

**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.

AMENDED JOINT PRETRIAL STIPULATION

(Pretrial Conference: October 2, 2024; Trial Period: October 21, 2024 - November 1, 2024)

Pursuant to this Court's April 9, 2024 *Order Scheduling Case for Trial and Setting Pretrial Procedures* and Fla.R.Civ.P. 1.200, the undersigned submit this Joint Pretrial Stipulation. This document supersedes all previous pretrial stipulations filed by any party in connection with the earlier June 2024 trial setting for this case.

The pretrial conference is set for October 2, 2024. The case is set for nonjury trial on the two-week trial calendar commencing October 21, 2024.

Defendants Michelle and Harley Kane join in this stipulation in its entirety, except in the limited instances noted herein in **red font**.

SHORT, CONCISE DESCRIPTION OF CASE

This is an action to establish and foreclose an existing judgment lien as an equitable lien against residential real estate (the “Tavernier Property”) in Tavernier, Florida. Defendants Harley N. Kane and Michelle J. Kane, as tenants by the entireties (collectively “the Kanes”) are the record owners of the Tavernier Property.

Plaintiffs hold an unpaid and duly recorded April 2023 judgment (“2023 Judgment”) against the Kanes in their capacity as joint tenants by the entireties, in the amount of \$2,837,725.32. The 2023 Judgment was entered pursuant to a jury verdict and included a finding that a certain 2015 transfer in the amount of \$2,037,500 to the Kanes was an avoidable fraudulent transfer that Harley Kane had made with intent to hinder, delay, or defraud Plaintiffs in their collection of an earlier 2008 judgment against him.

The 2023 Judgment was not granted against Michelle Kane or Harley Kane in their individual capacities. The trial court in that case denied Plaintiffs’ request to include their Social Security numbers in the body of the judgment.

Plaintiffs seek to foreclose their judgment lien against the Tavernier Property. They have named as defendants the Kanes (the record owners of the Property) and two other parties (Shechter & Everett, LLP, and David L. Manz Professional Association d/b/a The Manz Law Firm) who appear of record as asserting liens against the Tavernier Property. Plaintiffs assert that the claims of all defendants are inferior in priority to Plaintiffs’ judgment lien and are subject to foreclosure. **[Harley Kane objects to the use of the term “judgment lien” in this paragraph**

on the ground that “the jury verdict did not award any lien and a party cannot simply declare themselves as having a lien.”]¹

The funds used to purchase the Tavernier Property were originally generated by a settlement, by the Kanes’ law firm, of hundreds of cases with the various State Farm Insurance Companies. Plaintiffs did not have any interest or involvement with any of those law suits. Plaintiffs do not contend that the settlement of any of those cases was in any way improper, illegal, or immoral.

The Kanes contend that the Tavernier Property is exempt from foreclosure by Plaintiffs because it constitutes Harley Kane’s homestead. Plaintiffs contend that, pursuant to settled caselaw, the homestead exemption does not apply because the Kanes have acknowledged that the Tavernier Property, having been purchased in a cash transaction using the segregated and uncommingled funds received in the avoided fraudulent transfer, was acquired through egregious or fraudulent conduct. Plaintiffs accordingly assert entitlement to equitable lien on the Tavernier Property in the amount of their unpaid judgment.

The Kanes also contend that their recent dissolution of marriage on March 14, 2024 converts their ownership of the Tavernier Property from a tenancy by the entireties to a tenancy in common, and that this defeats Plaintiffs’ lien on the Tavernier Property. Plaintiffs dispute this contention on the merits and also object to it because it has not been pled. **[Harley Kane objects to the use of the term “lien” in this paragraph on the ground that “the jury verdict did not award any lien and a party cannot simply declare themselves as having a lien.”]**

¹ In response to this contention, whenever asserted by Mr. Kane herein, Plaintiffs contend that the recorded judgment creates a lien pursuant to §55.10, Fla. Stat.

**CONCISE STATEMENT OF FACTS WHICH ARE ADMITTED AND WILL
REQUIRE NO PROOF AT TRIAL**

1. The property at issue in this action (“Tavernier Property”) is identified as follows:

Lot 234, HAMMER POINT PARK, according to the plat thereof,
recorded in Plat Book 6, Page 35, of the Public Records of Monroe
County, Florida

Parcel Identification Number: 00480111-023400.
and has the address of:

107 Hilson Ct., Tavernier, FL 33070.

2. This Court has jurisdiction over this action.

3. Venue for this action lies in Monroe County, Florida.

4. Harley N. Kane and Michelle J. Kane were married in 2010.

5. Harley N. Kane and Michelle J. Kane acquired the Tavernier Property as tenants
by the entireties and owned the property of record in that capacity at all relevant times through
today.

