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

_____/

Defendant, Harley N. Kane's Response and Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment

Defendant, Harley N. Kane, responds to Plaintiffs' Motion for Summary Judgment and memoranda in support thereof and respectfully shows:

Uncontroverted Facts

2023 Judgment

This matter involves a judgment granted against an entity called "Harley N. Kane and Michelle J. Kane, as tenants by the entirety". The Plaintiff's obtained a judgment in 2023 against "Harley N. Kane and Michelle J. Kane, as tenants by the entirety". They did not obtain any additional judgment against Harley N. Kane individually or any judgment against Michelle J.

Kane, individually. Indeed, despite the Plaintiff's request, the trial court did not allow disclosure of either of their social security numbers in the judgment.

There is no conduct alleged or shown sufficient to overcome the constitutionally protected homestead privilege. As will be demonstrated, all the Plaintiffs can contend is "Harley N. Kane didn't voluntarily pay us with his exempt funds." Taken to its logical conclusion Harley N. Kane should not have been allowed the ownership benefits of marriage.

2008 Judgment – No claim for Fraud or Tort

In 2008 Plaintiffs obtained a money judgment, for an implied breach of contract, against Harley N. Kane and others in the sum of approximately $2.8 million as compensation for a 2004 benefit bestowed by the Plaintiffs that he and others accepted and had not reasonably compensated. Mr. Kane was implicated by the Plaintiff's claiming he was part of a joint venture related to the filing of a bad faith lawsuit for 36 joint clients.

It is undisputed that Mr. Kane did not advise or have any discussions with the 36 bad faith clients. It is also undisputed that the 36 clients were solely advised by either the Marks & Fleischer law firm or the Watson & Lentner law firm. Nevertheless, Mr. Kane was found liable based on this 'joint venture' theory.

Plaintiffs lost all Fraud and Tort claims

Initially, The Plaintiffs had sued based on events transpiring in 2004 claiming they were damaged by (1) fraud, (2) fraud in the inducement, (3) constructive trust and, (4) breach of fiduciary duty. All those claims were expressly rejected by the trial judge.

Over a year later, in October 2005, the Plaintiff's amended their complaint to add a count for "Quantum Meruit/Unjust Enrichment". This theory was ultimately successful and the Plaintiff's obtained a judgment.

In March 2009, Harley N. Kane, Kane & Kane, and Charles J. Kane filed Chapter 7 bankruptcy surrendering all non-exempt assets to the trustee. That bankruptcy terminated December 31, 2014 without a discharge. The Plaintiffs received in excess of $800,000.00 from those bankruptcies and later, upon the death of his mother, Mr. Kane did not object to the Plaintiffs claiming the entirety of his mother's probate estate.

Greenspan law firm (2009 – 2014)

Following the total liquidation of Kane and Kane (and all of Harley N. Kane's and Charles J. Kane's non-exempt assets) as a part of the Chapter 7 bankruptcy, Harley N. Kane and his father, Charles J. Kane, became employed as associate attorneys by the Greenspan Law Firm. Neither

Harley N. Kane nor Charles J. Kane had any ownership interest in that law firm.

None of the clients or cases of the Greenspan Law Firm were bad faith cases nor had any connection with the Plaintiff law firms. None of the Greenspan Law Firm cases were related to or involved in any of the cases settled in 2004.

Between 2009 and 2014, the Greenspan Law Firm continued to represent PIP clients and by 2014 had amassed a large backlog of open cases. In September 2014, the Greenspan Law Firm employed attorneys Leon Greenspan, Michael Greenspan, Charles J. Kane, Harley N. Kane, Harriet Uris, Joseph Littman, Michelle J. Kane, and Thomas Flannagan. There were then many remaining PIP suits filed against the various State Farm entities. The Greenspans were worried those would be lost. The Greenspans informed all its firm's employees were terminated effective October 31, 2014.

The formation of Kane Lawyers, PLLC.

