WRIT PETITION APPENDICES

VOLUME ONE

Florida Fourth District Court of Appeals

A-1 through A-105

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 12, 2025

FRANCIS T. GREISER, JR., Appellant(s) v. MARIAN K. GREISER and JOANNE L. DRINKARD, Appellee(s).	**CASE NO. - 4D2025-0233** L.T. No. - CACE23-014503

BY ORDER OF THE COURT:

ORDERED that Appellant's July 3, 2025 motion for rehearing and rehearing en banc is denied. Further,

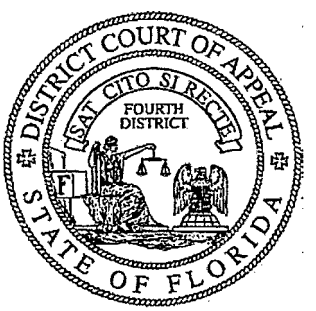
ORDERED that Appellant's July 24, 2025 motion to strike is denied.

Served:
Broward Clerk
Francis T. Greiser, Jr.
Jonathan Benjamin Lewis
John Preston Seiler
Steven A Wahlbrink

RA

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
4D2025-0233
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2025-0233 August 12, 2025



DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

FRANCIS T. GREISER, JR.,
Appellant,

v.

MARIAN K. GREISER and **JOANNE L. DRINKARD,**
Appellees.

No. 4D2025-0233

[June 19, 2025]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jeffrey Levenson, Judge; L.T. Case No. CACE23-014503.

Francis T. Greiser, Jr., Naples, pro se.

John P. Seiler, Steven A. Wahlbrink and Jonathan B. Lewis of Seiler, Sautter, Zaden, Rimes & Wahlbrink, Fort Lauderdale, for appellees.

PER CURIAM.

Affirmed.

WARNER, GERBER and FORST, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

FRANCIS T. GREISER JR.,
Appellant *pro se*,

v.

Case No.: 4D2025- 0233
L.T. No.: CACE-23-14503

MARIAN K. GREISER, and
JOANNE L. DRINKARD.
Appellees.

ON APPEAL FROM A FINAL JUDGMENT ORDER
OF THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

MOTION FOR REHEARING, REHEARING EN BANC, OR, ALTERNATIVELY, A WRITTEN OPINION AND CERTIFICATION OF ISSUES OF GREAT PUBLIC IMPORTANCE

FRANCIS GREISER JR.
Appellant *pro se*
2055 Poinciana Court
Naples, Florida 34110
(954) 696 5822
email: fg210@att.net

Appellant Francis T. Greiser Jr., pursuant to the Florida Rules of Appellate Procedure 9.330 and 9.331, respectfully moves this Court for a rehearing, rehearing *en banc*, or alternatively, a written opinion and certification of a question of great public importance.

PROCEDURAL HISTORY

Trial court Counts I, II, and III involve contract and interference claims related to Florida properties ("Unit 210" and "Unit 214") owned jointly by the Appellant and Appellee Greiser. On May 18, 2018, the Appellant filed a lawsuit against Appellee Drinkard for tortious interference in the U.S. District Court for the Southern District of Florida ("SDFL") under 28 U.S.C. § 1332, alleging damages because the properties were sold without compensation to the Appellant.

In 2019, the defendants' motion to transfer the case to the District Court for the Eastern District of Pennsylvania ("EDPA") was granted. Shortly thereafter, Appellant amended, adding Appellee Greiser as a defendant. On February 2, 2021, EDPA dismissed the case with prejudice, noting the Florida claims could be refiled in state court. On February 10, 2022, the Third Circuit Court of Appeals upheld the dismissal and denial of discretionary supplemental jurisdiction, citing uncertainty over whether the Florida contract claims would meet the $75,000 threshold for federal jurisdiction.

INTRODUCTION

Appellant respectfully argues that the panel's per curiam affirmation ("PCA") conflicts with the following decisions of the U.S. Supreme Court and the Florida Supreme Court, and that full Court review is necessary to ensure consistency in rulings. Appellant also claims that this case presents questions of exceptional importance concerning the fundamental duties of both the trial court and the appellate court to ensure fair proceedings and uphold the integrity of the judicial process, especially for *pro se* litigants.

The PCA dismissed counts II and III with prejudice for violating the statute of limitations ("SOL"), rejecting the "relation back" principle established in Kopel. The tolling for the Florida claims began on May 18, 2018, when the SDFL contract interference claims for Units 210 and 214 were filed against Appellee Drinkard. This also applies to the EDPA amended breach of contract claims against Appellee Marion Greiser, as those EDPA claims—later refiled in the trial court—include the same facts, conduct, damages, and events.

Furthermore, the PCA dismissal of claims II and III also rejected the Artis "stop the clock" tolling doctrine for supplemental jurisdiction state claims transferred from federal to state court. Therefore, the court improperly set aside the holdings of Artis and

Kopel, which should have tolled counts II and III beginning on May 18, 2018, with the filing of Unit 210 and Unit 214 claims in the EDPA, continuing on until the Third Circuit Court denied the Appellant's final appeal on February 10, 2022, plus 30 days as *per* Artis. [1]

I. THE COURT SHOULD GRANT REHEARING, REHEARING *EN BANC*, OR, ALTERNATIVELY, A WRITTEN OPINION.

Appellant respectfully argues that the panel's PCA conflicts with Supreme Court precedent and other decisions from this court. According to Florida Rules of Appellate Procedure 9.330(a)(2)(A), a party may, within fifteen days, file a motion for rehearing "calling an appellate court's attention ... to something the court has overlooked or misapprehended." See Cleveland v. State, 887 So. 2d 362, 364 (Fla. 5th DCA 2004), quoting Goter v. Brown, 682 So. 2d 155 (Fla. 4th DCA 1996), noting "[t]he motion for rehearing is not a vehicle for counsel or the party to continue its attempts at advocacy." Id. at 158.

Moreover, Rule 9.330(a)(2)(D)(ii) provides that when a decision is entered *per curiam* affirmed, a party may request that the court

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[1] Based on the holdings in both Kopel and Artis, the SOL for dismissed trial court claims II and III began when Unit 214 was sold on December 16, 2016, and tolled when the SDFL case was filed on May 18, 2018 (**518** days). The SOL clock resumed on March 11, 2022, and ran until June 7, 2023, when the claims were refiled in state court (**453** days), making the applicable statute of limitations total running time for claims II and III **971** days, equivalent to **2.66** years.

issue a written opinion. *See* Grate v. State, 750 So. 2d 625, 626 (Fla. 1999), citing Jenkins v. State, 385 So. 2nd 1356 (Fla. 1980). "Regardless of how a petition seeking review of a district court decision is styled, this Court does not have jurisdiction to review per curiam decisions rendered without opinion.". Id. at 1359.

Two reasons for *en banc* review are exceptional importance and the need for consistent decisions such as when a trial court decision directly conflicts with a Supreme Court ruling of the same legal issue, which applies here. Article VI of the U.S. Constitution establishes that Supreme Court decisions take precedence in resolving conflicts between federal law (rights under 28 U.S.C. § 1332 diversity jurisdiction) and state law (Florida Statute 95.11). *See* In re Rule 9.331, Etc., 416 So. 2d 1127, 1128 (Fla. 1982) "if intra-district conflict is not resolved within the district courts by en banc decision, totally inconsistent decisions could be left standing, and litigants left in doubt as to the state of law."

If this Court intends to depart from the tolling guidelines established in Kopel, despite the strong similarities with this case, as well as with Artis, then it should do so in an *en banc* opinion, explaining its reasoning for the decision and allowing for further appellate review by the Florida Supreme Court. As it now stands, the

PCA lacks reasoning or explanation, beyond the trial court's in-person motion to dismiss hearing held on October 31, 2024, where the judge without specifics stated, "[w]ell that's your problem because even if it relates back, you still violated" (Initial Brief p.10 ¶1), and then dismissed claims II and III with prejudice, stating, "[y]ou're out of luck, man. I mean, even if it relates back" (IB p.10 ¶2).

A. The Court misapplied the law regarding whether 28 U.S.C. §1332 state claims filed in federal court, which are later denied supplemental jurisdiction, are tolled under Artis to allow refiling of the claims in state court to address the issues on the merits.

Artis v. District of Columbia

1. First, resolving this case is crucial as because it will clarify the limitations of the "stop the clock" tolling application in Artis v. District of Columbia, 138 S. Ct. 594, 598 (2018). If the panel affirmed because Florida Statute 95.11 barred those claims, the decision conflicts with Artis, which permits state claims under 28 U.S.C. §1332 that are denied supplemental jurisdiction in a U.S. District Court to be refiled in state court as a "means of accounting for the fact that a claim was timely pressed in another forum." Id. at 597.

2. In Artis, the court held that the "period of limitations" for dismissed supplemental jurisdiction state claims, which are then refiled in state court, is tolled while the claim remains pending in

federal court and for 30 days after the final dismissal. Consequently, the statute of limitations for the claims of Units 210 and 214 was tolled during their time in federal court and on appeal, plus an additional 30 days of tolling that concluded on March 11, 2022.

3. When tolling ended on March 11, 2022, the Appellant still had nine hundred forty-three (943) days remaining to file claims related to Unit 210 and Unit 214 in state court under a four-year SOL. The Appellant filed the trial court complaint four hundred fifty-three (453) days later, on June 7, 2022. This demonstrates that the Appellant filed his claims within the applicable four-year and five-year SOL periods, as each claim involves the same facts, conduct, damages, and occurrence as the original 2018 SDFL claims.

B. The Court misapplied the law as to whether 28 U.S.C. §1332 state claims filed in federal court, which are later denied supplemental jurisdiction, relate back and are tolled under Kopel to allow state court refiling to address the issues on the merits.

Kopel v. Kopel

4. This is also of great importance to the public if the panel affirmed dismissal of counts II and III with prejudice because Florida Statute 95.11 barred those claims, as that decision breaks with Kopel v. Kopel, 229 So. 3d 812, 813 (Fla. 2017), which allows a claim or defense that would otherwise be barred to be saved. In Kopel, the

court "[makes] clear that an amendment asserting a new cause of action can relate back to the original pleading where the claim arises out of the same conduct, transaction, or occurrence as the original." Id. 819-20. This applies "even where the legal theory of recovery has changed or where the original and amended claims require the assertion of different elements." *See* also Caduceus Properties, LLC v. Graney, 137 So.3d 987, 991 (Fla. 2014), Flores v. Riscomp Indus. Inc., 35 So.3d 146, 148. Conversely, an amended claim can be time-barred where the claim "was based on different facts wholly unrelated to [the] original complaint". Herrera v. Jarden Corp., 334 So. 3d 637, 642 (Fla. 4th DCA 2022). [2]

5. The panel overlooked the similarities between this case and Kopel, which are almost identical. In 1994, the Petitioner filed a lawsuit against his brother for money owed due to a deteriorating business relationship and after the case went to trial in 2008, it resulted in a hung jury. In 2009, a fifth amended complaint was filed, adding new claims for undue enrichment and breach of an oral

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[2] There are three factors supporting tolling that are related to Fl. R. Civ. P. 1.190(c). 1) Florida's judicial policy of freely allowing amendments to pleadings if they do not prejudice the opposing party; 2) Florida case law, which holds that R. 1.190(c) is to be liberally construed and applied; and 3) R. 1.190(c) aligns with the purpose of the statute of limitations, which is to give "notice" and "to protect defendants from unusually long delays in filing lawsuits and to prevent prejudice to defendants from the unexpected enforcement of stale claims."

promise. Id. at 814. Defendants argued that the new claims did not relate back to the original claim and were barred by SOL. The judge agreed, stating, "an amended pleading must not state a new cause of action." Id. The Third District affirmed that the new claims could not relate back as a matter of law.

6. In 2017, after 23 years of litigation, the Kopel court ruled "[w]e hereby quash the Third District's decision ... and approve cases such as Caduceus Properties, LLC v. Graney, 137 So. 3d 987, 989 (Fla. 2014), Fabbiano v. Demings, 91 So.3d 893, 820 895 (Fla. 5th DCA 2012), and Armiger v. Associated Outdoor Clubs, Inc., 48 So.3d 864, 870 (Fla. 2d DCA 2010), which make clear that an amendment asserting a new cause of action can relate back to the original pleading where the claim arises out of the same conduct, transaction, or occurrence as the original." Id. 819-20.

7. The court failed to follow Artis, even though the SDFL complaint provided Appellee Drinkard (who filed a response) with fair notice, and Appellee Greiser (who filed a PFA and later a motion to dismiss) with fair notice of the claims and facts related to Unit 210 and Unit 214 counts. Additionally, amendments that add new defendants or introduce alternate causes of action can relate back,

"even if the legal theory of recovery has changed or if the original and amended claims require different elements." Id. at 818.

8. The trial court and appeal panel's PCA decision singles out and punishes Florida contract claims filed in federal court under 28 U.S.C. § 1332, diversity of citizenship, while allowing other state claims that originate in state court the protection found in Kopel. The court's unfair exclusion of the "relate back" tolling protection unjustly penalizes 28 U.S.C. § 1332 refiled claims and if allowed such a decision would violate the constitutional equal protection and due process rights of litigants with state claims in federal court.

C. The per curiam affirmance overlooked and did not address the alternative legal arguments raised in both the Appellant and Appellee briefs concerning equitable tolling, forfeiture of the statute of frauds, and statute of limitations affirmative defenses.

Equitable Tolling

9. The panel's PCA also warrants rehearing because, as argued in the Appellant briefs and overlooked by the panel, it departs from this Court's holdings related to applying equitable estoppel to tolling. It presumes the plaintiff knows of the facts underlying the cause of action, but delayed filing because of the defendant's conduct. Ryan v. Lobo De Gonzalez, 841 So. 2d 510, 576 (Fla. 4th DCA 2003) ("Equitable tolling is a doctrine utilized to prevent injustice"). *See* also

Morsani v. Major League Baseball, 739 So. 2d 610, 614 (Fla. 2d DCA 1999) (equitable tolling/estoppel is "a valid defense to a limitations-period defense") citing Machules v. Dep't of Admin., 523 So. 2d 1132, 1135 (Fla. 1988) (Morsani v. Major League extended Machules to civil cases as a theory that can "deflect the statute of limitations" to prevent defendants from "benefiting from their wrongful conduct."). Despite the Appellant raising the argument using supportive case law shown above, the trial court and appeal panel never addressed the issue of equitable tolling.

Statute of Frauds

10. If the trial court and PCA dismissed Counts II and III for violating the statute of frauds ("SOF") under Florida Statute 725.01, then the court misapplied the law because the Appellant provided Broward County records showing that Counts II and III were removed as a SOF defense. These records included: (1) a letter from Appellee Marian Greiser affirming that the Appellant owned Unit 214 and resided there year-round to qualify for a Florida Homestead property tax reduction; (2) evidence that the Appellant's Homestead tax reduction was granted from 2012 through 2016; and (3) proof that Appellee Marian Greiser received and benefited from the Homestead tax exemption by lowering her property tax by 50% over four years.

11. Overlooked in the Appellant's brief, Florida law clearly affirms Appellant's ownership of Unit 214 because a Florida Homestead Tax Exemption under Florida Statute 196.03 J(l)(a) is limited to: "A person who ... has the legal title or beneficial title in ***equity*** to real property in this state and who in good faith makes the property his or her permanent residence." (emphasis added).

12. Further overlooked, Appellant demonstrated that the SOF fails as a matter of law because the Appellant completed the "renovation in exchange for ownership" within nine months and received proof of ownership via a written memorandum signed by Appellee Greiser, in 2012, as Broward County required—when the Appellant applied for and was granted a Florida Homestead. *See* Fla. Stat. 725.01 "[n]o action shall be brought ... upon any agreement that is not to be performed within the space of [one] year from the making thereof ... unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith."

Affirmative Defense Forfeiture for Violating Fl. R. Civ. P. 1.370(a)

13. The trial court and appeal panel passed over the issue of barring SOL and SOF affirmative defenses under Fla. R. Civ. P.

1.370(a), for Appellee Marian Greiser's refusal to answer the August 2023 Request for Admissions ("RFA") served with her complaint and summons within 45 days to preserve those SOL and SOF defenses. The panel overlooked that, decidedly, Fla. R. Civ. P. 1.370(a) holds:

> The [RFA] matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection ... a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading upon the defendant.

14. It is unclear why that legal matter was dismissed and never addressed by either the trial court or the panel, despite its significance regarding the dismissal of counts II and III with prejudice. The Appellees' failure to file an RFA answer, despite court filings raising the issue of RFA non-compliance ten times over fourteen months, was deliberate and should have led to those claims being forfeited.

15. A "statute of limitations" and "statute of frauds defense under Fl. R. Civ. P. 1.110(d), must be affirmatively set forth in a [RFA answer] pleading or it is deemed waived. Deer Brooke S. Homeowners Ass'n v. Battles, 304 So. 3d 40, 42 (Fla. 2nd DCA 2020). Thus, Appellees lost their SOL and SOF defenses. *See* Morgan v. Thomson, 427 So. 2d 1134, 1135 (Fla. 5th DCA 1983) (where appellee filed RFA

that appellant failed to timely answer and summary judgment for appellee was granted, "appellee here failed to respond to appellant's request for admissions, also failed to move for leave to file responses belatedly pursuant to Florida Rules of Civil Procedure 1.370 and suffered the entry of an adverse summary judgment"). See also Wood v. Fortune Ins. Co., 453 So. 2d 451,451 (Fla. Dist. Ct. App. 1984), "In Morgan our companion court held the defaulting party could not belatedly file responses without a motion for leave to do so, the absence of which was fatal."

II. THE COURT SHOULD CERTIFY THE QUESTION OF GREAT PUBLIC IMPORTANCE, IN ADDITION TO ANY OTHER DECISIONS HANDED DOWN.

16. Most importantly, this court should certify a question of great importance regarding the inherent duty of both the trial court and appellate court to ensure fair proceedings and uphold the integrity of the judicial process, especially for *pro se* litigants. This duty becomes even more critical when as in this case, a *pro se* litigant faces repeated instances of attorney misconduct and rule violations that are ignored and go unpunished, thereby violating the self-represented party's fundamental rights to fair hearings, meaningful access to the courts, and due process.

17. In this case, because the trial court and panel clearly failed to fulfill their judicial obligations throughout the court proceedings by overlooking the repeated rule violations and attempted fraud upon the court that were repeatedly raised, the Appellant respectfully requests that the Court certify the following question:

> Does the inherent disadvantage indigent *pro se* plaintiffs face due to their inexperience, lack of legal knowledge, and the potential for bias or a lack of understanding from the court grow to become insurmountable when Florida courts fail in their duty to address defense attorney misconduct — as a part of their responsibility to uphold the integrity of the legal profession and the justice system, particularly concerning attorney violations of the Florida Rules of Professional Conduct, Rules of Civil Procedure, and Rules of Appellate Procedure?

17. Both the trial court and the appeal panel were notified and provided documentation showing repeated instances of attorney misconduct in this case, involving both ethical and rule violations by the Appellees' former counsel that impeded the *pro se* Appellant's case. However, these violations were ignored by the courts. Had these issues been addressed, they likely would have changed the outcome. Allowing this case to be dismissed despite those transgressions will weaken equal protection in the Florida Fourth District and undermine protections for pro se litigants in Palm Beach, Broward, St. Lucie, Martin, Indian River, and Okeechobee counties.

18. The Florida Supreme Court may review any decision by a district court of appeal that passes upon a question certified to be of great public importance. Fla. Const. Art. V § 3(b)(4). *See* also Fla. R. App. P. 9.030(a)(2)(B)(i). While "there is no standard to guide" for when certification is appropriate, "one general guide is that a question should be certified where our decision will affect a large segment of the public and the extant decisional law may not coalesce around a single answer to the question posed" Star Cas. v. U.S.A. Diagnostics, Inc., 855 So. 2d 251, 252 (Fla. 4th DCA 2003), or when the issue "is likely to frequently reoccur". *See* Ferguson v. State, 481 So. 2d 924, 925 (Fla. 2d DCA 1985). Here, both tests are met.

19. Appellant's due process was obstructed by Appellees' unethical tactics aimed at disrupting and dismissing the case to destroy the conflict-of-interest issue. This led to chaos, unnecessary court filings, and compelled the appellant to hurriedly file consecutive pleadings. The appellant had to hire a lawyer to assist, who, despite being new and unfamiliar with the case, was given only six days to file a Third Amended Complaint, while the appellees' attorney, who had been familiar with the case since the SDFL, was granted fifty days to file a motion to dismiss and was given priority over a pending six-month motion for RFA default.

20. Rule violations/ethical lapses were listed in Appellant's Initial Brief (p. 8, 17–19, 25-33) and Reply Brief (p. 12–17) as follows:

Issue	**Rule Violated**	**Appellant**	**Appellee**
8.21.23 complaint, summons served by process server	Fla. R. Civ. P. 1.140(a) No Answer	10.24.23 filed final default Marian Greiser	11.17.23 filed appearance by opposing default
8.21.23 RFA served by process server	Fla. R. Civ. P. 1.370(a) No Answer	4.4.24 filed motion to deem RFA admitted	No RFA Answer, or RFA response was filed [3]
11.17.23 Attorney Dean Trantalis Conflict of Interest	Rule Reg. Fla. Bar 4-1.9	2.7.24 Email sent requesting he withdraw	No Response
11.21.23 first zoom scheduled CMC	Both plaintiff, def. no shows	believed it was moved 12.5.23	No Explanation
12.5.23 Motion to Remove Default	No Hearing	Marian Greiser Default Proper	Joanne Drinkard was not served
2.7.24 Attorney Conflict of Interest	Rule Reg. Fla. Bar 4-1.9	2.7.24 docketed Letter to Judge	No Response
3.20.24 CMC Conflict of Interest Issue Raised	Rules Reg. Fla. Bar 4-1.9, R. 4-3.3	Def. Attorney represented the Plaintiff in past	"I don't believe [I ever represented the plaintiff]."
3.28.24 Attorney refusal to withdraw, Extension Request	Rule Reg. Fla. Bar 4-1.9	Filed extension, and disqualify motion 3.28.24	MTD filed for seeking extension to file SAC
3.30.24 Trantalis Affidavit to dismiss with prejudice	No mention of Conflict of Interest	Response to MTD Affidavit on 4.2.24	Failed to File SAC/ requested extension of time
4.2.24 Plaintiff's MTD /conflict of Interest response	MTD to avoid conflict of interest inquiry	Justified ext. request, raised Conflict issue	No Response

[3] Notice to Appellees of RFA filed with the court as follows: service of process affidavit (R. 243); motion for final default judgment (R. 238); response in support of default (R. 255); motion to deem RFA admitted (R. 313-315); RFA as Exhibit (R. 317-322}; Fl. Bar letter (R. 395); and Response to the 1st MTD (R. 414-15).

Issue	Rule Violated	Appellant	Appellee
Failure to Answer August 2023 RFA	Fla. R. Civ. P. 1.370(a)	Filed motion to deem admitted	No Response
4.9.24 Failure to Answer RFA, and Conflict of Interest	FRCP 1.370(a) R. Reg. Fla. Bar 4-1.9	Docketed letter to the Judge raising Issues	No Response
4.11.24 CMC Conflict of Interest Issue Raised Again	Rules Reg. Fla. Bar 4-1.9, R. 4-3.3	Trantalis had represented Plaintiff in past	"no conflict of interest" "case was dismissed"
5.10.24 Request for 1 week SAC ext. and to find attorney	None, Asked the Court's Permission	Difficult to find attorney due to Trantalis issue	extension not warranted, MTD instead
5.11.24 MTD with prejudice filed for asking 1week ext.	Self-interest. Derail Conflict Inquiry	To avoid MTD filed a rushed SAC 5.12.24	missed CMC, and asking for ext. to file SAC
5.13.24 Response to MTD and again Conflict/RFA issues	Rule Reg. Fla. Bar 4-1.9	Repeated effort to address RFA conflict interest	"no Conflict of Interest" "case was dismissed"
5.16.24 Final Email Warning of pending Fla. Bar complaints	Rule Reg. Fla. Bar 4-1.9	Final effort to withdraw for conflict interest	No Response
5.20.24 CMC about MTD and again Conflict/RFA issues	Rule Reg. Fla. Bar 4-1.9	Repeated effort to address RFA conflict interest	Grant MTD with Prejudice
5.20.24 plaintiff given to 6.3.24 to hire a lawyer	Plaintiff hired court reporter insure candor	Attorney Cost doubled due to conflict interest	Grant MTD with prejudice
5.28.24 misleading Draft Order to Dismiss w/prejudice	Rule Reg. Fla. Bar 4-3.3	Transcript of 5.20.24 does reflect Draft	MTD w/prejudice for not having a lawyer by 6.3.24[4]

[4] The Court Management System responded to the Draft Order, "Status: - Not Approved - Order does not accurately reflect the Court's ruling." The trial transcript shows that the judge never told the Plaintiff he must have a lawyer by June 3, 2024, or the case would be dismissed with prejudice; instead, the judge denied the motion to dismiss, correcting the Trantalis argument that the Plaintiff must have an attorney. Plaintiff Greiser then sent another docketed letter to the Judge complaining about those misleading tactics to have the case dismissed.

Issue	**Rule Violated**	**Appellant**	**Appellee**
6.27.24 Disqualify Hearing in-person with new lawyer	Rule Reg. Fla. Bar 4-1.9 forced withdraw	75% Attorney $5000 retainer was used	Resisted/forced a court ordered withdraw
6.28.24 Misleading Draft Order claiming withdraw "voluntary"	Rule Reg. Fla. Bar 4-3.3	Plaintiff's lawyer instructed to draft final Order	Avoid sanctions false/misleading draft Order
10.9.24 Email Request to set RFA Default hearing	Fla. R. Civ. P. 1.370	Affirm. defenses lost 18-month w/no Answer	New Attorney non-committal to hearing date
10.29.24 Answer filed For Aug. 2023 RFA without leave of court	Fla. R. Civ. P. 1.090(b)	Default filed 6 months prior to def. MTD	File without leave two days before MTD hearing
3.24.25 Appellees' Failed to respond to Initial Brief filing	Fla. R. App. P. 9.210(g)	Filed Motion to Foreclose after 34 days	4.7.25 filed an Answer Brief 18 days late

21. Attorney Trantalis misled the court to benefit himself, giving evasive answers to the conflict inquiry questions raised by the Appellant and the court. This thwarted judicial intervention and swift action, damaging the Appellant's case and due process. *See* R.J. Reynolds Tobacco Co. v. Kaplan, 321 So. 3d 267, 275-76 (Fla. 4th DCA 2021). "The primary purpose of this opinion is to repeat with emphasis to trial judges ... [t]he fact that appellate courts proscribe misconduct by trial counsel, unfortunately, does not seem to eliminate it. It is therefore of vital importance that trial judges, when objections are raised to improper [conduct] ... properly exercise their duties by stepping in and curbing it." Citing Bellsouth Hum. Res. Admin., Inc. v. Colatarci , 641 So. 2d 427, 430 (Fla. 4th DCA 1994).

22. The court has broad authority to sanction attorney misconduct. *See* In re Order as to Sanctions, 495 So. 2d 187, 188 (Fla. 2nd. DCA 1986), holding "[it has] come to the attention of the court various acts of misconduct by a small minority of the lawyers practicing before this court. It is an affront to the judicial process that any such misconduct occurs, and it would be a disservice to the vast majority of lawyers if the misconduct of a few were to go unnoticed." *See* also, Canon 3 B.(3) of the Model Code of Judicial Conduct, which provides, "[a] judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."

CONCLUSION

WHEREFORE, Appellant *pro se* Francis Greiser Jr. asks that this Court issues a written opinion that addresses the conflicts raised above to allow the Appellant to pursue *certiorari* review in the Florida Supreme Court or, alternatively, rehear the case as a panel or *en banc* in order to address the district and supreme court splits identified that the *per curiam* affirmance implicitly creates.

/s/ Francis T. Greiser Jr. Dated: July 3, 2025
pro se Appellant

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

FRANCIS T. GREISER JR.,
Appellant *pro se*,

v.

Case No.: 4D2025- 0233
L.T. No.: CACE-23-14503

MARIAN K. GREISER, and
JOANNE L. DRINKARD.
Appellees.
_____/

MOTION TO STRIKE

Appellant Francis Greiser Jr., in accordance with Florida Rules of Appellate Procedure 9.300(a) and 9.200, hereby moves to strike paragraphs eight and twelve of the Appellees' Response to a Motion for Rehearing *en banc*, as they are misleading, unsupported by material facts, contain an irrelevant legal argument, and contradict the record on appeal. In support, Appellant states as follows:

1. Appellees' Response paragraph eight is fully objected to and should be stricken as a misleading and meritless legal argument that lacks any reasonable basis in law or facts, and reads as follows:

> "As set forth in the Appellees' Answer Brief in this proceeding, the tolling analysis advocated by the Appellant is entirely inapplicable to the facts of this case, because the causes of action at issue accrued in 2010, and the applicable statute of limitations had expired before such actions were ever filed in the United States District Court for the Eastern District of Pennsylvania."

2. Appellees incorporate by reference their above flawed Answer statement again claiming regardless of when Unit 214 was sold, the claim for unjust enrichment accrued in 2010, when the renovations were completed; citing Flatirons Bank v. Alan W. Steinberg Ltd. P'ship., 233 So. 3d 1207, 1213 (Fla. 3rd DCA 2017), "The statute of limitations for an unjust enrichment claim begins to run at the time the alleged benefit is conferred and received by the defendant."

3. In the present case, the circumstances surrounding the accrual of Unit 214's causes of action differ from those in Flatirons Bank, as Appellant's claims do not involve a hidden transfer or fraud discovered years later. Instead, the present case timeline centers on 2016, when, without cause, the Appellees changed the locks on Unit 214, evicted Appellant Greiser, sold the unit, and retained the entire cash value of his Unit 214 equity share, which financially damaged him. This critical factual distinction undermines the relevance of Flatirons, rendering Appellees' reliance on its precedent misplaced. [1]

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[1] In Flatirons Bank, Mark Yost, the Chairman of Colorado Flatirons Bank, embezzled $3.8 million from his bank through fake lines of credit. On January 20, 2009, he transferred $1 million of stolen funds across multiple entities and ultimately deposited it into the Florida bank account of a third-party investor, Alan Steinberg, who was unaware of the theft and later suffered a net investment loss. Flatirons discovered Yost's fraud in August 2010 but did not learn about the money transfer to Steinberg until March 2012. Flatirons Bank delayed suing Steinberg for unjust enrichment until February 1, 2013, which was after the Florida four-year statute of limitations had expired. Id. 208-10.

4. Moreover, Appellees' argument that the statute of limitations began in 2010 overlooks the contractual relationship between the parties. In 2010, Appellee M. Greiser received the benefits of Unit 214 renovations, which also included detriment, as she compensated Appellant Greiser for his renovation work by granting him one-third ownership of her Unit 214. The record contains no evidence that the Appellant had reason to suspect in 2010 that Appellee M. Greiser would unjustly sell Appellant's equity share of Unit 214 in 2016. [2]

5. Paragraph twelve is equally troubling and misleading by using the phrase "each court which hears him," suggesting through paragraph eight that the Eastern District of Pennsylvania ("EDPA") agreed with Appellees' flawed legal argument that the "statute of

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2 In addition to Flatirons Bank, Appellees cite Barbara G. Banks, P.A. v. Thomas D. Lardin, P.A., 938 So.. 2d 571, 577 (Fla. 4th DCA 2006) to bolster the claim that all Unit 214 claims accrued in 2010. However, the case in fact supports Appellant Greiser's claim. *See* Banks v. Lardin (On March 11, 2005, appellant Banks filed suit against appellee Lardin for breach of agreement and unjust enrichment. Appellee filed a motion for summary judgment asserting that the alleged breaches occurred before March 11, 2001, four years before the complaint was filed, and thus the action on the oral agreement was barred by the four-year statute of limitations.) "The trial court granted the motion, finding that Banks cause of action accrued when appellees repudiated the contract on September 27, 1999, and was, therefore, barred by the statute of limitations. We disagree with the trial court's conclusion and reverse and remand for further proceedings." Id. at 571. The court also held "Banks P.A. [] also included a claim for unjust enrichment, which the trial court also dismissed as barred by the statute of limitations ... Banks, P.A., alleged that Lardin, P.A., did not receive the benefit until it was paid the attorney's fees in 2004. The cause of action accrued when this last element of the cause of action occurred and the suit was filed well within the statute of limitations." Id. at 577. (Internal quotations omitted.).

limitations had expired" because Unit 214's "causes of action accrued in 2010"—which is not reflected in the final court Orders. Paragraph twelve states as follows:

> "This case presents a straightforward application of the statute of limitations and the statute of frauds. The Appellant steadfastly refuses to take "no" for an answer from each Court which hears him. Respectfully, this saga must come to an end."

6. This Motion to Strike was filed because paragraphs eight through twelve create a false narrative to defeat Appellant's Motion for Rehearing *en banc*. Those paragraphs intend for this Court to believe that the EDPA rejected the Unit 214 claims due to the statute of limitations, with the trial court and appeal panel agreeing that a cause of action for Unit 214 began in 2010, not in 2016. The Third Circuit Court of Appeals did not affirm, noting that Unit 214 claims were still viable to be refiled in state court. (See Initial Brief P. 2 ¶ 3). Furthermore, the Opinion stated that, "[i]t would have been inequitable to permit Greiser to pursue two new claims worth less than $75,000 in damages against two new defendants nearly two years into this diversity action" (Rec. on Appl. 499 ¶ 1). The Third Circuit Opinion does not affirm the statute of limitations argument; only that the US District Court denied supplemental jurisdiction.

7. Furthermore, in Appellees' Response to a Rehearing *en banc* legal argument supporting the dismissal of Unit 214 counts II and III was reduced from several to one single argument focused solely on Flatirons Bank. This appears to be a last-minute attempt to circumvent the Artis tolling doctrine and Kopel relation-back doctrine raised by the Appellant, which are well-established procedural protections. Additionally, if unchecked, this Court's analysis of the Appellant's alternative causes of action that can relate back would also be lost, such as conversion, breach of contract, fraud, intentional misrepresentation, quantum meruit, interference with a contractual or business relationship, or unjust enrichment. [3]

8. The Appellees' response of misrepresenting previous court decisions and the statute of limitations timeline, combined with the incorrect application of legal standards, creates a troubling narrative. Such behavior underscores the necessity for meaningful judicial intervention to ensure that the core principles of fairness are upheld for all parties, particularly those navigating the system without legal

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[3] Appellant addressed Flatirons in his trial court response to the Motion to Dismiss Third Amended Complaint, and in his Appellant Briefs noting equitable estoppel as Appellees induced Appellant Greiser into inaction in filing a lawsuit between 2010 and 2016 because there were no disputes and he was treated as an equal co-owner of Unit 214—until 2016 when his ownership was taken away.

representation. Therefore, Appellant seeks additional latitude herein to clarify the record and counter the Appellees' misleading arguments to ensure that the Court may resolve the matter on its merits.

9. In sum, the Appellees' ongoing mischaracterization of the record, combined with their selective citation of authority, amounts to a deliberate tactical move by Appellees' counsel to mislead and take advantage of the pro se Appellant, as unrepresented parties are more likely to miss such impropriety. Alternatively, this may stem from a lack of understanding of substantive law and a failure to review the cited case law and legal arguments submitted by the Appellee's counsel. Under either scenario, Appellees' behavior undermines the judicial process and places an unfair burden on a *pro se* litigant to correct the record and address baseless claims. This pattern of dishonesty and unprofessionalism was well-documented in both the Appellant's Initial and Reply Briefs.

10. If, as Appellees' counsel claims, both the trial court and the appeal panel ("all courts") believed that the causes of action for Unit 214 accrued in 2010, based on what counsel believed was the holding in Flatirons Bank, then judicial intervention is necessary to protect the core principles of fairness in this case. Appellees' unchecked spreading of inaccuracies not only risks undermining the fair

resolution of this case but also highlights a broader systemic issue—one that, if ignored, can erode confidence in the appellate process itself. The Appellant asserts that this Court has both the authority and the duty to address such conduct decisively, ensuring candor, fairness, and professionalism expected in appellate litigation.

11. Under Fla. R. App. P. 9.410, Appellate courts can impose sanctions for the filing of any proceeding, motion, brief, or other document that is frivolous or in bad faith ... including reprimands, contempt, striking of briefs, dismissal, costs, and attorneys' fees. In addition, F.S. § 57.105 (1)(a)(b) allows for the award of attorney's fees to the prevailing party if the opposing party or their attorney knew or should have known that their claim or defense was not supported by material facts or the application of the then-existing law to those material facts. Lastly, R. Regul. Fla. Bar 4-3.1 requires attorneys to have a good-faith basis for proceedings, including arguments for changes in existing law, while R. 4-8.4(d) prohibits conduct prejudicial to the administration of justice.

12. So far, this type of behavior by the Appellees' counsel has gone unchecked and unpunished during both the trial court and appeals court proceedings. The lack of financial penalties removes a deterrent for this behavior, which triggers such situations. In this

state, a pro se, non-attorney litigant is prohibited from collecting attorney's fees, regardless of how egregious the opposing attorney's misconduct is, and the offender typically faces little to no financial consequences. However, here, this Court's hands are no longer "tied" because Appellant Greiser, who has been a pro se litigant since his US District Court filings in this case, paid two attorneys to work on the case during the final four months in the trial court. Those attorney fees were wasted due to the Appellees' Flatirons Bank deceit and other attorney misconduct outlined in Appellant's Appeal Briefs.[4]

12. On July 21, 2025, Appellant Greiser had a good-faith discussion via email with the attorney for Appellees, John P. Seiler, as to Appellant's concern regarding the need for clarification of his Statute of Limitations argument in his Response objecting to the

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[4] Appellant Greiser paid $5000 to Attorney Jennifer Ford (Florida Bar No.1003864) in June 2024: $1000 to file a 3rd Amend. Compl. that was dismissed by the trial court on due to Appellees counsel misrepresenting applicable case law and facts in Flatiron Bank (as admitted in their Response opposing a Rehearing *en banc*); $1000 to file a Response the Motion to Dismiss 3rd Amend. Complaint to counter misleading case law and facts in Flatiron; and $3000, to force a hearing that disqualified Attorney Dean Trantalis for conflict of Interest.

Appellant Greiser paid Attorney Mathew Fornaro (Florida Bar No.650641) $5,000 in September 2024 specifically for the following: recover attorney fees for the disqualification of Dean Trantalis; to schedule and hold a Motion to Deem Admitted the unanswered Requests for Admissions; and, to appear at the in-person hearing to oppose the Motion to Dismiss 3rd Amend. Compl. that Appellees' counsel misrepresented applicable case law and facts in Flatiron (as admitted in their motion opposing a Rehearing en banc) totaling $5,057.50.

Motion for Reconsideration *en banc*. The parties were unable to reach a resolution, as Attorney Seiler responded that he did not think there was a need for clarification.

WHEREFORE, Appellant *pro se* Francis T. Greiser Jr., respectfully moves this Court for an Order: (a) striking paragraphs numbered as eight and twelve of Appellees Response to the Motion for Reconsideration, Reconsideration *en banc*, a Written Decision, and the Certification of a Question of Great Importance, because Appellees statements are wholly inappropriate in pleadings before this Court; (b) admonishing Plaintiffs' counsel for their demonstrated lack of candor by spreading of inaccuracies, misrepresenting previous court decisions, and the incorrect application of legal standards to the court intended to discredit Appellant's Motion for Rehearing *en banc* and have Appellant's case improperly dismissed; and (c) award $10,057.50 in attorney fees paid by Appellant which was wasted unjustly by the misconduct of the Appellees' counsel.

Dated July 24, 2025

/s/ Francis T. Greiser Jr.
pro se Appellant

IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

FRANCIS T. GREISER, JR.,
Appellant,

CASE NO: 4D2025-0233

v.

MARIAN K. GREISER and
JOANNE L. DRINKARD,
Appellees.
_____/

RESPONSE TO PORTIONS OF APPELLEES' MOTION FOR ENLARGEMENT OF TIME [1]

Appellant *pro se* FRANCIS T. GREISER JR., pursuant to Rule 27 of the Florida Rules of Appellate Procedure, files this limited response to counter several misleading portions of Appellee's motion for enlargement of time which attempted to portray the *pro se* Appellant as the reason for: 1) Appellees failure to timely file an Answer Brief, and 2) as justification to ask the court to grant an enlargement of time to file their Answer Brief. [2]

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[1] Appellant agreed to a 3-day enlargement of time for Appellees to file an Answer Brief and conveyed this in an email to Attorney Seiler on April 7, 2025. Afterwards, Appellant learned that Appellees filed their motion prior to reading his email agreeing to the enlargement, and, in turn, Appellees justified the motion using blame-shifting claims against Appellant. Thus, countering those statements for the record is the sole reason for filing this response motion.

[2] Appellant believes Appellees were given more than sufficient time to file an Answer, yet agreed to the enlargement of time to avoid filing an opposition motion. However, this response is now necessary to avoid the assumption if Appellees' blame-shifting claims went unchallenged, they must be true.

The problematic paragraphs found in the Appellees' Motion for Enlargement of Time to file an Answer Brief ("MET") are paragraphs one (1) through three (3), along with paragraph twelve (12), and those specific paragraphs are referenced and listed below:

1. "The pro se Appellant, FRANCIS T. GREISER, JR., apparently filed an Initial Brief in this proceeding on or about February 18, 2025." (MET ¶1).

> Response: The Appellees Were Properly Served. The word "apparently" represents uncertainty created by the Appellant—and is misleading—as Attorney John Seiler was named as the Appellees' only attorney of record to initiate this case (see Attachment "A") and was served notice of the filing of the Initial Brief on February 18, 2025. (See Attachments "B-C"). Further, counsel for Appellees was served again that same day by courtesy email sent by the Appellant (see Attachment "D"), whereby Attorney Seiler acknowledged the Initial Brief filing courtesy email by responding, "Thank you" (See Attachment "E").

2. "The Appellees' counsel has communicated with and confirmed with the Clerk of the Fourth District Court of Appeal that, at the time the Initial Brief was filed, the electronic filing system contained service addresses for the Appellees' trial counsel and appellate co-counsel, John P. Seiler, Esquire ... [and] law partner and lead appellate counsel, Steven A. Wahlbrink, Esquire..." (MET ¶2).

Response: Appellees Failed to Enter Their Appearance. The *pro se* Appellant spoke to the Clerk of the Fourth District Court of Appeal to verify Appellees claim that Attorney Steven A. Wahlbrink was on the electronic filing system "attorney service list" at the time the Initial Brief was filed on February 18, 2025, and when the Motion to Foreclose was filed on March 24, 2025—as the Appellant does not recall seeing his name on those filing dates. The Clerk was unable to say when Attorney Wahlbrink was placed on the list, only that he was served with Appellees' Motion for an Enlargement of Time to file an Answer.

3. "Inexplicably, the Appellant did not select Mr. Wahlbrink or Ms. Sasser for service and the Initial Brief was served only on Mr. Seiler, who improperly, mistakenly and erroneously assumed that the Initial Brief was served on his appellate co-counsel and his legal assistant." (MET ¶3).

Response: Appellees Violated Local Rule 46(c). The *pro se* Appellant was unaware that Attorney Steven Wahlbrink was associated with Attorney John Seiler. Attorney Seiler was the only attorney of record in the Circuit Court case (see Attachment "F"), and Mr. Wahlbrink was never a signatory on any of the court filings in that Circuit Court case. Further, in this appellate case, Attorney Seiler could have made it clear to all that each was the Appellees' attorney—had he followed Local Rule 46(c): "Each attorney of record must file a written appearance with the clerk within 14 days after the appeal is docketed or after being retained or appointed."

4. "Further, while attempting to review and research the issues in this proceeding, counsel for the Appellees determined that

they have not received the Record on Appeal and have been unable to download the same from the online docket of the Court." (MET ¶12).

> Response: Appellees Were Served The Record on Appeal. Appellees' claim of being unable to access the Record on Appeal (on the day Answer was due no less) is highly dubious, as they were served notice when the Record of Appeal was docketed and available on the Florida Appellate Case Information System. As such, both the Appellant and Attorney Seiler were approved as verified ACIS users with unrestricted access to the court documents in this case. (See Attachments "G-H"). In fact, on April 7, 2025, after reading Appellees' motion, the Appellant logged in and downloaded the Record on Appeal without issue and then emailed it to the Appellees as a courtesy copy.

