

App. 1

**Third District Court of Appeal
State of Florida**

Opinion filed November 21, 2018.
Not final until disposition of timely
filed motion for rehearing.

No. 3D18-1117
Lower Tribunal No. 15-27596

Lizette Olachea, etc.,
Appellant,

vs.

Grace Olachea,
Appellee.

An Appeal from the Circuit Court for Miami-Dade
County, John W. Thornton, Jr., Judge.

Nancy C. Wear, for appellant.

Corona Law Firm, P.A., and Ricardo Corona and
Ricardo M. Corona, for appellee.

Before EMAS, SCALES and LINDSEY, JJ.

PER CURIAM.

Lizette Olachea, the defendant below, appeals entry of final judgment in favor of Grace Olachea, the plaintiff below, after a bench trial on claims for conversion, forgery, unjust enrichment, breach of fiduciary duty and a constructive trust. In the final judgment,

App. 2

the lower court awarded Grace Olachea \$419,750.43, plus interest, and imposed an equitable lien on the primary residence of Lizette Olachea and her husband, Gabor Simmonds. We affirm entry of the final judgment and imposition of the equitable lien without discussion. See Palm Beach Sav. & Loan Ass'n v. Fishbein, 619 So. 2d 267, 270-71 (Fla. 1993) (confirming that an equitable lien may be imposed on homestead property where funds obtained through fraud were used to purchase the homestead, and even where one spouse was not a party to the fraud).¹

Affirmed.

¹ We note that because Mr. Simmonds was neither a party to the proceedings in the lower court, nor a participant in this appeal, our decision is without prejudice to – and we express no opinion regarding – any defense Mr. Simmonds might assert to any subsequent foreclosure proceedings on the subject equitable lien.

App. 3

IN THE CIRCUIT COURT
OF THE JUDICIAL
CIRCUIT IN AND
FOR MIAMI-DADE
COUNTY, FLORIDA

GRACE OLAECHEA,
Plaintiff,

GENERAL JURISDICTION
CASE NO.
2015-027596-CA-01

vs.

LIZETTE OLAECHEA, AKA
LIZETTE SIMMONDS,
Defendant, /

FINAL JUDGMENT

(Filed Feb. 22, 2018)

THIS MATTER was tried before this Honorable Court on February 16, 2018. Having considered the evidenced [sic], having weighed the credibility of the testimony presented, and having heard the argument for Plaintiff Grace Olachea (mother of defendant) and Defendant Lizette Olachea aka Lizette Simmonds (daughter of plaintiff), this Court FINDS, ORDERS, AND ADJUDGES:

FINDINGS OF FACT

1. The Plaintiff mother was the sole beneficiary of a life insurance policy from New York Life Insurance owned by Gertrud Ida Martha Wunderlich (hereinafter "Decedent").

App. 4

2. On August 3, 2013, the Decedent passes and the Plaintiff was entitled to collect the sum of \$419,750.43 in the form of two (2) checks: 1) \$71,450.27 and 2) \$348,300.16.
3. On or about August 9, 2013, Defendant daughter took Plaintiff mother to a Miami Lakes branch of Chase Bank and as a result Plaintiff was added to an existing account belonging to Defendant, to-wit: Checking Account #0670.
4. Defendant testified that the Plaintiff did not want to add the Defendant to the Plaintiffs bank account.
5. Plaintiff reasonably relied on Defendant's misrepresentations to her detriment due to the close and trusting relationship with Defendant as Mother and Daughter.
6. On or about August 16, 2013, Defendant intercepted the two (2) New York Life Insurance checks, in the sum of \$419,750.43, prior to reaching Plaintiff.
7. The Defendant testified that the check was never delivered to the Plaintiff and the Defendant never gave the check to the Plaintiff.
8. On or about August 22, 2013, Defendant wrote Plaintiff's name on the back of the check and deposited the two (2) New York Life Insurance checks into their joint Checking Account #0670.
9. On August 22, 2013, Defendant transferred \$419,000.00 to a savings account, ending in

App. 5

#7922, which was in the sole name of the Defendant daughter.

10. On August 27, 2013, Defendant withdrew \$400,000.00 from savings account ending in #7922.
11. From Plaintiff's funds, Defendant used \$253,000.00 to purchase real property in Broward County, more particularly described as: BONAVENTURE LAKES ADD 2 91-32 B LOT 6 LESS S 10.74 BLK 15 AKA: PARCEL A aka 551 S.W. 168th Terr., Weston, FL 33326.
12. The Plaintiff filed the instant action on November 27, 2015 with an Amended Complaint filed on March 17, 2016.

