

IN THE CIRCUIT COURT IN AND
FOR BREVARD COUNTY, FLORIDA

CASE NO. 94-10557-CA-D

JOHN J. MALONE,

Plaintiff,

v.

CITY OF SATELLITE BEACH,

Defendant.

FINAL SUMMARY JUDGMENT

THIS MATTER having come on to be heard on November 20, 1995 on Defendant's Motion for Summary Judgment and attorney's fees, and the Court having reviewed said motion, the affidavits and memorandum in support of said motion, the record in this matter as of the date of this hearing, having heard argument of counsel and being otherwise advised in the premises, the Court makes the following findings:

1. There is no issue of any material fact as both parties acknowledged to this Court that it had before it all evidence that would otherwise be presented to it at trial.

2. The Defendant's policy for complying with public records requests for copies, together with its response by the City Clerk dated November 23, 1993 to Plaintiff's request of November 22, 1993, were both reasonable and well within the policy making powers of the Defendant.

3. The copying and special service charges imposed by the Defendant on the Plaintiff is contemplated by § 119.07(1)(a), (b), Florida Statutes.

4. The requirement of an advance deposit is contemplated by § 119.07(1)(a), (b), Florida Statutes.

5. Defendant was authorized to require the payment of an advance deposit under the facts of this case before proceeding with the effort and cost of preparing the voluminous copies requested by the Plaintiff. See, Wooten v. Cook, 590 So. 2d 1039 (Fla. 1st DCA 1991).

6. Based upon Plaintiff's position as a member of the City Council for the Defendant, a justiciable issue was presented as to whether or not such a charge should be imposed on the Plaintiff by the Defendant. As such, the Defendant is not entitled to recover attorney's fees against the Plaintiff pursuant to § 57.105, Florida Statutes.

7. The Defendant is entitled to recover any and all taxable costs and have same assessed against the Plaintiff.

Based upon the foregoing, it is

ORDERED and ADJUDGED as follows:

A. Defendant's Motion for Summary Judgment is hereby granted.

B. Plaintiff takes nothing by this action and Defendant goes hence without day.

C. This Court reserves jurisdiction to award Defendant any and all taxable costs it may be entitled to against the Plaintiff.

ORDERED and ADJUDGED at Rockledge, Brevard County, Florida, this 15 day of Dec, 1995.

Original Signed By
EDWARD M. JACKSON
Circuit Judge

EDWARD M. JACKSON, Circuit Judge

Copies furnished to:
James P. Beadle, Esq.
John A. Racin, Esq.