

IN RE: PALMER TRINITY PRIVATE SCHOOL VS.  
VILLAGE OF PALMETTO BAY

*Original*  
~~COPY~~

APPELLATE COURT CASE NO: 3D12-190  
Lower Tribunal No: 10-259

---

9705 Hibiscus Street  
Palmetto Bay, Florida,  
Monday, 7:30 p.m.,  
July 23, 2012.

APPEARANCES:

Ron Williams, Village Manager  
Eve Boutsis, Village Attorney  
Shelley Stanczyk, Mayor  
Howard Tendrich, Council Member  
Brian Pariser, Vice Mayor  
Joan Lindsay, Council Member  
Patrick Fiore, Council Member

Also Present: Raoul Cantero, Esq.  
White and Case Law Firm

1 MS. BOUTSIS: As the Village Attorney I  
2 have asked the Mayor and the Council that we  
3 meet tonight in a shade session regarding  
4 legal action entitled the Village of  
5 Palmetto Bay versus Palmetto Trinity Private  
6 School, before the Third District Court of  
7 Appeal number 3D12-190, Lower Tribunal  
8 number 10-259, and seek the advise from  
9 Council regarding litigation strategy and/or  
10 settlement.

11 The meeting was to start at 7:15, it's  
12 7:30 on Monday, July 23rd. I would ask  
13 everybody to introduce themselves for the  
14 record.

15 Again, a copy of all of the transcripts  
16 will be made available to the public at the  
17 end of the litigation and we are currently  
18 in the conference room at 9705 East Hibiscus  
19 Street. The court reporter is here to take  
20 down all of the testimony, and I ask that  
21 you speak one at a time.

22 And I'll start. I am Eve Boutsis, I am  
23 the Village Attorney.

24 MR. CANTERO: Raoul Cantero, attorney  
25 for the Village.

1 MR. PARISER: Brian Pariser, Vice  
2 Mayor.

3 MR. WILLIAMS: Ron Williams, Village  
4 Manager.

5 MS. LINDSAY: Joan Lindsay,  
6 Councilwoman, District Three.

7 MS. STANCZYK: Shelley Stanczyk, Mayor.

8 MR. FIORE: Patrick Fiore, Councilman,  
9 District 1.

10 MR. TENDRICH: Howard Tendrich,  
11 Councilman District Two.

12 MS. BOUTSIS: Thank you everybody for  
13 being here. As you know, we had a recent  
14 shade session, so since that time we had an  
15 order from the Court relating to attorney's  
16 fees and there is also subsequent to that  
17 and I believe I sent it to everyone, is a  
18 renewed motion for attorney's fees and  
19 costs.

20 We are here today, as you know, we did  
21 announce at the committee meeting that we  
22 would not be doing a reconsideration or an  
23 appeal of the Third District decision, but  
24 we are here today to talk about the order of  
25 Lagoa and Wells, relating to attorney's fees

1           against, I will quote, the Village only and  
2           remanding to the trial court to fix an  
3           amount. Schwartz, the senior judge did not  
4           deny the motion. And this was issued on  
5           July 13th, 2012.

6           We have a short time window should we  
7           decide to take any action, whether it's to  
8           reconsider on this attorney's fees motion.  
9           I am going to turn it over to Mr. Cantero.

10           MR. CANTERO: The rules provide that we  
11           can file a motion for rehearing from this  
12           particular order within 15 days of the  
13           order, which would be July 28th, a Saturday,  
14           so that would give us until July 30th which  
15           is next Monday. It's up to you to decide  
16           whether to file a motion for rehearing.

17           But this is a little different from our  
18           discussion about the panel decision, because  
19           here we have one judge who had voted against  
20           awarding fees, so we only have to convince  
21           one person instead of two. So we are in a  
22           little bit of a different situation.

23           Also, I think that we have a good basis  
24           for asking the Court to reconsider, because  
25           if you were at the oral argument you saw how

1 at least one judge was totally in our favor  
2 in oral argument.

