

We thus issued an order in the interim on July 5, 2006, directing the respondent in the present case to show cause why this Court should not accept jurisdiction and summarily quash the decision being reviewed in light of our decision in *F.G.* Upon consideration of the respondent's response, and the petitioners' replies thereto, the Court has determined that it should do just that.

We accordingly grant the petition for review in the present case. The decision under review is quashed and this matter is remanded to the Third District Court of Appeal for reconsideration upon application of this Court's decision in *F.G.*

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.



S AND T BUILDERS, Petitioner,

v.

**GLOBE PROPERTIES,
INC., Respondent.**

No. SC05-2045.

Supreme Court of Florida.

Nov. 16, 2006.

Background: Contractor brought action against property owner to impose and foreclose an equitable construction lien, and filed a lis pendens against the property. After owner moved to dissolve the lis pendens or require the posting of a bond, the Seventeenth Judicial Circuit Court, Robert B. Carney, J., granted owner's motion and, in setting the bond amount, in-

cluded an additional \$30,000 for anticipated attorney fees incurred by owner in the event the lis pendens was unjustified. Contractor filed petition for writ of certiorari. The District Court of Appeal, 909 So.2d 375, granted petition in part and certified conflict.

Holding: The Supreme Court, Lewis, C.J., held that a trial court may include attorney fees that may foreseeably be incurred in obtaining a discharge of a lis pendens in a lis pendens bond, disapproving *Wagner v. Birdman*, 460 So.2d 463. Judgment of District Court of Appeal affirmed.

1. Lis Pendens ⇐1

The purpose of a notice of lis pendens is to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litigation.

2. Lis Pendens ⇐18

Lis pendens bond requirement is a vehicle for protecting the property holders just as the lis pendens protects the plaintiff and third parties. West's F.S.A. § 48.23(3).

3. Injunction ⇐186(2)

Attorney fees in actions for dissolution of injunctions are recoverable as damages. West's F.S.A. § 60.07.

4. Injunction ⇐148(2)

Since an award of damages after the dissolution of an injunction is limited to the amount of the injunction bond, and attorney fees are recoverable from that bond, a trial court possesses the discretion to include foreseeable attorney fees in determining the amount of the bond. West's F.S.A. § 60.07.

5. Lis Pendens 18

A trial court may include attorney fees that may foreseeably be incurred in obtaining a discharge of a lis pendens in a lis pendens bond; disapproving *Wagner v. Birdman*, 460 So.2d 463. West's F.S.A. § 48.23(3).

Randall L. Gilbert and Ronald E. Kaufman of the Law Office of Randall L. Gilbert, P.A., Miami, FL, for Petitioner.

Guy M. Shir and Patrick Dervishi of Kahan, Shir and Associates, Boca Raton, FL, for Respondent.

LEWIS, C.J.

We have for review the decision in *S & T Builders v. Globe Properties, Inc.*, 909 So.2d 375 (Fla. 4th DCA 2005), in which the Fourth District Court of Appeal certified conflict with the decision of the Third District Court of Appeal in *Wagner v. Birdman*, 460 So.2d 463 (Fla. 3d DCA 1984). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. For the reasons expressed below, we approve the decision in *S & T*.

FACTS AND PROCEDURAL BACKGROUND

[1] S and T Builders (S & T) filed an amended complaint against Globe Properties (Globe) for foreclosure of an equitable lien. S & T also filed and recorded a Notice of Lis Pendens.¹ In response, Globe filed a “Motion to Dissolve Lis Pendens or Alternatively to Require the Posting of a Bond,” requesting that the trial

court require S & T to post a bond in an amount equal to, at a minimum, the cost of the project. The trial court granted Globe’s motion and, in setting the bond amount, included an additional \$30,000 for anticipated attorney’s fees incurred by Globe in the event the lis pendens filed by S & T was unjustified.

S & T petitioned the Fourth District for a writ of certiorari, arguing that the trial court departed from the essential requirements of law by ordering S & T to post a lis pendens bond without first conducting an evidentiary hearing. S & T further asserted that the trial court abused its discretion in increasing the bond to cover attorney’s fees because such fees are not recoverable in equitable lien claims. The Fourth District granted S & T’s petition in part, concluding that the trial court departed from the essential requirements of law by ordering S & T to post a lis pendens bond without first conducting an evidentiary hearing to determine the amount of the bond. See *S & T Builders v. Globe Props., Inc.*, 909 So.2d 375, 376 (Fla. 4th DCA 2005). However, the Fourth District held that the trial court properly added attorney’s fees to the amount of the bond because “[a]lthough, generally, fees may not be recoverable in equitable lien claims, there are different concerns regarding damages for wrongful filing of a lis pendens.” *Id.*

The Fourth District granted S & T’s motion to certify conflict with *Wagner v. Birdman*, 460 So.2d 463 (Fla. 3d DCA 1984), wherein the Third District held that there is no statutory authority for the award of attorney’s fees in discharging a lis pendens. See *S & T*, 909 So.2d at 377.²

1. The purpose of a notice of lis pendens is “to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litiga-

tion.” *Am. Legion Cmty. Club v. Diamond*, 561 So.2d 268, 269 n. 2 (Fla.1990).