5. Without belaboring the issue, the actions of the Appellees in failing to file an Answer to the Initial Brief in this case are not an isolated incident; it is more of a set pattern of conduct. In the District Court, Counsel for the Defendant/Appellees repeatedly ignored the pro se Plaintiff/Appellant's court filings and did not file an answer or a responsive pleading to his *pro se* Complaint/Amended Complaint (waiting four months to finally enter their appearance to contest the Clerks Default), two *pro se* Requests for Admissions (served by licensed process server), and the *pro se* Motion to Deem Admitted.

6. For these reasons, and in the interests of judicial economy, the *pro se* Appellant requests that the Court accept this motion as a counter statement to Appellees' motion statements one (1) through three (3), and paragraph twelve (12) found in the Appellees' Motion for an Enlargement of Time filed April 7, 2025. While, at the same time, the *pro se* Appellant does not oppose the Appellees' Enlargement of Time to file an Answer Brief granted by the Court.

Dated April 10, 2025

/s/ Francis T. Greiser Jr.
pro se Appellant
2055 Poinciana Court
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Email: fg210@att.net

Filing # 221512187 E-Filed 04/22/2025 11:29:13 AM

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
FOURTH DISTRICT**

CASE NO.: 4D2025-0233

Lower Tribunal Case No. CACE-23-014503

FRANCIS T. GREISER JR.,

Appellant,

v.

MARIAN K. GREISER
JOANNE L. DRINKARD.

Appellees.

ON APPEAL FROM A FINAL JUDGMENT ORDER
OF THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

FRANCIS GREISER JR.
Appellant *pro se*
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I. INTRODUCTION

Appellees' Answer Brief ("Answer" or "AB") uses the same legal arguments and case law as their trial court motion to dismiss. It is not surprising that the Answer Brief fails to present a counter-argument to the primary issue raised in the Appellant's Initial Brief ("IB"), which solidly negates Appellees' Statute of Limitations ("SOL") and Statute of Frauds ("SOF") affirmative defenses. The issue the Answer Brief sidesteps as irrefutable is whether the Appellees waived their SOL and SOF defenses in the trial court by ignoring Rules of Civil Procedure in failing to respond to Requests for Admissions ("RFA") and not addressing the motion to have the RFA deemed admitted. Accordingly, the Appellant requests that the court rule on the loss of affirmative defenses using the case law and arguments presented in the Appellant's Initial and Reply Briefs.

II. APPELLANT'S COUNTERSTATEMENT OF THE CASE

The Answer "Statement of the Case and Facts" comprises one-third of the brief and misrepresents the record. Page 1 states that the Appellant "admitted" in his Third Amended Complaint (R. 552) to having an "informal" and "legally messy" ownership interest in Units 210 and 214, which he jointly owned with his parents. That snippet

was extracted from a broader assessment of the contractual relationship, characterized as less formal, i.e., between family members rather than strangers. As the Appellant identified, it only became legally messy ***after*** his father suffered a stroke in December 2014 and passed away on May 14, 2016. (R. 552). Only then did Appellee Joanne Drinkard gain an opportunity to interfere; however, the agreement was memorialized in 2012 when the parents provided a sworn statement of Appellant's joint ownership of Unit 214 to receive Florida Homestead tax relief.

Answer page 2 states that the parents "attempted to add the Appellant to the [Unit 210] proprietary lease ... but failed to obtain [Board] approval" as the cause of litigation between Whittier Towers and the Greiser family. (R. 374-75). To clarify, Appellant was added to the 210 Proprietary Lease without issue because he was a bloodline descendant who did not require Board approval. (R. 554). [1]

Answer pages 3-4 attempt to establish a basis for holding the Appellant accountable for the delay in adding Appellee Marian Greiser to the US District lawsuit by blaming Appellant for ***complying***

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[1] Appellant's insistence on viewing financial records was the motivation for the lawsuit, and the significance of that SLAPP lawsuit was that while pending, Appellant's addition to the Unit **214** Proprietary Lease was strategically put on hold. *See* TAC. (R. 554-55).

with the conditions of the 2018 PA Common Pleas Court Protection from Abuse ("PFA") Order through its dismissal in 2019.

Appellees' page 3 downplays the PFA order with severe criminal consequences, arguing there was nothing "prohibiting the Appellant from initiating valid legal claims against M. Greiser." This sidesteps the fact that Marian Greiser's 2018 PFA Petition cited abuse as "[Appellant] filed [] a lawsuit in S. Florida against me" as justification and reason for obtaining the PFA Order. (R. 486).

Appellees' Answer pages 4-5 lack specificity and misrepresent the procedural posture of this case. It claims the U.S. District Court Eastern District of PA ("EDPA") determined that "Appellant's claims for an ownership interest in the Whittier Towers apartment units were barred by [the] ... Statute of Frauds." Appellees then incorrectly stated that the Third Circuit Court of Appeals affirmed this. [2]

Appellees' misguided assertion relies on a flawed summary of the Opinion (R. 445-46), in which the court addressed only the Unit 210 tortious interference claims against Appellee Drinkard in the ***Amended Complaint***. The EDPA Opinion's only mention of a Second

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[2] On February 10, 2022, the US Third Circuit stated that Trial Court Counts I and II were viable but that "[i]t would have been inequitable to permit Greiser to pursue two new claims worth less than $75,000 in damages against two new defendants nearly two years into this diversity action. " (emphasis added). (R. 429 ¶¶11-12, R. 348 ¶1).

Amended Complaint ("SAC") claim is the Unit 210 Breach of Contract claim against Appellee M. Greiser, deemed viable. (R. 445 ¶ 1).

Appellees' page 7 "Summary of the Argument" also erroneously claims that "Courts have repeatedly dismissed" the Florida claims for failing to state a legally cognizable cause of action. Again, this distorts the record because the only SAC claim to which the EDPA Opinion directly referred to was the Express Breach of Contract for Unit 210 stating it was viable. (R. 456 ¶ 1).

The "Argument" section, page 1, claims Appellant acknowledges that his Unit 214 ownership was never memorialized. This is not the case, as the Appellant references that Appellee Marian Greiser and Francis Greiser Sr. both signed a notarized letter attesting that the Appellant was a Unit 214 equity owner to qualify Appellant for Florida Homestead tax relief, which they themselves did not qualify for since Unit 214 was not their primary residence. (IB at 17).

On page 13 of the Answer, the Appellees mistakenly claim, "The Trial Court Properly Dismissed Count III for Failure to State a Cause of Action." However, that statement is not reflected in the trial court's dismissal Order or in the official eight-minute hearing transcript. As detailed in the Initial Brief, the court was laser-focused on dismissing Counts II and III for violating the Statute of Limitations (R. 692 -702).

Lastly, Appellees argue that the Appellant fails to sufficiently allege that Appellee Drinkard "used improper means" to interfere with the business relationship between the Appellant and Marian Greiser, leading to the tortious interference with Unit 214. Notably, again the Appellees acknowledge—and do not refute—that Appellee Drinkard hired a Fort Lauderdale private investigator beginning in 2016, gave thousands of dollars and a leased vehicle to a friend of the Appellant to encourage her to go to the Appellant's home and attempt to engage in illegal activities, and take video recordings. (AB 15-16).

III. ARGUMENT

1. The Central Question for This Court Is Whether Attorney Misconduct and Violations of The Rules of Civil Procedure Are an Acceptable Legal Strategy for Use Against a *Pro Se* Litigant.

A. Appellees' Refusal to Respond to Appellant's Court Filings

In their Answer, in the trial court, and during the instant case, Appellees' counsel demonstrates a mindset that they can violate the Florida Rules of Civil Procedure, Florida Rules of Appellate Procedure, and The Rules Regulating Florida Bar ("Rules of Ethics") at will, without fear of consequences. So far, they have succeeded.

Appellees' prior and past counsel have perfected the use of their bad faith playbook titled "How to utilize your attorney status to discourage and defeat a *pro se* litigant," which includes the following:

1) Leverage your reputation as a respected attorney and capitalize on the inherent bias against *pro se* court filings to your fullest advantage.

2) Avoid responding to all service of process that initiates a *pro se* lawsuit or a *pro se* appeal against your client; instead, compel the other side to file a motion on the matter.

3) Refrain from entering your appearance in a *pro se* case to keep the *pro se* party guessing and delay the case.

4) Do not reply to a properly served request for admissions and ignore any subsequent *pro se* motions filed to deem those facts admitted.

5) Use your esteemed status as an attorney to argue that the *pro se* litigant failed to adhere to the rules of civil/appellate procedure to justify your non-response; and when that is insufficient, provide a plausible excuse, such as being overwhelmed with your law practice.

6) Strategically navigate and reinterpret the rules of court and professional conduct that may be inconvenient for you, confident that your *pro se* counterpart does not possess the legal expertise required to hold you accountable in court.

7) Implement the aforementioned strategies confidently, knowing that even if caught, you are protected from bad faith actions since a *pro se* opponent cannot hold you liable for legal fees related to responsive motion filings, which are only awarded as a sanction to a party represented by counsel.

i. Appellees' Ignoring Service of Process in the Instant Case

The most recent Appellee bad faith occurred when Attorney Seiler failed to promptly file an Answer Brief in this case, violating Fla. R. App. P. 9.210(g). This Appellee inaction was disrespectful to this court and *anticipated* as part of a pattern of conduct toward this

pro se Appellant, who diligently confirmed service according to the rules of appellate procedure as follows: Attorney Seiler was named as the attorney of record for Appellees on January 29, 2025, and was served an Acknowledgment of New Case by the appeals Clerk.

Attorney Seiler received the Record on Appeal e-filing from the appeals Clerk on January 30, 2025. On February 12, 2025, Attorney Seiler telephoned the *pro se* Appellant to inquire about the November 2024 Motion for Reconsideration, which stated that the Appellant filed for bankruptcy in 2023. (R. 256 footnote). Attorney Seiler inter alia requested a copy of the bankruptcy petition to prove the Greiser case was disclosed as pending litigation and a potential asset as required under the U.S. Bankruptcy Code. [3]

On February 18, 2025, Appellees were notified of the filing of the Initial Brief and served with a certificate of service by the court's e-filing system. That same day, the brief filing was also sent via the Appellant's courtesy email. Attorney Seiler acknowledged receipt of the Initial Brief filing by responding, "Thank you." See Motion for Foreclosure of Answer attachment "G. " The Appellant also filed a

[3] Under the guise of "concern," Attorney Seiler warned Greiser Jr. that if he failed to list Greiser in his bankruptcy and continued with his appeal, the Appellees would raise it in their Answer, and a showing of a failure to disclose would lead to serious consequences.

copy of his Bankruptcy petition as attachment "I, " showing the court that he fully disclosed the underlying case in bankruptcy.

On March 24, 2025, after waiting 35 days without an Answer being filed, the *pro se* Appellant was compelled to file a Motion to Foreclose filing an Answer. On March 27, 2025, the motion was denied, and the Appellees were ordered to file an Answer by April 7, 2025. On April 7, at 4:47 pm, the Appellees filed a Motion for Enlargement of Time ("MET"), claiming Attorney Seiler was "in trial at the Broward County Courthouse on March 24, 2025, when the [Motion to Foreclose] was filed and served." (MET ¶7,9). [4]

Appellees argued that the *pro se* Appellant bore responsibility for the delay by serving only Attorney Seiler and not the new co-counsel, Steven A. Wahlbrink (first announced as co-counsel in the MET). Appellees MET claimed, as a result, the court filings of the Initial Brief and the Motion to Foreclose were not entered into the law firm's filing and docketing system. (Id. ¶2-4,6). Lastly, Attorney Seiler evasively claimed he could not open or access the Record on Appeal.

The Appellant filed a partial response to counter accusations that he was *twice* responsible for the Appellees' failure to timely file

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[4] Additional facts and documents are found in the March 24, 2025, Motion to Foreclose Answer, and the Response to MET, both filed *after* the filing of the Appellant's Initial Brief.

an Answer. Appellant's Response pointed out that he was unaware of Mr. Wahlbrink or his status, as he was not listed as an attorney of record—because he never entered his appearance with the court as required under Local Rule 46(c), which states: "Each attorney of record must file a written appearance with the clerk within 14 days after the appeal is docketed or after being retained or appointed." [5]

ii. Appellees' Ignoring Service of Process in the US District Court Case

Appellee bad faith procedural actions are not new to Appellant, as they were employed when the Unit 210 and 214 Claims were first filed in the US District Court for the Southern District of Florida ("SDFL") in 2018. There, Attorney Seiler refused to sign and return a request for waiver of summonses served with both the complaint and amended complaint, incorrectly claiming that they were defective.

Thereafter, Clerk-issued summonses (only) were served by a second process server. Counsel then filed a motion to dismiss for improper service of process, which was carried over to the US District Court for the Eastern District of Pennsylvania ("EDPA"), where the case was moved. The EDPA court ruled "a]lthough service of a

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[5] Appellees' recent actions are derived from the Appellees' Answer Brief. The Appellant respectfully requests that the court allow their inclusion in this Reply as recent examples of Appellees' bad faith occurring after the Appellant filed his Initial Brief.

summons and complaint separately is certainly unorthodox, it does not mean that such service is necessarily improper." (R. 706). The EDPA also ruled the refusal to waive service of a summons violated Fed. R. Civ. P. 4(d)(2), which made the follow-up service of process unnecessary, other than to subject it to a legal challenge. [6]

iii. Appellees Ignoring Service of Process in the Trial Court Case

On August 21, 2023, Defendant/Appellee M. Greiser was served in Pennsylvania with the Complaint, RFA, and a Summons by a licensed process server. (R. 242-43). On August 29, 2023, an amended complaint was filed and served on M. Greiser by U.S. Mail (as no attorney entered an appearance), adding Joanne Drinkard as a defendant. Due to the high cost of out-of-state service for Joanne Drinkard, her service of process was delayed. (R. 255 ¶4, R. 256).

Without a response or entering an appearance, Appellant filed for and obtained a Clerk's Default for failure to answer the amended complaint (R. 234), which was sent by U.S. Mail to M. Greiser. After waiting another thirty days, Appellant filed a motion for a Default Final Judgment on October 24, 2023 (R. 238-39) against defendant Marian Greiser, along with an attached affidavit. (R. 249-252).

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[6] The EDPA only awarded Plaintiff/Appellant $914.58 for his double service of process fees on February 2, 2021, after extensive litigation and motion filings. (R. 610). This issue was also raised as repeated instances of "bad faith" and violations of the rules of civil procedure in the trial court and in Appellant's Motion for Reconsideration. (R. 706-07).

On November 17, 2023, Attorney Dean J. Trantalis, entered his appearance for M. Greiser by filing a Motion to Oppose a Final Default, three months after she was served the amended complaint (R. 253-54). The excuse: "[u]pon consulting the undersigned, Defendants were informed that [an Amended Complaint] were e-filed on September 3, 2023, and that they should call him back once they received copies because the time to file a responsive pleading is tolled from the service of the last Amended Complaint." (R. 253 ¶2).[7]

Of note, the advice that M. Greiser wait until the new defendant, Joanne Drinkard, was served by a process server is not supported by Fla. R. Civ. P. 1.140. See *Meadows of Citrus County, Inc. v. Jones*, 704 So.2d 202, 203 (Fla. 5th DCA 1998) which holds, "where properly raised, the defense of failure to timely serve a defendant under Rule 1.070 warrants dismissal of the cause as to that defendant but not as to co-defendants who have been timely served." *Phillips v. Citibank, N.A.*, 63 So. 3d 21, 22-23 (Fla. DCA 2011). R 716.

This Court has sufficient facts and evidence in the record, attached hereto, to demonstrate that Appellees' Counsel willfully engaged in "bad faith" by ignoring rules of civil and appellate

[7] Attorney Trantalis admits to monitoring the docket for M. Greiser after August 2023 service but did not enter his appearance (as would be done with opposing counsel), only announcing his appearance by filing a November 2023 Opposition to a Final Default.

procedure and violating Rules of Ethics to generate motion filings designed to wear down the *pro se* Appellant. These actions disrupted the smooth flow of litigation, which is critical for a *pro se* plaintiff/appellant who is already at a considerable disadvantage.

B. Appellees' Bad-Faith Actions "Poisoned the Well' of Due Process

Appellees' Answer Brief downplays Attorney Dean Trantalis's violations of civil procedure and ethical rules, which overwhelmed and derailed the Appellant's *pro se* case presentation. Appellees summarize, saying, "Appellant contends that the Appellees' prior counsel made false statements to the Court, had a conflict of interest, and should have been disqualified at an earlier point in the proceedings." The Answer then sums up using an absurd positive outcome, falsely claiming that "prior counsel voluntarily withdrew from representation" in June of 2024." (AB at 16-17). [8]

i. Counsel for Appellees Conflict of Interest - R. Reg. Fla. Bar 4-1.9

Attorney Trantalis violated the Rules of Ethics by representing Marian Greiser in June 2023, as he had previously represented both her and the Appellant in their ownership of Unit 210 in 2017, which

[8] Appellees' Sept. 2024, MTD characterizes the conflict-of-interest as inconsequential, calling it "contentious litigation over alleged conflicts of interest by [] prior counsel." (R 578 ¶1, 709). It was contentious as it required a motion to disqualify and an in-person hearing to replace an ethically challenged attorney intent on violating Appellant's due process.

ethically obligated him to decline representation and refer her to another attorney. The obvious choice was the previous attorney John Seiler, who was unconflicted; however, Attorney Trantalis stubbornly remained for ten months, tenaciously fighting his removal until he was ultimately compelled to withdraw in June 2024 by court order.

The conflict was clear: Attorney Trantalis negotiated and drafted the "Trantalis" contract at issue in Count I of the underlying case, and by representing M. Greiser, Trantalis challenged the very contract he drafted for her and Appellant Greiser Jr., despite having assured both in 2017 that his contract would protect their interests.

On February 7, 2024, Attorney Trantalis received an email from the Appellant raising the conflict and requesting he step aside. (R. 295). The judge was also notified of the conflict by a letter that was docketed and served on Attorney Trantalis. (R. 410). The Appellant stated he opposed the representation and would address the issue at the Case Management Conference ("CMC") on March 20, 2024.

ii. Counsel for Appellees Lack of Candor - R. Reg. Fla. Bar 4-3.3

At the March 20th CMC, Attorney Trantalis was asked if he "knew [Appellant] or ever represented him as a client." Trantalis replied, "I don't believe so, Your Honor." (R. 311, 615, 622). Then and there, the matter terminated. At the April 11, 2024, CMC, the judge

again inquired about the conflict, and Attorney Trantalis responded there was "no conflict of interest" because the case had been "dismissed." (R. 622). After twice derailing the judicial inquiry into the conflict of interest, Attorney Trantalis defiantly remained on the case until June 27, 2024, when the judge ordered that he withdraw.

iii. Counsel for Appellees False Statements – R. Reg. Fla. Bar 4-3.3

Appellant was given until June 3, 2024, to hire an attorney. On May 28, 2024, Attorney Trantalis filed a "Proposed Order of Dismissal with Prejudice" falsely claiming that the court ordered that "Plaintiff shall secure an attorney and file a Notice of Appearance by June 3, 2024, or this case shall be dismissed with prejudice." (R. 644). The Court Management System (CMS) responded, "Status:- Not Approved - Order does not accurately reflect the Court's ruling." (R. 645).

Attorney Trantalis forced the *pro se* Appellant into a prolonged conflict-of-interest removal process involving four instances of misleading the court and numerous court filings, including several motions to dismiss this case with prejudice to silence the conflict of interest accusation, before Trantalis was ultimately disqualified. [9]

[9] On June 28, 2024, the day after the motion to disqualify hearing, Attorney Trantalis misled the court by submitting an untruthful draft order stating his withdrawal as counsel was voluntary. (R. 663). The judge used that exact language in his final order. (R. 664).

C. Counsel for Appellees "Bad-Faith" v. Pro Se "Excusable Neglect"

In response to Appellees' assertion that Appellant's due process was intact (despite unchecked violations of civil procedure and the bad faith actions) (IB 36), the Answer argues against them, stating that those issues "are not properly preserved for appellate review." (AB 17). In support, Appellees argue on Answer page 18, that issues raised in the Initial Brief are not appealable, citing *Tillman v. State*, 471 So.2d 32, 35 (Fla.1985), which holds "[i]n order to be preserved [for appeal] an issue must be presented to the lower court [including] the specific legal argument or ground to be argued on appeal."

In fact, each bad faith action by the Appellees that caused chaos, improper scheduling, and harsh deadlines for the Appellant in the trial court was listed, preserved, and argued in Appellant's November 2024 *pro se* ***Verified*** Motion for Reconsideration or Rehearing ("MFR") (R. 707, 709-720), which was denied on December 3, 2024. (R. 729). *See Ramirez v. Ramirez*, 293 So. 3d 21, 22 (Fla. 4th DCA 2020), "[A] party must obtain a ruling from the trial court in order to preserve an issue for appellate review" citing *Carratelli v. State*, 832 So. 2d 850, 856 (Fla. 4th DCA 2002).

Appellee's Answer claims the Appellant was to blame for the court's abuse of discretion in setting hearings and deadlines, because

he failed to raise an objection. (AB at 18 ¶2). This ignores the obvious, ***but for*** the Appellees' bad faith (that created excusable neglect), hearings and deadlines would have been properly set. If the Appellees had been honest with the court and followed the rules of civil procedure and rules of ethics, it is almost certain that the judge would have dispensed justice more even-handedly without abuse of discretion, and the Appellant would have had his due process. [10]

To recap, Appellees' bad faith ran rampant during his fourteen-month *pro se* representation and the five months, during which the Appellant's attorney also faced harsh deadlines and unequal motion hearing scheduling. This was also fully raised and addressed in Appellant's ***Verified*** MFR. (R. 726). "Excusable neglect must be proven by sworn statements or affidavits." *Geer v. Jacobsen*, 880 So.2d 717, 720 (Fla. 2d DCA 2004).

This appeal is an ideal vehicle for this Honorable Court to establish a future deterrent against similar bad faith attorney actions that would continue to deprive pro se litigants of their Due Process rights. Only by closing the significant loophole of limiting meaningful

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[10] Appellees argue the 6-day deadline to file a Third Amended Complaint lies with Appellant's new attorney, who should have argued more vigorously for more time. In fact, Trantalis had argued for a short deadline, claiming the Appellant had delayed the case.

sanction relief to those represented by counsel can this court eliminate the fertile grounds for attorney misconduct. [11]

IV. CONCLUSION

Appellant respectfully asks this court for a decisive *de novo* ruling on the issues raised in the Appellant's briefs that the trial court rejected when it dismissed the Motion for Rehearing in its entirety compelling this appeal; and that a new era of sanction relief for *pro se* litigants begin here with this case due to the Appellees' trial court and appeals court bad faith. These Appellees should face sanctions in this court and the trial court, as their actions have been disrespectful to the court, disrupted the efficient administration of justice, and prejudiced Appellant *pro se* Francis T. Greiser Jr.

Dated April 22, 2025

/s/ Francis T. Greiser Jr.
Appellant *pro se*

[11] Sanctioning will not unfairly prejudice the Appellees, as their attorneys have been given the green light to take their representation outside the norms and do whatever they wish without the need to limit legal fees (R. 608). The EDPA attorneys admitted as much in a letter to the EDPA judge. (R. 609). As for not being responsible for the acts of their attorneys, the Appellant preempted that claim on April 28, 2024, when he emailed Dean Trantalis, saying that he should notify his clients of the sanction cost they bear to continue the conflict of interest. (R. 524 ¶1). If he failed to inform, a claim can be filed against him.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

March 27, 2025

FRANCIS T. GREISER, JR., Appellant(s) v. MARIAN K. GREISER and JOANNE L. DRINKARD, Appellee(s).	**CASE NO. - 4D2025-0233** L.T. No. - CACE23-014503

BY ORDER OF THE COURT:

ORDERED that Appellant's March 24, 2025 "Motion for Expedited Decision Based on Merits of the Case Presented in the Initial Brief" is treated as a motion to foreclose the filing of an answer brief and is denied. Further,

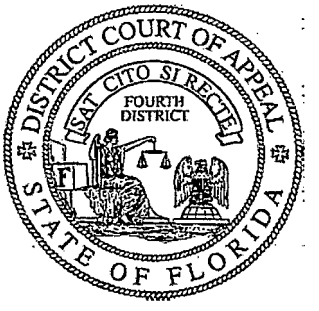
ORDERED that Appellee shall file the answer brief within ten (10) days from the date of this order. In addition, Appellee is notified that the failure to file the brief within the time provided herein may foreclose Appellee's right to file a brief or otherwise participate in this appeal, or the court in its discretion may impose other sanctions.

Served:
Broward Clerk
Francis T. Greiser, Jr.
John Preston Seiler

RA

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

4D2025-0233
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2025-0233 March 27, 2025



IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

CASE NO.: 4D2025-0233

Lower Tribunal Case No. CACE-23-014503

FRANCIS T. GREISER JR.,

Appellant,

v.

MARIAN K. GREISER
JOANNE L. DRINKARD.

Appellees.

ON APPEAL FROM A FINAL JUDGMENT ORDER
OF THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

To most, "pro se plaintiff" means a likelihood of wasted judicial resources, misinterpreting the law, violating court rules, and filing meritless lawsuits that overburden a court docket. That is why a federal court is four times more likely to grant a motion to dismiss against a *pro se* plaintiff than one represented by counsel.[1]

Even so, if meaningful access to justice is genuinely open to all, one's inability to afford legal counsel should not stop a case with merit from moving forward, which is the crux of this appeal.

In this Initial Brief, the Appellant Francis Greiser Jr. is called "GREISER." Appellee Marian Greiser is called "MOTHER," and Appellee Joanne L. Drinkard is called "SISTER" or jointly called "APPELLEES." Also, the following designations will be used: R.____ = (Record on Appeal page number); and R.____ Tr.____ = (Record on Appeal with Transcript Paragraph cited to).

Trial court Counts I, II, and III are directly related to a *pro se* Action filed on May 18, 2018, in the US District Court Southern District of Florida ("SDFL"). Immediately, the complaint was rejected as a shotgun pleading, and an amended complaint was filed. R. 428.

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[1] Patricia Hatamyar, *The Tao of Pleading: Do Twombly and Iqbal Matter Empirically?* American University Law Review 59, n. 3 (February 2010) 553, 620-21.

On September 10, 2018, SISTER filed a Protection from Abuse ("PFA") petition No.18-81406, and MOTHER filed her own PFA No.18-81407. R. 329-37. Both PFA's listed abuse as "Contact friends for information" and "Filed [SDFL] lawsuit." R. 335, 589. The PFA filed by MOTHER was active until May 30, 2019. R. 338, 722.

In 2019, the SDFL transferred the GREISER case with Florida claims to the Eastern District of Pennsylvania ("EDPA"), where new claims were added naming MOTHER as a defendant by a "proposed" second amended complaint ("SAC") filed on March 9, 2020. R 82

On February 2, 2021, the EDPA dismissed all amended complaint claims and denied leave to amend, rejecting GREISER'S "proposed" SAC. R. 429. GREISER then filed a Third Circuit appeal, which upheld the EDPA decision on April 5, 2022, and affirmed Florida claims could be refiled in state court. R. 322, 348.

On June 7, 2023, GREISER filed a civil circuit action against MOTHER in Broward County. On August 29, 2023, he amended his complaint to add new claims and SISTER as a defendant. R. 18.

This Appeal seeks to reverse the trial court's order dismissing Counts II and III with prejudice and transferring Count I to small claims court following an in-person oral hearing before the Honorable Judge Jeffery Levenson on October 31, 2024. R. 702, 729.

STATEMENT OF FACTS

On March 12, 2010, MOTHER and Francis Greiser Sr. ("Father") bought a two-bedroom co-op apartment in Broward County ("Unit 214") for $110,000, giving GREISER one-third ownership and permanent residency in exchange for his renovating the entire unit at no charge which was completed in six months. R. 20-21, 553.

On March 1, 2011, MOTHER and Father bought a one-bedroom cooperative apartment two doors down ("Unit 210") for $60,000 as an investment, giving GREISER one-third ownership in exchange for his renovating the entire unit at no charge. R. 228, 554.

On June 13, 2012, GREISER Unit 210 ownership was recorded when he, as a co-owner, was listed on Unit 210 Proprietary Lease filed with Broward County public records. [2] R. 95, 554.

Also, at that time, MOTHER and Father proposed that GREISER apply for a Florida Homestead for Unit 214, as he was an equity owner and full-time resident of the unit, which would lower the parents' county property tax burden for the unit. R. 119-20, 443.

On July 9, 2012, GREISER provided notarized proof of his equity ownership and full-time residency to the Broward County

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2 Co-op owners issued corporate shares and a unit proprietary lease rather than a deed.

Property Appraiser, who granted him a Unit 214 Florida Homestead, which was then recorded with Broward County records. [3] R. 40-41.

GREISER'S Father passed away on May 14, 2016. On July 7, 2016, without notice or reason, MOTHER and SISTER ousted GREISER from Unit 214 by changing the door locks while he was out for the day and listing the property for sale. R 91, 160, 555.

On December 13, 2016, APPELLEES sold Unit 214 for $167,500 over GREISER'S protest, who received no compensation for his lost ownership share or reimbursement for his renovation work. R 21, 91.

On June 1, 2017, MOTHER used Unit 214 sale proceeds to purchase a nearby condominium she then titled jointly in her name along with SISTER'S name. R. 224, R. 172-75.

On May 5, 2017, MOTHER listed Unit 210 for sale after GREISER signed over his one-half share under a written contract signed by both parties that called for MOTHER to split the net proceeds over $60,000 with GREISER evenly. R. 135, 217.

On June 8, 2018, MOTHER sold unit 210 and thereafter refused to disclose how much it sold it for. In December 2018, an effort was

3 GREISER, Father, and MOTHER paused adding GREISER to the Unit 214 proprietary lease until Whittier Towers v. Greiser Sr. et al (CACE12-0279410) SLAPP lawsuit filed against them by the Co-op Board was settled, which was not dropped until May of 2017. R 554-55.

made to get MOTHER'S information about the net sale proceeds, but it was stopped by her attorney, who said any attempt to collect was harassment. R. 144.

To date, MOTHER has not given details of how much unit 210 sold for or the costs to be deducted from the net proceeds. GREISER's only source of information was found in Broward County Property Records, showing a Unit 210 sale price of $75,000, which could be higher if payment was higher than the price listed. R. 137

GREISER'S only estimation of expenses directly related to the sale would be a realtor's commission, as the unit was owned without a mortgage and an attorney was not present as SISTER represented MOTHER at the closing according to signed records. R. 139.

APPELLEES September 18, 2024, MTD argues Count I should be dismissed for failure to state a cause of action due to GREISER'S failure "to identify the net sales proceeds." R. 680. Further, the MTD cites irrelevant case law holding that "mortgage indebtedness" [not applicable to Unit 210] must be included in the sale cost. R 680.

The MTD also argues that Counts II and III were barred by the Statute of Limitations ("SOL") and the Statute of Frauds ("SOF"). R. 681-82. The MTD justifies dismissal of Count III against SISTER for being "similar" to an EDPA dismissed count and further argued

GREISER failed to show a business relationship with MOTHER existed for SISTER to have interfered with such an interest. R. 682-83.

The trial court held an in-person MTD hearing on October 31, 2024, where the court ruled against the GREISER argument and case law for tolling the Statute of Limitations ("SOL") and instead granted the APPELLEES' Motion to Dismiss on the SOL grounds alone.

The court held that both Count II and III "[R]elates back to 2016. On its face, the Statute of Limitations survive", with the court adding "[b]ased on Counts 2 and 3 being dismissed with prejudice, Count 1 will be dismissed and transferred to small-claims court." R. TR 13, 3.

A motion for reconsideration ("MFR") and/or a rehearing was filed on November 20, 2024, pursuant to FL.R.C.P. 1.530 raising SOL, SOF, Attorney Misconduct, and Unequal Treatment. R. 705-28.

This was done to allow the trial court to correct errors of fact and errors of law in dismissing the GREISER case with prejudice, without the need to appeal. The MFR was also filed to preserve several issues for appeal, which are now included in this initial brief.

On December 3, 2024, the trial court denied the MFR in a one-page Order. R. 729. On December 9, 2024, GREISER filed a notice of appeal with the circuit court Clerk. R. 731.

SUMMARY OF ARGUMENT

The trial court erred in dismissing GREISER'S Counts II and III with prejudice as the Supreme Court case law ***on point*** mandates that SOL tolling applies, which the trial court ignored.

GREISER demonstrated: (**1**) Counts II and III cause of actions accrued on December 13, 2016, when APPELLEES sold Unit 214 despite protests from GREISER as equity owner; (**2**) Supreme Court precedent holds that causes of actions against MOTHER and SISTER began tolling on the date of their District Court filings, and; (**3**) the PFA filed by MOTHER was unjustified but effectively stopped her from being named as a defendant until her PFA was lifted.

Of importance, the SOL affirmative defense was ***never raised*** against Count III, either in the MTD or during the in-person hearing held on October 31, 2024. The facts and case law demonstrated that Count III was tolled and filed within the four-year SOL despite a *sua sponte* dismissal with prejudice by the trial court.

As to Florida SOF, GREISER provided county records removing Counts II and III from any SOF defense. The clear evidence against SOF for Unit 214 ownership is as follows: (**1**) GREISER provided proof of his Unit 214 equity ownership and year-round residency to the

Broward County Property Appraiser to qualify for a Florida Homestead property tax reduction, (**2**) GREISER'S Unit 214 Homestead tax reduction ran from 2012 until 2016, and, (**3**) MOTHER benefited from the Homestead exemption by accepting 2012 to 2016 property tax reductions.

Lastly, due process for GREISER was hindered when APPELLES' first attorney (who was disqualified for conflict of interest) used unethical methods to try and mislead the court into dismissing the GREISER case, causing chaos, unnecessary court filings, and forcing GREISER to rush and file an incomplete *pro se* SAC.

Thereafter, *pro se* GREISER hired a lawyer, who, although new and unfamiliar with the case, was given just ***six*** days to file a Third Amended Complaint ("TAC"); while APPELLEES' attorney, who was familiar with the case dating back to the SDFL was given ***fifty*** days to file a motion to dismiss and thereafter given priority to be heard.

The above-described actions deprived GREISER of a full and fair opportunity to present his case. To this end, the Court should reverse the trial court's ruling that dismissed the case with prejudice, rule on matters raised but ignored by the trial court, and direct that GREISER be allowed to file a fourth amended complaint.

ARGUMENT

I. THE TRIAL COURT ERRED IN NOT CONSIDERING OR APPLYING THE RELATE BACK DOCTRINE, EQUITABLE ESTOPPEL, AND SUPREME COURT PRECEDENT THAT TOLL COUNTS II AND III

A. Standard of Review for all Issues Presented

An order granting dismissal of a claim with prejudice is reviewed *de novo.* Larkin v. Buranosky, 973 So. 2d 1286, 1287 (Fla. 4th DCA 2008). Whether a trial court has complied with the guarantees of due process is reviewed *de novo.* VMD Fin. Servs., Inc. v. CB Loan Purchase Assocs., 68 So. 3d 997, 999 (Fla. 4th DCA 2011). Due process requires fair notice and a real opportunity to be heard and defended in an orderly procedure before judgment is rendered. J.B. vs. Florida Department of Children and Family Services, 768 So. 2d 1060, 1064 (Fla. 2000).

B. The Court Erred in Shutting Down Appellant's Attorney from Presenting Compelling SOL Tolling Case Law Cited in Both the GREISER Third Amended Complaint and the MTD Response.

Greiser v. Greiser CACE-23-014503 is a civil action with a complex history that confuses everyone new to the case, made worse by the actions of APPELLEES. At the October 31, 2024, in-person hearing, the trial court commented, "I mean, the main crux, besides the fact that it's deja vu all over again, the issue is the Statute of Limitations." R. 693. Tr. 11-13. The court listened to APPELLEES argument that Counts II and III were barred under SOL and SOF, almost without interruption. R. 692-697 Tr. (generally.)

The court pressed the GREISER attorney, "I really want to focus on [Counts] 2 and 3." R. 699 Tr 17-18. Several times the court cut short the GREISER attorney from presenting his argument with case law supporting Counts II and III. R. 699-702 TR. (generally). The disruptions made it extremely difficult for the experienced GREISER attorney to dislodge SOL accusations against Counts II and III. R. 701 TR. 6-9. The court then proclaimed, "Well that's your problem because even if it relates back [to December 13, 2016, when Unit 214 was sold], you still violated [the SOF]. R. 701 Tr. 10-12.

The GREISER attorney tried to rebut and bring up equitable estoppel by MOTHER filing a PFA. R. 701 Tr. 13-15, 18-24. The court interjected with, "You're out of luck, man. I mean, even if it relates back." R.701, Tr.16-17. Counts II and III were quickly dismissed based on the court's flawed SOL analysis and contrary to SOL case law found in the GREISER Response to MTD. R 586-591.

The cause of actions for both Counts II and III accrued on December 13, 2016, when APPELLEES sold Unit 214 and (**a**) kept GREISER'S equity ownership share, (**b**) kept the $57,500 in increased property value due to GREISER renovation work (R. 553), and (**c**) kept $39,500 in total monthly maintenance fees GREISER paid to the Association as equity owner over four years. R. 75-76, 559-60.

MOTHER retained all the benefits listed above because GREISER relied on her fraudulent inducement of "free renovation work for one-third ownership" and by misrepresenting her future intent to make GREISER an equal Unit 214 owner. R. 559-60.

APPELLEES argue that the SOL for Counts II and III runs from when MOTHER received free GREISER Unit 214 renovations in 2010. R. 581, 696 Tr. 7-24. GREISER countered with equitable estoppel, as he was falsely induced into believing he was a co-owner for the six years he lived there until his Unit 214 ownership ended with MOTHER selling Unit 214 on December 13, 2016.

§ 95.031(1) Fla. Stat. states, "the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues." Typically, "[a] cause of action accrues when the last element constituting the cause of action occurs." Id.

The essential elements of unjust enrichment are:

> (1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff.
>
> Gutierrez v. Sullivan, 338 So. 3d 971, 975 (Fla. Dist. Ct. App. 2022), citing Hillman Const. Corp. v. Wainer, 636 So. 2d 576, 577 (Fla. 4th DCA 1994).

As to US District Court SOL tolling missed by the trial court, Artis v. District of Columbia, 138 S. Ct 594, 598 (2018), holds that "state causes of actions survive and are tolled back to the date of the filing of the Federal case, [and] for 30 days after the federal case is disposed of." See also "relation back" in Kopel v. Kopel, 229 So. 3d 812, 820 (Fla. 2017), (where after 21 years of family business litigation) the court held that the "relation back doctrine" returns to the original filed claim date "where the [new] claim arises out of the same conduct, transaction, or occurrence as the original." R. 588.

Correct Analysis of SOL Count II based on undisputed facts:

Step 1: Unit 214 SOL runs from December 13, 2016 (when unit sold) through March 9, 2020, when MOTHER was named defendant. (38 months and 3 weeks). SOL tolling began on March 9, 2020, continuing through the appeals court decision on April 5, 2022, affirming the EDPA dismissal, plus 30 days, as *per* Artis. R. 587.

Step 2: Unit 214 SOL running resumed on May 5, 2022, and ran until June 7, 2023, when Grieser v. Greiser CACE 23-014503 was filed. (13 months and 2 days). The total running of SOL for Count II was 51 months and 26 days.

Florida SOL does not bar Count II because the trial court ignored critical aspects of Florida law in that equitable tolling and

estoppel began when MOTHER filed a September 10, 2018, PFA that ran until May 30, 2019, when the PFA was dropped (estoppel of 8 months and 2 weeks), leaving the SOL at 43 months, 24 days. R 588.

Equitable estoppel is "a valid defense to a limitations-period defense." Morsani v. Major League Baseball, 739 So. 2d 610, 614 (Fla. 2d DCA 1999). Equitable estoppel bars applying SOL as it "presupposes" the plaintiff knows of the facts underlying the cause of action but delayed filing because of the defendant's conduct. Ryan v. Lobo De Gonzalez, 841 So. 2d 510, 576 (Fla. 4th DCA 2003).

Equitable tolling is a doctrine utilized to prevent injustice. See Machules v. Dep't of Admin., 523 So. 2d 1132, 1135 (Fla. 1988), where equitable tolling was applied to an administrative proceeding brought by a former state employee. See also Major League Baseball v. Morsani, 790 So. 2d 1071 (Fla. 2001), where the Court extended Machules to civil cases as a theory that can "deflect the statute of limitations" to prevent defendants from "benefiting from their wrongful conduct." Id. at 1076.

Despite no contact between GREISER and MOTHER for sixteen months, MOTHER improperly used the Pennsylvania PFA Domestic Abuse Statute with its harsh *criminal* consequences of a $1000 fine and/or up to six months in jail for violating the PFA Order. R. 722.

23 Pa.C.S. § 6106(a) [PFA Statute] directs that "an adult may seek relief by filing a petition with the court alleging abuse by the defendant." Further, Evans v. Braun, Pa. Super. 12 A.3d 395, (2010) defines "abuse" according to the statute as follows:

> The occurrence of one or more of the following acts between family or household members... (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon. (2) Placing another in reasonable fear of imminent serious bodily injury. (internal quotations omitted). Id. at 398.

The seriousness of the PFA was conveyed by MOTHER'S public attorney, who relayed that contact about "litigation" or "money owed" could be construed as violating the PFA Order. R. 110.

Correct Analysis of SOL Count III based on undisputed facts:

The Count III SOL defense was not raised in APPELLEES' MTD or during the October 31, 2024, in-person hearing. The trial court dismissed Count III with prejudice *sua sponte* for SOL violation, cutting off the GREISER attorney from discussing Artis v. District of Columbia in depth, which was relevant and applied to Count III SOL for tortious interference. R. 586, R. 700 Tr. 20.

As *per* Artis, the SOL ran from December 13, 2016 (sale of Unit 214) through May 18, 2018, when GREISER filed his SDFL complaint (17 months and 2 days). The SOL resumed on May 5, 2022 (with 30 days as per Artis) when the appeal was denied and continued until September 3, 2023, when Greiser v. Greiser added SISTER as a defendant. (15 months and 29 days). Thus, the Count III SOL ran for 33 months and within the four-year SOL. R. 587, 591.

C. Appellees Raised the Statute of Frauds in Their MTD and Again at the In-Person Hearing, but a Quick Dismissal with Prejudice Muted GREISER'S Attorney from Countering the SOF Argument

The trial court dismissed Counts II and III with prejudice, focusing on Florida SOL. APPELLEES also raised SOF at the October 2024 hearing (R. 693 Tr. 14-17), and in their MTD as well. R. 681-82. SOF was countered by the GREISER Response to MTD (R. 589), and despite the GREISER attorney trying to argue again during the in-person hearing, he was cut off by the court. R. 700 Tr. 20.

The Florida SOF fails as a matter of law as it applies to oral agreements that cannot be carried out within one year:

> No action shall be brought ... upon any agreement that is not to be performed within the space of [one] year from the making thereof ... unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith." § 725.01. Fla. Stat.

Notably, the March 2010 oral contract that GREISER would renovate the unit and then receive one-third ownership of Unit 214 was satisfied within one year, as GREISER finished the entire renovation project in six months, began living in the unit, and was told he was an equal co-owner and was treated as such. R. 553.

SOF was inapplicable when the Unit 214 ownership in exchange for free renovation work agreement was memorialized on July 9, 2012; when GREISER, as a co-owner and a full-time resident, applied for and was granted Unit 214 Florida homestead tax exemption recorded in Broward County. R. 511-12, 586. GREISER'S ownership of Unit 214 was ratified each November 1st when the parents signed a personal check to pay the reduced property taxes. R. 513-514, 597.

Florida Law is clear that a Florida Homestead Exemption under § 196.03 J(l)(a) Fla. Stat. is limited to: "A person who, on January 1, has the legal title or beneficial title ***in equity*** to real property in this state and who in good faith makes the property his or her permanent residence." (emphasis added). R. 596-97.

Further, any SOF defense for Counts II and III goes against public policy and Florida law, as MOTHER and Father attested to GREISER'S Unit 214 equity ownership by signing the letter used to qualify for and receive a Unit 214 Homestead and property tax relief

from 2012 until 2016. § 196.131(2) Fla. Stat. states, "Any person who knowingly and willfully gives false information for the purpose of claiming homestead exemption is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding $5,000 or both. R. 597.