Multiple meetings and discussions were had among the newly unemployed lawyers. Harriet Uris and Joseph Littman declined ownership of any newly formed law firm. Thomas Flannagan chose ownership and used his P.A. to become the principal rather than as an individual. Harley N. Kane and Michelle J. Kane were married at the time and formed a new P.A. to own

their share. Since they were married, the newly created law firm was a marital asset and as tenants by the entireties. Charles J. Kane was nearing retirement, was not interested in bearing the risks and costs of the new venture, and therefore was not invited to be a principal. Charles J. Kane was retained as an associate. Harriett Uris and Joseph Littman were not hired and found employment elsewhere.

Kane Lawyers, PLLC. agreed to serve as co-counsel with Greenspan Law Firm on the PIP cases with the consent of all the PIP clients and purchased office furnishings, computers, all the equipment but not the office condominium which was listed by the Greenspans for sale. Kane Lawyers, PLLC. was permitted to use the premises until the sale of it. After the sale, Kane Lawyers vacated it at the end of August 2015.

In November 2014 Harley N. Kane and Michelle J. Kane formed what Plaintiffs refer to as “MJKPA,” a Florida professional association formed to practice law, jointly owned by them as husband and wife. MJKPA together with another Florida professional association formed Kane Lawyers, PLLC (“Kane Lawyers”), a Florida professional limited liability company owned by those two professional associations.

Kane Lawyers commenced law practice law as of December 1, 2014. In December 2015 it settled hundreds of suits brought by medical providers

against State Farm for unpaid PIP claims. The settlement yielded about $5,900,000. None of the settlement funds related in any way to the Plaintiffs. The Plaintiffs were not involved in any of the underlying PIP lawsuits settled in 2015 and have never made any claim against the settlement. The Plaintiffs have not alleged they were defrauded or harmed by Kane Lawyers in any way. The Plaintiffs have sued Kane Lawyers.

After meetings and agreement of the principals of Kane Lawyers, on December 31, 2015 the firm distributed $2,037,500 from its earnings to MJKPA that it in turn distributed to its shareholders, Harley N. Kane and Michelle J. Kane, as tenants by the entireties ("the Distribution").

In 2016 the Kanes purchased 107 Hilson Court, Tavernier, FL 33070 ("the Property") as their permanent residence acquired by them as husband and wife using a portion of the Distribution ('the Funds") received from MJKPA on December 31, 2015.

In December 2017, Plaintiffs sued the Kanes, as tenants by the entireties, asserting that the Distribution, the transfer at issue ("the Transfer"), was made with the intent to hinder, delay or defraud them as creditors of Harley N. Kane based on their 2008 judgment. The Plaintiffs did not sue Harley N. Kane or Michelle J. Kane individually.

The 2017 suit was tried before a jury that was not asked to nor did the jury expressly find that Harley N. Kane so dominated and controlled MJKPA that its separate existence was not maintained.[1] Nevertheless, the jury did find that MJKPA was the alter ego of Harley N. Kane and a 2023 monetary award that is not in addition to nor in replacement of the 2008 judgment against Harley N. Kane but was entered against Harley N. Kane and Michelle J. Kane, as tenants by the entireties. It is this judgment that the Plaintiffs characterize as "the Fraud Judgment." As is typical of these Plaintiffs, their phrasing and argument is designed to mislead. The Florida Uniform Fraudulent Transfer Act (F.S. 726.101) is not synonymous with common law fraud as it is commonly used. Indeed, under the act, a transfer may be avoided without an intent to defraud.[2] Under the Plaintiffs' theory, *Haveco* could not exist!

The 2017 suit and the 2023 judgment thereon established no further monetary judgment against Harley N. Kane as he was not individually a party in that action brought to avoid the Transfer. Rather, the judgment holds the

[1] The trial court refused Harley N. Kane's timely requested standard jury instruction addressing "alter ego" status.

[2] FUFTA recognizes a constructive fraudulent transfer – even if there's no intent to defraud, a transfer may still be fraudulent if it was made without receiving equivalent value, and the debtor was insolvent or become insolvent as a result. This was one of the claims in the 2017 suit.

Transfer is avoided and the transferees, Harley N. Kane and Michelle J. Kane, as tenants by the entireties, hold transferred funds belonging to MJKPA as the alter ego of Harley N. Kane.

