

Third District Court of Appeal

State of Florida

Opinion filed April 8, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1652
Lower Tribunal No. 15-11772

Rhonda Hollander, P.A., and Rhonda Hollander,
Petitioners,

vs.

Sandra Witty Fortunato,
Respondent.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Mavel Ruiz, Judge.

Katie S. Phang, P.A., and Kathleen S. Phang, for petitioners.

Benitez & Associates, and Leo Benitez, for respondent.

Before EMAS, C.J., and FERNANDEZ, and LINDSEY, JJ.

PER CURIAM.

Petitioners, Rhonda Hollander, P.A. and Rhonda Hollander, seek a writ of certiorari asking this Court to quash the trial court's August 7, 2019 order which denies petitioners' motion to dismiss the respondent, Sandra Witty Fortunato's, Fourth Amended Complaint.

Upon review of the record, we conclude that petitioners are not entitled to the writ because the litigation privilege does not apply under these circumstances, where respondent alleged in the trial court that petitioners violated section 559.72, Florida Statutes (2014) by sending threatening collection letters demanding payment of maintenance assessments, interest, late charges, and attorney's fees (collectively "dues") pursuant to the subject Declaration, despite having actual knowledge that the Declaration was expired and unenforceable under the provisions of Florida's Marketable Record Title Act, Florida Statute, Chapter 712. Thus, petitioners had no basis to proceed with the collection of these dues. See AGM Investors, LLC v. Business Law Group, P.A., 219 So. 3d 920 (Fla. 2nd DCA 2017); Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier, 965 So. 2d 1228 (Fla. 1st DCA 2007); and Fuller v. Becker & Poliakoff, P.A., 192 F. Supp. 2d 1361 (M.D. Fla. 2002).

Petition denied.