6. Harley Kane currently resides at the Tavernier Property.

7. **[NOTE: Defendant Harley Kane disputes the relevance of this paragraph,
and contends that its probative value is outweighed by its prejudice]:** At all relevant times
between 2004 and 2016, Harley Kane was a practicing lawyer in the State of Florida.

8. **[NOTE: Defendants Harley and Michelle Kane dispute the relevance of this
paragraph]:** At all relevant times, Michelle Kane has been, and remains, a practicing lawyer in
the State of Florida.

9. Defendant, David L. Manz Professional Association d/b/a The Manz Law Firm
(“Manz”) obtained a charging lien in the principal amount of \$21,607.50 against “all properties

and assets of Harley Kane, now and in the future,” which was recorded on December 17, 2021 in the Public Records of Monroe County, Florida.

10. Defendant, Shechter & Everett, LLP (“Shechter”), obtained a charging lien in the principal amount of \$17,760.06 upon “all of Michelle Kane’s right, title and interest she may have or which she may obtain” in several properties, including the Tavernier Property, which was recorded on August 4, 2023 in the Public Records of Monroe County, Florida.

To the extent that Shechter possesses a lien or encumbrance of any description on the Tavernier Property, such lien is subordinate and inferior to (i) any lien “(Judgment Lien)” arising from the 2023 Judgment described herein and to (ii) any equitable lien (“Equitable Lien”) on the Tavernier Property established in this action in favor of Plaintiffs. **[Harley Kane objects to the use of the term “judgment lien” in this paragraph on the ground that “the jury verdict did not award any lien and a party cannot simply declare themselves as having a lien.”]**

11. Shechter consents to the entry of a judgment on Counts I and II of this action, foreclosing the Judgment Lien and Equitable Lien and, specifically, foreclosing any lien or interest that Shechter may possess against the Property, for any amounts established by Plaintiffs in this action.

12. On April 21, 2023, Plaintiffs obtained a money judgment (“2023 Judgment”) against Harley N. Kane and Michelle J. Kane, as tenants by the entireties, in the amount of \$2,837,725.32. The 2023 Judgment was not granted against Michelle Kane or Harley Kane in their individual capacities. The trial court in that case denied Plaintiffs’ request to include their Social Security numbers in the body of the judgment.

13. The 2023 Judgment was duly recorded in the Public Records of Monroe County, Florida on May 8, 2023, at Official Records Book 3224, Page 509.

14. Plaintiffs hold a separate 2008 judgment (“2008 Judgment”) against Harley Kane, individually, in the original principal amount of \$2,000,000.00, with a current outstanding balance in excess of \$4.1 million.

15. In an attempt to collect on the 2008 Judgment, Plaintiffs initiated proceedings supplementary to execution (“Supplementary Proceedings”) before the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (“Palm Beach Court”).

16. **[NOTE: Harley Kane objects to this paragraph on the grounds of relevance and double hearsay]:** On April 6, 2023, in the Supplementary Proceedings, a jury expressly found that the funds that Harley Kane and Michelle Kane used to acquire the Tavernier Property were acquired by them, as joint tenants by the entireties, via an avoidable fraudulent transfer.

17. **[NOTE: Harley Kane objects to this paragraph on the grounds of relevance and double hearsay]:** Specifically, the jury found that, in 2015, Harley Kane personally received, through an alter ego entity, a law firm profit distribution in the amount of \$2,037,500.00 (the “Funds”), and transferred these funds to himself and Michelle Kane, as tenants by the entireties, with the intent to hinder, delay and defraud Plaintiffs in the collection of their 2008 Judgment.

18. Pursuant to a jury verdict, the Palm Beach Court entered the 2023 Judgment. Pursuant to §§ 726.108(1) and 726.109(2), Fla. Stat., the Palm Beach Court avoided the transfer of the Funds to Michelle Kane and Harley Kane, as tenants by the entireties. It also entered a money judgment against Harley N. Kane and Michelle J. Kane, as tenants by the entireties, in the amount of \$2,837,725.32 (the amount of the fraudulently transferred Funds, plus pre-judgment interest).

19. Michelle Kane and Harley Kane acquired the Tavernier Property via an all-cash transaction funded exclusively from a bank account (“TBE Account”) that they owned as joint tenants by the entirety.

20. The after-tax portion of the Funds was used for the exclusive purpose of acquisition, repair, and closing costs associated with the Tavernier Property.

21. As of April 21, 2023, Harley and Michelle Kane, as joint tenants by the entirety, are indebted to Plaintiffs in the principal amount of \$2,837,725.32, exclusive of late charges and post-judgment interest.

22. Any disputed issues related to taxation of costs or attorneys’ fees shall be separately handled at a hearing on a mutually convenient date to be scheduled after trial.