The Plaintiffs seek imposition of an equitable lien on the homestead property as embodying funds belonging to Harley N. Kane, individually, their 2008 judgment debtor.

Summary of the Argument

The Plaintiffs' 2023 judgment filed in 2023 does not attach as a lien encumbering the Property, owned by the Kanes as TBE because that judgment was not based on a written contract, mistake or misrepresentation and because it is settled law that a mere transfer of non-exempt funds to purchase a homestead is not an exception to the exemption afforded by Article X, §4a, Florida Constitution.

These Plaintiffs are attempting to mislead the Court by conflating a statutory avoidable transfer with common law fraud. They are not the same and former does not support an exception to the homestead protection whereas, the latter might.

The Plaintiffs mischaracterize their TBE judgment as "the Fraud Judgment." **The Plaintiffs did not sue for and obtained no judgment for common law fraud.** They succeeded with a suit brought pursuant to F.S.

§726.105(1)(a) to avoid the Transfer. The Transfer was made with funds lawfully obtained through the practice of law in transactions not involving the Plaintiffs and not involving fraud or egregious conduct. The Transfer is exactly the same type the Florida Supreme Court addressed in *Havoco of America v. Hill,* 790 So.2d 1018 (Fla. 2001) wherein it held a residence of a judgment debtor was nevertheless exempt from levy as a homestead and that the debtor's intent in making the transfer at issue was irrelevant as such transfer was not an exemption set forth in the protections afforded by Article X, §4a, Florida Constitution.[3]

Argument

Harley N. Kane has filed his affidavit establishing all the necessary elements entitling him to assert homestead exemption afforded by Article X, §4a, Florida Constitution. The Plaintiffs have alleged no ultimate facts and made no showing placing those facts in issue. The Plaintiffs have not alleged and have made no showing that the elements for a homestead are not present.

[3] Harley N. Kane denies any intent to defraud the Plaintiffs – but as *Haveco* and its progeny demonstrate, even if he did, the intent to defraud would be irrelevant.

A fraudulent transfer and fraud are not the same and not interchangeable

In Florida, the legal concepts of **fraudulent transfer** and **fraud** are related but distinct, each with its own criteria and applications. Below is a comparison of the two:

1. Fraudulent Transfer (also called Fraudulent Conveyance)

A **fraudulent transfer** refers to a transfer of property or assets that is made with the intent to defraud, hinder, or delay creditors. Florida law, under the **Florida Uniform Fraudulent Transfer Act (FUFTA)**, provides the framework for challenging such transfers.

Key Elements of Fraudulent Transfer:

- **Transfer of Property or Assets**: A person transfers property (e.g., money, real estate, or other assets).
- **Intent to Defraud, Hinder, or Delay Creditors**: The transfer must be done with the intent to avoid paying debts or obligations to creditors.
- **Insolvency or Unpaid Debts**: The debtor is typically insolvent, or the transfer occurs when the debtor is under financial pressure and unable to meet obligations.

Legal Actions:

- Creditors may seek to undo or "void" the fraudulent transfer and recover the transferred property.
- Courts may invalidate the transfer or order the debtor to return the assets to satisfy the creditor's claims.
- The ‘Intent to Defraud, Hinder, or Delay Creditors’ is not a type of common law fraud or egregious conduct necessary as one of the enumerated exemptions to the constitutionally protected homestead.

2. Fraud

Fraud, in the legal sense, generally refers to intentional deception or misrepresentation made with the intent to deceive another party, usually for financial gain.

Key Elements of Fraud:

- **False Representation**: A person makes a false statement or misrepresentation.
- **Knowledge of Falsity**: The person making the representation knows it is false or is reckless in making the statement.

- **Intent to Deceive**: The person makes the false statement with the intent that the other party will rely on it.
- **Reliance and Damages**: The other party must reasonably rely on the false representation and suffer damages as a result.

The Plaintiffs do not allege any false statement or reliance on such. The plaintiffs do not allege any egregious conduct merely that Harley N. Kane didn't satisfy their judgment with money received and instead purchased a homestead property with his wife.

