

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
FOURTH DISTRICT**

**CASE NO. 4D2024-1568**

**WENLEI MAO,  
Appellant,**

**v.**

**ADAM SMITH AND TAMARA SMITH,  
Appellees.**

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**APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH  
JUDICIAL CIRCUIT OF FLORIDA IN AND FOR BROWARD COUNTY**

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**INITIAL BRIEF OF APPELLANT**

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## **STATEMENT OF THE CASE AND FACTS**

This is an appeal of a final order in a landlord/tenant action, which obliterated Appellant, Wenlei Mao's right to seek attorney fees and costs of \$87,332.72 against her former tenants, Adam Smith and Tamara Smith. Record on Appeal filed with this Court on August 20, 2024 [hereinafter "R"] 1168-1178,1212-1222. While this is a small claims matter, Appellant incurred substantial attorney fees and costs of \$87,332.72, which included defending against two motions for summary disposition filed by Appellees and having to defend against nine separate counts raised by Appellees, which also required her counsel to have to prepare for and participate in a six-day bench trial. R15-182,194-290,305-310,322-324,327-435,441-532,538-914,917-1222,1271,1281-1312; Appellant's Appendix to Appellant's Motion to Supplement the Record filed with this Court on November 1, 2024, which this Court by written Order on November 21, 2024 deemed the record supplemented with the materials included in said Appendix [hereinafter "SR"] 11.

On July 13, 2022, Appellees, Adam Smith and Tamara Smith [hereinafter jointly referred to as "Appellees" or "Tenants"] filed this landlord/tenant action in small claims court, in which Appellees raised eight counts against Appellant, Wenlei Mao [hereinafter "Appellant" or "Landlord"]

or “Mao”]. R24-160. Nine days later, on July 22, 2022, Appellant was served with the statement of claim. SR6-8. Two and half weeks later, on August 8, 2022, Appellee filed amendment to statement of claim and proof of service, in which Appellee added a count for civil theft under Fla. Stat. 772.11 against Appellant. R161-182.

While no answer is required in small claims court, less than two weeks later, on August 21, 2022, Appellant filed an Answer, in which Appellant expressly denied a majority of Appellees allegations and “ [a]ny allegations that were not expressly addressed therein, were also expressly, directly and explicitly denied and strict proof was demanded.” R198-202. Despite Appellant denying almost all of the allegations raised by Appellees in the statement of claim and amendment to statement of claim, on August 29, 2022, one day before the pre-trial conference was to be held, Appellees filed Plaintiffs’ Motion for Summary Disposition seeking summary disposition in their favor on all claims raised in the statement of claim and on the civil theft claim raised in the amendment to statement of claim and sought damages in the amount of \$8,000 plus costs, attorney’s fees, and interest. R236-249. Appellees even argued that they were entitled to treble damages for their civil theft claim pursuant to Fla. Stat. 772.11. R238, 244.

On August 30, 2022, Appellant filed Defendant Wenlei Mao's Response and Objection to Plaintiff's Motion for Summary Disposition, in which Appellant sought Appellee's motion be denied due to genuine issues of material fact existing and requested Appellant's attorney's fees for breach of Fla. Stat. 44.403 as per Fla Stat 44.406 be awarded. R265-284. On August 31, 2022, after a pre-trial conference was held, a written pre-trial conference order and notice of trial was filed, in which the lower tribunal denied Appellees' Motion for Summary Disposition due to issues of fact remaining, the lower tribunal recognized that Appellant denies liability and damages, and trial was set for October 26, 2022. SR11.

In the beginning of September 2022, Appellant filed Defendant Wenlei Mao's Motion to Hold Plaintiff Adam Smith and Tamara Smith in Contempt of Court, and Motion for Sanctions, Pursuant to Florida Statutes 44.405 and filed an affidavit in support. R291-296,311-314. In this motion, Appellant asserted "Defendant has incurred attorney's fees both at the Mediation and in the filing of this Motion and seeks sanctions in the form of an award of attorney's fees for the Defendant in this cause." R294. Appellant requested that the court find Appellees in contempt of court, "award of sanctions in the form of attorney's fees associated with attendance at Mediation and the drafting and filing of this motion" and dismissal of the suit with prejudice.

R294-295. On September 5, 2024, Appellees filed Response to Defendant Wenlei Mao's Motion to Hold Plaintiff Adam Smith and Tamara Smith in Contempt of Court, and Motion for Sanctions, Pursuant to Florida Statutes 44.405 and Plaintiffs' Cross-Motion to Hold Defendant's Counsel, Jacqueline A. Salcines, in Contempt of Court and Motion for Sanctions. R297-304.

On September 5, 2022, Appellant filed Motion for Attorney's Fees pursuant to Fla. Stat. 772.11. R315-317. Appellant asserted that Fla. Stat 772.11 states in part:

The defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon finding that the claimant raised a claim that was without substantial fact or legal support. This section does not limit any right to recover attorney's fees or costs provided under any other law.

R 315. Appellant sought "an award of attorney's fees and court costs associated with the Court's future finding and ruling in this cause, pursuant to Florida Statutes §772.11." R316. On October 26, 2022, the first day of trial was set to begin before Judge Kim Mollica. SR11. The Appellees and the Appellant with her lower court counsel Jacqueline Salcines [hereinafter "Salcines"] were present before the Court on October 26, 2022 and at that time exhibits for trial were pre-marked by the Clerk, but opening statements were not made, rather the trial was continued and Appellant was ordered to

provide Appellees with a certain video in DVD form without delay. SR11-13,16, 25-48; R325-435,533.

On November 9, 2022, Appellees filed Notice of Defendant's Violation of the Court's Order and Motion for Sanctions against Defendant and Defendant's Counsel. R436-440. On November 11, 2022, Appellees filed Plaintiff's Renewed Motion for Summary Disposition. R441-532. In this motion, Appellees sought summary disposition against Defendant, which included claiming that Appellant "committed civil theft in violation of Fla. Stat. §772.11 and, is therefore liable...for treble damages." R442,446.

On November 18, 2022, the Court entered an order specially setting Appellant's motion for sanctions and Appellees' renewed motion for summary disposition for December 16, 2022. SR14-15. On December 5, 2022, Appellant filed Response and Objection to Plaintiff's Renewed Motion for Summary Disposition, in which Appellant sought Appellees' motion be denied and Appellant awarded attorney's fees for breach of Fla. Stat. 44.403 as per Fla Stat 44.406 and two days later, Appellant filed affidavits in support. R538-554. On December 15, 2022, Appellees filed affidavits in support of their motion for summary disposition and motion for sanctions. R555-563. No orders were entered on these motions, but clearly the renewed motion

for summary disposition was denied by the court since the trial court moved forward with trial. See SR1-575; R1-1550.

On February 1, 2023, April 12, 2023, June 15, 2023, June 30, 2023, July 17, 2023 and August 11, 2023, a six day bench trial was held before Judge Kim Theresa Mollica and Appellees were present and Appellant was present with her counsel Jacqueline Salcines. SR11-13,16,18-318; R1168,1212. On February 1, 2023, opening statements were made [SR25-46], in which Appellee, Adam Smith [hereinafter individually referred as “Mr. Smith” or “Adam Smith”] argued the claims raised in the statement of claim, as well as, the claim under the Florida Civil Theft Statute. SR25-32. At the end of the case, the trial court directed the parties each to submit a proposed final judgment. SR291-292. Appellant submitted a proposed final judgment, which provided that:

Third, Fla. Stat. §772.11 requires clear and convincing evidence of theft and the party claiming such theft must prove the party acted with criminal intent, which was never alleged nor proven at court.

Pursuant to the statute, the Defendant is entitled to recover attorney’s fees and court costs in trial upon the finding that a claimant raised a claim which was without substantial fact or legal support. Fla. Stat. §772.11. Accordingly, after due consideration it is,

ORDERED AND ADJUDGED that Judgment is entered in favor of the Defendant, Wenlei Mao...The Court reserves jurisdiction to determine an award of attorney’s fees and costs in favor of the Defendant, with amounts to be determined at a future hearing.

R1495-1502. No objection was filed. SR1-575; R1-1550. Appellees submitted a proposed final judgment, which stated that the court ruled in Appellees favor and awarded Appellees costs in the sum of \$2,184.12 and attorney's fees in the sum of \$66,687.50. SR 318-319.

On October 12, 2023, Final judgment After Non-Jury Trial was entered [hereinafter "Final Judgment"], which found in pertinent part:

27. The Plaintiffs in this case sent its written demand notice in writing by letter dated July 15, 2022 for treble damages, and filed this suit on July 13, 2022, and then sent another treble damages letter on October 25, 2022.

28. Section 772.11, Florida Statutes requires clear and convincing evidence of theft and the party claiming such theft must prove the party acted with criminal intent, which was never alleged nor proven at trial by the Plaintiffs.

29. The Court finds the Plaintiffs treble damage claim was without substantial fact or legal support to bring a claim under Section 772.11, Florida Statutes.

R1174-1175,

The final judgment ordered and adjudged as follows:

- A. As to Count I, the Court finds in favor of the Defendant.
- B. As to Count II, the Court finds in favor of the Defendant.
- C. As to Count III, the Court finds, in part, in favor of the Plaintiffs and Defendant.
- D. As to Count IV, the Court finds, in part, in favor of the Plaintiffs and Defendant.
- E. As to Count V, the Court finds in favor of the Defendant.
- F. As to Count VI, the Court finds in favor of the Plaintiffs.
- G. As to Count VII, the Court finds in favor of the Defendant.
- H. As to Count VIII, the Court finds in favor of the Plaintiffs.

