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PRELIMINARY STATEMENT

For the purpose 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 Answer Brief of the Respondent.

REPLY ARGUMENT

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

Respondent asserts that Petitioners' Motion for Attorneys Fees was properly denied by the Second District Court of Appeal because Petitioners failed to cite in their Motion the "grounds upon which recovery is sought." Respondent's contention is without merit for this Court decreed in Behm v. Division of Administration, Department of Transportation, 288 So.2d 476 (Fla. 1974), that no motion or petition for attorneys fees is necessary when an award of attorneys fees is mandatory. Since Section 73.131(2), Florida Statutes, declares that the payment of appellate attorneys fees to condemnees is mandatory when the appeal is initiated by the condemnor, Petitioners' failure to refer to the Statute in their Motion does not terminate their right to an attorneys fee.

Respondent's suggestion that the Petitioners erred in failing to file supporting affidavits as to the value of the attorneys' services is not a sufficient predicate for the denial of attorneys fees and, in reality, is impractical. At the time that Petitioners' Motion for Attorneys Fees is required to be filed pursuant to Rule 9.400, Florida Rules of Appellate Procedure, neither the extent of the services rendered nor the results of

such services can be ascertained. Thus, the expert witnesses who are providing the appellate court with their opinions of value do not have the information necessary to apply the statutory criteria set forth in Section 73.092, Florida Statutes.

At this juncture in the proceedings, the Respondent should not be permitted to complain about the form of Petitioners' Motion, for Respondent has admitted in its Answer Brief that it did not file an objection to Petitioners' Motion for Attorneys Fees in the District Court. (A-5). Respondent is thus estopped to now argue that Petitioners' Motion should be denied for alleged technical deficiencies.

Respondent claims that no conflict in jurisdiction exists in this cause and asserts that the Petitioners would still be permitted to apply to the trial court for the assessment of attorney's fees, notwithstanding the denial of Petitioners' motion by the Second District. (A-4). Respondent notes that the Second District Court of Appeal's Order "seems to allow the Petitioner to apply for his fees in the lower court", and that ". . .the Second District Court of Appeal would not seem to preclude the Petitioner from obtaining the fees to which he claims entitlement. . ." (A-4,5). This argument is inconsistent with this Court's ruling in Denmark v. State of Florida Department of Transportation, 389 So.2d 201 (1980). Moreover, if Respondent acknowledges that Petitioners are entitled to an award of attorneys fees for services rendered in the District Court, it should not be requesting this Court to affirm the Order denying attorneys fees.

Respondent complains that it is in a statutory "Catch-22" of paying additional attorney's fees for the appeal to this Court and that this action constitutes a "corruption" of the intent of the statutory provision for attorneys fees. Petitioners would note that if Respondent's contentions are true, it is the Second District Court of Appeal that has placed the parties in their respective positions. Petitioners simply adhered to Rule 9.400, Florida Rules of Appellate Procedure, and Section 73.131, Florida Statutes, and requested that they be compensated for the reasonable value of the services rendered by their attorneys in the appellate court. Had the Second District Court remanded the cause to the lower tribunal for assessment of attorney's fees or scheduled a hearing for the determination of the same, or declared that the denial of Petitioners' Motion was "without prejudice to apply for fees below" as the Respondent's Brief states occurred in City of Miami v. Manilow, 253 So.2d 910 (Fla. 3d DCA 1971), then Petitioners would be certain that they would receive the full compensation required under the dictates of Hodges v. Division of Administration, State Department of Transportation, 323 So.2d 275 (Fla. 2d DCA 1975), and Article X, Section 6 of the Constitution of the State of Florida. In the absence of the foregoing, the Petitioners could not risk not appealing the denial of its Motion for Attorney's Fees. Notwithstanding Respondent's assertions in its Answer Brief, it can reasonably be foreseen that if Petitioners had not sought review in this matter, the Respondent would contend during the

attorney's fee proceeding in the lower court that jurisdiction to award attorney's fees has been terminated based upon the District Court's Order.

As noted in Petitioners' Initial Brief on the Merits, the Second District Court's denial of Petitioners' Motion for Attorneys Fees expressly and directly conflicts with this Court's decision in Denmark, supra, and with the provisions of Section 73.131(2), Florida Statutes. Said Order must therefore be quashed and the case remanded for the proper determination of reasonable attorneys fees.

CONCLUSION

Respondent is estopped from asserting that the Petitioners' Motion for Attorney's Fees was insufficient, since it failed to object to the same in the Second District Court of Appeal. Additionally, since an award of attorney's fees is mandatory under Section 73.131, Florida Statutes, Petitioners' technical deficiency in failing to cite said enabling provision in its motion is not a proper basis for the denial of attorneys fees in the case at bar. This Court has previously declared in Behm, supra, that no motion is even necessary to obtain attorney's fees where such fees are provided as a matter of law. Accordingly, the Second District Court of Appeal's Order denying Petitioner's Motion for Attorneys Fees should be reversed and the cause remanded to the trial court for the institution of proceedings to determine a reasonable attorney's fees for the services rendered.

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, ESQ., City Attorney, and WILLIAM N. DRAKE, ESQ., Assistant City Attorney, P. O. Box 2842, St. Petersburg, FL 33731 this 8th day of April, 1987.

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