Legal Actions:

- Fraud can lead to civil lawsuits where the victim seeks damages for losses caused by the fraudulent actions.
- Criminal charges for fraud can also be filed, which may lead to penalties such as fines or imprisonment.

Key Differences:

- **Focus**: Fraudulent transfer deals with **transfers of assets** made to avoid creditors, whereas fraud involves **misrepresentations** made to deceive someone for personal gain.

- **Context**: Fraudulent transfer usually occurs in the context of insolvency or financial distress, while fraud can occur in many contexts (e.g., business, contracts, personal relationships).
- **Effect on Creditors**: Fraudulent transfers directly impact creditors who seek to recover money or property, while fraud can affect anyone who has been deceived or harmed by misrepresentation.

In essence, **fraudulent transfer** is a specific type of fraudulent action involving asset transfers, while **fraud** is broader and encompasses a variety of deceptive practices intended to mislead or harm another party. Both can have serious legal consequences, but they operate under different legal principles and remedies in Florida law.

The Plaintiffs have not alleged and made no showing of ultimate facts entitling them to assert any valid exception to the protection afforded by Article X, §4a, Florida Constitution. The Plaintiffs have not alleged and have made 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 done by Harley N. Kane based on a written contract, mistake or misrepresentation involving the Plaintiffs. A mere transfer in fraud of creditors is not one of the circumstances qualifying as among those requiring imposition of a lien out of general considerations of right or justice and is not a declaration of general considerations of right or justice as applied to particular circumstances of a case.

In *Havoco* the Florida Supreme Court cited *Bank Leumi*:

> In Bank Leumi Trust Co. v. Lang, 898 F. Supp. 883 (S.D.Fla. 1995), the Langs, New Jersey residents, owned and operated a New Jersey educational training business for which they secured $1.8 million in financing from Bank Leumi in exchange for corporate promissory notes and personal guarantees. Id. at 884. The Langs' business filed for bankruptcy in 1989 and Bank Leumi filed suit in New Jersey federal district court to collect on the Langs' debt in April of 1990. Id. In May of 1990, the Langs sold their New Jersey home for $940,000, purchasing a home the following month in Palm Beach Gardens, Florida, for $522,000. Id. Bank Leumi obtained a $1.8 million judgment against the Langs in November of 1990 and filed a postjudgment petition seeking to enforce the judgment against the Langs' Palm Beach Gardens home. Id.

> In its findings of fact, the district court determined that the Langs converted their nonexempt assets into the exempt homestead for the sole purpose of "hindering and avoiding their creditors and defeating their claims." Id. at 885. Nevertheless, the court concluded, albeit reluctantly, that Florida's homestead exemption did not except property acquired with the intent to hinder and defeat the claims of creditors from its protection:
>
> [T]he homestead exemption does not contain an exception for real property which is acquired in the state of Florida for the sole purpose of defeating the claims of out-of-state creditors. In light of the Supreme Court's admonition in Caggiano that the three exceptions to the homestead exemption should be read narrowly, this Court is unwilling to graft an additional exception. Id. at 887. Several bankruptcy courts have followed Bank Leumi's lead, reading the exceptions to the exemption strictly consistent with Caggiano and Tramel. See In re Young, 235 B.R. 666 (M.D.Fla. 1999); In re Hendricks, 237 B.R. 821 (M.D.Fla. 1999); In re Lazin, 221 B.R. 982 (M.D.Fla. 1998); In re Clements, 194 B.R. 923 (M.D.Fla. 1996); In re Lane, 190 B.R. 125 (S.D.Fla. 1995); In re Popek, 188 B.R. 701 (S.D.Fla. 1995).
>
> *Havoco of America v. Hill*, 790 So. 2d 1018, 1023 (Fla. 2001)

The Plaintiffs claim of equitable lien is based solely on their judgment of avoidance of the Transfer resulting in the joint liability awarded. Since Harley N. Kane, individually, was not a party in that case, his personal liability remains based solely on the 2008 judgment. The so-called “Fraud Judgment” is not based on a written contract, mistake or misrepresentation and is not a court’s declaration of general considerations of right or justice as applied to particular circumstances of a case. Rather, the basis is a transfer made to

hinder, delay or defraud identical to the scheme to defraud 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' "Fraud" Fallacy

