

file

IN THE SUPREME COURT OF FLORIDA
500 SOUTH DUVAL STREET
TALLAHASSEE, FLORIDA 32399
(904) 488-0125

WILLIAM BELL, et al.,

Petitioners,

v.

CASE NO.: 90,321

U.S.B. ACQUISITION COMPANY, INC.,
etc., et al.

Respondents.

FILED

SID J. WHITE

SEP 11 1997

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

U.S.B. ACQUISITION COMPANY, INC.,
etc., et al.

Petitioners,

v.

CASE NO.: 90,426

ALLEN G. STAMM, et al.

Respondents.

RESPONDENTS' APPENDIX TO
ANSWER BRIEF AND CROSS-PETITION

LEWIS, VEGOSEN, ROSENBACH & SILBER, P.A.
Marshall J. Osofsky, Esquire
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Cross-Petitioners

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JANUARY TERM 1997

U.S.B. ACQUISITION COMPANY, INC.
n/k/a U. S. Block Corporation;
and WALTER R. SJOGREN, SR.,

Appellants,

v.

ALLEN G. STAMM, WILLIAM BELL, and
THOMAS LAGANO, et al.,

Appellees.

CASE NO. 92-3138

Opinion filed March 12, 1997

Appeal from the Circuit Court for the Fifteenth
Judicial Circuit, Palm Beach County; Edward A.
Garrison, Judge; L.T. Case No. CL87-8107AE.

Marshall J. Osofsky of Lewis, Vegosen,
Rosenbach & Silber, P.A., West Palm Beach, for
appellants.

Basil E. Dalack, West Palm Beach, for himself.

**ON MOTION FOR REHEARING,
CLARIFICATION, AND CONSOLIDATION**

FARMER, J.

When this case was previously before us, we
affirmed on the main appeal and reversed on the
cross appeal, remanding the case to the trial court
for the entry of judgment in favor of appellees.
U.S.B. Acquisition Co. Inc. v. Stamm, 660 So. 2d
1075 (Fla. 4th DCA 1995), *rev. denied*, 670 So.
2d 941 (Fla. 1996). At the same time, we also
granted a motion for appellate attorney's fees and
directed the trial court to determine the amount of
such fees. After remand, the trial court was called
upon to determine attorney's fees for different

lawyers for trial court services, as well as for the
attorney entitled to the appellate fees we had
ordered. As a result, the trial court entered two
separate final orders awarding attorney's fees: one
in favor of Basil Dalack for the appellate fees and
another in favor of the individual appellees for
their trial court attorney's fees.

Within 30 days of rendition, the payor of the fees
filed a single notice of appeal seeking review of
both orders. At the same time, Mr. Dalack, the
appellate lawyer for the prevailing party, filed a
motion under rule 9.400(c)¹ to review the
appellate fee award.² The payor filed a response
to that motion. After due consideration, we
entered an order granting review of the award of
appellate fees and, upon such review, affirming
the order.

The payor of the fees has now timely moved for
rehearing or clarification of that order, as well as
for consolidation with its pending appeal of the
trial court fees. The payor argues that our
affirmance of the award has the effect of cutting
off its own separate appeal of the appellate fees
award—contending that it properly appealed the
appellate fees award, as opposed to seeking review
by motion in this court under rule 9.400(c).³ In
support of this argument it cites our decisions in
Magner v. Merrill Lynch Realty/MCK, Inc., 585
So. 2d 1040 (Fla. 4th DCA 1991), *rev. denied*,
598 So. 2d 77 (Fla. 1992), and *Starcher v.*
Starcher, 430 So. 2d 991 (Fla. 4th DCA 1983).
On the other hand, Mr. Dalack has himself moved

¹ See Fla.R.App.P. 9.400(c) ("Review of orders
rendered under this rule shall be by motion filed in the
court within 30 days of rendition.")

² Dalack argued that the trial court erred in failing to
consider a contingency risk multiplier in assessing the
amount of the appellate fees. See *Command Credit
Corp. v. Mineo*, 664 So. 2d 1123 (Fla. 4th DCA 1995).

³ Apparently, the payor seeks to raise legal issues
relating to the amount of the appellate attorney's fees
assessed by the trial court.

for certification of a controlling question of law to the supreme court as to the allowable use of a contingency risk multiplier in contract attorneys' fees cases. We deny the payor's motion for rehearing but grant Dalack's motion for certification.

The facts in *Starcher* show that, after a prior appeal and an award of appellate attorney's fees,⁴ the case was returned to the trial court for further proceedings relating to the distribution of marital property. We also granted the wife's motion for an award of appellate attorney's fees under section 61.16 and remanded with instructions that the trial court address the issue of such fees as well. After further proceedings on remand, the trial judge entered a single amended final judgment determining both issues. Specifically, he decided that the husband was entitled to a special equity in the home equal to the wife's half interest, and further that she was not entitled to any additional attorney's fees for the prior appeal.

She then filed a plenary appeal of that single amended judgment determining both issues but failed to seek review of the appellate fees issue under rule 9.400(c). Initially, we granted a motion by the husband to strike the appellate fees issue from her brief on account of her failure to seek review under the rule. But later when the merits panel addressed the appeal itself, we "reluctantly" reversed ourselves on the striking of the appellate fees issue. We held that:

"By way of careful limitation, we hold that if the only grievance is the assessment of attorney's fees and costs under Florida Rule of Appellate Procedure 9.400(a) and (b), it must be brought to this court by motion in strict accordance with the provisions of Florida Rule of Appellate Procedure 9.400(c). It is only where, as here, there are other points on appeal, points other than the assessment of attorney's fees and costs under Florida Rule of Appellate Procedure 9.400(a) and (b), that such review may also be obtained by raising same as an additional point

⁴ See *Starcher v. Starcher*, 391 So. 2d 340 (Fla. 4th DCA 1980).

on appeal."
430 So. 2d at 993.

Similarly, in *Magner* we held that "a timely challenge to an attorney's fee award can be consolidated with a simultaneous plenary appeal where strict compliance with [rule] 9.400(c) would unnecessarily result in multiple actions." [e.s.] 585 So. 2d at 1044. In so doing, we also conspicuously noted that the *Starcher* exception was based on the circumstance where "a single final judgment formed the basis for both a proper plenary appeal as well as review under [rule 9.400(c)]." 585 So. 2d 1044. We stressed, however, that the *Starcher* exception is "limited." 585 So. 2d at 1043.

The payor of the fees in this case has misread *Starcher* and *Magner*. The principal holding of these cases is that review of awards of appellate attorney's fees after remand is strictly under rule 9.400(c), rather than by separate appeal. Simply put, however, the payor reads these decisions to allow a full appeal of an appellate fees determination after remand whenever there are other issues determined in addition to the appellate fees. In this, the payor is mistaken. Properly read, *Starcher* and *Magner* recognize a very limited exception to the command of rule 9.400(c) that applies only when the same parties are involved in a single judgment after remand that encompasses both an appellate fees issue and another issue, and one party seeks review of both issues at the same time. As the facts of *Starcher* make clear, however, the exception does not apply when there are multiple and discretely different judgments entered, and the appellate fees issue involves a different party than the other issue determined on remand.

There is, after all, an important policy behind rule 9.400(c). Review by simple motion is far more expeditious and less costly than review by plenary appeal. It is obviously the intent of the rule to speed up what may very well be the last court determination in a law suit, especially where it occurs after all trials and appeals have been had, and the issue is the amount of the appellate

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500 SOUTH DUVAL STREET
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JANUARY TERM 1997

U.S.B. ACQUISITION COMPANY, INC.
n/k/a U. S. Block Corporation;
and WALTER R. SJOGREN, SR.,

Appellants,

v.

ALLEN G. STAMM, WILLIAM BELL, and
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Appellees.

CASE NO. 92-3138

Opinion filed March 12, 1997

Appeal from the Circuit Court for the Fifteenth
Judicial Circuit, Palm Beach County; Edward A.
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Marshall J. Osofsky of Lewis, Vegosen,
Rosenbach & Silber, P.A., West Palm Beach, for
appellants.

Basil E. Dalack, West Palm Beach, for himself.

**ON MOTION FOR REHEARING,
CLARIFICATION, AND CONSOLIDATION**

FARMER, J.

When this case was previously before us, we affirmed on the main appeal and reversed on the cross appeal, remanding the case to the trial court for the entry of judgment in favor of appellees. *U.S.B. Acquisition Co. Inc. v. Stamm*, 660 So. 2d 1075 (Fla. 4th DCA 1995), *rev. denied*, 670 So. 2d 941 (Fla. 1996). At the same time, we also granted a motion for appellate attorney's fees and directed the trial court to determine the amount of such fees. After remand, the trial court was called upon to determine attorney's fees for different

lawyers for trial court services, as well as for the attorney entitled to the appellate fees we had ordered. As a result, the trial court entered two separate final orders awarding attorney's fees: one in favor of Basil Dalack for the appellate fees and another in favor of the individual appellees for their trial court attorney's fees.

Within 30 days of rendition, the payor of the fees filed a single notice of appeal seeking review of both orders. At the same time, Mr. Dalack, the appellate lawyer for the prevailing party, filed a motion under rule 9.400(c)¹ to review the appellate fee award.² The payor filed a response to that motion. After due consideration, we entered an order granting review of the award of appellate fees and, upon such review, affirming the order.

