

ORIGINAL

FILED

SID J. WHITE

SEP 19 1997

CLERK SUPREME COURT
By Barry
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

BARBARA ARENDS,

Petitioner,

vs.

CASE NO.: 91 ,1 18

**JUANNA CRIBBS BALL
and WALTER C. BALL,**

Respondents.

APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

ANSWER BRIEF OF RESPONDENTS

JEFFERSON W. MORROW, P.A.
1301 Riverplace Boulevard
Suite 2501
Jacksonville, Florida 32207
(904) 399-5626

Attorney for Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS..	i
TABLE OF AUTHORITIES.....	ii
PRELIMINARY STATEMENT.....	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
ISSUE I.....	3
THE TRIAL JUDGE INCORRECTLY AWARDED ATTORNEY'S FEES AFTER PLAINTIFFS FILED A NOTICE OF VOLUNTARY DISMISSAL. (PETITIONER'S ISSUES I & II RESTATED).	
CONCLUSION.....	4
CERTIFICATE OF SERVICE.....	5

TABLE OF AUTHORITIES

CASES:	PAGES
<u>MX Investments, Inc. vs. Crawford</u> , ___ So.2d ___ 22 F.L.W. S530 (Fla., 9/5/97)	2,3

<u>STATUTES:</u>	
Section 768.79, Florida Statutes (1991)	2,3
Section 768.79, Florida Statutes (6),,	3

PRELIMINARY STATEMENT

In this Answer Brief of Respondents, the parties will generally be referred to as they stood in the trial court, Respondents Juanna Cribbs Ball and Waiter C. Ball having been the Plaintiffs and Petitioner Barbara **Arends** having been the Defendant. References to the Record on Appeal will be by the symbol "R: ." and references to the Supplemental Record' by the symbol "SR: ".

All emphasis herein is supplied unless otherwise indicated.

¹ By Motion dated October 8, 1996, Petitioner **Arends** moved the District Court to supplement the Record, attaching the pleadings which were sought to be added to the Record. By Order dated October 29, 1996, the First District granted that motion and accepted the attachments as a Supplemental Record. The first page of those attachments would thus be SR: 1.

SUMMARY OF THE ARGUMENT

The language of Section 768.79, Florida Statutes (1991), and the language of the 1993 statute are identical as it relates to section (6) "Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal, the court shall determine the following: . . .".

This Court has already decided this same issue in **MX Investments, Inc. vs. Crawford**, ___ So.2d ___, 22 F.L.W. S530 (Fla., 9/5/97), when this Court concluded that "to be entitled to an award of attorney fees under Section 768.79, Florida Statutes (1991), there must be a dismissal with prejudice of the cause of action."

ARGUMENT

ISSUE I

THE TRIAL JUDGE INCORRECTLY AWARDED ATTORNEY'S FEES AFTER PLAINTIFFS FILED A NOTICE OF VOLUNTARY DISMISSAL. (PETITIONER'S ISSUES I & II RESTATED).

The Court's decision on September 5, 1997 completely controls this appeal. MX Investments, Inc. vs. Crawford, ___ So.2d ___, 22 F.L.W. S530 (Fla., 9/5/97). There was no Voluntary Dismissal With Prejudice in the case below. Rather, it was the first voluntary dismissal without prejudice that was filed in the case. Only when a Plaintiffs voluntary dismissal is with prejudice, or is a second voluntary dismissal, is the Defendant entitled to attorney fees.

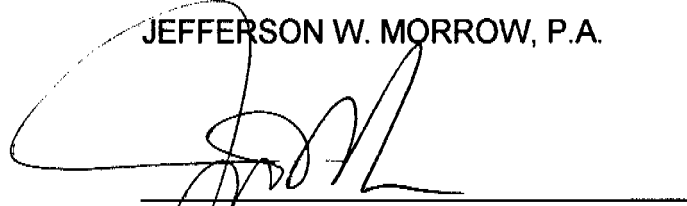
The language of Section 768.79, Florida Statutes (1991), and the language of the 1993 statute are identical as it relates to section (6) "Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal, the court shall determine the following: . . ."

This Court has already decided this same issue in MX Investments, Inc. vs. Crawford, supra, when this Court concluded that "to be entitled to an award of attorney fees under Section 768.79, Florida Statutes (1991), there must be a dismissal with prejudice of the cause of action."

CONCLUSION

Based on the fact that this was the Plaintiffs first Voluntary Dismissal Without Prejudice, the Petitioner is not entitled to attorney fees.

JEFFERSON W. MORROW, P.A.

A handwritten signature in black ink, appearing to read 'Jeff Morrow', is written over a horizontal line.

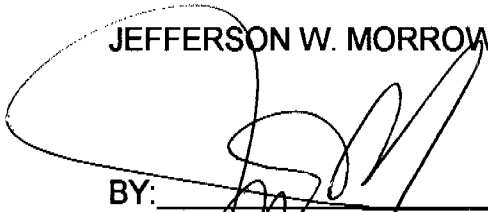
1301 Riverplace Boulevard
Suite 2600
Jacksonville, Florida 32207
(904) 399-5626
FLA. BAR NO. 369136

Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to JACK W. SHAW, JR.,[✓] ESQUIRE, of the firm, BROWN, OBRINGER, SHAW, BEARDSLEY & DECANDIO, 12 East Bay Street, Jacksonville, Florida 33303-5147, by U.S. Mail, this 18 day of September, A.D., 1997.

JEFFERSON W. MORROW, P.A.



BY: _____

JEFFERSON W. MORROW, ESQUIRE
1301 Riverplace Boulevard
Suite 2600
Jacksonville, Florida 32207
(904) 399-5626
FLABARNO.369136

Attorney for Respondents