

**IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA**

FOLEY, *et ux*, *Appellants*

vs.

ORANGE COUNTY, *et alia*, *Appellees*

Appeal No.: 5D19-0233
Case No.: 2016-CA-007634-O

**MOTION TO AMEND
INITIAL BRIEF**

RECEIVED, 06/25/2021 04:03:33 PM, Clerk, Fifth District Court of Appeal

APPELLANTS DAVID AND JENNIFER FOLEY MOVE THE COURT per Rule 9.300, for an order granting leave to file the amended initial brief that accompanies this motion, and to reschedule the filing of Orange County’s answer brief for 45 days after the filing of this motion, or Monday, August 9, 2021.

June 16, 2021, the Foleys timely filed their initial brief.

In that brief at the bottom of pages 46 and 47 the Foleys state:

Finally, in *Consumer Ser. v. Mid-Florida Growers, Inc.*, 570 So.2d 892 (Fla.1990), Florida recognized a farmer could recover business income as “probable yield and value of the crop when harvested.”

In sum, the Foleys ask the Court to remand for an answer on their claim in **Article X, Section 6, Florida Constitution**, of taking, without public purpose, and without due process, of substantially all value in personal and intangible property, fees and costs, and business income.

The Foleys would like to replace that statement with the following:

Finally, in *Consumer Serv. v. Mid-Florida Growers, Inc.*, 570 So.2d 892, 900 (Fla. 1990), by reference to *Corneal v. State Plant Board*, 95 So.2d 1, 6-7 (Fla.

1957), Florida recognized a farmer could recover ‘[t]he profit that would have been derived from [healthy stock]’ taken without public purpose.

In sum, the Foleys ask the Court to remand for an answer on their claim in **Article X, Section 6, Florida Constitution**.

This change will better direct opposing counsel and the Court to that portion of the opinion in *Consumer Services* that supports an award of business income pursuant Article X, Section 6, Florida Constitution.

The Foleys have contacted opposing counsel. Opposing counsel had no objection. Orange County, however, did request their answer be rescheduled for 45 days after the filing of the amended initial brief.

CONCLUSION

WHEREFORE DAVID AND JENNIFER FOLEY REQUEST THE COURT grant leave to file the amended initial brief that accompanies this motion, and to reschedule the filing of Orange County’s answer brief for 45 days after the filing of this motion, or Monday, August 9, 2021.

CERTIFICATE OF NO OBJECTION

The Foleys have consulted with counsel for the defendants and are authorized to say they have no objection to the requested relief.

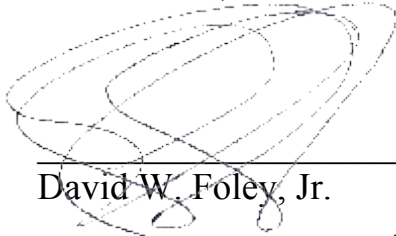
CERTIFICATE OF SERVICE

Plaintiffs certify that on June 25, 2021, the foregoing was electronically filed with the Clerk of the Court using eDCA, and electronically served to the following:

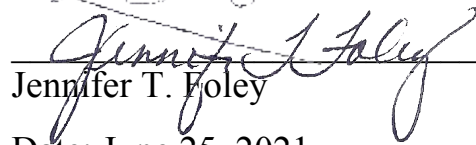
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