The payor of the fees has now timely moved for rehearing or clarification of that order, as well as for consolidation with its pending appeal of the trial court fees. The payor argues that our affirmance of the award has the effect of cutting off its own separate appeal of the appellate fees award—contending that it properly appealed the appellate fees award, as opposed to seeking review by motion in this court under rule 9.400(c).³ In support of this argument it cites our decisions in *Magner v. Merrill Lynch Realty/MCK, Inc.*, 585 So. 2d 1040 (Fla. 4th DCA 1991), *rev. denied*, 598 So. 2d 77 (Fla. 1992), and *Starcher v. Starcher*, 430 So. 2d 991 (Fla. 4th DCA 1983). On the other hand, Mr. Dalack has himself moved

¹ See Fla.R.App.P. 9.400(c) ("Review of orders rendered under this rule shall be by motion filed in the court within 30 days of rendition.").

² Dalack argued that the trial court erred in failing to consider a contingency risk multiplier in assessing the amount of the appellate fees. See *Command Credit Corp. v. Mineo*, 664 So. 2d 1123 (Fla. 4th DCA 1995).

³ Apparently, the payor seeks to raise legal issues relating to the amount of the appellate attorney's fees assessed by the trial court.

for certification of a controlling question of law to the supreme court as to the allowable use of a contingency risk multiplier in contract attorneys' fees cases. We deny the payor's motion for rehearing but grant Dalack's motion for certification.

The facts in *Starcher* show that, after a prior appeal and an award of appellate attorney's fees,⁴ the case was returned to the trial court for further proceedings relating to the distribution of marital property. We also granted the wife's motion for an award of appellate attorney's fees under section 61.16 and remanded with instructions that the trial court address the issue of such fees as well. After further proceedings on remand, the trial judge entered a single amended final judgment determining both issues. Specifically, he decided that the husband was entitled to a special equity in the home equal to the wife's half interest, and further that she was not entitled to any additional attorney's fees for the prior appeal.

She then filed a plenary appeal of that single amended judgment determining both issues but failed to seek review of the appellate fees issue under rule 9.400(c). Initially, we granted a motion by the husband to strike the appellate fees issue from her brief on account of her failure to seek review under the rule. But later when the merits panel addressed the appeal itself, we "reluctantly" reversed ourselves on the striking of the appellate fees issue. We held that:

"By way of careful limitation, we hold that if the only grievance is the assessment of attorney's fees and costs under Florida Rule of Appellate Procedure 9.400(a) and (b), it must be brought to this court by motion in strict accordance with the provisions of Florida Rule of Appellate Procedure 9.400(c). It is only where, as here, there are other points on appeal, points other than the assessment of attorney's fees and costs under Florida Rule of Appellate Procedure 9.400(a) and (b), that such review may also be obtained by raising same as an additional point

⁴ See *Starcher v. Starcher*, 391 So. 2d 340 (Fla. 4th DCA 1980).

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The payor of the fees in this case has misread *Starcher* and *Magner*. The principal holding of these cases is that review of awards of appellate attorney's fees after remand is strictly under rule 9.400(c), rather than by separate appeal. Simply put, however, the payor reads these decisions to allow a full appeal of an appellate fees determination after remand whenever there are other issues determined in addition to the appellate fees. In this, the payor is mistaken. Properly read, *Starcher* and *Magner* recognize a very limited exception to the command of rule 9.400(c) that applies only when the same parties are involved in a single judgment after remand that encompasses both an appellate fees issue and another issue, and one party seeks review of both issues at the same time. As the facts of *Starcher* make clear, however, the exception does not apply when there are multiple and discretely different judgments entered, and the appellate fees issue involves a different party than the other issue determined on remand.

There is, after all, an important policy behind rule 9.400(c). Review by simple motion is far more expeditious and less costly than review by plenary appeal. It is obviously the intent of the rule to speed up what may very well be the last court determination in a law suit, especially where it occurs after all trials and appeals have been had, and the issue is the amount of the appellate

lawyer's fee. Society has an interest at the point in expediting the closing judicial determination so that at long last finality and the end of litigation are at hand. That is the singular mission of rule 9.400(c).

Here, after remand, the trial court entered an amended final judgment on the merits of the dispute, as we instructed, as well as separate final orders on different applications for attorney's fees. One of the motions for attorney's fees was by the individual sellers, who sought an award for their trial court legal fees. The other motion was by Mr. Dalack, the lawyer who had represented appellees in the prior appeal, as authorized by our grant of appellate fees. Review of Dalack's motion would lead to the end of Dalack's involvement in the case. Dalack would certainly have no interest in the separate matter of the fees due appellees for their trial court lawyer. Under *Starcher* and *Magner*, in these circumstances the only method for review of the final order assessing the amount of Mr. Dalack's fees was by motion under rule 9.400(c) and not by appeal.

We also note that the record here shows that the payor of the appellate fees filed a response in this court to Dalack's motion to review the award and was thus doubtlessly aware of the rule.⁵ In spite of such knowledge of the rule, the payor made no attempt to file its own motion for review under rule 9.400(c) within the prescribed 30-day period or (within the same period) to amend his notice of appeal, filed in the lower court on November 4th, to constitute a motion under the rule to review the assessment of appellate fees. As we read *Starcher* and *Magner*, we are now precluded from allowing the recipient to have review of the amount of the appellate fees on account of the failure to follow

⁵ The two separate final orders awarding attorneys' fees were both entered and mailed on October 3, 1996. Allowing time for mailing, Mr. Dalack's motion for review was timely filed on November 6th. The payor's response to Dalack's motion was filed on November 21st. Hence the payor's response to Dalack's motion was well outside the 30 day period specified by rule 9.400(c), to constitute the payor's own attempt at review of the fee award under the rule.

the rule 9.400(c) procedure. Accordingly, the payor's motion for rehearing, clarification and consolidation must be denied.

On Dalack's motion for certification, we note that it involves the identical issue we previously certified to the supreme court in *Command Credit Corp. v. Mineo*, 664 So. 2d 1123 (Fla. 4th DCA 1995). In that case we determined that "a contingency multiplier is not applicable where the only authority for a fee award is based on a contractual provision and not a statute." 664 So. 2d at 1125-26. It appears, however, that the parties to that case did not seek review in the supreme court, and thus the issue has not yet been settled by our highest authority.

On remand in this case, the trial court assessed the amount of appellate fees as we directed. In doing so, however, the trial court refused to consider applying a contingency risk multiplier to the award, expressly following our decision in *Command Credit*. Hence, there is merit in the recipient's argument now that it is unfair to certify the question in *Command Credit* but not in this case in which the identical issue is presented and is dispositive. To facilitate supreme court review, therefore, we again certify the same question, namely:

Is a contingency risk multiplier inapplicable to a court awarded attorney's fee where the only authority for fees is predicated on a contractual provision and not a statute?

GUNTHER, C.J., and OWEN, WILLIAM C., Jr., Senior Judge, concur.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA.

CASE NO. CL 87-8107 AE

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

T.A.W. CORPORATION, f/k/a
U.S. BLOCK CORPORATION;
WILLIAM BELL; ALLEN G.
STAMM; and THOMAS LAGANO,

Defendants.

CONSOLIDATED WITH

CASE NO.: CL 89-2207 AE

ALLEN STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.,
a Florida Corporation, d/b/a U.S.
BLOCK CORPORATION, WALTER R. SJOGREN,
SR., UNITED STATES OF AMERICA, and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
a Florida Professional Association,
as escrow agent,

Defendants.

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, U.S. Block Corporation, appeal
to the Fourth District Court of Appeals the following order:

1. The Final Judgment, entered on August 26, 1996;

The nature of this Order is a Final Judgment. A copy of the
Final Judgment is attached hereto as Exhibit "A".

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 25th day of September, 1996 to the individuals on the attached service list.



MICHAEL D. BROWN, ESQUIRE
Attorney for Plaintiff
2655 North Ocean Drive, Suite 200
Riviera Beach, Florida 33404
Florida Bar No. 0727180

U.S. BLOCK CORP. etc. v. T.A.W. CORP., et al. (CL 87-8107 AE)
STAMM, et al. v. U.S.B. ACQUISITION CO. et al. (CL 89-2207 AE)
Consolidated

SERVICE LIST

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1400 Centrepark Blvd., Suite 909
West Palm Beach, Florida 33401

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North Palm Beach, Florida 33408

Robert L. Saylor, Esquire
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401

Mary Alice Gwynn, Esquire
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

92

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
• ALLEN G. STAMM and THOMAS LAGANO,

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

CASE NO.: CL 87-8107 AE

CONSOLIDATED
WITH: CL 89-2207 AE

FILED
96 AUG 26 PM 3:54
DOROTHY H. WILKEN
CLERK CIR. CL. CO. CT. FL.
PALM BEACH CO. FL.