The 2011 Unit 214 financial responsibility agreement was further proof of three-way ownership, in that owner GREISER paid $450 (later capped at $500) for the monthly maintenance fee. R. 75-76. MOTHER ratified GREISER'S Unit 214 ownership every month when she cashed his monthly $500 maintenance fee check. R. 76.

The 2011 agreement was that owners, MOTHER and Father were would pay the $2000 annual property taxes. R. 513-514. The GREISER Homestead tax exemption saved MOTHER $800 per year, and she only reversed herself, claiming GREISER was not a Unit 214 equity co-owner years later to fraudulently enrich herself.

II. THE COURT ABUSED ITS DISCRETION IN SETTING FILING DEADLINES, PRIORITIZING MOTION HEARINGS, AND NOT ASSERTING VIGILANCE AGAINST ATTORNEY MISCONDUCT

A. *The Six-Day Deadline for GREISER'S Attorney to File a Third Amended Complaint Versus a Fifty-Day Deadline to File a Motion to Dismiss Lacked Fairness and Equality.*

During the Case Management Conference (CMC) on March 20, 2024, the Court told *pro se* GREISER that it had concerns about his

case due to it being dismissed in the EDPA. At the end of the CMC, GREISER was told he had until March 29, 2024, to file a SAC, or his case would be dismissed with prejudice. R. 288-89.

The judge's March 29 deadline to file a SAC was lifted because, on March 28, 2024, GREISER filed a *pro se* Motion to disqualify APPELLEES' first attorney, Dean Trantalis, for a conflict of interest that took priority over the filing of a SAC. R. 311-12, 627-32.

On May 20, 2024, GREISER was given until June 3, 2024, to hire counsel, and a new CMC was set for June 6, 2024. GREISER hired attorney Jennifer Ford on June 3, 2024 (R. 544), who appeared at the CMC on Thursday, June 6, 2024. Ms. Ford was given a hard deadline of June 12, 2024, to file a Third Amended Complaint ("TAC"), despite being new to a case with extensive and confusing history and telling the court she had family obligations over the weekend. R. 549-50.

On June 12, 2024, Attorney Ford filed a motion asking for a three-day filing extension. R. 549. The TAC was filed on June 15, 2024, and was lacking, with counts reduced from eight in the amended complaint to three counts because of the six-day deadline. R. 551-63. As such, the TAC dropped the defendant Estate of Francis

Greiser Sr., and dropped the SAC Count of Unit 214 Conversion against MOTHER (that was never raised in the EDPA).

Because Attorney Ford did not have enough time to research alternative causes of action, it was decided to follow the Third Circuit Court of Appeals guidance that states:

> [GREISER] stat[ed] he was entitled to certain proceeds when Whittier Towers Unit 210 was sold. He also maintained that his parents were unjustly enriched when he performed renovation work in unit 214. It would have been inequitable to permit Greiser to pursue 2 new claims worth less than $75,000 in damages against two new defendants nearly two years into this diversity action. R. 351-52. [4]

On June 27, 2024, APPELLEES' attorney Trantalis was disqualified for conflict of interest. R. 661. Also, that day APPELLEES were given 30 days to find new counsel and another 30 days to file a response to the Third Amended Complaint. R. 664-65.

On August 5, 2024, APPELLES' new attorney, John Seiler, who was familiar with the case as having been the APPELLEES attorney in the SDFL, asked for and received an additional 44 days to file the MTD. R. 573-75. His MTD was filed on September 18, 2024.

The trial court erred in setting clearly disproportionate plaintiff and defendant court filing deadlines. As such, GREISER never

[4] The TAC has a count never raised against SISTER that relates back to the filing in EDPA.

received a meaningful opportunity to present his full case or to be heard. See Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth., 795 So. 2d 940, 948 (Fla. 2001), stating that "Procedural due process requires both fair notice and a real opportunity to be heard." "The essence of justice is that all persons under similar conditions are treated substantially the same under the law." Id. See also Sylvester v. Ryan, 623 So. 2d 767, (Fla. Dist. Ct. App. 1993), holding that "the concept of comparable fairness ... is not unlike the doctrine of proportionality ... and has the same constitutional aura because of the equal protection requirements of Article 1, section 2 of the Florida Constitution." Id. at 768.

B. *The April 2024 Motion for Default and Both Requests for Admissions Were Unanswered and Never Ruled On as the Court's Quick Dismissal Silenced the GREISER Attorney.*

The SOL and SOF affirmative defenses raised on October 31, and in the MTD were subject to default under Fl. R. Civ. P. 1.270(a), for APPELLEES refusing to answer the August 2023 Request for Admissions ("RFA") served on MOTHER. R. 668-73. That RFA was served with the complaint and summons and required an answer within 45 days to affirmatively set forth and preserve their SOL and SOF defenses as well as defeat equitable estoppel. R. 238-39.

GREISER'S attorney wanted RFA decision and sought to bring it up at the in-person hearing, but the case was quickly dismissed; and was unable to argue both the SOL and SOF affirmative defenses should have been barred because on April 4, 2024, GREISER filed a Notice of Motion for Order Deeming Admitted Truth of Facts and Documents with the RFA attached as Exhibit "1". R. 636-38. The court was aware, as on April 9, 2024, GREISER filed a letter with the Clerk again stating the 2023 RFA was still unanswered. R. 635.

On May 30, 2024, GREISER filed a letter to the judge as follows:

> [APPELLEES] have not answered [the GREISER] Request for Admissions served by process server on August 21, 2023, that addressed [SOL and SOF] potential defenses. Defendants failed to reply [to the April 4, 2024] Notice of Motion for Order Deeming Admitted Truth of Facts and Genuineness of Documents ("MTDA"). As such, there are issues that need to be addressed before Defendants file their third MTD in this case." R. 646. [5]

The failure to answer pursuant to Fl. R. Civ. P. 1.370(a) holds:

> The [RFA] matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection ... a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading upon the defendant.

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[5] 2023 RFA non-answer also cited in: the affidavit of service R. 243; motion for clerk's final default R. 238; support of default R. 255-257; motion deem RFA admitted R. 313-315; RFA as Exhibit R. 317-322; Fl. Bar letter R. 395-401; and Response to the 1st MTD R. 414-15.

The 2023 RFA admissions were not complex and were intended to be used as a discovery tool to narrow the scope of issues, including admissions that Unit 214 claims were not barred by the Florida SOL or SOF, yet the APPELLEES intentionally ignored the RFA. APPELLEES despite being reminded ten times over fourteen months that an RFA was served without their providing a written answer.

There was no excusable neglect, as APPELLEES were represented by counsel and repeatedly warned about the unanswered RFA, yet even after GREISER filed a *pro se* default motion on April 4, 2024, the APPELLEES and both of their attorneys consciously chose not to answer or ***respond*** to the default motion to preserve their SOL and SOF affirmative defenses.

"To promote the orderly movement of litigation, Florida Rule of Civil Procedure 1.380 authorizes sanctions for a party's failure to comply with discovery orders [or as in here, Fl. R. Civ. P. 1.370(a)]." Mercer v. Raine, 443 So.2d 944, 946 (Fla.1983). See also PNC Bank ATA v. Duque, 137 So. 3d 476,478 (Fla. Dist. Ct. App. 2014), "the ultimate sanction of dismissal [of APPELLEES affirmative defenses] is warranted in cases involving a protracted history of discovery abuses, numerous motions to compel ... and patent prejudice to the

The 2023 RFA admission that equitable estoppel began with the filing of a PFA on September 18, 2018 (even though GREISER had not seen, spoken to, phoned, or texted MOTHER in the 16 months prior to her filing of the PFA) R. 599 was by default as follows:

> **25.** Admit that the temporary protection order [Case No. 18-81407] that was granted by the Court of Common Pleas in Delaware County, Pennsylvania, on September 18, 2018, caused Defendant Marian K. Greiser to be "unavailable" for being named in a Florida civil action and being subjected to service of process while the protective order was in effect. R. 321.

Thus, APPELLES lost their SOL and SOF defenses. See Morgan v. Thomson, 427 So.2d 1134, 1135 (Fla. 5th DCA 1983) (Appellee filed RFA that Appellant failed to timely answer and summary judgment for Appellee granted). "[A]ppellee here failed to respond to appellant's request for admissions, also failed to move for leave to file responses belatedly pursuant to Florida Rules of Civil Procedure 1.370 and suffered the entry of an adverse summary judgment."

See also Wood v. Fortune Ins. Co., 453 So. 2d 451,451 (Fla. Dist. Ct. App. 1984), "In Morgan our companion court held the defaulting party could not belatedly file responses without a motion for leave to do so, the absence of which was fatal."

On October 4, 2024, GREISER hired attorney Mathew Fornaro to argue GREISER'S Motion for failure to answer the August 2023 RFA. R. 593. Attorney Fornaro emailed Attorney John Seiler on October 9, 2024, to set a hearing for the RFA default; however, Attorney Seiler would not commit to a scheduling date. R. 685.

Once alerted to the intent to set a motion hearing, Attorney Seiler filed an Answer to the 2023 RFA on October 29, 2024 (two days before the in-person hearing). R. 594-602. This was done 14 months after the service of the RFA and without seeking leave of court to do so. Just as egregious, the APPELLEES never filed an answer to the second RFA served upon SISTER by a process server on July 16, 2024, a second violation of Fl. R. Civ. P. 1.370(a). R. 675-676.

C. *The Trial Court Erred by Not Reining in the Improper Conduct of Appellees' First Attorney Preventing GREISER From Effectively Framing and Presenting His pro se Case.*

On November 17, 2023, APPELLEES' Attorney, Dean Trantalis, entered his appearance in Greiser v. Greiser CACE-23-014503 three months after Mother was served with the complaint, by filing a motion to set aside the Clerk's Default. R 254. Trantalis had represented GREISER in 2017 as a plaintiff in Francis Greiser Jr. v. Whittier Towers Apts. (COCE 13-8820) and represented GREISER

and MOTHER as defendants in Whittier Towers Apts. v. Francis Greiser Sr. et al (CACE 12-027941).[6] R. 305.

On February 7, 2024, GREISER notified Trantalis by voice mail and email that a conflict of interest still existed and again asked him to step aside as the defendant's attorney in Greiser. R. 295, 613. GREISER stated he was notifying the judge and would raise the issue at the CMC on March 20, 2024. R. 298. There was no response.

GREISER filed his letter to the judge about the conflict of interest on February 7, 2024, informing the court as follows:

> My concern is that a conflict of interest exists-now that [Attorney Trantalis] is counsel for Defendants against me as those cases involve the same properties and subject matter as those in that are the center of this instant action. I met with Attorney Trantalis extensively under a lawyer client relationship and discussed confidential matters relating to this case. I wanted to ask him to recuse himself, which would not prejudice the Defendants as they had been represented previously by Attorney Jack Seiler who knows the case well. R. 614.

The conflict details listed in February 7, 2024, email and letter filed with the court gave GREISER the trusted belief that Trantalis would withdraw from Greiser at the March 20, 2024, CMC in the best

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[6] The co-op lawsuit claimed GREISER was never approved as a 210 proprietary lease co-owner (despite cooperative by-laws clearly stating that as a son to MOTHER and Father by blood, GREISER could be added without Board approval). This was a SLAPP lawsuit filed after GREISER repeatedly pressed to see cooperative financial records. R.554-55.

interest of all parties. R. 284. Especially so because there would be no prejudice as the case was in early litigation, and former SDFL Attorney John Seiler could easily take over the case. R. 279.

As such, GREISER planned a visit to Thailand with his wife, who just received her U.S. Permanent Resident Card, allowing her to reenter the country after visiting her elderly father, who was in poor health and whom she hadn't seen since 2018. R 311-12. GREISER booked non-refundable airfare tickets departing Miami on March 21, 2024, and returning on May 2, 2024. R. 312.

During the CMC of March 20, 2024, the judge asked Trantalis if he "knew [GREISER] or ever represented him as a client." Trantalis replied, "I don't believe so, Your Honor." R. 311, 615, 616, 622. [7] That answer tainted GREISER as a liar concerning any prior representation, and the conflict-of-interest matter was immediately terminated. GREISER'S Clerk's Final Default against MOTHER was dismissed without explanation, and GREISER was ordered to file a SAC by March 29, 2024, or have his case dismissed with prejudice.

For two days before leaving the country, GREISER spent all his

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[7] Trantalis quoted exchange was noted in: 2nd Letter to Judge R. 615; Resp.to MTD R. 521; Bar letter R. 623; and MFR R.712. All went unchallenged as to accuracy and truthfulness.

time trying to secure an attorney to take over Greiser v. Greiser and file a SAC. R. 521. GREISER spoke with several lawyers personally and left many unreturned voicemail messages explaining the opposing attorney in Greiser had a conflict of interest, made false statements to the court, and the need to disqualify Attorney Dean J. Trantalis. A very clear non-interest was shown in the willingness to provide representation in Greiser. R. R. 521. [8]

In Thailand, without a computer or Internet, GREISER scrambled to do the following: (**1**) research, draft, and file a March 28, 2024, *pro se* Motion to Disqualify Attorney Trantalis R. 297-307; (**2**) file a Response to the March 29, 2024, Trantalis' MTD by Affidavit R. 311-12; (**3**) draft and file a third Letter to the Judge on April 9, 2024, notifying the court there really was a conflict of interest R. 316-22; (**4**) draft and file a Motion to Deem the 2023 RFA Admitted for failure to answer R. 313-15; and (**5**) file a Request for a 35-day extension for GREISER to find an Attorney. R. 419.

On March 30, 2024, Trantalis filed a Motion to Dismiss with Prejudice by affidavit because GREISER missed the court's March 29,

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[8] GREISER suspected a lack of interest in providing legal representation was due to Mr. Trantalis having a dual role as both a Broward County civil attorney and a Broward County political leader as the current Mayor of Ft. Lauderdale, FL. R. 521, 712.

2024, deadline to file a SAC without mentioning the conflict-of-interest allegation. R. 306-07. The court, however, delayed ruling on the dismissal with prejudice due to the motion to disqualify court filing and set a new CMC for April 11, 2024. R. 286.

During April 11th CMC, Trantalis objected to GREISER'S March 28th request for additional time to retain a lawyer and his asking to extend the deadline to file a SAC. Trantalis asked that the case be dismissed with prejudice instead. The court denied the Trantalis motion and ordered a new CMC set for May 20, 2024. R. 392.

On May 16, 2024, GREISER emailed a final warning to attorney Trantalis that he needed to withdraw or GREISER would be forced to file a Bar Complaint. 639

At the CMC of May 20, 2024, Defendants' second MTD was dismissed, and Plaintiff was given a date of June 3, 2024, to hire an attorney, and a new CMC was set for June 6, 2024. Fearing repeated lack of candor by Trantalis, GREISER hired a Court Reporter for the May 20 CMC hearing. R. 647-658.

On May 28, 2024, Attorney Trantalis filed a "Proposed Order of Dismissal with Prejudice" falsely claiming that at the May 20 CMC, the Court ordered that "Plaintiff shall secure an attorney and file a Notice of Appearance by June 3, 2024, or this case shall be dismissed

with prejudice." R. 644. The Court Management System (CMS) responded, "Status: - Not Approved - Order does not accurately reflect the Court's ruling." R. 645.

The trial transcript GREISER paid for was submitted to the court, documenting that the judge never told GREISER he had a deadline to retain counsel, or the case would be dismissed with prejudice. R. 650-58 (generally). GREISER then sent another letter to the Judge complaining about those misleading tactics. R. 646

Attorney Trantalis purposely misled the court with repeated evasive answers to the conflict questions raised by the court that thwarted swift action. In doing so, Trantalis avoided disqualification and continued representing the APPELLEES until June 27, 2024, when the court removed him. R. 566.

Even ***after*** his removal, Trantalis misled the court again by submitting an untruthful draft order (that the judge asked attorney Ford to draft) stating his withdrawal as counsel was voluntary. R. 663. GREISER caught the misrepresentation and emailed his attorney to ask the judge to reject the draft order. However, it was too late, as the judge used that exact language in his final order. R. 664.

Attorney Trantalis had an ethical duty to avoid conduct that undermines the integrity of the judicial process and take all steps

necessary to prevent misleading the tribunal through untrue statements of "law or fact." R. Regul. Fl. Bar 4-3.3. Trantalis failed repeatedly, damaging GREISER'S already complex civil action and forcing him to divert thousands of dollars to disqualify him. R. 622.

His continued representation in Greiser quadrupled GREISER'S attorney fees and costs from quotes received in 2023. R. 521, 712. Legal representation went from a flat fee quote of $2500 (through to the final order) to the $10,000 in lawyer fees Greiser was forced to pay. [9] Attorney Trantalis had a duty to recuse himself eight months before the trial court ordered that he be removed. His failure to do so irreparably damaged GREISER financially and derailed his case.

The plain language of R. Regulating Fla. Bar 4-8.4 and Florida caselaw holds an attorney to "the quintessentially professional act of admitting defeat when there is no chance of victory, or when victory will have been obtained at the price of integrity and truth" Boca Burger, Inc. v. Forum, 912 So. 2d 561, 571 (2005) (citing Lingle v Dion, 776 So.2d 1073,1078 (Fla 4th DCA 2001) further stating "[w]hile counsel does have an obligation to be faithful to [his] [client's] lawful

[9] GREISER is an indigent *pro se* litigant with a spinal cord injury, has no savings or assets, declared bankruptcy in August of 2023, and his only income is $1600 per month he receives in Social Security. R. 732-38

objectives, that obligation cannot be used to justify unprofessional conduct by elevating the perceived duty to zealously represent over all other duties." Id. at 571.

In this case, missed opportunities of judicial intervention against attorney Trantalis at key moments played a decisive role in tilting the playing field in favor of the APPELLEES.[10] See R.J. Reynolds Tobacco Co. v. Kaplan, 321 So. 3d 267, 275-76 (Fla. Dist. Ct. App. 2021). "The primary purpose of this opinion is to repeat with emphasis to trial judges what we said in 1994: The fact that appellate courts proscribe misconduct by trial counsel, unfortunately, does not seem to eliminate it. It is therefore of vital importance that trial judges, when objections are raised to improper [conduct, or] argument as they were in this case, properly exercise their duties by stepping in and curbing it." Citing to Bellsouth Hum. Res. Admin., Inc. v. Colatarci , 641 So. 2d 427, 430 (Fla. 4th DCA 1994).

Based on both the action of APPELLEES' Counsel and the inaction of the trial court, this Court should reverse the trial court's

[10] Common sense dictates that a *pro se* plaintiff should not instruct a trial court judge how to run his courtroom and is thus limited to bringing facts of problematic conduct to the attention of the judge —for the trial court judge to make the final decision and take action if necessary.

ruling that dismissed the case with prejudice, rule on matters raised but ignored by the trial court, and direct that GREISER be allowed to file a fourth amended complaint.

III. THE TRIAL COURT'S FAILURE TO CORRECT ITS FINAL ORDER TO RESOLVE ERRORS IN TOLLING, AS WELL AS OTHER ISSUES RAISED IN THE MOTION FOR REHEARING, JUSTIFY A *DE NOVO* REVIEW AND RULING BY THIS COURT ON THOSE OTHER ISSUES

"The requirement of a contemporaneous objection [GREISER'S MFR] is based on practical necessity and basic fairness in the operation of a judicial system. It places the trial judge on notice that error may have been committed, and provides him an opportunity to correct it at an early stage of the proceedings. Delay and unnecessary use of the appellate process result from a failure to cure early that which must be cured eventually." See Murphy v. International Robotic Systems, 766 So. 2d 1010, 1017 (Fla. 2000). [11]

The APPELLEES MTD states claims against SISTER were dismissed with prejudice (R. 678). Still, when specifically referring to Count III, they state that "[GREISER] attempted to assert a ***similar*** claim against [SISTER] in the [EDPA]." R 683. As the MTD and the

[11] Common sense dictates that a *pro se* plaintiff should not instruct a trial court judge how to run his courtroom and is thus limited to bringing facts of problematic conduct to the attention of the judge —for the trial court judge to make the final decision and take action if necessary.

word "similar" concedes, Count III was a new claim and never raised—and thus, it "relates back" as *per* Kopel v. Kopel.

APPELLEES further argues Count III against SISTER was barred as "[GREISER] had no enforceable business relationship with [MOTHER]"; therefore, "[SISTER] could not have interfered with any such interest." R 682-83.

A party seeking redress under a claim for tortious interference with a business relationship must show 1) the existence of a business relationship, not necessarily evidenced by an enforceable contract, 2) knowledge of the relationship on the part of the defendant, 3) intentional and unjustified interference with the relationship, and 4) damage to the plaintiff as a result of the tortious interference with the relationship. Jay v. Mobley, 783 So. 2d 297, 299 (Fla. Dist. Ct. App. 2001) citing ISS Cleaning Servs. Group, Inc. v. Cosby, 745 So.2d 460, 462 (Fla. 4th DCA 1999).

GREISER argues that there was a business relationship with MOTHER as Unit 210 was a rental investment property. In addition, they were proprietary leaseholders for both Unit 210 and Unit 214, who owned shares of voting stock in the Whittier Towers Apartments Association Inc. As equal cooperative association shareholders, they were required to follow the articles of incorporation and bylaws, attend

annual shareholders meetings, elect members to the Board, and vote on issues concerning financial expenditures outside the purview of authority given to the Whittier Board of Directors. See generally, § 719.101 Fla. Stat. (known as Cooperative Act), and the corresponding administrative rules, Chapters 61B-75 through 61B-79, Florida Administrative Code (F.A.C.).

SISTER knew of the business relationship between MOTHER and GREISER and pushed for the sale of Unit 214 before GREISER could be added to the Unit 214 proprietary lease. GREISER learned of the interference and sent SISTER a strongly worded email on July 6, 2016, ordering her to stop interfering with Unit 214. R. 72, 561.

In response, on July 7, 2016, Defendant Drinkard boarded a flight from Philadelphia, Pennsylvania, to Broward County, Florida, then drove to Whittier Towers Unit 214 and had her husband change the door locks and the mailbox lock and evicting GREISER from Unit 214 while he was out for the day. R. R. 561.

As to additional interference by SISTER, on October 29, 2016, ***she*** sent GREISER an email announcing that she was increasing his monthly $500 maintenance fee payment for Unit 214 (set under his 2011 owner agreement) by $84.50 a month. R. 187, 230. SISTER also contacted a Ft. Lauderdale private investigator in early 2016 to

find incriminating information on GREISER she could use to convince MOTHER to terminate her Unit 210 and Unit 214 business relationship with GREISER. SISTER contacted GREISER'S Broward County friend named "Robyn" and offered her money for incriminating video of GREISER doing anything illegal (unknown by GREISER until late 2017.) "Robyn" confessed that SISTER had paid her thousands of dollars and gave her the use of a leased vehicle to encourage her to drive to GREISER'S home to record incriminating evidence she could use against GREISER. R. 560-61.

APPELLEES responded to the detailed allegation of SISTER's tortious interference in the business relationship between GREISER and MOTHER raised in GREISER'S TAC, not by labeling it as "a slanderous falsehood" but by describing it as "irrelevant facts regarding a private investigator" in their MTD. R. 683-84.

The court rejected GREISER'S request for a rehearing by denying the MFR giving the court facts and case law needed to address the following: the missed SOL, SOF and equitable estoppel arguments (R. 721), APPELLEE attorney abuse dating back to the EDPA (R, 705-07, 709-16), the dismissal of the clerk's default without a hearing (R. 716), and APPELLEES' refusal to answer the 2023 RFA or respond to the motion to deem admitted (R. 715-20).

CONCLUSION

Appellant Francis T. Greiser Jr. respectfully requests that this Court reverse the trial court's order dismissing this case with prejudice, rule on matters raised but ignored by the trial court, direct that GREISER be allowed to file a fourth amended complaint adding a Count of Intrusion into Seclusion directly related to dismissed Count III; and grant such further relief as may be just and proper.

/s/ Francis T. Greiser Jr.
pro se Appellant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was filed and served upon Appellees counsel who has been in phone contact with Appellant concerning this appeal, by way of this Court's ECF system, and by personal email.

Served this day of February 16, 2025

/s/ Francis T. Greiser Jr.
2055 Poinciana Court
Naples FL 34110
Telephone: 954 696 5822
Email: fg210@att.net

John Seiler, Esq.
2850 North Andrews Avenue
Ft. Lauderdale, Florida 33311
Telephone: 954 568 7000
jseiler@sszrlaw.com

From: Corzo, Rebeca
To: Daniel Evan Forrest
Cc: dean@trantalis.com; fo210@att.com; Chung, William
Subject: Dean J. Trantalis; The Florida Bar File No. 2024-50,796(17A)
Date: Friday, August 22, 2025 4:07:00 PM
Attachments: Letter to GGC-Bar Counsel is Investigating Member.pdf

Good afternoon Mr. Forrest,

Attached please find The Florida Bar's letter of today's date from Bar Counsel regarding the above-referenced matter.

Thank you.

Rebeca Corzo
Legal Secretary
Lawyer Regulation – Ft. Lauderdale Branch
The Florida Bar
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, FL 33323
Tel: 954-835-0233, ext. 4140
Email: rcorzo@floridabar.org

The Florida Bar

Ft. Lauderdale Branch Office
Lake Shore Plaza II
1300 Concord Terrace Ste. 130
Sunrise, FL 33323
(954) 835-0233

Joshua E. Doyle
Executive Director

850/561-5600
www.floridabar.org

August 22, 2025

Via E-Mail to def@forrestesq.com

Mr. Daniel Evan Forrest, Chair
450 E Las Olas Blvd., Ste 1090
Fort Lauderdale, FL 33301-2276

Re: Dean J. Trantalis; The Florida Bar File No. 2024-50,796(17A)

Dear Mr. Forrest:

I am forwarding this matter to your committee for further investigation and disposition. I will serve as the Investigating Member and will report to the committee when my investigation is complete.

As always, if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

William W. Chung
Bar Counsel

Enclosure

cc: Dean J. Trantalis, Respondent
Francis T. Greiser, Complainant

WRIT PETITION APPENDICES

VOLUME TWO

Florida 17th Judicial Circuit Court
Abbreviated Record on Appeal

A-106 through A-187

JENNIFER FORD, ESQ
JOHN P. SEILER, ESQ

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff *pro se*, v. MARIAN K. GREISER; THE ESTATE OF FRANCIS T. GREISER SR.; and JOANNE L. DRINKARD Defendants.	CASE NO. 23-14503 Honorable Jeffrey R. Levinson Judge Presiding

PLAINTIFF'S MOTION TO DISQUALIFY DEFENDANTS' ATTORNEY

Plaintiff Francis Greiser Jr., pursuant to Rule 1.010 Fla. R. Civ. P. and The Rules Regulating The Florida Bar (RRTFB), moves this Honorable Court to disqualify Dean J. Trantalis and the law firm of Trantalis and Associates from representing Defendants' Marian Greiser, Joanne Drinkard, and The Estate of Francis Greiser Sr. in this case; and respectfully Requests the Court to temporarily stay all proceedings in the instant case, and in support thereof, the Plaintiff will show the Court the following:

I. PRIOR REPRESENTATION OF PLAINTIFF BY DEAN TRANTALIS

1. This instant action is for contract breach involving two Broward County, Florida cooperative properties co-owned by Plaintiff (hereafter "Greiser Jr.") and Defendant (hereafter "Ms. Greiser"). In October 2012, both parties were sued in *Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et al* (CACE 12-027941) which sought to remove Greiser Jr.'s name from his Unit 210 Proprietary Lease alleging that he was never approved by the Board Directors to be a co-owner (which was filed after Greiser Jr. persisted in asking to view Whittier Towers financial records). Undermining that claim was that the Whittier By-Laws allowed adding Greiser Jr. to the Unit 210 Proprietary Lease without Board approval—as he was a first-degree blood line relative.

2. The *Whittier Towers* trial date was set for March 2017 and Joanne Drinkard as a third-party payer, retained Attorney Dean J. Trantalis (hereafter "Trantalis") to act as co-counsel in the *Whittier Towers* civil suit. On January 17, 2017, Trantalis filed his Notice of Appearance to represent ***both*** Francis Greiser Jr., and Marian Greiser in *Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et al.* (See Certified Copy of Notice of Appearance as Exhibit "A").

3. Greiser Jr. was initially opposed to retaining Trantalis as co-counsel. However, shortly thereafter he did meet with Trantalis and his staff to fully brief them on the five-year case history. (See Email Correspondence as Exhibit "B"). Trantalis asked Greiser Jr. to be totally forthcoming about any negative personal history that might be raised at trial, as he was the target of the lawsuit. Greiser Jr. then disclosed confidential information to Trantalis and his staff.

4. On May 5, 2017, at a final settlement conference before trial, Ms. Greiser became upset about going forward and pressured Greiser Jr. to remove his name from the Unit 210 Proprietary Lease so she could sell the unit (estimated to be worth $120,000) and afterwards, Ms. Greiser said she would split sale proceeds with Greiser Jr.

5. Greiser Jr. rejected giving up co-ownership without a contract, so Dean Trantalis drafted a contract which allowed Ms. Greiser to sell Unit 210 after Greiser Jr. removed his name and included language to insure Greiser Jr. would receive full compensation after Unit 210 was sold. Defendant Marian Greiser breached that contract by never paying agreed upon after-sale proceeds to Greiser Jr., which is the crux of Count I in the Complaint and Amended Complaint. [1]

---

[1] Plaintiff reminded Dean Trantalis on 2.7.24 that he was a former client and that a conflict of interest did exist as long as he represented Defendants Marian Greiser and Joanne Drinkard and asked that Trantalis withdraw from the case (see Exhibit "C"). Greiser Jr. added that he was also notifying the Judge as to the conflict of interest and would raise the issue at the next Case Management Conference if he did not withdraw from the case. At the March 20, 2024, Case Management Conference, Trantalis was first asked by Judge Levinson if he ever represented Greiser Jr. as a client. Trantalis replied "I don't believe so Your Honor" giving the Judge the impression Greiser Jr. had fabricated the conflict of interest claim and due to time restraints, Greiser Jr. was unable to discuss or show the conflict evidence now found in this Motion.

II. AUTHORITIES AND ARGUMENT IN FAVOR OF DISQUALIFICATION

6. Dean Trantalis should be barred from representing Defendants in this action because of a conflict of interest in the matter. A motion to disqualify counsel for conflict-of-interest, such as the one now before the Court, is codified in Chapter 4 RRTFB (emphasis added):

> Rule 4-1.7(a) | RRTFB | Conflict of Interest; Current Clients:
> "*...**a lawyer must not represent a client if***... there is a ***substantial risk*** that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, ***a former client*** or a third person..."
>
> Rule 4-1.6(a) | RRTFB | Confidentiality of Information
> *...**A lawyer must not reveal information relating to representation of a client*** ... unless the client gives informed consent."
>
> Rule 4-1.8(b) | RRTFB | Conflict of Interest; Prohibited...
> "*...**a lawyer is prohibited from using information relating to representation of a client to the disadvantage of the client*** unless the client gives informed consent..."

7. "Disqualification of counsel is 'an extraordinary remedy that should be used most sparingly.'" *Akrey v. Kindred Nursing Ctrs. E., L.L.C.*, 837 So. 2d 1142, 1144 (Fla. 2d DCA 2003). "[T]he Florida Rules of Professional Conduct provide the standard for determining whether counsel should be disqualified in a given case." *Young v. Achenbauch*, 136 So. 3d 575, 580 (Fla. 2014) (citing *State Farm Mut. Auto Ins. Co. v. K.A.W.*, 575 So. 2d 630, 633 (Fla. 1991)). As such, Rule 4-1.9 states: A lawyer who has formerly represented a client in a matter must not afterwards:

> (a) represent another person in the same or a substantially related matter in which that person's interests are materially ***adverse*** to the interests of the former client unless the former client gives informed consent;
>
> (b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
>
> (c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

8. Standard of Review on Attorney Disqualifications (emphasis added). The Florida Supreme Court has established a Two Prong test for disqualifying attorneys:

> "A party seeking to disqualify opposing counsel based on a conflict of interest must demonstrate that: (1) ***an attorney-client relationship existed***, thereby giving rise to an irrefutable presumption that ***confidences were disclosed*** during the relationship, and (2) the ***matter*** in which the law firm subsequently ***represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client.***" See Kaplan v. Divosta Homes, L.P., 20 So. 3d 459, 462 (Fla. 2d DCA 2009) (quoting State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So. 2d 630, 633 (Fla. 1991)).

A. Attorney Client Relationship

9. The conflict is as follows: Plaintiff Greiser Jr. has shown that: (a) Attorney Trantalis established an attorney-client relationship with him by entering his appearance as counsel for Greiser Jr. in *Whittier Towers* on January 17, 2017, and (b) as his attorney, Dean Trantalis was privy to private confidential facts that could portray Greiser Jr. in a bad light as a cooperative apartment co-owner in the *Whittier Towers* case, and possibly in this instant action may be used as an attempt to justify Joanne Drinkard's interference with in the contractual relationship between Greiser Jr. and Ms. Greiser concerning Whittier Towers Units 210 and Unit 214 (Counts found in both the Complaint and Amended Complaint). Thus, it is uncontroverted that Attorney Dean Trantalis created an ***attorney-client relationship*** with Greiser Jr. and ***Prong One*** is satisfied.

B. Substantially Related Matters

10. Florida's Supreme Court has affirmed that matters are "substantially related" if they involve the same transaction. (emphasis added).

> "Matters are 'substantially related' for purposes of this rule if they ***involve the same transaction*** or legal dispute, or ***if the current matter would involve the lawyer attacking work that the lawyer performed for the former client.***" Young v. Achenbauch 136 So. 3d 575, 583 (Fla. 2014) (quoting Comment to R. Regulating Fla. Bar 4-1.9).

11. In January of 2017, Dean Trantalis was tasked by Joanne Drinkard to work with Greiser Jr. to thwart efforts by Whittier Towers to make Greiser Jr. appear to be an unfit owner and in doing so preserve Greiser Jr.'s ownership stake in Unit 210 to help Ms. Greiser and Greiser Jr. prevail in the *Whittier Towers* lawsuit.[2] The instant action is nearly identical to *Whittier Towers* as it involves Whittier Towers Unit 210 and Greiser Jr. is once again trying to enforce his Unit 210 rights, only this time to recoup the proceeds from the sale of Unit 210 that Marian Greiser was contracted to deliver but has refused to pay Greiser Jr. The conflict of interest attaches to Attorney Trantalis because he has now adopted Defendants adversary position against his former client, ***and*** presently argues against the very contract he drafted and signed as the attorney and witness—that is hindering Greiser Jr.'s enforcement of that contract. [3] As such, the *Whittier Towers* case and the instant action are indeed "***substantially similar***" and thus ***Prong Two is satisfied.***

C. The Florida Supreme Court Has Directed When to Address a Conflict of Interest

12. Florida's Supreme Court has stated that where there is a serious conflict of interest, the conflicted attorney should recuse themselves immediately:

---

[2] In short, Dean Trantalis was retained as *Whittier Towers* co-council because Joanne Drinkard did not understand that the Whittier Towers By-Laws had explicit language stating that a blood-line lineal descendant of a proprietary lease holder ***did not need*** Whittier Board approval to be added to their parents' proprietary lease making Whittier claims of not being approved by the Board ***for any reason irrelevant.***

[3] Attorney Trantalis may well have violated attorney code of ethics in drawing up the Unit 210 sale contract between Ms. Greiser and Greiser Jr. and may be personally liable to Plaintiff as follows: "It is immaterial that in [] dual representation, the respondent may have acted with good intentions or that his motives may have been pure. It is settled that, except in exceptional circumstances ... an attorney may not represent conflicting interests in the same general transaction, no matter how well-meaning his motive or however slight such adverse interest may be. The rule in this respect is rigid, because it is designed not only to prevent the dishonest practitioner from fraudulent conduct but also to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent." *The Florida Bar v. Moore*, 194 So. 2d 264, 269 (Fla. 1967)

> "a serious question of conflict of interest arose that should have been resolved by the prompt withdrawal by [the attorney] from the representation of the [clients] and by advising the [clients] to secure other attorneys to represent them." *The Florida Bar v. Moore*, 194 So.2d 264, 269 (Fla. 1967).

Here, Service of Process was properly served on Marian Greiser on August 21, 2023, which included a Four Count Complaint with Count I being the above discussed Breach of Contract Claim. A cursory review by Attorney Trantalis of Count I, and his examining the contract he drafted and signed as a witness for Greiser Jr. that is attached as Exhibit "A" to the Complaint and Amended Complaint should have set off ***conflict of interest*** alarm bells for Attorney Dean Trantalis. Instead, Trantalsi appeared at the March 20, 2024, Case Management Conference where he referred to Plaintiff Greiser Jr.'s Complaint, including the Count I Breach of Contract for the sale of Unit 210 as "a continuing effort by Mr. Greiser to harass his mother and sister."

II. CONCLUSION

13. The *pro se* Plaintiff has met the burden of proof needed to Disqualify Defendants' counsel through Florida Appellate decisions, Florida Rules of Professional Conduct, and plain logic demonstrating that Attorney Dean J. Trantalis and the law firm of Trantalis and Associates should be immediately disqualified from this case.

Dated March 28, 2024

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
16015 Arbor View Blvd. Apt. 224
Naples FL 34110
(954) 696 5822
fg210@att.net

A-114

A-2

Filing # 51270687 E-Filed 01/17/2017 04:14:40 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

WHITTIER TOWERS APARTMENTS, ASSOCIATION, INC., a Florida non-profit corporation,
Plaintiff,

v.

FRANCIS GREISER, SR., MARIAN GREISER, and FRANCIS GREISER, JR.,
Defendant.
_____/

Case No. CACE 12-027941 (18)

NOTICE OF APPEARANCE

NOTICE IS HEREBY given that DEAN J. TRANTALIS, ESQ. does hereby appear as attorney for the Defendants, FRANCIS GREISER, SR. (deceased), MARIAN GREISER, and FRANCIS GREISER, JR., and requests that all briefs, motions, orders, correspondence and other papers in relation to this matter be served on the undersigned.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appearance was sent by e-mail addressed to GERARD S. COLLINS, ESQ. Kaye Bender Rembaum, P.L., *Attorney for the Plaintiff*, at gcollins@kbrlegal.com and SEAN P. SHEPPARD, ESQ., Sheppard Firm, P.A., at sean@sheppardfirm.com on this 17 day of January, 2017.

DEAN J. TRANTALIS, ESQ.
2255 Wilton Drive
Wilton Manors, FL 33305
954-566-2226 – Telephone
954-566-2248 – Fax
Email: dean@trantalis.com
2nd Email: brian@trantalis.com

Florida Bar No. 313246

*** FILED: BROWARD COUNTY, FL BRENDA D. FORMAN, CLERK 1/17/2017 4:14:39 PM.****

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff *pro se*, v. MARIAN K. GREISER; THE ESTATE OF FRANCIS T. GREISER SR.; and JOANNE L. DRINKARD Defendants.	CASE NO. 23-14503 Honorable Jeffrey R. Levinson Judge Presiding

NOTICE OF PLAINTIFF'S MOTION FOR ORDER DEEMING ADMITTED TRUTH OF FACTS AND GENUINENESS OF DOCUMENTS AND SANCTIONS

NOTICE IS HEREBY GIVEN that the Plaintiff will be calling up a hearing date and time as soon thereafter as the current conflict of interest and attorney status involving Dean J. Trantalis can be decided by the court, and a motion for an order deeming admitted truth of facts and genuineness of documents may be heard. Plaintiff Francis Greiser Jr. will, and hereby does, move the court for an order pursuant to Florida Rule of Civil Procedure 1.370, that the truth of all specified matters, and the genuineness of all specified documents in Plaintiff's First Request for Admissions, served on Defendant Marian Greiser on August 21, 2023, be deemed admitted and in support thereof the Plaintiff will show the Court the following:

I. BACKGROUND

1. This motion arises from Plaintiff Francis Greiser's First Request for Admissions. (Exhibit "A"). On August 21, 2023, a certified and licensed service processor served Defendant Marian Greiser at her home with Plaintiff's First Set of Admissions along with a copy of the Complaint and a Summons issued by the Court. (Exhibit "B").

2. The time for Defendant Marian Greiser to serve a timely response to Plaintiff's First Request for Admissions expired on October 5, 2023. Defendant Marian Greiser has yet to serve a

response to the moving party's above-described Request for Admissions despite having seven (7) months to do so.

3. Plaintiff Francis Greiser Jr., as the moving party, is now asking the court to order that the genuineness of any documents and the truth of any matters specified in the First Request for Admissions are now admitted.

II. LEGAL ARGUMENT

4 Florida Rule of Civil Procedure 1.370(a) governs requests for admissions. The rule provides that "A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request."

5. Further, "[T]he matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request or such shorter or longer time as the court may allow but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading upon the defendant." Fla. R. Civ. P. 1.370(a).

6. Fla. R. Civ. P. 1.370 (b) states: "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission."

7. Fla. R. Civ. P. 1.380(c) holds: "If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.370 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the

requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees."

8. The moving party Plaintiff therefore requests that the Court order that the genuineness of any documents and the truth of any matters specified in the Plaintiff's First Request for Admissions be deemed admitted, and that Defendant Marion Greiser, her attorney, or both, pay the moving party Plaintiff's costs in preparing this motion.

Dated April 3, 2024

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
16015 Arbor View Blvd. Apt. 224
Naples FL 34110
(954) 696 5822
fg210@att.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically furnished via email and EC/EMF this April 4, 2024 to:

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
(954) 696 5822
fg210@att.net

A- 118
Exhibit I

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street,
Fort Lauderdale, FL 33301

RE: Francis Greiser Jr. v. Marian Greiser, et al CACE-23-014503

Dear Judge Levenson,

I wish to bring to your attention that I was present at the Case Management Conference scheduled before you yesterday, February 6, 2024. I logged in to Zoom and called your Judicial Assistant at 8:35 am to let her know I was present and waiting to be called. I also informed her that I was having trouble logging on because there were two meetings showing up on Zoom at the same time.

I was told that the hearing didn't start until 8:45 and I would be called. I told your assistant the Zoom video call had changed, and it didn't seem right, but she said it was because the hearing hadn't started yet and to wait and I would be notified when the hearing starts. I waited an hour and called your Assistant at 9:35 am to let her know I was still waiting, and she told me the hearing was over. I filed a Motion to Reconsider with proof exhibits 90 minutes after the hearing ended.

I wanted to bring to your attention that I had been in touch with Attorney Dean Trantalis' Office both last week and Monday and made it known I was going to attend the hearing and needed to discuss matters with him. His assistant said he would get back to me, but he never did. One of the things I wanted to discuss with him was the conflict of interest in his representing Marian Greiser against me because Dean Trantellis was my attorney in 2017 and represented me as a Broward County plaintiff in *Greiser v. Whittier Towers*, and both myself and Marian Greiser as co-defendants *Whittier Towers v. Greiser et al.*

My concern is that a conflict of interest exists—now that he is counsel for Defendants against me as those cases involve the same properties and subject matter as those in that are the center of this instant action. I met with Attorney Trantalis extensively back then under a lawyer client relationship and discussed confidential matters relating to this case. I wanted to ask him to recuse himself, which would not prejudice the Defendants as they had been represented previously by Attorney Jack Seiler who knows the case well.

I never got to make that argument and the order of dismissal states the hearing proceeded without me using only Attorney Trantalis' testimony to have you reach your decision to Dismiss with Prejudice my civil action. I just wanted to let you know about the Zoom call malfunction and as a result what I wasn't able to inform the Court at the Case Management Hearing.

Respectfully submitted,

s/Francis T. Greiser Jr.

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street
Fort Lauderdale, FL 33301

Date: March 28, 2024
RE: Francis Greiser Jr. v. Marian Greiser, et al CACE-23-014503

Dear Judge Levenson,

My name is Francis Greiser Jr., and I am a *pro se* Plaintiff in the above captioned case. I am at fault for not appearing at the Case Management Conference hearing you set for November 21, 2023, however, Defendants counsel failed to appear as well and when I petitioned to have my case reopened you granted me a new hearing on February 6, 2024.