- I. In Sum, the Plaintiffs, ADAM SMITH AND TAMARA SMITH are entitled to recover from the Defendant, WENLOA MAO, the sum of THREE THOUSAND SEVEN HUNDRED EIGHTY FORTY SIX DOLLARS AND 21/100 (\$3746.21) all of which shall bear interest at the rate of 8.54% per year until satisfied for which let execution issue.
- J. As to Amendment to the Statement of Claim and Proof of Service re: Civil Theft 772.11(1), Florida Statutes, the Court finds in favor of the Defendant.
- K. The Court reserves jurisdiction to determine entitlement and amount of attorney's fees and costs.

R1176-1177.

On October 18, 2023, Appellees filed Corrected Plaintiffs' Motion to Correct Final Judgment after non-jury trial, in which Appellees sought correction of the spelling of Appellant's name in the Final Judgment and sought to correct the Final Judgment claiming that 1) Appellees did allege that Appellant acted with criminal intent in its statement of claim and amendment to statement of claim, 2) the treble damage claim was with substantial fact and legal support, and 3) that at trial the court orally determined that Appellees were entitled to attorney's fees and costs as a matter of law under Fla. Stat 83.49(3)(c). R1183-1189.

On October 27, 2023, Appellant filed a motion for rehearing with regards to the Final Judgment. R1190-1193. On October 30, 2023, Appellees moved to strike Appellant's motion for rehearing. R1194-1199. On October 31, 2023, Appellees moved for sanctions against Appellant and

Appellant's trial counsel Jacqueline A. Salcines. R1200-1205. On November 6, 2023, a hearing was held on Appellees' Motion to Correct Final Judgment after non-jury trial, Appellant's motion for rehearing, Appellee's motion to strike Appellant's motion for rehearing and Appellees motion for sanctions. See SR322-375; R1206-1211. At the hearing, the parties agreed to correct two scrivener errors. SR328-331,355-356. The court also clarified that it had not resolved the issue of Appellees' entitlement to attorney's, which was to be addressed at a future hearing. SR339-341.

On November 7, 2023, the trial court filed First Amended Final Judgment After Non-Jury Trial [hereinafter "Amended FJ"] which merely corrected scrivener errors. R1207-1208,1212-1222. On November 13, 2023, Appellees' Motion to Tax Costs and Award Attorney's Fees was filed. R1223-1248. On November 13, 2023, Appellant filed Motion for Award of Attorney's Fees and Costs and Corrected Motion for Award of Attorney's Fees and Costs. R1249-1269. On November 13, 2023, Appellant and Appellee both filed notice of compliance with Court Order Preliminary to Hearing on Motion to Tax Costs and Award Attorney's Fees. SR376-381.

On November 15, 2023, Appellant filed Corrected Motion for Award of Attorney's Fees and Costs [hereinafter "Appellant's Attorney Fees Motion"], in which Appellant stated:

COMES NOW, the Defendant, WENLEI MAO, by and through her undersigned counsel and files this her Motion to Tax Attorney's Fees and Costs, pursuant to the Order Preliminary to Hearing on Motion for Attorney's Fees and Costs as Florida Small Claims Rules 7.175, and in support thereof states as follows:

1. A Final Judgment was entered in this cause on October 13, 2023 and Amended Final Judgment November 7, 2023 after a Non-Jury Trial held February 1, 2023, April 12, 2023, June 15, 2023, June 30, 2023, July 17, 2023 and August 11, 2023.
2. Defendant, WENLEI MAO, was the prevailing party on Counts I, II, III, IV, V, VII and on the Amended Statement of Claim Civil Theft Count.
3. Pursuant to the terms of the Residential Lease, Fla. Stat. Chapter 83, and the Florida Civil Theft Statute 772.11, Defendant, as the prevailing party, is entitled to an award of attorney's fees and costs.
4. This Court further ruled for such entitled in its Judgment of October 13, 2023 and November 7, 2023.
5. Defendant WENLEI MAO seeks an award of attorney' in this matter for total hours spent of 164.50 at a rate of \$500.00 per hour, for a total of \$82,250.00, as per the attached time sheets (Exhibit A) and corresponding Affidavit of Fees and Costs, as well as costs in the amount of \$5,082.72 representing court reporter costs, plus an additional award for additional fees to be incurred relating to any hearing on same.

WHEREFORE Defendant WENLEI MAO, respectfully moves this Court for an award of attorney's fees and costs associated in this matter in the sum of \$87,332.72, plus any additional fees related to any hearings on same, as well as any fees for experts or additional costs incurred in this matter, and any further relief this Court deems just and proper.

R1270-1280. Appellant also filed an affidavit of reasonable attorney's fees in support of her motion. R1281-1312.

On November 21, 2023, Appellees filed opposition to Appellant's claim for costs and in further support of Plaintiffs' Motion for Attorney's Fees and Costs, in which Appellees for the first time claimed that Appellant waived its claim for attorney's fees or costs by failing to plead it in her Answer or any other pleading in the case. R1313-1361. On November 26, 2023, Appellant filed another notice of compliance with Court Order. SR382-383.

On December 1, 2023, a hearing was set for January 19, 2024 to address entitlement to attorney's fees and costs, Plaintiffs' Motion to Tax Costs and Award Attorney's Fees and Defendant's Motion for Award of Attorney's Fees and Costs. SR384-385. On December 11, 2023, Appellant filed opposition to Plaintiff's Claim for Attorney's Fees and Costs. R1364-1371.

On January 19, 2024, a hearing was held before Judge Kim Mollica, in which at the end of the hearing the court began to hear the issue of entitlement with regards to Appellant's Attorney Fee Motion. SR406-417. Salcines argued that the lower tribunal found in favor of Appellant on counts, one, two, five, seven, partially on three, partially on four, and in favor of Appellant with regards to the civil theft count. SR407. Salcines argued that Appellant is entitled to fees based on Chapter 83, as well as, the lease which

states an award of attorney's fees to the prevailing party. SR407. Salcines further argued:

And then as to the civil theft, there was the safe harbor letter that was timely sent. There was a motion for fees that was timely filed. And pursuant to statute 772.11, it says the defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim that was without substantial fact or legal support, and the exact judgment says, "As to amendment of the Statement of Claim regarding civil theft, 772.11, the court finds in favor of the defendant." So it's our position that Ms. Mao is entitled to attorney's fees on the counts mentioned as well as a civil theft count."

SR407-408.

This matter was then continued until February 19, 2024. SR431-432; R1400. On January 23, 2023, the Court granted Appellees Motion for Fees and Costs as to Adam Smith only and on the issue of entitlement only and ordered that the amount of Adam Smith's fees and costs shall be determined at a future hearing. R1372-1373.

On February 19, 2024 a hearing was held, in which the lower tribunal heard additional argument on Appellant's Attorney Fee Motion. SR435-469 14-15. Salcine argued that Appellant was the prevailing party with regards to Count I, II, V, VII and the civil theft count and partially Counts III and IV. SR447-448. She asserted that Appellant based on paragraph 26 of the lease, Fla. Stat 83.48 and Small Claims Rule 7.175, Appellant as a prevailing

party on counts I, II, III, IV, V, and VII, is entitled to attorney's fees and costs. SR447-451, 453. Salcine argued that the civil theft statute is a statute all by itself and Appellant is entitled to fees and costs for the civil theft claim under both statute and the contract. SR449-453. She asserted that the civil theft, Florida Statute 772.11 "specifically says the defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim that was without substantial fact or legal support."SR451. Salcine pointed out that in the final judgment, Paragraph J, the trial court on the civil theft claim found in favor of the defendant. SR451. Salcine argued that pursuant to the civil theft statute, 772.11, a motion for fees is required to be filed separately, which she did. SR453. Salcine asserted that based on her arguments, Appellant is entitled to recuperate her attorney's fees and costs. SR 453.

Appellee's Counsel, Andrew Rader in opposition argued that Appellant failed to plead as required by Stockman and thus, waived attorney fees and costs. SR458-460. The arguments were not completed, so the court set the matter to be continued to March 6, 2024, SR466-468, 482-483. On March 1, 2024, Appellant filed a motion for continuance of the hearing scheduled for March 6, 2024 on Appellant's Attorney Fees Motion. R1374-1377. Despite oral argument had already commenced with regards to this motion

and Appellees had already submitted their opposition, Appellees on March 4, 2024 filed a brief in opposition to Defendant's claim of entitlement to attorney's fees and costs. R1378-1397.

On March 5, 2024, the trial court granted the motion for continuance and continued the hearing on Appellant's Attorney Fees Motion to a future date to be set by the Court. R1374-1377,1398. On March 6, 2024, the court by written order set a hearing for April 24, 2024. SR484-485. No hearing on Appellant's Attorney Fees Motion was held, rather on April 24, 2024, the Court by written order, after being advised by the parties via e-mail, set a hearing for May 1, 2024 to determine a date for Appellant's Attorney Fees Motion and Plaintiff's Motion for Attorney Fees to be continued to. SR486-487. On May 1, 2024, Appellant's Attorney Fees Motion was continued to May 16, 2024. SR490-491.

