

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

JULY TERM 2011

JOHN T. BRYANT AND MORIAH BRYANT,

Appellants,

v.

Case No. 5D10-2412

REYNOLDS GENERAL CONTRACTORS, INC.,

Appellee.

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Decision filed September 16, 2011

Appeal from the Circuit Court
for Brevard County,
Robert Wohn, Jr., Judge.

Mark S. Peters of Eisenmenger, Berry &
Peters, P.A., Viera, for Appellants.

Pierre A.L. Mommers of Pierre A.L.
Mommers, P.A., Mommers & Colombo,
Melbourne, for Appellee.

PER CURIAM.

AFFIRMED.

PALMER and LAWSON, JJ., concur.
EVANDER, J., dissents with opinion.

EVANDER, J., dissenting.

While I acknowledge that the “abuse of discretion” standard of review is a deferential one, I believe a reversal is required. Given the ultimate outcome below, this was an ideal case for the trial court to hold that neither side was the “prevailing party” and to decline to make an award of attorney’s fees. See, e.g., *Merchants Bonding Co. (Mutual) v. City of Melbourne*, 832 So. 2d 184 (Fla. 5th DCA 2002); *Brevard County Fair Ass’n v. Cocoa Expo, Inc.*, 832 So. 2d 147 (Fla. 5th DCA 2002); *Lasco Enters., Inc. v. Kohlbrand*, 819 So. 2d 821 (Fla. 5th DCA 2002).