

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

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

Plaintiffs

Case No.: 2023-CA-000370-A001-P

vs.

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

_____/

Harley N. Kane's Motion for Final Summary Judgment

COMES NOW, Defendant HARLEY N. KANE, pro se, and pursuant to the Florida Rules of Civil Procedure, moves this Honorable Court for Final Summary Judgment, opposes Plaintiffs' Motion for Summary Judgment, and as grounds in support states:

JOINDER and STATEMENT OF UNDISPUTED FACTS

Movant joins in and adopts the Statement of Undisputed Facts set forth in Defendant Michelle J. Kane's Motion for Final Summary Judgment filed July 9, 2024 (Michelle J. Kane's Motion for Final Summary Judgment). In further support Movant has filed the Affidavit of Harley N. Kane.

STANDARD OF REVIEW

Movant adopts the Standard of Review as set forth in Michelle J. Kane's Motion for Final Summary Judgment.

MEMORANDUM OF LAW

Movant adopts the Memorandum of Law as set forth in Michelle J. Kane's Motion for Final Summary Judgment.

Harley Kane's Ownership Interest in 107 Hilson Ct., Tavernier, FL 33070 ("the Property") is Protected by The Homestead Exemption.

The affidavit of Harley N. Kane filed herewith sets forth all the essential elements of fact to establish entitlement to the homestead exemption as set forth at Article X, Section 4(a) (1) of the Florida Constitution. It shows the acquisition of the Property in 2016 as the homestead of Harley Kane and Michelle Kane, as TBE, with the intention and the fact that the Property was then and thereafter remained their sole residence and that the Property was within a municipality with a contiguous land area of less than ½ acre.

The Certified Question in Havoco of America v. Hill, 790 So. 2d 1018 (Fla. 2001) resolves this matter.

Does Article X, Section 4 of the Florida Constitution exempt a Florida homestead, 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](#)? *Havoco of America, Ltd. v. Hill*, 197 F.3d 1135, 1144 (11th Cir. 1999). We have jurisdiction. *Art. V, § 3(b)(6), Fla. Const.* For the reasons that follow we answer the certified question in the affirmative.

The conduct in *Havoco* was certainly significantly more egregious than what the Plaintiffs allege. Indeed, Hill was found liable for fraud, conspiracy, tortious interference with contractual relations, and breach of fiduciary duty. In this matter, Harley N. Kane was not. Although alleged by the Plaintiffs here, Kane prevailed on all those theories! All of those theories were rejected in the 2008 Judgment and were not presented in the 2017 [Fla. Stat. § 726.105 case](#). (Basis for the Judgment here).

In 1981 Havoco sued Hill for fraud, tortious interference with contractual relations, conspiracy and breach of fiduciary duty¹. On January 2, 1991 a

¹ The Plaintiffs here, like in *Haveco*, sued Harley N. Kane for (1) fraud, (2) fraud in the inducement, (3) constructive trust and, (4) breach of fiduciary duty. The difference is that *Haveco* won those tort claims whereas here, the plaintiffs lost all those claims. All those claims were expressly rejected by the trial judge.

court entered a final judgment for Havoco in the amount of \$15,000,000 after a jury had found for it on all its claims.

1. Hill was a longtime resident of Tennessee but bought a property in Destin Florida for \$650,000 on December 30, 1990 claiming the purchase was for his retirement home. Nothing suggests Hill acquired the funds used in that 1990 purchase through fraud or egregious conduct.
2. On July 22, 1992 Hill filed Chapter 7 bankruptcy asserting a homestead exemption pursuant to Art. X §4a, Fla. Const.
3. Havoco challenged the exemption asserting the purchase was part of a larger scheme to defraud it through bankruptcy.
4. The bankruptcy court held an evidentiary hearing to consider whether Hill intended to hinder, delay or defraud Havoco, held its evidence inadmissible and found for Hill.
5. Havoco appealed to the district court that reversed finding error in the bankruptcy court's supposition that intent to hinder, delay or defraud could provide grounds to deny the exemption. It directed the bankruptcy court "to determine whether and under what circumstances

Florida law prevented debtors in 1990 and 1991 from converting nonexempt property to exempt property." Havoco, [197 F.3d at 1138](#). The district court ordered the bankruptcy court to conduct an evidentiary hearing during which Havoco would be allowed to present evidence of Hill's other transfers of nonexempt assets if it determined that Hill's homestead claim was limited under Florida law.