On May 16, 2024, the hearing resumed before Judge Kim Theresa Mollica. SR492-524. Salcine presented argument, in which she argued the following: The trial court under the First Amended Final Judgment found Appellant to be the prevailing party on Counts I, II, V, VII, partially as to III and IV and as to the civil theft count also found in favor of the Appellant. R496-497. Under Fla. Stat 83.48 and paragraph 26 of the lease, Appellant has both statutory and contractual entitlement to recuperate attorney's fees

on these separate counts, and each count is separate and distinct. SR495-499,504.

Appellees also filed a completely separate civil theft count in this case. R499. Under the separate civil theft statute, Fla. Stat. 772.11 Appellant “is entitled to recover reasonable attorney’s fees and court costs in the trial and appellate courts upon a finding that the claimants raised a [civil theft] claim that was without substantial fact or legal support,” which it did. SR499. The trial court went out of its way in its First Amended Final Judgment to specifically find it was a frivolous claim. SR499,504,518. The trial court in paragraph 28 of the First Amended Final Judgment finds that “Florida Statute requires clear and convincing evidence of theft, and the party claiming such theft must prove the party acted with criminal intent, which was never alleged nor proven at trial by the plaintiff.” R499. The trial court found that Plaintiff failed to allege nor prove any criminal intent. R504,518. Since a motion for attorney’s fees was filed pursuant to 772.11, and the court made the required finding Appellant is entitled to fees under Fla. Stat 772.11. SR499-500,504,517.

Appellant did not abandon any claim for fees and costs as Appellees allege because Small Claim Rule 7.175 governs this case, which requires a

party seeking fees or costs or both shall serve their motion no later than 30 days after the filing of the judgment, which Appellant timely did. SR502-503.

Moreover, “772.11 requires a separate motion for attorney’s fees. That’s what the case law states, that if you are claiming under 772.11 you have to have a Safe Harbor letter and you have to have a separate motion for attorney’s fees which we did. So that’s why that separate motion was filed. Under *Stockman v. Down* he is stating any attorney’s fees must be pled. However, our position, again, is under 7.175 of small claim rules, 30 days you have to file your motion for fees 30 days after judgment or a maximum of 30 days, which we timely did.” SR517.

Additionally, the small claims rules don’t require an answer to the claims. SR516-517. Appellant however did file an answer, which did deny or address all of the allegations. SR516-517. In the last sentence of the Answer, it even says any allegation not expressly addressed is denied. SR517.

Also, *Stockman* pleading rule does not apply to Appellant’s statutory and contractual claims for attorney fees because “the case is about notice, notice that the other side is seeking fees.” SR503. Appellees were on said notice, as “[i]t was brought up during the trial. It was brought up at all points in time that” Appellant was seeking fees. SR503. Appellant based on Fla.

Stat 83.48, paragraph 26 of the contract, based on 772.11 civil theft statute, based on 7.175 of the small claims rules, etc., is seeking entitlement to fees. SR504-505,519.

Appellees' Counsel, Andrew Rader provided argument in response [SR505-516,519-520], which included that based on *Stockman* Appellant's claim for attorney fees and costs, which were based on statutes or a contract, must be pled. SR507-508,510-511,520. He argued that such a claim for attorney fees and costs cannot" simply be made in a motion, as Ms. Salcine would like us to believe", and failure to set forth a claim in a pleading constitutes a waiver. SR508,510-511,515.

Rader asserted that counsel argues that all you have to do is make a motion for fees and costs under Fla. Stat. 772.11. SR 507-508. But in civil theft, while it is true you have to make a motion for fees and costs under the statute, that is only provided you have pled an entitlement to fees and costs, which was not done. SR508. The trial court did not orally rule, but rather indicated that an order would be out shortly. SR 521.

After the hearing, on May 16, 2024, and without the court requesting any additional briefing, Appellees filed Notice of Supplemental Argument on Defendant's Motion for Attorney's Fees and Costs. SR525-556. One day later, on May 17, 2024, the trial court entered a final order entitled "Order on

Defendant's Corrected Motion for Award of Attorney's Fees and Costs (Entitlement Only) (hereinafter "Final Order"], which provided:

This cause came to be heard on February 19, 2024, March 6, 2024, April 24, 2024 and May 16, 2024 for a special set hearing on Defendant's Corrected Motion for Award of Attorney's Fees and Costs (Entitlement Only), and the Court after hearing argument of counsel, and reviewing the court file, and being otherwise advised, the court finds the Defendant did not plead for attorney's fees and costs in the Defendant's response, the Defendant did file a motion for attorney's fees and costs prejudgment, however, the Defendant is required to specifically plead for attorney's fees and costs, and failed to do so in the counts the Defendant prevailed, *Stockman v. Downs*, 573 So. 2d 835 (1991), it is therefore,

Ordered and Adjudged, that the Defendant's Motion for Entitlement to Attorney's Fees and Costs is Denied.

R1400

On May 31, 2024 Appellant filed a timely motion for new trial and/or rehearing entitled "Motion for Rehearing and Reconsideration on Order on Defendant's Corrected Motion for an Award of Attorney's Fees and Costs (Entitlement)" [hereinafter "motion for new trial"]. R1402-1411. On June 3, 2024, Appellees filed an Opposition to Appellant's Motion for New Trial and an Amended Opposition to Appellant's Motion for New Trial as well. R1412-1419.

On June 10, 2024, Appellant filed Amended Motion for Rehearing and New Trial on Order Denying Defendant's Corrected Motion for an Award of Attorney's Fees and Costs (Entitlement Only) [hereinafter "Amended Motion

for New Trial”] and Appellees filed a response. R1456-1479. On June 13, 2024, Appellant filed Corrected Amended Motion for Rehearing and New Trial on Order Denying Defendant’s Corrected Motion for an Award of Attorney’s Fees and Costs (Entitlement Only) [hereinafter “Corrected Amended Motion for New Trial”]. R1480-1502. In this Corrected Amended Motion for New Trial, Appellant argued that there is a exception to *Stockman*, which is that “[w]here a party has notice that an opponent claims entitlement to attorney’s fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement, that party waives any objection to the failure to plead a claim for attorney’s fees.” R1480-1502. Appellant argued that this *Stockman* exception applied. R1480-1502. Appellant argued that the Appellees were on notice of Appellant’s claims of entitlement to attorney fees due to numerous prejudgment filings [August 30, 2022 Defendant Wenlei Mao’s Response and Objection to Plaintiff’s Motion for Summary Disposition, September 4, 2022 Defendant Wenlei Mao’s Motion to Hold Plaintiff Adam Smith and Tamara Smith in Contempt of Court, and Motion for Sanctions, pursuant to Fla. Stat. 44.405, September 5, 2022 Defendant Wenlei Mao Motion for Attorney’s Fees Pursuant to Fla. Stat. 772.11, September 5, 2022 Affidavit of Wenlei Mao in Support of Its Motion to Hold Adam Smith and Tamara

Smith in Contempt of Court and for Sanctions, December 5, 2022 Defendant Wenlei Mao's Response and Objection to Plaintiff's Renewed Motion for Summary Disposition] and the proposed Final Judgment, and acquiesced to such fees by failing to raise any objection pre-judgment and only raising their objection for the first time post-judgment, thus, the trial court erred in denying the motion based on *Stockman*. R1480-1502.

On June 14, 2024, without a hearing, the trial court denied Appellant's Corrected Amended Motion for New Trial. R1503-1504. On June 14, 2024, Appellant timely filed her notice of appeal, in which she appealed the Final Order, which was rendered on June 14, 2024. R1505-1507. On November 1, 2024, Appellant filed Appellant's Motion to Supplement the Record and Appellant's Appendix to Appellant's Motion to Supplement the Record. See Appellant's Motion to Supplement the Record filed with this Court on November 1, 2024; Appellant's Appendix to Appellant's Motion to Supplement the Record filed with this Court on November 1, 2024. On November 21, 2024 this honorable court filed a written order, which granted said motion to supplement the record and ordered that "the record is supplemented with the materials included in the November 1, 2024 appendix. Said supplemental record is deemed filed as of the date of this

order.” See Order filed with this Court on November 21, 2024. Appellant now timely files her Initial Brief.

### **SUMMARY OF ARGUMENT**

The trial court in the final order took away Appellant’s right to seek attorney fees and costs of \$87,332.72 against Appellees based on the erroneous ground that Appellant’s claim for attorney fees and costs had not been properly pled as required by *Stockman*. The *Stockman* pleading rule does NOT apply to claims for fees based on any statute or contract when the exception in *Stockman* applies, which it clearly did. The exception in *Stockman* states that if “a party has notice that an opponent claims entitlement to attorneys’ fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement, the party waives any objection for failure to plead a claim for attorney’s fees.”

In this case, the Appellees were on notice of Appellant’s claim for fees by multiple pre-trial filings and Appellant’s submissions of a proposed final judgment. The trial court even entered a Final Judgment finding that Appellees civil theft claim was without substantial fact or legal support, which is only necessary for the court to find if it is going to award attorney fees under Fla. Stat. 772.11, and reserved jurisdiction to determine entitlement

and amount of attorney fees and costs. Appellees did not object to Appellant's entitlement to fees based on failure to plead until after Final Judgment. Accordingly, Appellee's were on notice of appellant's claim for fees and waived their objection to appellant's failure to plead entitlement in a pleading. Thus, reversal is required since the exception in *Stockman* applies.

