

IN THE SUPREME COURT OF FLORIDA

JAMES GIBSON,

Defendant, Crossdefendant,
Counterclaimant, Petitioner,

vs.

NEAL AND NEAL REALTORS,

Plaintiff,

vs.

GARTH COURTOIS and SALLY COURTOIS,

Defendants, Crossclaimants,
Counterdefendants, Respondents.

FILED
SEP 11 1987
SUPREME COURT
Case No. 71,921

RESPONDENT'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

For the purposes of this brief only, Respondents accept the statement of the case and facts set forth in Petitioner's Jurisdictional Brief.

ARGUMENT

THERE IS NO CONFLICT IN THE
DECISIONS OF THE DISTRICT
COURTS OF APPEAL.

Time and again this Court and at least four of the Courts of Appeal have held that attorney's fees are not recoverable unless (1) a statute or (2) a contract specifically authorizes their recovery or (3) equity permits recovery from a fund benefited by the services. Estate of Hampton v. Fairchild-Fla. Const. Co., 341 So.2d 759 (Fla. S.Ct. 1976); American and Foreign Ins. Co. v. Avis, etc., 401 So.2d 855 (1st DCA 1981); Wilkinson v. Jenkins Const. Co., 475 So.2d 743 (2nd DCA 1985); Leitman v. Boone, 439 So.2d 318 (3rd DCA 1983); Medina v. Medina, 461 So.2d 1028 (5th DCA 1985).

We disagree with Petitioner's claim that Sousa v. Palumbo, 426 So.2d 1072 (4th DCA 1983) conflicts with the foregoing cases. The non-contract in Sousa provided that

"In any action to...interpret the
rights and obligations of the parties...."

the prevailing party was entitled to recover attorney's fees.

The Court in Sousa found that it had to interpret the writing.
In the case at bar the non-contract provided that

"In connection with any litigation
arising out of the contract...."
(Emphasis added)

the prevailing party was entitled to attorney's fees. In the
case at bar there was no contract and, therefore, no recovery
of fees.

CONCLUSION

We suggest that no true conflict exists under the obviously
widely varied language quoted above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was mailed to Gwynne A. Young, Attorney at Law, P. O. Box 3239, Tampa, FL 33601, this 8th day of September, 1987.

Jon Paul Grewe
Attorney