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' RESPONSE TO DEFENDANT MICHELLE J. KANE'S MOTION FOR FINAL SUMMARY JUDGMENT

Plaintiffs respond to *Defendant Michelle J. Kane's* [1] *Motion for Final Summary Judgment*.

[1] For brevity and avoidance of confusion, Michelle Kane and Harley Kane will be referred to herein by their first names. The parties' competing summary judgment motions will be referred to as "Plaintiffs' MSJ" and "Michelle's MSJ." Other capitalized terms will have the same meaning ascribed to them in Plaintiffs' MSJ.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs adopt and incorporate by reference their July 3, 2024 motion for summary judgment ("Plaintiffs' MSJ"). As shown there, the Florida Supreme Court's *Havoco* decision, [2] and controlling post-*Havoco* Third District authorities, [3] allow imposition of an equitable lien against a putative homestead when, as in this case, the alleged homestead is acquired with the proceeds of fraud or egregious conduct. Plaintiffs' MSJ at 6-10.

Michelle's MSJ is remarkable in two particular respects: First, she ignores the controlling post-*Havoco* Third District authorities; they are mentioned nowhere in her motion. Second, she falsely states that "There has never been an allegation or suggestion that the funds [used to purchase the Tavernier Property] were fraudulently obtained funds." Michelle MSJ at 13. But not only has there been such an "allegation or suggestion," there has been an ***adjudication*** that the ***very same non-commingled funds that the Kanes used to purchase the property were received by them via an intentionally fraudulent transfer***. Plaintiffs' MSJ at 4, ¶¶ 5-9.

In the rest of her MSJ, Michelle continues to misinterpret *Havoco*, and contends that the Tavernier Property is *her* homestead, although she has not lived there for at least five years and is actively attempting to force its sale. [4] She erroneously argues that her March 2024 divorce from Harley magically and conveniently extinguished Plaintiffs' judgment lien against the property, such that the applicability of the homestead is moot. She ironically invokes "equitable

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[2] *Havoco of America v. Hill*, 790 So.2d 1018 (Fla. 2001).

[3] *Randazzo v. Randazzo*, 980 So.2d 1210 (Fla. 3d DCA 2008); *de Diego v. Barrios*, 271 So.3d 1181 (Fla. 3d DCA 2019). *Accord*, *Zureikat v. Shaibani*, 944 So.2d 1019 (Fla. 5th DCA 2006).

[4] Harley, who *has* continually resided at the Tavernier Property at all relevant times, has neither moved for summary judgment nor opposed Plaintiffs' MSJ.

principles" and incorrectly argues that Plaintiffs and this Court are bound by certain findings in the divorce case.

We address these arguments below.

ARGUMENT

I. THE KANES' DIVORCE DID NOT EXTINGUISH PLAINTIFFS' JUDGMENT LIEN AGAINST THE TAVERNIER PROPERTY

Before even addressing the homestead issue, Michelle suggests that it is moot. She contends that her recent divorce automatically extinguished the lien of Plaintiffs' recorded 2023 Fraud Judgment against her and Harley as tenants by the entireties, obviating the need to determine applicability of the homestead exemption. She is wrong.

A. The Relevant Timeline

November 30, 2016	Michelle and Harley take title to the Tavernier Property, as tenants by the entirety. Michelle MSJ, Exh. B.
April 21, 2023	Plaintiffs obtain the 2023 Fraud Judgment, which is a money judgment providing that Plaintiffs "shall recover" the principal amount of $2,837,725.32 (inclusive of prejudgment interest) from "Harley N. Kane and Michelle J. Kane, as tenants by the entireties." Plaintiffs' MSJ, Exh. A.
May 8, 2023	The 2023 Fraud Judgment is recorded in the Public Records of Monroe County, Florida. Plaintiffs' MSJ, Exh. C.
September 26, 2023	Plaintiffs commence this action to foreclose judgment lien and establish equitable lien.
September 29, 2023	Plaintiffs' notice of lis pendens with reference to this action is recorded in the Public Records of Monroe County, Florida.
March 14, 2024	Judgment of dissolution of marriage of Harley and Michelle Kane (subsequently amended on May 1, 2024). Michelle MSG at 4, ¶21; Michelle MSJ, Exh. D.

B. The Judgment Lien Attached to the Tavernier Property

Thus, in May 2023, when Plaintiffs recorded their judgment against Harley and Michelle, as tenants by the entirety, the Kanes owned the Tavernier Property in that precise capacity. The judgment lien therefore attached to the property in May 2023. [5] § 55.10(1), Fla. Stat. *Lamchick, Glucksman & Johnston, P.A. v. City Nat. Bank of Florida*, 659 So. 2d 1118, 1120 (Fla. 3d DCA 1995) (a judgment becomes a lien on real property owned by judgment debtor on the date the judgment was filed in county's official records).

