

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**THE BANK OF NEW YORK**, as Trustee for the Benefit of CWMBS, INC.,  
CHL Mortgage Pass-Through Trust 2007-19 Mortgage Pass-Through  
Certificates, Series 2007-19,  
Petitioner,

v.

**RICHARD VON HOUTMAN**, et al.,  
Respondents.

No. 4D15-2771

[November 25, 2015]

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barry J. Stone, Senior Judge; L.T. Case No. CACE 08-31733.

Adam M. Topel, J. Randolph Liebler, Christine M. Manzo and Katherine A. Coba of Liebler, Gonzalez & Portuondo, Miami, for petitioner.

Bruce Jacobs, Court E. Keeley, Amida U. Frey and Anna C. Morales of Jacobs Keeley, PLLC, Miami, for respondent Richard Von Houtman.

**ON MOTION FOR ATTORNEYS' FEES**

PER CURIAM.

The Bank of New York as Trustee for the Benefit of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-19 Mortgage Pass-Through Certificates, Series 2007-19 ("the Bank"), petitioned this court for a writ of certiorari to review a trial court discovery order. After we issued an order dismissing that petition, respondent filed a motion for appellate attorneys' fees. Because it was not timely filed pursuant to Florida Rule of Appellate Procedure 9.100(k), we deny the motion.

As the Bank petitioned this court for a writ of certiorari, we have original jurisdiction. See Fla. R. App. P. 9.100(a)-(b). Motions for attorney's fees in original proceedings must be served "not later than . . . the time for service of the petitioner's reply to the response to the

petition.” Fla. R. App. P. 9.400(b)(2). “Under rule 9.100, parties may not respond to the petition unless the appellate court issues an order to show cause.” *Advanced Chiropractic & Rehab. Ctr., Corp.*, 140 So. 3d 529, 534 (Fla. 2014). Here, we issued an order to respondent to show cause why the petition should not be granted, and he later filed a response within the time period allotted.<sup>1</sup>

If a response has been filed, rule 9.100(k) states that “[w]ithin 20 days thereafter or such other time set by the court, the petitioner may serve a reply . . . .” Fla. R. App. P. 9.100(k). Thus, where a response has been filed by the respondent in cases of original jurisdiction, any motion for attorneys’ fees must be filed within twenty days of the response, or within any other time set by the appellate court.

Here, respondent failed to timely file the motion in accordance with the deadlines established in these rules. Accordingly, the motion for appellate attorneys’ fees is denied.

*Motion for fees denied.*

WARNER, DAMOORGIAN and KLINGENSMITH, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***

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<sup>1</sup> In *Advanced Chiropractic & Rehabilitation Center, Corp.*, the Florida Supreme Court held that the version of Florida Rule of Appellate Procedure 9.400 then in effect did not apply to original proceedings. 140 So. 3d at 537. Subsequently, the court created rule 9.400(b)(2). See *In re Amendments to Fla. Rules of Appellate Procedure*, No. SC14-227, 2014 WL 5714099, at \*19 (Fla. Nov. 6, 2014).