

**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 HARLEY N. KANE'S
MOTION FOR FINAL SUMMARY JUDGMENT**

Plaintiffs respond to *Defendant Harley N. 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," "Harley's MSJ," and "Michelle's MSJ." Other capitalized terms will have the same meaning ascribed to them in Plaintiffs' MSJ.

INTRODUCTION

Following a scheduling conference, this Court (J. Garcia, then presiding) originally scheduled a special set hearing on all motions for summary judgment for August 15, 2024. All parties were to file their summary judgment motions on or before July 5, 2024. *See* Notice of Hearing filed June 7, 2024, under Filing #200048433. Plaintiffs and Defendant Michelle J. Kane timely filed their motions and response. The summary judgment hearing was continued twice (due once to illness of counsel and once because of judicial reassignment) and is now set for August 12, 2025.

Harley N. Kane filed an untimely motion for summary judgment on April 1, 2024, in which he incorporated Michelle's MSJ by reference and added his own affidavit. Plaintiffs here briefly respond to that motion.

ARGUMENT

I. INCORPORATION OF PLAINTIFFS' PRIOR FILINGS

In response to Harley's MSJ, Plaintiffs adopt and incorporate by reference (i) their July 3, 2024, motion for summary judgment ("Plaintiffs' MSJ") and (ii) their August 2, 2024, response to Michelle's MSJ.

The undisputed facts documented in those papers, which have been of record for a year, demonstrate that Plaintiffs are entitled to judgment as a matter of law. 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

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).

case, the alleged homestead is acquired with the proceeds of fraud or egregious conduct.

Plaintiffs' MSJ at 6-10.

II. HARLEY RELIES ON IRRELEVANT FACTS

Harley's MSJ changes nothing. The only record evidence he has added consists of his affidavit, which is devoted in its entirety to two subjects: (i) what was and was not decided in connection with Plaintiffs' original 2008 judgment against him, and (ii) the notion that the funds that he was found by jury to have fraudulently transferred were "lawfully earned." Both topics are irrelevant. Neither affects Plaintiffs' entitlement to an equitable lien as a matter of law.

A. The Claims Underlying the 2008 Judgment Are Irrelevant

The findings and evidence underlying Plaintiffs' original 2008 judgment against Harley is irrelevant. Plaintiffs' equitable lien claim in this case is not based on that judgment. It is based solely upon Plaintiffs' separate and distinct *2023 Fraud Judgment* against both Harley and Michelle.

The 2023 Fraud Judgment was based on a jury's finding that in 2015, Harley personally received \$2,037,500 through an alter ego entity and then 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 against Harley. It is Harley's 2015 ***intentional fraudulent transfer***, as found by the jury in the 2023 trial, that gives rise to Plaintiffs' equitable lien.

This is precisely what distinguishes this case from the facts of *Havoco*. Harley himself emphasizes the fact that "Nothing suggests that Hill [the debtor in the *Havoco* case] acquired the funds used in [his purchase of his homestead property] through fraud or egregious conduct."

Harley's MSJ at 4. By contrast, as demonstrated in Plaintiffs' MSJ, the uncommingled proceeds of Harley's 2015 intentional fraudulent transfer were used to purchase the Tavernier Property that he claims as homestead.

In other words, the requisite nexus between (i) egregious and intentionally fraudulent conduct and (ii) acquisition of the alleged homestead property --- which was absent from the *Havoco* facts -- is present here.

B. The Fact that Harley "Lawfully Obtained" the Funds that the Subsequently Fraudulently Transferred is Irrelevant

Finally, like Michelle, Harley relies heavily on the notion --- which Michelle labelled as the "most important fact in the case" --- that he "lawfully obtained" the funds that he *subsequently* fraudulently transferred. *See* Harley's MSJ at 10.

In Plaintiffs' response to Michelle's MSJ at 6-7, we explained that we have never challenged the legality of Harley's *acquisition* of the \$2,037,500.00. It is his subsequent fraudulent transfer of those funds --- as found by the jury in a judgment affirmed by the Fourth District Court of Appeal --- that gave rise to the 2023 Fraud Judgment and the equitable lien on the Tavernier Property that arises from that judgment.

CONCLUSION

The Court should grant Plaintiffs' summary judgment motion, deny the summary judgment motions filed by Michelle and Harley, 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 9th day of July, 2025, 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, and via separate Email, on Michelle Kane at shellybythesea@gmail.com, John B. Agnetti, Esq. at pleadings@hlalaw.com and at aglick@hlalaw.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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