

OA 6.4.87

IN THE SUPREME COURT
STATE OF FLORIDA

Salley
FRANCIS W. CLARK, SR., etc.,
et al.,

CASE NO. 69,306

Petitioners,

vs.

CITY OF ST. PETERSBURG, a
municipal corporation,

Respondents.

APPLICATION FOR DISCRETIONARY REVIEW
OF THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT OF FLORIDA

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

For the purposes of this Brief the Petitioners, WALLACE SALLEY, CHARLIE C. JONES, CHARLIE BYRD, WILLIAM BROWN, THEODIS WRIGHT, CALVIN HICKS, JR., as Successor Trustees of MASONIC LODGE NO. 109, shall be referred to herein as "Petitioners", and Respondent, CITY OF ST. PETERSBURG, shall be referred to herein as "Respondent" or "City".

The following symbols shall be utilized herein:

"R" shall refer to the Record on Appeal herein.

"A" shall refer to the Appendix to this Brief.

STATEMENT OF THE CASE AND FACTS

This appeal emanates from an eminent domain action instituted by the City of St. Petersburg to acquire the fee simple title to Petitioner's property. Prior to the filing of the suit, City Council adopted a Resolution which established a policy for calculating full and fair compensation for several church properties located within a proposed redevelopment site, which area included the Petitioner's land. (R-74-76). The method of valuation set forth in the City's Resolution provided for compensation above and beyond the full compensation mandated by the Florida and United States Constitutions in that the City elected to value the structures and improvements located thereon based on the cost of replacing the same without depreciation for age or other obsolescence. (R-74-76). Additionally, said valuation methodology considered the cost of acquiring replacement sites in other areas of the community without regard to the actual fair market value of the land being acquired. (R-74-76).

Petitioners have constructed on their property a Masonic Lodge and have used the same as the meeting place and center for community services provided by the Masonic Temple, a non-profit fraternal organization designed to promote brotherhood in the community. Petitioners demanded that the City apply the method of calculating full and fair compensation which it had established for the adjacent church properties to the

Petitioner's land. However, the City refused to do so. Petitioner asserted in its Answer that it was being denied equal protection of the law and that the City's application of its valuation methodology violated the constitutional proscription against assisting the establishment of religion. (R-39,71).

Petitioner subsequently filed a Motion in Limine to determine the method of valuation to be utilized at the jury trial in this cause. The trial court determined (1) that the City's application of its Resolution violated the constitutional proscription against assisting the establishment of religion, and (2) that it denied the Petitioner equal protection of the law. (R-80). In order to give said enactment any constitutional effect, the trial court construed the same to require equal application of the method of valuation to all special use properties owned by non-profit educational, religious, charitable or eleemosynary organizations within the subject area. (R-81). The City filed a Petition for Certiorari in the Second District Court of Appeals, which was denied December 7, 1984, without Opinion. The City then stipulated to the amount of compensation that Petitioner would receive if the valuation methodology set forth in the City's Resolution was applied to Petitioner's property and a Final Judgment incorporating said amount was entered. The City appealed said Judgment to the Second District Court of Appeal, which reversed the same based on the District Court's conclusion that the Resolution was

adopted with reference "only to the church's property". City of St. Petersburg v. Clark, 492 So.2d 685 (Fla. 3d DCA 1986). By separate Order, the District Court denied the Motion for Attorneys Fees filed by the Petitioner. (A-1). The District Court also denied Petitioner's Motion for Rehearing as to the reversal of the Final Judgment and the denial for Petitioner's Motion for Attorneys Fees. Petitioner filed its Notice Seeking to Invoke the Discretionary Jurisdiction of the Court pursuant to Rule 9.030(a)(2)(iv) and Rule 9.120, Florida Rules of Appellate Procedure. On February 16, 1987, this Court entered its Order accepting jurisdiction of this cause only as to the issue of the denial of Petitioner's Motion for Attorneys Fees.

SUMMARY OF THE ARGUMENT

The Second District Court's denial of Petitioner's Motion for Attorneys Fees directly conflicts with this Court's prior ruling in Denmark v. State of Fla. Dept. of Transportation, 389 So.2d 201 (Fla. 1980). Attorneys fees for services rendered in the appellate court are recoverable by condemnees for all appeals instituted by a condemnor regardless of the outcome of the appeal.

ARGUMENT

THE SECOND DISTRICT COURT OF APPEAL
ERRED IN DENYING PETITIONER'S
MOTION FOR ATTORNEYS FEES FOR
SERVICES RENDERED IN THE APPELLATE
COURT.

The Final Judgment awarding full compensation to the Petitioner in the subject eminent domain action was timely appealed by the City of St. Petersburg in City of St. Petersburg v. Clark, 492 So.2d 685 (Fla. 2nd DCA 1986). Pursuant to Rule 9.400 Petitioner filed a Motion for Attorneys Fees seeking compensation for their attorney's services rendered in the appellate court. The foundation for Petitioner's demand for attorney's fees is contained in Section 73.131(2), Florida Statutes, which provides:

"The petitioner shall pay all reasonable costs of the proceedings in the appellate court, including a reasonable attorney's fee to be assessed by that court except upon an appeal taken by a defendant in which the judgment of the trial court shall be affirmed."

The Florida decisions interpreting the aforesaid statutory provision have consistently held that condemnees are entitled to receive attorneys fees for services in the appellate court regardless of the outcome of the appeal, providing the condemnor had initiated the appeal. Denmark v. State of Fla. Dept. of Transportation, 389 So.2d 201 (Fla. 1980); State Road Dept. v. Hancock, 250 So.2d 307 (Fla. 2d DCA 1971); State Road Dept. v. Levato, 199 So.2d 714 (Fla. 1967). In Denmark, supra, the

eminent domain proceeding culminated in a jury verdict of \$48,000. The trial judge entered a judgment notwithstanding the verdict of \$229,850 in severance damages to the condemnees. The condemnor appealed the award to the Fourth District Court of Appeals, which reversed the judgment. In a separate order, the District Court denied the condemnee's motion for appellate attorney's fees. This Court granted certiorari and quashed the order denying appellate attorney's fees. This Court ruled that, based upon Section 73.131(2), Florida Statutes, the condemnees were entitled to an attorney's fee for appellate services even though the condemnor prevailed on appeal.

In the case at bar, the Second District Court was faced with the same statutory provision and with similar factual circumstances present in Denmark, supra. Since the subject action is identical in all material respects to the facts before this Court in Denmark, supra, it is apparent that the Second District Court's denial of the Petitioner's Motion for Attorney's Fees was erroneous and must be reversed.

CONCLUSION

The Second District Court of Appeal's denial of Petitioner's Motion for Attorneys Fees expressly and directly conflicts with this Court's decision in Denmark, supra, and the unequivocal provisions of Section 73.131(2), Florida Statutes. Accordingly, said Order must be quashed and the cause remanded for appropriate proceedings determining a reasonable attorney's fee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by mail to MICHAEL S. DAVIS, City Attorney, and WILLIAM N. DRAKE, JR., Assistant City Attorney, P. O. Box 2842, St. Petersburg, FL 33731 this 11 day of March, 1987.

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