Even if that exception in *Stockman* did not apply [although it clearly does], it is recognized in Florida that the *Stockman* pleading rule does not apply to claims for attorney fees and/or costs based on Fla. Stat. 772.11. A claim for attorney fees and/or costs based on Fla. Stat. 772.11 is not required to be pled, but rather may be raised by motion after the case has concluded. In this case, Appellant in her post-judgment attorney fees motion sought attorney fees and costs based on Fla. Stat. 772.11. Thus, the trial court reversibly erred in denying Appellant's attorney fees motion in its entirety. Reversal is required.

Additionally, it is well established in Florida that the *Stockman* pleading requirement does not extend to claims for costs and rather under small claim rules a party is merely required to file a post-judgment motion for costs. As a result, the trial court reversibly erred in denying Appellant's claim for costs

based on Appellant's failure to plead as required by *Stockman*. Reversal is required.

## **ARGUMENT**

### **I. Standard of Review**

When entitlement to attorney's fees is based on an application of stockman rule and/or exception to the pleading requirement for attorney's fees, this court undertakes a de novo review. *Save on Cleaners of Pembroke II Inc. v. Verde Pines city Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4th DCA 2009).

When entitlement to attorney's fees is based on interpretation of contract or statute or procedural rule, it is pure matter of law in which appellate court undertakes de novo review. *Hinkley v. Gould, Cooksey, Fennell, O'Neil, Marine, Carter & Hafner, P.A.*, 971 So. 2d 955 (Fla. 5<sup>th</sup> DCA 2007); *Hirschenson v. Hirschenson*, 996 So. 2d 905 (Fla. 4<sup>th</sup> DCA 2008); *Vital Pharms., Inc. v. Prof'l Supplements, LLC*, 210 So. 3d 766 (Fla. 4<sup>th</sup> DCA 2017).

Any legal issue raised is subject to de novo review. *Shirley's Pers. Care Servs. of Okeechobee, Inc. v. Boswell*, 165 So. 3d 824 (Fla. 4<sup>th</sup> DCA 2015).

**II. The Lower Tribunal Reversibly Erred in Denying Appellant's Attorney Fees Motion Based on Appellant's Failure to Plead because the Exception in Stockman applied.**

In November, 2023, Appellant filed post-judgment Appellant's Attorney Fees Motion, in which Appellant argued she was entitled to attorney fees and costs pursuant to the residential lease, Fla. Stat. Chapter 83 and the Florida Civil Theft Statute 772.11. R1259-1312. On November 21, 2023, Appellees filed post-judgment their opposition to Appellant's Attorney Fees Motion and raised for the first time that based on *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991) Appellant waived her right to fees due to Appellant's failure to plead her claim for attorney fees in a pleading. R1313-1361. At the hearing on Appellant's Attorney Fees Motion, Appellant argued that *Stockman* pleading requirement does not apply because the case is about notice that the other side is seeking fees and Appellees were on said notice, as Appellant brought up at all points in time that Appellant was seeking fees. SR503-504.

On May 17, 2024, the trial court after oral argument on Appellant's Attorney Fees Motion entered a Final Order<sup>1</sup>, which found that:

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<sup>1</sup> The order on appeal is a final order, because it is a post-judgment order denying Appellant's claim for entitlement to attorney's fees. See R1400; *C.V.P. Cmty. Ctr., Inc. v. McCormick 105, LLC*, 302 So. 3d 905 (Fla. 4<sup>th</sup> DCA 2020)("Post-judgment orders denying motions for attorney's fees are appealable final orders."); *BDO Seidman, L.L.P. v. British Car Auctions, Inc.*, 789 So. 2d 1019 (Fla. 4<sup>th</sup> DCA 2001)(Recognized that post judgment orders denying attorney's fees are final appealable orders); *Kiefer v. Sunset Beach Invs., LLC*, 207 So. 3d 1008 (Fla. 4<sup>th</sup> DCA 2017); *Yampol v. Turnberry Isle S. Condo. Ass'n*, 250 So. 3d 835 (Fla. 3<sup>rd</sup> DCA 2018)("A post-judgment order

The Defendant did not plead for attorney's fees and costs in the Defendant's response, the Defendant did file a motion for attorney's fees and costs prejudgment, however, the Defendant is required to specifically plead for attorney's fees and costs, and failed to do so in the counts the Defendant prevailed, *Stockman v. Downs*, 573 So. 2d 835, it is therefore,

Ordered and Adjudged, that the Defendant's Motion for Entitlement to Attorney's Fees and Costs is Denied.

R 1400. Appellant timely moved for new trial. Fla. Sm. Cl. R. 7.180; R1402-1411,1456-1470,1480-1502. Appellant again argued in her Corrected Amended Motion for New Trial that the exception in *Stockman* to the pleading rule applied. R1480-1494. Appellant argued the exception in *Stockman* to the pleading rule, is that, 'where the Plaintiff has been placed on notice that an opponent is going to claim fees, and by its conduct either "recognizes or acquiesces to the claim of fees or otherwise fails to object to it, that party waives any objection to the failure to plead a claim of attorney's fees.'" R1485,1487. Appellant argued that Appellees were on notice of Appellant's claims of entitlement to attorney fees due to numerous prejudgment filings, including Defendant Wenlei Mao's Response and Objection to Plaintiff's Motion for Summary Disposition filed August 30, 2022,

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denying a party's claim for entitlement to attorney fees, however, is an appealable final order."); *Hubert v. Div. of Admin.*,425 So. 2d 671 (Fla. 2<sup>nd</sup> DCA 1983)(Saw no logical distinction between attorneys' fees and costs entered after final judgment, they are both final orders.).

Defendant Wenlei Mao's Motion to Hold Plaintiff Adam Smith and Tamara Smith in Contempt of Court, and Motion for Sanctions, pursuant to Fla. Stat. 44.405 filed September 4, 2022, Defendant Wenlei Mao Motion for Attorney's Fees Pursuant to Fla. Stat. 772.11 filed September 5, 2022, Affidavit of Wenlei Mao in Support of its Motion to Hold Adam Smith and Tamara Smith in Contempt of Court and for Sanctions filed September 5, 2022, Defendant Wenlei Mao's Response and Objection to Plaintiff's Renewed Motion for Summary Disposition filed December 5, 2022, and Appellant's proposed final judgment. R1480-1494. Appellant argued that Appellees acquiesced by failing to raise any objection prejudgment and only raising their objection for the first time post-judgment. R1480-1494. On June 14, 2024, without a hearing, Appellant's Corrected Amended Motion for New Trial was denied by the lower tribunal via a written order. R 1503-1504.

But the exception in *Stockman* to the pleading rule clearly applied and thus, the trial court reversibly erred by denying Appellant's Attorney Fees Motion based on the ground that Appellant's claim had not been properly pled as required by *Stockman* and by denying Appellant's Corrected Amended Motion for New Trial. R1400,1503. It is well established by this Court that *Stockman* recognizes an exception to the requirement that a claim for attorney fees must be pled, which is if "a party has notice that an opponent

claims entitlement to attorneys' fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement, the party waives any objection for failure to plead a claim for attorney's fees." *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295, 296-98 (Fla. 4th DCA 2009); *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015); *Van Vechten v. Anyzeski*, 157 So. 3d 350 (Fla. 4<sup>th</sup> DCA 2015); *Stockman v. Down*, 573 So. 2d 835, 838 (Fla. 1991). It is well recognized by this Court that this exception to *Stockman* applies when Appellant has asserted her claim for fees in multiple filings pre-judgment, thus providing Appellees notice, and Appellees acquiesce by failing to formally object to Appellant's claim for fees based on a failure to plead until after Final Judgment is entered. See *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4<sup>th</sup> DCA 2009) (Held *Stockman* exception applied when Appellant raised claim of attorney fees in multiple pre-trial filings and submitted a proposed final judgment that contained a provision awarding it attorney fees, and Appellee did not object to failure to plead until after final judgment in a motion for rehearing); *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015) (Stockman exception applied when Appellant made multiple requests for attorneys' fees in multiple filings pre-judgment and Appellees did not

object, but rather waited until after final summary judgment to object for the first time in their response to the post-judgment motion for attorney fees).

In *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4th DCA 2009), which is a Fourth District Court of Appeal case, the Appellant did not claim attorney fees in a pleading, but rather asserted Appellant's claim for attorney fees in several pre-trial filings and Appellant's proposed final judgment contained a provision awarding Appellant attorney's fees. Both parties had been directed to file proposed final judgments in that case. *Id.* The Appellee did not object to Appellant's proposed form of judgment or the provision awarding fees. *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4th DCA 2009). The Appellee failed to raised any objection to Appellant's claim to fees not being pled until after final judgment was entered. *Id.*

The final judgment found Appellant entitled to fees under the lease provision. *Id.* Appellee filed a motion for rehearing and Appellee argued for the first time that under *Stockman* Appellant was not entitled to fees because of Appellant's failure to demand fees in a pleading. *Id.* Appellant responded "with the occasions in the record before the trial in which it had claimed fees" and a pre-trial settlement offer, in which Appellant offered to waive its claim

for attorney's fees. *Id.* "But the trial court granted the motion for rehearing and struck attorneys fees from the final judgment." *Id.*

On appeal, this Honorable Court recognized that the *Stockman* exception did apply. *Id.* This Honorable Court recognized that Appellee waived any objection to the failure to plead a claim for attorney's fees since Appellee was on notice of Appellant's claim of fees by the pre-trial filings and the proposed final judgment and Appellee failed to object to Appellant's failure to plead entitlement until after final judgment. *Id.* This Honorable Court found that if Appellee "desired to insist on a strict application of the *Stockman* rule and avoid its exception, it was necessary to object when... [Appellant] attempted to claim fees without a formal pleading." *Id.* This honorable court reversed the order striking the award of fees from the final judgment and remanded for restoration of the award of fees in favor of the Appellant. *Id.*

