

**IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
FOR THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY**

Case No. 44-2023-CA-000370-A0-01PK

UPPER KEYS DIVISION

STEWART TILGHMAN FOX & BIANCHI, P.A.,
WILLIAM C. HEARON, P.A., and
TODD S. STEWART, P.A.,

Plaintiffs,

vs.

HARLEY N. KANE, MICHELLE J. KANE,
SHECHTER & EVERETT, LLP, and
DAVID L. MANZ PROFESSIONAL
ASSOCIATION d/b/a THE MANZ LAW FIRM,

Defendants.

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PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs move for summary judgment pursuant to Fla.R.Civ.P. 1.510 on both counts of their Complaint -- Count I (Establishment of Equitable Lien) and Count II (Foreclosure of Equitable and Judicial Lien).

BRIEF DESCRIPTION OF CASE AND SUMMARY OF ARGUMENT

Plaintiffs seek to foreclose a \$2.8 million judgment lien against certain real property ("Tavernier Property") owned jointly by defendants Harley Kane and Michelle Kane. Plaintiffs' judgment is against the Kanes jointly, and the Kanes own the Tavernier Property jointly.

The material facts are undisputed. In a circuit court trial last year in Palm Beach County, a jury held that Mr. and Mrs. Kane, in their joint capacity, acquired certain funds (the "Fraud

Proceeds”) via an intentionally fraudulent transfer. It is undisputed that the Kanes acquired the Tavernier Property for cash, using *only* the Fraud Proceeds.

The issue for resolution by the Court is whether the Tavernier Property is exempt homestead. The Kanes, who are now divorced, contend that this property (which they continue to own jointly) is Mr. Kane’s homestead and is therefore exempt from Plaintiffs’ judgment lien. Plaintiffs contend that, as a matter of law under binding Florida Supreme Court and Third District Court of Appeal precedent,¹ the homestead exemption does not apply because the property was acquired with the proceeds of fraud and otherwise egregious conduct and this Court should therefore impose an equitable lien on the property in the amount of their \$2.8 million judgment.

The remaining defendants are an accounting firm, Shechter & Everett, and a law firm, David L. Manz, P.A. (“Manz Firm”), each of which claims a charging lien on the Tavernier Property as a result of services rendered to *one* of the Kanes. Shechter & Everett has stipulated that its lien, if any, is subordinate to Plaintiffs’ claim. Plaintiffs contend that the Manz Firm’s lien does not even attach to the property because its claim --- unlike Plaintiffs’ claim --- lies against only one of the joint owners of the property.

¹ *Randazzo v. Randazzo*, 980 So.2d 1210 (Fla. 3d DCA 2008); *de Diego v. Barrios*, 271 So.3d 1181 (Fla. 3d DCA 2019).

STATEMENT OF UNDISPUTED FACTS

Pursuant to Fla.R.Civ.P. 1.510(c), Plaintiffs present the following undisputed facts, with citations to the record.²

Plaintiffs' Unsatisfied Judgment Against The Kanes

1. At all relevant times through and including the commencement of this action, Harley Kane and Michelle jointly owned the Tavernier Property (107 Hilson Court, Tavernier, FL 33070) as tenants by the entireties. (Comp., ¶ 4; H. Kane Answer, ¶ 4; M. Kane Answer, ¶ 4).

2. Plaintiffs hold a final, duly recorded, and unsatisfied money judgment dated April 21, 2023 ("2023 Fraud Judgment") against Mr. and Mrs. Kane, jointly, in the amount of \$2,837,725.32 (Comp., ¶¶ 10-11; H. Kane Answer, ¶¶ 10-11; M. Kane Answer, ¶¶ 10-11; Exh. A).

3. The 2023 Fraud Judgment was entered following a jury trial ("2023 Jury Trial") in Palm Beach County Circuit Court. (Exh. A; Exh. E).

4. Plaintiffs also hold a separate unsatisfied 2008 unjust enrichment judgment ("2008 Judgment") against Harley Kane with a current balance in excess of \$4.1 million. (Comp., ¶¶ 13; 17-20; H. Kane Answer, ¶ 13; M. Kane Answer, ¶ 13; Exh. B).