FINAL JUDGMENT

THIS MATTER coming before the Court on the parties' Motion for Entry of Final Judgment pursuant to the Fourth District Court of Appeal Opinion dated August 9, 1995, and

Mandate dated December 15, 1995, it is

(59)

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20 AP

ORDERED AND ADJUDGED that ALLEN STAMM have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the following:

Promissory Note	\$423,867.94	
Less Set off	<u>(12,544.26)</u>	
TOTAL		\$411,323.68
1992 Interest From October 14, 1992 122 days @ \$135.23/day	\$16,498.06	
1993 Interest One year @ 12%	\$49,358.84	
1994 Interest One year @ 12%	\$49,358.84	
1995 Interest One year @ 8%	\$32,905.89	
1996 Interest From 1/01/96 through 8/26/96 239 days @ \$112.69/day	\$26,932.91	
TOTAL INTEREST		<u>\$175,054.54</u>
TOTAL JUDGMENT FOR ALLEN STAMM FOR WHICH LET EXECUTION ISSUE		<u>\$586,378.22</u>

WILLIAM BELL shall have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the following:

Promissory Note	\$61,718.51	
Less Set off	<u>(6,272.13)</u>	
TOTAL		\$55,446.38
1992 Interest From October 14, 1992 122 days @ \$18.23/day	\$ 2,224.06	
1993 Interest One year @ 12%	\$ 6,653.57	

1994 Interest	One year @ 12%	\$ 6,653.57	
1995 Interest	One year @ 8%	\$ 4,435.71	
1996 Interest	From 1/01/96 through 8/26/96 239 days @ \$15.19/day	\$ 3,630.41	
TOTAL INTEREST			<u>\$ 23,597.32</u>

TOTAL JUDGMENT FOR WILLIAM BELL
FOR WHICH LET EXECUTION ISSUE \$ 79,043.70

THOMAS LAGANO shall have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the following:

	Promissory Note	\$61,718.51	
	Less Set off	(<u>6,272.13</u>)	
	TOTAL		\$55,446.38
1992 Interest	From October 14, 1992 122 days @ \$18.23/day	\$ 2,224.06	
1993 Interest	One year @ 12%	\$ 6,653.57	
1994 Interest	One year @ 12%	\$ 6,653.57	
1995 Interest	One year @ 8%	\$ 4,435.71	
1996 Interest	From 1/01/96 through 8/26/96 239 days @ \$15.19/day	<u>\$ 3,360.41</u>	
TOTAL INTEREST			<u>\$ 23,597.32</u>

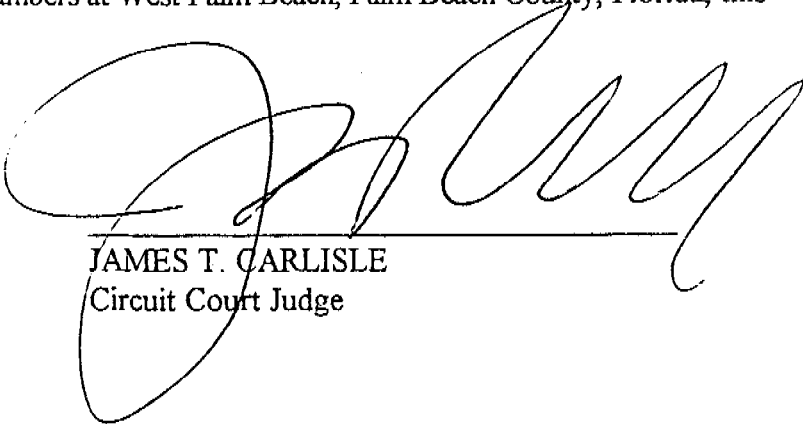
TOTAL JUDGMENT FOR THOMAS LAGANO
FOR WHICH LET EXECUTION ISSUE \$ 79,043.70

The Court reserves jurisdiction to award attorneys' fees to ALLEN STAMM, THOMAS LAGANO and WILLIAM BELL.

The Court reserves jurisdiction to enter an Order of Disbursement of the funds held by the Clerk, pursuant to Motion and Notice of Hearing by the parties or agreement.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this

26 day of Aug, 1996.



JAMES T. CARLISLE
Circuit Court Judge

Copies Furnished:

Michael J. Ferrin, Esquire
1400 Centrepark Blvd., Suite 909
West Palm Beach, Florida 33401

Robert D. Critton, Esquire
712 U.S. Highway One
North Palm Beach, Florida 33408

Robert L. Saylor, Esquire
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401

Mary Alice Gwynn, Esquire
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401

Ms. Tucker, Revenue Officer
Department of Treasury
300 Lock Road Stop 5420
Deerfield Beach, Florida 33442

Michael D. Brown, Esquire
2655 North Ocean Drive, Suite 200
Singer Island-Riviera Beach, Florida 33404

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: CL 87-8107 AE

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Plaintiff,

vs.

T.A.W. CORPORATION f/k/a
U.S. BLOCK CORPORATION,
WILLIAM BELL, ALLEN G. STAMM
and THOMAS LAGANO,

Defendants.

ALLEN G. STAMM, WILLIAM BELL and
THOMAS LAGANO,

Plaintiffs.

vs.

CONSOLIDATED WITH:
CASE NO.: CL 89-2207 AE

U.S.B. ACQUISITION COMPANY, INC.,
a Florida corporation d/b/a U.S.
BLOCK CORPORATION, WALTER SJOGREN,
SR., UNITED STATES OF AMERICA and
CHRISTIANSSEN, JACKNIN & TUTHILL,
P.A., a Florida professional
association, as escrow agent,

Defendants.

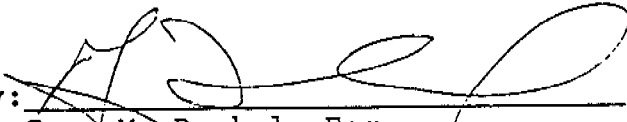
NOTICE OF APPEAL

Notice is given that U.S. BLOCK CORPORATION f/k/a U.S.B. ACQUISITION COMPANY, INC. and WALTER SJOGREN, SR., appeal to the Fourth District Court of Appeal, the Orders of this Court rendered October 3, 1996 by the Honorable James T. Carlisle. The nature of the Orders are a Final Judgment on Attorneys' Fees and Final Order Awarding Appellate Attorneys' Fees.

||

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to all parties on the attached service list this 4th day of November, 1996.

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500 South Australian Avenue
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West Palm Beach, Florida 33402-4388
(407) 659-3300

By: 
Gary M. Dunkel, Esq.
Florida Bar No.: 350354

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO.: CL 87-8107 AE

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

CONSOLIDATED
WITH: CL 89-2207 AE

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNEN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

FINAL JUDGMENT ON ATTORNEY'S FEES

THIS COURT finds as follows:

1. ALLEN STAMM is entitled to an award of \$230,000.00 for services rendered in this cause by his attorneys.

2. ROBERT L. SAYLOR is entitled to an award of \$85,000.00 for services rendered to THOMAS LAGANO in this Court.

3. MARY ALICE GWYNN is entitled to an award of \$42,500.00 for services rendered to WILLIAM BELL in this Court.

4. ROBERT L. SAYLOR and MARY ALICE GWYNN meet the criteria for a contingency fee multiplier, but this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp. v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

ORDERS AND ADJUDGES that ALLEN STAMM, ROBERT L. SAYLOR, and MARY ALICE GWYNN have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the following amounts:

STAMM	\$230,000.00;
SAYLOR	\$85,000.00;
GWYNN	\$42,500.00,

for which sums let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 1996.

SIGNED AND DATED

OCT - 3 1996

JAMES T. CARLISLE
Circuit Court Judge

JUDGE JAMES T. CARLISLE

Copies Furnished:

See attached List of Counsel

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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10-1-00

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO.: CL 87-8107 AE

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

CONSOLIDATED
WITH: CL 89-2207 AE

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

FINAL ORDER AWARDING APPELLATE ATTORNEY'S FEES

THIS COURT finds that BASIL E. DALACK is entitled to an award of \$42,500.00 for services rendered to THOMAS LAGANO and WILLIAM BELL in the Fourth District Court of Appeal in Case No. 92-3138, and that DALACK meets the criteria for a contingency fee multiplier,

but that this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp. v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

ORDERS AND ADJUDGES that BASIL E. DALACK have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the sum of \$42,500.00, for which sum let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 1996.

SIGNED AND DATED

OCT - 3 1996

JAMES T. CARLISLE
Circuit Court Judge

JUDGE JAMES T. CARLISLE

Copies Furnished:

See attached List of Counsel

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

U.S.B. ACQUISITION COMPANY,
INC., etc., et al.,

Appellants/Cross-appellees,

v.

ALLEN G. STAMM, WILLIAM BELL,
et al.,

CASE NO: 92-3138
TRIAL COURT

CASE NOS. 87-8107 &
89-2207

DISTRICT COURT

96 OCT 10 4 54 PM '96

Appellees/Cross-Appellants.

MOTION FOR REVIEW OF TRIAL COURT ORDER
AWARDING APPELLATE ATTORNEY'S FEES

Pursuant to Florida Appellate Rule 9.400(c), Basil E. Dalack, appellate attorney for William Bell and Thomas Lagano, hereby seeks review of the order, circuit court docket #622, filed October 7, 1996, of the circuit court that awarded him appellate attorney's fees of \$42,500.00, but declined to apply a contingency multiplier to that fee because of this Court's holding in *Command Credit Corp. v. Mineo*, 664 So.2d 1123 (Fla. 4th DCA 1995), even though he met the criteria for application of a multiplier.

In the *Command Credit* case, this Court, relying on its interpretation of *Standard Guar. Ins. Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990), and *Sun Bank of Ocala v. Ford*, 564 So.2d 1078 (Fla. 1990), held that a contingency fee multiplier could not be applied to an attorney's fee arising out of a contract, and that a multiplier could be applied only to an attorney's fee arising out of a statute.

