which the Borrower [] had no *personal liability* for payment of the debt secured by the Security Instrument. The Note also provides that the Lender [] could enforce the debt only through the sale of the property and was not permitted to obtain a deficiency judgment against the Borrower if the Security Instrument was foreclosed. See ¶ 4(C), Note.
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> Undeniably, the statute "allows for reciprocity of unilateral prevailing party attorney's fees contractual provisions." *Shirley's Pers. Care Servs. of Okeechobee, Inc. v. Boswell, 165 So. 3d 824, 827 (Fla. 4th DCA 2015)*. However, "[t]his reciprocity is limited to the specific terms of the attorney's fees provision in a contract." *Escambia Cty. v. U.I.L. Family Ltd. P'ship, 977 So. 2d 716, 717 (Fla. 1st DCA 2008)*.
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> Accordingly, although it is undisputed that the loan agreement provides for the recovery of an award of attorney's fees in the event of Plaintiff's success in a foreclosure action, any potential award **[*8]** of fees to the Plaintiff would be limited to an increase in the principal amount of any judgment of foreclosure. If the mortgagors are not individually liable for fees, even if they win, they are themselves unable to recover fees as they claim under *section 57.105(7)*. *Suchman Corp. Park, Inc. v. Greenstein, 600 So. 2d 532, 533 (Fla. 3d DCA 1992)*.
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> In opposition, the Defendant argues that Plaintiff's assessment ignores the fact that if there is equity in the property, any surplus funds to which the Defendant would be otherwise entitled would be reduced by the amount of attorney's fees awarded to the Plaintiff. While this argument is persuasive, this Court is bound to follow the decisions of district courts of appeal that are on point. *See Dawkins, Inc. v. Huff, 836 So. 2d 1062, 1064 (Fla. 5th DCA 2003)*.

The trial court was not incorrect in deferring to the Third District's decision in *Suchman*. Understandably, the court may have perceived it was dealing with a novel issue on attorney's fees—we only surmise this, since a transcript of the hearing has not graced this record—and *Suchman*, such as it is, can be read as being directly on point. ***HN1***[⬆] Furthermore, as the trial court acknowledged in its order, when "there is no binding precedent from the supreme court or the district court of appeal in which the court sits, a trial judge is bound to follow **[*9]** decisions of other district courts of appeal. . . ." *Dawkins, 836 So. 2d at 1064* (citing *McGauley v. Goldstein, 653 So. 2d 1108, 1109 (Fla. 4th DCA 1995)*). However, that holding reveals only one facet of the rule.

HN2[] The full text of this hierarchical principle was expressed in Pardo v. State, 596 So. 2d 665 (Fla. 1992), wherein the supreme court succinctly stated "that '[t]he decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court.'" Id. at 666 (alteration in original) (quoting Stanfill v. State, 384 So. 2d 141, 143 (Fla. 1980)). The supreme court continued: "Thus, in the absence of interdistrict conflict, district court decisions bind all Florida trial courts." *Id.* (citing Weiman v. McHaffie, 470 So. 2d 682, 684 (Fla. 1985)).

Since these rules unburden Florida's trial courts from auguring future jurisprudential revisions, the court in the instant case could not have possibly anticipated the confluence of opinions that lately emerged from the Florida Supreme Court *and* the Third District Court of Appeal on the very question we are asked to resolve here. In fact, while the trial court was deciding the issue at hand, there brewed an interdistrict conflict which, by analogy, was highly relevant on this point. Nearly a year after the trial court entered its order on review, the conflict was resolved by the Florida Supreme Court in Ham v. Portfolio Recovery Associates, LLC, 308 So. 3d 942 (Fla. 2020). Moreover, as we speak, the Third **[*10]** District just issued its opinion in Castellanos v. Reverse Mortgage Funding LLC, No. 3D20-472, 2021 Fla. App. LEXIS 6715, 2021 WL 1897069 (Fla. 3d DCA May 12, 2021), in which it applied the supreme court's decision in Page v. Deutsche Bank Trust Company Americas, 308 So. 3d 953 (Fla. 2020)—decided on the same day as *Ham*—to facts distinctly analogous to our own, and, in doing so, determined that *Page* overruled Suchman. We now hold that the intervening decisions in *Ham* and *Castellanos* wholly inform the outcome in the present case.[1]

II.