In *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015), which is another Fourth District Court of Appeal case, Appellant's request for attorney fees was raised in pre-trial filings, such as a motion to dismiss, motion for summary judgment, as well as in a memoranda of law. An answer to the complaint was never filed. *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015). The case resulted in a final summary judgment in favor of

Appellant. *Id.* Appellees did not object to Appellant's claim of fees until after entry of final summary judgment, when Appellees filed motion to dismiss and/or strike Appellant's post-judgment motion for attorney fees. *Id.* This honorable court found that the exception to *Stockman* was applicable. *Id.* This honorable court held that "Appellant made multiple requests for attorneys' fees in multiple filings. Appellees never objected...Thus, it is clear under *Stockman*, appellees were on notice of appellant's claim for fees and waived their objection to appellant's failure to "plead" entitlement in a pleading." *Id.* This honorable court reversed the order on appeal which granted Appellees' motion to strike appellant's post-judgment motion for fees. *Id.*

In this case, just like in *Save on Cleaners of Pembroke II Inc.* and *Nathanson*, the exception to *Stockman* is clearly applicable. *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015); *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4<sup>th</sup> DCA 2009). As detailed below, similar to *Save on Cleaners of Pembroke II Inc.* and *Nathanson*, Appellees were on notice of appellant's claim for fees prejudgment by multiple filings prejudgment and did not object to the failure to plead until after final judgment. *Id.*

In this case, Appellant asserted her entitlement to fees in multiple pre-trial filings and Appellees did not object. First, less than one month after the statement of claim was served and the day before the pretrial conference was held, on August 30, 2022, Appellant filed Defendant Wenlei Mao's Response and Objection to Plaintiff's Motion for Summary Disposition, in which Appellant sought attorney fees for breach of Fla. Stat 44.403 as per Fla. Stat. 44.406. R265-284. Appellees did NOT file any written response in opposition to Appellant's request for attorney's fees and thus, did not formally object to any failure to plead attorney fees. R1-1550; SR1-575. On August 31, 2022, by written order, the lower tribunal denied Appellees Motion for Summary Disposition due to issues of fact remaining. SR11.

Second, less than one month after the statement of claim was served, on September 4, 2022, Appellant filed Defendant Wenlei Mao's Motion to Hold Plaintiff Adam Smith and Tamara Smith in Contempt of Court, and Motion for Sanctions pursuant to Florida Statutes 44.405 [R291-296], in which Appellant stated:

21. Defendant has incurred attorney's fees both at the Mediation and in the filing of this Motion and seeks sanctions in the form of an award of attorney's fees for the Defendant in this cause.

WHEREFORE, the Defendant, WENLEI MAO, respectfully requests this Honorable Court find the Plaintiffs ADAM SMITH and TAMARA SMITH in contempt of Court for the Violation of this Court's Order of August 15, 2022, and seeks:....2. Award of

sanctions in the form of attorney's fees associated with attendance at Mediation and the drafting and filing of this motion.

R294-295. Appellant also filed Affidavit in Support of Its Motion to Hold Plaintiff's in Contempt of Court and for Sanctions, in which Appellant under oath stated "Due to Mr. Smith's continued lack of confidentiality towards me, I have been prejudiced and have been forced to incur additional attorney's fees and with regard to the Motion, and this Affidavit." R311-314.

One day later, Appellees filed Response to Defendant Wenlei Mao's Motion to Hold Plaintiff Adam Smith and Tamara Smith in Contempt of Court, and Motion for Sanctions, pursuant to Florida Statutes 44.405 and Plaintiffs' Cross-Motion to hold Defendant's Counsel, Jacqueline A. Salcines, in Contempt of Court and Motion for Sanctions. R297-304. Nowhere in this response, did Appellees even mention Appellant's claim for fees let alone object to the failure to plead entitlement. R297-304. The trial court did not enter a written order regarding this motion. R1-1550; SR1-575.

Third, on September 5, 2022, three weeks after the amendment to statement of claim was filed, which added a claim for civil theft under Fla. Stat. 772.11, Appellant filed Defendant Wenlei Mao's Motion for Attorney's Fees Pursuant to Fla. Stat. 772.11. R161-182,315-317. In this motion, Appellant asserted:

Defendant, Wenlei Mao, by and through her undersigned counsel and files this her Motion for Attorney's Fees, pursuant to Fla. Stat. §772.11 and in support thereof states as follows:

1. On July 13, 2022, Plaintiff filed a seven count Statement of Claim lawsuit against Defendant alleging in part under Paragraph 18 that "Defendant's wrongful retention and commingling of Plaintiff's deposit constitute civil theft under Fla. Stat. §772.11. See Statement of Claim ¶ 18.
2. On August 8, 2022, Plaintiff filed its Amendment to Statement of Claim and Proof of Service demanding treble damages from Defendant under Fla. Stat. §772.11.
3. Fla. Stat. §772.11 states in part:  
The defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon finding that the claimant raised a claim that was without substantial fact or legal support. This section does not limit any right to recover attorney's fees or costs provided under any other law.
4. Defendant seeks an award of attorney's fees and court costs associated with the Court's future finding and ruling in this cause, pursuant to Florida Statutes §772.11.

**WHEREFORE**, the Defendant WENLEI MAO, respectfully seeks to be awarded attorney's fees and costs associated with the future ruling on the claims alleged under Fla. Stat. §772.11.

R315-316.

Appellees did NOT file anything in response prejudgment, this matter was not set for hearing prejudgment, and clearly, Appellees did not formally object prejudgment to this claim for fees. SR1-575; R1-1550. No written order ruling on this motion was entered prejudgment. SR1-575; R1-1550.

Fourth, on December 5, 2022, Appellant filed Defendant Wenlei Mao's Response and Objection to Plaintiff's Renewed Motion for Summary

Disposition, in which Appellant again requested an award of attorney's fees for the breach of Fla. Stat §44.403 as per Fla. Stat. §44.406. R538-542. Appellees did NOT file any written response in opposition to Appellant's request for attorneys' fees and thus, did not formally object based on a failure to plead. R1-1550; SR1-575. The trial court did not enter a written order regarding the Renewed Motion for Summary Disposition, but clearly it was denied<sup>2</sup> since the lower tribunal went forward with trial. R1-1550; SR1-575.

Not only did Appellant put Appellees on notice that they were claiming entitlement to attorney's fees in multiple filings early on and Appellees did not object, but also, just like in *Save on Cleaners of Pembroke II Inc.*, by the submission of Appellant's proposed final judgment, which was provided prior to closing arguments via email to the court and to Appellees counsel, which stated:

Third, Fla. Stat. §772.11 requires clear and convincing evidence of theft and the party claiming such theft must prove the party acted with criminal intent, which was never alleged nor proven at court.

Pursuant to the statute, the Defendant is entitled to recover attorney's fees and court costs in trial upon the finding that a claimant raised a claim which was without substantial fact or legal support. Fla. Stat. §772.11.

Accordingly, after due consideration it is,

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<sup>2</sup> See also SR501; R1468,1492

ORDERED AND ADJUDGED that Judgment is entered in favor of the Defendant, Wenlei Mao and against the Plaintiffs Adam Smith and Tamara Smith, on Plaintiff's Complaint and Amended Complaint, and the Court awards no damages to either party. The parties shall take nothing by this action and shall go hence without day.

The Court reserves jurisdiction to determine an award of attorney's fees and costs in favor of the Defendant, with amounts to be determined at a future hearing.

R1502; *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4th DCA 2009). Accordingly, such indicates that Appellees had notice that Appellant not only was claiming an entitlement to attorney's fees but was doing so under Fla. Stat. 772.11. See *Id*; *Cooper v. Marriott Int'l, Inc.*, 16 So. 3d 156 (Fla 4<sup>th</sup> DCA 2009)("The defendants put the plaintiff on notice that they were claiming entitlement to attorney's fees pursuant to section 44.103 ... by sending the plaintiff a proposed final judgment stating that the trial court would reserve jurisdiction to consider the defendants' motion to tax fees and costs pursuant to section 44.103..."). Just like in *Save on Cleaners of Pembroke II Inc.*, Appellees did not file or submit an objection to this proposed form of judgment or provision awarding fees. SR318-319;R1490-1493;R1-1550;SR1-575; *Id*.

It is manifest from the foregoing outline of events that Appellees knew, recognized and acquiesced, without objection or suggestion of surprise,

prejudice, or discommendation, that Appellant was claiming fees. It is fair to speculate that had the appellees expressed any surprise or discontent with the notion that Appellant was seeking fees, then certainly Appellant would have been galvanized into formally amending and pleading her entitlement. R1490-1493. As matters stood, Appellant was affirmatively lulled into believing that her claim was known, alive and that the same would be adjudicated.

Moreover, in the Corrected Amended Motion for New Trial, which was ruled on without a hearing, Appellant listed all these pre-trial filings and the proposed final judgment and emphasized that Appellees never objected prejudgment to these requests for fees. R1480-1502. In the prior version [Amended Motion for New Trial], Appellant also listed all these pre-trial filings and emphasized that Appellees never objected prejudgment to these requests for fees. R1456-1470. Appellees never disputed, in their responses, that they did NOT object prejudgment to the requests for fees based on failure to plead. See R1412-1419, 1471-1479.