6. The bankruptcy court relied on *Bank Leumi Trust Co. v. Lang*, [898 F. Supp. 883](#)(S.D.Fla. 1995), and *Butterworth v. Caggiano*, [605 So.2d 56](#) (Fla. 1992) and held that Florida law did not prevent Hill from converting non-exempt assets even if done with the intent to defraud Havoco expressly holding Hill was entitled to assert the homestead exemption. The district court affirmed.
7. Havoco appealed to the 11th Circuit Court of Appeals that affirmed certifying to the Florida Supreme Court the question of whether the homestead exemption applied to the real property and the furnishings and personal property therein expressly asking if the homestead exemption could apply even where the judgment creditor held a judgment granted pursuant to F.S. §726.105² and other laws.

² F.S. §726.105 is the same statute the Plaintiffs utilized to obtain the Judgment they now seek to foreclose.

8. The Florida Supreme Court held the exemption applied notwithstanding any intention to hinder, delay or defraud.

The Instant Facts are Essentially the Same as in Havoco

The only distinction between this matter and Havoco is that the Plaintiff in Havoco prevailed on its tort claims (fraud, conspiracy, tortuous interference with contractual relations, and breach of fiduciary duty) whereas the Plaintiffs here lost those tort claims. If Havoco couldn't overcome the homestead – the plaintiffs here certainly cannot.

1. In 2008 the Plaintiffs obtained a judgment for \$2 million plus statutory interest against Harley N. Kane based on a claim of Quantum Meruit/Unjust Enrichment.
2. In 2009 Harley N. Kane filed Chapter 7 bankruptcy.
3. Harley N. Kane and Michelle J. Kane as TBE formed MJKPA in November 2014 for the practice of law as a 50% member of Kane Lawyers, PLLC formed about the same time.
4. That bankruptcy terminated on December 31, 2014.
5. Kane Lawyers, PLLC achieved a lawful \$5,900,000 settlement in December 2015 and distributed \$2,037,500 from its lawfully earned profits to its 50% member, MJKPA on December 31, 2015.

6. MJKPA immediately on receipt distributed that \$2,037,500 to its shareholders, Harley N. Kane and Michelle J. Kane, as TBE.

7. In 2016 Harley N. Kane and Michelle J. Kane, as TBE used a portion of that \$2,037,500 to purchase the Property in Tavernier, FL as their permanent residence,

8. In 2017 the Plaintiffs filed suit asserting the transfer from MJKPA was by Harley Kane's alter ego that he had caused to transfer the Funds to himself and his wife as TBE as a transfer in fraud of creditors in violation of F.S. §726.105(1)(a).³

9. The Plaintiffs seek to levy on the Property despite the assertion the Property is exempt from levy pursuant to Art. X §4a, Fla. Const.

10. The Kanes separated in 2019 with Harley N. Kane remaining in possession of the Property as his sole personal residence with jointly owned furnishings therein.

11. The Kanes' marriage was dissolved in 2024. The marital judge specifically found that the Hilson residence was homestead property and

³ Both Michelle J. Kane and Harley N. Kane sought to raise the "homestead exemption" as an affirmative defense – the Plaintiffs objected claiming that they were not seeking any type of lien in that suit and the trial court struck those defenses. This issue was specifically excluded.

the Property was ordered sold with the proceeds distributed subject to the terms of the final judgment of dissolution. No sale has occurred.

***The Dissolution of Marriage Does Not Result
in Individual Indebtedness***

The Plaintiffs' 2017 supplemental cause of action for a transfer in fraud of creditors was filed in aid of collection of their 2008 judgment against Harley N. Kane. It sought avoidance of the 2015 transfer from MJKPA that ultimately resulted in the purchase of the Property. The point of the lawsuit was to secure a finding that the funds transferred to Harley N. Kane and Michelle J. Kane as TBE was really a transfer of funds belonging solely to Harley N. Kane and to treat those proceeds as having been spent solely by Harley N. Kane used to secure the Property.

Nothing in that cause of action was alleged to be nor constitutes a basis for an award of an additional sum to be added to the 2008 final judgment for which Harley N. Kane, not a party in that further supplemental suit, is personally liable.

Nothing in the judgment for avoidance of the transfer of the Funds results in individual indebtedness as the Plaintiffs already hold a judgment against Harley N. Kane but not against Michelle J. Kane. The dissolution of

marriage merely alters the ownership interest in the Property to a tenancy in common. It establishes no individual liability.