CONCISE STATEMENT OF FACTS WHICH REMAIN TO BE LITIGATED

1. Plaintiff contends that the only funds ever deposited into the TBE Account were the Funds that were the subject of the avoided fraudulent transfer from Harley Kane. Michelle Kane contests this fact, and contends that the funds used for the purchase were received for services performed, and do not represent illegally or ill-gotten gains. Plaintiff contends that Ms. Kane is collaterally estopped and otherwise barred by the 2023 Judgment from asserting this position. Defendant Harley Kane contends that the use of collateral estoppel is inappropriate because the Plaintiffs consistently took the position in the earlier action that the “homestead issue and all its elements” were not being litigated there.

2. **[NOTE: Defendants Michelle and Harley Kane dispute this paragraph, contest its relevance, contend that it is hearsay, contend that its probative value is outweighed by its prejudice, and do not stipulate to its inclusion in this stipulation]:**
Plaintiff contends that the U.S. Bankruptcy Court held that the 2008 Judgment was

nondischargeable because it arose out of a “willful and malicious injury” that Harley Kane inflicted upon Plaintiffs. The Bankruptcy Court also held that Harley Kane was not entitled to discharge of *any* of his debts because of his post-judgment fraudulent conduct while a chapter 7 debtor. *In re Kane*, 470 B.R. 902 (Bankr.S.D.Fla. 2012). The U.S. District Court and U.S. Court of Appeals affirmed these judgments, and the U.S. Supreme Court denied certiorari.

3. **[NOTE: Defendants Michelle and Harley Kane dispute this paragraph, contest its relevance, contend that it is hearsay, contend that its probative value is outweighed by its prejudice, and do not stipulate to its inclusion in this stipulation]:** Plaintiff contends that, on October 6, 2016, the Supreme Court of Florida disbarred Harley Kane as a direct result of the same conduct that gave rise to Plaintiffs’ 2008 Judgment against him. *The Florida Bar v. Kane*, 202 So.3d 11 (Fla. 2016). In addition to finding that Harley Kane had violated multiple ethical rules, the court agreed with the referee’s finding that his conduct “was dishonest, deceitful, and contrary to honesty, and justice.” *Id.* at 24.

4. Defendant Michelle Kane contends that the parties were divorced in Case No. 20-DR-000122-M, and that the trial court found in that case (i) that the Tavernier Property is homestead, and (ii) that the debt reflected in the 2023 Judgment was not a marital debt but only a debt of Harley Kane. Plaintiffs do not dispute that the parties are now divorced or that the amended divorce judgment made those findings. Plaintiff contends, and Defendant Michelle Kane disagrees, that these findings are not binding in the instant action.

STATEMENT OF UNIQUE LEGAL ISSUES FOR TRIAL

1. Should the Court adjudicate that the 2023 Judgment constitutes an equitable lien on the Tavernier Property that defeats the Kanes' claim that the property is exempt homestead?

2. Assuming, arguendo, that the 2023 Judgment is deemed an equitable lien on the Tavernier Property, is the Plaintiffs' equitable lien on the Tavernier Property superior in priority to any right, title, and interest claimed by any of the Defendants?

3. Is Defendant, David L. Manz Professional Association d/b/a The Manz Law Firm ("Manz") charging lien in the principal amount of \$21,607.50 against "all properties and assets of Harley Kane, now and in the future," recorded on December 17, 2021 in the Public Records of Monroe County, Florida, superior to the Plaintiffs' 2023 judgment and superior to alleged equitable lien?

4. Should the Court enter a foreclosure judgment on Plaintiffs' equitable lien and a judicial sale of the Tavernier Property?

5. Does the recent dissolution of the Kanes' marriage convert their ownership of the Tavernier Property into a tenancy in common and, if so, does this nullify or otherwise defeat Plaintiffs' claimed judgment lien against the Property? ²

6. Is the instant action a statutory cause of action, or is it based on a statutory cause of action, and, if so, does the constitutional homestead exemption trump such a cause of action?

7. Does the homestead exemption prevent creditors such as Plaintiffs from executing against homestead property?

² This issue was identified by Michelle Kane. Plaintiffs object to this defense as not having been pled.

TRIAL EXHIBITS

Plaintiffs' trial exhibits to be admitted without objection are listed on the attached Schedule A-1. Plaintiffs' trial exhibits for which objections have been noted are listed on the attached Schedule A-2. Defendant Michelle Kane's trial exhibits, and Plaintiffs' objections thereto, are listed on the attached Schedule B. No other objections were noted by any party. No other party has submitted any trial exhibits.

TRIAL WITNESSES

Plaintiffs' trial witnesses are listed on the attached Schedule C.

Defendant Michelle Kane's trial witnesses are listed on the attached Schedule D.

No other party identified any trial witnesses.