ARGUMENT

A CONTINGENCY FEE MULTIPLIER IS NOT LIMITED TO CASES
IN WHICH THE ATTORNEY'S FEE ARISES FROM A STATUTE.

As a general rule, attorney's fees may be taxed as costs if a statute or contract so provides; however, there are certain exceptions to that rule. *Schwartz v. Sherman*, 210 So.2d 469, 471 (Fla. 3d DCA 1968). One of those exceptions is the allowance of an attorney's fee award "from a common fund where an action has created, preserved, or increased a common fund in which others may share." *Holley v. City of Naples*, 371 So.2d 501, 502 (Fla. 2d DCA 1979).

Kuhnlein v. Department of Revenue, 662 So.2d 309 (Fla. 1995), was a "common fund" case, and the Supreme Court held that the attorney's fee there was subject to a contingency fee multiplier of five.

In *Executive Square, Ltd. v. Delray Executive Square, Ltd.*, 546 So.2d 434 (Fla. 4th DCA 1989), a mortgage case this Court held in favor of the appellee. Thereafter, on review of an award of appellate attorney's fees to the appellee, this Court held that the trial court's order applying a contingency fee multiplier to the award was insufficient; but this Court recognized that a multiplier was appropriate in that case, which, as indicated above, was a mortgage case, which is a type of contract case, and so not a case in which the fee arose from a statute.

Similarly, *Stack v. Lewis*, 641 So.2d 969, Fla. 1st DCA 1994)

was a type of contract case, a dispute over a broker fee. The court held that a multiplier was properly applied to the prevailing party's appellate attorney's fees.

Thus, the Supreme Court, this Court, and at least one other district have recognized that a contingency fee multiplier is applicable to attorney's fees that do not arise from a statute. Those cases stand for the proposition that if the facts of a contingency fee case bring it within the criteria for applying a multiplier, then the trial court should apply a multiplier without regard to the source from which the attorney's fee arises.

CONCLUSION

For the foregoing reasons, this Court should recede from its holding in *Command Credit Corp.*, and it should remand this cause to the trial court with directions that that court apply an appropriate multiplier to the lodestar award.

I HEREBY CERTIFY that a copy of this motion is being mailed to Gary Dunkel, Esquire, 400 Australian Avenue South, West Palm Beach, Florida 33401, the current appellate attorney for U.S. Block Corporation and Walter R. Sjogren, Sr., this Sixth day of November 1996.

Basil E. Dalack, Florida Bar No. 99185
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401
(561) 697-8700

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO.: CL 87-8107 AE

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

CONSOLIDATED
WITH: CL 89-2207 AE

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

FINAL ORDER AWARDING APPELLATE ATTORNEY'S FEES

THIS COURT finds that BASIL E. DALACK is entitled to an award of \$42,500.00 for services rendered to THOMAS LAGANO and WILLIAM BELL in the Fourth District Court of Appeal in Case No. 92-3138, and that DALACK meets the criteria for a contingency fee multiplier,

but that this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp. v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

ORDERS AND ADJUDGES that BASIL E. DALACK have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the sum of \$42,500.00, for which sum let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 1996.

SIGNED AND DATED

OCT - 3 1996

JAMES T. CARLISLE
Circuit Court Judge

JUDGE JAMES T. CARLISLE

Copies Furnished:

See attached List of Counsel

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NOS. CL 87-8107 AE & CL 89-2207 AE

U.S. BLOCK CORP., et al.,

Plaintiffs,

v.

NOTICE OF CROSS-APPEAL

ALLEN G. STAMM, et al.,

Defendants.

NOTICE IS GIVEN that Robert L. Saylor and Mary Alice Gwynn,
trial attorneys for defendants Thomas Lagano and William Bell,
appeal to the District Court of Appeal of Florida, Fourth District,
from the Final Judgment On Attorney's Fees, docket entry 623, filed
October 7, 1996.

Robert L. Saylor, P.A.
Counsel for Cross-appellants
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401
(561) 697-8700

I HEREBY CERTIFY that a copy of this Notice of Cross-appeal is
being mailed to the attorneys on the attached list this Fourteenth
day of November 1996.

Basil E. Dalack, Florida Bar # 18

FILED
DROPPED
96 NOV 14 PM 8:52
DOCKETS
CLERK
CIR. CLERK
PALM BEACH CO. FL

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
4DCA Case No: 96-03695; L.T. Case No: CL 87-8107 AE; CL 89-2207 AE

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S. BLOCK CORP. f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,
WALTER SJOGREN, SR.

4TH DCA CASE NO.: 96-03200
LT. CASE NO.: CL 89-2207 AE

Appellants,

vs.

T.A.W. CORPORATION f/k/a
U.S. BLOCK CORPORATION,
WILLIAM BELL, ALLEN G. STAMM
and THOMAS LAGANO,

Appellees.

MOTION TO CONSOLIDATE

U.S. BLOCK CORP. f/k/a U.S.B. ACQUISITION COMPANY, INC. and
WALTER SJOGREN, SR., by and through their undersigned counsel,
hereby file this their Motion to Consolidate this cause with the
action styled U.S. Block Corporation v. T.A.W. Corporation, etc.,
bearing Fourth District Court of Appeal Case No. 96-03695 and as
grounds therefore states as follows:

1. Appellants have filed the subject appeal arising out of
two Orders from the Trial Court below regarding the award of
attorneys' fees against them and in favor of Appellees.

2. Previously, a Notice of Appeal was filed regarding a
Final Judgment in favor of three of the Appellees with the appeal
pertaining to the amount of principal and interest awarded to each.

3. As the attorneys' fees issues and principal and interest
issues arise out of the same transaction and judgment, and involve
the same parties, it is in the best interest of judicial economy to
consolidate the matters for appeal.

WHEREFORE, U.S. BLOCK CORP. f/k/a U.S.B. ACQUISITION COMPANY, INC. and WALTER SJOGREN, SR., it is respectfully requested that this Court consolidate the subject appeal with the appeal currently pending styled as U.S. Block Corporation v. T.A.W. Corporation, etc., bearing Fourth District Court of Appeal Case No. 96-03200.

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to all parties on the attached service list this 20th day of November, 1996.

LEWIS, VEGOSEN, ROSENBACH & SILBER, P.A.
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(407) 659-3300

By: 

Marshall J. Osofsky, Esq.
Florida Bar No. 739730

Gary M. Dunkel, Esq.
Florida Bar No.: 350354

SERVICE LIST

U.S.B Acquisition Co. v. Allen G. Stamm, et al.
Case Nos.: CL 87-8107 AE and CL 89-2207 AE

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Gary M. Dunkel, Esq.
Lewis, Vegosen, Rosenbach & Silber, P.A.
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West Palm Beach, FL 33401

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S.B. ACQUISITION COMPANY,
INC., etc., et al.

4TH DCA CASE NO. 92-3138

Appellants/Cross-Appellees,

L.T. CASE NOS. 87-8107 &
89-2207

vs.

ALLEN G. STAMM, WILLIAM BELL,
et al.,
Appellees/Cross-Appellants.

RESPONSE TO MOTION FOR REVIEW OF TRIAL COURT
ORDER AWARDING APPELLATE ATTORNEY'S FEES

Appellants/Cross-Appellees, U.S.B., ACQUISITION COMPANY, INC.,
etc., et al., by and through their undersigned counsel, hereby file
this their Response to Motion for Review of Trial Court Order
Awarding Appellate Attorney's Fees and state as follows:

Basil E. Dalack, Esquire, as appellate attorney for WILLIAM
BELL and THOMAS LAGANO, has filed a Motion for Review of Trial
Court Order Awarding Appellate Attorney's Fees requesting this
Court recede from its holding in Command Credit Corporation v.
Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

The movants correctly state the holding of Command Credit that
a contingency fee multiplier cannot be applied to attorney's fee
arising out of a contract. The trial court below correctly relied
upon this Court's holding in Command Credit in denying the
application of a contingency fee multiplier to the appellate
attorney's fees sought below.

It is axiomatic that if a District Court of the district in
which the trial court is located has decided an issue, the trial

court is bound to follow it. Pardo v. State, 596 So.2d 655 (Fla. 1992).

In seeking to have this Court recede from its very recent opinion of Command Credit, the movants have not been able to demonstrate any flaw in the reasoning of this Court in arriving at its holding in Command Credit.

This Court in Command Credit noted the distinction between a fee-shifting statute and a contract. Such statutes are intended to encourage the public to initiate certain types of actions as a means of promoting a similar legislative goal, and whether the market requires a multiplier in order to obtain competent counsel. Command Credit, 684 So.2d at 1125. This Court in interpreting Standard Guaranty Insurance Company v. Quanstrom, 555 So.2d 828 (Fla. 1990) noted this distinction between statutes and contracts finding that it cannot be said that the concerns as noted previously are reflected by a contractual provision to shift fees.

Thus, having been unable to find any criticism of this Court's rationale in Command Credit, movants should not be seeking this Court to recede from its opinion.

Further, the Order that is the subject of the Motion for Review of Trial Court Order Awarding Appellate Attorney's Fees has also been filed as part of the appeal in Case No. 96-03695, currently pending before this Court. It is respectfully submitted that by virtue of the filing of the appeal in which the subject Order is part and parcel, the proper mechanism for the movants would have been through the filing of a timely cross-appeal, which was not done.

