

IN THE COUNTY COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

MARK BUCK and,
YOLANDA TORICELLA BUCK,

CASE NO: 22-00603 CC 05 (02)

Plaintiffs,

v.

LAZARO SANTOS and
DIANELYS PEREZ LINARES,

Defendants. _____/

DEFENDANTS MOTION FOR SANCTIONS

COME NOW the Defendants, Lazaro Santos and Dianelys Perez Linares ("Defendants"), by and through their undersigned counsel move the Court to enter an Order sanctioning Plaintiffs, Mark Buck and Yolanda Toricella Buck ("Plaintiffs"), including an award of attorney's fees and costs to the Defendants, and as grounds therefore state:

1. *Florida Statutes § 57.105* provides, that the Court "... [u]pon the court's initiative or motion of any party, ... 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 ... 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.

2. The Plaintiffs filed Complaint against the Defendants for Malicious Prosecution based on an alleged actions filed against them for Domestic Violence against their daughter YSP (hereinafter "Child")..

3. Both actions were titled Lazaro Santos, OBO YSP, and the Defendant Dianelys Perez Linares was not mentioned as a party or as the guardian, and voluntarily dismissed without prejudice based on the agreement of the Plaintiffs and the Defendant Lazaro Santos as parent of the Child.

4. Plaintiffs filed a malicious prosecution action which appended both Orders of Dismissal without prejudice and the settlement agreement between the parties..

5. To bring a prima facie case for malicious prosecution, the following six elements must be established: (1) commencement of a judicial proceeding; (2) its legal causation by the present defendant against the plaintiff; (3) its bona fide termination in favor of plaintiff; (4) absence of probable cause; (5) malice; and (6) damages, *and the failure to establish any one of those elements is fatal to a claim for malicious prosecution. Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994); *Rivernider v. Meyer*, 174 So. 3d 602, 604 (Fla. 4th DCA 2015).

6. As is apparent there was obvious probable cause to bring the action, and the action was settled by the parties and the Plaintiffs did not prevail.

7. As a result, the Plaintiffs did not and do not have a viable cause of action against either of the Defendants based on the failure to properly allege a cause of action, and since neither of the Defendants were parties individually in the Domestic Violence case.

8. Black letter law in Florida expressly provides that a party has no claim for malicious prosecution if cases are not terminated in a bona fide manner in their favor cannot make a claim. A "bona fide termination" means *not only that the underlying suit was resolved favorably to the Plaintiffs in that action but also that it ended in a manner demonstrating that the underlying suit lacked merit. Rowen v. Holiday Pines Prop. Owners' Ass'n*, 759 So. 2d 13, 15-16 (Fla. 4th DCA 2000); *Cohen v. Corwin*, 980 So.2d 1153, 1155 (Fla. 4th DCA 2008); *Doss v. Bank of Am., N.A.*, 857 So. 2d 991 (Fla. 5th DCA 2003). (termination of the underlying suit on technical

grounds, for procedural reasons, or any other reason not inconsistent with the guilt of the accused).
[Emphasis Added].

9. Plaintiffs were and are fully aware that the Defendants was not responsible for the prosecution and that the termination of the cases were without prejudice and pursuant to agreement, but they nevertheless filed the baseless and frivolous action.

10. At the time of filing this action and continuing to date, the Plaintiffs, knew that the Defendants were not liable or should have known at the outset that the claim asserted against the Defendants in this case were not supported by the facts and applicable Florida law.

11. The Defendants has and is requesting the Plaintiffs dismiss the action pending against the Defendants within the safe harbor period of 21 days from the date or the remittance of this notice and motion.

12. Should the Plaintiffs refuse to withdraw and dismiss this action, the same would violate §57.105, *Florida Statutes*, in that the Plaintiffs knew or should have known that the facts relating to the Complaint, when initially presented and thereafter, were not and are not supported by the material facts necessary to establish a basis for relief, or in the alternative, the Complaint is not supported by the application of the then existing law to those material facts.

13. The Plaintiffs have and are creating unnecessary, unjustified and costly litigation in this case, where none is necessary, and as a result they should be sanctioned for their litigious actions and that all conditions precedent to the efficacy of this Motion have has complied with by the undersigned, wherein a 21-day safe harbor notice is being properly rendered to the Plaintiffs. its counsel.

14. As a result of the Plaintiffs bad faith, the same is in violation of §57.105, *Florida Statutes*, and the refusal to resolve the issues and matters posed herein, the Defendants are entitled to the taxation of reasonable attorney's fees against the Plaintiffs..

15. The Defendants retained the undersigned attorney and is obligated to pay a reasonable fee for his services.

16. The undersigned certifies that a copy hereof has been furnished by U.S. Mail on February 17, 2022, to the Plaintiffs at the address provide in the Complaint.

WHEREFORE, Defendants prays this Honorable Court assess and find pursuant to *Florida Statute §57.105*, that Plaintiffs violated the Statute, and are entitled to sanctions being imposed on the Plaintiffs, including attorney's fees and costs and such other relief as the Court deems just and proper.

Respectfully submitted,

Harvey D. Rogers, P.A.
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By: /S/ Harvey D. Rogers, Esq.
Harvey D. Rogers, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was emailed through the Florida Courts E-filing Portal, this _____ day of _____, _____, and to: Mark Buck and Yolanda Torricella Buck, 2511 Washington Street Hollywood, Florida 33020.

/S/ Harvey D. Rogers, Esq.
Harvey D. Rogers, Esq.
FBN: 194330