3 To grant attorney's fees to Palmer  
4 Trinity the Court had to have concluded that  
5 our appeal had no basis in fact or law. I  
6 think it's a huge stretch to go from one  
7 judge thinking that you win, to judges  
8 thinking that your appeal had no basis in  
9 fact or law. And so I certainly can't  
10 guarantee what would happened, but I think  
11 we have a good faith basis for asking the  
12 Court to reconsider that order.

13 MS. BOUTSIS: Just so we are clear, the  
14 original motion filed by Palmer Trinity was  
15 for two hearings, one was an appellate  
16 procedure for attorney's fees and the other  
17 one is one we have talked about under  
18 different scenarios, it's a Florida Section  
19 called  
20 57 105, which is basically a frivolous type  
21 of claim. The Court doesn't address any of  
22 the standards, it just says granted as to  
23 the Village.

24 And I believe Vice Mayor, you had a  
25 question about the Sovereign immunity.

1           MR. CANTERO: We did research and found  
2           some law that says it doesn't apply.

3           MR. PARISER: What bothers me is that  
4           they announced the award of attorney's fees  
5           and they didn't say under what theory,  
6           57 105 or 9.400.

7           I am assuming that they are going under  
8           the sanction rule, under the appellate rule.  
9           And if that's the case that they are saying  
10          this was filed frivolous and in bad faith,  
11          which I can't believe they would say that  
12          because certiorari is an extraordinary  
13          remedy, they accepted cert and they wanted a  
14          brief, it was argued, certainly judge  
15          Schwartz who got turned around thought it  
16          should be denied.

17          Frivolous or bad faith means there was  
18          zero or close to zero chance. And in filing  
19          something -- and Justice Cantero or our  
20          counsel would have told us we have zero  
21          percent of getting somewhere and this is  
22          totally in bad faith, this wouldn't have  
23          been done.

24          It was argued, it was fully briefed and  
25          I think it's improper for the Court to have

1 done that. My suggestion is to go for  
2 rehearing on the attorney's fees motion.

3 MR. TENDRICH: I thought personally  
4 this session was earlier, I mean, I am not a  
5 lawyer and I don't know what the legal  
6 aspects are, but I figure if there was a  
7 dollar amount set that the Judge had said,  
8 then I can see if we thought that the dollar  
9 amount was frivolous, then we can say, well,  
10 we want to appeal your decision.

11 But not knowing, he might -- this  
12 judge, like I am thinking, and I have  
13 thought and I have told people maybe this  
14 judge is going to say, you know, the Village  
15 was wrong, we are going to try to make  
16 things nice and we'll award Palmer Trinity  
17 one dollar and that's it.

18 Of course, it's a dream, but it's the  
19 way that I feel that going to ask the Judges  
20 not to go forward when we don't know what  
21 they are saying that we have to pay, I don't  
22 know, I don't know the legal steps.

23 MS. BOUTSIS: To have a rehearing or to  
24 have them reconsider the concept of fees,  
25 this would be the time to do that. There is

1 a battle below as to what is a reasonable  
2 fee for the appeal, and that's what would  
3 happen. Because it goes back to the lower  
4 court and basically Palmer Trinity would  
5 file its motion with the detailed billing  
6 saying this is what we are owed. I think  
7 it's really an evidentiary hearing because  
8 in some ways they have to go through the  
9 bills and argue the reasonableness and  
10 that's a whole different battle.

11 If you don't do any kind of  
12 reconsideration now and the Court sees that  
13 a 300,000 dollar bill which is the number  
14 that I have heard floating around somewhere,  
15 maybe it was the paper, in the Miami Herald  
16 from Mr. Price, then we don't have a chance  
17 to say no at all.

18 MR. PARISER: In other words, it's  
19 entitlement and then amount. We are at the  
20 entitlement state. If they have awarded it  
21 under the appellate rule, bad faith and  
22 frivolous when there was all of this oral  
23 argument and all those briefings, I just  
24 don't see it. And certainly to spend some  
25 additional money on attorneys fees and try

1 to avoid a very large award which is the --  
2 I don't think they are entitled to it.