WHEREFORE, it is respectfully submitted that movants have demonstrated no grounds to have this Court recede from its 1995 holding in Command Credit, and has committed procedural error in filing its motion for review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished by U.S. mail to Basil E. Dalack, Esquire, 1615 Forum Place, Suite 300, West Palm Beach, Florida 33401 this 21st day of November, 1996.

LEWIS, VEGOSEN, ROSENBAACH & SILBER, P.A.
500 South Australian Avenue
P. O. Box 4388
West Palm Beach, Florida 33402-4388
(407) 659-3300
Counsel for Appellants

By: Marshall J. Ososky
Marshall J. Ososky, Esq.
Florida Bar No. 739730

Gary M. Dunkel, Esq.
Florida Bar No.: 350354

K:\F4000\4991\0001\APPEAL.II\RESPMO.REV

U.S. BLOCK CORPORATION,

Appellant,

v.

CASE NO. 96-3200.

T.A.W. CORPORATION,
etc., et al.,

Appellees.

U.S. BLOCK CORP., etc.,
et al.,

Appellants/
Cross-Appellees,

v.

CASE NO. 96-3695.

ALLEN G. STAMM, WILLIAM
BELL, et al.,

Appellees/
Cross-Appellants.

December 2, 1996

BY ORDER OF THE COURT:

ORDERED that the Motion to Consolidate filed November 20, 1996, is granted, and the above-styled case numbers are now consolidated and are to proceed under the time schedule for a full appeal and according to the requirements of Fla. R. App. P. 9.110.

Case Nos. 96-3200 and 96-3695

I hereby certify the foregoing is a
true copy of the original court order.


MARILYN BEUTTENMULLER
CLERK

cc: Marshall J. Osofsky
Gary M. Dunkel
Michael J. Ferrin
Basil E. Dalack
Robert L. Saylor
Robert D. Critton
Mary Alice Gwynn
Michael Brown
Louis Silber
Dorothy H. Wilken, Clerk (#CL 87-8107 AE & CL 89-2207 AE)

/CH

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S.B. ACQUISITION
COMPANY, INC., etc.,
Appellant-Cross Appellee(s),

CASE NO. 92-03138

vs.

ALLEN G. STAMM, WILLIAM
BELL, et al.
Appellee-Cross Appellant(s).

L.T. CASE NO. CL 87-8107 AE
PALM BEACH

December 12, 1996

BY ORDER OF THE COURT:

ORDERED that appellees' motion filed November 6, 1996,
for review of trial court order awarding appellate attorney's
fees is granted, and the order on fees is hereby affirmed;
further,

ORDERED that appellees' suggestion filed November 15,
1996, that this court should certify to the supreme court the
order to be reviewed is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.


MARILYN BEUTENMULLER
CLERK

cc: Jane Kreuzler-Walsh
T.A.W. Corp.
Robert L. Saylor
David K. Friedman
Robert D. Critton, Jr.
Dorothy H. Wilken, Clerk
Daniel S. Rosenbaum
David M. Schultz
James R. Rich
B. B. Allen
Basil E. Dalack

Ann Fishman
F. Lee Bailey
Robert S. Lenner
Michael J. Ferrin
Mary Alice Gwynn
Michael D. Brown
Marshall J. Osofsky
Gary Dunkel
Louis Silber

/CH

36

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

U.S.B. ACQUISITION COMPANY,
INC., etc., et al.,

Appellants/Cross-appellees,

v.

ALLEN G. STAMM, WILLIAM BELL,
et al.,

CASE NO: 92-3138
TRIAL COURT
CASE NOS. 87-8107 &
89-2207

Appellees/Cross-Appellants.

MOTION FOR RECONSIDERATION EN BANC

On the grounds that follow, and on authority of Florida Appellate Rule 9.331(d), the undersigned moves this Court to reconsider en banc his November 6, 1996, motion for review of the trial court's October 7, 1996, order that awarded him appellate attorney's fees. The trial court refused to apply a contingency fee multiplier to that award, even though he met the criteria for application of a multiplier, because of *Command Credit Corp. v. Mineo*, 664 So.2 1123 (Fla. 4th DCA 1995). There, this Court held that a contingency fee multiplier could not be applied to an attorney's fee that arose from a contract, because a multiplier could be applied only to a fee that arose from a statute.

I. DECISION OF EXCEPTIONAL IMPORTANCE

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is of exceptional importance. That belief is bottomed on this Court's certification to the Supreme Court of the question involved in *Command Credit*.

Corp., which is essentially the same question the undersigned raised in his November 6, 1996, motion for review, viz., whether a contingency fee multiplier applies only to attorney's fees that arise from a statute.

II. CONFLICT OF DECISIONS

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision of this Court and that a consideration by the full Court is necessary to maintain uniformity of decisions in this Court: *Execuitve Square, Ltd. v. Delray Executive Square, Ltd.*, 546 So. 2d 434 (Fla. 4th DCA 1989), wherein this Court recognized that a contingency fee mutiplier was appropriate in a mortgage case, which is a type of contract case--not a case in which the attorney's fees arose from a statute.

Basil E. Dalack
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401
(561) 697-8700
Florida Bar No. 99185

I hereby certify that a copy of the foregoing is being mailed to the attorneys named on the following list this Twenty-seventh day of December 1996.

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(561) 687-3708

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Gary Dunkel, Esquire
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Fax: (561) 659-3345

Mary Alice Gwynn, Esquire
EARNHART & GYWNN
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Delray Beach, FL. 33483
(561) 265-2220
Fax: (561) 265-1505

Michael Brown, Esquire
2655 North Ocean Drive
Riviera Beach, Florida 33404
(561) 848-4306
Fax: (561) 842-6845

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

U.S.B. ACQUISITION COMPANY,
INC., etc., et al.,

Appellants/Cross-appellees,

v.

ALLEN G. STAMM, WILLIAM BELL,
et al.,

CASE NO: 92-3138
TRIAL COURT
CASE NOS. 87-8107 &
89-2207

Appellees/Cross-Appellants.

DISTRICT COURT
OF FLORIDA

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MOTION FOR CERTIFICATION

Pursuant to Florida Appellate Rule 9.330, the undersigned moves this Court to certify to the Supreme Court of Florida, as one of great public importance, the following question:

MAY A TRIBUNAL APPLY A CONTINGENCY FEE
MULTIPLIER TO ATTORNEY'S FEES THAT ARISE FROM
A CONTRACT, OR IS APPLICATION OF A MULTIPLIER
LIMITED TO FEES THAT ARISE FROM A STATUTE?

This Court certified a substantially similar form of the foregoing question in *Command Credit Corp. v. Mineo*, 664 So. 2d 1123 (Fla. 4th DCA 1995), but Supreme Court review was not pursued there. Without certification in the present case, the undersigned would be denied equal protection of the law.

Basil E. Dalack
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401
(561) 697-8700
Florida Bar No. 99185

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S.B. ACQUISITION COMPANY,
INC., etc.

CASE NO.: 92-03138
LT. CASE NO.: CL 87-8107 AE

Appellant-Cross Appellee(s)

vs.

ALLEN G. STAMM, WILLIAM BELL,
et al.

Appellees-Cross Appellant(s)

MOTION FOR REHEARING/MOTION FOR CLARIFICATION/
MOTION TO CONSOLIDATE

Appellants, U.S.B. ACQUISITION COMPANY, INC. n/k/a U.S. BLOCK CORPORATION and WALTER R. SJOGREN, SR., by and through their undersigned counsel, hereby file this their Motion for Rehearing/Motion for Clarification/Motion to Consolidate arising out of the Order entered by this court on December 12, 1996 and state as follows:

1. On December 12, 1996, this court granted a review of Appellees' motion of November 6, 1996, for review of the trial court order awarding appellate attorney's fees and affirmed the award thereof. A true and correct copy of the order is attached hereto as Exhibit "A".
2. Prior to the filing of the motion by Appellees seeking review of the appellate fees order, Appellants filed a Notice of Appeal of two orders from the trial court relating to attorney's fees, including the order which is the subject of the later filed motion. The appeal from which the Order relating to appellate attorney's fees bears Case No. 96-03695, and is pending before this

court and has been consolidated with Case No. 96-3200, also pending before this court, said appeal being based on an order arising out of the same case below. The Notice of Appeal with the relevant order is attached and the Order Granting the Motion to Consolidate are attached hereto as Exhibits "B" and "C" respectively.

3. By ruling on the Appellees' Motion for Review of the trial court's order awarding Appellants' attorney's fees, this court has arguably mooted a portion of Appellants' appeal in the consolidated matter without benefit of Appellants even having the opportunity to argue the merits of their appeal.

4. After Appellees filed their Motion for Review of the trial court's order awarding Appellants' attorney's fees, Appellants filed a response to the motion advising this court of the pending matters, which included seeking appellate review of the order referenced in Appellees' motion. A true and correct copy of the Appellants' response to Appellees' motion is attached hereto as Exhibit "D".

5. Appellees' motion was brought pursuant to Fla. R. App. P. 9.400. However, since Appellants sought review of the appellate attorney's fee order along with a separate order from the trial court pertaining to other attorney's fees, and thereafter consolidated the appeal with another pending appeal, other points were raising on appeal other than the assessment of appellate attorney's fees. The combining of the different points on appeal provide an exception under Rule 9.400.