An equitable lien can only exist to secure an established further liability. Here, there is no allegation and no showing of necessary elements of a written contract, mistake or material misrepresentation resulting in damage to the Plaintiffs. *Merritt v. Unkefer*, 223 So.2d 723 (Fla. 1979). “The prevailing view in Florida is that equitable liens may be founded upon two bases: (1) a written contract that indicates an intention to charge a particular property with a debt or obligation or (2) a declaration by a court out of general considerations of right or justice as applied to the particular circumstances of a case. See *Jones v. Carpenter*, 90 Fla. 407, 413-414, 106 So. 127 (1925); *Ross v. Gerung*, 69 So.2d 650,652 (Fla. 1954); Bob Cooper, 60 B.R. at 583.” *In re Tsiolas*, 236 B.R. 85 (Bankr. M.D. Fla. 1999).

Nothing is alleged or shown to be done by Harley N. Kane in 2015 or 2016 based on a written contract, mistake or misrepresentation involving the Plaintiffs.

The Plaintiffs claim of equitable lien is based solely on their judgment of avoidance of the transfer. It is not based on a written contract, mistake or misrepresentation. Rather, the basis is a transfer made to hinder, delay or

defraud identical to the scheme to defraud asserted by Havoco against Hill addressed by the Florida Supreme Court in *Havoco of America v. Hill*, 790 So.2d 1018 (Fla. 2001) holding that even a transfer with the intent to hinder, delay or defraud does not overcome the exemption afforded by *Florida Const. Art. X, §4a*.

**The Plaintiffs' Judgment of Avoidance Establishes
No Lien on this Homestead Property**

Movant adopts and sets forth the explanation of Florida Law as set forth in Michelle J. Kane's Motion for Final Summary Judgment.

The Funds Were Lawfully Obtained

There is no evidence to show the Funds were not lawfully obtained. Plaintiffs do not dispute that the Funds used to purchase the Property were proceeds of a distribution from Kane Lawyers, PLLC that it lawfully earned and distributed to the owner of a 50% interest in its membership that the Plaintiffs asserted were transferred by Harely Kane's alter ego to Harley N. Kane and Michelle J. Kane, as TBE, that they, in turn, used to purchase the Property.

The Plaintiffs have not alleged and have not shown the Funds were proceeds of any unlawful act, transaction or fraud involving the Plaintiffs. Nor have the Plaintiffs alleged or shown that the Funds were the proceeds of any unlawful act, transaction or fraud involving anyone else.

Intent to Hinder, Delay or Defraud is Irrelevant

As set forth in Michelle Kane's Motion for Final Summary Judgment at page 12: "The *Havoco* court held a Florida homestead is protected even where the debtor acquired the homestead using non-exempt fund, with the specific intent of hindering, delaying or defrauding creditors in violation of Fla. Stat. 726.105 or Fla. Stat. 222.29 and 222.307." (emphasis supplied). *Havoco* clearly supports the entry of summary judgment on behalf of Harley N. Kane as the Funds were not procured as a result of a fraud on the Plaintiffs or any of them, nor as the proceeds of any unlawful act or transaction wherein the Funds were obtained through fraud or egregious conduct.

The Plaintiffs have not alleged any unlawful act, fraud or egregious conduct done by Kane Lawyers that merely performed an innocent ministerial act of distribution to its 50% member nor any by MJKPA, even as Harley Kane's alter ego, who in turn performed an innocent ministerial act of distribution to its shareholders:

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 excepts only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.**

Havoco of America v. Hill, 790 So. 2d 1018, 1028 (Fla. 2001)(emphasis suppliedhn).

Movant adopts and reasserts the argument and explanation of law as set forth Michelle Kane's Motion for Final Summary Judgment.

Summary judgment should be granted in Harley N. Kane's favor, as the Plaintiffs' judgment cannot be the basis of an equitable lien for the reasons set forth above,

WHEREFORE, Defendant Harley N. Kane, respectfully requests this Court enter Final Summary Judgment granting the instant motion and denying the Plaintiffs' claim for equitable lien finding the Property exempt from levy pursuant to the Florida Constitution, awarding costs and any additional relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY certify that on this 1st day of April. 2025, a truer and correct copy of the foregoing was electronically served in compliance with Ryle 2.516(a) and Administrative Order 13-49 through Florida Courts E-filing Portal on all counsel of record.

HARLEY N. KANE

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Harley N. Kane, pro se