COUNT I: CONVERSION

13. Plaintiff mother has met her burden in establishing the elements of Conversion in order to recover from Defendant daughter as to Count I of this cause of action.
14. Defendant wrongfully obtained the New York Life Insurance checks with intent to exercise ownership that was inconsistent with the Plaintiffs right of possession by: 1) fraudulently intercepting Plaintiff's check, 2) forging Plaintiff's name to indorse the checks without Plaintiff's consent and 3) improperly transferring the funds to a private savings account that solely belonged to Defendant and immediately withdrawing \$400,000.00 as soon as the funds were available for withdrawal. See

App. 6

Ginsberg v. Lennar Florida Holdings, Inc., 645 So. 2d 490, 500 (Fla. 3d DCA 1994).

15. The record evidence provides that: 1) Defendant unequivocally forged Plaintiff's name through the undisputed testimony of Defendant and through Ms. Dianne C. Flores, a handwriting expert witness, 2) the New York Life Insurance checks was [sic] never received by Plaintiff and was received by Defendant as stated through the testimony of Defendant, and 3) Defendant has provided no credible evidence in the record which shows that Plaintiff consented to Defendant's ownership of the two checks or Defendant's forgery of Plaintiffs name.
16. Defendant has failed to provide any credible record evidence establishing the elements of a gift: 1) present donative intent; 2) delivery; and 3) acceptance by the donee. *See Sullivan v. American Telephone and Telegraph Company, Inc., et al*, 230 So. 2d 18 (Fla. 4th DCA 1969).

COUNT II: FORGERY

17. Plaintiff has met her burden in establishing the elements of forgery in order to recover from Defendant as to Count II of this cause of action.
18. It is undisputed that in forging Plaintiff mother's endorsement for the two (2) New York Life Insurance checks, Defendant daughter made a writing which falsely purports to

App. 7

be the writing of Plaintiff and that it was made with the purpose of defrauding the Plaintiff and obtaining funds which rightfully belonged to the Plaintiff as the beneficiary of the New York Life Insurance. *See Bennett v. Mortgage Elec. Registration Sys., Inc.*, 230 So. 3d 100, 107 (Fla. 3d DCA 2017).

19. The record evidence provides that Defendant unequivocally forged Plaintiff's name through the undisputed testimony of assent to the forgery by Defendant.
20. Furthermore, Dianne C. Flores, a handwriting expert witness, provided expert testimony, after reviewing, analyzing and comparing handwriting document specimens of the Plaintiff and Defendant, which unequivocally identified Defendant as creating the writing on the disputed New York Life Insurance checks.
21. Defendant has failed to provide any credible record evidence that Plaintiff consented or authorized Defendant's forgery of Plaintiff's name. *See National Bank of Melbourne and Trust Co. v. Batchelor*, 266 So. 2d 185 (Fla. 4th DCA 1972).

COUNT III: UNJUST ENRICHMENT

22. Additionally, Plaintiff has met her burden in establishing the elements for unjust enrichment in order to recover from Defendant as to Count III of this cause of action.
23. It is undisputed that: 1) Plaintiff conferred a benefit to Defendant by Defendant intercepting

App. 8

two (2) New York Life Insurance checks and the benefit of the full amount of the funds from the checks; 2) Defendant voluntarily accepted the benefit by forging Plaintiff's endorsement, depositing the checks and retaining the funds by subsequently transferring the funds to a savings account solely in Defendant's name and immediately withdrawing \$400,000.00; and 3) the circumstances of Defendant forging Plaintiff's name without Plaintiff receiving a benefit in return would be inequitable for the Defendant to retain the benefit without paying the value thereof to the Plaintiff. *See Extraordinary Title Services, LLC. v. FLP, Co.*, 1 So. 3d 400 (Fla. 3d DCA 2009).

24. Defendant has failed to provide any credible record evidence establishing the elements of a gift.

COUNT IV: BREACH OF FIDUCIARY DUTY

25. Plaintiff has met her burden in establishing the elements for Breach of Fiduciary Duty in order to recover from Defendant as to Count IV of this cause of action.
26. It is undisputed that a fiduciary relationship of trust and confidence was established between Plaintiff and Defendant due to: 1) Plaintiff and Defendant having a close relationship of mother and daughter; 2) Defendant assisting Plaintiff with reading, reviewing and analyzing documents that were in English for Plaintiff, and 3) Defendant and Plaintiff living with

each other for approximately forty years. *See Gracey v. Eaker*, 837 So. 2d 348 (Fla. 2002).

27. The breach of fiduciary duty was established when Defendant: 1) fraudulently intercepted Plaintiff's New York Life Insurance checks, 2) forged Plaintiff's name on the checks without Plaintiff's consent and 3) improperly transferred the funds to a private savings account that solely belonged to Defendant which the Defendant indisputably immediately withdrew \$400,000.00 of said funds.
28. The record evidence provides that a fiduciary relationship existed between Plaintiff and Defendant through the undisputed testimony of assent by Plaintiff and Defendant.