3 MR. TENDRICH: I think the frivolous  
4 part was that the Justice told us that he  
5 thought that we had a 30 percent chance of  
6 winning, and 30 percent is not as high of a  
7 percentage. You know, it's like people say  
8 that baseball players hit 30 percent and  
9 they get 12 million dollars a year, but I  
10 think that's a low percentage and that could  
11 be why the Court finally said enough is  
12 enough and you all have just overstepped  
13 your boundaries.

14 I understand what our attorneys  
15 explained about first you have to protest  
16 the award, but I just feel to me, I just  
17 don't agree with that law, you don't protest  
18 something that you don't know what it's  
19 going to be.

20 MS. BOUTSIS: If you don't do it now, I  
21 don't know of anybody that awards one  
22 dollar. There is a formula, and it's  
23 basically whether it's reasonable under the  
24 circumstances. You are looking at probably  
25 a lot more.

1 MR. TENDRICH: My dollar was a dream.

2 MR. CANTERO: If the lower court would  
3 award one dollar, that would go up on appeal  
4 and would be reversed because there is no  
5 basis for awarding a dollar. It's going to  
6 be in the six figures, probably between one  
7 hundred and three hundred, I would say.

8 MS. LINDSAY: Justice Cantero, the way  
9 that I remember the conversation was that it  
10 was said that there was a 30 percent chance  
11 that the Third District would take the case.  
12 And I think those of us who decided to  
13 appeal felt that the Eleventh Circuit had  
14 acted outside of their authority. And so we  
15 did appeal. And I think what the Vice Mayor  
16 is saying here and what you are saying is  
17 that if we look at the state statute 57 105,  
18 it clearly says that the attorney's fees  
19 will be awarded if there was a frivolous  
20 lawsuit.

21 What I believe that means is that there  
22 were no grounds. What the Vice Mayor is  
23 saying is the Court did not by right have to  
24 take the case; is that correct?

25 MR. CANTERO: Yes.

1 MS. LINDSAY: They decided to take the  
2 case. Why did they decide to take the case  
3 if it was a frivolous lawsuit.

4 Once they decided to take the case,  
5 then they went even further and they  
6 accepted the briefs, which is another step;  
7 is that correct?

8 MR. CANTERO: Once they take the case  
9 they are going to ask for the briefs, the  
10 further step was something for oral  
11 argument.

12 MS. LINDSAY: Then they took another  
13 step. If this had been a frivolous lawsuit  
14 why did the Court allow it to get to this  
15 point.

16 My question for you, Justice Cantero,  
17 were there other parties making these  
18 decisions and not the judges who actually  
19 heard the case?

20 In other words, who decided to accept  
21 the case?

22 MR. CANTERO: It was these three  
23 judges.

24 MS. LINDSAY: These three judges  
25 decided to take the case, and these three

1 judges decided that they wanted to have oral  
2 argument?

3 MR. CANTERO: I don't know about that.  
4 I think if one judge would request oral  
5 argument then they would do it.

6 MS. LINDSAY: So we are in a position  
7 here that they didn't have to take the case,  
8 they took the case, then it was, as you say,  
9 fully briefed, then we went for oral  
10 argument. It seems to me if it was  
11 frivolous on its face, that should have been  
12 determined from the onset.

13 And so what they are saying here is  
14 that if it wasn't frivolous on its face,  
15 then perhaps these legal fees should not  
16 have been awarded under 57 105, which  
17 clearly says it had to be a frivolous  
18 lawsuit; is that what you are saying?

19 MR. CANTERO: Yes. And I would go  
20 further not just taking it from the Courts  
21 point of view, but taking it from the  
22 Council's point of view, what the Court is  
23 saying is, Council, you should have known  
24 that when the Circuit Court remanded for you  
25 to remove the nine hundred student limit,

1                   what it really meant was remove the nine  
2                   hundred student limit and give them the  
3                   1,150.

4                   MS. LINDSAY: How could we have known  
5                   that?

6                   MR. CANTERO: Well, we asked for  
7                   clarification, the Circuit Court issued us  
8                   an as vague clarification as the original  
9                   order.

10                   I think that opposing counsel  
11                   themselves admitted that we violated the  
12                   spirit of the order but not the letter of  
13                   the order, because the letter of the order  
14                   did not require us to give them 1,150.