² Plaintiffs' *Complaint to Establish Equitable Lien, and to Foreclose Equitable Lien and Judgment Lien, on Real Estate*, filed September 26, 2023, shall be referred to as "Comp." *Harley N. Kane's Answer and Affirmative Defenses*, filed February 1, 2024, shall be referred to as "H. Kane Answer." *Michelle J. Kane's Answer and Affirmative Defenses*, filed March 1, 2024, shall be referred to as "M. Kane Answer." "Exh." shall refer to exhibits attached to this motion.

Kanes' Use of Fraud Proceeds to Acquire Tavernier Property

5. The Kanes acquired the Tavernier Property in 2016 in an all-cash transaction funded exclusively from a single bank account ("Entireties Account") that they held as joint tenants by the entireties. (Exh. C, Deposition of Michelle Kane, at 27-35; Exh. D, Deposition of Harley Kane, at 25-26).

6. *All* of the funds in the Entireties Account, used for the acquisition of the Tavernier Property, were the uncommingled proceeds ("Fraud Proceeds") of the \$2,037,500 fraudulent transfer discussed below. (Exh. C, Deposition of Michelle Kane, at 27-35; Exh. D, Deposition of Harley Kane, at 25-26). No other funds were ever deposited into the Entireties Account. *Id.*

7. The jury in the 2023 Jury Trial found that, in 2015, Harley Kane personally received the \$2,037,500 through an alter ego entity and that he transferred these funds to himself and Michelle Kane, as joint tenants by the entireties, *with the intent to hinder, delay and defraud Plaintiffs* in the collection of their 2008 Judgment. (Exh. E (jury verdict)). As shown in paragraph 6 above, these funds were the Fraud Proceeds transferred into the Entireties Account.

8. Pursuant to the jury's verdict, the Palm Beach County Circuit Court entered the 2023 Fraud Judgment avoiding the fraudulent transfer and entering money judgment for \$2,837,725.32 against Mr. and Mrs. Kane as tenants by the entireties. (Exh. A).

9. As a computational matter, the outstanding balance on the 2023 Fraud Judgment as of June 30, 2024 is \$281,925.81. (Exh. F). Post-judgment interest will continue to accrue at a rate of \$733.46 per day. *Id.*

Claims of Defendants Shechter & Everett and Manz Firm

10. Shechter & Everett, an accounting firm, recorded a notice of charging lien in Monroe County against Michelle Kane, for whom it had provided services. (Exh. G).
11. Shechter has stipulated to all relief requested against it by Plaintiffs in this action. (Exh. H).
12. The Manz Firm, a law firm, recorded a notice of charging lien in Monroe County against Harley Kane, for whom it had provided services. (Exh. I).

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO AN EQUITABLE LIEN ON THE TAVERNIER PROPERTY

A. The Homestead Exemption Does Not Defeat Plaintiffs' Judgment Lien

The Kanes contend that Plaintiffs may not foreclose their judicial lien because the Tavernier Property is exempt homestead under Art. X, §4(a)(1), Fla. Const., which provides, in relevant part:

There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: ... (1) a homestead

The Kanes predicate their homestead argument on *Havoco of America v. Hill*, 790 So.2d 1018 (Fla. 2001). (H. Kane Answer at 4-7; M. Kane Answer at 3-5). As shown below, *Havoco* supports imposition of an equitable lien in this case, a conclusion confirmed by several post-*Havoco* cases from the Third District Court of Appeal. *Randazzo v. Randazzo*, 980 So.2d 1210 (Fla. 3d DCA 2008); *de Diego v. Barrios*, 271 So.3d 1181 (Fla. 3d DCA 2019).

1. Facts and Holding of *Havoco*

In *Havoco*, Hill, a judgment debtor residing in Tennessee, had applied non-exempt funds to the purchase of a Florida homestead with alleged intent to hinder his creditors. *Havoco*, *supra*, at 1019 - 1020. In response to a certified question from the U.S. Court of Appeals for the Eleventh Circuit, the Florida Supreme Court held that homestead property is exempt even “where the debtor acquired the homestead using non-exempt funds with the specific intent of hindering, delaying, or defrauding creditors in violation of Fla.Stat. §726.105 or Fla.Stat. § § 222.29 and 222.30 [Florida’s fraudulent transfer and fraudulent asset conversion statutes].” *Id.* at 1019. The court noted that Article X, section 4 contains only three *express* exceptions to the exemption: taxes; obligations for purchase, improvement, or repair of property; and obligations for labor performed on the realty. *Id.* at 1022. The court declined to engraft an additional exception for a debtor’s “transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors.” *Id.* at 1028.

