

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC08-2465

**UNITEAMERICA, INC., *d/b/a*
GARY MOULTON AUTO
CENTER,**

Petitioner,

vs.

CASE NO: 1D07-4900 and 1D07-4902

**FARMERS AND MERCHANTS
BANK,**

Respondent.

_____/

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
JURISDICTIONAL STATEMENT	4
STATEMENT OF THE CASE AND FACTS	4
SUMMARY OF ARGUMENT	6
ARGUMENT	7
CONCLUSION	9
CERTIFICATE OF SERVICE	9
CERTIFICATE OF COMPLIANCE WITH FONT SIZE	10

TABLE OF AUTHORITIES

Cases

<i>Apgar v. Markham Construction of Florida, Inc. v. Macasphalt, Inc.</i> , 424 So.2d 41 (Fla. 2d DCA 1982)	6
<i>Patricia Salazar v. Helicopter Structural Maintenance, Inc.</i> , 986 So.2d 620 (Fla. 4 th DCA 2007)	4
<i>Ware v. Land Title Company of Florida, Inc.</i> , 582 So.2d 46 (Fla. 2d DCA 1991)	6
<i>Yang Enterprises, et.al. v. Mavis Georgalis</i> , 33 Fla. Weekly D 1941 (Fla. 1 st DCA 2008)	4

Statutes and Constitutional Provisions

<u>Fla. Const.</u> Art. V, Section 3	4
<i>Florida Statutes, Chapter 57.105</i>	4, 5, 6, 7, 8, 9

Rules

<i>Florida Rules of Appellate Procedure, Rule 9.030(a)(2)(A)(iv)</i>	4
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JURISDICTIONAL STATEMENT

Petitioner, **UNITEAMERICA, INC., d/b/a GARY MOULTON AUTO CENTER**, invokes the discretionary jurisdiction of this Court. Discretionary jurisdiction is invoked pursuant to the Florida Constitution, Article V, Section 3 (b) (3) and the *Florida Rules of Appellate Procedure*, *Rule 9.030(a)(2)(A)(iv)* in that the decision of the First District Court (**App. “A”**) conflicts with previous decisions of the First District Court, itself, in the case of *Yang Enterprises, et.al. v. Mavis Georgalis*, 33 Fla. Weekly D 1941 (Fla. 1st DCA 2008), as well as the decision of the Fourth District Court in *Patricia Salazar v. Helicopter Structural Maintenance, Inc.*, 986 So.2d 620 (Fla. 4th DCA 2007), which have established that a condition precedent to an award of attorney’s fees pursuant to the *Florida Statutes, Chapter 57.105*, is that any such Order containing an award must contain judicial findings of law and fact supporting the subject award.

STATEMENT OF THE CASE AND FACTS

On or about August 3, 2005, the Petitioner, UniteAmerica, Inc., d/b/a Gary Moulton Auto Center (hereinafter to be referred to as “Unite-America”), brought a lawsuit against Farmers and Merchants Bank in connection with monies which were embezzled by an employee of the

Petitioner through a bank account with Farmers and Merchants Bank.

While Petitioner brought several claims in its initial Complaint, the case was later reduced to one (1) claim predicated upon breach of contract.

On January 5, 2007, the Trial Court granted Summary Judgment on the Petitioner's claim and, subsequently, awarded attorney's fees pursuant to the *Florida Statutes, Chapter 57.105*. The Petitioner appealed both the ruling on Summary Judgment and the award of attorney's fees to the First District Court of Appeal.

On or about September 15, 2008, the First District Court issued what was characterized as a written opinion affirming the Trial Court's rulings, as well as awarding additional appellate fees pursuant to the *Florida Statutes, Chapter 57.105*. (**App. "A"**). The Petitioner, Unite-America, timely filed a Motion for Rehearing, as well as a Request for a Written Opinion (**App. "B"**). On or about December 3, 2008, the First District Court of Appeal issued a ruling denying the Petitioner's Motion for Rehearing, as well as its Request for a Written Opinion (**App. "C"**). The Petitioner, UniteAmerica, now seeks review of the First District Court of Appeal's decision in *UniteAmerica, d/b/a Gary Moulton Auto Center v. Farmers and Merchants Bank*, Case Number(s) 1D07-4900 and

1D07-4902 (App. “A”).