15                   So, while I told you I don't think that  
16                   our chances are great, I didn't say this is  
17                   a frivolous appeal, don't take it, because  
18                   we had a good faith basis, especially given  
19                   the Supreme Court Law, we thought that they  
20                   probably hadn't told us what to do because  
21                   they couldn't tell us what to do under  
22                   Florida law.

23                   MS. STANCZYK: Not only that, didn't  
24                   they say and nothing more. We felt  
25                   constrained. My reading of it as someone

1           who would have lead a full blown hearing or  
2           not, I felt it was very specific when it  
3           said do nothing more.

4           MR. TENDRICH: Does the frivolousness  
5           attorney fees start, are they considering it  
6           from the beginning or is it just from this  
7           last lawsuit?

8           MR. BOUTSIS: It's from the date they  
9           filed the motion I believe in the Third  
10          District which happened pretty much  
11          immediately that they filled it, so it's  
12          February going forward.

13          MR. CANTERO: It's for the expenses in  
14          the appeal to the Third DCA. And we also  
15          have the renewed motion that they just filed  
16          in the Circuit Court.

17          MS. BOUTSIS: For those fees as well.

18          Another thing that I will tell you, and  
19          in abundance of caution, and this is the  
20          pessimism in me so please bear with me.  
21          Because of certain language in this ruling  
22          and some of the other court opinions, there  
23          is a chance that they could get a little bit  
24          more stern with the Council in a  
25          reconsideration. We have to think about

1 that risk as well. I am not saying that  
2 they will, but we haven't had a good track  
3 record with that, so I have to put that  
4 voice of reason out there.

5 MR. WILLIAMS: One question. What was  
6 the basis, not the basis but under what rule  
7 was the ruling on fees made? You mentioned  
8 something other than 57 105?

9 MS. BOUTSIS: The appellate procedure.

10 MR. PARISER: I am not an appellate  
11 lawyer, but 57 105 which is generally 50  
12 percent the attorney and 50 percent the  
13 party, or under 9.400, which they can  
14 determine a party, an attorney or both.

15 And obviously since they didn't award  
16 against these attorney's, it looks like it's  
17 under the appellate rule which is sanctions,  
18 which says frivolous and bad faith.

19 MS. BOUTSIS: 57 105 is frivolous and  
20 bad faith, that's what 57 105 is. There is  
21 a portion of the appellate rule that has  
22 that language, but it is not as clear cut.

23 MR. PARISER: The reason why it's not  
24 57 105, the shall attorney's and the client,  
25 unless the attorneys have been mislead, lied

1 to or what have you, which obviously that's  
2 not the case.

3 MS. BOUTSIS: It also requires  
4 findings.

5 MR. PARISER: Right. That's why I  
6 think it's under the appellate rule. And  
7 again, they accepted cert, they accepted  
8 briefs, they accepted oral argument and it  
9 was quite -- there was an issue to be  
10 determined at least in the mind of one  
11 judge, Judge Schwartz in oral argument.

12 And there is a big difference between  
13 frivolous and the 30 percent chance.  
14 Frivolous means get out of here you have no  
15 chance. And that's their issues that the  
16 Justice mentioned that were in my mind that  
17 weren't as clear as day and that's why it  
18 was brought ---

19 MR. TENDRICH: Why was the suit only  
20 brought against the Village of Palmetto Bay  
21 and not CCOCI.

22 MS. BOUTSIS: The motion was made and  
23 the judges decided against us. I can't tell  
24 you -- I don't know the basis to tell you  
25 why they decided not to ---

1 MR. CANTERO: They felt we were taking  
2 the lead.

3 MS. BOUTSIS: We did the oral argument,  
4 we wrote the briefs and CCOCI didn't write  
5 any briefs they just followed whatever we  
6 did.

7 MR. PARISER: Right now they are saying  
8 Palmer you get all of your attorney's fees,  
9 which opens it up to their award of  
10 attorneys fees at the trial appellate court  
11 level also.