STATEMENT REFLECTING OBJECTIONS TO SPECIFIC PORTIONS OF VIDEO DEPOSITIONS, TESTIMONY, OR VIDEO EXHIBITS WHICH MAY BE OFFERED IN EVIDENCE AT TRIAL

No video depositions or video exhibits will be offered at trial. Plaintiffs may offer the depositions of Michelle Kane and Harley Kane, both taken on September 7, 2023 pursuant to the designation attached as Schedule E. None of the parties noted an objection to these designations.

LIST OF ANY UNDISPOSED MATTERS TO BE HEARD AT THE PRETRIAL CONFERENCE

There are pending competing motions for summary judgment.³ These had been specially set for hearing on August 15, 2024, but that hearing was cancelled due to illness of counsel. These motions will be mooted by the Court's disposition of the case following the bench trial.

³ These are (i) *Plaintiffs' Motion for Summary Judgment* filed July 3, 2024; and (ii) *Defendant Michelle J. Kane's Motion for Final Summary Judgment* filed July 9, 2024.

Plaintiffs' undersigned counsel had long ago arranged a trip to California in connection with his wife's birthday and is scheduled to return to Florida late on Monday, October 21. Accordingly, Plaintiffs' counsel would prefer to try the case any day during the trial period except October 21 and 22. That said, Plaintiffs' counsel will rearrange his schedule if those two days are the only available days.

Dated: September 26, 2024.

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 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 shellybythesea16@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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SCHEDULE A-1

PLAINTIFFS' TRIAL EXHIBITS TO BE ADMITTED WITHOUT OBJECTION

Ex. No.	Description
1	Order Granting Charging Lien to Manz Law Firm
2	Order Granting Charging Lien to Shechter & Everett

SCHEDULE A-2

PLAINTIFFS' TRIAL EXHIBITS FOR WHICH THERE ARE OBJECTIONS

Ex. No.	Description	Objection
3	Recorded Amended Final Judgment in Palm Beach Circuit Court Case 50-2017-CA-013497-XXXX-MB-AO (Stewart Tilghman v. Kane)	Objection by Harley Kane: Hearsay
4	Final Judgment in Palm Beach Circuit Court Case 50-2004-CA-006138-XXXX-MB-AO (Stewart Tilghman v. Kane)	Objection by Harley Kane: Hearsay
5	Jury Verdict in Palm Beach Circuit Court Case 50-2017-CA-013497-XXXX-MB-AO (Stewart Tilghman v. Kane)	Objection by Harley Kane: Hearsay
6	<i>In Re Kane</i> , 470 B.R. 902 (Bankr.S.D.Fla.2012) and orders and opinions affirming same	Objection by Michelle Kane: Relevance; hearsay Objection by Harley Kane: Hearsay; prejudicial effect far outweighs probative value
7	<i>The Florida Bar v. Kane</i> , 202 So.3d 11 (Fla. 2016).	Objection by Michelle Kane: Relevance; hearsay Objection by Harley Kane: Hearsay; prejudicial effect far outweighs probative value

SCHEDULE B

DEFENDANT MICHELLE J. KANE'S TRIAL EXHIBITS

Ex. No.	Description	Objection
A	Amended Final Judgment Monroe County Circuit Court Case 20-DR-000122-M	Objection by Plaintiffs: Relevance; hearsay
B	Final Judgment Monroe County Circuit Court Case 20-DR-000122-M	Objection by Plaintiffs: Relevance; hearsay

SCHEDULE C

PLAINTIFFS' TRIAL WITNESSES

William C. Hearon, 1 SE 3rd Ave, Ste. 3000, Miami, FL 33131 (Mr. Hearon will testify only as to computation of the balance due on Plaintiffs' claim at the time of trial, in the event that the parties are unable to stipulate to same).

Harley N. Kane, 107 Hilson Ct., Tavernier, FL 32070

Michelle J. Kane, 145 1st Road, Key Largo, FL 33037

Plaintiffs reserve the right to call any witness listed by Defendants, and any rebuttal witnesses.

Plaintiffs may introduce deposition testimony of witnesses to the extent allowed by the Florida Rules of Civil Procedure and the Florida Evidence Code, and the orders of this Court.

SCHEDULE D

DEFENDANT MICHELLE KANE'S TRIAL WITNESSES

Harley N. Kane, 107 Hilson Ct., Tavernier, FL 32070

Michelle J. Kane, 145 1st Road, Key Largo, FL 33037

SCHEDULE E

PLAINTIFFS' DESIGNATION OF DEPOSITION TESTIMONY

Deposition	Page and Line	Objections (identifying objecting party and grounds for objection)
Deposition of Michelle Kane dated September 7, 2023		
	Pages 1-5	
	Page 6, lines 8-10	
	Page 28, lines 7-17	
	Page 29, line 4 – Page 31, line 25	
	Page 34, lines 14-21	
Deposition of Harley Kane dated September 7, 2023		
	Pages 1-5	
	Page 25, line 8 – Page 26, line 3	