At the heart of this case is the reciprocity provision contained in section 57.105(7), Florida Statutes. Reverse Mortgage argues on appeal that the question to be decided is not whether section 57.105(7) needs to be construed, either strictly or in any other way. Instead, it maintains that by virtue of the unilateral terms of the non-recourse loan, the lender would be contractually prohibited from obtaining a money judgment for its attorney's fees were it to prevail against the borrower. Consequently, a borrower who prevails in defense of a lender's unsuccessful attempt to foreclose a non-recourse loan would likewise be unable to recover a money judgment in the form of an award of attorney's fees. Our reading of Ham convinces us that Reverse Mortgage's logic is flawed. Reverse Mortgage bases its argument on how the payment of attorney's fees is realized under a contract. *Ham*, in contrast, focuses **[*11]** on the fact of entitlement to recover attorney's fees under the contract.

III.

In *Ham*, the Florida Supreme Court reviewed the consolidated cases of Ham v. Portfolio Recovery Associates, LLC, 260 So. 3d 450 (Fla. 1st DCA 2018), which certified conflict with Bushnell v. Portfolio Recovery Associates, LLC, 255 So. 3d 473 (Fla. 2d DCA 2018). As the supreme court announced in the introduction to its opinion:

> In these consolidated cases, we consider whether a unilateral attorney's fee provision in a credit card contract is made reciprocal to a debtor under section 57.105(7), Florida Statutes (2015), when the debtor prevails in an account stated action brought to collect unpaid credit card debt. . . .
>
> In *Ham*, the First District ruled that section 57.105(7) was inapplicable because the actions for account stated did not rely on the credit card contracts containing the fee provisions. Ham, 260 So. 3d at 455. Accordingly, the district court held that the debtors could not recover attorney's fees. *Id.* In contrast, the Second District in *Bushnell* held that the debtor

[1] HN3[] As the Third District acknowledged in *Castellanos*, "we must apply the law 'as it exists at the time of the appeal.'" 2021 Fla. App. LEXIS 6715, 2021 WL 1897069 at *2 (quoting Deutsche Bank Nat'l Tr. Co. v. Torres, 245 So. 3d 985, 986 (Fla. 3d DCA 2018)).

was entitled to attorney's fees under section 57.105(7), reasoning that the account stated claim and the underlying credit card contract were inextricably intertwined. *See* Bushnell, 255 So. 3d at 477-78.

Based on our analysis of the text of the statute, we conclude that section 57.105(7) allows the debtors to recover reciprocal attorney's fees. **HN4**[↑] Under section 57.105(7)'s rule of reciprocity, if a contract provides for attorney's fees for a party **[*12]** when that party "is required to take any action to enforce the contract," then attorney's fees are authorized for the other party if "that party prevails in any action . . . with respect to the contract." Here, the fees were authorized for the debtors because both conditions required by the statute were met. We approve the result in *Bushnell* and quash *Ham*.

308 So. 3d at 943.

To resolve the certified conflict, the supreme court undertook to interpret the statutory provisions "to determine whether the unilateral attorney's fee provisions in the credit card contracts [were] made reciprocal to the debtors under section 57.105(7)." *Id. at 946*. **HN5**[↑] To do so, the supreme court employed the following essential tool of statutory construction:

> In interpreting the statute, we follow the "supremacy-of-text principle"—namely, the principle that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). **HN6**[↑] We also adhere to Justice Joseph Story's view that "every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground **[*13]** to control, qualify, or enlarge it." *Advisory Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment, 288 So. 3d 1070, 1078 (Fla. 2020)* (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), quoted in Scalia & Garner, *Reading Law* at 69).
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> We thus recognize that the goal of interpretation is to arrive at a "fair reading" of the text by "determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." Scalia & Garner, *Reading Law* at 33. This requires a methodical and consistent approach involving "faithful reliance upon the natural or reasonable meanings of language" and "choosing always a meaning that the text will sensibly bear by the fair use of language." Frederick J. de Sloovère, *Textual Interpretation of Statutes*, 11 N.Y.U. L.Q. Rev. 538, 541 (1934), quoted in Scalia & Garner, *Reading Law* at 34.