I had technical issues with Zoom and missed the February 6, 2024, Case Management Conference as well, and you dismissed my case with prejudice. I again filed a petition to have my case reopened and made a compelling argument and provided screen shots of my cell phone call log records showing I called your Judicial Assistant before and during your hearing schedule, but I was not able to log on. More importantly I informed you that at the Conference hearing I missed was important to me because I wanted to discuss the issue of a conflict of interest—as Defendants Attorney Dean Trantalis was my former attorney. Based on that claim you scheduled a third Case Management Conference for March 20, 2024, and told me to be there in person - which I was.

At the March 20th Case Management Conference, I began only long enough to state my name. Then after Attorney Trantalis acknowledged his presence, you asked him if he knew me or ever represented me, to which Attorney Trantalis replied "I do not believe so Your Honor." It is likely Mr. Trantalis is too busy to remember me as a client, but I was—and his portrayal of never representing me cast me as a liar who deceived the Court when I asked for reconsideration for a new Management Conference based on a conflict of interest which was granted. As such, the Court lost patience with me and I was not able to show you, my proof. Therefore, to document my case, I filed a Motion to Disqualify Mr. Trantalis as Defendants counsel that is supported by evidence and case law, and I asked the Court to stay all pending motions for the time being.

I spoke the truth, yet it appeared that I was misleading the Court, and I was ordered to file an amended complaint within 9 days or have my case dismissed. Attorney Trantalis failed to use due diligence to find out if I was indeed a former client after I sent him an email asking to recuse himself and he was notified of the letter to your honor that I filed asking for a new Case Management Conference based on conflict of interest.

Your Honor, I need more time to raise money to retain a lawyer to help me draft a new complaint but as I explain in my Motion to Disqualify, my Count I breach of contract claim is on solid legal footing and should not be dismissed. I will have the $3500 retainer fee for my new Attorney by May 7, 2024.

Respectfully submitted,

Francis Greiser Jr.

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street
Fort Lauderdale, FL 33301

Date: April 8, 2024

RE: Francis Greiser Jr. v. Marian Greiser, et al CACE-23-014503
PLAINTIFF'S POSITION ON CONFLICT OF INTEREST to be discussed at the April 11, 2024, CMC.

Your Honor,

I am Plaintiff in the above captioned case. On March 20, 2024, at the CMC, I fully expected Attorney Trantalis would withdraw and the court would grant a 30-day extension for the Defendants to retain new counsel. As such, I left the country the next day and I will be in Thailand during the April 11, 2024, CMC Zoom hearing using Internet service at a hotel that has not been 100% reliable. Due to this connectivity issue uncertainty, I respectfully ask the Court for latitude in giving my standpoint as to the conflict of interest that exists in this case and clarify issues before the upcoming CMC hearing.

With certainty, Attorney Trantalis' and his law firm should have disqualified themselves in August of 2024, when they were retained, but failed to do so. I never waived my previous attorney-client privilege. Attorney Trantalis received notice of my conflict-of-interest claim beginning on February 6, 2024, and I feel an ethical red line was crossed on March 30, 2024, when as Defendants' attorney he provided an affidavit and proposed order to the court asking that my complaint be dismissed with prejudice—despite being seriously conflicted. My position is that I do not oppose Attorney Trantalis' from settling this case if Defendants' so wish, however, I do oppose Attorney Trantalis and his law firm from representing Defendants in any future pleadings, motions, responses, or representation at trial, based on their past confidential relationship with me.

As this case stands now, Defendant Marian Greiser was served with a Request for Admissions (RFA) on August 21, 2023, along with the complaint and summons. Attorney Trantalis never responded to the RFA, and I have filed an order deeming admitted truth of facts and genuineness of documents. With those admissions deemed true and with the facts and evidence clearly proving Counts One and Two in both the Complaint and Amended Complaint, I would like to move for summary judgment at some point. If this case cannot be settled, I will set a hearing date to remove Attorney Trantalis and order Defendants to retain new counsel.

I contacted Attorney Trantalis and offered to withdraw my lawsuit if we can come to a reasonable agreement on Counts One and Two to keep this case from mushrooming into a larger more complex civil action. On April 4, 2024, the assistant to Attorney Dean J. Trantalis relayed to me that the Defendants prefer to wait until after the April 11, 2024, CMC hearing has concluded before discussing any settlement terms. That is where we currently stand on this issue.

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street,
Fort Lauderdale, FL 33301

Greiser Jr. v. Greiser, et al CACE23014503
Plaintiff's Position on Misleading the Court

Date: May 30, 2024

Dear Judge Levenson,

As you are aware, Attorney Trantalis filed a 5/28/24 proposed Order of Dismissal with Prejudice falsely claiming that at our May 20, 2024, Case Management Conference ("CMC") you ordered "Plaintiff shall secure an attorney and file a Notice of Appearance by June 3, 2024, or this case shall be dismissed with prejudice." Shortly after, by Court Management System ("CMS") you responded "Status: - Not Approved - Order does not accurately reflect the Court's ruling."

Based on Attorney Trantalis' inability to answer truthfully when asked if he ever represented me in the past, and his repeatedly characterizing this case as "dismissed" to avoid answering conflict of interest questions posed by the court at previous CMC's, I paid $150 to transcribe the May 20, 2024, CMC. After receiving the 5/28/24 proposed order that added "dismissed with prejudice", and knowing that to be false, I paid $146 for same day delivery of the May 20th CMC Transcript (prior to Your Honor's CMS rejection) to counter that claim. I attached a copy of the CMC transcript to this filing.

In the transcript, Your Honor says "He doesn't have to have a lawyer, Mr. Trantalis. He can go with a lawyer or he doesn't have to have a lawyer. That's not a requirement." To which Attorney Trantalis responded "I agree." (See Transcript p. 8, ¶¶ 14–17). Importantly, nowhere in the Transcript does Your Honor say I must have a lawyer by June 3, 2024, "or this case shall be dismissed with prejudice" as he falsely claimed. I respectfully ask the Court to admonish Mr. Trantalis by ordering him to reimburse my $296 in transcript costs to counter his attempt to mislead the court. Also, I am making every effort possible to have an attorney fully retained by your June 3rd deadline.

I am also concerned with the in-person Motion to Disqualify Counsel and a yet-to-be filed Motion to Dismiss ("MTD") hearing to be held June 25, 2024, that are to be addressed in a 30-minute oral argument before the court. First, as a pro se Plaintiff, I am at a disadvantage at a hearing where I am expected to defend my position and counter any claims raised by Attorney Trantalis without advance notice of what his position is. I respectfully request that Mr. Trantalis be given 10 days to file a written response to the ***March 28, 2024*** Motion to Disqualify Counsel; so I may have 10 days to fact check his claims and provide relevant case law to support my motion at the in-person hearing.

Concerning Defendants upcoming MTD, Attorney Trantalis has left the mistaken impression that there is a substantive issue with the dismissed Federal Case in Pennsylvania—when there is no such issue—as both claims in my Second Amended Complaint were dismissed without prejudice to allow them to be refiled in Florida state court. In addition, Defendants have not answered Plaintiff's Request for Admissions served by process server on 8/21/23 that addressed those and other potential defenses. Defendants further failed to reply to Plaintiff's 4/4/24 Notice of Motion for Order Deeming Admitted Truth of Facts and Genuineness of Documents. As such, there are issues that need to be addressed before Defendants file their third MTD in this case.

Respectfully Submitted,

Francis Greiser Jr

The Florida Bar
Inquiry/Complaint Form

STOP - PLEASE DOWNLOAD THIS FORM TO YOUR COMPUTER BEFORE FILLING IT OUT.

PART ONE (See Page 1, PART ONE – Complainant Information.):

Your Name: Francis T. Greiser Jr.

Organization: n/a

Address: 2055 Poinciana Ct.

City, State, Zip Code: Naples, FL 34110

Phone: (954) 696 - 5822

Email: fg210@att.com

ACAP Reference No.: n/a

Does this complaint pertain to a matter currently in litigation? Yes X No

PART TWO (See Page 1, PART TWO – Attorney Information.):

Attorney's Name: Dean J. Trantalis Florida Bar No. 313246

Address: 2301 Wilton Drive, Suite C1-A

City, State, Zip Code: Wilton Manors, FL 33305

Phone: (954) 566-2226

PART THREE (See Page 1, PART THREE – Facts/Allegations.): The specific thing or things I am complaining about are: (attach additional sheet).

PART FOUR (See Page 1, PART FOUR – Witnesses.): The witnesses in support of my allegations are: (attach additional sheet).

PART FIVE (See Page 1, PART FIVE – Acknowledge Oath and Signature.):

☑ YOU MUST PLACE YOUR MARK IN THE BOX ACKNOWLEDGING THE OATH AND YOU MUST SIGN YOUR FULL NAME BELOW.

Under penalties of perjury, I declare that the foregoing facts are true, correct and complete.

Francis T. Greiser Jr.
Print Name

Signature

Francis T Greiser Sr 5/7/24
Date

*Having trouble? Download the form and open the document in Adobe Acrobat™.

A- 123
Exhibit J

Letter to Judge

From: jrFrank Greiser (fg210@att.net)

To: dean@trantalis.com; brian@trantalis.com

Date: Wednesday, February 7, 2024 at 11:52 AM PST

Dean,

I notified the Judge by letter about a possible conflict of interest with you representing Defendants.

I just kept it simple. I did it because I was shut out of the hearing because of Zoom and never had a chance to speak.

Your representation was seven years ago so maybe you don't remember clearly ... but I saved all of my emails between my sister and mother and me.

I have the one where my sister tells me you are our lawyer and to meet with you and discuss the case of Whittier Towers and to tell you anything bad in my life so you're not caught off guard by Whittier Towers at trial.

I did meet with you twice at your office for over an hour each time and told you all about myself because you were my lawyer.

I still want you to recuse yourself before the Motion to Reconsider or if I have to file an appeal.

Frank

From: jrFrank Greiser (fg210@att.net)

To: dean@trantalis.com; brian@trantalis.com; brett@trantalis.com; fg210@att.net

Date: Sunday, April 28, 2024 at 07:50 PM EDT

Attorney Dean J. Trantalis
2301 Wilton Drive, Suite C1-A
Wilton Manors, FL 33305

RE: **Greiser v. Greiser et. al** (Case No. 23-14503)

April 28, 2024,

Mr. Trantalis,

This is my final request for you to voluntarily remove yourself as counsel to the Defendants and put an end to your conflict-of-interest in the above matter. Your refusal to do so thus far has sidetracked my civil case and has doubled my cost to retain an attorney to file an amended complaint when they must first remove you from this case. This notice is intended for your clients as well—as I suspect they are encouraging you to continue your conflicted representation which makes their continued support for you to remain as counsel sanctionable.

Should you continue as Defendants' counsel, I am prepared to file a detailed and well documented formal complaint against you with the Florida Bar Association upon my return to the United States on May 3, 2024. You leave me no other choice. As your former client, I was never asked, nor would I have consented to your current representation based on our preexisting confidential lawyer-client relationship concerning those same Whittier Towers cooperative apartments. Acting for a client against a former client in the same matter is a conflict of duties you owe to both parties and is a clear violation of the Florida Rules of Professional Conduct.

Again, to be clear, I will be filing a complaint with the Florida Bar Association unless you notify me no later than May 3, 2024, informing me that you will no longer be representing the Defendants, and you are prepared to file the necessary paperwork for you and your law firm to withdraw as counsel in this case. I am certain based on the voiced concerns of Judge Levenson concerning a conflict-of-interest that he will grant your motion to withdraw.

Regards,

Francis Greiser Jr.

Request for Attorney Status – Greiser (No. 23-14503)

From: jrFrank Greiser (fg210@att.net)

To: dean@trantalis.com; brian@trantalis.com; brett@trantalis.com

Date: Thursday, May 16, 2024 at 05:32 PM EDT

Attorney Dean J. Trantalis

2301 Wilton Drive, Suite C1-A

Wilton Manors, FL 33305

RE: **Request for Attorney Status – Greiser** (No. 23-14503)

May 16, 2024,

Mr. Trantalis,

I need to ask you if you intend on remaining as counsel to the Defendants despite your conflict-of-interest in the above matter. This information is important to me because it will be much easier for me to retain an attorney without your presence, knowing I will not have to pay attorney fees for having you removed to end your conflicted representation that is currently disrupting my case. I need to receive your answer as soon as possible to prepare for the upcoming *Greiser* CMC scheduled for May 10, 2024.

As I warned you, I would do, in my email sent to you on April 28th when I asked you to withdraw and you refused, I went ahead filed a detailed and well documented formal complaint against you with the Florida Bar Association upon my return to the United States on May 7, 2024.

I really think you should voluntarily withdraw now and bring in new counsel before you are ordered by the Court to do so. Whatever your decision is, please give me the professional courtesy of responding to this email, as you have not replied to my previous emails.

Regards,

Francis Greiser Jr.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff *pro se*, v. MARIAN K. GREISER; THE ESTATE OF FRANCIS T. GREISER SR.; and JOANNE L. DRINKARD Defendants.	CASE NO. 23-14503 Honorable Jeffrey R. Levinson Judge Presiding

PLAINTIFF'S RESPONSE TO DEFENDANTS' AFFIDAVIT TO DISMISS CASE

1. Plaintiff Francis Greiser Jr. (hereafter "Greiser Jr.") did fail to appear at the Case Management Conference (hereafter "CMC") on November 21, 2023, however, Defendants counsel ***failed to appear as well,*** whereby Plaintiff paid a $50 fee to the Clerk of Court to reopen this case and Judge Levenson granted a new hearing on February 6, 2024.

2. Plaintiff Greiser Jr. was on February 6, 2024, CMC Zoom link but unable to connect with Judge Levenson and the case was dismissed with prejudice. Plaintiff filed a petition to reopen by providing screen shots of his Zoom link and cell phone calls to the JA before and during the CMC because he was unable to log on. More importantly Plaintiff petitioned that he had intended to raise a ***conflict of interest*** as Defendants Attorney Dean Trantalis (hereafter "Trantalis") was his former attorney. Based on those facts, Judge Levenson ordered a third CMC for March 20, 2024, with the Plaintiff ordered by the Court to be there in person - which he was.

3. The March 20th CMC began with Plaintiff stating his name. Then, Attorney Trantalis acknowledged his presence, and Judge Levenson asked him if he knew or ever represented Francis Greiser Jr.—to which Trantalis replied, "I do not believe so Your Honor." As a result of the false portrayal of never representing Greiser Jr. as his attorney, Plaintiff was cast a liar who deceived the Court when petitioning the Judge for reconsideration for a new CMC hearing based on a conflict of interest. As such, Plaintiff was not permitted to provide proof of a conflict of interest due to CMC time restraints. On March 28, 2024, Plaintiff filed a Motion to Disqualify Trantalis that is supported by evidence and case law, and Greiser Jr. asked the Court to stay all pending motions until the Trantalis matter is resolved.

4. Attorney Trantalis' has refused to admit or address his conflict of interest despite: (a) being served with a complaint and amended complaint showing Count I as a breach of a contract that was drafted and signed by attorney Trantalis—with contract as "exhibit A"; (b) receiving a copy of the February 6, 2024 petition and letter to Judge asking for a new CMC listing the details of the conflict of interest; (c) receiving an email dated February 7, 2024 from the Plaintiff asking Trantalis to withdraw as counsel due to his conflict of interest; (d) his presence at the March 20, 2024 CMC where he was asked by the Court if he had ever represented the Plaintiff

and failed to disclose that information; and (e) in filing his March 30, 2024, affidavit in support of dismissal of this case with prejudice without mention of a conflict of interest dispute.

5. At the March 20, 2024, CMC, Plaintiff Greiser Jr. spoke the truth, while Trantalis was not forthcoming about prior representation, yet Greiser Jr. was punished by having his properly filed Clerk's Default Judgment against the Defendant Marian Greiser dismissed without a hearing and he was ordered to file an amended complaint within 9 days or have his case dismissed with prejudice. It was impossible to find- an attorney in less than 24 hours because Plaintiff had made previous plans to travel to Thailand and had booked non-refundable March 21 to May 3, 2024, airfare because his elderly father-in-law has been in severe declining health and Plaintiff's wife had been waiting for her Permanent Residency Card since August 2021 (and was told by USCIS not to leave the country until her new Green Card was issued, which was on February 14, 2024). Thus, that is the reason Plaintiff asked for a 35-day extension to find an Attorney who would draft and file a second amended complaint and handle the conflict-of-interest matter.

6. Plaintiff Greiser Jr. has followed the Rules of Civil Procedure and despite claims to the contrary, has not cost the Defendants additional attorney fees and costs, rather, it is Attorney Trantalis who has cost the Defendants unnecessary attorney fees and wasted the court's time by willfully ignoring Florida Rules of Professional Conduct and then trying to avoid consequences for his unethical attorney representation in this case by trying to hide that fact and pursuing his unsuccessful effort to fast-forward a dismissal of the Plaintiff's case.

7. Although Defendants Motion to Dismiss with supporting signed affidavit by Dean Trantalis' was denied by Judge Levenson on March 31, 2024, Plaintiff has responded to the seven allegations in the affidavit in this Response Motion to establish a written record of this case to prepare for possible attorney misconduct proceedings, and to document for appeal purposes.

Respectfully submitted, April 2, 2024

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this day of April 2, 2024, a copy of the foregoing has been electronically furnished via email and EC/EMF to Attorney Dean Trantalis:

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
16015 Arbor View Blvd. Apt. 224
Naples, FL, 34110
(954) 696 5822
fg210@att.net

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE23014503

FRANCIS T. GREISER JR.,

Plaintiff,

vs.

MARIAN K. GREISER, et al.,

Defendants.

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TRANSCRIPT OF PROCEEDINGS
VIA VIDEOCONFERENCE
BEFORE THE HONORABLE JEFFREY LEVENSON
(Pages 1 - 12)

May 20, 2024
8:58 a.m. - 9:41 a.m.

Held Remotely Via Videoconference

Reported By:
Lisa M. Sheib, FPR
Notary Public, State of Florida
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

ALL PARTIES APPEARED VIA VIDEOCONFERENCE:

Appeared Pro se as the Plaintiff:

FRANCIS T. GREISER, JR., PRO SE.

Appeared for the Defendants:

DEAN J. TRANTALIS, ESQ.
TRANTALIS & ASSOCIATES
2301 Wilton Drive, Suite C1A
Wilton Manors, Florida 33305-1261
954-566-2226
954-566-2248 Fax
Dean@trantalis.com

PROCEEDINGS

THE COURT: Greiser versus Greiser. For the Plaintiff?

MR. GREISER: Yes, Your Honor. Francis Greiser, Jr., here, Plaintiff.

THE COURT: Okay. Defense? I think he said he was going to be at the end of the docket? Was that what it was? I forgot. Do you remember that, Francis? You were on.

I want to address this. So let me recall the case. If you see him up there, let me know, okay, please.

Are you back from Thailand?

MR. GREISER: Yes, Your Honor.

THE COURT: All right. I may have an in-person hearing, so we'll see. All right. But I'll recall the case. All right?

MR. GREISER: Thank you, Your Honor.

(There was a brief recess.)

THE COURT: We have Greiser versus Greiser. There he is.

MR. GREISER: Your Honor, Plaintiff, Francis Greiser, Jr.

THE COURT REPORTER: Court Reporter, Your Honor.

MR. TRANTALIS: Dean Trantalis on behalf of the Defendants.

THE COURT: We waited for you, Dean. I just want you to know that. We waited.

MR. TRANTALIS: I appreciate that.

THE COURT: All right. There's a couple things.

First of all, Plaintiff, no attorney has entered his appearance. You're saying you can't get a lawyer because of Mr. Trantalis? I think that's a lame excuse.

MR. GREISER: No, Your Honor, I have an update.

THE COURT: There are 5,000 lawyers in Broward County.

MR. TRANTALIS: Yeah.

MR. GREISER: I have an update, Your Honor. I spoke with Attorney Matthew Fornaro. I signed a retainer agreement.

THE COURT: Okay.

MR. GREISER: He is -- the retainer fee is doubled, so I need a little more time to get the money.

THE COURT: All right.

MR. GREISER: And I'll pay his --

THE COURT: All right. I got it. I got it.

You froze.

MR. GREISER: -- the retainer fee some time later next week.

THE COURT: Mr. Trantalis, from your perspective, I was hoping that we get a response to the motion to disqualify. I read his motion. He raises some pretty significant points. You know, he says that you represented him and the mother and he provided you with personal information, whatever, so forth. So I was hoping that maybe by today we would have gotten some kind of response. Would that be possible for you to do that?

MR. TRANTALIS: Well, Your Honor, I can't do it today, but --

THE COURT: No, no, what I suggest, if you don't mind, let him get some time to get a lawyer. I'll give you time to file your response, I don't want you to rush. And then we can have an in-person special-set hearing on this. Would that be okay?

MR. TRANTALIS: Yes, we can. But, Your Honor, one thing, first of all, there's no case before this Court.

THE COURT: That dog is already hunted. He didn't show up at the CMC, but there was an excuse. I've already -- I'm dealing with -- to be honest with

you, Mr. Trantalis, I'm dealing with substance now. So that's what I need to do. I need to deal with the disqualification and I need a good motion to dismiss if you want a motion to dismiss. Your original motion has dealt with him not showing up and the case being dismissed. So I've already ruled on that. We're moving on.

MR. TRANTALIS: Okay. But there are other -- if I may, Your Honor -- we filed a new motion to dismiss because he had failed to comply with even your most recent order.

THE COURT: When did you file your new motion? The one that was filed on 5/11?

MR. TRANTALIS: That's correct, Your Honor, 5/11. As of that date he had failed to --

THE COURT: That motion is denied. But I'll give you a substantive motion to dismiss. I'm not going to get into the "him complying" or "you complying." I want to deal with the substance.

There are two substantive issues. Number one, whether it's appropriate here. There is a federal case in Pennsylvania. There were other issues up there, that's number one. I haven't dealt with the substance.

Number two, I need to deal with the

disqualification before I get to that. So I need a response from you on a disqualification. I'm going to order that it be set -- give me one second, I'll give you a time and a date now. It will be next week.

How much time do you need to get a lawyer?

MR. TRANTALIS: He says he has a lawyer.

THE COURT: He said he had to pay him. I don't know.

MR. GREISER: I have to pay.

MR. TRANTALIS: He says he has a retainer agreement, which we haven't seen, Your Honor. He's never --

MR. GREISER: But it's a conflict of interest.

THE COURT: He doesn't have to have a lawyer, Mr. Trantalis. He can go with a lawyer or he doesn't have to have a lawyer. That's not a requirement.

MR. TRANTALIS: I agree.

THE COURT: He's not a corporation. What was the date? What did I cancel? The 30th I canceled something. I canceled --

Do you want the end of May or the end of June? What do you guys want?

MR. TRANTALIS: The end of May or the end of June?

THE COURT: Yes. When do you want to have that

special-set hearing, end of May or the end of June?

MR. GREISER: The end of June, Your Honor.

THE COURT: What about you, Dean?

MR. TRANTALIS: It doesn't matter to me, Your Honor. He's just dragging this on longer and longer. The end of June is fine.

THE COURT: Okay. I'm going to give you a date now so we don't have to worry about you conferring on that.

What was the date I canceled that thing? June 25. What time was it set, do you know? It was set at -- I'll set it at 10:00 on the 25th, June 25th.

MR. TRANTALIS: Your Honor, I have a conflict at that time.

THE COURT: What's your conflict?

MR. TRANTALIS: I have -- I'm on the board of the Tourist Development Council from 9:30 to 11:00.

THE COURT: How about 3:00?

MR. TRANTALIS: I could do 3:00.

THE COURT: Is that okay with you? It's in person.

MR. TRANTALIS: I have another hearing at 2:00, so that should work out.

THE COURT: But it's in person though, okay?

MR. TRANTALIS: That's fine. I'll be at the

courthouse.

THE COURT: All right. 3:00 on 6/25 on motion to disqualify and motion to dismiss. And I'm going to set a case management on this by Zoom on motion calendar. That's at 3:00 -- 3 p.m., and I'm going to set that --

When are you going to have your lawyer by, Francis?

I'll tell you what, I'll set a case management on June the 6th, and you need to get your lawyer by June 3rd. Okay?

MR. GREISER: Yes, Your Honor. Thank you.

MR. TRANTALIS: June 6th did you say, Your Honor?

THE COURT: Yeah. And it's at 8:45. Is that okay?

MR. TRANTALIS: Yeah, because I have a calendar call at 9:30. So that should be fine.

THE COURT: If you need me to get you up right away, just send me -- let me know.

June 3rd to get the attorney.

It is okay, Dean, if you put in an order of June 6th and June 3rd to get the lawyer? I can just keep it in my notes, if you want, if you don't want to upload it.

MR. TRANTALIS: So June 3rd to get the lawyer and June 6th for case management at 8:45?

THE COURT: Yes. You do a notice of hearing for June 25th.

MR. TRANTALIS: You want me to do that also?

THE COURT: If you don't mind.

MR. TRANTALIS: Okay. And the hearing is regarding the issue --

THE COURT: A motion to disqualify. And then if you're going to file another motion to dismiss, a motion to dismiss, a substantive one.

MR. TRANTALIS: Okay. All right. Thank you, Your Honor.

THE COURT: All right. Anything else from you, Plaintiff?

MR. GREISER: No.

THE COURT: Could you-all do me a favor? Have a great day.

Thank you.

MR. TRANTALIS: Thank you.

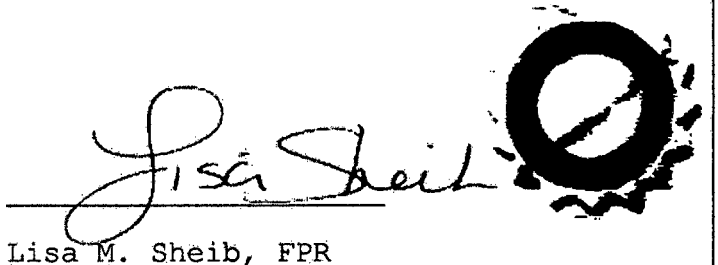
(Hearing concluded at 9:41 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF BROWARD)

I, Lisa M. Sheib, Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing remote proceedings, and that the transcript is a true and complete record of my stenographic notes.

Dated this 28th day of May, 2024.



Lisa M. Sheib, FPR
Shorthand Reporter

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR.

Plaintiff,

v.

MARIAN K. GREISER; and
JOANNE L. DRINKARD.

Defendants.
_____/

Case No: CACE-23-014503

Judge Jefferey R. Levenson
Presiding Judge

Jury Trial Requested

THIRD AMENDED COMPLAINT

COMES NOW the Plaintiff, FRANCIS T. GREISER JR., by and through counsel, and files this Third Amended Complaint against Defendant MARIAN K. GREISER and JOANNE L DRINKARD alleging Breach of Contract; Unjust Enrichment; and Tortious Interference.

PARTIES, JURISDICTION AND VENUE

1. That this is an action at law for damages within the jurisdiction of the circuit court because the matter in controversy exceeds Fifty Thousand and 00/100 ($50,000.00), exclusive of attorney's fees, costs and interest.

2. Plaintiff Francis T. Greiser Jr. (hereafter "Greiser Jr.") is a Florida resident and the son of Defendant Marian K. Greiser and Francis T. Greiser Sr., deceased (hereafter "Greiser Sr.").

3. Defendant Marian K. Greiser (hereafter "M. Greiser") is an adult individual and a resident of Pennsylvania living at 695 Barclay Lane in Broomall, Pennsylvania.

4. Defendant Joanne L. Drinkard (hereafter "J. Drinkard") is an adult individual living at 695 Barclay Lane in Broomall, Pennsylvania, and is the daughter of M. Greiser and Greiser Sr.

5. Plaintiff Francis T. Greiser Jr. and Defendant Joanne L. Drinkard are full siblings. Defendant Marian K. Greiser is their mother, and decedent Francis T. Greiser Sr. was their father.

6. Defendant M. Greiser is the co-owner of 5200 N. Ocean Blvd., Unit No. 505B in Lauderdale-By-The-Sea, Florida, which satisfies sufficient contact to assert personal jurisdiction.

7. Defendant Drinkard is a co-owner of 5200 N. Ocean Blvd., Unit 505B, which satisfies sufficient contact for the State of Florida to assert personal jurisdiction.

8. The actions giving rise to this lawsuit and the real property subject to this lawsuit are in Broward County, Florida, thereby making venue in Broward County, Florida proper.

BACK STORY

9. This parties to this case were a once close-knit family unit up until the patriarch suffered a stroke in December 2014, and then passed away on May 14, 2016. This helps to explain how the ownership of the properties at issue was so informal and became so legally messy.

10. Marian K. Greiser and Francis T. Greiser Sr. were financially well off, owning several successful businesses. Mr. and Mrs. Greiser Sr. gifted tens of thousands of dollars to their daughter Joanne Drinkard's current home: 695 Barclay Lane in Broomall, Pennsylvania, and also gifted $28,000 to their son Robert Greiser for the purchase of his home in Ridley Township, Pennsylvania. Conversely, Mr. and Mrs. Greiser Sr. had not provided any money to their son Francis Greiser Jr. to purchase a home.

11. When Mr. Greiser Sr. suffered a stroke in December 2014, Defendant J. Drinkard became his power of attorney. This is when the conflict began. Ms. Drinkard, acting as her father's fiduciary, was not privy to the informal ownership agreement between Mr. Greiser Sr. and his son Plaintiff Greiser Jr. for the subject property, Whittier Towers Unit 214. Ms. Drinkard did not consider all the factors her father knew and had taken into account when Mr. Greiser Sr. made the deal with his son, Plaintiff Greiser Jr., regarding Unit 214.

12. In the very least, the issues at bar could have been worked out in mediation after this litigation first began. Instead, this family has been torn apart, embroiled in years of expensive

– and at times completely ridiculous - litigation. Family bonds have been broken, and tens of thousands of dollars have been lost unnecessarily to attorney's fees on both sides. This case is a sad example of how litigation, fueled by sibling rivalry, can destroy loving families.

FACTS

13. On March 12, 2010, Defendant M. Greiser and Greiser Sr. Purchased Unit 214 at Whittier Towers Apartments Association Inc. (hereafter "Whittier") located at 1439 S. Ocean Boulevard in Lauderdale-By-The-Sea, Florida for $110,000. Whittier Unit 214 was an outdated two-bedroom apartment in need of remodeling.

14. Prior to buying Unit 214, Defendant M. Greiser and Greiser Sr. offered Plaintiff Greiser Jr. one-third ownership, allowing him to live in Unit 214 year-round, in exchange for his renovating the entire unit at no charge. Plaintiff Greiser Jr. accepted M. Greiser and Greiser Sr.'s offer

15. On March 19, 2010, Plaintiff Greiser Jr. began renovations of Unit 214 by ripping out all carpeting, baseboards, doors and doorjambs, installed new outlets and wall switches throughout, and ran new electric to install new ceiling fans in the living room and both bedrooms. Plaintiff Greiser Jr. replaced the toilets, sinks, faucets and vanities in two bathrooms, installed new exhaust fans, replaced termite damage studs in several walls throughout the unit, installed new tile in the kitchen and porch floors, painted all of the walls and ceilings, installed all new base board and crown molding, installed all new entry doors and bi-fold closet doors, including new door jambs and moldings. Plaintiff's extensive renovations added approximately $40,000.00 in active equity to the value of Unit 214, as fair market value improvements. Plaintiff finished the entire renovation project in six months, working 6-days a week by himself.

16. In January 2011, Plaintiff Greiser Jr. began paying the $450.00/ monthly maintenance fee for Unit 214 (later increased and capped at $500) and agreed with his parents to do all additional improvements in the future, while Greiser Sr. and M. Greiser paid the property

taxes of $2,000.00/yearly. In July 2012, Greiser Jr. received a homestead tax exemption based on his equity ownership, reducing the property tax bill for Unit 214 to $1,200.00 annually.

17. On March 1, 2011, M. Greiser and Greiser Sr. purchased Whittier Unit 210 (two doors down) for $60,000 and offered Plaintiff Greiser Jr. the same deal they had with him for Whittier Unit 214, *to wit*: one-third ownership in exchange for his renovating the entire unit at no charge[1]. Plaintiff Greiser Jr. agreed to this.

18. Plaintiff Greiser Jr. began renovating Unit 210 in September 2011 and finished in February 2012. Plaintiff Greiser Jr began renovations on Unit 210 by ripping out all of the carpeting, then installed new outlets and wall switches throughout the unit, ran new electrical wiring to install new ceiling fans in the living room and bedroom, replaced the toilet, sink, faucets and vanity in the bathroom, installed a new exhaust fan, painted the walls and ceilings, cut a new door to access the bathroom from the living room, and installed new bedroom and bathroom doors with new door jamb and casing, and installed a bi-fold closet door as well. Plaintiff Greiser Jr. completed his renovation work on Unit 210 in February 2012.

19. On June 13, 2012, Plaintiff Greiser Jr. was added to the Unit 210 Proprietary Lease.

20. After being added to the Unit 210 Proprietary Lease, Plaintiff Greiser Jr. began asking the co-op to view financial records via certified mail, because regular building repairs were not being done.

21. By way of response to Plaintiff Greiser Jr.'s requests to view co-op records, the co-op filed a retaliatory lawsuit against the Greiser Family in August 2012, claiming Greiser Jr. was never approved as a co-owner *(despite the by-laws clearly stating that Greiser Jr. as a son to both Greiser Sr. and M. Greiser by blood did not need Board approval).*

22. Plaintiff Francis Greiser Jr., Defendant Marian Greiser, and Francis Greiser Sr. all

[1] Unit 210 and Unit 214 are part of a co-op -personal property, rather than real property. In place of a deed, co-op owners are granted a set number of shares in the corporation, and a proprietary lease to occupy their unit

agreed that adding Greiser Jr. to the Unit 214 Proprietary Lease would be paused until the lawsuit *Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et. al.* (CACE 12-027941), and the Greiser's counter suit *Greiser v Whittier Towers Apts. Assn. Inc.* (COCE 13-8820) were settled.

23. On July 7, 2016, Defendant M. Greiser ousted Plaintiff Greiser Jr. from Unit 214 at the insistence of Defendant Joanne Drinkard, and with Ms. Drinkard's assistance, by changing the door locks while he was out for the day. Unit 214 was the home Plaintiff Greiser Jr. lived in at the time. Defendant M. Greiser barred his return and sent a Unit 214 "restriction letter." On July 15, 2016, Plaintiff Greiser Jr. sent Defendant M. Greiser a letter and email advising her that she was in breach of Unit 214 Contract, and that she must stop any attempt to sell Unit 214.

24. Defendant M. Greiser did not pay Plaintiff Greiser Jr. for his 1/3 ownership interest in Unit 214 when she illegally ousted him.

25. In preparation for the upcoming settlement conference with Whittier Towers Apts. Assoc., and at Attorney Trantalis' request, Plaintiff Francis Greiser Jr. met with Attorney Dean Trantalis in February 2017 alone in his office, speaking with the attorney at length regarding the facts surrounding plaintiff's ownership interest in Units 210 and 214, and also regarding intimate details of plaintiff Francis Greiser Jr's past. Attorney Trantalis stated he needed to know *anything* about plaintiff's past that opposing counsel might be able to discover and try to use to gain advantage at the settlement and trial. Plaintiff Francis Greiser Jr. opened up to Attorney Trantalis, revealing very private details about his past, which are not public knowledge.

26. In *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941), Whittier took the position that Greiser Jr. was not allowed to live in the property, because he was never approved as a co-owner, despite Whittier's by-laws clearly stating family members did not need board approval. Plaintiff Francis Greiser Jr. also filed *Francis T. Greiser Jr. v. Whittier Towers.* (COCE13-08820).

27. On or about May 5, 2017, Plaintiff Francis Greiser Jr., and Defendants Joanne Drinkard (non-party to the Whittier case) and Marian Greiser all attended a settlement conference with Whittier Towers Apts., and all three were represented at that conference by Attorney Dean Trantalis.

28. Plaintiff Francis Greiser Jr. really *did not want* to settle with Whittier at the May 5, 2017 settlement conference, because the lawsuit Whittier filed: *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941), was a complete sham pleading as evidenced by its own by-laws, and also because Plaintiff had already spent several thousand dollars litigating *Francis T. Greiser Jr. v. Whittier Towers*. (COCE13-08820). Plaintiff strongly believed he would prevail in each lawsuit and be awarded all of his attorney fees, as the prevailing party.

29. On the other hand, Defendant Marian Greiser, strongly *wanted* to settle with Whittier at the May 5, 2017 settlement conference, because she adamantly believed that her son, Plaintiff Francis Greiser Jr.'s history could be discovered by the Whittier lawyers and used against them at trial, and that this would cause them to lose in *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941), and be ordered to pay all of Whittier's attorney's fees.

30. Francis Greiser Jr. had never shared with his mother his past private issues that Marian Greiser was so upset about at the May 5, 2017 settlement conference. Plaintiff had shared the issues with Attorney Dean Trantalis at their February 2017 meeting. Plaintiff believes his sister Joanne Drinkard became aware of his past issues, and shared them with their mother, Marian Greiser.

31. Against Plaintiff Francis Greiser Jr.'s better judgment, the parties agreed to settle with Whittier at the May 5, 2017 settlement conference. As a condition of Plaintiff Francis Greiser Jr.'s agreement to settle with Whittier, he insisted on being compensated for both his interest in Unit 210 *and* also compensated for giving up his right to seek reimbursement of his attorney's fees as the prevailing party in *Francis T. Greiser Jr. v. Whittier Towers*. (COCE13-08820). The settlement also required Plaintiff to voluntarily dismiss his lawsuit: *Francis T. Greiser Jr. v.*

38. Plaintiff Greiser Jr. honored the Trantalis Contract. However, on June 8, 2018, Defendants M. Greiser and J. Drinkard sold Unit 210 for only $75,000 but have refused to pay Greiser Jr. his contracted half of the $15,000 in net profit (minus $4,500.00 realtor commission) leaving $5,250.00 still owed Plaintiff for Unit 210.

39. To date, Defendant M. Greiser has not paid Plaintiff Greiser Jr. the $60,000.00 he is owed for his 1/3 interest in Unit 214. The work completed by Plaintiff Francis Greiser Jr. to Unit 210 and Unit 214 was substantially similar, although somewhat more extensive to Unit 214.

40. To date, Defendants M. Greiser and J. Drinkard have not paid Plaintiff Greiser Jr. The $5,250.00, as required by the Trantalis Contract, regarding Unit 210.[4]

41. Procedureal Posture: In 2021, Plaintiff Greiser Jr. Filed the original lawsuit against the defendants regarding these issues in Federal Court in the Eastern District of Pennsylvania. In February 2022, the Eastern District dismissed all claims, except Breach of Contract and Unjust Enrichment, instructing plaintiff that he could re-file his state claims in Florida.

COUNT ONE: BREACH OF CONTRACT (UNIT 210) MARIAN K. GREISER

42. Plaintiff Francis Greiser Jr. realleges paragraphs 1-12, 17-21, 25-34, 37, 38, 40, 41, and incorporates the same by reference herein.

43. In Florida, a claim for breach of contract requires (1) the existence of a valid contract, (2) A "material" breach of an obligation under the contract by the other party, and (3) that the plaintiff incurred damages resulting from the breach.

44. The parties have a valid contract, evidenced by the Trantalis Contract, whereby Defendant Marian Greiser would pay Plaintiff Francis Greiser Jr. $60,000.00 plus 50% of any amount in excess of $60,000.00 which Defendant Marian Greiser received from the sale of Unit 210; and in exchange, Plaintiff Francis Greiser Jr. would give up his ownership interest in Unit

4 To date, M. Greiser has not paid Jr his share of the $1,236.12 legal fee reimbursement for Unit 210, or the $1730.56 legal fee reimbursement for Unit 214

210 and drop his lawsuit against Whittier.

45. Plaintiff Greiser Jr. honored the Trantalis Contract. Defendant Marian Greiser paid Plaintiff Greiser Jr. $60,000.00. However, on June 8, 2018, Defendants M. Greiser and J. Drinkard sold Unit 210 for $75,000. but materially breached the contract by refusing to pay Greiser Jr. his contracted half of the $15,000 in net profit,[5] causing Plaintiff to incur damages of $5,250 plus his $618.06 share of the $1236.12 for the Whittier Unit 210 legal fee reimbursement.

WHEREFORE, the Plaintiff, FRANCIS T. GREISER JR., demands judgment against the Defendant MARIAN K. GREISER for Breach of Contract in the amount of $5,868.06, plus costs, including prejudgment interest, and any other such relief as the Court deems equitable and just.

COUNT TWO: UNJUST ENRICHMENT (UNIT 214) MARIAN K. GREISER

46. Plaintiff Francis Greiser Jr. realleges paragraphs 1-16, 22-24, 36, 39, 41, and incorporates the same by reference herein.

47. In Florida, a claim for unjust enrichment requires a showing that: (1) The plaintiff has conferred a benefit on the defendant; (2) The defendant has knowledge of the benefit; (3) The defendant has accepted or retained the benefit; and (4) The circumstances are such that it would be inequitable for the defendant to retain the benefit without paying fair market value for it.

48. Defendant M. Greiser and Greiser Sr. offered Plaintiff Greiser Jr. one-third ownership in Unit 214, in exchange for his renovating the entire unit at no charge. Plaintiff Greiser Jr. completed extensive renovations on the unit, adding approximately $40,000.00 in active equity to the value of Unit 214 by working 6-days a week for six months.

49. Further, Plaintiff Greiser Jr. paid $39,500.00 in total from 2010 to 2016, for Unit 214's monthly maintenance fees, as an equitable owner of the unit.

50. Defendant M. Greiser acknowledged and accepted the renovations completed by Plaintiff, and also the $39,500.00 paid by Plaintiff. However, notwithstanding this, on December

5 minus $4,500.00 for the realtor's commission

13, 2016, six months after Greiser Sr. passed away, Defendant M. Greiser sold Unit 214 for $167,500, making a profit of $57,000.00 and failed to give Plaintiff 1/3 of the sales price. If not for Plaintiff Greiser Jr.'s renovations, Defendant would not have made any profit on Unit 214.

51. Plaintiff Greiser Jr. kept his part of the agreement regarding Unit 214, but Defendant M. Greiser failed to satisfy her part of the agreement. Therefore, it would be grossly inequitable for Defendant M. Greiser to retain the benefit of Plaintiff Greiser Jr.'s renovations, without paying him the fair market value for his work.

WHEREFORE, the Plaintiff, FRANCIS T. GREISER JR., demands judgment against the Defendant MARIAN K. GREISER for Unjust Enrichment, granting all of his damages, equaling his 1/3 ownership in Unit 214, plus costs, including prejudgment interest, and any other such relief as the Court deems equitable and just.

COUNT THREE: TORTIOUS INTERFERENCE BUSINESS RELATIONSHIP (UNIT 214) – JOANNE L. DRINKARD

52. Plaintiff Francis Greiser Jr. realleges paragraphs 1-16, 22-24, 36, 39, 41 and incorporates the same by reference herein.

53. In Florida, a claim for tortious interference with an advantageous business relationship or contract requires: (1) The existence of a business relationship or contract under which the plaintiff has legal rights (but which is not necessarily evidenced by an enforceable contract); (2) The defendant's knowledge of the relationship or contract; (3) An intentional and unjustified interference with the business or contractual relationship by the defendant; and (4) Damage to the plaintiff as a result of the interference.

54. In early 2016, Defendant J. Drinkard contacted a Fort Lauderdale private investigator to help find incriminating information on her brother Plaintiff Greiser Jr., so she could in-turn convince M. Greiser to renege on her agreement with her son, Plaintiff Greiser Jr. Defendant Drinkard went so far as to contact one of Plaintiff Greiser Jr.'s Broward County friends

6 and maintenence fee payments he was not otherwise required to make, but did so as a co-owner of the unit

named "Robyn" and offered her money if she could get incriminating video of Plaintiff Greiser Jr. doing anything illegal (which Plaintiff did not learn about until May of 2017).

55. Plaintiff Greiser's friend "Robyn" confessed shortly before Greiser Jr. moved to Naples, Florida, that Defendant J. Drinkard had paid her thousands of dollars and gave her the use of a leased vehicle to continue her efforts to entrap Greiser Jr. and take video recordings.