6. This exception has been noted by this court in Starcher v. Starcher, 430 So.2d 991 (Fla. 4th DCA 1983) and explained later in Magner v. Merrill Lynch Realty/MCK, Inc., 585 So.2d 1040 (Fla.

4th DCA 1991). Where there is a timely challenge to an attorney's fee award which is joined with other points on appeal, review of the attorney's fee orders do not fall under Fla. R. App. P. 9.400, but rather review may be obtained by raising additional points on appeal. See, Starcher, at 993; Magner, at 1044.

7. Thus, as Appellants raised the appellate attorney's fee issue as an additional point of appeal in the now consolidated matters pending before the court, Appellants are entitled to review of the order pursuant to the procedure they followed.

8. It is unclear from the court's order of December 12, 1996, attached as Exhibit "A", whether Appellants are foreclosed from pursuing the portion of the appeal related to the subject order pertaining to appellate attorney's fees. If that is the court's intention, it is respectfully submitted that it is improper in light of the pending appeal relating to the same order which was properly filed under the authority of Starcher, supra, and Magner, supra.

9. Further, the matters raised in the motion should be consolidated with the pending consolidated appeals. The Order, which is the subject of the Motion is the same order that forms part of the pending consolidated appeal. If the matters are not consolidated, conflicting rulings could result. A conflicting result has already occurred as the Court in its order of December 12, 1996 denied Appellees request to certify an issue to the Florida Supreme Court, and the Court in the consolidated matter has reserved ruling on the same certification issue until such time as the merits of the appeal have been heard.

WHEREFORE, Appellants, U.S.B. ACQUISITION COMPANY, INC. n/k/a, U.S. BLOCK CORPORATION and WALTER SJOGREN, SR. respectfully request this court grant their Motion to Rehear the matter set forth in the order of December 12, 1996, or in the alternative to clarify the order to allow the consolidated appeals of Case Nos. 96-3200 and 96-3695 to continue including the merits raising with regard to the appellate attorney's fees order, and to further consolidate the motion filed in Case No. 92-3138 with the pending consolidated matters as all the issues are related and arise out of the same order.

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to all parties on the attached service list this 27th day of December, 1996.

LEWIS, VEGOSEN, ROSENBAACH & SILBER, P.A.
500 South Australian Avenue
P. O. Box 4388
West Palm Beach, Florida 33402-4388
(407) 659-3300

By: Marshall J. Osofsky
MARSHALL J. OSOFSKY, ESQ.
Florida Bar No.: 739730

K:\F4000\4991\0001\APPEAL\REHEARIN.MOT

SERVICE LIST

U.S.B Acquisition Co. v. Allen G. Stamm, et al.
Case Nos.: CL 87-8107 AE and CL 89-2207 AE

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1400 Centrepark Blvd.
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Earnhart and Gwynn
811 N.E. 8th Street
Delray Beach, FL 33483-5719

Michael Brown, Esq.
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Suite 200
Riviera Beach, FL 33404

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S.B. ACQUISITION
COMPANY, INC., etc.,
Appellant-Cross Appellee(s),

CASE NO. 92-03138

vs.

ALLEN G. STAMM, WILLIAM
BELL, et al.
Appellee-Cross Appellant(s).

L.T. CASE NO. CL 87-8107 AE
PALM BEACH

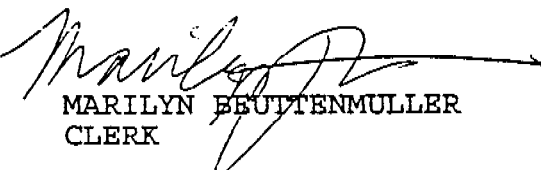
December 12, 1996

BY ORDER OF THE COURT:

ORDERED that appellees' motion filed November 6, 1996,
for review of trial court order awarding appellate attorney's
fees is granted, and the order on fees is hereby affirmed;
further,

ORDERED that appellees' suggestion filed November 15,
1996, that this court should certify to the supreme court the
order to be reviewed is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.


MARILYN BEUTTENMULLER
CLERK

cc: Jane Kreuzler-Walsh
T.A.W. Corp.
Robert L. Saylor
David K. Friedman
Robert D. Critton, Jr.
Dorothy H. Wilken, Clerk
Daniel S. Rosenbaum
David M. Schultz
James R. Rich
B. B. Allen
Basil E. Dalack

Ann Fishman
F. Lee Bailey
Robert S. Lenner
Michael J. Ferrin
Mary Alice Gwynn
Michael D. Brown
Marshall J. Osofsky
Gary Dunkel
Louis Silber

/CH

EXHIBIT

A

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DEC 13 1996

Ans'd.....

29

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: CL 87-8107 AE

U.S. BLOCK CORP. f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florid corporation,

Plaintiff,

vs.

T.A.W. CORPORATION f/k/a
U.S. BLOCK CORPORATION,
WILLIAM BELL, ALLEN G. STAMM
and THOMAS LAGANO,

Defendants.

COPY
ORIGINAL RECEIVED FOR FILING

NOV 4 1996

DOROTHY H. WILKEN
CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DIVISION

ALLEN G. STAMM, WILLIAM BELL and
THOMAS LAGANO,

Plaintiffs.

vs.

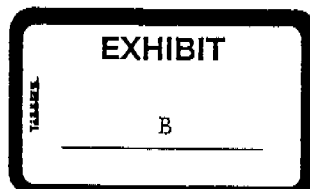
U.S.B. ACQUISITION COMPANY, INC.,
a Florida corporation d/b/a U.S.
BLOCK CORPORATION, WALTER SJOGREN,
SR., UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL,
P.A., a Florida professional
association, as escrow agent,

Defendants.

CONSOLIDATED WITH:
CASE NO.: CL 89-2207 AE

NOTICE OF APPEAL

Notice is given that U.S. BLOCK CORPORATION f/k/a U.S.B. ACQUISITION COMPANY, INC. and WALTER SJOGREN, SR., appeal to the Fourth District Court of Appeal, the Orders of this Court rendered October 3, 1996 by the Honorable James T. Carlisle. The nature of the Orders are a Final Judgment on Attorneys' Fees and Final Order Awarding Appellate Attorneys' Fees.



I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to all parties on the attached service list this 4th day of November, 1996.

LEWIS, VEGOSEN, ROSENBACH & SILBER, P.A.
500 South Australian Avenue
P. O. Box 4388
West Palm Beach, Florida 33402-4388
(407) 659-3300

By: 

Gary M. Dunkel, Esq.
Florida Bar No.: 350354

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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Mary Alice Gwynn, Esquire
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO.: CL 87-8107 AE

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

CONSOLIDATED
WITH: CL 89-2207 AE

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

FINAL JUDGMENT ON ATTORNEY'S FEES

THIS COURT finds as follows:

1. ALLEN STAMM is entitled to an award of \$230,000.00 for services rendered in this cause by his attorneys.

2. ROBERT L. SAYLOR is entitled to an award of \$85,000.00 for services rendered to THOMAS LAGANO in this Court.

3. MARY ALICE GWYNN is entitled to an award of \$42,500.00 for services rendered to WILLIAM BELL in this Court.

4. ROBERT L. SAYLOR and MARY ALICE GWYNN meet the criteria for a contingency fee multiplier, but this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp. v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

ORDERS AND ADJUDGES that ALLEN STAMM, ROBERT L. SAYLOR, and MARY ALICE GWYNN have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the following amounts:

STAMM	\$230,000.00;
SAYLOR	\$85,000.00;
GWYNN	\$42,500.00,

for which sums let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this

_____ day of _____, 1996.

SIGNED AND DATED

OCT - 3 1996

JAMES T. CARLISLE
Circuit Court Judge

JUDGE JAMES T. CARLISLE

Copies Furnished:

See attached List of Counsel

51

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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11-7-00

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO.: CL 87-8107 AE

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

CONSOLIDATED
WITH: CL 89-2207 AE

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

FINAL ORDER AWARDING APPELLATE ATTORNEY'S FEES

THIS COURT finds that BASIL E. DALACK is entitled to an award of \$42,500.00 for services rendered to THOMAS LAGANO and WILLIAM BELL in the Fourth District Court of Appeal in Case No. 92-3138, and that DALACK meets the criteria for a contingency fee multiplier,

but that this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp. v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

ORDERS AND ADJUDGES that BASIL E. DALACK have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the sum of \$42,500.00, for which sum let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 1996.

SIGNED AND DATED

OCT - 3 1996

JAMES T. CARLISLE
Circuit Court Judge

JUDGE JAMES T. CARLISLE

Copies Furnished:

See attached List of Counsel

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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Bailey, Fishman, Freeman & Ferrin
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(561) 687-3708

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EARNHART & GYWNN
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Delray Beach, FL. 33483
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Fax: (561) 265-1505

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S. BLOCK CORPORATION,

Appellant,

v.

CASE NO. 96-3200.

T.A.W. CORPORATION,
etc., et al.,

Appellees.

U.S. BLOCK CORP., etc.,
et al.,

Appellants/
Cross-Appellees,

v.

CASE NO. 96-3695.

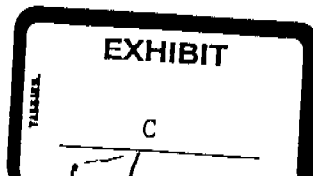
ALLEN G. STAMM, WILLIAM
BELL, et al.,

Appellees/
Cross-Appellants.

