

IN THE SUPREME COURT OF FLORIDA

CYNTHIA L. JACKSON and
THOMAS JACKSON,

Appellants/Petitioners

vs.

Sup. Ct. Case No.: SC18-357

HOUSEHOLD FINANCE CORP III;
HOUSEHOLD FINANCE CORPORATION III;
THE DRAIN TEAM, INC.; NORTH STAR
CAPITAL ACQUISITION LLC AS ASSIGNEE
OF WELLS FARGO; and CAPITAL ONE
BANK (USA) NA., A CORPORATION,

Appellees/Respondents

PETITIONERS' MOTION FOR APPELLATE ATTORNEY'S FEES

Petitioners, Cynthia L. Jackson and Thomas Jackson, pursuant to the promissory note and mortgage upon which this action was brought, Florida Statute Section 57.105, and Florida Rule of Appellate Procedure 9.400(b), move for an award of appellate attorney's fees and states as follows:

1. This action stems from a contract between the parties, to wit, the note and mortgage.

2. The mortgage attached to the Complaint provides in pertinent part:

17. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such

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proceeding all expenses for foreclosure, including, but not limited to, reasonable attorney's fees, court costs, and costs of documentary evidence, abstracts and title reports.

3. Similarly, the note attached to the Complaint provides in pertinent part:

We may with or without notice sue you for the entire balance of your loan including accrued interest and any judgment in our favor may include our reasonable attorney fees and court costs as determined by the court.

4. Florida Statute Section 57.105(7) states:

If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. This subsection applies to any contract entered into on or after October 1, 1988.

5. On or about April 7, 2015, the trial court entered a Uniform Final Judgment of Mortgage Foreclosure against the Petitioners.

6. The Petitioners timely sought review from the Second District Court of Appeal.

7. On January 31, 2018, the Second District Court of Appeal entered an Opinion affirming the trial court but certifying conflict with the Fourth District Court of Appeal's decision in *Maslak v. Wells Fargo Bank, N.A.*

8. Petitioners timely filed a Notice to Invoke this Court's Discretionary Jurisdiction. This Court accepted jurisdiction on July 6, 2018.

9. Petitioners have retained the undersigned counsel to represent them in this appeal and have incurred reasonable attorney's fees in doing so.

10. Accordingly, if the Petitioners prevail in this appeal, the Petitioners are entitled to a provisional award of their reasonable attorney's fees pursuant to Fla. R. App. P. 9.400(b), Fla. Stat. Section 57.105(7), and the note and mortgage upon which this action was brought.

WHEREFORE, Petitioners respectfully request this Honorable Court enter an order provisionally awarding Petitioners their reasonable attorney's fees incurred in this proceeding pending a final determination in their favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of November, 2018, a true and correct copy of the foregoing is being served through the Florida Courts E-Filing Portal with a copy sent via electronic mail and by U.S. Mail to the following:

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