2. After the Fourth District remanded the case, the trial court held an evidentiary hearing and

ANALYSIS

We have previously stated that “[i]t is an elemental principle of law in this State that attorney’s fees may be awarded a prevailing party only under three circumstances, viz: (1) where authorized by contract; (2) where authorized by a constitutional legislative enactment; and (3) where awarded for services performed by an attorney in creating or bringing into the court a fund or other property.” *Kittel v. Kittel*, 210 So.2d 1, 3 (Fla.1967). Having reviewed the Florida Statutes and applicable case law, we conclude that the award of attorney’s fees incurred in discharging a lis pendens is statutorily authorized.

The provision of the Florida Statutes governing lis pendens states, in pertinent part:

When the initial pleading does not show that the action is founded on a duly recorded instrument or on a lien claimed under part I of chapter 713, *the court may control and discharge the notice of lis pendens as the court may grant and dissolve injunctions.*

§ 48.23(3), Fla. Stat. (2005) (emphasis supplied).³ Thus, if a court is authorized to take certain actions with regard to injunctions, those actions would be similarly authorized in a lis pendens proceeding.

[2] Florida Rule of Civil Procedure 1.610 controls the granting of temporary injunctions and provides, in pertinent part:

(b) Bond. No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

again included attorney’s fees in the amount of the bond that it ordered S & T to post.

Fla. R. Civ. P. 1.610(b). We have interpreted the statutory reference to injunctions in section 48.23(3) of the Florida Statutes to authorize a trial court to require the posting of a bond because a notice of lis pendens “will often prevent the property holder from selling or mortgaging the property.” *Med. Facilities Dev., Inc. v. Little Arch Creek Props., Inc.*, 675 So.2d 915, 917 (Fla.1996). Thus, “[t]he bond requirement . . . is a vehicle for protecting the property holders just as the lis pendens protects the plaintiff and third parties.” *Chiusolo v. Kennedy*, 614 So.2d 491, 493 (Fla.1993). In setting the amount of a bond, we have determined that “[t]he amount should bear a reasonable relationship to the amount of damages which the property-holder defendant demonstrates will likely result if it is later determined that the notice of lis pendens was unjustified.” *Little Arch Creek*, 675 So.2d at 918 n. 2.

With regard to the award of damages after the dissolution of an injunction, section 60.07 of the Florida Statutes (2005) provides:

In injunction actions, on dissolution, the court may hear evidence and assess damages to which a defendant may be entitled under any injunction bond, eliminating the necessity for an action on the injunction bond if no party has requested a jury trial on damages.

§ 60.07, Fla. Stat. (2005). We have held with respect to attorney’s fees specifically that “a dissolution of an injunction upon the merits operates as an adjudication that it was improperly issued,” and “a reasonable attorney’s fee incurred in procuring the dissolution of an injunction is an element of damages covered by the surety

3. None of the parties disputes that S & T’s lis pendens is not founded on a duly recorded instrument or on a lien claimed under part I of chapter 713, Florida Statutes.

bond.” *Nat’l Sur. Co. v. Willys–Overland, Inc.*, 103 Fla. 738, 138 So. 24, 25–26 (1931). In an early case, we explained our rationale for allowing a party to recover the attorney’s fees incurred in procuring the dissolution of an injunction:

[T]he temporary injunction is an extraordinary remedy. Unlike the usual course of law, which “proceeds upon inquiry and only condemns after a hearing,” it is often *ex parte* and condemns temporarily before a hearing. It seems just and right that where a party asks the interposition of the power of the courts, in advance of a trial of the merits of the cause, to deprive the defendant of some right or privilege claimed by him, even though temporarily, that if on investigation it is found that the plaintiff had no just right either in the law or the facts to justify him in asking and obtaining from the court such a harsh and drastic exercise of its authority, that he should indemnify the defendant in the language of his bond for “all damages he might sustain,” and that *reasonable* counsel fees necessary to the recovering of such injunction are properly a part of his damage.

Wittich v. O’Neal, 22 Fla. 592, 598–99 (1886).