Id. at 946-47 (alteration in original).

With the analytical groundwork laid, the supreme court turned to the language of section 57.105(7) and the competing interpretations of the statute propounded by the parties. Section 57.105(7) states in pertinent part:

> If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may **[*14]** also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. . . .

Looking only to the express terms of section 57.105(7), the debtors argued that the statute would apply when two requirements were met. First, the contract must contain "'a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract,' and second, the other party that is seeking fees must 'prevail[ ] in any action, whether as plaintiff or

defendant, with respect to the contract.' § 57.105(7)." Ham, 308 So. 3d at 947. On the other hand, the creditors claimed the statute applied

> when (1) an action is brought to enforce a contract which contains a unilateral fee provision, and (2) the party not named in the fee provision prevails in that action. According to Portfolio, an account stated claim cannot be considered an action to enforce a contract. Portfolio also argues that it—as the party benefitting from a unilateral attorney's fee provision—gives up its right to collect fees from consumers when it chooses to file a common law cause of action.

Id.

The supreme court concluded that the result reached by the Second District **[*15]** in *Bushnell* and sought by the debtors was supported by the text of section 57.105(7) and "closely track[ed] the text of the statute," whereas, the opposing view "diverg[ed] from the text." *Id.* Beginning with the statute's "enforce the contract" language, the supreme court ruled that it "describ[ed] what is required of the contractual provision—not of the claim raised by the plaintiff." Id. at 947-48. It explained that to the extent "[t]hat portion of the statute is anchored by the phrase '[i]f a *contract contains a provision*,'" it "presents a question that can be answered simply by reviewing the provisions of the contract." Id. at 948 (emphasis in original). Turning the page, the supreme court next determined that "[t]he 'with respect to the contract' language [] presents a question that requires considering the claims actually litigated and determining the existence of the required relationship between the contract and the litigation in which the other party prevails." *Id.*

As regards the first consideration, the supreme court reviewed the contracts between the creditors and the debtors. It took little persuasion for the court to conclude that the language in each contract granting the creditor the right to recover attorney's **[*16]** fees if the creditor used the services of an attorney to collect the account of the debtor "is 'a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract,'" within the meaning of section 57.105(7). *Id.* In short, it pronounced that an "[a]ction to collect an account established under a contract is encompassed by the phrase 'any action to enforce the contract'" and thus, "the first element of section 57.105(7) [was] readily satisfied by the terms of the credit contract fee provisions." *Id.* Accordingly, the supreme court rejected as "untenable" Portfolio's "argument that a provision authorizing fees for action to collect a debtor's account does not encompass account stated claims." *Id.*

Having arrived at this conclusion, "[t]he only question remaining" for the supreme court to answer "regarding the proper interpretation" of section 57.105(7) was "whether the second element of that statute was met—that is, whether the debtors 'prevail[ed] in any action, whether as plaintiff or defendant, with respect to the contract.'" *Id.* (quoting § 57.105(7), Fla. Stat.). In other words, the supreme court questioned "whether the account stated action in which each debtor prevailed was an 'action . . . with respect to **[*17]** the contract.'" *Id.*

To do so, the supreme court initially observed the statutory phrase "'with respect to'" is simply "a longer way of saying 'respecting.'" Progressing within the predictable rubric of statutory construction, the court turned to the dictionary meaning of the term "respecting," finding it meant "'with regard or relation to: REGARDING, CONCERNING.' Webster's Third New International Dictionary Unabridged 1934 (1993 ed.)." *Id.* From that definition, the supreme court declared:

> The scope of "with respect to" is necessarily broader than terms such as "based on," "under," or "pursuant to." "With respect to" in this context requires a relationship with the contract containing a unilateral fee provision that may be different than and not as immediate as the relationship that would be required if "based on," "under," or "pursuant to" were the

> operative language. "[W]ith respect to" is inclusive of those other terms, *but it sweeps more broadly*.