56. Despite discovering everything about their parent's agreement with her brother Plaintiff Greiser Jr. about Unit 214, including the fact that he spent months completely renovating it in exchange for 1/3 ownership in the unit, Defendant Joanne Drinkard exerted undue influence over their elderly mother, and encouraged her to no longer acknowledge Plaintiff's ownership interest in Unit 214. In May of 2016, Plaintiff learned that Defendant J. Drinkard was pressuring M. Greiser to sell Unit 214, telling her the after the death of Greiser Sr. she could no longer afford it.

57. Further, Defendant Joanne Drinkard actively encouraged and helped Defendant M. Greiser wrongly oust Plaintiff Greiser Jr. from Unit 214, and no longer acknowledge Plaintiff's ownership interest in Unit 214. On July 7, 2016, Defendant J. Drinkard flew from Philadelphia, Pennsylvania to Broward County, Florida, and drove to Whittier Towers Unit 214 with M. Greiser to change the door locks and the mailbox lock while Greiser Jr. was away and ousted him from the Unit.

58. On July 8, 2016, Defendant J. Drinkard contacted Caldwell Banker Realtors in Lauderdale-By-The-Sea and had their agency list Unit 214 for sale against the express wishes of Plaintiff Greiser Jr.

59. On December 13, 2016, Defendant J. Drinkard traveled to Florida and used her power of attorney for M. Greiser to sign settlement papers to sell Unit 214 for $167,500.00. Defendant J. Drinkard's motive was to end the business relationship between Plaintiff Greiser Jr.

and his parents was so that she could use the $167,500 in Unit 214 sale proceeds to buy a condominium in Lauderdale-By-The-Sea, at 5200 N. Ocean Blvd., Unit 505B.

60. Defendant J. Drinkard's interference with Plaintiff's business relationship with M. Greiser damaged Plaintiff who was ousted from his home, lost his co-equity ownership share of Unit 214, as well as losing $39,500.00 in maintenance fees he paid.

WHEREFORE, the Plaintiff, FRANCIS T. GREISER JR., demands judgment against the Defendant JOANNE L. DRINKARD for Tortious Interference with an Advantageous Business Relationship, granting him damages, plus costs, including prejudgment interest, and any other such relief as the Court deems equitable and just.

Plaintiff FRANCIS T. GREISER JR. demands Jury Trial for all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiff's Third Amended Complaint was served on the O n**June 15, 2024.**

Respectfully submitted,

/s/ Jennifer Ford, Esq.
JenniferFord,Esq.
FloridaBarNo.1003864
1 East Broward Blvd.,
Suite 700
Fort Lauderdale, FL 33301
Office:(800)961-1909
Cell:(954)588-8831
Jennifer@jenniferford.lawyer
Counsel for Plaintiff

EXHIBIT A

A-151

5/5/17

I, Marian Greiser, hereby agree to pay Francis Greiser, Jr. $60,000, plus above $60,000 ½ of all ~~net~~ net sale proceeds of Unit 210 Whittier Towers Apartments; and I Francis Greiser, Jr. hereby agrees to transfer all of my right, title and interest in said Unit to Marian Greiser ~~to be paid within~~ on or before May 8, 2017 upon signing of this Agreement. ~~24 hrs. from the date hereof~~. Francis Greiser hereby agrees to vacate the premises within 60 days hereof. Francis agrees to credit Marian the amount of $210 for the apt. maintenance from the sale proceeds.

FTG JR MKG

WITNESS:

Sean P. Sherman

Marian Greiser
Marian Greiser

FTG JR
Dean J. Trantalis

Francis Greiser, Jr.

UCN: 062023CA014503AXXXCE

A- 152

HEARING PROCEEDINGS

Francis Greiser Jnr

Plaintiff(s)

VS

Marian Greiser

Defendant(s)

Case No. CACE 23-14503

Date: 6/27/24

Judge: Levenson

This case being called for hearing on In person motion to disqualify

The Plaintiff was/~~was not~~ present in open court with Counsel

Jennifer Ford

The Defendant was/was not present in open court with Counsel

Dean Trantalis

Court Reporter, Stella Kim Lexitas Legal

The following witnesses were duly sworn and testified in this case:

PLAINTIFF	DEFENDANTS
Francis Greiser Jr	

After due consideration, this court:

GRANTED / ~~DENIED / DEFERRED~~ the Motion to disqualify.

30 days to find new counsel. CMC 7/29/24 @ 8:45am

By: Mat Lunq DEPUTY CLERK

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE23014503** DIVISION: **09** JUDGE: **Levenson, Jeffrey R. (09)**

FRANCIS T GREISER JR

Plaintiff(s) / Petitioner(s)

v.

Marian K Greiser, et al

Defendant(s) / Respondent(s)

_____/

ORDER AUTHORIZING WITHDRAWAL OF DEFENDANTS' COUNSEL

THIS CAUSE having come unto be heard before this Court on the Plaintiff's Motion to Disqualify Attorney, and having considered said Motion and being otherwise duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED as follows:

1. Dean J. Trantalis, Esq. is hereby authorized to voluntarily withdraw as counsel for the Defendants.
2. The Defendants shall have thirty (30) days from the execution of this Order to retain new counsel or the Defendants shall be deemed to be proceeding *pro se.*
3. The Defendants shall have thirty (30) days from the expiration of these thirty days or from the filing of a Notice of Appearance of their new attorney to file a responsive pleading to the Plaintiff's Third Amended Complaint. A case management conference is set on July 29, 2024 at 8:45am.
4. The Defendants' address for service of all pleadings and notices henceforth is 659 Barclay Lane, Broomall, PA 19008 until such time as new Counsel shall appear.

DONE AND ORDERED in Chambers at Broward County, Florida on 28th day of June, 2024.

CACE23014503 06-28-2024 3:27 PM

CACE23014503 06-28-2024 3:27 PM
Hon. Jeffrey Levenson
CIRCUIT COURT JUDGE
Electronically Signed by Jeffrey Levenson

Copies Furnished To:
Dean J Trantalis Esq , E-mail : brian@trantalis.com
Dean J Trantalis Esq , E-mail : dean@trantalis.com
Dean J Trantalis Esq , E-mail : brett@trantalis.com
Francis Thomas Greiser Jr Jr , E-mail : fgreiser@alumni.avemarialaw.edu
Francis Thomas Greiser Jr Jr , E-mail : fg210@att.net
Jennifer Ford , E-mail : jennloford@gmail.com
Jennifer Ford , E-mail : jlfordlaw@mail.com

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE23014503** DIVISION: **09** JUDGE: **Levenson, Jeffrey R. (09)**

FRANCIS T GREISER JR

Plaintiff(s) / Petitioner(s)

v.

Marian K Greiser, et al

Defendant(s) / Respondent(s)

_____/

ORDER AUTHORIZING WITHDRAWAL OF DEFENDANTS' COUNSEL

THIS CAUSE having come unto be heard before this Court on the Plaintiff's Motion to Disqualify Attorney, and having considered said Motion and being otherwise duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED as follows:

1. Dean J. Trantalis, Esq. is hereby authorized to voluntarily withdraw as counsel for the Defendants.
2. The Defendants shall have thirty (30) days from the execution of this Order to retain new counsel or the Defendants shall be deemed to be proceeding *pro se.*
3. The Defendants shall have thirty (30) days from the expiration of these thirty days or from the filing of a Notice of Appearance of their new attorney to file a responsive pleading to the Plaintiff's Third Amended Complaint.
4. The Defendants' address for service of all pleadings and notices henceforth is 659 Barclay Lane, Broomall, PA 19008 until such time as new Counsel shall appear.

DONE AND ORDERED in Chambers at Broward County, Florida on .

Judge Name
CIRCUIT COURT JUDGE
DRAFT DRAFT DRAFT DRAFT

Misleading Draft Order

From: jrFrank Greiser (fg210@att.net)

To: jennifer@jenniferford.lawyer

Date: Friday, June 28, 2024 at 05:17 PM EDT

Jennifer Ford Attorney at Law
1 E Broward Blvd Suite 700
Fort Lauderdale, FL 33301

June 28, 2024

Dear Jennifer,

There are problems with the proposed order for Defendants Counsel to withdraw submitted by Dean Trantalis.

Paragraph 1 states "Dean J. Trantalis, Esq. is hereby authorized to voluntarily withdraw as counsel for the Defendants."

That statement is self-serving and intentionally misleading and distorts the record of this case if the Judge enters the order as proposed.

He is not "voluntarily" withdrawing, as at the close of the Motion to Disqualify Hearing, Judge Levenson ruled that he must withdraw, and Defendants must must find new counsel.

For the following reasons, I would like you to correct the proposed order by striking the word ***voluntarily*** from paragraph one for the following reasons....

First, Dean Trantalis has been disqualified and should not be submitting proposed orders.

Second, Judge Levenson directed you personally to submit the Order that disqualified Mr. Trantalis and ordered Defendants to retain new counsel.

Lastly, I want a record of this case that truthfully reflects Judge Levenson's decision from the bench. (One cannot voluntarily withdraw after being ordered to do so by the Judge).

I have an active Bar Complaint against Mr. Trantalis for conflict-of-interest, and I want to submit the Final Order of the Court to Bar Counsel.

Sincerely,

Francis Greiser Jr

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-23-014503

FRANCIS T. GREISER JR.,

Plaintiff,

v.

MARIAN K. GREISER and
JOANNE L. DRINKARD,

Defendants.
_____/

NOTICE OF APPEARANCE

The undersigned attorney, JOHN P. SEILER, ESQUIRE, hereby notifies this Honorable Court of his appearance as counsel of record for the Defendant, JOANNE L. DRINKARD, in this action, and respectfully requests that copies of all future pleadings, motions, notices, orders, filings, correspondence, or other written communications concerning the Defendant, JOANNE L. DRINKARD, or this action be furnished to him.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct photocopy of the foregoing Notice of Appearance has been served via electronically through the Florida Courts E-Filing Portal this 5th day of August, 2024, to all attorneys and parties of record.

LAW OFFICES OF SEILER, SAUTTER,
ZADEN, RIMES & WAHLBRINK
2850 North Andrews Avenue
Fort Lauderdale, Florida 33311
Telephone: (954) 568-7000
jseiler@sszrlaw.com
lsasser@sszrlaw.com

By: /s/ John P. Seiler
JOHN P. SEILER, ESQUIRE (#776343)

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-23-014503

FRANCIS T. GREISER JR.,

Plaintiff,

v.

MARIAN K. GREISER and
JOANNE L. DRINKARD,

Defendants.
_____/

MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

The Defendants, MARIAN K. GREISER ("M. Greiser") and JOANNE L. DRINKARD ("Drinkard") (collectively "Defendants"), by and through their undersigned counsel, pursuant to the Florida Rules of Civil Procedure, hereby move to dismiss the Third Amended Complaint filed by the Plaintiff, FRANCIS T. GREISER, JR. ("Plaintiff") and state as follows:

1. The Plaintiff's Third Amended Complaint represents yet another attempt to state a cause of action against his family members following repeated dismissals for non-compliance with this Honorable Court's Case Management Orders and contentious litigation over alleged conflicts of interest by the Defendants' prior counsel.

2. This action also follows litigation in the federal Eastern District of Pennsylvania, in which the Plaintiff's claims against Drinkard were dismissed with prejudice, the Plaintiff was denied leave to amend to assert futile claims against M. Greiser, and such dismissal was affirmed by the United States Circuit Court of Appeal. *See Francis Greiser Jr. v. Joanne Drinkard, et. al.* (E.D. Pa. Civil No. 2:18-cv-05044)

3. The Plaintiff now has filed a Third Amended Complaint in this action, rehashing theories which can not provide a legally cognizable basis to proceed against his mother and sister.

4. The Plaintiff asserts three causes of action against his mother, M. Greiser, in connection with co-op units in the Whittier Towers Condominium in Lauderdale-by-the-Sea, in which the Plaintiff purports to have had an ownership interest – a Breach of Contract claim for $5,868.00 in alleged lost profits from the sale of Unit 210, and an unjust enrichment claim relating to improvements he claims he provided for Unit 214. The Plaintiff also asserts a claim against Drinkard for alleged tortious interference with a business relationship, *i.e.* his expectancy of his mother sharing the profits from the sale of Unit 214 with him. As detailed below, each of these claims must be dismissed.

Count I – Plaintiff's Claim Must Be Dismissed Because its Allegations are Contradicted and Negated by Exhibit A to the Third Complaint and the Amount in Controversy is Below this Honorable Court's Jurisdictional Limit

5. The Plaintiff's breach of contract claim relating to Unit 210 expressly acknowledges that M. Greiser paid the $60,000.00 specified in the Trantalis agreement but claims that M. Greiser subsequently sold Unit 210 for a total sales price of $75,000.00.

6. The Trantalis Agreement attached as Exhibit A to the Third Amended Complaint states, in pertinent part,

> I, Marian Greiser, agree to pay Francis Gresier, Jr. ½ of all net sale proceeds above $60,000.00 of Unit 210, Whittier Towers Apartments.

7. This language expressly contradicts the allegation in Count I that "Greiser and Drinkard sold Unit 210 for $75,000.00 but materially breached the contract by refusing to pay Greiser his contracted half of the $15,000.00 in net profits."

8. As the excerpted language above clearly states, M. Greiser agreed to pay ½ of *net sales proceeds* above $60,000.00, not ½ of any sales price over $60,000.00.

9. The Fourth District Court of Appeal considered the plain meaning of the phrase "net proceeds" in light of a similar agreement to share such proceeds upon the sale of a house in *Romano v. Romano*, 632 So. 2d 207, 212 (Fla. 4th DCA. 1994), holding "[T] he costs of sale, closing costs, and mortgage indebtedness are to be deducted from the sales price to reach the net proceeds, and then that figure is to be multiplied by each parties' percentage to calculate their respective shares of the proceeds."

10. While the Plaintiff identifies a $4,500 realtor's commission in a footnote to Count I, he does not state at any point what the closing costs were for the transaction as a whole, nor does he identify the total net proceeds of the sale.

11. It is well settled that "[I]f an exhibit attached to a complaint negates the pleader's cause of action, the plain language of the document will control and may be the basis for a motion to dismiss." *Warren v. Dairyland Ins. Co.*, 662 So. 2d 1387, 1388 (Fla. 4th DCA. 1995)(citing *Buck v. Kent Sec. of Broward*, 638 So.2d 1004 (Fla. 4th DCA 1994).

12. Because the Trantalis Agreement clearly does not entitle the Plaintiff to ½ of gross sales proceeds over $60,000.00, and further fails to identify the net sales proceeds from the transaction, Count I fails to state a cause of action and should be dismissed.

13. Moreover, even if Count I were to survive dismissal on the basis of the contradictory exhibit, the amount of the claim, standing alone, is far below the $50,000.00

jurisdictional limit for an action in Circuit Court. As such, if this Honorable Courrt dismisses Counts II and III of the Third Amended Complaint, then Count I must be dismissed for lack of subject matter jurisdiction.

Count II - Plaintiff's Claim for Unjust Enrichment is Barred by the Statute of Frauds and the Statute of Limitations.

13. As alleged in paragraph 15 of the Third Amended Complaint, the Plaintiff moved into Unit 214 and began renovation on March 19, 2010, which he completed within six months.

14. Accordingly, to the extent the Plaintiff is attempting to assert that the renovations he performed conveyed a benefit to M. Greiser for which he has not been compensated, his claim comes approximately ten (10) years too late.

15. "The statute of limitations for an unjust enrichment claim begins to run at the time the alleged benefit is conferred and received by the defendant." *Flatirons Bank v. Alan W. Steinberg Ltd. P'ship*, 233 So. 3d 1207, 1213 (Fla. 3rd DCA 2017)(citing *Barbara G. Banks, P.A. v. Thomas D. Lardin, P.A.*, 938 So.2d 571, 577 (Fla. 4th DCA 2006); *Swafford v. Schweitzer*, 906 So.2d 1194, 1195–96 (Fla. 4th DCA 2005)).

16. The Plaintiff also claims that he paid monthly maintenance fees for Unit 214 from 2010 through 2016, but these claims also fall outside the permissible four (4) year statute of limitation for unjust enrichment.

17. The Plaintiff attempts to circumvent this issue by characterizing his unjust enrichment action as a claim for his 1/3 owership interest in Unit 214, rather than for the value of the improvements which he allegedly performed.

18. The Plaintiff acknowledges that his purported ownership interest in Unit 214 arises from an oral agreement with his faather and mother which was never memorialized and

which, unlike his interest in Unit 210, was not addressed by the Trantalis Agreemenet. Such claims, premised on allegations of an oral contract, would be barred by Florida's statute of frauds. It was for this reason that both the District Court for the Eastern District of Pennsylvania and the United States Circuit Court of Appeal denied the Plaintiff leave to assert claims against M. Greiser. *See Fla. Stat.* § 725.01; *see also Stamer v. Free Fly, Inc.*, 277 So. 3d 179, 182 (Fla. 5th DCA. 2019)(holding Statute of Frauds could not be circumvented by claim of promissory estoppel).

19. Moreover, Florida Courts recognize that the remedy for an unjust enrichment claim based on services rendered must "be valued based on either (1) the market value of the services; or (2) the value of the services to the party unjustly enriched." *Dooley v. Gary the Carpenter Constr., Inc.*, 388 So. 3d 881, 883 (Fla. 3rd DCA. 2023)

20. The Plaintiff's claim is for neither of the above, but rather, the Plaintiff asserts that the services he rendered entitled him to a 1/3 interst in the sale proceeds of Unit 214, harkening back to the unenforceable agreement to convey him such an interest.

21. Because the Plaintiff's claim for unjust enrichment fails to seek a legally permissible remedy, relies on an unenforceable oral agreement, and falls far outside the Statute of Limitations, this claim must also be dismissed.

Count III - Plaintiff's Claim for Tortious Interference Against Drinkard Fails Because he Lacked a Legally Cognizable Business Interest in Unit 214 and Any Interference by Drinkard's was Privileged.

22. In Count III, the Plaintiff asserts that Drinkard tortiously interfered with his ownership interest in Unit 214 by convincing her mother to sell the unit.

23. The "advantageous business relationship" cited by the Plaintiff in support of this cause of action is his mother's purported agreement to grant him a 1/3 ownership interest and allow him to live in Unit 214.

24. However, as detailed in the preceding section, the Plaintiff did not have a legally enforceable agreement granting him such a 1/3 interest, only a conclusory assertion of an oral promise. Florida Court's recognize that "[i]f a contract between the initial buyer and seller is unenforceable, then an element of a tortious interference claim is absent." *See Mariscotti v. Merco Grp. At Akoya, Inc.,* 917 So. 2d 890, 892 (Fla. 3rd DCA 2005)(citing *Sullivan v. Econ. Research Props.,* 455 So.2d 630 (Fla. 5th DCA 1984)).

25. In short, because the Plaintiff had no enforceable business relationship with his mother, Drinkard could not have interfered with any such interest.

26. The Plaintiff also attempted to assert a similar claim against Drinkard in the federal court litigation in Pennsylvania. In addition to issues with the enforceability of the agreement, the federal district court noted the allegations that the parties were a tight knit family, and that in light of these familial relationships, the Plaintiff had failed to state why Drinkard's actions were unjustified, failing to satisfy the element of " an intentional and unjustified interference with the relationship by the defendant." *Font & Nelson, PLLC v. Path Med., LLC,* 317 So. 3d 134, 139 (Fla. 4th DCA 2021)

27. Paragraph 56 of the Third Amended Complaint expressly alleges that Drinkard was encouraging her mother to sell Unit 214 not for any malicious or vindictive motive, but because her mother could not afford to keep the unit. While the Plaintiff includes irrelevant facts regarding a private investigator and statements made to a former friend of the Plaintiff, the Plaintiff fails to tie these allegations to M. Greiser's decision to sell Unit 214. The Plaintiff does

not allege that Drinkard induced the sale using improper means, only stating that she "pressured" her mother to sell the Unit (because she could not afford it).

28. The Plaintiff's claim for tortious intereference has been repeatedly and rightfully rejected, and consistent with the prior ruling of the Eastern District of Pennsylvania, this Honorable Court should dismiss Count III of the Third Amended Complaint with prejudice.

WHEREFORE, the Defendants, MARIAN K. GREISER and JOANNE L. DRINKARD, respectfully request and hereby demand that this Honorable Court grants this Motion; dismisses the Third Amended Complaint, with prejudice; enters an Order dismissing the Third Amended Complaint with prejudice; and further grants such other and additional relief as this Honorable Court deems necessary, legal, equitable, reasonable, just and proper. .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct photocopy of the foregoing Motion to Dismiss the Plaintiff's Third Amended Complaint has been served via electronically through the Florida Courts E-Filing Portal this 18th day of September, 2024, to all attorneys and parties of record.

LAW OFFICES OF SEILER, SAUTTER,
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By: /s/ John P. Seiler
JOHN P. SEILER, ESQUIRE (#776343)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff,	:	Case No: CACE-23-014503
v.	:	Judge Jefferey R. Levenson
MARIAN K. GREISER; and	:	
JOANNE L. DRINKARD. Defendants.	:	

/

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

I. INTRODUCTION AND PROCEDURAL POSTURE

This action arises from a breach of contract and related claims concerning two properties, Units 210 and 214, at Whittier Towers in Lauderdale-by-the-Sea, Florida. Plaintiff alleges a breach of the 'Trantalis Contract' concerning Unit 210 and unjust enrichment related to Unit 214, both of which were owned by M. Greiser and her late husband, Francis Greiser Sr. Additionally, Plaintiff asserts a claim for tortious interference by Defendant Drinkard for disrupting Plaintiff's business relationship with M. Greiser regarding Unit 214.

Plaintiff's Third Amended Complaint was filed in response to this Court's invitation to amend after dismissals based on technical deficiencies. Despite Defendants' claims, Plaintiff has presented legally cognizable claims, each supported by facts that, when taken as true, entitle him to relief. Defendants' Motion fails to demonstrate that dismissal is warranted under Florida law.

II. STANDARD OF REVIEW

A motion to dismiss tests the legal sufficiency of a complaint. For purposes of such a motion, the court must accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Minor v. Brunetti*, 43 So.3d 178 (Fla. 3d DCA 2010). A motion to dismiss must be denied if the complaint contains allegations that, if proven, would

entitle the plaintiff to relief under any theory. *Cintron v. Osmose Wood Preserving, Inc.*, 681 So.2d 859 (Fla. 5th DCA 1996).

III. FACTUAL BACKGROUND

Plaintiff Greiser Jr. entered into two oral agreements with M. Greiser and Greiser Sr. regarding renovations of Units 210 and 214 at Whittier Towers in exchange for equity ownership in the units. Plaintiff completed extensive renovations on both units, adding significant value. On June 13, 2012, M. Greiser and Greiser Sr. honored their oral agreement for Unit 210 and added Plaintiff to the Proprietary Lease. Following the settlement of a separate litigation regarding Unit 210, the parties entered into a written settlement agreement known as the "Trantalis Contract."

Under this contract, Plaintiff agreed to relinquish his ownership interest in Unit 210 in exchange for $60,000.00 and 50% of any sale proceeds exceeding $60,000.00. However, Defendants have failed to produce financial documents related to the sale or pay Plaintiff the $5,250.00 owed under the agreement.

Similarly, Plaintiff renovated Unit 214 in 2010 under an oral agreement with M. Greiser and Greiser Sr. Then, on July 9, 2012, Greiser Jr. as equity owner and full-time resident of Unit 214 was approved by Broward County for a Florida Homestead tax reduction. M. Greiser and Greiser Sr. paused adding Greiser Jr. to the Unit 214 Proprietary Lease until the lawsuit filed by Whittier Towers *(Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et. al.* (CACE 12-027941)) was settled (eventually doing so in 2017). After the passing of Greiser Sr. in May 2016, Plaintiff Greiser Jr was ousted from the property without compensation for his one-third interest, leading to the unjust enrichment claim.

IV. LEGAL ARGUMENT

This case is not barred by the statute of limitations, pursuant to the well settled doctrine of equitable estoppel, and the well settled relation back doctrine, newly applied in the 2017 Florida Supreme Court ruling in *Kopel v. Kopel*, as well as the Federal tolling statute applied in the 2018 United States Supreme Court ruling in *Artis v District of Columbia, 138 S. Ct 594, 598 (2018)*. Defendants Marian Greiser and Joanne Drinkard induced Plaintiff not to file the action sooner. Thus, they cannot use the SOL as a shield to bar this action.

CASE LAW REVIEW
Equitable Estoppel

The doctrine of equitable estoppel applies "in all cases where one, by word, act or conduct, willfully caused another to believe in the existence of a certain state of things, and thereby **induces him to act on this belief injuriously to himself**, or to alter his own previous condition to his injury." Major League Baseball v. Morsani, 790 So.2d 1071 (Fla. 2001) (quoting State ex rel. Watson v. Gray, 48 So.2d 84, 87-88 (Fla.1950)). [emphasis added]

> In Major League Baseball v. Morsani, 790 So.2d 1071 (Fla. 2001) plaintiffs filed a complaint 8 years after the cause of action accrued, alleging interference with advantageous contractual and business relationships and violation of antitrust laws. The defendant argued plaintiffs are estopped from asserting SOL as a defense, *"because the defendants had induced the plaintiffs to forbear suit on the Minnesota Twins transaction."*. Id. The trial court granted summary judgment in defendant's favor as a matter of law, pursuant to the SOL. Id. However, the district court reversed, holding Florida's tolling statute did not apply, and later the Florida Supreme Court affirmed.
>
> In Florida DHRS v. SAP, 835 So.2d 1091 (Fla. 2002), the plaintiff asserted a claim that HRS was negligent in 1979, and then covered up her abuse, under the theory of Equitable Estoppel. The SAP court found the Defendant was estopped from arguing SOL as a defense, notwithstanding the fact that incidents giving rise to the Complaint accrued decades earlier. The SAP court held this was because HRS *"...actively concealed the facts concerning the negligence that is the basis of this complaint..."* Id.
>
> Conversely, in Rubio v. Archdiocese of Miami, Inc., 114 So.3d 279 (Fla. App. 2013), the court declined to extend this rule in SAP. In Rubio, the Complaint alleged the Plaintiff endured SA by a parish priest 35 years earlier, and that the Archdiocese failed to report the sexual abuse as required by law. Id. However, the Rubio court held that the doctrine of estoppel did not apply, and that the suit was barred by the SOL, due to "*the plaintiff's failure to allege acts by the Archdiocese that explain how he was induced by the Archdiocese to wait almost three decades to sue for abuse*"..." Id.

In Artis v District of Columbia, 138 S. Ct 594, 598 (2018), the court held state causes of actions survive and are tolled back to the date of the filing of the Federal case, for 30 days after the federal case is disposed of. Thus, even when cases are litigated for several years and SOL has long passed on the state claims, the clock is stopped on the date the Federal case was filed and does not start up again until 30 days after the Federal case is dismissed. "the tolling provision of 28 U.S.C. § 1367 operates to suspend or "stop-the-clock" on supplemental state court claims while the concordant federal suit is pending and for 30 days thereafter" Id at 598

Relation Back Doctrine

Kopel v. Kopel, 229 So. 3d 812 (Fla. 2017) came before the Florida Supreme Court after 21 years of two brothers litigating against their nephew over deteriorating business relationships within the family. The Kopel court held that the relation back doctrine relates back to the original complaint, even if new causes of action are brought before the court, if the same facts giving rise to the action accruing were alleged in the previous lawsuits.

SOL Clock

In Count II Unjust Enrichment (as to Marian Greiser), the SOL clock ran from date of sale of Unit 214: December 22, 2016, until PFA filed on September 9, 2018 (20 months and 18 days) and again from the date PFA lifted: May 30, 2019, until the claims were raised in the proposed amended complaint on March 9, 2020 (9 months and 10 days), and again from the date the appeal by the Third Circuit was finally denied on April 5, 2022 (plus 30 days as per *Artis v. District of Columbia, 138 S. CT 594, 598, (2018),* until *Grieser Jr. v. Greiser* (CACE 23014503) was filed on June 7, 2023 (13 months and 2 days). Thus, Count II was filed 3 ½ years after the cause of action accrued, well within the 4 year SOL.

In Count III: Tortious Interference with a business relationship (as to Joanne Drinkard), the SOL clock ran from the date of the sale of Unit 214 sale: December 22, 2016, until May 18, 2018, the date plaintiff filed a complaint in the SDFL, alleging the same set of facts that caused the causes of action to accrue as he did here (16 months and 27 days), and continued from April 5, 2022 (plus 30 days as per *Artis)* when The US District Court of Appeals for the Third District upheld the closing of the EDPA Case, until September 3, 2023 (17 months), when Drinkard was added as a Plaintiff in the instant case. Thus, Count III was filed a little under 3 years after the cause of action accrued, well within the 4 year SOL.

A. Breach of Contract (Count I - Unit 210)

Defendants argue that Plaintiff's breach of contract claim fails because Plaintiff is not entitled to 50% of the gross proceeds from the sale of Unit 210. However, this argument misrepresents the terms of the Trantalis Contract. Plaintiff seeks his share of the net proceeds, as defined by the contract. Defendants have not provided an accounting or the financial documents concerning the sale of unit 210, as such, it appears the Defendants sold the property for $75,000.00 and the only expense (because there was no mortgage or attorney fees) would be a $4,500.00 realtor's commission which would leave $10,500.00 in net proceeds. Plaintiff is entitled to half of these net proceeds, or $5,250.00, as Florida law upholds the principle that a

party who has performed under a valid contract is entitled to damages resulting from the other party's breach. *See Perera v. Diolife LLC*, 274 So.3d 1119 (Fla. 4th DCA 2019). Defendants' failure to pay the full amount owed under the contract constitutes a clear breach, entitling Plaintiff to relief.

B. Unjust Enrichment (Count II - Unit 214)

Defendants claim that the statute of limitations and the statute of frauds bar Plaintiff's unjust enrichment claim. These arguments are misplaced.

1. Statute of Limitations: The four-year statute of limitations for unjust enrichment does not bar Plaintiff's claim because equitable estoppel applies. on September 10, 2018, ***both*** J. Drinkard and M. Greiser filed Temporary Protection from Abuse petitions claiming that Greiser Jr. had "Contact friends for information" and "Filed 3rd lawsuit against me in S Florida." Marian Greiser left her Temporary PFA to remain in effect until May 30, 2019, when it was dismissed by the Court.

Defendants wrongfully ousted Plaintiff from Unit 214 in July of 2016, and the sold Unit 214 on December 13, 2016, despite objections from the Plaintiff who sought legal recourse shortly thereafter. Additionally, the application of equitable estoppel is appropriate where, as here, Defendants' misconduct (i.e., the wrongful ouster, the sale of Unit 214 against Greiser Jr.'s wishes, and the filing of a PFA Petition) prevented Plaintiff from timely asserting his rights. See Machules v. Dep't of Admin., 523 So.2d 1132, 1134 (Fla. 1988).

2. Statute of Frauds: While oral contracts related to real property are generally subject to the statute of frauds, Plaintiff's claim for unjust enrichment does not depend on the enforceability of the oral agreement but on the benefits conferred upon Defendants. Plaintiff performed extensive renovations to Unit 214, increasing its value by approximately $57,500 (Unit 214 purchased in 2010 for $110,000 and sold in 2016 for $167,500). By unjustly retaining the benefits of these improvements without compensating Plaintiff, Defendants have been unjustly enriched. Florida courts have consistently held that claims for unjust enrichment are valid where services rendered confer a benefit to the defendant. See Dooley v. Gary the Carpenter Constr., Inc., 388 So.3d 881, 883 (Fla. 3rd DCA 2023).

C. Tortious Interference (Count III - Unit 214)

Defendants argue that Plaintiff lacks a legally cognizable business interest in Unit 214. However, Plaintiff's business relationship with M. Greiser, based on his renovations and contributions to the property, constitutes a protectable interest under Florida law. Furthermore, Defendant Drinkard's interference was not privileged. By convincing M. Greiser to oust Plaintiff and sell the property without compensating him, Drinkard intentionally disrupted Plaintiff's expectancy of receiving his share of the proceeds.

Under Florida law, a tortious interference claim requires: (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) intentional and unjustified interference, and (4) damages. *See Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla. 1985). Plaintiff has sufficiently pleaded these elements, and the claim should proceed to discovery.

D. Statute of Limitations Arguments

Defendants assert that the statute of limitations bars several of Plaintiff's claims, including those for unjust enrichment and tortious interference. However, Defendants' arguments overlook critical aspects of Florida law, particularly the doctrines of equitable tolling and equitable estoppel, which apply in this case due to Defendants' misconduct. These doctrines prevent Defendants from benefiting from their wrongful conduct in delaying or preventing Plaintiff's timely filing.

1. Unjust Enrichment (Count II - Unit 214):

Defendants argue that the four-year statute of limitations for unjust enrichment bars Plaintiff's claim, as the alleged benefits were conferred over a decade ago, beginning in 2010. However, Plaintiff was wrongfully ousted from Unit 214 in July of 2016 and Defendants sold Unit 214 on December 13, 2016, despite objections from the Plaintiff, and the statute of limitations is tolled under the doctrine of equitable estoppel. The application of equitable estoppel is appropriate where a defendant's conduct induces the plaintiff to delay filing suit. Here, Defendant M. Greiser, in collaboration with Defendant Drinkard, unlawfully barred Plaintiff from returning to the unit and receiving compensation for his contributions and paused

his filing claims against M. Greiser until March 9, 2020. Thus, the statute of limitations is tolled until the ouster and sale in December 2016, and during the 10 months the PFA Order was in effect, making Plaintiff's unjust enrichment claim timely under Florida law.

2. Breach of Contract (Count I - Unit 210):

Defendants suggest that Plaintiff's breach of contract claim is also barred by the statute of limitations. However, the sale of Unit 210 occurred on June 8, 2018, and Plaintiff's action was initiated on June 7, 2023, just within the five-year statute of limitations prescribed under Florida law for breach of contract claims. Therefore, the breach of contract claim is timely and not barred.

3. Tortious Interference (Count III - Unit 214):

Defendants argue that Plaintiff's tortious interference claim is untimely based on a four-year statute of limitations. However, as set forth above, Defendants' interference occurred when Defendant Drinkard unlawfully conspired to oust Plaintiff from Unit 214 in July of 2016, and then sell Unit 214 on December 13, 2016, despite protests from Plaintiff Greiser Jr. Under the equitable estoppel doctrine, the statute of limitations should be tolled until the sale of Unit 214 in December 2016, which effectively terminated Plaintiff's expectancy. Plaintiff's complaint, filed on May 18, 2018, within the four-year statute, is timely.

V. CONCLUSION

WHEREFORE, For the foregoing reasons, Defendants' Motion to Dismiss should be denied in its entirety. Plaintiff has adequately pleaded claims for breach of contract, unjust enrichment, and tortious interference, each of which is supported by Florida law and the facts alleged in the Third Amended Complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the E-filing Portal. On Date: October 3, **2024**

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE23014503** DIVISION: **09** JUDGE: **Levenson, Jeffrey R. (09)**

FRANCIS T GREISER JR

Plaintiff(s) / Petitioner(s)

v.

Marian K Greiser, et al

Defendant(s) / Respondent(s)

_____/

ORDER GRANTING MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

This cause having come before this Honorable Court for hearing on Thursday, October 31, 2024, upon the "Motion to Dismiss Plaintiff's Third Amended Complaint" filed and served by the Defendants, MARIAN K. GREISER and JOANNE L. DRINKARD, and this Honorable Court having reviewed the record, having considered the file, having examined the "Motion to Dismiss Plaintiff's Third Amended Complaint", having also examined the "Third Amended Complaint", having heard argument of counsel, and being otherwise fully and duly advised and informed in the premises, it is hereupon:

ORDERED AND ADJUDGED as follows:

1. The Defendants' "Motion to Dismiss Plaintiff's Third Amended Complaint" shall be and the same is hereby granted, in part.

2. More specifically, the Defendants' "Motion to Dismiss Plaintiff's Third Amended Complaint" shall be and the same is hereby granted, with prejudice, as to Count II and Count III of the Third Amended Complaint.

3. Therefore, Count II and Count III of the Third Amended Complaint shall be and the same are hereby dismissed, with prejudice.

4. Furthermore, the Defendants' "Motion to Dismiss Plaintiff's Third Amended Complaint"

shall be and the same is hereby granted, without prejudice and with leave to amend, as to Count I of the Third Amended Complaint.

5. Therefore, Count I of the Third Amended Complaint shall be and the same is hereby dismissed, without prejudice and with leave to amend one last time.

6. Finally, this action shall be transferred to County Court since the damages amount of the claim, standing alone, is substantially below the jurisdictional limit for this Circuit Court. Any amendment to Count I of the Third Amended Complaint shall be filed and served in County Court.

DONE AND ORDERED in Chambers at Broward County, Florida on 5th day of November, 2024.

CACE23014503 11-05-2024 6:52 AM

CACE23014503 11-05-2024 6:52 AM
Hon. Jeffrey Levenson
CIRCUIT COURT JUDGE
Electronically Signed by Jeffrey Levenson

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IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO.: CACE-23-014503

FRANCIS T. GREISER JR.,

Plaintiff,

vs.

MARIAN K. GREISER and
JOANNE L. DRINKARD,

Defendants.

_____x

Broward County Courthouse
201 SE 6th Street
Ft. Lauderdale, FL 33301
Thursday, October 31, 2024
10:36 a.m. - 10:47 a.m.

This cause came on for hearing before the Honorable JEFFREY R. LEVENSON, Judge of the above-styled court, at the Broward County Courthouse, pursuant to notice.

APPEARANCES

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Thereupon the proceedings commenced as follows:

THE COURT: We're here for Greiser versus Greiser, case number 23-14503. We're here for Defendant's Motion to Dismiss. I think we have -- let's see. We are on -- I granted the Motion to Dismiss. We are on the Fourth Amended Complaint. This is the Third Amended Complaint. Counsel for the plaintiff, please announce your appearance.

MR. FORNARO: Good morning, your Honor. Matthew Fornaro for the plaintiff.

THE COURT: Thank you, Matt, for putting on a tie.

MR. FORNARO: No problem.

MR. SEILER: Jack Seiler, your Honor, on behalf of both defendants now.

THE COURT: I read both motion and response. Please go ahead.

MR. SEILER: Judge, I think when you look at this, it's pretty clear. As to the first count -- by the way, this is a long history of litigation between this family. We had litigation going, and I represented them before Judge Dimitrouleas in federal court and that got dismissed. Then they took it to the

Eastern District of Pennsylvania. That got dismissed. Now they're back here in state court where we have been handling it. This litigation has been going on between the brother and the sister and the mother for quite some time and like I said, my involvement had been back in 2017 when all this started and then when it went up to the Eastern District of Pennsylvania, I think Mr. Trantalis got involved because he was involved --

THE COURT: I mean, the main crux, besides the fact that it's deja vu all over again, the issue is the Statute of Limitations.

MR. SEILER: But it's also the Statute of Frauds and there's also the issue of this contract, and Judge, if I could just direct you just to save time. Count 1, that's --

THE COURT: Breach of Contract, yes.

MR. SEILER: Count 1 says Breach of Contract and they said that what they have, because we did not give them one-half of the net sale price above $60,000. That's not what the contract says on its face. It says, I, Marian Greiser, agree to pay Francis Greiser, Junior one-half of all net sale proceeds above

$60,000 of unit 210. Not price. So net sale proceeds.

So when you go to that contract, it speaks for itself. It's why the Court in Pennsylvania didn't allow it to be amended again. It's why we previously had this here. This thing, it just keeps going.

So let's look at the language, and you go to the Fourth District Court of Appeal and it says in the case of Romano versus Romano, and we cite that, the plain meaning of the phrase, quote, net proceeds, closed quote, in light of a similar agreement to share such proceeds upon the sale of a house, it's the cost of sale, the closing costs, the mortgage indebtedness are to be deducted from the sales price to meet the net proceeds. So what we have here is they don't even plead that there were realtor commissions, there were closing costs. So they're trying to say the net sales price above that $60,000 when it sold for 75, Judge. This is a very small amount. They continue fighting because it's family, but the sales price was not what the contract says. It's the net sale proceeds. When you look at

that, then obviously the contract speaks for itself and if you go further, and they do recognize there's a realtor's commission. They put it in the footnote, a $4,500 realtor's commission, but if you go further, Judge, that exhibit negates the complaint, obviously in Count 1, and that document was written by Dean Trantalis, who I think the Court is aware of.

So even if this were to survive dismissal, this count is going to be somewhere less than, it'll be about a $4,000 dispute.

THE COURT: It wouldn't meet the jurisdictional requirement.

MR. SEILER: Right. So I just want the Court to be aware of that.

Count 2, unjust enrichment, that is barred by Statute of Fraud and Statute of Limitations. This one involves the other unit. They have two units in the building. This is Whittier Towers. This involves unit 214 and what he's alleged in here is that about sometime in 2010, he moved into the unit and he began renovations, which he completed, by his own testimony, by his own admission, within six months. So if in 2010 the renovations were

completed, the Statute of Limitations would have run either 2014 or 2015, depending on what theory he wants to travel under. And so the extent that they're trying to assert that the renovations he performed convey a benefit, that benefit, they're suing ten years too late.

The Statute of Limitations for unjust enrichment begins to run at the time the alleged benefit is conferred and received by the defendant, and Judge, we've cited the Flatirons case out of the Third DCA and the Barbara G. Banks case out of the 4th DCA where it says specifically the date the alleged benefit is conferred and received by the defendant is when the statute begins to run. That was in 2010. Then they claimed that he paid the monthly miantenance fees on the unit for unit 214 from 2010 to 2016. Again, the statute has run on those claims that he wants to be reimbursed for paying maintenance fees and then he tries to circumvent it by this new allegation that it's really an unjust enrichment action for his one-third ownership interest which was promised to him.

So he lays it all out about these

assessments and he lays it out about the maintenance and the renovations, but then his argument at the end is he has a one-third ownership interest in unit 214. Well Judge, we know that the Statute of Frauds and the Statute of Limitations would have run on that.

The Statute of Frauds says you can't convey an ownership interest in real estate not in writing. There's nothing in writing that conveys the ownership interest as one-third and arises from an oral agreement by his own admission.

So when you look at the Statute of Frauds and Statute of Limitations, Count 2 is gone and then when you go to, last thing I'll add on that, Judge --

THE COURT: Your position is they didn't have a legally enforceable agreement. Therefore no advantageous business relationship. Let me hear from him and I'll have you reply, okay.

MR. SEILER: Thank you.

THE COURT: Let me hear from Matthew.

MR. FORNARO: Do you want to hear about Count 1 first?

THE COURT: I want to hear about all the counts.

MR. FORNARO: Okay. Count 1 is very simple and shouldn't be dismissed. There's no Statute of Limitations issue with Count 1 whatsoever. It was filed --

THE COURT: I guess you're saying if I dismiss it, then you don't have anything. You don't have a controversial -- what's the amount in controversy if I dismiss 2?

MR. FORNARO: Well right now it's about $50,000 in aggregate for all three claims. If you knock out two of the three claims, then it's less than the jurisdictional amount and you'll have to transfer the case to County.

THE COURT: Jack, you might want to listen to this.

MR. SEILER: Sorry, Judge.

MR. FORNARO: If the two other counts go away, then it's less than $50,000. You transfer it to County Court. So Count 1, there's no Statute of Limitations issue.

THE COURT: Stop for a second. So if I grant 2 and 3, okay, where does that leave us with Count 1? Jurisdiction amount is going to

be 4-grand or something. Does it go to County Court?

MR. SEILER: It might even go to small claims court. It definitely goes to County Court. Under the new threshold, small claims is $7,500 or something.

THE COURT: So it's not a basis to dismiss it. It's to dismiss it to transfer it to small claims.

MR. SEILER: Except I think when you read the contract, I mean, he has to at least now re-plead what are the net sales proceeds.

THE COURT: Well that would be in a different jurisdiction. It wouldn't be here.

MR. SEILER: It would be the Fourth Amended Complaint because he still needs to re-plead.

THE COURT: I want to separate the two. I want to really focus on 2 and 3.

MR. FORNARO: Well I'll finish one real quick.

THE COURT: Let's go to 2 and 3.