Plaintiff's label their latest judgment as "the Fraud Judgment" mischaracterizing it to draw attention from the pertinent issue:

> **Did Harley N. Kane and Michelle J. Kane, as TBE, acquire the Property with funds lawfully derived?**

The answer is an unequivocal "Yes." Nothing in the instant claim nor in the record remotely suggests Kane Lawyers, PLLC did not lawfully earn and distribute its earnings to its shareholder, MJKPA (whether or not it was Harley Kane's alter ego) who in turn transferred those earnings to Harley N. Kane and Michelle J. Kane, as TBE that they used to acquire the Property.

This is exactly the situation addressed in *Havoco* where Hill was sued in 1981 for fraud and other things resulting in a $15,000,000 judgment for Havoco 9 years later a mere 3 days after Hill used $650,000 to purchase a new homestead in Destin, Florida. Hill filed Chapter 7 bankruptcy in 1992 and asserted homestead exemption. Following lower courts' rulings

upholding the exemption, the Eleventh Circuit Certified the following question:

> "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)

The Florida Supreme Court answered in the affirmative. The homestead was held exempt because nothing tended to show the $650,000 was not lawfully obtained by him and nothing tended to show egregious conduct that was the trial court's declaration of general considerations of right or justice as applied to particular circumstances of a case. His intent to hinder, delay or defraud was held irrelevant because that is not an exception to the homestead exemption afforded by Article X, §4a, Florida Constitution.

The 2023 Judgment is Not an Exception to the Homestead Exemption

The clear fallacy is Plaintiffs' focus on the statutory remedy they achieved instead of the lawful acquisition of the Funds used to purchase the Property. The Plaintiffs remedy, a judgment for a transfer in violation of

F.S.§726.105(1)(a), is not an exception recognized to the exemption provided by Article X, §4a, Florida Constitution.

Plaintiffs Cite Inapt Cases

Plaintiffs cite 5 cases they assert support their claim for an equitable lien. **All of those cases are examples of use of funds not lawfully acquired:**

1. *Palm Beach Savings & Loan Ass'n. v. Fishbein,* 619 So.2d 267 (Fla. 1993):

> Here, the homestead was owned by a husband and wife and was encumbered by 3 valid mortgages. While the spouses were engaged in a divorce, the husband obtained a $1.2 million loan secured by a new mortgage where **he forged the signature** of the wife. Nine Hundred Thirty Thousand ($930,000) Dollars of the proceeds was used to pay off the existing mortgage and taxes. The husband made a property settlement with the wife agreeing to buy her a new home for $275,000 and to pay her another $225,000 in exchange for her interest in the homestead. As collateral for his promise the husband provided to the wife's attorney a quitclaim deed to the homestead representing the property was free of liens

except those of his mother and sister. The wife vacated the premises, but the husband failed to buy her a new house and did not pay her the $225,000 as agreed. In the meantime, the new mortgage went into default, the bank foreclosed and the wife moved back into the homestead. The matrimonial judge set aside the property settlement agreement for fraud in the procurement and awarded the homestead to the wife.

In the foreclosure proceeding the parties stipulated the property was a homestead, that the wife had not abandoned her interest and the mortgage could not be foreclosed, but the trial court held that mortgagee had an equitable lien as the funds had been used to satisfy existing mortgages and taxes. On appeal the 4th DCA, in a split decision, reversed imposition of the equitable lien reasoning that the wife was innocent of wrongdoing. The Supreme Court in a 4-3 split decision reversed holding that the bank was subrogated to the positions of the prior mortgagees who were paid off and that the wife therefore stands in no worse position than she had if the fraud had not occurred. Clearly this was an egregious set of circumstances involving fraud that was the basis to put the wife in the same position she had been based on her prior written

agreements with the mortgagees whose mortgages were satisfied. The Plaintiffs cannot claim and do not allege Harley N. Kane or Michelle J. Kane forged anything nor committed any tort damaging the Plaintiffs.