Id. (emphasis added.)[2],[3]

Returning to the facts presented in *Ham*, the supreme court observed that "[a]lthough the account stated claims brought by Portfolio perhaps could not fairly be said to be claims brought 'based on,' 'under,' or 'pursuant to' the credit contracts, there [was] nonetheless a clear and direct relationship between the credit contracts and the account stated claims." *Id. at 949*. It further explained:

> The business relationship and the previous transactions between the debtors and the creditor were predicated on the credit card contracts. Without those contracts, there would have been no business relationship or previous transactions. The accounts **[*19]** that the creditor sought to collect came into existence as a result of the operation of those credit card contracts. So it is a fair reading to say that the account stated actions on which the debtors prevailed were actions "with regard or relation to" those credit card contracts and that the second element of the statutory provision was therefore satisfied.

Id. Consequently, the supreme court concluded that "the unilateral fee provisions in the credit card contracts [were] made reciprocal to the prevailing debtors under *section 57.105(7)*," thereby approving the result reached by the Second District in *Bushnell*, and quashing *Ham*. *Id. at 950*.

IV.

HN9[↑] To reiterate the test: "*Section 57.105(7)* applies when (1) the contract includes 'a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract,' and (2) the other 'party prevails in any action, whether as plaintiff or defendant, with respect to the contract.'" *Ham, 308 So. 3d at 947*. Applying that test to the facts of this case, we first review the language of the note and mortgage. Both contain provisions "allowing attorney's fees to a party when he or she is required to take any action to enforce the contract." *§ 57.105(7), Fla. Stat.* The note grants to Reverse Mortgage the **[*20]** right to recover—as "costs and expenses" incurred in enforcing the debt through the sale of the property—"reasonable and customary attorney's fees for enforcing this Note." The mortgage actually contains three attorney's fees provisions. The one applicable to the instant foreclosure case entitles Reverse Mortgage "to collect all expenses incurred in pursuing [foreclosure], including, but not limited to, reasonable attorneys' fees. . . ." The fact that Reverse Mortgage is limited to selling the property to enforce the debt—as opposed to reaching directly into Gartner's pocket as

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[2] In confirmation of the foregoing pronouncement of its understanding of the breadth of the term "respecting" the supreme court turned to a recent decision of the United States Supreme Court in *Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 201 L. Ed. 2d 102 (2018)*, which involved the interpretation of a provision of the bankruptcy code. ***HN7***[↑] It noted that in *Lamar*, the Supreme Court recognized that the "'[u]se of the word "respecting" in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.'" *Ham, 308 So. 3d at 948* (quoting *Lamar, 138 S. Ct. at 1761*).

[3] ***HN8***[↑] To hammer home its view of the sweeping breadth of the statute, the supreme court stressed later in its opinion that "the reciprocal fee statute . . . manifests a purpose to help level the playing field," and, for that reason described the phrase "with respect to" as being "*capacious*." *308 So. 3d at 949* (emphasis added). The court continued:

> In its wholly implausible argument that the fee provisions in the credit card contracts afforded it no eligibility for fees in its account stated collection actions, the creditor shows a keen awareness of **[*18]** the patent anomaly in denying fees to a prevailing debtor under *section 57.105(7)* even though the creditor would be eligible for fees under the unilateral contract provision if the creditor prevailed. If the text of the statute required such an anomalous result, we would be bound to enforce the statute according to its terms. But a fair reading of the key language employed by the legislature—"with respect to"—which is equivalent to the "respecting" language the Supreme Court recognized generally to have a "broadening effect," does not require that anomalous result. Far from it.

Id. at 949-50.

recourse—has no bearing on this analysis. As was true for the creditors in *Ham*, Reverse Mortgage's action to foreclose on Gartner's mortgage was "encompassed by the phrase 'any action to enforce the contract.'" *Id. at 948*. So too, as in *Ham*, "the first element of *section 57.105(7)* is readily satisfied by the terms" of the note and mortgage. *Id.*

Determining whether the second element of *section 57.105(7)* is "readily satisfied" in this case is decidedly easier to discern than it was in *Ham*. We are not faced with an action arguably outside the scope of the contract between the parties. The action brought by Reverse Mortgage to foreclose on Gartner's property **[*21]** was undeniably an "action . . . with respect to the contract." *§ 57.105(7), Fla. Stat.* Here, there is a "relationship with the contract containing a unilateral fee provision." *Ham, 308 So. 3d at 948*. Gartner was the prevailing party. Consequently, under the express terms of *section 57.105(7)*, Gartner was eligible to recover his attorney's fees, despite the non-recourse nature of the note and mortgage.

