

IN THE DISTRICT COURT OF APPEAL THIRD DISTRICT

CASE NO.: 3D23-1222
L.T. CASE NO. 2019-9509-CA

WILMINGTON TRUST, N.A.,

APPELLANT

v.

ROBERT FAINE, et al.

APPELLEE

**APPELLEE'S RESPONSE TO APPELLANT'S
MOTION TO DISMISS AND MOTION FOR APPELLATE
ATTORNEYS' FEES**

Appellee, SFL PROPERTY HOLDING LLC ("Appellee"), by and through the undersigned counsel, hereby responds to Appellant's motions as follows:

On December 6, 2024 this appeal became moot when the lower court vacated the June 6, 2023 Corrected Final Judgment. On December 13, 2024, Appellant curiously filed a motion to dismiss its own appeal instead of filing a notice of voluntary dismissal. Appellant's decision to file a motion to dismiss became clear when it filed on the same date a motion for attorneys' fees based on Florida Statute Section 59.46.

-1-

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The motion to dismiss should be granted because, as Appellant correctly stated in its motion, the appeal is moot. The motion for attorneys' fees, however, should be denied for two reasons. First, there is no prevailing party in this appeal. The appeal is simply moot. An attorney fee award based on Florida Statute Section 59.46 is limited to the prevailing party in the appeal. Appellee's decision to create unnecessary judicial labor by requesting an order of dismissal instead of filing a notice of voluntarily dismissal does not change the fact that the appeal is moot, and there is no prevailing party.

Second, Appellee has no contractual privity with Appellant. Appellee is the property owner but not the mortgagor. Appellee did not execute the mortgage and has no personal liability under the attorney fee provision of the mortgage. Appellant's attempt to qualify the requested attorney fee award as not being personal against Appellee but solely *in rem* against the property is a red herring as Appellee will necessarily be required to pay the appellate attorney fee award because the property has equity in excess of Appellant's

mortgage. For both reasons stated herein, the motion for appellate attorneys fees should be denied.

Respectfully submitted,

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By: /s/ Erik Wesoloski
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 16th day of December, 2024, a true and correct copy of the foregoing was served via email upon: Eric S. Matthew, Esq., Atlas Solomon PLLC, 819 SW Federal Hwy, Suite 301, Stuart, Florida 34994, eric@atlas-solomon.com.

/s/ Erik Wesoloski
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