12 What more could they do to us?

13 MS. BOUTSIS: That and taxing costs, of  
14 course.

15 MR. PARISER: Taxing costs you get any  
16 ways.

17 MS. BOUTSIS: I am just saying.

18 MR. PARISER: I just think that they  
19 should -- look, if it was three nothing, it  
20 would be one thing, but it was two to one.  
21 And we are not appealing the decision,  
22 that's over with, so it's just a matter if  
23 there was an issue to be litigated in good  
24 faith and if there was, then there should be  
25 no award of attorney's fees.

1 MS. BOUTSIS: Mayor?

2 MS. STANCZYK: I am good for right now.

3 MR. FIORE: I just think you all know  
4 how I feel. I don't believe we are even  
5 discussing taking this back to court in any  
6 matter. I meant what I said the other  
7 night, I don't know why we are not  
8 discussing settling with this entity. I  
9 don't know what part of wishful thinking and  
10 exercise and futility, any of those you  
11 don't understand. And I am stating what was  
12 stated in the record.

13 Justice Cantero sat in this chair and  
14 he told us what the chances are, a  
15 two-thirds chance of not winning means  
16 exactly that, and we didn't, we were not  
17 successful.

18 I don't know how much more clear I can  
19 make myself that I haven't made from the  
20 first time we had an attorney/client session  
21 here in December of 2010.

22 MS. STANCZYK: Just so that it's on the  
23 record, we have moved toward trying to find  
24 a way to settle. That was the instruction  
25 to the attorney that was given at the last

1 attorney/client session, she has been in  
2 discussions and I think that we all in this  
3 room have talked about that.

4 We have talked about it under numerous  
5 different occasions when they have made  
6 offers to us that were clearly, at that  
7 moment, not suitable because they exceeded  
8 what was already on the agreed to  
9 resolution.

10 So I think this Council in my feeling  
11 has looked to try and support the residents  
12 of this community and what the residents  
13 incorporated for.

14 We came together in this community to  
15 support our control of zoning and we have  
16 tried that. Not everything works out, but  
17 that's what we have tried to do.

18 At this point, Justice Cantero did go  
19 to them to discuss settlement under our  
20 direction and he did that and it didn't work  
21 out. We are now once again sending our  
22 attorney forward to try and settle the stage  
23 for discussions. I am sure that she is  
24 doing her best.

25 MS. BOUTSIS: I have spent about three

1 hours talking to Ms. Meta since our last  
2 shade session which was about a week ago.  
3 She will be communicating with her client.  
4 She does not have any settlement authority  
5 at this point. But she is going back to  
6 them to see what she can come up with.

7 MS. STANCZYK: I would venture to say  
8 if she has no authority for settlement and  
9 that she has had no authority for  
10 settlement, their drive for settlement was  
11 not there.

12 MR. FIORE: Therefore, the Court, the  
13 Appellate Court ruled for attorney's fees  
14 for Palmer Trinity. But they remanded, they  
15 sent it back to the lower court to determine  
16 the amount. And we don't know if the lower  
17 court at this point in time is going to base  
18 that amount just on the latest appeal or the  
19 whole ball of wax going back?

20 MS. BOUTSIS: It would have to be two  
21 separate decisions, one on the Third  
22 District attorneys fees that was remanded  
23 back to them to handle, and the renewed  
24 motion by Palmer Trinity for attorney's fees  
25 in the lower court action. So it's still,

1 no matter how you look at it, it's two  
2 separate motions.

3 MR. PARISER: It doesn't go all the way  
4 back to day one, it goes back to the motion  
5 to enforce the mandate?

6 MS. BOUTSIS: Yes.

7 MS. LINDSAY: And another thing that is  
8 important for everybody to remember is that  
9 the outstanding lawsuit which is separate  
10 and apart from this is a 2008 lawsuit that  
11 deals with the rezoning, and that was an  
12 issue that was decided by a former council.  
13 And that particular case has been amended  
14 repeatedly by Palmer Trinity and  
15 unfortunately the Eleventh Circuit Court has  
16 not made any decisions.