V.

The Third District's analysis in *Castellanos* reinforces our own. In that case, Orquidea Castellanos—the borrower and defendant in a reverse mortgage foreclosure—appealed the trial court's order denying her motion for attorney's fees after she successfully defended the foreclosure action. Same as here, the *Castellanos* mortgage contained a unilateral prevailing party attorney's fee provision favoring Reverse Mortgage. The trial court denied Castellanos's attorney's fee motion on the authority of *Suchman*. *2021 Fla. App. LEXIS 6715, 2021 WL 1897069 at *1*. The Third District reversed. As for the continuing viability of its decision in *Suchman*, the Third District held:

> Further,***HN10***[⬆] to the extent *Suchman* holds that, as a matter of law, the reciprocity provision of *section 57.105(7)* cannot apply to authorize an award of attorney's fees to a prevailing borrower on an underlying nonrecourse loan, we determine such a holding **[*22]** has been implicitly overruled by the Florida Supreme Court's recent decision in *Page v. Deutsche Bank Tr. Co. Ams., 308 So. 3d 953 (Fla. 2020)* (holding that a unilateral attorney's fee provision in a note and mortgage was made reciprocal to a borrower under *section 57.105(7)* when the borrower prevailed in a foreclosure action on its standing defense).

Id. (footnote omitted). "The strict holding of *Page*," as the Third District noted, was "not directly applicable" to the case before it, it nevertheless concluded that the logic inherent in the plain meaning construction applied by the court to the text of *section 57.105(7)* was "dispositive."[4] *2021 Fla. App. LEXIS 6715, [WL] at *3*. Importantly, the Third District deftly rejected Reverse Mortgage's argument, one that is inherent in its position taken in the present appeal:

> [T]he Lender's primary theme, summed up during its presentation at oral argument was "you get what you give," meaning that, because the attorney's fee provision in the mortgage did not authorize the Lender to seek an award of attorney's fees ***from Castellanos***, the reciprocity provision of *section 57.105* could not apply to authorize Castellanos to seek an award of attorney's fees ***from the Lender***. However, nothing in the plain language of the statute imposes such a requirement as a condition of reciprocity. Instead, that **[*23]**

[4] *Page* resolved the question of whether a unilateral attorney's fee provision is made reciprocal to a borrower under *section 57.105(7)* "when the borrower prevails in a foreclosure action in which the plaintiff bank established standing to enforce the note and mortgage at the time of trial but not at the time suit was filed." *308 So. 3d at 954*. Specifically, the supreme court explained that the bank's failure to prove its right to enforce the contract was "not an adjudication that no contractual relationship existed between the parties" or that "the contract was nonexistent." *Id. at 959* (quotation omitted). It went on to **[*24]** reject the district court's reasoning that *section 57.105(7)* requires "contract enforceability by both parties on the day suit is filed" because it "erroneously added words to the statute that were not placed there by the Legislature." *Id. at 959-60* (quotation omitted). It continued: "There is simply no basis in the statutory text to conclude that a contract containing the requisite provision must be shown to be mutually enforceable on the day suit is filed." *Id. at 960*.

> aspect of *section 57.105(7)* creates reciprocity where the "contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract. . . ." ***HN11***[⬆] The statutory language addresses a prevailing party's ability to recover attorney's fees, not a losing party's obligation to pay attorney's fees.

*2021 Fla. App. LEXIS 6715, [WL] at *5* (emphasis in original) (footnotes omitted). In the end, the Third District reversed the trial court's order denying Castellanos's motion for attorney's fees. It remanded for the trial court for further proceedings to enter an order granting entitlement to fees under *section 57.105(7)*. *2021 Fla. App. LEXIS 6715, [WL] at *6*. We do likewise.

VI.

In conclusion, we hold that the trial court erred in denying Gartner's motion for an award of attorney's fees. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

RAY, C.J., and LEWIS, J., concur.

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