MR. FORNARO: Okay, 2 and 3. So the unjust enrichment is for the moneys received. Not for the actual one-third ownership interest in the properties themselves. So the reason why, when

they argue Statute of Limitations, obviously Mr. Seiler told you about the long history of those two parties litigating against each other. So based on events that we outlined in our response regarding the case in the Eastern District of Pennsylvania, an appeal to the Third District Court of Appeal in Philadelphia, various other things, the time to bring Counts 2 and 3 was tolled from the filing of the original complaint until the filing of this complaint and we cited Koppel versus Koppel, which is a Florida case as to standing for the proposition that where it's the same nucleus of facts -- and again, that's a Florida Supreme Court case found at Florida 229 So.3d 812 -- you can relate it back to the original filing. So that's why these two counts --

THE COURT: What's the date? What's the operative date?

MR. FORNARO: We explain it in the --

THE COURT: Give me the date.

MR. FORNARO: In Count 2, it goes back to the sale of the unit, which is December 22, 2016.

THE COURT: What's the Statute of

Limitations on that?

MR. FORNARO: For unjust enrichment would be four years, but it was tolled.

THE COURT: When did you file the complaint?

MR. FORNARO: We filed the original complaint --

THE COURT: In '22; isn't it?

MR. FORNARO: Yes, but there was --

THE COURT: Well that's your problem because even if it relates back, you still violated --

MR. FORNARO: But the mother filed an action in Pennsylvania. I can't really explain an equivalent action here in Florida.

THE COURT: You're out of luck, man. I mean, even if it relates back.

MR. FORNARO: Okay. Well, she filed an action in Pennsylvania that basically issued a protective order against her, disallowing my client from interacting with her in any possible way. That wasn't dissolved until 2019. So that goes back from 2016 to 2019. That's three years right there.

THE COURT: That motion is granted with

prejudice as to that. It relates back to 2016. On its face, the Statute of Limitations survive. Let's go to 3.

MR. FORNARO: It's going to be almost the same argument.

THE COURT: Motion to dismiss with prejudice is granted. Any amendment to the complaint would be futile, Fourth Amended Complaint. The Court will not excercise discretion as to Count 1. Based on Counts 2 and 3 being dismissed with prejudice, Count 1 will be dismissed and transferred to small-claims court. Anything else from either party?

MR. SEILER: No. Thank you, your Honor.

MR. FORNARO: Thank you.

HEARING CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I, TRACIE S. PERRY, Court Reporter and Notary Public, certify that I was authorized and did stenographically report the foregoing proceedings and that this transcript is a true record of the proceedings before the Court.

I further certify that I am not a relative, employee, attorney or counsel for any of the parties, nor am I a relative of employee of any of the parties; attorney of counsel connected with the action, nor am I financially interested in the action.

Dated this 13th day of November 2024.

Tracie S. Perry

TRACIE S. PERRY

WRIT PETITION APPENDICES

VOLUME THREE

U.S. District Court Eastern District of Pennsylvania
and U.S. Third Circuit Court of Appeals
Orders and Opinions

From

The Florida Circuit Court Record on Appeal

A-188 through A-219

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS T. GREISER, JR. **Plaintiff,** **v.** **JOANNE L. DRINKARD, *et al.*** **Defendants.**	**CIVIL ACTION NO. 18-5044**

MEMORANDUM OPINION

Rufe, J. **February 2, 2021**

Plaintiff Francis T. Greiser, Jr. filed this action *pro se* against his sister, Joanne Drinkard and her husband, Paul Drinkard, alleging state-law claims of tortious interference with contract, wrongful conveyance and conversion, unjust enrichment, tortious interference with a business relationship, fraudulent concealment and misrepresentation, tortious interference with an expectancy, defamation, and intentional infliction of emotional distress.[1] Defendants have moved to dismiss the Amended Complaint. Plaintiff opposes the motion and seeks leave to file a Second Amended Complaint to add as Defendants his mother, Marian Greiser, and the estate of his late father, Francis Greiser, Sr.[2] For the reasons set forth below, the motion to dismiss will be granted and the motion for leave to file a Second Amended Complaint will be denied.

I. FACTUAL ALLEGATIONS

A. Allegations in the Amended Complaint

Plaintiff alleges the following facts. Between 2010 and 2014, Plaintiff had a loving relationship with his parents, living in Units 210 and 214 of the same condominium complex,

[1] Federal jurisdiction is premised on diversity of citizenship; the case was transferred from the United States District Court for the Southern District of Florida.

[2] Pl.'s Mot. for Leave, Exh. A, March 9, 2020 [Doc. No. 71].

Whittier Towers, in Florida.[3] They socialized frequently, mainly during the winter months, as his parents would return to their home in Pennsylvania in the spring.[4] In 2014, Plaintiff's father suffered a stroke, and was in and out of the hospital for months.[5] After a visit to his parents in January 2015, Plaintiff received an e-mail from his mother in March 2015, accusing him of trying to break into the family's safe.[6] Plaintiff alleges that his sister falsely accused him to their mother.[7] His sister also allegedly gained power of attorney and had her father sign over his assets to her, and engaged in other financial misdeeds.[8]

Plaintiff's father died in May of 2016, and Plaintiff alleges that at the funeral family members told him that his sister was telling people that he had attempted to break into his parents' safe. Plaintiff later took a polygraph examination to demonstrate that he had not broken into the safe.[9] In late May and early June 2016, Plaintiff sent two demand notices to his sister to retract her statements.[10] They went unanswered.[11]

At about this same time, Plaintiff's brother, Robert Greiser, informed him that their sister was pressuring their mother into selling both units in Whittier Towers.[12] Plaintiff alleges that he

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[3] Pl.'s Am. Compl., July 2, 2018 [Doc. No. 8] at ¶¶ 49-50.

[4] *Id.* at ¶ 51.

[5] *Id.* at ¶ 52.

[6] *Id.* at ¶ 59.

[7] *Id.* at ¶ 65.

[8] *Id.* at ¶¶ 71, 80-90.

[9] *Id.* at ¶¶ 102-105. Plaintiff then took a second polygraph test about the renovations of the Florida condominium. *See id.* at ¶ 106.

[10] *Id.* at ¶¶ 108-09.

[11] *Id.* at ¶ 110.

[12] *Id.* at ¶¶ 114-15.

and his parents had orally contracted for both living rights and future interest in Unit 214 in exchange for unpaid renovation work.[13] With regard to Unit 210, Plaintiff alleges that in 2012, he and his parents began a lawsuit against Whittier Towers, regarding his ownership of the unit, which was eventually resolved with Plaintiff's name being removed from the proprietary lease for a payment of $60,000.[14] Plaintiff also alleges that his sister wrested control of the family's daycare business away from him and his brother.[15]

B. Additional Allegations in the Proposed Second Amended Complaint

In the proposed Second Amended Complaint, Plaintiff adds allegations that his father told him about a new will in 2012 that left Plaintiff some property in Florida.[16] Plaintiff accuses his sister of changing the will in 2015 and signing everything over to her.[17] During probate proceedings in Pennsylvania state court, the Orphans' Court Division of the Delaware County Court of Common Pleas determined that there was no 2012 will, and that both the penultimate will executed in 2000 and the final will executed in 2015 left all assets to the surviving spouse, Plaintiff's mother.[18] Plaintiff alleges that his sister hid assets from the probate court and that he was supposed to be left some sort of expectancy.[19] Plaintiff maintains that his sister fraudulently

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[13] *Id.* at ¶ 134.

[14] *Id.* at ¶ 188.

[15] *Id.* at ¶¶ 194-98.

[16] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A (Proposed Second Amended Complaint) at 5.

[17] *Id.* at 6.

[18] *Id.* at 10.

[19] *Id.* at 7-9.

transferred assets of the estate.[20] Finally, Plaintiff also includes a claim alleging a breach of a written contract regarding an entitlement to proceeds from the sale of Whittier Unit 210.

II. LEGAL STANDARDS

For a complaint to survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[21] This occurs when the claim "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[22] A court must "accept as true all factual allegations in the complaint and draw all inferences from the facts alleged in the light most favorable to [plaintiff]."[23] A court is not required to accept legal conclusions as factual allegations; to overcome a motion to dismiss, the complaint must show "direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory."[24]

Federal Rule of Civil Procedure 15 guides the amended pleading standard. Under Rule 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."[25] Additionally, Rule 15(d) provides that "[o]n motion or reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that

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[20] *Id.* at 5.

[21] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[22] *Id.* (quoting *Twombly*, 550 U.S. at 556).

[23] *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008).

[24] *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)) (internal quotation marks omitted).

[25] Fed. R. Civ. P. 15(a)(2).

happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in a claim or defense."[26]

Moreover, when adding defendants, a plaintiff must also satisfy Federal Rule of Civil Procedure 20, which provides that "[p]ersons . . . may be joined in one action as defendants if: any right to relief is asserted against them jointly [or] severally . . .with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences."[27]

Leave to amend should be denied if amendment would be futile or inequitable. Amendment would be futile if "the amended complaint would not survive a motion to dismiss for failure to state a claim."[28] It is inequitable to allow amendment where there has been "undue delay, bad faith, dilatory motive, [or] unfair prejudice."[29] Finally, "pro se pleadings should be construed liberally," but still must meet the applicable legal standards.[30]

III. DISCUSSION

To the extent that claims in the Amended Complaint and proposed Second Amended Complaint overlap, the Court will analyze the claims together, and will address separately the proposed new claims against new Defendants in the motion to amend.

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[26] Fed. R. Civ. P. 15(d).

[27] Fed. R. Civ. P. 20(a)(2)(A). Federal Rule of Civil Procedure 21 states that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party."

[28] *Budhun v. Reading Hosp. & Med. Ctr.*, 765 F.3d 245, 259 (3d Cir. 2014) (citing *Travelers Indem. Co. v. Dammann & Co.*, 594 F.3d 238, 243 (3d Circ. 2010); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[29] *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

[30] *Paramount Pictures Corp. v. Davis*, 234 F.R.D. 102, 110 (E.D. Pa. 2005) (citing *Haines v. Kerner,* 404 U.S. 519, 520–21 (1972)).

A. Claims concerning Whittier Units 210 and 214

In the Amended Complaint, Plaintiff alleges claims against his sister and her husband for tortious interference with a contract, wrongful conveyance and conversion, unjust enrichment, and tortious interference with a business relationship. These claims arise from an alleged oral contract between Plaintiff and his parents for future ownership rights of Unit 214 in exchange for Plaintiff performing unpaid renovation work, and a similar claim for Plaintiff to renovate and then move into Unit 210.[31]

Defendants argue that the Florida statute of frauds bars these claims.[32] Under this statute, "no action shall be brought . . . upon any contract for the sale of lands . . . or of any uncertain interests in or concerning them, or any lease period longer than 1 year...unless the agreement or promise . . . shall be in writing and signed by the party to be charged therewith."[33] A party cannot avoid this requirement by reformulating a breach of contract claim into one for fraud, and promissory estoppel is not an exception to the statute of frauds.[34] Plaintiff argues that "it is well established in Florida that part performance will remove an oral contract from the statute of frauds and enable it to specifically enforced in equity."[35] While this is correct, "[t]he doctrine of part performance to excuse a failure to comply with the statute of frauds is not available in

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[31] Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 35.

[32] Def.'s Mot. to Dismiss, Mar. 10, 2020 [Doc. No. 73] at 11.

[33] Fla. Stat. § 725.01. As the property is in Florida, there is no dispute that Florida law applies to these claims.

[34] *Stamer v. Free Fly, Inc*, 277 So.3d 179, 181–82 (Fla. Dist. Ct. App. 2019).

[35] Pl.'s Reply to Def.'s Response to Pl.'s Mot. for Leave, Apr. 6, 2020 [Doc 80] at 8.

Florida to actions solely for money damages."[36] Plaintiff has not sought equitable relief, and because the property has been sold, equitable relief would likely not be available.

To the extent that the claim for tortious interference with a contractual or business relationship is not barred by the statute of frauds,[37] Plaintiff has failed to state a claim. The tort requires "(1) the existence of a business relationship, not necessarily evidenced by an enforceable contract; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result" of the interference.[38] Plaintiff has not alleged the existence of a valid contract, and has alleged only in conclusory terms that any interference by Defendants was unjustified given the family relationships among the parties. Claims relating to Unit 214 and Unit 210 in the Amended Complaint will be dismissed, and the motion for leave to amend will be denied as to any tort claims.[39]

B. Claims Concerning the Will of Francis Greiser, Sr.

Plaintiff asserts claims for fraudulent concealment and misrepresentation, and for tortious interference with an expectancy. The fraudulent concealment claim, which alleges that his sister failed to list all of their father's assets to the Orphans' Court, is barred by the probate exception to federal jurisdiction.[40] The probate exception applies when a "claim for relief requires a federal

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[36] *Wharfside at Boca Pointe, Inc. v. Superior Bank*, 741 So.2d 542, 545 (Fla. Dist. Ct. App. 1999) (*citing Hosp. Corp. of Am. v. Associates in Adolescent Psychiatry*, 605 So.2d 556 (Fla. Dist. Ct. App. 1992)).

[37] *See Brace v. Comfort*, 2 So.3d 1007, 1011 (Fla. Dist. Ct. App. 2008).

[38] *Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla. 1985).

[39] A claim in the proposed Second Amended Complaint for breach of an express contract regarding proceeds from the sale of Unit 210 will be discussed separately below. The tort claims do not concern this alleged breach of contract.

[40] *See* Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 46-49.

court to. . . probate or annul a will."[41] Furthermore, the probate exception bars a district court from determine whether a testamentary document is invalid.[42] Thus this Court cannot adjudicate claims relating to the will and the probate assets.[43]

To state a claim for tortious interference with an expectancy under Pennsylvania law, a plaintiff must allege "(1) [t]he testator indicated an intent to change his will to provide a described benefit for plaintiff, (2) [t]he defendant used fraud, misrepresentation or undue influence to prevent execution of the intended will, (3) [t]he defendant was successful in preventing the execution of a new will; and (4) [b]ut for the defendant's conduct, the testator would have changed his will."[44] Plaintiff alleges the family's daycare business was supposed to be left to both him and his sister as an inheritance, but in 2016 his sister changed their father's will and persuaded their parents to sign over all business holdings to her.[45] However, as Plaintiff acknowledges, the Orphans' Court determined that the final will was written in 2015 and left all assets to the surviving spouse, Plaintiff's mother.[46] There are no plausible allegations that any other disposition of assets was contemplated.[47]

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[41] *Rothberg v. Marger*, No. 11-5497, 2013 WL 1314699, at *5 (D.N.J. Mar. 28, 2013) (citing *Three Keys Ltd. v. SR Utility Holding Co.*, 540 F.3d 220, 227 (3d Cir. 2008).

[42] Id at *7 (citations omitted).

[43] In addition to the probate exception, the claims likely would be barred by the *Rooker-Feldman* doctrine, as Orphans' Court has ruled on the questions surrounding probate.

[44] *Cardenas v. Schober*, 783 A.2d 317, 326 (Pa. 2001). As the will was probated in Pennsylvania, the parties do not dispute that Pennsylvania law applies to these claims.

[45] Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 5, 50.

[46] *See* Def.'s Mot. to Dismiss, Mar. 10, 2020 [Doc. No. 73] at 8.

[47] *See id.*; *see also Cardenas*, 783 A.2d at 326.

D. Claim of Intentional Infliction of Emotional Distress

Plaintiff alleges a claim of intentional infliction of emotional distress. It is not clear whether Florida or Pennsylvania law governs this claim, but Plaintiff cannot state a claim under either standard. Under Florida law, "a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe."[57] Pennsylvania law is similar but also requires a showing of physical injury.[58] Plaintiff has not met either standard. He alleges that Defendants' lies and "slander" were so severe that they "shock the conscience and are well outside acceptable social norms."[59] Both Florida and Pennsylvania courts generally follow the Restatement (Second) of Torts, which defines outrageous conduct as that "beyond all possible bounds of decency, and regarded as atrocious, and utterly intolerable in a civilized community."[60] Courts have found extreme and outrageous conduct only in the "most egregious of situations."[61] Plaintiff has not alleged conduct that meets this standard; the claim is essentially coterminous with the allegations of defamation.[62]

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[57] *Liberty Mut. Ins. Co. v. Steadman*, 968 So.2d 592, 594 (Fla. Dist. Ct. App. 2007). It should be noted that under Florida law, "proof of physical injury or impact is not necessary to sustain an action for the intentional infliction of emotional distress." *Clemente v. Horne*, 707 So.2d 865, 866 (Fla. Dist. Ct. App. 1998).

[58] *John v. Phila. Pizza Team, Inc*, 209 A.3d 380, 384 (Pa. Super. Ct. 2019).

[59] Pl.'s Am. Compl., July 2, 2018 [Doc. No. 8] at 57.

[60] *Gallogly v. Rodriguez*, 970 So.2d 470, 472 (Fla. Dist. Ct. App. 2007) (quoting Restatement (Second) of Torts § 46 cmt. d (1965)).

[61] *Cheney v. Daily News, L.P.*, 654 F. App'x 578, 583 (3d Cir. 2016) (citing Pennsylvania law); *Steadman*, 968 So.2d at 595 (under Florida law, the court must determine as a matter of law whether the conduct is "atrocious and utterly intolerable in a civilized community" (internal quotation marks and citations omitted)).

[62] The Court notes that the proposed Second Amended Complaint does not seek to assert a claim for intentional infliction of emotional distress.

E. Additional Claims Raised in the Proposed Second Amended Complaint

Plaintiff's proposed Second Amended Complaint seeks to add claims for abuse of process and wrongful use of civil proceedings against his sister and his mother, Marian Greiser, who is not currently a Defendant, and a claim for breach of contract against his mother and the Estate of Francis Greiser, Sr., which is also not a current Defendant.[63]

1. Abuse of Process

Plaintiff alleges that his mother and sister sought a Protection from Abuse order ("PFA") against Plaintiff in Pennsylvania but it was later dropped. Plaintiff states he was in Florida at the time of the filing and there was no reason to file a PFA against him. To claim abuse of process, a plaintiff must allege "that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff."[64] "Abuse of process . . . focuses on the misuse of [the] civil process . . . to achieve some object other than the legitimate purpose for which it is designed, as opposed to the wrongful initiation of legal proceedings without probable cause."[65] Furthermore, "[i]n support of this claim, the [plaintiff] must show some definite act or threat not authorized by the process . . . there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions."[66] More simply stated, "the gist of an action for abuse of process is the improper use of process after it has been

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[63] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 28-39.

[64] *Lerner v. Lerner*, 954 A.2d 1229, 1238 (Pa. Super. Ct. 2008).

[65] *Douris v. Dougherty*, 192 F. Supp. 2d 358, 366 (E.D. Pa. 2002) (quoting *Muirhead v. Zucker*, 726 F. Supp. 613, 617 (W.D. Pa. 1989).

[66] *Lerner*, 954 A.2d at 1238 (citing *Shiner v. Moriarty*, 706 A.2d 1228, 1236 (Pa. Super. Ct. 1998)).

issued."[67] The Supreme Court [of Pennsylvania] has interpreted the tort broadly, making clear that it "will not countenance the use of the legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process."[68]

These claims bear a striking resemblance to those rejected by the Pennsylvania Superior Court in *Lerner v. Lerner*.[69] In *Lerner,* Helen Lerner alleged that her brother Nathan Lerner harassed her and caused her to fear for her safety.[70] In 2003, Nathan attempted to serve legal papers to Helen's building manager and janitor, creating a scene among tenants in the lobby.[71] In response, Helen filed two criminal reports and subsequently filed for a PFA but, during the hearings, the PFA was withdrawn.[72] Nathan then filed a complaint stating that the PFA was retaliation for his legal efforts and that because he had not had any contact with Helen in over 20 years, there was no way she could have probable cause.[73] He brought claims for abuse of process and wrongful use of civil proceedings.[74] The court concluded that Nathan failed to satisfy the elements of either claim and that he failed to "aver well-pled facts which would permit the conclusion that [Helen] acted in a grossly negligent manner or without probable cause in filing her PFA."[75] The court noted the allegation that there had been no contact between the siblings

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[67] *Hart v. O'Malley*, 436 Pa. Super. 151, 160, (1994) (quoting *Rosen v. American Bank of Rolla,* 627 A.2d 192 (1993)).

[68] *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 305 (3d Cir. 2003) (citing *McGee v. Feege*, 517 Pa. 247, 535 A.2d 1020, 1026 (1987)). *See* 42 Pa. C.S.A. § 8351 (defining existence of probable cause).

[69] 954 A.2d 1229 (Pa. Super. Ct. 2008).

[70] *Id.* at 1232.

[71] *See id.*

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *Id.* at 1239.

for a period of time did not rule out a finding of probable cause.[76] Moreover, the Superior Court held that Helen did nothing more than carry out the process to its authorized conclusion, so that there was no liability regardless of her intention.[77] Finally, the bald assertion of damages did not sufficiently allege injury.[78]

As in *Lerner*, the present dispute lacks a factual basis for an abuse of process claim. Although Plaintiff asserts that there was no probable cause because he and his sister had not been in contact for eighteen months, a lack of recent contact does not vitiate probable cause. Further, Plaintiff claims the PFA's primary purpose was to "facilitate personal retribution" as well as to hinder his ability to respond to the motion to dismiss and force him to hire counsel and travel to Pennsylvania.[79] However, in the absence of allegations that the process was perverted in some way, these "bad intentions" cannot form a basis for liability. Instead, Plaintiff asserts that it was an attempt to prevent him from filing a timely answer to a motion to dismiss.[80] However, the state court granted Plaintiff an extension of time to respond to this motion and therefore he suffered no harm.[81]

Plaintiff also alleges that he had to fly to Pennsylvania, obtain counsel and defend himself, which caused great "mental pain" in addition to being "humiliated and put under a cloud of suspicion."[82] However, Plaintiff alleges that his attorney advised him that he could appear by

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[76] *See id.*

[77] *See id* at 1238.

[78] *Id.*

[79] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 31, 36-37.

[80] *See id.* at 30.

[81] *See* Order Sept. 24, 2018 [Doc. No. 34].

[82] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 39.

telephone to contest the jurisdiction rather than traveling to Pennsylvania. Plaintiff alleges that he instead chose to travel to Pennsylvania on his own.[83] Furthermore, Plaintiff never alleges how his reputation was actually damaged, or how any relationships among his neighbors or peers were damaged as a result of the PFA. Plaintiff's only allegation is that he was "put under a cloud of suspicion,"[84] which is insufficient to assert a claim of abuse of process.

2. Wrongful Use of Civil Proceedings

Plaintiff also seeks to bring claims for wrongful use of civil proceedings against Joanne Drinkard and Marian Greiser based upon the issuance of the PFAs. Wrongful use of civil proceedings occurs when: "(1) [Defendant] acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and (2) The proceedings have terminated in favor of the person against who they are brought."[85] By definition, proceedings are terminated in favor of the person against whom they are brought "by the favorable adjudication of the claim by a competent tribunal."[86] However, "[a] voluntary withdrawal of civil proceedings does not constitute a favorable termination unless the withdrawal was 'tantamount to the unbidden abandonment of a claim brought in bad faith.'"[87] With this in mind, "Pennsylvania courts have concluded that a withdrawal of proceedings is a favorable termination when the withdrawal occurred 'on the eve of trial' and the circumstances indicated

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[83] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 29–30.

[84] *Id.* at 39.

[85] *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (2011) (citing 42 Pa.C.SA. § 8351).

[86] *Id.* at 972.

[87] *Kegerise v. Susquehanna Sch. Dist.*, 325 F. Supp. 3d 564, 582 (M.D. Pa. 2018) (*citing Hyldahl v. Denlinger*, 661 F. App'x 167, 171 (3d Cir. 2016)).

that the withdrawal was a 'last-second dismissal in the face of imminent defeat.'"[88]

Defendants argue that Plaintiff failed to show that the efforts to obtain the PFA lacked probable cause and that proceedings were terminated in his favor.[89] Plaintiff raises substantially the same arguments as in the previous claim, and has not alleged a lack of probable cause.

Plaintiff also alleges that Defendants terminated the proceedings after legal counsel advised them to do so, noting that both Defendants are "unable to establish that the original proceeding against Plaintiff Greiser was instituted and prosecuted on the good faith reliance of legal counsel," and were dropped before Plaintiff had the opportunity to defend himself.[90] In essence, Plaintiff claims that the withdrawal of the PFAs was "last-second" in the "face of imminent defeat."[91] Plaintiff is seeking damages on the grounds that Defendants were the cause of reputational harm, as Plaintiff was "humiliated and put under a cloud of suspicion."[92] Plaintiff has not stated facts to allege defendants acted in a "grossly negligent manner or without probable cause" nor has he alleged facts showing the withdrawal of the PFAs was "last-second" in the "face of imminent defeat," but instead relies only on legal conclusions.[93] Therefore, leave to amend will not be granted as to these claims.

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[88] *Hyldahl* 661 F. App'x at 171 (citing *Bannar v. Miller*, 701 A.2d 242, 245, 248 (Pa. Super. Ct. 1997)); *see also Majorsky v. Douglas*, 58 A.3d 1250, 1269–70.

[89] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 32, 38.

[90] *Id.* at 32, 39.

[91] *See id.*; *see also Hyldahl* 661 F. App'x at 171.

[92] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 39.

[93] *See id.* at 38; *see also Lerner*, 954 A.2d at 1237.

3. Express Breach of Contract

Finally, Plaintiff seeks to add a claim against his mother and his father's estate for breach of contract, and attaches the alleged handwritten express contract (which is only between Plaintiff and Marian Greiser) as an exhibit.[94] Plaintiff alleges that under this contract he was to receive $60,000 plus one half the proceeds above $60,000 when Whittier Unit 210 was sold, in exchange for him settling the lawsuit he had against Whittier Towers, and removing his name from the lease.[95] Plaintiff alleges that Unit 210 was sold for $75,000.[96] According to a letter from an attorney then representing Plaintiff that is also attached to the proposed Second Amended Complaint, the amount due under this contract is $4,034.[97] This is the only potentially viable claim in the litigation. However, the Court determines that it would be inequitable and unwarranted under Rule 15 or Rule 20 to permit amendment for the purpose of asserting a single claim against new Defendants that would not meet the jurisdictional threshold. Therefore, the Court will deny the motion to amend as to this claim, which Plaintiff may pursue in the appropriate state court.

IV. CONCLUSION

For the reasons set forth above, the motion to dismiss will be granted, and the motion for leave to file a second amended complaint will be denied. An order will be entered.

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[94] *Id.* at 22-24; Doc. No. 72 Exh. 18.

[95] *Id.* at 23.

[96] *Id.* at 24.

[97] Doc. No. 72 Exh. 21.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1879

FRANCIS GREISER, JR.,
Appellant

v.

JOANNE L. DRINKARD; PAUL A. DRINKARD

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil No. 2:18-cv-05044)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 3, 2022
Before: GREENAWAY, Jr., PORTER, and NYGAARD, Circuit Judges

(Opinion filed: February 10, 2022)

OPINION*

PER CURIAM

Francis Greiser, Jr., appeals pro se from the District Court's dismissal of his amended complaint without leave to amend, and its subsequent denial of his motion for

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

reconsideration. For the following reasons, we will affirm the District Court's judgment.

I.

Greiser made the following allegations in his amended complaint. In 2010, his parents purchased an apartment, Unit 214, at a Florida cooperative apartment complex, Whittier Towers. He and his parents agreed that he would renovate the apartment in exchange for permanent occupancy there and ownership of the unit when his parents both passed away. Greiser initially lived in Unit 214 with his parents, but in 2011, his parents purchased Unit 210 in the same complex, and Greiser moved there.

In 2012, Greiser's parents added Greiser to their proprietary lease for Unit 210. As a result, the Whittier Towers cooperative apartment association sued Greiser and his parents to remove Greiser's name from the proprietary lease, as Greiser had not been approved by the Whittier Towers cooperative board.

In 2014, Greiser's father had a stroke and was in and out of the hospital in Pennsylvania. Greiser's sister, Joanne Drinkard, was appointed as their father's agent through a power of attorney. Greiser visited his parents in January 2015 and stayed at their home in Pennsylvania. In March 2015, his mother accused him of trying to break into a safe at his parents' home. When his father died in May 2016, Greiser learned from family members at the funeral that his sister told people that he had attempted to break into his parents' safe. His relationship with his mother never recovered.

Greiser believes that his sister convinced their father to change his will in 2015, before he died. In 2016, Greiser initiated an action in the Orphans' Court Division of the

Delaware County Court of Common Pleas to produce his father's wills and get an accounting of his father's estate. That Court identified two wills, from 2001 and 2015, and dismissed the action after noting that the sole beneficiary in both wills was Greiser's mother. Greiser believes that his sister lied and hid assets from the Orphans' Court, and that she has been using their mother's assets for her own gain.

Greiser's sister also became involved in the handling of the Whittier Towers litigation after their father died. In 2017, after years of litigation and mediation, Whittier Towers agreed to drop the lawsuit in a settlement agreement; Greiser was paid $60,000 to agree to its terms. In exchange, Greiser's name was removed from the proprietary lease of Unit 210 and Greiser moved out of the unit. Greiser's mother later sold both units.

In 2018, Greiser initiated an action in the United States District Court for the Southern District of Florida, bringing state law claims against his sister and her husband, Paul Drinkard. Greiser continues to reside in Florida, while the Drinkards are Pennsylvania residents. The case was ultimately transferred to the United States District Court for the Eastern District of Pennsylvania.

After the transfer, the Drinkards moved to dismiss Greiser's amended complaint based on a service issue. Greiser moved for leave to file a second amended complaint, but he later withdrew his request. The District Court denied the Drinkards' first motion to dismiss, and Greiser sought reimbursement for service-related costs.

On the day before the Drinkards' answer or second motion to dismiss was due, Greiser filed another motion for leave to file a second amended complaint, as well as his

proposed second amended complaint, and on the following day, the Drinkards moved to dismiss. The District Court ultimately granted the Drinkards' motion, dismissing the claims in Greiser's amended complaint with prejudice, and denied Greiser's motion for leave to amend his complaint. The District Court also partially granted Greiser's motion for costs. Greiser moved for reconsideration, which was denied, and timely appealed.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of Greiser's amended complaint. See Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). Dismissal is appropriate "if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that [the] plaintiff's claims lack facial plausibility."[1] Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011). We review the denial of a motion for reconsideration for abuse of discretion. See Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

III.

We agree that dismissal of Greiser's amended complaint was appropriate.[2] First, Greiser brought four tort claims under Florida law against the Drinkards regarding the

[1] "We may affirm on any ground supported by the record as long as the appellee[s] did not *waive* — as opposed to *forfeit* — the issue." TD Bank N.A. v. Hill, 928 F.3d 259, 276 n.9 (3d Cir. 2019).

[2] We note where Greiser made additional allegations in his proposed second amended complaint that relate to the claims against the Drinkards in his amended complaint.

sale of Units 210 and 214 at Whittier Towers. Greiser alleged unjust enrichment, wrongful conveyance and conversion, tortious interference with a contract, and tortious interference with a business relationship by the Drinkards.

Greiser cannot state a claim for unjust enrichment, as he has not alleged that he conferred a benefit on the Drinkards in the course of his mother's sale of the Whittier Towers apartments, and cannot state a claim for wrongful conveyance and conversion where he has not alleged that the Drinkards took control of the Whittier Towers units. See Agritrade, LP v. Quercia, 253 So. 3d 28, 33 (Fla. Dist. Ct. App. 2017) (explaining that one element of unjust enrichment is that the "plaintiff has conferred a benefit on the defendant, who has knowledge thereof") (internal quotation marks and citation omitted); Belford Trucking Co. v. Zagar, 243 So. 2d 646, 648 (Fla. Dist. Ct. App. 1970) ("[C]onversion is . . . an act of dominion wrongfully asserted over another's property inconsistent with his ownership of it.").

Greiser also cannot state a claim for tortious interference with a contract or with a business relationship based on his conclusory allegations about his sister's influence on their mother's decisions. As the District Court explained, given the closely tied familial relationships in this matter, Greiser's allegations are not sufficient to allege "an intentional and unjustified interference with the relationship by the defendant[s]." Font & Nelson, PLLC v. Path Med., LLC, 317 So. 3d 134, 138-39 (Fla. Dist. Ct. App. 2021) (internal quotation marks and citation omitted).

Next, Greiser brought claims for tortious interference with an expectancy and fraudulent concealment and misrepresentation under Pennsylvania law, relating to his father's will. Greiser could not a state a claim for tortious interference with an expectancy because he did not claim that his sister "used fraud, misrepresentation, or undue influence to [successfully] *prevent* execution of [his father's] intended will" in a situation where his father would have otherwise changed his will.[3] See Fiedler v. Spencer, 231 A.3d 831, 836 (Pa. Super. Ct. 2020) (emphasis added). He also could not state a claim for fraudulent concealment and misrepresentation based on allegations that his sister lied and withheld information during probate proceedings, as he does not allege that he acted in reliance on his sister's representations but rather that he contested them in court.[4] See Bortz v. Noon, 729 A.2d 555, 560 (Pa. 1999); Youndt v. First Nat'l Bank of Port Allegany, 868 A.2d 539, 545 (Pa. Super. Ct. 2005).

Greiser also brought claims for defamation by implication and defamation per se under Pennsylvania law. He claimed that his sister lied to their parents about him trying to break into their safe sometime before March 2015, and then again before their father's funeral in 2016. His proposed second amended complaint alleges that his sister has

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[3] Greiser sought to add a parallel claim in his proposed second amended complaint against his mother, but amendment would have been futile where he made no allegations that his mother prevented his father from executing an intended will.

[4] In addition to restating these allegations against his sister in his proposed second amended complaint, Greiser sought to bring a parallel fraud claim against his mother, but amendment would have been futile where Greiser made no allegations that he relied on his mother's representations.

continued to lie about the safe during the course of proceedings in the District Court and that she has continued to tell others that he is trying to steal from his mother.

An action for defamation or slander under Pennsylvania law is subject to a one-year statute of limitations. 42 Pa. Cons. Stat. § 5523(1). It is apparent from the face of Greiser's complaint that the alleged statements he identified were uttered, at the latest, at his father's funeral in 2016, but he brought his action in the District Court in 2018. [5] To the extent that Greiser additionally alleged in his proposed second amended complaint that his sister continued to accuse him of stealing to unidentified individuals at unidentified times after their father's funeral, such allegations would be too vague to allow his claims to survive dismissal. See Jaindl v. Mohr, 637 A.2d 1353, 1358 (Pa. Super. Ct. 1994) ("A complaint for defamation must, on its face, identify exactly to whom the allegedly defamatory statements were made."). Accordingly, we agree with the District Court's dismissal of Greiser's amended complaint.[6]

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[5] A statute of limitations is an affirmative defense that normally must be raised in an answer to the complaint. See Fed. R. Civ. P. 8(c). "However, the law of this Circuit . . . permits a limitations defense to be raised by a motion under Rule 12(b)(6) . . . if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations." Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002) (internal quotation marks and citations omitted). "If the bar is not apparent on the face of the complaint, then it may not afford the basis for a dismissal of the complaint under Rule 12(b)(6)." Id. (citation omitted).

[6] Greiser brought one additional claim for intentional infliction of emotional distress in his amended complaint, but because he did not raise or discuss it in his opening appellate brief, he has forfeited any challenge to the disposition of that claim. See United States v. Pelullo, 399 F.3d 197, 222 (3d Cir. 2005). We note that Greiser discusses the claim in his

Further, we conclude that the District Court did not abuse its discretion or otherwise err in denying Greiser's renewed request to file a second amended complaint.[7] See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). Amendment would have been futile for new claims of breach of contract and promissory estoppel against Greiser's mother and his father's estate — new defendants to the action — based on his allegations regarding the Whittier Towers units. Such claims, premised on allegations of an oral contract, would be barred by Florida's statute of frauds, as the District Court explained. See Fla. Stat. § 725.01; see also Stamer v. Free Fly, Inc., 277 So. 3d 179, 182 (Fla. Dist. Ct. App. 2019) ("Florida law is clear that promissory estoppel is not an exception to the statute of frauds.").

Greiser also sought to add new claims against his mother and sister for wrongful use of civil proceedings and abuse of process under Pennsylvania law, based on new allegations that Greiser's mother and sister sought and received temporary protection

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reply brief, but we do not "reach arguments raised for the first time in a reply brief." See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 146 (3d Cir. 2017).

[7] Greiser argues that the District Court erred in ruling on defendants' motion to dismiss before considering his renewed request to file a second amended complaint. However, he provides no support for the proposition that the District Court should have considered the parties' motions in the order he would have preferred. As we have explained, "matters of docket control . . . are committed to the sound discretion of the district court," and "[w]e will not interfere with a trial court's control of its docket except upon the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant." In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982) (internal quotation marks and citations omitted). Greiser was on notice of defendants' motion to dismiss and had a full opportunity to contest it. Further, Greiser had previously moved for leave to file a second amended complaint earlier in the litigation, but withdrew his request only to renew it one day before defendants' motion to dismiss was due.

from abuse ("PFA") orders against him in September 2019, alleging that he had threatened them. Ultimately, they each withdrew those petitions and their cases were dismissed, while Greiser withdrew a counterclaim against his sister.[8] Allowing Greiser to amend his complaint to add these claims would have been futile where he did not make allegations to state a claim, for the reasons given by the District Court. See Lerner v. Lerner, 954 A.2d 1229, 1238 (Pa. Super. Ct. 2008) ("[T]here is no liability [for abuse of process] where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.") (citation omitted); 42 Pa. Cons. Stat. § 8351(a) (providing that to state a claim for wrongful use of civil proceedings, a plaintiff must allege that a defendant acted "in a grossly negligent manner or without probable cause and primarily for a purpose other than that of . . . adjudication of the claim in which the proceedings are based," and that the proceedings terminated in favor of the person against whom they were brought).

Greiser included two remaining claims against his mother and his father's estate in his proposed amended complaint. Greiser first contended that he was owed about $4000[9]

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[8] Greiser makes no mention of this counterclaim in his factual allegations, but a counterclaim is discussed in the order dismissing Greiser's sister's petition, which Greiser attached to his proposed amended complaint. See Davis v. Wells Fargo, 824 F.3d 333, 341 (3d Cir. 2016) (explaining that in evaluating whether a Rule 12(b)(6) dismissal was appropriate, we may examine "exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents") (citation omitted).

[9] This amount was included in a letter from Greiser's attorney that Greiser attached to his proposed amended complaint. See Davis, 824 F.3d at 341.

based on a written contract with his mother stating that he was entitled to certain proceeds when Whittier Towers Unit 210 was sold. He also maintained that his parents were unjustly enriched when he performed renovation work in Unit 214. It would have been inequitable to permit Greiser to pursue two new claims worth less than $75,000 in damages against two new defendants nearly two years into this diversity action.

See Grayson, 293 F.3d at 108; see also Fed. R. Civ. P. 15(a)(2). We thus perceive no abuse of discretion in denying Greiser leave to amend to add these claims.

Next, the District Court did not abuse its discretion in denying Greiser's motion for reconsideration. See Max's Seafood Café, 176 F.3d at 673. Greiser sought reconsideration in part based on a document he had acquired indicating that he received a homestead property tax exemption from 2012-2016. As the District Court noted, Greiser could have provided that document earlier, and he could have made factual allegations about this document at any time, as he claims to have filed it himself. Greiser provided no further allegations that would have prevented dismissal of his claims.

Finally, Greiser claims that the District Court should have fully granted his request for costs associated with litigating several service-related motions. We see no error in the District Court's decision to deny costs for Greiser's subscriptions to legal research services for several years, case filing fees, and non-itemized litigation expenses. See Fed. R. Civ. P. 4(d)(2).

For these reasons, we will affirm the judgment of the District Court.[10]

[10] We grant Greiser's requests to file an overlong brief and to file the second volume of his joint appendix out of time.

Exhibit D (9)

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1879

FRANCIS GREISER JR.,
Appellant
v.

JOANNE L. DRINKARD; PAUL A. DRINKARD

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 2-18-cv-05044)
Senior District Judge: Cynthia M. Rufe

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, MCKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, NYGAARD, [1] *Circuit Judges*

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

BY THE COURT,

s/Joseph A. Greenaway, Jr.
Circuit Judge

cc: Mr. Francis Greiser Jr.
K. Kirk Karagelian, Eq.
Shannon S. McFadden, Esq.

[1] Judge Nygaard's vote is limited to panel rehearing only.

Filing # 211410163 E-Filed 11/20/2024 07:09:34 PM
UCN: 062023CA014503AXXXCE

April 7, 2020

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VIA E-FILING AND U.S. MAIL
The Honorable Judge Cynthia M. Rufe
United States District Court
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106

RE: Greiser v. Drinkard Case No. 18-5044

Dear Judge, Rufe,

I write this letter on behalf of myself as the pro se plaintiff in the above noted civil action. I bring to your attention the potential for abuse of the EDPA local policy of filing a sur-reply without the need for leave of court. I believe this policy has the potential for abuse by the Defendants in my case. Currently, counsel for the Defendants has filed three sur-replies [Doc. 50, 65, 66] forcing me to respond once by sur-sur-reply. [Doc. 67]. I have yet to file a sur-reply in this case before the Court.

On March 24, 2020, I reached out to Defendants' counsel Kirk Karagelian by email concerning the above referenced issue and respectfully asked counsel to limit those filings in the future, and I would do the same. I explained my reasoning. The abuse of the sur-reply favors the seasoned attorney and disadvantages a pro se plaintiff. I also discussed my personal belief that a well-prepared Answer or Response eliminates the need for filing a sur-reply. this courtesy was sought to avoid having to file future objections and motions to strike with the Court.

Mr. Karagelian was polite in his response but informed me that he intends to file whatever his clients deem necessary, which is understandable. Now, the matter becomes the Defendant parties' abuse of the sur-reply policy to disadvantage a pro se plaintiff. I am not asking for Defendants' counsel to waive client rights. However, sur-replies without leave should be reserved for important issues of contention and not used as a tool to batter your non-lawyer opponent. As it stands now, Defendants' counsel has no incentive to file a comprehensive Answer or Response, saving that for a sur-reply to be filed after the plaintiff files his Reply. This creates an unfair advantage (and incentive) for a wait-and-see attorney to present a full argument after the pro se plaintiff files his Reply.

I am hopeful this letter entered into the record will eliminate future litigation on the issue I now bring to your attention. My hope is that opposing counsel will voluntarily use their sur-reply privileges sparingly to keep this case moving along. Without that cooperation, I will have to file to strike the sur-reply filed without leave of court and ask for sanctions, as the local policy is a privilege and not an unfettered right under the Federal Rules of Civil Procedure.

Respectfully submitted,

s/Francis T. Greiser Jr.

cc. To K. Karagelian by EC/EMF and U.S. Mail

UCN: 062023CA014503AXXXCE

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April 9, 2020

The Honorable Cynthia M. Rufe
U.S. District Court –Eastern District
James A. Byrne Court House
Room 12614
601 Market Street
Philadelphia, PA 19106

via CM/ECF

Re: Francis T. Greiser, Jr. vs. Joanne L. and Paul A. Drinkard
No. 2:18-cv-05044-CMR

Dear Judge Rufe:

As you may recall, we are counsel to Defendants, Joanne L. Drinkard and Paul A. Drinkard, in this matter. By letter to the Court dated April 7, 2019, Plaintiff, Francis T. Greiser, Jr., expressed concern regarding the filing of Sur-Reply memoranda. While we do not believe it necessary to respond to Plaintiff's communication to the Court in detail, we note that this Court's Policies and Procedures permit the filing of Reply and Sur-Reply memoranda without leave of Court. As we have informed Plaintiff, while it is not the Defendants' preference to have to file Sur-Reply memoranda, given the nature and contents of some of Plaintiff's filings, Defendants are not in a position to proactively waive their ability to do so, and Defendants intend to file whatever they deem necessary to properly advocate their positions and protect their interests in this case in accordance with applicable rules and procedures.

Respectfully yours,

K. Kirk Karagelian

K. Kirk Karagelian

cc: Mr. Francis T. Greiser, Jr. *(via CM/ECF and via email)*

UCN: 062023CA014503AXXXCE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS T. GREISER, JR. **Plaintiff,** **v.** **JOANNE L. DRINKARD, *et al.*** **Defendants.**	**CIVIL ACTION NO. 18-5044**

ORDER

AND NOW, this 2nd day of February 2021, upon consideration of the Motion for Fees and Costs and all related filings, it is hereby **ORDERED** that:

1. Plaintiff's Motion for Leave to File a Surreply [Doc. No. 87] is **GRANTED**.

2. Plaintiff's Motion for Fees and Costs [Doc. No. 76] is **GRANTED in part and DENIED in part.**[1] The Court awards Plaintiff **$914.58** in reasonable costs and expenses associated with the service of process.

