

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2012

BLACK DIAMOND PROPERTIES, INC.,
BLACK DIAMOND REALTY, INC., AND
STANLEY C. OLSEN,

Appellants,

v.

Case No. 5D11-589

CHARLES S. HAINES, KATHY HAINES,
RICHARD O. CONBOY, JACKSON
RANDOLPH, LARRY LAUKKA, ANGELO
MASUT, BRENDA MASUT AND TOM HOWELL,

Appellees.

Opinion filed May 25, 2012

Appeal from the Circuit Court
for Citrus County,
William T. Swigert, Judge.

Edward A. Marod, of Gunster Yoakley and
Stewart, P.A., West Palm Beach, and
Anne S. Mason of Mason Law, P.L.,
Clearwater, for Appellant.

Steve A. Rothenburg, Ocala, and John C.
Bell, Jr., Bell & Brigham, Augusta,
Georgia, for Appellee.

PALMER, J.

Appellants, Black Diamond Properties, Inc., Black Diamond Realty, Inc., and Stanley C. Olsen appeal an order awarding statutory prevailing-party attorney's fees and costs to appellees, Charles and Kathy Haines, Angelo and Brenda Masut, Tom

Howell, and Richard Conboy. See § 817.41(6), Fla. Stat. (1997). The award was based on the previously entered final judgment finding that the appellees had sustained damages as a result of the appellants' misleading advertising, as prohibited by section 817.41(2). While this appeal was pending, we reversed and remanded the final judgment entered in favor of the appellees. Black Diamond Properties, Inc. v. Haines, 69 So. 3d 1090 (Fla. 5th DCA 2011). As such, the award of attorney's fees and costs must be reversed because the appellees are no longer prevailing parties. See Montgomery v. English, 902 So. 2d 836 (Fla. 5th DCA 2005); F.J.W. Enters. Inc. v. Johnson, 749 So. 2d 573 (Fla. 5th DCA 2000); Ass'n Fin. Servs, Inc. v. Lewis, 551 So. 2d 590 (Fla. 5th DCA 1989).

REVERSED and REMANDED.

SAWAYA and MONACO, JJ., concur.