2. *Havoco* Ratifies Equitable Liens as an Exception to Homestead Exemption

The Kanes’ reliance on *Havoco* is misplaced because the Florida Supreme Court nonetheless cautioned that the homestead exemption “should not be so applied as to make it an instrument of fraud or imposition upon creditors.” *Id.* at 1028. The court underscored the point by expressly ratifying its longstanding holdings that there is an equitable exception to homestead protection where, as here, “*funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.*” *Id.* at 1028 (emphasis added). The court stated:

In sum, we conclude that we must answer the certified question in the affirmative. The transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors is not one of the three exceptions to the homestead exemption provided in article X, section 4. Nor can we reasonably extend our equitable lien jurisprudence to except such conduct from the exemption's protection. *We have invoked equitable principles to reach beyond the literal language of the exceptions only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.*

Id. (emphasis added).

The court reached this conclusion after a thorough review of its long line of cases “invok[ing] equitable principles to reach beyond the literal language of the exceptions.” *Id.* at 1024-1028. The court cited the following cases:

- *Palm Beach Savings & Loan Ass’n v. Fishbein*, 619 So.2d 267 (Fla. 1993), where the court “allowed an equitable lien against homestead property in favor of a lender, where the debtor husband *fraudulently obtained a loan* and used the loan to satisfy three preexisting mortgages on the homestead property.” *Havoco, supra*, at 1024. In *Fishbein*, the court stated “[W]here **equity demands it this Court has not hesitated to permit equitable liens to be imposed on homesteads beyond the literal language of article X, section 4.**” *Fishbein, supra*, 619 So.2d at 270 (cited in *Havoco, supra*, at 1024)(emphasis added).
- *Jones v. Carpenter*, 106 So. 127 (Fla. 1925), where the court granted an equitable lien in favor of the bankruptcy trustee of a company whose president had improved his homestead with funds embezzled from the company.
- *Craven v. Hartley*, 135 So. 899 (Fla. 1931), where the court imposed an equitable lien in favor of a woman who had loaned the property owner money to purchase the property in exchange for an unfulfilled promise that he would grant her a mortgage upon obtaining title.
- *LaMar v. Lechliden*, 185 So. 833 (Fla. 1939), where the court granted an equitable lien to plaintiffs who had made improvement to the homestead with the understanding that they were acquiring an interest in it.
- *Sonneman v. Tuszyński*, 191 So. 18 (1939), where the court granted an equitable lien to a woman who provided money and services to defendant’s tourist camp with the understanding that he would care for her for the remainder of her life.

The court expressly noted that “Most of those cases involve equitable liens that were imposed *where proceeds from fraud or reprehensible conduct were used to invest in, purchase, or improve the homestead.*” *Havoco, supra*, at 1027 (emphasis added). That is the precise scenario presented here.

3. Plaintiffs are Entitled to an Equitable Lien on the Tavernier Property

Thus, *Havoco* recognizes the distinction between (i) a statutory fraudulent transfer where a debtor invests non-exempt funds in homestead property to hinder creditors (no equitable lien allowed) and (ii) a situation like that presented in the instant case, where the homestead is purchased with funds *that are themselves the proceeds of fraud or egregious conduct.*

The distinction is critical in this case. *Havoco* involved only the debtor Hill’s investment of non-exempt funds into the purchase of a homestead in contemplation of a judgment against him. There was no holding that the specific funds used by Hill for this purpose were obtained through “fraud or egregious conduct.” *Havoco* held only that, in the absence of any *other* fraud or egregious conduct, property retains its exempt homestead status even if it was purchased with non-exempt funds in violation of the fraudulent transfer or fraudulent conversion statutes.

In other words, Florida law recognizes a distinction between (i) the situation in *Havoco*, where *the purchase of the homestead itself* is alleged to be the fraudulent transfer and (ii) the situation in this case, where the funds used to purchase the homestead were obtained through *prior* fraud or egregious conduct.