Additionally, it is quite apparent that Appellant's requests for fees had not been objected to prejudgment based on a failure to plead, since the court even entered an order reserving jurisdiction to determine entitlement and amount of attorney fees and costs and did not limit it to the Appellees.

R1177,1221. Not only did the court reserve jurisdiction, but it made the Fla. Stat. 772.11 required finding. In this case, the trial court went out of its way to make the following findings in the Final Judgment and Amended Final Judgment:

Section 772.11, Florida Statutes requires clear and convincing evidence of theft and the party claiming such theft must prove the party acted with criminal intent, which was never alleged nor proven at trial by the Plaintiffs...The Court finds the Plaintiffs treble damage claim was without substantial fact or legal support to bring a claim under Section 772.11, Florida Statutes. R1175,1219.

It is well established by this Court that Section 772.11, Florida Statutes does not require the trial court to make such a finding **unless** it is awarding attorney's fees to the Defendant [which would be the Appellant]. *Barnard v. Gunter*, 625 So. 2d 56, 58 (Fla. 3<sup>rd</sup> DCA 1993). These actions by the trial court in the final judgment further support the conclusion that the issue of attorney fees was properly before the court, had not been objected to and that the Appellant's claim was sufficiently asserted.

Rather only after 1) entry of the Final Judgment [R1168-1178], 2) entry of Order Denying Appellant's Motion for Rehearing [R1206], 3) entry of Order Denying Appellee's Motion to Strike Appellant's Motion for Rehearing [R1211], 4) entry of Order Denying Appellees Motion for Sanctions[R1209-1210], 5) entry of Order Granting in Part and Denying in Part Appellees

Motion for Corrected Final Judgment after Non-Jury Trial [which only granted to correct scrivener errors in the final judgment] [R1207-1208], 6) entry of the First Amended Final Judgment [which merely corrected scrivener errors in the Final Judgment] [R1212-1222], 7) Appellant's filing of her post-judgment Motion for Award of Attorney's Fees and Costs [R1249-1258], 8) Appellant's filing of her post-judgment Corrected Motion for Award of Attorney's Fees and Costs [R1259-1280], 9) Appellant's filing of Affidavit of Reasonable Attorney's Fees [R1281-1312] and 10) Appellant's filing of her Notice of Compliance with Court Order Preliminary to Hearing on Motion to Tax Costs and Award Attorney Fees [SR377-378], does Appellees for the **first-time** raise the argument that under *Stockman* Appellant waived her claim to fees due to failure to plead, which was raised in Appellees response to Appellant's post-judgment motion for attorney fees and costs. R1-1550; SR1-575.

Accordingly, similar to *Save on Cleaners of Pembroke II Inc.* and *Nathanson*, as the record reflects, Appellant made multiple requests for attorneys' fees in multiple filings prejudgment and Appellees acquiesced by failing to object to Appellant's entitlement to fees based on failure plead until after Final Judgment. See *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015); *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4th DCA 2009). Just like in *Save on Cleaners of*

*Pembroke II Inc. and Nathanson*, the Appellees were on notice of Appellant's claim for fees and waived their objection to Appellant's failure to plead entitlement in a pleading. *Id.* Just like in *Save on Cleaners of Pembroke II Inc. and Nathanson*, the exception to *Stockman* applies. *Id.* As a result, the trial court's denial of Appellant's motion for attorney fees based on *Stockman* and the denial of the motion for new trial was erroneous and thus, reversal is required. See *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015)(Reversed trial court's order granting appellees' motion to strike appellant's motion for fees because exception in *Stockman* applied); *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4<sup>th</sup> DCA 2009)(Reversed order striking award of fees from final judgment because it was error to strike award of fees from the final judgment when the exception in *Stockman* applied.); *Fernandez v. Crespo*, 98 So. 3d 1198 (Fla. 3<sup>rd</sup> DCA 2012)(Reversed order denying appellant the attorney's fees he was entitled to solely on the ground that his claim had not been properly pled as required by *Stockman* because the record establishes the applicability of the exception to the *Stockman* doctrine.); *Navarro v. Veloz*, 305 So. 3d 58 (Fla. 3<sup>rd</sup> DCA)(Reversed order denying Navarro an award of attorney's fees on the ground that her claim had not been properly pled as

required by *Stockman v. Down* because exception to the *Stockman* doctrine applied).

Even if the above was not enough [although clearly based on this court's binding precedent it is], Appellees were clearly on notice of Appellant's claim for fees at entry of Final Judgment and failed to object to the Final Judgment based on Appellant's failure to plead entitlement to fees. As detailed above, the Court entered a Final Judgment that made the required finding so it could award attorney fees and costs under Fla. Stat. 772.11 to Appellant and reserved jurisdiction to determine entitlement and amount of attorney fees and costs. See Section III below for further support; R1175,1777,1219,1221. But Appellees did not object to the Final Judgment nor First Amended Final Judgment [which merely corrected scrivener's errors] based on Appellant's failure to plead entitlement. R1-1550; SR1-575. While Appellees did file a Motion to Correct Final Judgment after Non-Jury Trial and a Corrected Plaintiff's Motion to Correct Final Judgment After Non-Jury Trial and a hearing was held on said motion, Appellees did not object to the order in their motion nor at the hearing based on Appellant's failure to plead entitlement to attorney fees. SR324-357; R1179-1189.

Rather as detailed above, not until after entry of the First Amended Final Judgment [which merely corrected scrivener errors in the Final

Judgment] [R1212-1222], Appellant's filing of her post-judgment Motion for Award of Attorney's Fees and Costs [R1249-1258], Appellant's filing of her post-judgment Corrected Motion for Award of Attorney's Fees and Costs [R1259-1280], Appellant's filing of Affidavit of Reasonable Attorney's Fees [R1281-1312] and Appellant's filing of her Notice of Compliance with Court Order Preliminary to Hearing on Motion to Tax Costs and Award Attorney Fees [SR377-378] did Appellees even mention Appellant's failure to plead. SR1-1550; SR1-575. Appellees were clearly on notice of appellant's claim for fees and waived their objection to appellant's failure to plead entitlement in a pleading. R1-1550; SR1-575. Thus, the trial court reversibly erred in denying Appellant's claim for fees based on the ground that Appellant's claim had not been properly pled as required by *Stockman* since the exception in *Stockman* clearly applied. Reversal is required. *Nathanson v. Morelli*, 169 So. 3d 259 (Fla. 4<sup>th</sup> DCA 2015)(Reversed trial court's order granting appellees' motion to strike appellant's motion for fees because exception in *Stockman* applied); *Save on Cleaners of Pembroke II Inc. v. Verde Pines City Ctr. Plaza LLC*, 14 So. 3d 295 (Fla. 4<sup>th</sup> DCA 2009)(Reversed order striking award of fees from final judgment because it was error to strike award of fees from the final judgment when the exception in *Stockman* applied.); *Fernandez v. Crespo*, 98 So. 3d 1198 (Fla. 3<sup>rd</sup> DCA 2012)(Reversed order

denying appellant the attorney's fees he was entitled to solely on the ground that his claim had not been properly pled as required by *Stockman* because the record establishes the applicability of the exception to the *Stockman* doctrine.); *Navarro v. Veloz*, 305 So. 3d 58 (Fla. 3<sup>rd</sup> DCA)(Reversed order denying Navarro an award of attorney's fees on the ground that her claim had not been properly pled as required by *Stockman v. Down* because exception to the *Stockman* doctrine applied).

In addition, as previously detailed above and/or as the record reflects, these arguments were raised to the lower tribunal in Appellant's Motion for Award of Attorney's Fees and Costs, Appellant's Attorney Fee Motion, at the hearing on Appellant's Attorney Fee Motion, in Appellant's Motion for New Trial, Amended Motion for New Trial, and Corrected Amended Motion for New Trial and thus, were preserved. See SR503-504; R1249-1250,1259-1260,1270-1271,1402--1411,1456-1470,1480-1502. Reversal is required.