C. The Conversion to a Tenancy in Common Did Not Extinguish Plaintiffs' Prior Recorded Judgment Lien From the Tavernier Property

Michelle implicitly concedes, as she must, that Plaintiffs' judgment lien attached to the Tavernier Property in May 2023. She argues instead that the *subsequent* March 2024 dissolution of her marriage instantaneously stripped the lien from the property because she and Harley no longer own the property as tenants by the entirety. Michelle MSJ at 7.

Michelle cites no authority for the facially absurd proposition that dissolution of marriage can retroactively extinguish the rights of a third-party creditor of the ex-spouses. Black letter statutory and case law refute it.

"A judgment, order, or decree becomes a lien on real property in any county when a certified copy of it is recorded in the official records or judgment lien record of the county …." § 55.10(1), Fla. Stat. The judgment lien takes priority over subsequent liens *and* the interests of subsequent purchasers with notice of the lien. § 695.01(1), Fla. Stat. (judgment lien is effective against subsequent purchasers where they do not qualify as bona fide purchasers without notice

[5] The lien attached subject to Michelle's argument that the property is protected by the homestead objection, a separate issue which Michelle correctly addresses in a separate section of her MSJ, and which we address in Section II, *infra*.

of the lien); *Lamchick, supra* (recorded judgment lien has priority over subsequently recorded liens); *Kroitzsch v. Steele*, 768 So. 2d 514, 517 (Fla. 2d DCA 2000)("It is a basic tenet of property law that successor to legal title take title subject to those equitable interests of which they have notice.").

At most, the dissolution of the Kane's marriage effectuated a deemed transfer of title from the Kanes (in their capacity as tenants by the entireties) to *themselves* (in their capacity as tenants in common). But Plaintiffs' prior recorded judgment, as well as their prior recorded notice of lis pendens in this action, put the entire world on notice of their claim against the Tavernier Property.

Any subsequent purchaser of the property ---- anywhere on the spectrum from a complete stranger to a Kane family member --- would acquire title subject to the judgment lien, and that acquisition of title would not disturb the lien's existence or its priority. § 695.01, Fla. Stat. ***A fortiori*, the Kanes themselves could not extinguish a judgment lien --- of which they were fully aware, and which arose from their receipt of an intentionally fraudulent transfer --- by the expedient of having their marriage dissolved, any more than they could have done so by simply deeding the property to themselves as tenants in common.** *Myers v. Van Buskirk*, 119 So. 123 (Fla. 1928) (purchaser with notice of prior adverse rights is not protected as bona fide purchaser, though receiving deed purporting to convey title); *Gamble v. Hamilton*, 31 Fla. 401, 411 (Fla. 1893) (subsequent purchaser with actual notice that others have claim to real estate takes the real estate subject to the rights of others claiming it); *Smith v. Pattishall*, 176 So. 568, 574 (Fla. 1937).

Thus, the counterintuitive, inequitable, and offensive notion that, by dissolving their marriage *inter se*, the Kanes could somehow vaporize Plaintiffs' prior recorded judgment lien on their real property, is not the law. Indeed, spouses whose tenancy by the entirety is converted by divorce into a tenancy in common "have joint responsibilities" and "have a mutual obligation to pay the charges upon the property." "This statutory property obligation is distinct from any obligation which may result from the … final judgment granting dissolution of the marriage." *Tinsley v. Tinsley*, 490 So.2d 205, 207 (3rd DCA 1986) (internal citations omitted).

The dissolution of the Kanes' marriage could not, and did not, affect or extinguish Plaintiffs' judgment lien on the Tavernier Property.

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

Michelle's remaining arguments relate to her contention that the homestead exemption insulates the Tavernier Property from Plaintiffs' judgment lien. In Plaintiffs' MSJ, we demonstrated that Plaintiffs are entitled to invoke the well-recognized equitable lien exception to the homestead exemption. Plaintiffs' MSJ at 5-10. We adopt, and will not repeat, that analysis here. Instead, we briefly respond to specific arguments raised in Michelle's motion.

A. The Funds Used to Purchase the Tavernier Property Were the Non-Commingled Proceeds of an Intentionally Fraudulent Transfer

As noted, Michelle makes the gross misrepresentation that "There has never been an allegation or suggestion that the funds [used to purchase the Tavernier Property] were fraudulently obtained funds." Michelle MSJ at 13.