2. *Jones v. Carpenter*, 106 So. 127 (Fla. 1925):

This case involved a fraudulent withdrawal by Carpenter, the president of a bankrupt company, used by him to improve his homestead. Jones, the trustee in bankruptcy, was awarded an equitable lien as **the funds were traced to the homestead and because those funds were procured through fraud.** In the instant case, the funds embodied in the Transfer were not procured by fraud as they were the proceeds of legal fees lawfully earned. Plaintiffs cannot show nor do they contend that Harley N. Kane or Michelle J. Kane derived the settlement funds by way of fraud.

3. *Craven v. Hartley,* 135 So. 899 (Fla. 1931):

This case involves application of then Section Two, Article XI of the Florida Constitution and whether an oral contract for a loan of $625 used toward purchase of a homestead in exchange for a

promise to execute a mortgage as security upon purchase of the land was enforceable to establish an equitable lien where the promisor breached the agreement to execute the mortgage lien. At the time the agreement was made the promisor was a married woman. Her husband subsequently passed and she was thereupon head of a family. The parties agreed that if the then Section Two, Article XI applied, then the wife who had borrowed the $625 to finish purchasing the property and accordingly the land was subject to the lien for the funds used to purchase it. The case has no application here as the funds used to purchase the instant Property were not proceeds obtained from the Plaintiffs to be used for the purchase. Instead, the funds used were lawful earnings derived in circumstances not involving the Plaintiffs.

4. *LaMar v. Lechlider,* 185 So. 833 (Fla. 1939):

   This case did not involve a fraudulent transfer. Rather, it involved an equitable interest in land where the aggrieved party had provided funds used to improve the homestead with the understanding the lenders were acquiring an interest in it. That is not the circumstances here. Again, nothing was obtained from

the Plaintiffs to acquire the instant property. The funds used were lawful earnings.

5. In *Sonneman v. Tuszynski*, 191 So, 18 (Fla. 1939), the court observed:

> It may be reasonably inferred from the testimony adduced in this case that the money advanced by the plaintiff to the defendant was used by him in purchasing the tourist camp near Tampa during the month of January, 1934. Her services and labor were factors that aided the defendant in accumulating the money placed into the tourist camp and it appears from the evidence that an equitable lien exists in her behalf on the tourist camp property for the money advanced and the work and labor by her performed for the defendant.

Sonneman v. Tuszynski, 139 Fla. 824, 830 (Fla. 1939)(Emphasis added).

The Plaintiffs allege nothing suggesting they provided funds to acquire the subject homestead with an understanding they would acquire an interest in it. The citation is inapt.

The situation in *Havoco* is precisely the situation we have here where none of the funds used to acquire the homestead were unlawfully derived and none were obtained from the Plaintiffs.

In 2009, Harley N. Kane filed Chapter 7 bankruptcy. All his non-exempt assets were surrendered to the trustee. The bankruptcy terminated

December 31, 2014 without a discharge. Hence, nothing remained in the hands of Harley N. Kane of any non-exempt assets obtained from the benefit bestowed by the Plaintiffs in 2004.

The Plaintiffs ignore the holding in *Havoco* relying instead on inapt cases. The Kanes used funds they lawfully acquired through their labors to purchase their homestead. Similarly, in *Havoco* funds not shown unlawfully obtained by Hill or in circumstances involving fraud or egregious conduct in obtaining them were used to purchase his homestead that entitled him to the homestead exemption notwithstanding his $15,000,000 indebtedness to Havoco.

Harley N. Kane's prior indebtedness to the Plaintiffs did not transform his lawful ownership of non-exempt funds into funds unlawfully derived nor has any court found use of the Funds to purchase the Property to be "fraud or egregious conduct." Again, Havoco holds such use of funds lawfully derived are not an exception to the protections afforded by Sec. 4a, Article X, Florida Constitution.