It is so **ORDERED.**

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.

[1] Federal Rule of Civil Procedure 4(d)(2) provides that "[i]f a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant: (A) the expenses later incurred in making services; and (b) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses." As the waiver of service form provides, "'[g]ood cause' does not include a belief that the lawsuit is groundless, or that is has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property." Thus, Defendants cannot show good cause on those grounds. Defendants also argue that the waivers of service were not signed by Plaintiff, although his name, address, and other information were printed on the forms. Although the form has a signature line, the detailed requirements of Rule 4(d) do not explicitly mention a signature, and the purpose of the signature on the form appears to be related to the certification of the date the form was sent. Because Defendants do not dispute that the waiver form was mailed to them, and the failure to waive service does not concern the timing of the waiver, the lack of a signature does not constitute good cause in this case. The Court will grant the motion to the extent that it will award the costs directly related to the service of process, and which are reasonably supported by Plaintiff's declaration. *See* Doc. 84 at Exh. A, ¶¶ 3b-c. Specifically, the Court awards $759.94 paid to the process server and $154.64 in related expenses Plaintiff avers that he incurred in connection with service of process. The Court will deny the other fees and costs requested by Plaintiff, including costs for research services, other motions, and filing fees. Finally, the Court will deny the motion to the extent it seeks the imposition of sanctions.

WRIT PETITION APPENDICES

VOLUME TWO

Florida 17th Judicial Circuit Court
Abbreviated Record on Appeal

A-106 through A-187

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
WEST PALM BEACH, FLORIDA

RECORD ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR.
APPELLANT

vs

MARIAN K. GREISER
JOANNE L. DRINKARD
APPELLEE

CACE 23-14503(09)
CASE NO.:

4D25-233
APPEAL NO.:

RECORD ON APPEAL

CC:
FRANCIS GREISER JR (PRO SE)
DEAN J. TRANTALIS, ESQ

JENNIFER FORD, ESQ
JOHN P. SEILER, ESQ

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff *pro se*, v. MARIAN K. GREISER; THE ESTATE OF FRANCIS T. GREISER SR.; and JOANNE L. DRINKARD Defendants.	CASE NO. 23-14503 Honorable Jeffrey R. Levinson Judge Presiding

PLAINTIFF'S MOTION TO DISQUALIFY DEFENDANTS' ATTORNEY

Plaintiff Francis Greiser Jr., pursuant to Rule 1.010 Fla. R. Civ. P. and The Rules Regulating The Florida Bar (RRTFB), moves this Honorable Court to disqualify Dean J. Trantalis and the law firm of Trantalis and Associates from representing Defendants' Marian Greiser, Joanne Drinkard, and The Estate of Francis Greiser Sr. in this case; and respectfully Requests the Court to temporarily stay all proceedings in the instant case, and in support thereof, the Plaintiff will show the Court the following:

I. PRIOR REPRESENTATION OF PLAINTIFF BY DEAN TRANTALIS

1. This instant action is for contract breach involving two Broward County, Florida cooperative properties co-owned by Plaintiff (hereafter "Greiser Jr.") and Defendant (hereafter "Ms. Greiser"). In October 2012, both parties were sued in *Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et al* (CACE 12-027941) which sought to remove Greiser Jr.'s name from his Unit 210 Proprietary Lease alleging that he was never approved by the Board Directors to be a co-owner (which was filed after Greiser Jr. persisted in asking to view Whittier Towers financial records). Undermining that claim was that the Whittier By-Laws allowed adding Greiser Jr. to the Unit 210 Proprietary Lease without Board approval—as he was a first-degree blood line relative.

2. The *Whittier Towers* trial date was set for March 2017 and Joanne Drinkard as a third-party payer, retained Attorney Dean J. Trantalis (hereafter "Trantalis") to act as co-counsel in the *Whittier Towers* civil suit. On January 17, 2017, Trantalis filed his Notice of Appearance to represent ***both*** Francis Greiser Jr., and Marian Greiser in *Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et al.* (See Certified Copy of Notice of Appearance as Exhibit "A").

3. Greiser Jr. was initially opposed to retaining Trantalis as co-counsel. However, shortly thereafter he did meet with Trantalis and his staff to fully brief them on the five-year case history. (See Email Correspondence as Exhibit "B"). Trantalis asked Greiser Jr. to be totally forthcoming about any negative personal history that might be raised at trial, as he was the target of the lawsuit. Greiser Jr. then disclosed confidential information to Trantalis and his staff.

4. On May 5, 2017, at a final settlement conference before trial, Ms. Greiser became upset about going forward and pressured Greiser Jr. to remove his name from the Unit 210 Proprietary Lease so she could sell the unit (estimated to be worth $120,000) and afterwards, Ms. Greiser said she would split sale proceeds with Greiser Jr.

5. Greiser Jr. rejected giving up co-ownership without a contract, so Dean Trantalis drafted a contract which allowed Ms. Greiser to sell Unit 210 after Greiser Jr. removed his name and included language to insure Greiser Jr. would receive full compensation after Unit 210 was sold. Defendant Marian Greiser breached that contract by never paying agreed upon after-sale proceeds to Greiser Jr., which is the crux of Count I in the Complaint and Amended Complaint. [1]

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[1] Plaintiff reminded Dean Trantalis on 2.7.24 that he was a former client and that a conflict of interest did exist as long as he represented Defendants Marian Greiser and Joanne Drinkard and asked that Trantalis withdraw from the case (see Exhibit "C"). Greiser Jr. added that he was also notifying the Judge as to the conflict of interest and would raise the issue at the next Case Management Conference if he did not withdraw from the case. At the March 20, 2024, Case Management Conference, Trantalis was first asked by Judge Levinson if he ever represented Greiser Jr. as a client. Trantalis replied "I don't believe so Your Honor" giving the Judge the impression Greiser Jr. had fabricated the conflict of interest claim and due to time restraints, Greiser Jr. was unable to discuss or show the conflict evidence now found in this Motion.

II. AUTHORITIES AND ARGUMENT IN FAVOR OF DISQUALIFICATION

6. Dean Trantalis should be barred from representing Defendants in this action because of a conflict of interest in the matter. A motion to disqualify counsel for conflict-of-interest, such as the one now before the Court, is codified in Chapter 4 RRTFB (emphasis added):

> Rule 4-1.7(a) | RRTFB | Conflict of Interest; Current Clients:
> "...***a lawyer must not represent a client if***... there is a ***substantial risk*** that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, ***a former client*** or a third person..."
>
> Rule 4-1.6(a) | RRTFB | Confidentiality of Information
> ...***A lawyer must not reveal information relating to representation of a client*** ... unless the client gives informed consent."
>
> Rule 4-1.8(b) | RRTFB | Conflict of Interest; Prohibited...
> "...***a lawyer is prohibited from using information relating to representation of a client to the disadvantage of the client*** unless the client gives informed consent..."

7. "Disqualification of counsel is 'an extraordinary remedy that should be used most sparingly.'" *Akrey v. Kindred Nursing Ctrs. E., L.L.C.*, 837 So. 2d 1142, 1144 (Fla. 2d DCA 2003). "[T]he Florida Rules of Professional Conduct provide the standard for determining whether counsel should be disqualified in a given case." *Young v. Achenbauch*, 136 So. 3d 575, 580 (Fla. 2014) (citing *State Farm Mut. Auto Ins. Co. v. K.A.W.*, 575 So. 2d 630, 633 (Fla. 1991)). As such, Rule 4-1.9 states: A lawyer who has formerly represented a client in a matter must not afterwards:

> (a) represent another person in the same or a substantially related matter in which that person's interests are materially ***adverse*** to the interests of the former client unless the former client gives informed consent;
>
> (b) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
>
> (c) reveal information relating to the representation except as these rules would permit or require with respect to a client.

8. Standard of Review on Attorney Disqualifications (emphasis added). The Florida Supreme Court has established a Two Prong test for disqualifying attorneys:

> "A party seeking to disqualify opposing counsel based on a conflict of interest must demonstrate that: (1) ***an attorney-client relationship existed***, thereby giving rise to an irrefutable presumption that ***confidences were disclosed*** during the relationship, and (2) the ***matter*** in which the law firm subsequently ***represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client.***" See Kaplan v. Divosta Homes, L.P., 20 So. 3d 459, 462 (Fla. 2d DCA 2009) (quoting State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So. 2d 630, 633 (Fla. 1991)).

A. Attorney Client Relationship

9. The conflict is as follows: Plaintiff Greiser Jr. has shown that: (a) Attorney Trantalis established an attorney-client relationship with him by entering his appearance as counsel for Greiser Jr. in *Whittier Towers* on January 17, 2017, and (b) as his attorney, Dean Trantalis was privy to private confidential facts that could portray Greiser Jr. in a bad light as a cooperative apartment co-owner in the *Whittier Towers* case, and possibly in this instant action may be used as an attempt to justify Joanne Drinkard's interference with in the contractual relationship between Greiser Jr. and Ms. Greiser concerning Whittier Towers Units 210 and Unit 214 (Counts found in both the Complaint and Amended Complaint). Thus, it is uncontroverted that Attorney Dean Trantalis created an ***attorney-client relationship*** with Greiser Jr. and ***Prong One*** is satisfied.

B. Substantially Related Matters

10. Florida's Supreme Court has affirmed that matters are "substantially related" if they involve the same transaction. (emphasis added).

> "Matters are 'substantially related' for purposes of this rule if they ***involve the same transaction*** or legal dispute, or ***if the current matter would involve the lawyer attacking work that the lawyer performed for the former client.***" Young v. Achenbauch 136 So. 3d 575, 583 (Fla. 2014) (quoting Comment to R. Regulating Fla. Bar 4-1.9).

11. In January of 2017, Dean Trantalis was tasked by Joanne Drinkard to work with Greiser Jr. to thwart efforts by Whittier Towers to make Greiser Jr. appear to be an unfit owner and in doing so preserve Greiser Jr.'s ownership stake in Unit 210 to help Ms. Greiser and Greiser Jr. prevail in the *Whittier Towers* lawsuit.[2] The instant action is nearly identical to *Whittier Towers* as it involves Whittier Towers Unit 210 and Greiser Jr. is once again trying to enforce his Unit 210 rights, only this time to recoup the proceeds from the sale of Unit 210 that Marian Greiser was contracted to deliver but has refused to pay Greiser Jr. The conflict of interest attaches to Attorney Trantalis because he has now adopted Defendants adversary position against his former client, ***and*** presently argues against the very contract he drafted and signed as the attorney and witness—that is hindering Greiser Jr.'s enforcement of that contract. [3] As such, the *Whittier Towers* case and the instant action are indeed "***substantially similar***" and thus ***Prong Two is satisfied.***

C. The Florida Supreme Court Has Directed When to Address a Conflict of Interest

12. Florida's Supreme Court has stated that where there is a serious conflict of interest, the conflicted attorney should recuse themselves immediately:

---

[2] In short, Dean Trantalis was retained as *Whittier Towers* co-council because Joanne Drinkard did not understand that the Whittier Towers By-Laws had explicit language stating that a blood-line lineal descendant of a proprietary lease holder ***did not need*** Whittier Board approval to be added to their parents' proprietary lease making Whittier claims of not being approved by the Board ***for any reason irrelevant.***

[3] Attorney Trantalis may well have violated attorney code of ethics in drawing up the Unit 210 sale contract between Ms. Greiser and Greiser Jr. and may be personally liable to Plaintiff as follows: "It is immaterial that in [] dual representation, the respondent may have acted with good intentions or that his motives may have been pure. It is settled that, except in exceptional circumstances ... an attorney may not represent conflicting interests in the same general transaction, no matter how well-meaning his motive or however slight such adverse interest may be. The rule in this respect is rigid, because it is designed not only to prevent the dishonest practitioner from fraudulent conduct but also to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent." *The Florida Bar v. Moore*, 194 So. 2d 264, 269 (Fla. 1967)

> "a serious question of conflict of interest arose that should have been resolved by the prompt withdrawal by [the attorney] from the representation of the [clients] and by advising the [clients] to secure other attorneys to represent them." *The Florida Bar v. Moore*, 194 So.2d 264, 269 (Fla. 1967).

Here, Service of Process was properly served on Marian Greiser on August 21, 2023, which included a Four Count Complaint with Count I being the above discussed Breach of Contract Claim. A cursory review by Attorney Trantalis of Count I, and his examining the contract he drafted and signed as a witness for Greiser Jr. that is attached as Exhibit "A" to the Complaint and Amended Complaint should have set off ***conflict of interest*** alarm bells for Attorney Dean Trantalis. Instead, Trantalsi appeared at the March 20, 2024, Case Management Conference where he referred to Plaintiff Greiser Jr.'s Complaint, including the Count I Breach of Contract for the sale of Unit 210 as "a continuing effort by Mr. Greiser to harass his mother and sister."

II. CONCLUSION

13. The *pro se* Plaintiff has met the burden of proof needed to Disqualify Defendants' counsel through Florida Appellate decisions, Florida Rules of Professional Conduct, and plain logic demonstrating that Attorney Dean J. Trantalis and the law firm of Trantalis and Associates should be immediately disqualified from this case.

Dated March 28, 2024

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
16015 Arbor View Blvd. Apt. 224
Naples FL 34110
(954) 696 5822
fg210@att.net

A-114

A 2

Filing # 51270687 E-Filed 01/17/2017 04:14:40 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

WHITTIER TOWERS APARTMENTS, ASSOCIATION, INC., a Florida non-profit corporation,
Plaintiff,

v.

FRANCIS GREISER, SR., MARIAN GREISER, and FRANCIS GREISER, JR.,
Defendant.
_____/

Case No. CACE 12-027941 (18)

NOTICE OF APPEARANCE

NOTICE IS HEREBY given that DEAN J. TRANTALIS, ESQ. does hereby appear as attorney for the Defendants, FRANCIS GREISER, SR. (deceased), MARIAN GREISER, and FRANCIS GREISER, JR., and requests that all briefs, motions, orders, correspondence and other papers in relation to this matter be served on the undersigned.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appearance was sent by e-mail addressed to GERARD S. COLLINS, ESQ. Kaye Bender Rembaum, P.L., *Attorney for the Plaintiff*, at gcollins@kbrlegal.com and SEAN P. SHEPPARD, ESQ., Sheppard Firm, P.A., at sean@sheppardfirm.com on this 17 day of January, 2017.

DEAN J. TRANTALIS, ESQ.
2255 Wilton Drive
Wilton Manors, FL 33305
954-566-2226 – Telephone
954-566-2248 – Fax
Email: dean@trantalis.com
2nd Email: brian@trantalis.com

Florida Bar No. 313246

*** FILED: BROWARD COUNTY, FL BRENDA D. FORMAN, CLERK 1/17/2017 4:14:39 PM.****

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff *pro se*, v. MARIAN K. GREISER; THE ESTATE OF FRANCIS T. GREISER SR.; and JOANNE L. DRINKARD Defendants.	CASE NO. 23-14503 Honorable Jeffrey R. Levinson Judge Presiding

NOTICE OF PLAINTIFF'S MOTION FOR ORDER DEEMING ADMITTED TRUTH OF FACTS AND GENUINENESS OF DOCUMENTS AND SANCTIONS

NOTICE IS HEREBY GIVEN that the Plaintiff will be calling up a hearing date and time as soon thereafter as the current conflict of interest and attorney status involving Dean J. Trantalis can be decided by the court, and a motion for an order deeming admitted truth of facts and genuineness of documents may be heard. Plaintiff Francis Greiser Jr. will, and hereby does, move the court for an order pursuant to Florida Rule of Civil Procedure 1.370, that the truth of all specified matters, and the genuineness of all specified documents in Plaintiff's First Request for Admissions, served on Defendant Marian Greiser on August 21, 2023, be deemed admitted and in support thereof the Plaintiff will show the Court the following:

I. BACKGROUND

1. This motion arises from Plaintiff Francis Greiser's First Request for Admissions. (Exhibit "A"). On August 21, 2023, a certified and licensed service processor served Defendant Marian Greiser at her home with Plaintiff's First Set of Admissions along with a copy of the Complaint and a Summons issued by the Court. (Exhibit "B").

2. The time for Defendant Marian Greiser to serve a timely response to Plaintiff's First Request for Admissions expired on October 5, 2023. Defendant Marian Greiser has yet to serve a

response to the moving party's above-described Request for Admissions despite having seven (7) months to do so.

3. Plaintiff Francis Greiser Jr., as the moving party, is now asking the court to order that the genuineness of any documents and the truth of any matters specified in the First Request for Admissions are now admitted.

II. LEGAL ARGUMENT

4 Florida Rule of Civil Procedure 1.370(a) governs requests for admissions. The rule provides that "A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request."

5. Further, "[T]he matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request or such shorter or longer time as the court may allow but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading upon the defendant." Fla. R. Civ. P. 1.370(a).

6. Fla. R. Civ. P. 1.370 (b) states: "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission."

7. Fla. R. Civ. P. 1.380(c) holds: "If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 1.370 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the

requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees."

8. The moving party Plaintiff therefore requests that the Court order that the genuineness of any documents and the truth of any matters specified in the Plaintiff's First Request for Admissions be deemed admitted, and that Defendant Marion Greiser, her attorney, or both, pay the moving party Plaintiff's costs in preparing this motion.

Dated April 3, 2024

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
16015 Arbor View Blvd. Apt. 224
Naples FL 34110
(954) 696 5822
fg210@att.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically furnished via email and EC/EMF this April 4, 2024 to:

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
(954) 696 5822
fg210@att.net

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Exhibit I

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street,
Fort Lauderdale, FL 33301

RE: Francis Greiser Jr. v. Marian Greiser, et al CACE-23-014503

Dear Judge Levenson,

I wish to bring to your attention that I was present at the Case Management Conference scheduled before you yesterday, February 6, 2024. I logged in to Zoom and called your Judicial Assistant at 8:35 am to let her know I was present and waiting to be called. I also informed her that I was having trouble logging on because there were two meetings showing up on Zoom at the same time.

I was told that the hearing didn't start until 8:45 and I would be called. I told your assistant the Zoom video call had changed, and it didn't seem right, but she said it was because the hearing hadn't started yet and to wait and I would be notified when the hearing starts. I waited an hour and called your Assistant at 9:35 am to let her know I was still waiting, and she told me the hearing was over. I filed a Motion to Reconsider with proof exhibits 90 minutes after the hearing ended.

I wanted to bring to your attention that I had been in touch with Attorney Dean Trantalis' Office both last week and Monday and made it known I was going to attend the hearing and needed to discuss matters with him. His assistant said he would get back to me, but he never did. One of the things I wanted to discuss with him was the conflict of interest in his representing Marian Greiser against me because Dean Trantellis was my attorney in 2017 and represented me as a Broward County plaintiff in *Greiser v. Whittier Towers*, and both myself and Marian Greiser as co-defendants *Whittier Towers v. Greiser et al.*

My concern is that a conflict of interest exists—now that he is counsel for Defendants against me as those cases involve the same properties and subject matter as those in that are the center of this instant action. I met with Attorney Trantalis extensively back then under a lawyer client relationship and discussed confidential matters relating to this case. I wanted to ask him to recuse himself, which would not prejudice the Defendants as they had been represented previously by Attorney Jack Seiler who knows the case well.

I never got to make that argument and the order of dismissal states the hearing proceeded without me using only Attorney Trantalis' testimony to have you reach your decision to Dismiss with Prejudice my civil action. I just wanted to let you know about the Zoom call malfunction and as a result what I wasn't able to inform the Court at the Case Management Hearing.

Respectfully submitted,

s/Francis T. Greiser Jr.

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street
Fort Lauderdale, FL 33301

Date: March 28, 2024
RE: Francis Greiser Jr. v. Marian Greiser, et al CACE-23-014503

Dear Judge Levenson,

My name is Francis Greiser Jr., and I am a *pro se* Plaintiff in the above captioned case. I am at fault for not appearing at the Case Management Conference hearing you set for November 21, 2023, however, Defendants counsel failed to appear as well and when I petitioned to have my case reopened you granted me a new hearing on February 6, 2024.

I had technical issues with Zoom and missed the February 6, 2024, Case Management Conference as well, and you dismissed my case with prejudice. I again filed a petition to have my case reopened and made a compelling argument and provided screen shots of my cell phone call log records showing I called your Judicial Assistant before and during your hearing schedule, but I was not able to log on. More importantly I informed you that at the Conference hearing I missed was important to me because I wanted to discuss the issue of a conflict of interest—as Defendants Attorney Dean Trantalis was my former attorney. Based on that claim you scheduled a third Case Management Conference for March 20, 2024, and told me to be there in person - which I was.

At the March 20th Case Management Conference, I began only long enough to state my name. Then after Attorney Trantalis acknowledged his presence, you asked him if he knew me or ever represented me, to which Attorney Trantalis replied "I do not believe so Your Honor." It is likely Mr. Trantalis is too busy to remember me as a client, but I was—and his portrayal of never representing me cast me as a liar who deceived the Court when I asked for reconsideration for a new Management Conference based on a conflict of interest which was granted. As such, the Court lost patience with me and I was not able to show you, my proof. Therefore, to document my case, I filed a Motion to Disqualify Mr. Trantalis as Defendants counsel that is supported by evidence and case law, and I asked the Court to stay all pending motions for the time being.

I spoke the truth, yet it appeared that I was misleading the Court, and I was ordered to file an amended complaint within 9 days or have my case dismissed. Attorney Trantalis failed to use due diligence to find out if I was indeed a former client after I sent him an email asking to recuse himself and he was notified of the letter to your honor that I filed asking for a new Case Management Conference based on conflict of interest.

Your Honor, I need more time to raise money to retain a lawyer to help me draft a new complaint but as I explain in my Motion to Disqualify, my Count I breach of contract claim is on solid legal footing and should not be dismissed. I will have the $3500 retainer fee for my new Attorney by May 7, 2024.

Respectfully submitted,

Francis Greiser Jr.

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The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street
Fort Lauderdale, FL 33301

Date: April 8, 2024

RE: Francis Greiser Jr. v. Marian Greiser, et al CACE-23-014503
PLAINTIFF'S POSITION ON CONFLICT OF INTEREST to be discussed at the April 11, 2024, CMC.

Your Honor,

I am Plaintiff in the above captioned case. On March 20, 2024, at the CMC, I fully expected Attorney Trantalis would withdraw and the court would grant a 30-day extension for the Defendants to retain new counsel. As such, I left the country the next day and I will be in Thailand during the April 11, 2024, CMC Zoom hearing using Internet service at a hotel that has not been 100% reliable. Due to this connectivity issue uncertainty, I respectfully ask the Court for latitude in giving my standpoint as to the conflict of interest that exists in this case and clarify issues before the upcoming CMC hearing.

With certainty, Attorney Trantalis' and his law firm should have disqualified themselves in August of 2024, when they were retained, but failed to do so. I never waived my previous attorney-client privilege. Attorney Trantalis received notice of my conflict-of-interest claim beginning on February 6, 2024, and I feel an ethical red line was crossed on March 30, 2024, when as Defendants' attorney he provided an affidavit and proposed order to the court asking that my complaint be dismissed with prejudice—despite being seriously conflicted. My position is that I do not oppose Attorney Trantalis' from settling this case if Defendants' so wish, however, I do oppose Attorney Trantalis and his law firm from representing Defendants in any future pleadings, motions, responses, or representation at trial, based on their past confidential relationship with me.

As this case stands now, Defendant Marian Greiser was served with a Request for Admissions (RFA) on August 21, 2023, along with the complaint and summons. Attorney Trantalis never responded to the RFA, and I have filed an order deeming admitted truth of facts and genuineness of documents. With those admissions deemed true and with the facts and evidence clearly proving Counts One and Two in both the Complaint and Amended Complaint, I would like to move for summary judgment at some point. If this case cannot be settled, I will set a hearing date to remove Attorney Trantalis and order Defendants to retain new counsel.

I contacted Attorney Trantalis and offered to withdraw my lawsuit if we can come to a reasonable agreement on Counts One and Two to keep this case from mushrooming into a larger more complex civil action. On April 4, 2024, the assistant to Attorney Dean J. Trantalis relayed to me that the Defendants prefer to wait until after the April 11, 2024, CMC hearing has concluded before discussing any settlement terms. That is where we currently stand on this issue.

Respectfully submitted,

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*

The Honorable Judge Jeffrey R. Levenson
Seventeenth Judicial Circuit
201 SE 6th Street,
Fort Lauderdale, FL 33301

Greiser Jr. v. Greiser, et al CACE23014503
Plaintiff's Position on Misleading the Court

Date: May 30, 2024

Dear Judge Levenson,

As you are aware, Attorney Trantalis filed a 5/28/24 proposed Order of Dismissal with Prejudice falsely claiming that at our May 20, 2024, Case Management Conference ("CMC") you ordered "Plaintiff shall secure an attorney and file a Notice of Appearance by June 3, 2024, or this case shall be dismissed with prejudice." Shortly after, by Court Management System ("CMS") you responded "Status: - Not Approved - Order does not accurately reflect the Court's ruling."

Based on Attorney Trantalis' inability to answer truthfully when asked if he ever represented me in the past, and his repeatedly characterizing this case as "dismissed" to avoid answering conflict of interest questions posed by the court at previous CMC's, I paid $150 to transcribe the May 20, 2024, CMC. After receiving the 5/28/24 proposed order that added "dismissed with prejudice", and knowing that to be false, I paid $146 for same day delivery of the May 20th CMC Transcript (prior to Your Honor's CMS rejection) to counter that claim. I attached a copy of the CMC transcript to this filing.

In the transcript, Your Honor says "He doesn't have to have a lawyer, Mr. Trantalis. He can go with a lawyer or he doesn't have to have a lawyer. That's not a requirement." To which Attorney Trantalis responded "I agree." (See Transcript p. 8, ¶¶ 14–17). Importantly, nowhere in the Transcript does Your Honor say I must have a lawyer by June 3, 2024, "or this case shall be dismissed with prejudice" as he falsely claimed. I respectfully ask the Court to admonish Mr. Trantalis by ordering him to reimburse my $296 in transcript costs to counter his attempt to mislead the court. Also, I am making every effort possible to have an attorney fully retained by your June 3rd deadline.

I am also concerned with the in-person Motion to Disqualify Counsel and a yet-to-be filed Motion to Dismiss ("MTD") hearing to be held June 25, 2024, that are to be addressed in a 30-minute oral argument before the court. First, as a pro se Plaintiff, I am at a disadvantage at a hearing where I am expected to defend my position and counter any claims raised by Attorney Trantalis without advance notice of what his position is. I respectfully request that Mr. Trantalis be given 10 days to file a written response to the ***March 28, 2024*** Motion to Disqualify Counsel; so I may have 10 days to fact check his claims and provide relevant case law to support my motion at the in-person hearing.

Concerning Defendants upcoming MTD, Attorney Trantalis has left the mistaken impression that there is a substantive issue with the dismissed Federal Case in Pennsylvania—when there is no such issue—as both claims in my Second Amended Complaint were dismissed without prejudice to allow them to be refiled in Florida state court. In addition, Defendants have not answered Plaintiff's Request for Admissions served by process server on 8/21/23 that addressed those and other potential defenses. Defendants further failed to reply to Plaintiff's 4/4/24 Notice of Motion for Order Deeming Admitted Truth of Facts and Genuineness of Documents. As such, there are issues that need to be addressed before Defendants file their third MTD in this case.

Respectfully Submitted,

Francis Greiser Jr

The Florida Bar
Inquiry/Complaint Form

STOP - PLEASE DOWNLOAD THIS FORM TO YOUR COMPUTER BEFORE FILLING IT OUT.

PART ONE (See Page 1, PART ONE – Complainant Information.):

Your Name: Francis T. Greiser Jr.

Organization: n/a

Address: 2055 Poinciana Ct.

City, State, Zip Code: Naples, FL 34110

Phone: (954) 696 - 5822

Email: fg210@att.com

ACAP Reference No.: n/a

Does this complaint pertain to a matter currently in litigation? Yes X No ____

PART TWO (See Page 1, PART TWO – Attorney Information.):

Attorney's Name: Dean J. Trantalis Florida Bar No. 313246

Address: 2301 Wilton Drive, Suite C1-A

City, State, Zip Code: Wilton Manors, FL 33305

Phone: (954) 566-2226

PART THREE (See Page 1, PART THREE – Facts/Allegations.): The specific thing or things I am complaining about are: (attach additional sheet).

PART FOUR (See Page 1, PART FOUR – Witnesses.): The witnesses in support of my allegations are: (attach additional sheet).

PART FIVE (See Page 1, PART FIVE – Acknowledge Oath and Signature.):

☑ YOU MUST PLACE YOUR MARK IN THE BOX ACKNOWLEDGING THE OATH AND YOU MUST SIGN YOUR FULL NAME BELOW.

Under penalties of perjury, I declare that the foregoing facts are true, correct and complete.

Francis T. Greiser Jr.
Print Name

Signature

Francis T. Greiser Sr 5/7/24
Date

*Having trouble? Download the form and open the document in Adobe Acrobat™.

Letter to Judge

From: jrFrank Greiser (fg210@att.net)

To: dean@trantalis.com; brian@trantalis.com

Date: Wednesday, February 7, 2024 at 11:52 AM PST

Dean,

I notified the Judge by letter about a possible conflict of interest with you representing Defendants.

I just kept it simple. I did it because I was shut out of the hearing because of Zoom and never had a chance to speak.

Your representation was seven years ago so maybe you don't remember clearly ... but I saved all of my emails between my sister and mother and me.

I have the one where my sister tells me you are our lawyer and to meet with you and discuss the case of Whittier Towers and to tell you anything bad in my life so you're not caught off guard by Whittier Towers at trial.

I did meet with you twice at your office for over an hour each time and told you all about myself because you were my lawyer.

I still want you to recuse yourself before the Motion to Reconsider or if I have to file an appeal.

Frank

Exhibit A

Greiser v. Greiser et. al (Case No. 23-14503)

From: jrFrank Greiser (fg210@att.net)

To: dean@trantalis.com; brian@trantalis.com; brett@trantalis.com; fg210@att.net

Date: Sunday, April 28, 2024 at 07:50 PM EDT

Attorney Dean J. Trantalis
2301 Wilton Drive, Suite C1-A
Wilton Manors, FL 33305

RE: **Greiser v. Greiser et. al** (Case No. 23-14503)

April 28, 2024,

Mr. Trantalis,

This is my final request for you to voluntarily remove yourself as counsel to the Defendants and put an end to your conflict-of-interest in the above matter. Your refusal to do so thus far has sidetracked my civil case and has doubled my cost to retain an attorney to file an amended complaint when they must first remove you from this case. This notice is intended for your clients as well—as I suspect they are encouraging you to continue your conflicted representation which makes their continued support for you to remain as counsel sanctionable.

Should you continue as Defendants' counsel, I am prepared to file a detailed and well documented formal complaint against you with the Florida Bar Association upon my return to the United States on May 3, 2024. You leave me no other choice. As your former client, I was never asked, nor would I have consented to your current representation based on our preexisting confidential lawyer-client relationship concerning those same Whittier Towers cooperative apartments. Acting for a client against a former client in the same matter is a conflict of duties you owe to both parties and is a clear violation of the Florida Rules of Professional Conduct.

Again, to be clear, I will be filing a complaint with the Florida Bar Association unless you notify me no later than May 3, 2024, informing me that you will no longer be representing the Defendants, and you are prepared to file the necessary paperwork for you and your law firm to withdraw as counsel in this case. I am certain based on the voiced concerns of Judge Levenson concerning a conflict-of-interest that he will grant your motion to withdraw.

Regards,

Francis Greiser Jr.

Request for Attorney Status – Greiser (No. 23-14503)

From: jrFrank Greiser (fg210@att.net)

To: dean@trantalis.com; brian@trantalis.com; brett@trantalis.com

Date: Thursday, May 16, 2024 at 05:32 PM EDT

Attorney Dean J. Trantalis

2301 Wilton Drive, Suite C1-A

Wilton Manors, FL 33305

RE: Request for Attorney Status – Greiser (No. 23-14503)

May 16, 2024,

Mr. Trantalis,

I need to ask you if you intend on remaining as counsel to the Defendants despite your conflict-of-interest in the above matter. This information is important to me because it will be much easier for me to retain an attorney without your presence, knowing I will not have to pay attorney fees for having you removed to end your conflicted representation that is currently disrupting my case. I need to receive your answer as soon as possible to prepare for the upcoming *Greiser* CMC scheduled for May 10, 2024.

As I warned you, I would do, in my email sent to you on April 28th when I asked you to withdraw and you refused, I went ahead filed a detailed and well documented formal complaint against you with the Florida Bar Association upon my return to the United States on May 7, 2024.

I really think you should voluntarily withdraw now and bring in new counsel before you are ordered by the Court to do so. Whatever your decision is, please give me the professional courtesy of responding to this email, as you have not replied to my previous emails.

Regards,

Francis Greiser Jr.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR.
Plaintiff *pro se*,

v.

MARIAN K. GREISER; THE ESTATE OF FRANCIS T. GREISER SR.; and JOANNE L. DRINKARD
Defendants.

CASE NO. 23-14503

Honorable Jeffrey R. Levinson
Judge Presiding

PLAINTIFF'S RESPONSE TO DEFENDANTS' AFFIDAVIT TO DISMISS CASE

1. Plaintiff Francis Greiser Jr. (hereafter "Greiser Jr.") did fail to appear at the Case Management Conference (hereafter "CMC") on November 21, 2023, however, Defendants counsel ***failed to appear as well,*** whereby Plaintiff paid a $50 fee to the Clerk of Court to reopen this case and Judge Levenson granted a new hearing on February 6, 2024.

2. Plaintiff Greiser Jr. was on February 6, 2024, CMC Zoom link but unable to connect with Judge Levenson and the case was dismissed with prejudice. Plaintiff filed a petition to reopen by providing screen shots of his Zoom link and cell phone calls to the JA before and during the CMC because he was unable to log on. More importantly Plaintiff petitioned that he had intended to raise a ***conflict of interest*** as Defendants Attorney Dean Trantalis (hereafter "Trantalis") was his former attorney. Based on those facts, Judge Levenson ordered a third CMC for March 20, 2024, with the Plaintiff ordered by the Court to be there in person - which he was.

3. The March 20th CMC began with Plaintiff stating his name. Then, Attorney Trantalis acknowledged his presence, and Judge Levenson asked him if he knew or ever represented Francis Greiser Jr.—to which Trantalis replied, "I do not believe so Your Honor." As a result of the false portrayal of never representing Greiser Jr. as his attorney, Plaintiff was cast a liar who deceived the Court when petitioning the Judge for reconsideration for a new CMC hearing based on a conflict of interest. As such, Plaintiff was not permitted to provide proof of a conflict of interest due to CMC time restraints. On March 28, 2024, Plaintiff filed a Motion to Disqualify Trantalis that is supported by evidence and case law, and Greiser Jr. asked the Court to stay all pending motions until the Trantalis matter is resolved.

4. Attorney Trantalis' has refused to admit or address his conflict of interest despite: (a) being served with a complaint and amended complaint showing Count I as a breach of a contract that was drafted and signed by attorney Trantalis—with contract as "exhibit A"; (b) receiving a copy of the February 6, 2024 petition and letter to Judge asking for a new CMC listing the details of the conflict of interest; (c) receiving an email dated February 7, 2024 from the Plaintiff asking Trantalis to withdraw as counsel due to his conflict of interest; (d) his presence at the March 20, 2024 CMC where he was asked by the Court if he had ever represented the Plaintiff

and failed to disclose that information; and (e) in filing his March 30, 2024, affidavit in support of dismissal of this case with prejudice without mention of a conflict of interest dispute.

5. At the March 20, 2024, CMC, Plaintiff Greiser Jr. spoke the truth, while Trantalis was not forthcoming about prior representation, yet Greiser Jr. was punished by having his properly filed Clerk's Default Judgment against the Defendant Marian Greiser dismissed without a hearing and he was ordered to file an amended complaint within 9 days or have his case dismissed with prejudice. It was impossible to find- an attorney in less than 24 hours because Plaintiff had made previous plans to travel to Thailand and had booked non-refundable March 21 to May 3, 2024, airfare because his elderly father-in-law has been in severe declining health and Plaintiff's wife had been waiting for her Permanent Residency Card since August 2021 (and was told by USCIS not to leave the country until her new Green Card was issued, which was on February 14, 2024). Thus, that is the reason Plaintiff asked for a 35-day extension to find an Attorney who would draft and file a second amended complaint and handle the conflict-of-interest matter.

6. Plaintiff Greiser Jr. has followed the Rules of Civil Procedure and despite claims to the contrary, has not cost the Defendants additional attorney fees and costs, rather, it is Attorney Trantalis who has cost the Defendants unnecessary attorney fees and wasted the court's time by willfully ignoring Florida Rules of Professional Conduct and then trying to avoid consequences for his unethical attorney representation in this case by trying to hide that fact and pursuing his unsuccessful effort to fast-forward a dismissal of the Plaintiff's case.

7. Although Defendants Motion to Dismiss with supporting signed affidavit by Dean Trantalis' was denied by Judge Levenson on March 31, 2024, Plaintiff has responded to the seven allegations in the affidavit in this Response Motion to establish a written record of this case to prepare for possible attorney misconduct proceedings, and to document for appeal purposes.

Respectfully submitted, April 2, 2024

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this day of April 2, 2024, a copy of the foregoing has been electronically furnished via email and EC/EMF to Attorney Dean Trantalis:

s/Francis Greiser Jr.
Francis Greiser Jr. Plaintiff *pro se*
16015 Arbor View Blvd. Apt. 224
Naples, FL, 34110
(954) 696 5822
fg210@att.net

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE23014503

FRANCIS T. GREISER JR.,

Plaintiff,

vs.

MARIAN K. GREISER, et al.,

Defendants.

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TRANSCRIPT OF PROCEEDINGS
VIA VIDEOCONFERENCE
BEFORE THE HONORABLE JEFFREY LEVENSON
(Pages 1 - 12)

May 20, 2024
8:58 a.m. - 9:41 a.m.

Held Remotely Via Videoconference

Reported By:
Lisa M. Sheib, FPR
Notary Public, State of Florida
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

ALL PARTIES APPEARED VIA VIDEOCONFERENCE:

Appeared Pro se as the Plaintiff:

FRANCIS T. GREISER, JR., PRO SE.

Appeared for the Defendants:

DEAN J. TRANTALIS, ESQ.
TRANTALIS & ASSOCIATES
2301 Wilton Drive, Suite C1A
Wilton Manors, Florida 33305-1261
954-566-2226
954-566-2248 Fax
Dean@trantalis.com

PROCEEDINGS

THE COURT: Greiser versus Greiser. For the Plaintiff?

MR. GREISER: Yes, Your Honor. Francis Greiser, Jr., here, Plaintiff.

THE COURT: Okay. Defense? I think he said he was going to be at the end of the docket? Was that what it was? I forgot. Do you remember that, Francis? You were on.

I want to address this. So let me recall the case. If you see him up there, let me know, okay, please.

Are you back from Thailand?

MR. GREISER: Yes, Your Honor.

THE COURT: All right. I may have an in-person hearing, so we'll see. All right. But I'll recall the case. All right?

MR. GREISER: Thank you, Your Honor.

(There was a brief recess.)

THE COURT: We have Greiser versus Greiser. There he is.

MR. GREISER: Your Honor, Plaintiff, Francis Greiser, Jr.

THE COURT REPORTER: Court Reporter, Your Honor.

MR. TRANTALIS: Dean Trantalis on behalf of the Defendants.

THE COURT: We waited for you, Dean. I just want you to know that. We waited.

MR. TRANTALIS: I appreciate that.

THE COURT: All right. There's a couple things.

First of all, Plaintiff, no attorney has entered his appearance. You're saying you can't get a lawyer because of Mr. Trantalis? I think that's a lame excuse.

MR. GREISER: No, Your Honor, I have an update.

THE COURT: There are 5,000 lawyers in Broward County.

MR. TRANTALIS: Yeah.

MR. GREISER: I have an update, Your Honor. I spoke with Attorney Matthew Fornaro. I signed a retainer agreement.

THE COURT: Okay.

MR. GREISER: He is -- the retainer fee is doubled, so I need a little more time to get the money.

THE COURT: All right.

MR. GREISER: And I'll pay his --

THE COURT: All right. I got it. I got it.

You froze.

MR. GREISER: -- the retainer fee some time later next week.

THE COURT: Mr. Trantalis, from your perspective, I was hoping that we get a response to the motion to disqualify. I read his motion. He raises some pretty significant points. You know, he says that you represented him and the mother and he provided you with personal information, whatever, so forth. So I was hoping that maybe by today we would have gotten some kind of response. Would that be possible for you to do that?

MR. TRANTALIS: Well, Your Honor, I can't do it today, but --

THE COURT: No, no, what I suggest, if you don't mind, let him get some time to get a lawyer. I'll give you time to file your response, I don't want you to rush. And then we can have an in-person special-set hearing on this. Would that be okay?

MR. TRANTALIS: Yes, we can. But, Your Honor, one thing, first of all, there's no case before this Court.

THE COURT: That dog is already hunted. He didn't show up at the CMC, but there was an excuse. I've already -- I'm dealing with -- to be honest with

you, Mr. Trantalis, I'm dealing with substance now. So that's what I need to do. I need to deal with the disqualification and I need a good motion to dismiss if you want a motion to dismiss. Your original motion has dealt with him not showing up and the case being dismissed. So I've already ruled on that. We're moving on.

MR. TRANTALIS: Okay. But there are other -- if I may, Your Honor -- we filed a new motion to dismiss because he had failed to comply with even your most recent order.

THE COURT: When did you file your new motion? The one that was filed on 5/11?

MR. TRANTALIS: That's correct, Your Honor, 5/11. As of that date he had failed to --

THE COURT: That motion is denied. But I'll give you a substantive motion to dismiss. I'm not going to get into the "him complying" or "you complying." I want to deal with the substance.

There are two substantive issues. Number one, whether it's appropriate here. There is a federal case in Pennsylvania. There were other issues up there, that's number one. I haven't dealt with the substance.

Number two, I need to deal with the

disqualification before I get to that. So I need a response from you on a disqualification. I'm going to order that it be set -- give me one second, I'll give you a time and a date now. It will be next week.

How much time do you need to get a lawyer?

MR. TRANTALIS: He says he has a lawyer.

THE COURT: He said he had to pay him. I don't know.

MR. GREISER: I have to pay.

MR. TRANTALIS: He says he has a retainer agreement, which we haven't seen, Your Honor. He's never --

MR. GREISER: But it's a conflict of interest.

THE COURT: He doesn't have to have a lawyer, Mr. Trantalis. He can go with a lawyer or he doesn't have to have a lawyer. That's not a requirement.

MR. TRANTALIS: I agree.

THE COURT: He's not a corporation. What was the date? What did I cancel? The 30th I canceled something. I canceled --

Do you want the end of May or the end of June? What do you guys want?

MR. TRANTALIS: The end of May or the end of June?

THE COURT: Yes. When do you want to have that

special-set hearing, end of May or the end of June?

MR. GREISER: The end of June, Your Honor.

THE COURT: What about you, Dean?

MR. TRANTALIS: It doesn't matter to me, Your Honor. He's just dragging this on longer and longer. The end of June is fine.

THE COURT: Okay. I'm going to give you a date now so we don't have to worry about you conferring on that.

What was the date I canceled that thing? June 25. What time was it set, do you know? It was set at -- I'll set it at 10:00 on the 25th, June 25th.

MR. TRANTALIS: Your Honor, I have a conflict at that time.

THE COURT: What's your conflict?

MR. TRANTALIS: I have -- I'm on the board of the Tourist Development Council from 9:30 to 11:00.

THE COURT: How about 3:00?

MR. TRANTALIS: I could do 3:00.

THE COURT: Is that okay with you? It's in person.

MR. TRANTALIS: I have another hearing at 2:00, so that should work out.

THE COURT: But it's in person though, okay?

MR. TRANTALIS: That's fine. I'll be at the

courthouse.

THE COURT: All right. 3:00 on 6/25 on motion to disqualify and motion to dismiss. And I'm going to set a case management on this by Zoom on motion calendar. That's at 3:00 -- 3 p.m., and I'm going to set that --

When are you going to have your lawyer by, Francis?

I'll tell you what, I'll set a case management on June the 6th, and you need to get your lawyer by June 3rd. Okay?