To the contrary, as we demonstrated with citations to the jury verdict in the Palm Beach County case and via Michelle's own sworn deposition testimony, it is an *adjudicated fact* that the cash funds used to purchase the Tavernier Property were exactly the same non-commingled

funds that Michelle and Harley received from an alter ego of Harley Kane in a transfer that was determined by the jury to have been made with actual intent to hinder, delay, and defraud the Plaintiffs. Plaintiffs' MSJ at 4.

Indeed, this is precisely what distinguishes with this case from *Havoco*. In *Havoco*, the Florida Supreme Court declined to impose an equitable lien where the fraudulent transfer consisted only of the judgment debtor's application of available funds in his possession to purchase an exempt homestead.

In this case, by contrast, the funds used by the Kanes to purchase the property ***were themselves the product of a discrete, prior, completed fraud***. The funds used to acquire the property ***were obtained*** by the Kanes in their joint capacity "through fraud or egregious conduct" and that is why Plaintiffs are entitled to an equitable lien. *Randazzo v. Randazzo*, 980 So.2d 1210 (Fla. 3d DCA 2008); *de Diego v. Barrios*, 271 So.3d 1181 (Fla. 3d DCA 2019). *Accord*, *Zureikat v. Shaibani*, 944 So.2d 1019 (Fla. 5th DCA 2006).

Moreover, the "single most import [*sic*] fact" identified by Michelle --- i.e., that the *original distribution* of the funds to Harley Kane from his employer was "legally and properly earned" [6] – is irrelevant. Plaintiffs have never challenged that distribution. They successfully challenged Harley Kane's *subsequent* and *separate* deployment of those funds, when he intentionally defrauded Plaintiffs by employing an alter ego to funnel the funds into a putatively exempt entireties bank account in his and Michelle's name, [7] --- in a fraudulent transaction that was also, in turn, *separate* from the *subsequent* use of those funds to purchase the Tavernier Property.

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[6] Michelle MSJ at 13.

[7] All as detailed in Plaintiffs' MSJ at 4.

B. Michelle Cannot Claim the Tavernier Property as *Her* Homestead

Michelle asserts that the Tavernier Property is *her* homestead. Michelle MSJ at 8. *Id*. at 10 ("the … [Tavernier Property] is, in fact, Michelle's homestead property. Michelle lived there immediately after it was purchased on November 11, 2016, and it was her residence.").

But Michelle acknowledged under oath that Harley has been "the sole occupant since 2019." Plaintiffs' MSJ, Exh. C at 44. Harley testified that, when Michelle moved out, they agreed that *he* would keep the property, *and* that they agreed to sell the property. *Id.*, Exh. D at 9, 21. As of September 2023, Michelle could not even recall when she had last been inside the house. *Id.*, Exh. C at 25. The record evidence establishes that, by the time Plaintiffs' judgment lien attached to the property in May 2023, Michelle could no longer establish the requisite "actual intention to live permanently" at the property coupled with "actual use and occupancy." *Beltran v. Kalb*, 63 So.3d 783 (Fla. 3d DCA 2011), cited in Michelle MSJ at 8.

For his part, Harley Kane ---- the one person who has actually resided at the property continuously since its acquisition with the proceeds of the fraudulent transfer --- has neither moved for summary judgment in his own behalf, nor opposed Plaintiffs' MSJ.

C. The Findings in the Dissolution Judgment are Irrelevant and Lack Preclusive Effect

Finally, citing *res judicata* and ironically invoking unidentified "equitable principles," [8] Michelle contends that Plaintiffs are bound by a finding in their divorce judgment that the Tavernier Property "was [the Kanes'] primary residence and was their homestead property." Michelle MSJ at 7. These findings are irrelevant here, because even if the property could be

[8] To invoke equity, one must come before the Court with clean hands. *See, e.g., Malkus v. Gaines*, 476 So.2d 220, 222 (Fla. 3rd DCA 1985). Michelle and Harley used the proceeds of an intentionally fraudulent conveyance to purchase the Tavernier Property. Plaintiffs' MSJ at 4.

considered homestead, the divorce court (Judge Helms) did not consider, let alone adjudicate, Plaintiffs' entitlement to invoke *Havoco*'s equitable lien exception to homestead. In any event, Plaintiffs are not bound by any of the divorce findings because they were not parties to the dissolution action and no issues concerning Plaintiffs' rights, interests, or remedies were adjudicated there. Res judicata requires four identities: "(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim is made." *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004). Not one of these identities exists between this case and the divorce case.[9]

CONCLUSION

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August, 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 dlm@gmpalaw.com and Melissa S. Chames at melissachames@outlook.com.

[9] Although also irrelevant, Michelle's assertion that Plaintiffs' motion to intervene in the divorce proceeding was denied as "untimely filed" is false. Judge Helms denied that motion on the ground that Plaintiffs were not "necessary parties," a fact that further undercuts Michelle's preclusion arguments.

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