SUMMARY OF ARGUMENT

Florida Courts including, but not limited to, the First District Court of Appeal, have routinely held that “Before attorney’s fees can be awarded to the prevailing party under Fla. Stat. ch. 57.105(1) (1989), the Court must find an absence of any justiciable issue of either law or fact, raised by the complaint or defense of the losing party. **The finding must be express and without it an order awarding such fees is technically deficient and must be reversed** (*Emphasis Supplied*)”. *Ware v. Land Title Company of Florida, Inc.*, 582 So.2d 46 (Fla. 2d DCA 1991). See also *Apgar & Markham Construction of Florida, Inc. v. Macasphalt, Inc.*, 424 So.2d 41 (Fla. 2d DCA 1982).

At both the Trial Court level, as well as in the Appeals Court, the Petitioner, UniteAmerica, has sought to avail itself of its entitlement under the *Florida Statutes, Chapter 57.105*, to be furnished with an Order setting forth findings of fact and law justifying an award of attorney’s fees as a condition precedent to the granting of such award. The Petitioner, UniteAmerica, took the instant case up on appeal before the First District Court for the specific purpose of obtaining relief from the Order of the Trial Court which, respectfully, failed to abide by the dictates of the statute

and controlling case law precedent which served as the legal authority for the original award attorney's fees.

On appeal, the First District Court not only affirmed the award giving rise to the appeal, but went still further by awarding appellate attorney's fees for said appellate proceedings and, in so doing, compounded the Petitioner's injuries by virtue of committing the identical procedural omissions which catalyzed the initial appeal.

ARGUMENT

There is no question that an award of attorney's fees pursuant to the *Florida Statutes, Chapter 57.105*, requires an Order setting forth the factual and/or legal basis for the award of said fees. Despite the fact that the briefs filed in the appeal record with the First District Court were extensive in character—encompassing a variety of legal issues and/or arguments—the Order of the First District Court of Appeal which purports to characterize the appeal as lacking in merit and/or foundation and, accordingly, justifying the imposition of sanction is, literally, comprised of a mere four (4) sentences—“We find no merit to this appeal. Furthermore, we conclude that appellant and its attorneys knew or should have known that arguments made in the briefs were not supported by the material facts and applicable law. Consequently, we AFFIRM the trial

court's challenged rulings and GRANT the appellee's motions for appellate attorney fees under section 57.105, Florida Statutes (2005). On remand, the trial court shall determine the proper amount of the attorney fees for handling this appeal and shall then apportion the fees between appellant and its attorneys according to the procedure set out in section 57.105, Florida Statutes (2005)".

The four (4) sentence written opinion of the First District Court of Appeal directs that the case be remanded to the Trial Court for proceedings consistent with statutory procedures and yet, respectfully, does not address the Trial Court's failure to abide by the pertinent statutory procedures, as well as its own lack of compliance therewith.

The fact that setting forth the relevant findings of fact and law are an absolute and indispensable predicate to the imposition of attorney's fees and/or sanctions pursuant to the *Florida Statutes, Chapter 57.105*, notwithstanding, the provision of an Order including said findings would only serve the interests of fairness and judicial economy. To wit, the findings of fact and law required serve to explain to the parties against whom sanctions are sought the reason why the claims and/or actions previously brought were without merit. In so doing, the parties against whom sanctions are sought are apprised of the nature and/or character of

actions which would tend to give rise to the said sanctions. Accordingly, having been conferred with such knowledge, the parties at issue are able to avoid continuing and/or future instances of engaging and/or otherwise pursuing actions/claims that the Court would construe as lacking in merit.

CONCLUSION

The Petitioner, UniteAmerica, comes before this Court with the simple request that—in the event that the Trial Court and the First District Court of Appeal seek to impose sanctions—in so doing, the respective Courts abide by the dictates set forth in the *Section 57.105* statutory regime. The statutory procedures at issue should be uniform and applied with a predictable measure of homogeneity. Jurisdiction should be granted to address the matters addressed and/or contemplated herein so as to ensure transparency and fundamental fairness.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was conveyed via U.S. Mail, postage pre-paid, to Ms. Mary Kay Simpson, Esq., Guilday, Tucker, *et.al.*, 1983 Centre Pointe Boulevard, Suite 200, Tallahassee, Florida 32308, on this 8th day of January, 2009.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the font of this brief is Times
New Roman 14.

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