December 2, 1996 ✓

BY ORDER OF THE COURT:

ORDERED that the Motion to Consolidate filed November 20, 1996, is granted, and the above-styled case numbers are now consolidated and are to proceed under the time schedule for a full appeal and according to the requirements of Fla. R. App. P. 9.110.



RECEIVED
DEC 04 1996

Case Nos. 96-3200 and 96-3695

I hereby certify the foregoing is a
true copy of the original court order.


MARILYN BEUTTENMULLER
CLERK

cc: Marshall J. Osofsky
Gary M. Dunkel
Michael J. Ferrin
Basil E. Dalack
Robert L. Saylor
Robert D. Critton
Mary Alice Gwynn
Michael Brown
Louis Silber
Dorothy H. Wilken, Clerk (#CL 87-8107 AE & CL 89-2207 AE)

/CH

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S.B. ACQUISITION COMPANY,
INC., etc., et al.

4TH DCA CASE NO. 92-3138

Appellants/Cross-Appellees,

L.T. CASE NOS. 87-807 &
89-807

vs.

ALLEN G. STAMM, WILLIAM BELL,
et al.,
Appellees/Cross-Appellants.

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CLERK
DISTRICT COURT OF APPEAL
4TH DISTRICT

RESPONSE TO MOTION FOR REVIEW OF TRIAL COURT
ORDER AWARDING APPELLATE ATTORNEY'S FEES

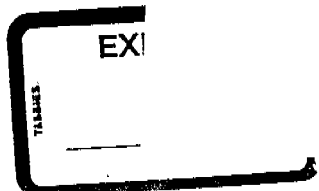
Appellants/Cross-Appellees, U.S.B., ACQUISITION COMPANY, INC.,
etc., et al., by and through their undersigned counsel, hereby file
this their Response to Motion for Review of Trial Court Order
Awarding Appellate Attorney's Fees and state as follows:

Basil E. Dalack, Esquire, as appellate attorney for WILLIAM
BELL and THOMAS LAGANO, has filed a Motion for Review of Trial
Court Order Awarding Appellate Attorney's Fees requesting this
Court recede from its holding in Command Credit Corporation v.
Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

The movants correctly state the holding of Command Credit that
a contingency fee multiplier cannot be applied to attorney's fee
arising out of a contract. The trial court below correctly relied
upon this Court's holding in Command Credit in denying the
application of a contingency fee multiplier to the appellate
attorney's fees sought below.

It is axiomatic that if a District Court of the district in
which the trial court is located has decided an issue, the trial

58



court is bound to follow it. Pardo v. State, 596 So.2d 655 (Fla. 1992).

In seeking to have this Court recede from its very recent opinion of Command Credit, the movants have not been able to demonstrate any flaw in the reasoning of this Court in arriving at its holding in Command Credit.

This Court in Command Credit noted the distinction between a fee-shifting statute and a contract. Such statutes are intended to encourage the public to initiate certain types of actions as a means of promoting a similar legislative goal, and whether the market requires a multiplier in order to obtain competent counsel. Command Credit, 684 So.2d at 1125. This Court in interpreting Standard Guaranty Insurance Company v. Quanstrom, 555 So.2d 828 (Fla. 1990) noted this distinction between statutes and contracts finding that it cannot be said that the concerns as noted previously are reflected by a contractual provision to shift fees.

Thus, having been unable to find any criticism of this Court's rationale in Command Credit, movants should not be seeking this Court to recede from its opinion.

Further, the Order that is the subject of the Motion for Review of Trial Court Order Awarding Appellate Attorney's Fees has also been filed as part of the appeal in Case No. 96-03695, currently pending before this Court. It is respectfully submitted that by virtue of the filing of the appeal in which the subject Order is part and parcel, the proper mechanism for the movants would have been through the filing of a timely cross-appeal, which was not done.

WHEREFORE, it is respectfully submitted that movants have demonstrated no grounds to have this Court recede from its 1995 holding in Command Credit, and has committed procedural error in filing its motion for review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished by U.S. mail to Basil E. Dalack, Esquire, 1615 Forum Place, Suite 300, West Palm Beach, Florida 33401 this 21st day of November, 1996.

LEWIS, VEGOSEN, ROSENBACH & SILBER, P.A.
500 South Australian Avenue
P. O. Box 4388
West Palm Beach, Florida 33402-4388
(407) 659-3300
Counsel for Appellants

By: Marshall J. Osofsky
Marshall J. Osofsky, Esq.
Florida Bar No. 739730

Gary M. Dunkel, Esq.
Florida Bar No.: 350354

X:\F4000\4991\0001\APPEAL.II\RESPMO.REV

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

U.S.B. ACQUISITION COMPANY,
INC., etc., et al.,

Appellants/Cross-appellees,

v.

ALLEN G. STAMM, WILLIAM BELL,
et al.,

CASE NO: 92-3138

TRIAL COURT

CASE NOS. 87-8107

89-2207

DIS-
JAN 13 P1:17

Appellees/Cross-Appellants.

RESPONSE TO BUYERS' DECEMBER 27, 1996,
MOTION FOR REHEARING/CLARIFICATION/CONSOLIDATION

In *Starcher v. Starcher*, 430 So.2d 991 (Fla. 4th DCA 1983), this Court dealt with the question of review of appellate attorney's fee orders by means of Rule 9.400(c) or notice of appeal. It went to great pains to explain that:

"By way of careful limitation, we hold that if the only grievance is the assesment of attorney's fees and costs under Florida Rule of Appellate Procedure 9.400(a) and (b), it must be brought to this court by motion in strict accordance with the provisions of Florida Appellate Rule of Appellate Procedure 9.400(c). It is only where, as here, there are other points on appeal, points other than the assessment of attorney's fees and costs under Florida Rule of Appellate Procedure 9.400(a) and (b), that such review may also be obtained by raising same as an additional point on appeal." 430 So.2d at 993.

The trial court entered two orders in October 1996, both of which dealt only with attorney's fees. One directed that (a) Allen Stamm recover the \$230,000 he paid his attorneys for the services they rendered him at trial and on appeal; (b) Robert L. Saylor be awarded \$85,000 for the services he rendered Thomas Lagano at trial; and (c) Mary Alice Gwynn be awarded \$42,500 for the services

she rendered William Bell at trial. The order also found that although Gwynn and Saylor met the criteria for contingency fee multipliers the trial court could not apply a multiplier because of this Court's holding in *Command Credit Corp. v. Mineo*, 664 So.2d 1123 (Fla. 4th DCA 1995).

The other order awarded Basil E. Dalack \$42,500 for the services he rendered Lagano and Bell in this Court, and it similarly refused to apply a contingency fee multiplier on authority of *Command Credit Corp. v. Mineo*.

Under the directives of Rule 9.400 and *Starcher v. Starcher*, review of the latter order was solely by motion in this Court, since the order involved nothing but an appellate attorney's fee. Accordingly, Dalack on November 6, 1996, filed a motion for review, which set forth his argument in support of having this Court grant him relief from the denial of a contingency fee multiplier. The Bulyers did not file a comparable motion, and to this day, two and a half months after the due date for such a motion, they have done nothing to present this Court with any argument to support any relief they might wish to obtain from this Court.

For this Court to consolidate this proceeding with the appeals in Case Nos. 96-3200 and 96-3695 would be to permit the Buyers to avoid the rigors of Rule 9.400(c) by giving them several months to present an argument that they were required to present within 30 days of October 7, 1996, and would penalize Dalack for his compliance with the time burden of Rule 9.400(c).

If this Court should deem it appropriate to consolidate, then Dalack is entitled to fair play, which, given the background of this case, would be (a) vacation of this Court's order of December 12, 1996, and (b) permission to raise his argument before the panel that will decide Case Nos. 96-3600 and 96-3695.

I hereby certify that a true copy of the foregoing is being mailed to the attorneys on the attached list this Thirteenth day of January 1997.

Basil E. Dalack
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401
(561) 697-8700
Florida Bar No. 099185

Lewis, Vegosen, Rosenbach & Silber, P.A.
500 South Australian Avenue
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2655 North Ocean Drive
Riviera Beach, Florida 33404

Michael J. Ferrin, Esquire
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Mary Alice Gwynn, Esquire
811 George Bush Boulevard
Delray Beach, Florida 33483

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

U.S.B. ACQUISITION COMPANY,
INC., et al.

Appellants/Cross-Appellees,

v.

CASE NOS. 96-3200
and 96-3695

ALLEN G. STAMM, WILLIAM BELL,
et al.,

Appellees/Cross-Appellants.

EXTRAORDINARY MOTION FOR CLARIFICATION OF OPINION

Footnote five of this Court's March 12, 1997, opinion states, in material part, that "The two separate orders awarding attorneys' fees were both entered and mailed on October 3, 1996. Allowing time for mailing, Mr. Dalack's motion for review was timely filed on November 6th."

The undersigned received a copy of the order that awarded the appellate attorney's fees bearing the date October 3, 1996. However, the original of that order (docket entry no. 622) was apparently re-signed on October 7, 1996, and, as the certified copy of that order attached hereto shows, was filed (and therefore, under Rule 9.020(g), rendered) on October 7, 1996. The other judgment on attorney's fees (docket entry no. 623), a certified copy of which is also attached, was also filed (and therefore rendered) on October 7, 1996.