COUNT V: CONSTRUCTIVE TRUST

29. Plaintiff has met her burden in establishing the elements to impose a Constructive Trust in order to recover from Defendant.
30. It is undisputed that a constructive trust was established due to: 1) an implied promise was made by Defendant to assist Plaintiff during her cancer treatment, 2) Defendant receiving the two (2) New York Life Insurance checks prior to Plaintiffs receipt, 3) a confidential relationship existed as established in Count IV herein; and 4) Defendant has been unjustly enriched as established in Count III herein. *See Saporta v. Saporta*, 766 So. 2d 379 (Fla. 3d DCA 2007).

31. The Florida Supreme Court, in *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018, 1025 (Fla. 2001), recognized an equitable lien on homestead as “a viable remedy for creditors in cases where funds obtained fraudulently were used to produce, invest in or improve a homestead.” *See also Smith v. Smith*, 761 So. 2d 370 (Fla. 5th DCA 2000) (and its discussion of Article X, Section 4 of the Florida Constitution exceptions.)
32. In *Havoco, supra*, the Florida Supreme Court recognized the appropriateness of an equitable lien in cases in which the funds, obtained through fraud or egregious conduct, can be directly traced to the investment, purchase or improvement of homestead. *See also In re Crum*, 294 B.R. 402 (Bkrcty. Ct. M.D. Fla. 2003). *Ryskind v. Robinson*, 302 So.2d 427, 428 (Fla 4th DCA 1974).
33. In the instant case, an equitable lien or constructive trust can be imposed on the Defendant’s property as the evidence was unrefuted that the Defendant used \$253,000.00 from the proceeds of the funds from the two checks to purchase the real property identified as 551 S.W. 168th Terr., Weston, FL 33326.
34. It has been held that an equitable lien may be imposed on homestead exemption even when the husband did not participate in his wife’s fraud. It has been noted that “if the proceeds of Defendant Husband’s fraud can be traced directly to the jointly owned homestead, the court’s ability to impose an equitable lien is

not impaired by the fact that no fraud has been established on the part of Defendant's wife." *In re Crum*, supra at 405.

35. Defendant has failed to provide any credible record evidence establishing the elements of a gift.

Based upon the foregoing, it is hereby ORDERED AND ADJUDGED:

36. For Counts I, II, III, IV, and V, Plaintiff GRACE OLAECHEA shall recover from the Defendant LIZETTE OLAECHEA aka LIZETTE SIMMONDS the total sum of **\$419,750.43 plus pre judgment interest at 4.75% of \$89,748.97 totaling \$509,499.40** which shall bear interest at the statutory rate of 5.53%, for which let execution issue forthwith.
37. Plaintiff GRACE OLAECHEA shall be entitled, and this Court imposes, an equitable lien to be recorded on the primary residence belonging to Defendant LIZETTE OLAECHEA aka LIZETTE SIMMONDS and her husband, GABOR SIMMONDS, for real property 551 S.W. 168th Terr, Weston, FL 33326 as a result of using fraudulent funds rightfully belonging to Plaintiff to purchase the real property. See *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018, 1025 (Fla. 2001) (finding that an equitable lien on homestead is a "viable remedy for creditors in cases where funds obtained fraudulently were used to produce, invest in or improve a homestead.").

App. 12

38. The Court reserves jurisdiction to address post judgment recovery issues relating to this Final Judgment and to address any post judgment motions for attorneys fees and costs.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 02/22/18.

/s/ John W. Thornton
JOHN W. THORNTON
CIRCUIT COURT JUDGE

App. 13

**FINAL ORDERS AS TO
ALL PARTIES SRS
DISPOSITION NUMBER 3**

**THE COURT DISMISSES
THIS CASE AGAINST ANY
PARTY NOT LISTED IN
THIS FINAL ORDER OR
PREVIOUS ORDER(S).
THIS CASE IS CLOSED
AS TO ALL PARTIES.**

Judge's Initials JWT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

Copies Furnished to:

Michelle Ramos, Esq., 3899 NW 7th Street, Second floor, Miami, FL 33126; mramos@coronapa.com civil@coronapa.com; (Counsel for Plaintiff)

Lizette Olachea, 551 S.W. 168th Terr., Weston, FL 33326 (Defendant).

App. 14

Supreme Court of Florida

THURSDAY, MAY 30, 2019

CASE NO.: SC18-2096

Lower Tribunal No(s):

3D18-1117; 132015CA027596000001

LIZETTE OLAECHEA, ETC. vs. GRACE OLAECHEA

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

POLSTON, LABARGA, LAWSON, LAGOA, and LUCK, JJ., concur.

A True Copy

Test:

/s/ John A. Tomasino

John A. Tomasino
Clerk, Supreme Court

[SEAL]

App. 15

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Served:

RICARDO M. CORONA

MICHELLE RAMOS

RICARDO R. CORONA

LIZETTE OLAECHEA

HON. HARVEY RUVIN, CLERK

HON. MERCEDES M. PRIETO, CLERK

HON. JOHN W. THORNTON, JR., JUDGE