**III. Even if the exception in *Stockman* detailed in Section II above did not apply [although it clearly does], the Lower Tribunal reversibly erred in denying Appellant's Corrected Motion for Attorney Fees and Costs in its entirety based on failure to plead, because Appellant claimed fees and costs under Fla. Stat. 772.11 which is not required to be pled.**

Fla. Stat 772.11 entitles a defendant to recover attorney's fees and costs in the trial and appellate courts "upon a finding that the claimant raised

a claim that was without substantial fact or legal support.” Fla. Stat. 772.11; *Skubal v. Coolely*, 650 So. 2d 169 (Fla. 4<sup>th</sup> DA 1995)(“[A] defendant is entitled to his attorney’s fees in defending a claim of civil theft if the claim lacks substantial factual support or if it lacks substantial legal support, or both”); *Moore Bus. Forms v. Iberoamerican Elecs., S.R.L.*, 698 So. 2d 611 (Fla. 3<sup>rd</sup> DCA 1997) (Reversed order denying attorney’s fees sought under section 772.11 because the dismissal of the claim was a finding of a lack of legal support); *Island Travel & Tours Ltd. Co. v. MYR Indep., Inc.*, 307 So. 3d 829 (Fla. 3<sup>rd</sup> DCA 2020)(Reversed trial courts order denying motion for fees under section 772.11 because trial court found it was without any substantial fact when the trial court directed a verdict in favor of the Appellants, finding that there was no evidence of criminal intent, a necessary element of the civil theft claim). It is clear from the Final Judgment and First Amended Final Judgment that the lower tribunal found the Appellees civil theft claim was “without substantial fact or legal support.” R1175,1219

Here, in the Final Judgment and First Amended Final Judgment, the lower tribunal found that a necessary element of the civil theft claim, criminal intent was never alleged nor proven at trial. R1175,1219; *Island Travel & Tours Ltd. Co. v. MYR Indep., Inc.*, 307 So. 3d 829 (Fla. 3<sup>rd</sup> DCA 2020). As a result, the claim of civil theft was by definition without any factual

evidentiary support, let alone substantial fact, because it was missing an essential element of the claim. *Island Travel & Tours Ltd. Co. v. MYR Indep., Inc.*, 307 So. 3d 829 (Fla. 3<sup>rd</sup> DCA 2020); *Friedman v. Lauderdale Medical Equip. Serv.*, 591 So. 2d 328 (Fla. 4<sup>th</sup> DCA 1992). Thus, the lower tribunal found Appellees civil theft claim was without substantial fact since it was missing the essential elements of a claim for civil theft. See *Moore Bus. Forms v. Iberoamerican Elecs., S.R.L.*, 698 So. 2d 611 (Fla. 3<sup>rd</sup> DCA 1997); *Friedman v. Lauderdale Medical Equip. Serv.*, 591 So. 2d 328 (Fla. 4<sup>th</sup> DCA 1992).

But the lower tribunal did not stop there, the lower tribunal even explicitly found “Plaintiffs treble damage claim,” which was the civil theft claim, “was without substantial fact or legal support to bring a claim under Section 772.11, Florida Statutes.” R1175,1219. This finding is only necessary for the lower tribunal to make, if it is going to award attorney fees to the defendant under Fla. Stat. 772.11. See *Barnard v. Gunter*, 625 So. 2d 56, 58 (Fla. 3<sup>rd</sup> DCA 1993). Thus, since the lower tribunal found the civil theft claim was without substantial fact or legal support, under Fla. Stat. 772.11 Appellant was entitled to attorney fees and costs. *Moore Bus. Forms v. Iberoamerican Elecs., S.R.L.*, 698 So. 2d 611 (Fla. 3<sup>rd</sup> DCA 1997); *Friedman v. Lauderdale Medical Equip. Serv.*, 591 So. 2d 328 (Fla. 4<sup>th</sup> DCA 1992);

*Island Travel & Tours Ltd. Co. v. MYR Indep., Inc.*, 307 So. 3d 829 (Fla. 3<sup>rd</sup> DCA 2020); *Ciaramello v. D'Ambra*, 613 So. 2d 1324 (Fla. 2d DCA 1991)(Entitled to attorney fees since the dismissal of the claim of civil theft was a finding of a lack of legal support). The lower tribunal in the Final Judgment and First Amended Final Judgment also found in favor of the Appellant on Appellee's civil theft claim and reserved "jurisdiction to determine entitlement and amount of attorney's fees and costs." R1177,1221. No appeal of the Final Judgment nor First Amended Final Judgment was filed. R1-1550; SR1-575.

After entry of the Final Judgment and the First Amended Final Judgment, Appellant filed Appellant's Attorney Fees Motion, in which Appellant asserted that a Final Judgment and First Amended Final Judgment had been entered and that Appellant is entitled to award of attorney's fees and cost pursuant to the terms of the Florida Civil Theft Statute 772.11. R1249. Appellant asserted that the Court ruled for such entitlement in its Final Judgment and First Amended Final Judgment, which clearly the lower tribunal did, as detailed above. R1249,1259,1270.

Appellees for the first time in their written response and at the hearing argued that Appellant waived her claim for costs and attorney's fees by failing to plead for it as required by *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991).

R1313-1361; SR458-460,508-511,515,520. At the hearing, Appellant in response argued that pleading for fees under Fla. Stat 772.11 was not required. SR449-453,499-500,503-505,516-519. Appellant argued that she just had to file a motion for fees based on Fla. Stat. 772.11 after judgment, which she timely did. SR407-408, 453,499-500,502-504,517,519. Appellant argued that a party is entitled to fees and costs under Fla. Stat 772.11 upon a finding that the claimant raised a claim that was without substantial fact or legal support. SR451,499,504,518. Appellant argued that the court in the Final Judgment went out of its way to find the claim was without substantial fact or legal support. SR499,504,518. Appellant argued that since the court found such, and she filed a motion for attorney fees, she is entitled to recuperate her fees and costs. SR407-408,451-453,499-500, 503-505,508 [Attorney Rader recognizing that Appellant is claiming you don't have to plead, but rather all you have to do is make a motion for fees and costs under Fla. Stat 772.11], 517.

Despite Appellant seeking fees and costs under Fla. Stat. 772.11 and the lower tribunal making the necessary finding, the trial court erroneously denied Appellant's corrected motion for award of attorney's fees and costs in its **entirety** due to her claim for fees and costs not being specifically pled pursuant to *Stockman v. Downs*, 573 So. 2d 835 (1991). R1175,1219,1249-

1280,1400; SR406-417,435-469,492-524. It is recognized in Florida that the holding of *Stockman*, that a claim for attorney fees must be pled and the failure to do so waives such a claim, does NOT apply to Fla. Stat. 772.11. See *Carrier v. Jest Operating, Inc.*, 2023 U.S. Dist. LEXIS 241436 (M.D. Fla. Apr. 28, 2023); *Cap. Factors v. Gen. Plastics Corp. (In re Gen. Plastics Corp.)*, 170 B.R. 725 (Bankr. S.D. Fla. 1994); *Key Biscayne Gateway Partners, Ltd. V. Vill. Council for Key Biscayne*, 240 So. 3d 84, 87 n3 (Fla. 3<sup>rd</sup> DCA 2019)(A decision of a Federal District Court while not binding upon a state court is “persuasive if well reasoned.”). Rather, as Appellant correctly recognized and argued to the lower tribunal, in Florida a defendant is entitled to attorney fees and costs under Fla. Stat. 772.11 upon a finding by the lower tribunal that the civil theft claim is without substantial fact or legal support, and Appellant is not required to plead, but rather may file a motion for attorney fees based upon Fla. Stat. 772.11 after judgment. *Id*; SR406-417,433-469,492-523. Thus, since Appellant was not required to plead when seeking attorney fees and costs based on Fla. Stat. 772.11, reversal is required.

Moreover, it is well established in Florida that the *Stockman* pleading requirement does not always apply to statutes awarding attorney’s fees for frivolous or unfounded litigation. *Id*; *Ganz v. Hzj Inc.*, 605 So. 2d 871 (Fla.

1992). The Florida Supreme Court in *Ganz* recognized an exception to Stockman for attorney fees sought pursuant to a similar statute, Fla. Stat. 57.105. *Cooper v. Marriott Int'l, Inc.*, 16 So. 3d 156 (Fla. 4<sup>th</sup> DCA 2009); *Ganz v. Hzi*, 605 So. 2d 871 (Fla 1992). “Analogous to 772.11, 57.105 provides for an award of attorney’s fees where there “was a complete absence of justiciable [sic] issue of either law or fact raised by the complaint or defense of the losing party....” *Carrier v. Jest Operating, Inc.*, 2023 U.S. Dist. LEXIS 241436 (M.D. Fla. Apr. 28, 2023); *Cap. Factors v. Gen. Plastics Corp. (In re Gen. Plastics Corp.)*, 170 B.R. 725 (Bankr. S.D. Fla. 1994). The Florida Supreme Court reasoned:

It is extremely difficult, if not impossible, for a party to plead in good faith its entitlement to attorney’s fees under section 57.105 before the case is ended. We agree with the Third District’s observations in *Autorico, Inc. v. Government Employees Insurance Co.*, 398 So. 2d 485, 487-88 (Fla. 3d DCA 1981):

There is certainly no way for a litigant to know in advance whether the adverse party will raise nothing but frivolous issues in a civil case and, therefore, to plead in good faith its entitlement to attorney’s fees under Section 57.105, Florida Statutes (1979). Indeed, we think it is best to presume good motives on the part of one’s adversary even on what appears to be an open and shut case. It is only after the case has been terminated that a sensible judgment can be made by a party as to whether the adverse party raised nothing but frivolous issues in the cause, and, if so, to file an appropriate motion, as here, seeking an entitlement to said attorney’s fees under Section 57.105, Florida Statutes (1979).

*Gantz v. Hzj*, 605 So. 2d 871 (Fla. 1992). *Ganz* allows a party to wait until the conclusion of litigation to seek attorney fees by appropriate motion. *Gantz v. Hzj*, 605 So. 2d 871 (Fla. 1992); *National Env'tl. Prods v. Falls*, 678 So. 2d 869 (Fla. 4<sup>th</sup> DCA 1996).