The other district court of appeals cases Plaintiffs cite are similarly inapt. In *Randazzo* the former wife duped her former husband by using

proceeds of her martial settlement agreement to purchase a new homestead:

> **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.* at 1028.
>
> In the case before us, the parties voluntarily entered into a marital settlement agreement which was then approved by the court and incorporated into the final judgment of dissolution. In disregard of the final judgment, the Former Wife failed to pay, or make any attempt to pay, the $190,000 equitable distribution to the Former Husband within the agreed upon time frame. Furthermore, the Former Wife failed to abide by the procedures set forth in the marital settlement agreement for obtaining an extension of time to pay the equitable distribution. As set forth in the magistrate's report, the Former Wife then represented that a sale on the marital residence was pending and that the Former Husband would be paid from the sale proceeds. After the wife filed for bankruptcy and stayed the dissolution proceedings, she sold the residence, and used the sale proceeds to purchase a new homestead property. In blatant disregard of her previous representations, no payment was made to the Former Husband.

Randazzo v. Randazzo, 980 So. 2d 1210, 1212-13 (Fla. Dist. Ct. App. 2008) (emphasis added).

The Former Wife's misrepresentations, egregious conduct and breach of the marital settlement agreement was adequately demonstrated. There are no such representations and no trickery done by the Kanes here who merely used their lawful earnings distributed to them to purchase their homestead in transactions not involving the Plaintiffs. *Randazzo* is inapt.

Citation of *Zureikat v. Shaibani*, 944 So.2d 1019 (Fla.5th DCA 2006) is similarly inapt. The wrong done to the Plaintiffs whereby they acquired their 2008 judgment was done in 2004. None of the funds Harley N. Kane then acquired without paying fair compensation was involved in his 2016 purchase of the homestead at issue. Zureikat represented to Shaibani that he was a licensed broker and offered to assist Shaibani in the purchase of property in Orange County, Florida. Shaibani loaned Zureikat $200,000 with the understanding the funds were to be used as a deposit for Shaibani's purchase. Instead, Zureikat said he used the money to pay off preexisting debt and that he lost the rest in the stock market. Shaibani sued on a promissory note and for fraud in the inducement. Shaibani obtained a judgment for $200,000 and commenced supplementary proceedings alleging Zureikat had transferred funds to his wife and children who were impleaded as defendants. In discovery it was learned that Zureikat had actually deposited Shaibani's money in an undisclosed bank account and that the funds were used to purchase property that became Zureikat's homestead. The trial court's imposition of an equitable lien was upheld. Again, *Zureikat* merely stands for the proposition that fraud and trickery to obtain the funds used to purchase a homestead will not be condoned. The instant case is not the same. The Kanes' 2016 earnings received as exempt

distribution from a member of their PLLC was not obtained by fraud or trickery. The treachery in *Zureikat* is not present here.

Conclusion

A FUFTA avoidable transfer is not the type of fraud to support any of the exceptions to the constitutionally protected homestead. *Haveco, supra.* None of the cases cited by the Plaintiffs support this conclusion.

The Plaintiffs' 2023 judgment filed in 2023 does not attach as a lien encumbering the Property as it was owned by the Kanes as TBE because that judgment was not based on a written contract, mistake or misrepresentation and because a mere transfer of non-exempt funds to purchase a homestead is not an exception to the exemption afforded by Article X, §4a, Florida Constitution.

These Plaintiffs are attempting to mislead the Court by conflating a statutory avoidable transfer with common law fraud. They are not the same and former does not support an exception to the homestead protection whereas, the latter might.

The Plaintiffs mischaracterize their TBE judgment as "the Fraud Judgment." **The Plaintiffs did not sue for and obtained no judgment for common law fraud.** They succeeded with a suit brought pursuant to F.S.

§726.105(1)(a) to avoid the Transfer. The Transfer was made with funds lawfully obtained through the practice of law in transactions not involving the Plaintiffs and not involving fraud or egregious conduct. The Transfer is exactly the same type the Florida Supreme Court addressed in *Havoco of America v. Hill,* 790 So.2d 1018 (Fla. 2001) wherein it held a residence of a judgment debtor was nevertheless exempt from levy as a homestead and that the debtor's intent in making the transfer at issue was irrelevant as such transfer was not an exemption set forth in the protections afforded by Article X, §4a, Florida Constitution.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-service to all interested parties on this 1st day of April, 2025.

Harley N. Kane

By: /s/ Harley N. Kane
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