Footnote five's reference to the allowance of time for mailing so as to make the November 6, 1996, motion timely raises an apparent inconsistency and potential conflict with decisions holding that Rule 9.420(d) does not apply to final judgments so as to extend the time for filing notices of appeal. See *Franchi v. Florida Dept. of Commerce, Etc.*, 375 So. 2d 1154 (Fla. 4th DCA 1979); *Turner v. State*, 557 So. 2d 939 (Fla. 5th DCA 1990); *Allen v. Live Oak Ford Mercury*, 647 So. 2d 1060 (Fla. 1st DCA 1994). A clarification of footnote five so as to show that the November 6, 1996, motion for review was timely because the order of which it sought review was filed on October 7, 1996, would eliminate any potential conflict.

I HEREBY CERTIFY that a copy of this motion is being mailed to Marshall J. Osofsky, Esquire, P.O. Box 4388, West Palm Beach, Florida 33402-4388, and Michael J. Ferrin, Esquire, 1400 Centrepark Boulevard, Suite 909, West Palm Beach, Florida 33401, this Seventeenth day of March 1997.

Basil E. Dalack

Basil E. Dalack
1615 Forum Place, Suite 300
West Palm Beach, Florida 33401
(561) 697-8700
Florida Bar No. 099185

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

92

U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO.: CL 87-8107 AE

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

Defendants.

CONSOLIDATED
WITH: CL 89-2207 AE

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

FILED
96 OCT -7 PM 4:03
DOROTHY H. WILKEN
CLERK CIR. U. CO. CTS.
PALM BEACH CO. FL

FINAL ORDER AWARDING APPELLATE ATTORNEY'S FEES

THIS COURT finds that BASIL E. DALACK is entitled to an award of \$42,500.00 for services rendered to THOMAS LAGANO and WILLIAM BELL in the Fourth District Court of Appeal in Case No. 92-3138, and that DALACK meets the criteria for a contingency fee multiplier.

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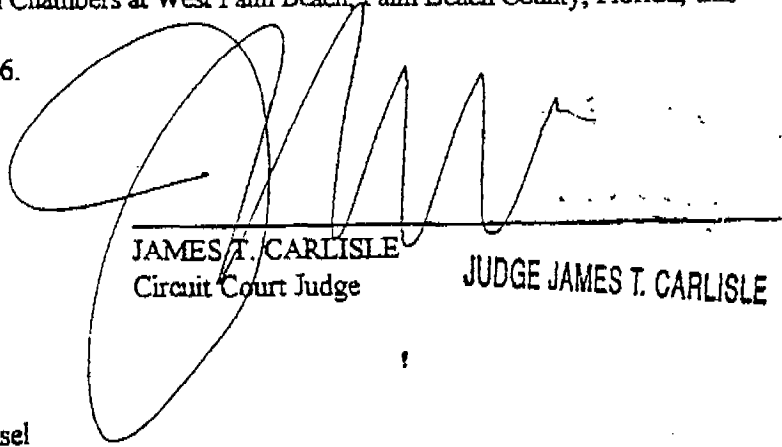
but that this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp. v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

ORDERS AND ADJUDGES that BASIL E. DALACK have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the sum of \$42,500.00, for which sum let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this

9 day of Oct, 1996.


JAMES T. CARLISLE
Circuit Court Judge

JUDGE JAMES T. CARLISLE

Copies Furnished:

See attached List of Counsel

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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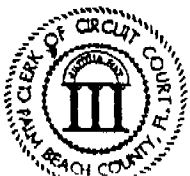
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Fax: (561) 265-1505

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I certify this document to be a true copy of the record in my office
this FOURTEENTH day of MARCH, 1997

DOROTHY H. WILKEN, Clerk of Court, Palm Beach County, FL

By *[Signature]* Deputy Clerk

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

92 U.S. BLOCK CORP., f/k/a
U.S.B. ACQUISITION COMPANY,
INC., a Florida corporation,

Plaintiff,

vs.

T.A.W. CORPORATION, f/k/a U.S.
BLOCK CORPORATION, WILLIAM BELL;
ALLEN G. STAMM and THOMAS LAGANO,

Defendants.

ALLEN G. STAMM, WILLIAM BELL,
and THOMAS LAGANO,

Plaintiffs,

vs.

U.S.B. ACQUISITION COMPANY, INC.,
A Florida corporation, d/b/a U.S. Block
CORPORATION, WALTER R. SJOGREN, SR.,
UNITED STATES OF AMERICA and
CHRISTIANSEN, JACKNIN & TUTHILL, P.A.,
A Florida Professional Association, as escrow agent,

Defendants.

CASE NO.: CL 87-8107 AE

CONSOLIDATED
WITH CL 89-2207 AE

FILED
96 OCT -7 PM 4:03
NICHOLAS H. WILKIN
CLERK CIR. D. CO. CT. S.
PALM BEACH CO., FL

FINAL JUDGMENT ON ATTORNEY'S FEES

THIS COURT finds as follows:

1. ALLEN STAMM is entitled to an award of \$230,000.00 for services rendered in this cause by his attorneys.

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2. ROBERT L. SAYLOR is entitled to an award of \$85,000.00 for services rendered to THOMAS LAGANO in this Court.

3. MARY ALICE GWYNN is entitled to an award of \$42,500.00 for services rendered to WILLIAM BELL in this Court.

4. ROBERT L. SAYLOR and MARY ALICE GWYNN meet the criteria for a contingency fee multiplier, but this Court cannot make a contingency fee multiplier award because of the holding in Command Credit Corp v. Mineo, 664 So.2d 1123 (Fla. 4th DCA 1995).

Accordingly, this Court

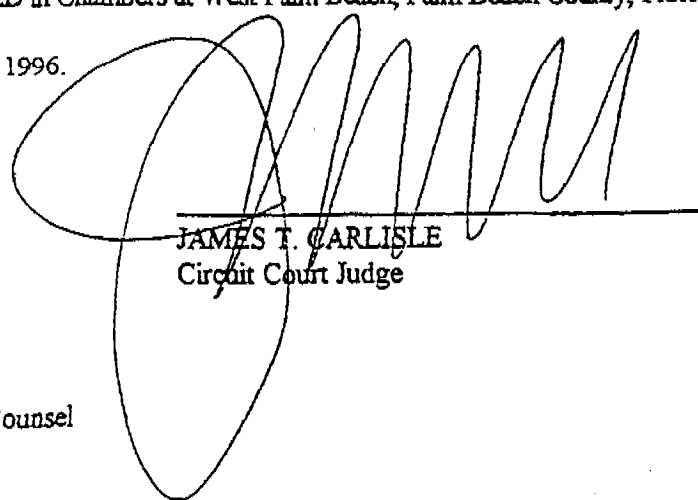
ORDERS AND ADJUDGES that ALLEN STAMM, ROBERT L. SAYLOR, and MARY ALICE GWYNN have and recover from U.S. BLOCK CORPORATION, formerly known as U.S.B. ACQUISITION COMPANY, INC., and WALTER R. SJOGREN, SR., both jointly and severally, the following amounts:

STAMM	\$230,000.00;
SAYLOR	\$85,000.00;
GWYNN	\$42,500.00,

for which sums let execution issue.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this

3 day of Oct, 1996.



JAMES T. CARLISLE
Circuit Court Judge

Copies Furnished:

See attached List of Counsel

COUNSEL OF RECORD

U.S. B. Acquisition Co. V. Stamm, et al
Case No: CL 87-8107 AE; CL 89-2207 AE

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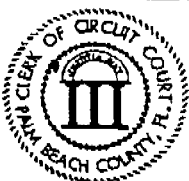
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(561) 265-2220
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I certify this document to be a true copy of the record in my office
this FOURTEENTH day of MARCH, 1997

DOROTHY H. WILKEN, Clerk of Court, Palm Beach County, FL

By

Deputy Clerk

not valid unless signed in red ink

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

U.S.B. ACQUISITION
COMPANY, INC., etc.,
Appellant-Cross Appellee(s),

CASE NO. 92-03138

vs.

ALLEN G. STAMM, WILLIAM
BELL, et al.
Appellee-Cross Appellant(s).

L.T. CASE NO. CL 87-8107 AE
PALM BEACH

April 8, 1997

BY ORDER OF THE COURT:

ORDERED that Basil E. Dalack's Extraordinary Motion for
Clarification of Opinion filed on March 17, 1997, is hereby
denied.

I hereby certify the foregoing is a
true copy of the original court order.


MARILYN BEUTTENMULLER
CLERK

cc: Jane Kreuzler-Walsh
Mary Alice Gwynn
David K. Friedman
Robert D. Critton, Jr.
Daniel S. Rosenbaum
David M. Schultz
James R. Rich
B. B. Allen
Basil E. Dalack
Ann Fishman
F. Lee Bailey
Robert S. Lenner
Michael J. Ferrin
Michael D. Brown
Marshall J. Osofsky
Gary M. Dunkel
Louis M. Silber

/CH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U. S. Mail to Basil E. Dalack, Esq., 1615 Forum Place, Suite 300, West Palm Beach, FL 33401 this 10th day of September, 1997.

LEWIS, VEGOSEN, ROSENBACH & SILBER, P.A.
500 South Australian Avenue
P. O. Box 4388
West Palm Beach, Florida 33402-4388
(561) 659-3300

By: 
Marshall J. Osofsky, Esq.
Florida Bar No. 739730

K:\F4000\4991\0001\APPEAL.II\SUPREME.CT\APPENDIX