It is accepted in Florida that given the similarity of the statutes 57.105 and 772.11, the *Ganz* rationale applies with equal force to Fla. Stat. 772.11. *Carrier v. Jest Operating, Inc.*, 2023 U.S. Dist. LEXIS 241436 (M.D. Fla. Apr. 28, 2023); *Cap. Factors v. Gen. Plastics Corp. (In re Gen. Plastics Corp.)*, 170 B.R. 725 (Bankr. S.D. Fla. 1994). Accordingly, “[t]he same rationale that moved the Florida Supreme Court to depart in *Ganz* from the rigid statement of dicta in *Stockman* fully applies to fees sought under 772.11.” *Cap. Factors v. Gen. Plastics Corp. (In re Gen. Plastics Corp.)*, 170 B.R. 725 (Bankr. S.D. Fla. 1994). Thus, Appellant was not required to plead for attorney fees under Fla. Stat. 772.11, but only after the conclusion of the case was Appellant then to file a motion seeking an entitlement to said attorney’s fees under Fla. Stat. 772.11.

Moreover, it is well recognized by this Honorable Court and other courts that where the above *Ganz* rationale applies, the *Stockman* pleading rule does not apply. See *Cooper v. Marriott Int’l, Inc.*, 16 So. 3d 156 (Fla. 4<sup>th</sup> DCA 2009); *Ocean Bank v. Caribbean Towers Condo. Ass’n*, 121 So. 3d

1087 (Fla. 3<sup>rd</sup> DCA 2013); *Carrier v. Jest Operating, Inc.*,\_2023 U.S. Dist. LEXIS 241436 (M.D. Fla. Apr. 28, 2023); *Cap. Factors v. Gen. Plastics Corp. (In re Gen. Plastics Corp.)*, 170 B.R. 725 (Bankr. S.D. Fla. 1994). In *Cooper*, this Honorable Court held:

The *Ganz* analysis applies here as well. To paraphrase the supreme court, it is extremely difficult, if not impossible, for a party to plead in good faith its entitlement to attorney's fees under section 44.103 before the case is ended. There is certainly no way for a litigant to know in advance whether the fee-shifting provision of 44.103 will become effective and, therefore, to plead in good faith its entitlement to attorney's fees under that statute. It is only after the case has been terminated that a party can determine whether the fee-shifting provision has become effective, and, if so, to file an appropriate motion seeking an entitlement to said attorney's fees.

*Cooper v. Marriott Int'l, Inc.*, 16 So. 3d 156 (Fla. 4<sup>th</sup> DCA 2009). The Court then in part affirmed the order awarding attorney fees based on such. *Id.*

As asserted above, the *Ganz analysis* clearly applies and has been recognized to apply with equal force to Fla. Stat 772.11. *Carrier v. Jest Operating, Inc.*,\_2023 U.S. Dist. LEXIS 241436 (M.D. Fla. Apr. 28, 2023); *Cap. Factors v. Gen. Plastics Corp. (In re Gen. Plastics Corp.)*, 170 B.R. 725 (Bankr. S.D. Fla. 1994). Accordingly, since the *Ganz* rationale applies, the *Stockman* pleading rule does not apply. Thus, as Appellant argued in the lower tribunal, pleading for fees under Fla. Stat. 772.11 was not required, she just had to file a motion for fees after judgment. Reversal is required.

Furthermore, just like in Florida Supreme Court *Ganz* and this Honorable Courts *Cooper*, it is extremely difficult, if not impossible, for Appellant to plead in good faith under Fla. Stat. 772.11 before the case has ended. *Cooper v. Marriott Int'l, Inc.*, 16 So. 3d 156 (Fla. 4<sup>th</sup> DCA 2009); *Gantz v. Hzj*, 605 So. 2d 871 (Fla. 1992). There is certainly no way for a litigant to know in advance whether the mandatory fee-shifting requirement of Fla. Stat. 772.11 will become effective and, therefore, to plead in good faith its entitlement to attorney's fees under the statute. *Carrier v. Jest Operating, Inc.*, 2023 U.S. Dist. Lexis 241436 (Fla. M.D. 2023) ('Section 772.11 "imposes a mandatory fee-shifting requirement upon a finding that a claimant asserted a cause of action for civil theft that was without substantial fact or legal support.'). There is certainly no way for a litigant to know in advance whether the adverse party will raise nothing but civil theft claims without substantial fact or legal support in a civil case, and, therefore, to plead in good faith its entitlement to attorneys' fees under Fla. Stat. 772.11. Just like in Florida Supreme Court *Ganz* and this Honorable Courts *Cooper*, it is only after the case has ended that a party can determine whether the mandatory fee-shifting requirement has become effective or whether the adverse party has raised nothing but a civil theft claim without substantial fact or legal support in the cause and, if so, to file an appropriate motion seeking attorney fees

under Fla. Stat. 772.11. *Cooper v. Marriott Int'l, Inc.*, 16 So. 3d 156 (Fla. 4<sup>th</sup> DCA 2009); *Gantz v. Hzj*, 605 So. 2d 871 (Fla. 1992). Thus, attorney fees under Fla. Stat. 772.11 are not required to be pled.

As a result, Appellant was not required to plead for attorney fees in order for her to claim attorney fees under Fla. Stat. 772.11. The lower tribunal reversibly erred in denying post-judgment Appellant's Attorney's Fee Motion, which sought attorney fees under Fla. Stat. 772.11, based on Appellant's failure to plead for attorney fees and costs as required by *Stockman*. R1270-1271, 1400. Reversal is required. See *Gantz v. Hzj*, 605 So. 2d 871 (Fla. 1992) (Quashed decision below because the rule announced in *Stockman* did not apply to fee requests made under section 57.105); *Tampa Letter Carriers v. Mack*, 649 So. 2d 90 (Fla. 2d DCA 1995) (Reversed order denying Appellant's motion for attorney's fees under section 57.105 and 768.79 since the rule announced in *Stockman* did not apply to section 768.79 and section 57.105) (Disapproved by the Florida Supreme Court on a different issue).

Also, as detailed above and as the record reflects, these arguments were raised to the lower tribunal at the hearing on the Corrected Motion for Attorney Fees and Costs, and thus, were preserved. SR406-417, 433-469, 492-523. Reversal is required.

**IV. Reversal is required because the Lower Tribunal erred in denying Appellant's claim for costs based on Appellant's failure to plead.**

In Appellant's Motion for Attorney Fees and at the hearing, Appellant argued that she was entitled to attorney fees and costs based on the lease, Fla. Stat. Chapter 83 and Florida Civil Theft Statute 772.11. R1249,1250;1259-1260,1270-1271;SR407-409,447-453,495-505,516-519. Appellant argued she did not abandon her claim for costs by failing to plead as required by *Stockman*. SR502-503, 517. Rather, her position was that under small claim rule 7.175 you have 30 days after judgment to file your motion for fees, which Appellant timely did. SR502-503,517.

In response, Appellees argued in their written response and at the hearing that, unlike Appellant would like us to believe, a claim for attorney fees and costs cannot simply be made by motion, but rather must be pled as required by *Stockman*. R1313-1316,1319,1378-1381,1385; SR458-460,507-508;510-511,515-516,520. The trial court denied Appellant's post-judgment motion seeking costs due to Appellant's failure to plead for costs as required by *Stockman*. R1400. But it is well established in Florida that the *Stockman* pleading requirement does not extend to claims for costs. See *Shirley's Pers. Care Servs. of Okeechobee, Inc. v. Boswell*, 165 So. 3d 824 (Fla. 4<sup>th</sup> DCA 2015)(Held that *Stockman* "pleading requirement does not

apply to costs...”); *First Protective Ins. Co. v. Featherston*, 978 So. 2d 881 (Fla. 2d DCA 2008)(same); *Fernandez v. Crespo*,98 So. 3d 1198 (Fla. 3<sup>rd</sup> DCA 2012). *Id.* Moreover, small claim rule 7.175 simply requires the filing of motion for costs no later than 30 days after filing of the judgment, which Appellant did. See Fla. Sm. Cl. R. 7.175 R1212,1249-1312. Accordingly, the trial court erred in denying Appellant’s claim since *Stockman* is not applicable to the recovery of costs and Appellant properly requested them in her post-judgment motion. Reversal is required. *First Protective Ins. Co. v. Featherston*, 978 So. 2d 881 (Fla. 2d DCA 2008)(Reversed denial of motion to tax costs because not required to claim entitlement to consists in the pleadings.).

Moreover, as detailed above and/or as the record reflects, this argument was preserved, since it was at the very least raised at the hearing on Appellant’s Attorney Fee Motion and ruled on by the lower tribunal. See R1249-1316,1319,1378-1381,1385, 1400; SR407-409,447-453,458-460,495-505,507-508,510-511,515-520. Reversal is required.

### **CONCLUSION**

Based upon the arguments and authorities cited herein and based upon each individual error or some of the errors or all errors cited herein, WENLEI MAO, as Appellant respectfully requests this Court to reverse the

Final Order and provide any other relief, if any there be at law or in equity,  
as is deemed just and proper.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Initial Brief of Appellant was electronically served via the Florida Courts E-filing Portal to Adam Smith, Attorney for Appellees, 11940 S. Baypoint Cir., Parkland, FL 33076-4855, [ajsmith3@gmail.com](mailto:ajsmith3@gmail.com), [asmith@biztxlaw.com](mailto:asmith@biztxlaw.com) on December 19, 2024.

By: /s/ Lane Weinbaum

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this Brief complies with the applicable word count and font requirements of Florida Rule of Appellate Procedure 9.045 and Fla. R. App. P. 9.210(a)(2). This Brief uses Arial 14-point font and according to the word-processing system used to prepare the document, consists of 12,707 words, which pursuant to Fla. R. App. P. 9.045 and Fla. R. App. P. 9.210 does not include words in cover sheet, table of contents, table of citations, certificate of compliance, certificate of service, and signature block.

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