4. The Third District Court of Appeal Recognizes the Equitable Lien Exception

Post-*Havoco*, the Third District Court of Appeal has reaffirmed that an equitable lien may be impressed on homestead property if *the funds used to acquire the property* were obtained through fraud or egregious conduct. *Randazzo v. Randazzo*, 980 So.2d 1210 (Fla. 3d DCA 2008); *de Diego v. Barrios*, 271 So.3d 1181 (Fla. 3d DCA 2019).

In *Randazzo*, the court affirmed imposition of an equitable lien on the homestead of a debtor who had violated her contractual obligation to transfer proceeds of a former home to her ex-husband and had instead used the funds to buy a new homestead. In *de Diego*, the court stated that using a newly acquired home as an “instrument of fraud” for a means to escape a financial obligation establishes the competent evidence needed to support a finding of an egregious conduct. *de Diego, supra*, 271 So. 3d at 1184 (citing *Nadrich v. Nadrich*, 872 So. 2d 994 (Fla. 4th DCA 2001)).

Other post-*Havoco* courts agree. In *Zureikat v. Shaibani*, 944 So.2d 1019 (Fla. 5th DCA 2006), the court, citing *Havoco*, affirmed the award of an equitable lien against homestead property where the creditor established that proceeds from the debtor’s fraudulent or reprehensible conduct were used to invest in, purchase, or improve the homestead. *Id.*, 944 So.2d at 1024. The court also noted that:

More important, the Florida Supreme Court has held that, where funds obtained through one spouse’s fraud are used to invest in, purchase, or improve the homestead, an equitable lien may be established ***despite the other spouse’s innocence or ignorance of wrongdoing***. *Palm Beach Sav. & Loan Ass’n, F.S.A. v. Fishbein*, 619 So.2d 267, 270–71 (Fla.1993); *In re Crum*, 294 B.R. 402, 405 (Bankr.M.D.Fla.2003).

Zureikat, supra, 944 So.2d at 1024 (emphasis added).

The Kanes have used the Tavernier Property as an “instrument of fraud.” *de Diego, supra*. Their acquisition of the property was accomplished ---- not with innocently acquired cash on hand --- but with the *proceeds* of a separate and discrete fraud found by the Palm Beach County jury, namely Harley Kane’s fraudulent use of an alter ego to transfer funds to a bank account in joint name with his wife, Michelle, to hinder, delay, and defraud Plaintiffs. This egregious conduct led to the 2023 Fraud Judgment avoiding the fraudulent transfers of the funds subsequently used to purchase the Tavernier Property.

There is no genuine dispute as to any material fact. Plaintiffs are entitled to an equitable lien on the Tavernier Property in the amount of the 2023 Fraud Judgment and to a judgment ordering the foreclosure of that lien via a judicial sale.

II. PLAINTIFFS’ LIEN IS SUPERIOR TO THE LIENS OF THE REMAINING DEFENDANTS

Plaintiffs’ lien, which is based on a judgment against Harley Kane *and* Michelle Kane, jointly, is senior in priority to any liens held by the two other named defendants.

As noted, Schechter & Everett has stipulated to the relief requested by Plaintiffs. (Exh. H).

The claimed lien of the Manz Firm, by its express terms (*see* Exh. I), relates only to services performed for *one* spouse --- Harley Kane --- and, as a matter of law, could not have attached to the Tavernier Property, which Harley and Michelle Kane owned as joint tenants by the entireties at the time of the issuance of the charging lien. *Beal Bank, SSB v. Almand and Associates*, 780 So.2d 45, 53 (Fla. 2001).

CONCLUSION

The Court should grant Plaintiffs' summary judgment motion, declare that Plaintiffs' judgment lien is an equitable lien that may be enforced against the Tavernier Property, and should enter judgment of foreclosure of Plaintiffs' judgment lien/equitable lien.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July, 2024, a true and correct copy of the foregoing was electronically served in compliance with Rule 2.516(a) and Administrative Order 13-49 through Florida Courts E-filing Portal via Email on Michelle Kane at shellybythesea@gmail.com, Harley N. Kane at Harley.N.Kane@gmail.com, David L. Manz at dln@gmpalaw.com and Melissa S. Chames at melissachames@outlook.com.

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