

# SUPPLEMENTARY PROCEEDINGS: A POTENTIAL AVENUE FOR MISUSE AND UNDUE BURDEN

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Supplementary proceedings, which are found in Florida Statutes Section 56.29, are designed to be a vehicle for judgment creditors to satisfy their judgments against debtors by allowing creditors to seek interests or funds of the judgment debtor that may be held by others. While the statute provides for an efficient process by which creditors can learn the extent of a judgment debtor's holdings and can obtain a charging order where appropriate, in reality, the process can be lengthy and expensive for implied third parties who at the end of the proceedings have no recourse against the party who brought them into the proceedings. Florida Statute 56.28(8) addresses the ability of third parties who have been brought into supplementary proceedings to recover attorneys' fees and costs. Yet, the only party from whom the statute permits parties to recover is the debtor – the same party without the necessary funds to satisfy the underlying judgment at issue. A judgment creditor can subject a third party to costly proceedings, and if the implied third party ultimately prevails, it has no ability to recover legal expenses.

While the statute provides that a prevailing party may recover costs and fees, they can only be collected against the judgment debtor. The statute ignores the reality that the debtor does not have the funds to pay for those legal expenses and allows a judgment creditor to escape fee shifting when it caused the implied third party to incur attorneys' fees and costs in the first instance.

Consider a bank that has secured a judgment against a debtor. The bank, in pursuit of repayment, decides to bring in third parties to the supplementary proceeding, alleging pursuant to Fla. Stat § 56.29(3) that the third parties have assisted in delaying, hindering or defrauding the bank in its recovery efforts. Litigating those issues can be burdensome and costly for third parties, but if they prevail and the bank fails to prove any assistance in interfering with its ability to recover from the judgment debtor, the third parties have no mechanism in the supplementary proceedings statute to recover their attorneys' fees or costs from the bank. What makes the framework particularly



frustrating is that supplementary proceedings are initiated because a judgment creditor cannot satisfy its judgment. It would follow, then, that the judgment debtor does not have the funds to reimburse the implied third parties for their legal expenses.

Under the traditional fee-shifting principle, whether statutory or contractual, the prevailing defendant typically recovers its legal fees from the party that initiated the lawsuit. This sensibly places the financial risk on the party initiating the lawsuit and prevents meritless claims. The supplementary proceedings statute deviates from this principle and reaches beyond financial implications. It challenges the core principles of fairness by on one hand providing no risk to a party bringing potentially baseless claims, while on the other hand disincentivizing third parties from vigorously defending themselves because of the potential of unrecoverable costs. The statute can only embolden resourceful judgment creditors to bring in multiple third parties to supplementary proceedings, knowing that there is no financial repercussion to them directly, even if they lose.

A reevaluation and potential amendment of Florida Statutes Section 56.28 to allow for a true fee-shifting would solve the problem. If a party initiates proceedings supplementary and brings in third parties, then the statute should mandate that if the third party prevails, they have a right to collect their costs and attorney's fees from the initiating party, not only the judgment debtor. This would ensure that parties think twice before alleging claims against third parties without substantial merit and protect the rights and financial wellbeing of those who are brought into legal proceedings through no direct fault of their own.

In conclusion, while the intent behind the supplementary proceedings is to streamline the process for judgment creditors to recover on their judgment, it inadvertently creates a potential avenue for misuse and undue financial burden on innocent third parties.