17 MS. BOUTSIS: That is correct.

18 MS. LINDSAY: Justice Cantero, would  
19 you tell us what you think we should do?

20 MR. CANTERO: If I were you I would  
21 seek rehearing of the order.

22 MS. LINDSAY: You would?

23 MR. CANTERO: Yes.

24 MR. PARISER: Do we make that a motion?

25 MS. BOUTSIS: You can't make a final

1 action here, but we need clear direction. I  
2 need at least three of you to give clear  
3 direction.

4 MR. PARISER: I am for it. There is  
5 nothing to lose. There is no downside  
6 because they are awarding one hundred  
7 percent at this point, whatever the number  
8 is, and they may say based upon one of the  
9 judges saying you are not entitled, that  
10 speaks a lot to me.

11 MR. TENDRICH: You say one hundred  
12 percent, that was my thought, that we have  
13 no idea what dollar amount they are talking  
14 about.

15 MS. BOUTSIS: Once they rule on the  
16 motion, it's from the date the motion was  
17 filed, the beginning of this appeal going  
18 forward, one hundred percent of their  
19 attorney's fees that are considered  
20 reasonable. So the amount may be modified a  
21 bit as to reasonableness, but it's one  
22 hundred percent from that date going  
23 forward, whatever that amount is.

24 MR. CANTERO: The reason we don't know  
25 the amount is they haven't told us, they

1 haven't submitted their invoice.

2 MS. BOUTSIS: Put it this way, Stan  
3 Price in the newspaper said 350,000. So it  
4 would be to look at all of the time spent,  
5 make sure it's not frivolous and exorbitant  
6 and something completely off the wall.

7 MR. WILLIAMS: A question to your  
8 earlier comment. If this ruling stands, do  
9 those additional attorney's fees go on top  
10 of that?

11 If this ruling stands ---

12 MR. CANTERO: The response to our  
13 motion, yes.

14 MR. FIORE: In addition, with all due  
15 respect, Mr. Cantero, we are paying you and  
16 we are paying our Village Attorney, that's  
17 more taxpayer money. And if the majority of  
18 this Council wants to do it, I stand by what  
19 I said all along and I think that I made  
20 myself very clear. There is nothing else  
21 that I can add at this point.

22 MS. BOUTSIS: Can I have a yea or nay  
23 to proceed on a rehearing. And just go  
24 around the room and I will announce the  
25 council member so we have a clear direction.

1 Vice Mayor?

2 MR. PARISER: Yes.

3 MS. BOUTSIS: Councilwoman Lindsay?

4 MS. LINDSAY: Justice Cantero has  
5 advised us to go forward, so based on that  
6 recommendation I will say yes.

7 MS. BOUTSIS: Mayor Stanczyk?

8 MS. STANCZYK: I agree with Justice  
9 Cantero.

10 MS. BOUTSIS: Councilman Fiore?

11 MR. FIORE: I am not spending anymore  
12 taxpayer dollar. With all due respect to  
13 Justice Cantero, I vote no.

14 MS. BOUTSIS: Councilman Tendrich?

15 MR. TENDRICH: I have to say no.

16 MS. BOUTSIS: At least I know I have  
17 clear direction, and staff has a bit of work  
18 to do by Monday. So if there is no further  
19 discussion we are going to adjourn this  
20 shade session and it is now 7:55.

21

22

23 (Whereupon, the meeting was concluded  
24 at 7:55 p.m.

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA :  
 : SS.  
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,  
Notary Public in and for the State of Florida at  
Large, do hereby certify that I reported the  
Attorney/Client Session called by the Village of  
Palmetto Bay in the above-styled cause. That the  
foregoing pages, numbered 1 to 25 inclusive,  
constitute a true and correct transcription of my  
shorthand report of the Meeting.

I further certify that I am not an  
attorney or counsel of any of the parties, nor a  
relative or employee of any attorney or counsel  
connected with the action, nor financially  
interested in the action.

WITNESS my hand and official seal in  
the City of Miami, County of Miami-Dade, State of  
Florida, the \_\_\_\_\_ day of July, 2012



*Adriadna Gonzalez*  
\_\_\_\_\_

Adriadna Gonzalez  
Court Reporter  
Commission # EE041583  
Expires Nov. 29, 2014