Since the attorney’s fees incurred in obtaining the dissolution of an injunction are recoverable from a surety bond, we conclude that section 48.23 of the Florida Statutes similarly permits a recovery of the attorney’s fees incurred in obtaining a discharge of a *lis pendens*. See § 48.23(3),

Fla. Stat. (2005). Indeed, relying on this Court’s holding in *Willys–Overland*, the Second District has held that such attorney’s fees are recoverable damages in a proceeding to recover on a *lis pendens* bond. See *Saporito v. Madras*, 576 So.2d 1342, 1345 (Fla. 5th DCA 1991);⁴ see also *Haisfield v. ACP Fla. Holdings, Inc.*, 629 So.2d 963, 967 (Fla. 4th DCA 1993) (trial court properly awarded attorney’s fees incurred in removing *lis pendens* (citing *Saporito*)); *Town of Davie v. Sloan*, 566 So.2d 938, 939 (Fla. 4th DCA 1990) (“Implicit in the trial court’s ruling [dissolving an injunction] is that this injunction was wrongfully issued, which thus gives rise to attorney’s fees and costs as . . . damages.”).

[3, 4] Although attorney’s fees in actions for dissolution of injunctions are recoverable as damages, we have held that the damages recoverable for wrongfully obtaining an injunction are limited to the amount of the injunction bond. See *Parker Tampa Two, Inc. v. Somerset Dev. Corp.*, 544 So.2d 1018, 1019 (Fla.1989). In so holding, we noted that “[l]imiting liability to bond amount . . . provides an orderly step-by-step procedure whereby all parties can be continually apprised of the consequences of their actions.” *Id.* at 1021. Since an award of damages is limited to the amount of the injunction bond, and attorney’s fees are recoverable from that bond, it logically follows that a trial court possesses the discretion to include foreseeable attorney’s fees in determining the amount of the bond. See *generally Wil-*

4. In *Price v. Tyler*, 890 So.2d 246 (Fla.2004), we disapproved the decision in *Saporito* to the extent it could be read to permit the award of attorney’s fees as general compensatory damages or costs in either an action to quiet title or a declaratory action. See 890 So.2d at 253. While the Fifth District in *Saporito* did conclude that attorney’s fees were awardable in such actions, it also held that attorney’s

fees incurred in removing a *lis pendens* are recoverable. See *Saporito*, 576 So.2d at 1345. Since our decision in *Price* did not involve a *lis pendens* or an injunction, and we disapproved *Saporito* only “to the extent it conflicts with our analysis here,” see 890 So.2d at 248, the Fifth District’s holding with regard to the award of attorney’s fees in *lis pendens* proceedings remains as controlling authority.

lys-Overland, 138 So. at 26. Therefore, pursuant to the authorizing language in section 48.23 of the Florida Statutes, we conclude a trial court is similarly authorized to include attorney's fees that foreseeably may be incurred in discharging a lis pendens in a lis pendens bond. See § 48.23(3), Fla. Stat. (2005) (providing that a court "may control and discharge the notice of lis pendens as the court may grant and dissolve injunctions").

CONCLUSION

[5] In conclusion, we hold that a trial court may include attorney's fees that may foreseeably be incurred in obtaining a discharge of a lis pendens in a lis pendens bond. Accordingly, we approve the Fourth District's decision in *S & T Builders v. Globe Properties, Inc.*, 909 So.2d 375 (Fla. 4th DCA 2005), and we disapprove the Third District's decision in *Wagner v. Birdman*, 460 So.2d 463 (Fla. 3d DCA 1984), to the extent that it conflicts with this opinion.

It is so ordered.

WELLS, ANSTEAD, PARIENTE,
QUINCE, CANTERO, and BELL, JJ.,
concur.



**P. Dewitt CASON, etc.,
et al., Petitioners,**

v.

**FLORIDA DEPARTMENT OF
MANAGEMENT SERVICES,
Respondent.**

No. SC05-1484.

Supreme Court of Florida.

Nov. 16, 2006.

Background: Department of Management Services brought action to enjoin tax

deed sale of property owned by State and used to operate a youthful offender prison. The Circuit Court, Columbia County, E. Vernon Douglas, J., granted summary judgment in favor of holders of tax certificates. Department appealed. The District Court of Appeal, Ervin, J., 909 So.2d 378, reversed and certified question of great public importance.

Holding: The Supreme Court, Pariente, J., held that jurisdictional requirement that a lawsuit challenging an ad valorem tax assessment must be filed within 60 days after the assessment is certified for collection can not be used to preclude the State from challenging a tax assessment as void on the ground that the property assessed is immune from ad valorem taxation.

Judgment of District Court of Appeal approved.

1. Taxation ⇌2705

Supreme Court review of decision addressing issue of whether statute imposing jurisdictional requirement that a lawsuit challenging an ad valorem tax assessment be filed within 60 days after the assessment is certified for collection, applied when the State challenged tax assessment as void on the ground that the property assessed was immune from ad valorem taxation, which was issue of statutory interpretation, was de novo. West's F.S.A. § 194.171.

2. Taxation ⇌2275

State is immune from taxation.

3. Taxation ⇌2275

Property of municipalities is subject to taxation because municipalities are not subdivisions of the State.