MR. GREISER: Yes, Your Honor. Thank you.

MR. TRANTALIS: June 6th did you say, Your Honor?

THE COURT: Yeah. And it's at 8:45. Is that okay?

MR. TRANTALIS: Yeah, because I have a calendar call at 9:30. So that should be fine.

THE COURT: If you need me to get you up right away, just send me -- let me know.

June 3rd to get the attorney.

It is okay, Dean, if you put in an order of June 6th and June 3rd to get the lawyer? I can just keep it in my notes, if you want, if you don't want to upload it.

MR. TRANTALIS: So June 3rd to get the lawyer and June 6th for case management at 8:45?

THE COURT: Yes. You do a notice of hearing for June 25th.

MR. TRANTALIS: You want me to do that also?

THE COURT: If you don't mind.

MR. TRANTALIS: Okay. And the hearing is regarding the issue --

THE COURT: A motion to disqualify. And then if you're going to file another motion to dismiss, a motion to dismiss, a substantive one.

MR. TRANTALIS: Okay. All right. Thank you, Your Honor.

THE COURT: All right. Anything else from you, Plaintiff?

MR. GREISER: No.

THE COURT: Could you-all do me a favor? Have a great day.

Thank you.

MR. TRANTALIS: Thank you.

(Hearing concluded at 9:41 a.m.)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR.

Plaintiff,

v.

MARIAN K. GREISER; and
JOANNE L. DRINKARD.

Defendants.
_____/

Case No: CACE-23-014503

Judge Jefferey R. Levenson
Presiding Judge

Jury Trial Requested

THIRD AMENDED COMPLAINT

COMES NOW the Plaintiff, FRANCIS T. GREISER JR., by and through counsel, and files this Third Amended Complaint against Defendant MARIAN K. GREISER and JOANNE L DRINKARD alleging Breach of Contract; Unjust Enrichment; and Tortious Interference.

PARTIES, JURISDICTION AND VENUE

1. That this is an action at law for damages within the jurisdiction of the circuit court because the matter in controversy exceeds Fifty Thousand and 00/100 ($50,000.00), exclusive of attorney's fees, costs and interest.

2. Plaintiff Francis T. Greiser Jr. (hereafter "Greiser Jr.") is a Florida resident and the son of Defendant Marian K. Greiser and Francis T. Greiser Sr., deceased (hereafter "Greiser Sr.").

3. Defendant Marian K. Greiser (hereafter "M. Greiser") is an adult individual and a resident of Pennsylvania living at 695 Barclay Lane in Broomall, Pennsylvania.

4. Defendant Joanne L. Drinkard (hereafter "J. Drinkard") is an adult individual living at 695 Barclay Lane in Broomall, Pennsylvania, and is the daughter of M. Greiser and Greiser Sr.

5. Plaintiff Francis T. Greiser Jr. and Defendant Joanne L. Drinkard are full siblings. Defendant Marian K. Greiser is their mother, and decedent Francis T. Greiser Sr. was their father.

6. Defendant M. Greiser is the co-owner of 5200 N. Ocean Blvd., Unit No. 505B in Lauderdale-By-The-Sea, Florida, which satisfies sufficient contact to assert personal jurisdiction.

7. Defendant Drinkard is a co-owner of 5200 N. Ocean Blvd., Unit 505B, which satisfies sufficient contact for the State of Florida to assert personal jurisdiction.

8. The actions giving rise to this lawsuit and the real property subject to this lawsuit are in Broward County, Florida, thereby making venue in Broward County, Florida proper.

BACK STORY

9. This parties to this case were a once close-knit family unit up until the patriarch suffered a stroke in December 2014, and then passed away on May 14, 2016. This helps to explain how the ownership of the properties at issue was so informal and became so legally messy.

10. Marian K. Greiser and Francis T. Greiser Sr. were financially well off, owning several successful businesses. Mr. and Mrs. Greiser Sr. gifted tens of thousands of dollars to their daughter Joanne Drinkard's current home: 695 Barclay Lane in Broomall, Pennsylvania, and also gifted $28,000 to their son Robert Greiser for the purchase of his home in Ridley Township, Pennsylvania. Conversely, Mr. and Mrs. Greiser Sr. had not provided any money to their son Francis Greiser Jr. to purchase a home.

11. When Mr. Greiser Sr. suffered a stroke in December 2014, Defendant J. Drinkard became his power of attorney. This is when the conflict began. Ms. Drinkard, acting as her father's fiduciary, was not privy to the informal ownership agreement between Mr. Greiser Sr. and his son Plaintiff Greiser Jr. for the subject property, Whittier Towers Unit 214. Ms. Drinkard did not consider all the factors her father knew and had taken into account when Mr. Greiser Sr. made the deal with his son, Plaintiff Greiser Jr., regarding Unit 214.

12. In the very least, the issues at bar could have been worked out in mediation after this litigation first began. Instead, this family has been torn apart, embroiled in years of expensive

– and at times completely ridiculous - litigation. Family bonds have been broken, and tens of thousands of dollars have been lost unnecessarily to attorney's fees on both sides. This case is a sad example of how litigation, fueled by sibling rivalry, can destroy loving families.

FACTS

13. On March 12, 2010, Defendant M. Greiser and Greiser Sr. Purchased Unit 214 at Whittier Towers Apartments Association Inc. (hereafter "Whittier") located at 1439 S. Ocean Boulevard in Lauderdale-By-The-Sea, Florida for $110,000. Whittier Unit 214 was an outdated two-bedroom apartment in need of remodeling.

14. Prior to buying Unit 214, Defendant M. Greiser and Greiser Sr. offered Plaintiff Greiser Jr. one-third ownership, allowing him to live in Unit 214 year-round, in exchange for his renovating the entire unit at no charge. Plaintiff Greiser Jr. accepted M. Greiser and Greiser Sr.'s offer

15. On March 19, 2010, Plaintiff Greiser Jr. began renovations of Unit 214 by ripping out all carpeting, baseboards, doors and doorjambs, installed new outlets and wall switches throughout, and ran new electric to install new ceiling fans in the living room and both bedrooms. Plaintiff Greiser Jr. replaced the toilets, sinks, faucets and vanities in two bathrooms, installed new exhaust fans, replaced termite damage studs in several walls throughout the unit, installed new tile in the kitchen and porch floors, painted all of the walls and ceilings, installed all new base board and crown molding, installed all new entry doors and bi-fold closet doors, including new door jambs and moldings. Plaintiff's extensive renovations added approximately $40,000.00 in active equity to the value of Unit 214, as fair market value improvements. Plaintiff finished the entire renovation project in six months, working 6-days a week by himself.

16. In January 2011, Plaintiff Greiser Jr. began paying the $450.00/ monthly maintenance fee for Unit 214 (later increased and capped at $500) and agreed with his parents to do all additional improvements in the future, while Greiser Sr. and M. Greiser paid the property

taxes of $2,000.00/yearly. In July 2012, Greiser Jr. received a homestead tax exemption based on his equity ownership, reducing the property tax bill for Unit 214 to $1,200.00 annually.

17. On March 1, 2011, M. Greiser and Greiser Sr. purchased Whittier Unit 210 (two doors down) for $60,000 and offered Plaintiff Greiser Jr. the same deal they had with him for Whittier Unit 214, *to wit*: one-third ownership in exchange for his renovating the entire unit at no charge[1]. Plaintiff Greiser Jr. agreed to this.

18. Plaintiff Greiser Jr. began renovating Unit 210 in September 2011 and finished in February 2012. Plaintiff Greiser Jr began renovations on Unit 210 by ripping out all of the carpeting, then installed new outlets and wall switches throughout the unit, ran new electrical wiring to install new ceiling fans in the living room and bedroom, replaced the toilet, sink, faucets and vanity in the bathroom, installed a new exhaust fan, painted the walls and ceilings, cut a new door to access the bathroom from the living room, and installed new bedroom and bathroom doors with new door jamb and casing, and installed a bi-fold closet door as well. Plaintiff Greiser Jr. completed his renovation work on Unit 210 in February 2012.

19. On June 13, 2012, Plaintiff Greiser Jr. was added to the Unit 210 Proprietary Lease.

20. After being added to the Unit 210 Proprietary Lease, Plaintiff Greiser Jr. began asking the co-op to view financial records via certified mail, because regular building repairs were not being done.

21. By way of response to Plaintiff Greiser Jr.'s requests to view co-op records, the co-op filed a retaliatory lawsuit against the Greiser Family in August 2012, claiming Greiser Jr. was never approved as a co-owner *(despite the by-laws clearly stating that Greiser Jr. as a son to both Greiser Sr. and M. Greiser by blood did not need Board approval).*

22. Plaintiff Francis Greiser Jr., Defendant Marian Greiser, and Francis Greiser Sr. all

[1] Unit 210 and Unit 214 are part of a co-op -personal property, rather than real property. In place of a deed, co-op owners are granted a set number of shares in the corporation, and a proprietary lease to occupy their unit

agreed that adding Greiser Jr. to the Unit 214 Proprietary Lease would be paused until the lawsuit *Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et. al.* (CACE 12-027941), and the Greiser's counter suit *Greiser v Whittier Towers Apts. Assn. Inc.* (COCE 13-8820) were settled.

23. On July 7, 2016, Defendant M. Greiser ousted Plaintiff Greiser Jr. from Unit 214 at the insistence of Defendant Joanne Drinkard, and with Ms. Drinkard's assistance, by changing the door locks while he was out for the day. Unit 214 was the home Plaintiff Greiser Jr. lived in at the time. Defendant M. Greiser barred his return and sent a Unit 214 "restriction letter." On July 15, 2016, Plaintiff Greiser Jr. sent Defendant M. Greiser a letter and email advising her that she was in breach of Unit 214 Contract, and that she must stop any attempt to sell Unit 214.

24. Defendant M. Greiser did not pay Plaintiff Greiser Jr. for his 1/3 ownership interest in Unit 214 when she illegally ousted him.

25. In preparation for the upcoming settlement conference with Whittier Towers Apts. Assoc., and at Attorney Trantalis' request, Plaintiff Francis Greiser Jr. met with Attorney Dean Trantalis in February 2017 alone in his office, speaking with the attorney at length regarding the facts surrounding plaintiff's ownership interest in Units 210 and 214, and also regarding intimate details of plaintiff Francis Greiser Jr's past. Attorney Trantalis stated he needed to know *anything* about plaintiff's past that opposing counsel might be able to discover and try to use to gain advantage at the settlement and trial. Plaintiff Francis Greiser Jr. opened up to Attorney Trantalis, revealing very private details about his past, which are not public knowledge.

26. In *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941), Whittier took the position that Greiser Jr. was not allowed to live in the property, because he was never approved as a co-owner, despite Whittier's by-laws clearly stating family members did not need board approval. Plaintiff Francis Greiser Jr. also filed *Francis T. Greiser Jr. v. Whittier Towers.* (COCE13-08820).

27. On or about May 5, 2017, Plaintiff Francis Greiser Jr., and Defendants Joanne Drinkard (non-party to the Whittier case) and Marian Greiser all attended a settlement conference with Whittier Towers Apts., and all three were represented at that conference by Attorney Dean Trantalis.

28. Plaintiff Francis Greiser Jr. really *did not want* to settle with Whittier at the May 5, 2017 settlement conference, because the lawsuit Whittier filed: *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941), was a complete sham pleading as evidenced by its own by-laws, and also because Plaintiff had already spent several thousand dollars litigating *Francis T. Greiser Jr. v. Whittier Towers*. (COCE13-08820). Plaintiff strongly believed he would prevail in each lawsuit and be awarded all of his attorney fees, as the prevailing party.

29. On the other hand, Defendant Marian Greiser, strongly *wanted* to settle with Whittier at the May 5, 2017 settlement conference, because she adamantly believed that her son, Plaintiff Francis Greiser Jr.'s history could be discovered by the Whittier lawyers and used against them at trial, and that this would cause them to lose in *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941), and be ordered to pay all of Whittier's attorney's fees.

30. Francis Greiser Jr. had never shared with his mother his past private issues that Marian Greiser was so upset about at the May 5, 2017 settlement conference. Plaintiff had shared the issues with Attorney Dean Trantalis at their February 2017 meeting. Plaintiff believes his sister Joanne Drinkard became aware of his past issues, and shared them with their mother, Marian Greiser.

31. Against Plaintiff Francis Greiser Jr.'s better judgment, the parties agreed to settle with Whittier at the May 5, 2017 settlement conference. As a condition of Plaintiff Francis Greiser Jr.'s agreement to settle with Whittier, he insisted on being compensated for both his interest in Unit 210 *and* also compensated for giving up his right to seek reimbursement of his attorney's fees as the prevailing party in *Francis T. Greiser Jr. v. Whittier Towers*. (COCE13-08820). The settlement also required Plaintiff to voluntarily dismiss his lawsuit: *Francis T. Greiser Jr. v.*

Whittier Towers (COCE13-08820).

32. At the settlement conference with Whittier, Attorney Dean Trantalis hand wrote out a settlement agreement between Francis Greiser and Marian Greiser, for Francis Greiser and Marian Greiser to sign along with Attorney Dean Trantalis and a witness 'the Trantalis Contract" *See* the Trantalis Contract, attached as **Exhibit A**.

33. The Trantalis Contract required Defendant Marian Greiser to pay Plaintiff Francis Greiser Jr. $60,000.00 plus 50% of any amount in excess of $60,000.00 which Defendant Marian Greiser received from the sale of Unit 210; and in exchange, Plaintiff Francis Greiser Jr. would give up his ownership interest in Unit 210 and drop his lawsuit against Whittier.

34. The value of Unit 210 was around $130,000.00 at the time (based on real-time comps at the time). Everyone signed the handwritten settlement agreement drafted by Attorney Trantalis.[2]

35. The Trantalis Contract did not have any language whatsoever about Unit 214 and did not include any language alleging the contract settled any other issues between the parties.

36. To date, Plaintiff has not been paid for his $60,000.00 ownership interest in Unit 214.

37. For the settlement with Whittier, Defendant M. Greiser and Plaintiff Greiser Jr. received a $1,236.12 Special Assessment refund for Unit 210, after jointly agreeing to: (i) sell Whittier Unit 210 and not go to trial in *Whittier Towers v. Francis T. Greiser Sr. et al* (CACE 12-027941); (ii) drop Greiser Jr.'s countersuit in *Francis T. Greiser Jr. v. Whittier Towers.* (COCE13-08820) [3]; and, (iii) all parties would pay their own attorney's fees.

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[2] See handwritten agreement drafted by Attorney Trantalis and signed by Defendant Marian Greiser, Plaintiff Francis Greiser Jr., and Attorney Trantalis - Exhibit A

[3] On May 5, 2017, just weeks before going to trial for Whittier Towers v. Francis Greiser Sr.; Marian Greiser; and Francis Greiser Jr., conference and refunded the Unit 210 and Unit 214 special assessments imposed on the Greiser's for legal fees, the Whittier Towers Board President dropped their SLAPP lawsuit at the final mediation

38. Plaintiff Greiser Jr. honored the Trantalis Contract. However, on June 8, 2018, Defendants M. Greiser and J. Drinkard sold Unit 210 for only $75,000 but have refused to pay Greiser Jr. his contracted half of the $15,000 in net profit (minus $4,500.00 realtor commission) leaving $5,250.00 still owed Plaintiff for Unit 210.

39. To date, Defendant M. Greiser has not paid Plaintiff Greiser Jr. the $60,000.00 he is owed for his 1/3 interest in Unit 214. The work completed by Plaintiff Francis Greiser Jr. to Unit 210 and Unit 214 was substantially similar, although somewhat more extensive to Unit 214.

40. To date, Defendants M. Greiser and J. Drinkard have not paid Plaintiff Greiser Jr. The $5,250.00, as required by the Trantalis Contract, regarding Unit 210.[4]

41. Procedureal Posture: In 2021, Plaintiff Greiser Jr. Filed the original lawsuit against the defendants regarding these issues in Federal Court in the Eastern District of Pennsylvania. In February 2022, the Eastern District dismissed all claims, except Breach of Contract and Unjust Enrichment, instructing plaintiff that he could re-file his state claims in Florida.

COUNT ONE: BREACH OF CONTRACT (UNIT 210) MARIAN K. GREISER

42. Plaintiff Francis Greiser Jr. realleges paragraphs 1-12, 17-21, 25-34, 37, 38, 40, 41, and incorporates the same by reference herein.

43. In Florida, a claim for breach of contract requires (1) the existence of a valid contract, (2) A "material" breach of an obligation under the contract by the other party, and (3) that the plaintiff incurred damages resulting from the breach.

44. The parties have a valid contract, evidenced by the Trantalis Contract, whereby Defendant Marian Greiser would pay Plaintiff Francis Greiser Jr. $60,000.00 plus 50% of any amount in excess of $60,000.00 which Defendant Marian Greiser received from the sale of Unit 210; and in exchange, Plaintiff Francis Greiser Jr. would give up his ownership interest in Unit

4 To date, M. Greiser has not paid Jr his share of the $1,236.12 legal fee reimbursement for Unit 210, or the $1730.56 legal fee reimbursement for Unit 214

210 and drop his lawsuit against Whittier.

45. Plaintiff Greiser Jr. honored the Trantalis Contract. Defendant Marian Greiser paid Plaintiff Greiser Jr. $60,000.00. However, on June 8, 2018, Defendants M. Greiser and J. Drinkard sold Unit 210 for $75,000. but materially breached the contract by refusing to pay Greiser Jr. his contracted half of the $15,000 in net profit,[5] causing Plaintiff to incur damages of $5,250 plus his $618.06 share of the $1236.12 for the Whittier Unit 210 legal fee reimbursement.

WHEREFORE, the Plaintiff, FRANCIS T. GREISER JR., demands judgment against the Defendant MARIAN K. GREISER for Breach of Contract in the amount of $5,868.06, plus costs, including prejudgment interest, and any other such relief as the Court deems equitable and just.

COUNT TWO: UNJUST ENRICHMENT (UNIT 214) MARIAN K. GREISER

46. Plaintiff Francis Greiser Jr. realleges paragraphs 1-16, 22-24, 36, 39, 41, and incorporates the same by reference herein.

47. In Florida, a claim for unjust enrichment requires a showing that: (1) The plaintiff has conferred a benefit on the defendant; (2) The defendant has knowledge of the benefit; (3) The defendant has accepted or retained the benefit; and (4) The circumstances are such that it would be inequitable for the defendant to retain the benefit without paying fair market value for it.

48. Defendant M. Greiser and Greiser Sr. offered Plaintiff Greiser Jr. one-third ownership in Unit 214, in exchange for his renovating the entire unit at no charge. Plaintiff Greiser Jr. completed extensive renovations on the unit, adding approximately $40,000.00 in active equity to the value of Unit 214 by working 6-days a week for six months.

49. Further, Plaintiff Greiser Jr. paid $39,500.00 in total from 2010 to 2016, for Unit 214's monthly maintenance fees, as an equitable owner of the unit.

50. Defendant M. Greiser acknowledged and accepted the renovations completed by Plaintiff, and also the $39,500.00 paid by Plaintiff. However, notwithstanding this, on December

5 minus $4,500.00 for the realtor's commission

13, 2016, six months after Greiser Sr. passed away, Defendant M. Greiser sold Unit 214 for $167,500, making a profit of $57,000.00 and failed to give Plaintiff 1/3 of the sales price. If not for Plaintiff Greiser Jr.'s renovations, Defendant would not have made any profit on Unit 214.

51. Plaintiff Greiser Jr. kept his part of the agreement regarding Unit 214, but Defendant M. Greiser failed to satisfy her part of the agreement. Therefore, it would be grossly inequitable for Defendant M. Greiser to retain the benefit of Plaintiff Greiser Jr.'s renovations, without paying him the fair market value for his work.

WHEREFORE, the Plaintiff, FRANCIS T. GREISER JR., demands judgment against the Defendant MARIAN K. GREISER for Unjust Enrichment, granting all of his damages, equaling his 1/3 ownership in Unit 214, plus costs, including prejudgment interest, and any other such relief as the Court deems equitable and just.

COUNT THREE: TORTIOUS INTERFERENCE BUSINESS RELATIONSHIP (UNIT 214) – JOANNE L. DRINKARD

52. Plaintiff Francis Greiser Jr. realleges paragraphs 1-16, 22-24, 36, 39, 41 and incorporates the same by reference herein.

53. In Florida, a claim for tortious interference with an advantageous business relationship or contract requires: (1) The existence of a business relationship or contract under which the plaintiff has legal rights (but which is not necessarily evidenced by an enforceable contract); (2) The defendant's knowledge of the relationship or contract; (3) An intentional and unjustified interference with the business or contractual relationship by the defendant; and (4) Damage to the plaintiff as a result of the interference.

54. In early 2016, Defendant J. Drinkard contacted a Fort Lauderdale private investigator to help find incriminating information on her brother Plaintiff Greiser Jr., so she could in-turn convince M. Greiser to renege on her agreement with her son, Plaintiff Greiser Jr. Defendant Drinkard went so far as to contact one of Plaintiff Greiser Jr.'s Broward County friends

6 and maintenence fee payments he was not otherwise required to make, but did so as a co-owner of the unit

named "Robyn" and offered her money if she could get incriminating video of Plaintiff Greiser Jr. doing anything illegal (which Plaintiff did not learn about until May of 2017).

55. Plaintiff Greiser's friend "Robyn" confessed shortly before Greiser Jr. moved to Naples, Florida, that Defendant J. Drinkard had paid her thousands of dollars and gave her the use of a leased vehicle to continue her efforts to entrap Greiser Jr. and take video recordings.

56. Despite discovering everything about their parent's agreement with her brother Plaintiff Greiser Jr. about Unit 214, including the fact that he spent months completely renovating it in exchange for 1/3 ownership in the unit, Defendant Joanne Drinkard exerted undue influence over their elderly mother, and encouraged her to no longer acknowledge Plaintiff's ownership interest in Unit 214. In May of 2016, Plaintiff learned that Defendant J. Drinkard was pressuring M. Greiser to sell Unit 214, telling her the after the death of Greiser Sr. she could no longer afford it.

57. Further, Defendant Joanne Drinkard actively encouraged and helped Defendant M. Greiser wrongly oust Plaintiff Greiser Jr. from Unit 214, and no longer acknowledge Plaintiff's ownership interest in Unit 214. On July 7, 2016, Defendant J. Drinkard flew from Philadelphia, Pennsylvania to Broward County, Florida, and drove to Whittier Towers Unit 214 with M. Greiser to change the door locks and the mailbox lock while Greiser Jr. was away and ousted him from the Unit.

58. On July 8, 2016, Defendant J. Drinkard contacted Caldwell Banker Realtors in Lauderdale-By-The-Sea and had their agency list Unit 214 for sale against the express wishes of Plaintiff Greiser Jr.

59. On December 13, 2016, Defendant J. Drinkard traveled to Florida and used her power of attorney for M. Greiser to sign settlement papers to sell Unit 214 for $167,500.00. Defendant J. Drinkard's motive was to end the business relationship between Plaintiff Greiser Jr.

and his parents was so that she could use the $167,500 in Unit 214 sale proceeds to buy a condominium in Lauderdale-By-The-Sea, at 5200 N. Ocean Blvd., Unit 505B.

60. Defendant J. Drinkard's interference with Plaintiff's business relationship with M. Greiser damaged Plaintiff who was ousted from his home, lost his co-equity ownership share of Unit 214, as well as losing $39,500.00 in maintenance fees he paid.

WHEREFORE, the Plaintiff, FRANCIS T. GREISER JR., demands judgment against the Defendant JOANNE L. DRINKARD for Tortious Interference with an Advantageous Business Relationship, granting him damages, plus costs, including prejudgment interest, and any other such relief as the Court deems equitable and just.

Plaintiff FRANCIS T. GREISER JR. demands Jury Trial for all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiff's Third Amended Complaint was served on the O n**June 15, 2024.**

Respectfully submitted,

/s/ Jennifer Ford, Esq.
JenniferFord,Esq.
FloridaBarNo.1003864
1 East Broward Blvd.,
Suite 700
Fort Lauderdale, FL 33301
Office:(800)961-1909
Cell:(954)588-8831
Jennifer@jenniferford.lawyer
Counsel for Plaintiff

EXHIBIT A

A-151

5/5/17

I, Marian Greiser, hereby agree to pay Francis Greiser, Jr. $60,000, plus above $60,000 ½ of all ~~sale~~ net sale proceeds of $ Unit 210 Whittier Towers Apartments; and I Francis Greiser, Jr. hereby agrees to transfer all of my right, title and interest in said Unit to Marian Greiser on or before May 8, 2017 ~~to be paid within~~ upon signing of this agreement. ~~of this date hereof~~. Francis Greiser hereby agrees to vacate the premises within 60 days hereof. Francis agrees to credit Marian the amount of $ 210 for the apt. maintenance from the sale proceeds.

FTG JT
MKG

WITNESS:

Sean P. Sheehan

Marian Greiser

FTG JT

DEAN J. TRANTALIS

Francis Greiser, Jr.

HEARING PROCEEDINGS

Francis Greiser Jnr

Plaintiff(s)

Case No. CACE 23-14503

Date: 6/27/24

Judge: Leverson

VS

Marian Greiser

Defendant(s)

FILED
JUN 27 2024
BY: ML

This case being called for hearing on In person motion to disqualify

The Plaintiff was/~~was not~~ present in open court with Counsel

Jennifer Ford

The Defendant was/was not present in open court with Counsel

Dean Trantalis

Court Reporter, Stella Kim Lexitas Legal

The following witnesses were duly sworn and testified in this case:

PLAINTIFF	DEFENDANTS
Francis Greiser Jr	

After due consideration, this court:
GRANTED / ~~DENIED / DEFERRED~~ the Motion to disqualify.
30 days to find new counsel. CMC 7/29/24 @ 8:45am

By: Mat Lund DEPUTY CLERK

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE23014503** DIVISION: **09** JUDGE: **Levenson, Jeffrey R. (09)**

FRANCIS T GREISER JR

Plaintiff(s) / Petitioner(s)

v.

Marian K Greiser, et al

Defendant(s) / Respondent(s)

_____/

ORDER AUTHORIZING WITHDRAWAL OF DEFENDANTS' COUNSEL

THIS CAUSE having come unto be heard before this Court on the Plaintiff's Motion to Disqualify Attorney, and having considered said Motion and being otherwise duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED as follows:

1. Dean J. Trantalis, Esq. is hereby authorized to voluntarily withdraw as counsel for the Defendants.
2. The Defendants shall have thirty (30) days from the execution of this Order to retain new counsel or the Defendants shall be deemed to be proceeding *pro se.*
3. The Defendants shall have thirty (30) days from the expiration of these thirty days or from the filing of a Notice of Appearance of their new attorney to file a responsive pleading to the Plaintiff's Third Amended Complaint. A case management conference is set on July 29, 2024 at 8:45am.
4. The Defendants' address for service of all pleadings and notices henceforth is 659 Barclay Lane, Broomall, PA 19008 until such time as new Counsel shall appear.

DONE AND ORDERED in Chambers at Broward County, Florida on 28th day of June, 2024.

CACE23014503 06-28-2024 3:27 PM

CACE23014503 06-28-2024 3:27 PM
Hon. Jeffrey Levenson
CIRCUIT COURT JUDGE
Electronically Signed by Jeffrey Levenson

Copies Furnished To:
Dean J Trantalis Esq , E-mail : brian@trantalis.com
Dean J Trantalis Esq , E-mail : dean@trantalis.com
Dean J Trantalis Esq , E-mail : brett@trantalis.com
Francis Thomas Greiser Jr Jr , E-mail : fgreiser@alumni.avemarialaw.edu
Francis Thomas Greiser Jr Jr , E-mail : fg210@att.net
Jennifer Ford , E-mail : jennloford@gmail.com
Jennifer Ford , E-mail : jlfordlaw@mail.com

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE23014503 DIVISION: 09 JUDGE: Levenson, Jeffrey R. (09)

FRANCIS T GREISER JR

Plaintiff(s) / Petitioner(s)

v.

Marian K Greiser, et al

Defendant(s) / Respondent(s)

_____/

ORDER AUTHORIZING WITHDRAWAL OF DEFENDANTS' COUNSEL

THIS CAUSE having come unto be heard before this Court on the Plaintiff's Motion to Disqualify Attorney, and having considered said Motion and being otherwise duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED as follows:

1. Dean J. Trantalis, Esq. is hereby authorized to voluntarily withdraw as counsel for the Defendants.
2. The Defendants shall have thirty (30) days from the execution of this Order to retain new counsel or the Defendants shall be deemed to be proceeding *pro se.*
3. The Defendants shall have thirty (30) days from the expiration of these thirty days or from the filing of a Notice of Appearance of their new attorney to file a responsive pleading to the Plaintiff's Third Amended Complaint.
4. The Defendants' address for service of all pleadings and notices henceforth is 659 Barclay Lane, Broomall, PA 19008 until such time as new Counsel shall appear.

DONE AND ORDERED in Chambers at Broward County, Florida on .

Judge Name
CIRCUIT COURT JUDGE
DRAFT DRAFT DRAFT DRAFT

Misleading Draft Order

From: jrFrank Greiser (fg210@att.net)

To: jennifer@jenniferford.lawyer

Date: Friday, June 28, 2024 at 05:17 PM EDT

Jennifer Ford Attorney at Law
1 E Broward Blvd Suite 700
Fort Lauderdale, FL 33301

June 28, 2024

Dear Jennifer,

There are problems with the proposed order for Defendants Counsel to withdraw submitted by Dean Trantalis.

Paragraph 1 states "Dean J. Trantalis, Esq. is hereby authorized to voluntarily withdraw as counsel for the Defendants."

That statement is self-serving and intentionally misleading and distorts the record of this case if the Judge enters the order as proposed.

He is not "voluntarily" withdrawing, as at the close of the Motion to Disqualify Hearing, Judge Levenson ruled that he must withdraw, and Defendants must must find new counsel.

For the following reasons, I would like you to correct the proposed order by striking the word ***voluntarily*** from paragraph one for the following reasons....

First, Dean Trantalis has been disqualified and should not be submitting proposed orders.

Second, Judge Levenson directed you personally to submit the Order that disqualified Mr. Trantalis and ordered Defendants to retain new counsel.

Lastly, I want a record of this case that truthfully reflects Judge Levenson's decision from the bench. (One cannot voluntarily withdraw after being ordered to do so by the Judge).

I have an active Bar Complaint against Mr. Trantalis for conflict-of-interest, and I want to submit the Final Order of the Court to Bar Counsel.

Sincerely,

Francis Greiser Jr

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-23-014503

FRANCIS T. GREISER JR.,

Plaintiff,

v.

MARIAN K. GREISER and
JOANNE L. DRINKARD,

Defendants.
_____/

NOTICE OF APPEARANCE

The undersigned attorney, JOHN P. SEILER, ESQUIRE, hereby notifies this Honorable Court of his appearance as counsel of record for the Defendant, JOANNE L. DRINKARD, in this action, and respectfully requests that copies of all future pleadings, motions, notices, orders, filings, correspondence, or other written communications concerning the Defendant, JOANNE L. DRINKARD, or this action be furnished to him.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct photocopy of the foregoing Notice of Appearance has been served via electronically through the Florida Courts E-Filing Portal this 5th day of August, 2024, to all attorneys and parties of record.

LAW OFFICES OF SEILER, SAUTTER,
ZADEN, RIMES & WAHLBRINK
2850 North Andrews Avenue
Fort Lauderdale, Florida 33311
Telephone: (954) 568-7000
jseiler@sszrlaw.com
lsasser@sszrlaw.com

By: /s/ John P. Seiler
JOHN P. SEILER, ESQUIRE (#776343)

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-23-014503

FRANCIS T. GREISER JR.,

Plaintiff,

v.

MARIAN K. GREISER and
JOANNE L. DRINKARD,

Defendants.
_____/

MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

The Defendants, MARIAN K. GREISER ("M. Greiser") and JOANNE L. DRINKARD ("Drinkard") (collectively "Defendants"), by and through their undersigned counsel, pursuant to the Florida Rules of Civil Procedure, hereby move to dismiss the Third Amended Complaint filed by the Plaintiff, FRANCIS T. GREISER, JR. ("Plaintiff") and state as follows:

1. The Plaintiff's Third Amended Complaint represents yet another attempt to state a cause of action against his family members following repeated dismissals for non-compliance with this Honorable Court's Case Management Orders and contentious litigation over alleged conflicts of interest by the Defendants' prior counsel.

2. This action also follows litigation in the federal Eastern District of Pennsylvania, in which the Plaintiff's claims against Drinkard were dismissed with prejudice, the Plaintiff was denied leave to amend to assert futile claims against M. Greiser, and such dismissal was affirmed by the United States Circuit Court of Appeal. *See Francis Greiser Jr. v. Joanne Drinkard, et. al.* (E.D. Pa. Civil No. 2:18-cv-05044)

3. The Plaintiff now has filed a Third Amended Complaint in this action, rehashing theories which can not provide a legally cognizable basis to proceed against his mother and sister.

4. The Plaintiff asserts three causes of action against his mother, M. Greiser, in connection with co-op units in the Whittier Towers Condominium in Lauderdale-by-the-Sea, in which the Plaintiff purports to have had an ownership interest – a Breach of Contract claim for $5,868.00 in alleged lost profits from the sale of Unit 210, and an unjust enrichment claim relating to improvements he claims he provided for Unit 214. The Plaintiff also asserts a claim against Drinkard for alleged tortious interference with a business relationship, *i.e.* his expectancy of his mother sharing the profits from the sale of Unit 214 with him. As detailed below, each of these claims must be dismissed.

Count I – Plaintiff's Claim Must Be Dismissed Because its Allegations are Contradicted and Negated by Exhibit A to the Third Complaint and the Amount in Controversy is Below this Honorable Court's Jurisdictional Limit

5. The Plaintiff's breach of contract claim relating to Unit 210 expressly acknowledges that M. Greiser paid the $60,000.00 specified in the Trantalis agreement but claims that M. Greiser subsequently sold Unit 210 for a total sales price of $75,000.00.

6. The Trantalis Agreement attached as Exhibit A to the Third Amended Complaint states, in pertinent part,

> I, Marian Greiser, agree to pay Francis Gresier, Jr. ½ of all net sale proceeds above $60,000.00 of Unit 210, Whittier Towers Apartments.

7. This language expressly contradicts the allegation in Count I that "Greiser and Drinkard sold Unit 210 for $75,000.00 but materially breached the contract by refusing to pay Greiser his contracted half of the $15,000.00 in net profits."

8. As the excerpted language above clearly states, M. Greiser agreed to pay ½ of *net sales proceeds* above $60,000.00, not ½ of any sales price over $60,000.00.

9. The Fourth District Court of Appeal considered the plain meaning of the phrase "net proceeds" in light of a similar agreement to share such proceeds upon the sale of a house in *Romano v. Romano*, 632 So. 2d 207, 212 (Fla. 4th DCA. 1994), holding "[T] he costs of sale, closing costs, and mortgage indebtedness are to be deducted from the sales price to reach the net proceeds, and then that figure is to be multiplied by each parties' percentage to calculate their respective shares of the proceeds."

10. While the Plaintiff identifies a $4,500 realtor's commission in a footnote to Count I, he does not state at any point what the closing costs were for the transaction as a whole, nor does he identify the total net proceeds of the sale.

11. It is well settled that "[I]f an exhibit attached to a complaint negates the pleader's cause of action, the plain language of the document will control and may be the basis for a motion to dismiss." *Warren v. Dairyland Ins. Co.*, 662 So. 2d 1387, 1388 (Fla. 4th DCA. 1995)(citing *Buck v. Kent Sec. of Broward*, 638 So.2d 1004 (Fla. 4th DCA 1994).

12. Because the Trantalis Agreement clearly does not entitle the Plaintiff to ½ of gross sales proceeds over $60,000.00, and further fails to identify the net sales proceeds from the transaction, Count I fails to state a cause of action and should be dismissed.

13. Moreover, even if Count I were to survive dismissal on the basis of the contradictory exhibit, the amount of the claim, standing alone, is far below the $50,000.00

which, unlike his interest in Unit 210, was not addressed by the Trantalis Agreemenet. Such claims, premised on allegations of an oral contract, would be barred by Florida's statute of frauds. It was for this reason that both the District Court for the Eastern District of Pennsylvania and the United States Circuit Court of Appeal denied the Plaintiff leave to assert claims against M. Greiser. *See Fla. Stat.* § 725.01; *see also Stamer v. Free Fly, Inc.*, 277 So. 3d 179, 182 (Fla. 5th DCA. 2019)(holding Statute of Frauds could not be circumvented by claim of promissory estoppel).

19. Moreover, Florida Courts recognize that the remedy for an unjust enrichment claim based on services rendered must "be valued based on either (1) the market value of the services; or (2) the value of the services to the party unjustly enriched." *Dooley v. Gary the Carpenter Constr., Inc.*, 388 So. 3d 881, 883 (Fla. 3rd DCA. 2023)

20. The Plaintiff's claim is for neither of the above, but rather, the Plaintiff asserts that the services he rendered entitled him to a 1/3 interst in the sale proceeds of Unit 214, harkening back to the unenforceable agreement to convey him such an interest.

21. Because the Plaintiff's claim for unjust enrichment fails to seek a legally permissible remedy, relies on an unenforceable oral agreement, and falls far outside the Statute of Limitations, this claim must also be dismissed.

Count III - Plaintiff's Claim for Tortious Interference Against Drinkard Fails Because he Lacked a Legally Cognizable Business Interest in Unit 214 and Any Interference by Drinkard's was Privileged.

22. In Count III, the Plaintiff asserts that Drinkard tortiously interfered with his ownership interest in Unit 214 by convincing her mother to sell the unit.

23. The "advantageous business relationship" cited by the Plaintiff in support of this cause of action is his mother's purported agreement to grant him a 1/3 ownership interest and allow him to live in Unit 214.

24. However, as detailed in the preceding section, the Plaintiff did not have a legally enforceable agreement granting him such a 1/3 interest, only a conclusory assertion of an oral promise. Florida Court's recognize that "[i]f a contract between the initial buyer and seller is unenforceable, then an element of a tortious interference claim is absent." *See Mariscotti v. Merco Grp. At Akoya, Inc.*, 917 So. 2d 890, 892 (Fla. 3rd DCA 2005)(citing *Sullivan v. Econ. Research Props.*, 455 So.2d 630 (Fla. 5th DCA 1984)).

25. In short, because the Plaintiff had no enforceable business relationship with his mother, Drinkard could not have interfered with any such interest.

26. The Plaintiff also attempted to assert a similar claim against Drinkard in the federal court litigation in Pennsylvania. In addition to issues with the enforceability of the agreement, the federal district court noted the allegations that the parties were a tight knit family, and that in light of these familial relationships, the Plaintiff had failed to state why Drinkard's actions were unjustified, failing to satisfy the element of " an intentional and unjustified interference with the relationship by the defendant." *Font & Nelson, PLLC v. Path Med., LLC,* 317 So. 3d 134, 139 (Fla. 4th DCA 2021)

27. Paragraph 56 of the Third Amended Complaint expressly alleges that Drinkard was encouraging her mother to sell Unit 214 not for any malicious or vindictive motive, but because her mother could not afford to keep the unit. While the Plaintiff includes irrelevant facts regarding a private investigator and statements made to a former friend of the Plaintiff, the Plaintiff fails to tie these allegations to M. Greiser's decision to sell Unit 214. The Plaintiff does

not allege that Drinkard induced the sale using improper means, only stating that she "pressured" her mother to sell the Unit (because she could not afford it).

28. The Plaintiff's claim for tortious intereference has been repeatedly and rightfully rejected, and consistent with the prior ruling of the Eastern District of Pennsylvania, this Honorable Court should dismiss Count III of the Third Amended Complaint with prejudice.

WHEREFORE, the Defendants, MARIAN K. GREISER and JOANNE L. DRINKARD, respectfully request and hereby demand that this Honorable Court grants this Motion; dismisses the Third Amended Complaint, with prejudice; enters an Order dismissing the Third Amended Complaint with prejudice; and further grants such other and additional relief as this Honorable Court deems necessary, legal, equitable, reasonable, just and proper. .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct photocopy of the foregoing Motion to Dismiss the Plaintiff's Third Amended Complaint has been served via electronically through the Florida Courts E-Filing Portal this 18th day of September, 2024, to all attorneys and parties of record.

LAW OFFICES OF SEILER, SAUTTER,
ZADEN, RIMES & WAHLBRINK
2850 North Andrews Avenue
Fort Lauderdale, Florida 33311
Telephone: (954) 568-7000
jseiler@sszrlaw.com
lsasser@sszrlaw.com

By: /s/ John P. Seiler
JOHN P. SEILER, ESQUIRE (#776343)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

FRANCIS T. GREISER JR. Plaintiff,	:	Case No: CACE-23-014503
v.	:	Judge Jefferey R. Levenson
MARIAN K. GREISER; and	:	
JOANNE L. DRINKARD. Defendants.	:	

/

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

I. INTRODUCTION AND PROCEDURAL POSTURE

This action arises from a breach of contract and related claims concerning two properties, Units 210 and 214, at Whittier Towers in Lauderdale-by-the-Sea, Florida. Plaintiff alleges a breach of the 'Trantalis Contract' concerning Unit 210 and unjust enrichment related to Unit 214, both of which were owned by M. Greiser and her late husband, Francis Greiser Sr. Additionally, Plaintiff asserts a claim for tortious interference by Defendant Drinkard for disrupting Plaintiff's business relationship with M. Greiser regarding Unit 214.

Plaintiff's Third Amended Complaint was filed in response to this Court's invitation to amend after dismissals based on technical deficiencies. Despite Defendants' claims, Plaintiff has presented legally cognizable claims, each supported by facts that, when taken as true, entitle him to relief. Defendants' Motion fails to demonstrate that dismissal is warranted under Florida law.

II. STANDARD OF REVIEW

A motion to dismiss tests the legal sufficiency of a complaint. For purposes of such a motion, the court must accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Minor v. Brunetti*, 43 So.3d 178 (Fla. 3d DCA 2010). A motion to dismiss must be denied if the complaint contains allegations that, if proven, would

entitle the plaintiff to relief under any theory. *Cintron v. Osmose Wood Preserving, Inc.*, 681 So.2d 859 (Fla. 5th DCA 1996).

III. FACTUAL BACKGROUND

Plaintiff Greiser Jr. entered into two oral agreements with M. Greiser and Greiser Sr. regarding renovations of Units 210 and 214 at Whittier Towers in exchange for equity ownership in the units. Plaintiff completed extensive renovations on both units, adding significant value. On June 13, 2012, M. Greiser and Greiser Sr. honored their oral agreement for Unit 210 and added Plaintiff to the Proprietary Lease. Following the settlement of a separate litigation regarding Unit 210, the parties entered into a written settlement agreement known as the "Trantalis Contract."

Under this contract, Plaintiff agreed to relinquish his ownership interest in Unit 210 in exchange for $60,000.00 and 50% of any sale proceeds exceeding $60,000.00. However, Defendants have failed to produce financial documents related to the sale or pay Plaintiff the $5,250.00 owed under the agreement.

Similarly, Plaintiff renovated Unit 214 in 2010 under an oral agreement with M. Greiser and Greiser Sr. Then, on July 9, 2012, Greiser Jr. as equity owner and full-time resident of Unit 214 was approved by Broward County for a Florida Homestead tax reduction. M. Greiser and Greiser Sr. paused adding Greiser Jr. to the Unit 214 Proprietary Lease until the lawsuit filed by Whittier Towers *(Whittier Towers Apts. Assn. Inc. v. Francis T. Greiser Sr. et. al.* (CACE 12-027941)) was settled (eventually doing so in 2017). After the passing of Greiser Sr. in May 2016, Plaintiff Greiser Jr was ousted from the property without compensation for his one-third interest, leading to the unjust enrichment claim.

IV. LEGAL ARGUMENT

This case is not barred by the statute of limitations, pursuant to the well settled doctrine of equitable estoppel, and the well settled relation back doctrine, newly applied in the 2017 Florida Supreme Court ruling in *Kopel v. Kopel*, as well as the Federal tolling statute applied in the 2018 United States Supreme Court ruling in *Artis v District of Columbia, 138 S. Ct 594, 598 (2018)*. Defendants Marian Greiser and Joanne Drinkard induced Plaintiff not to file the action sooner. Thus, they cannot use the SOL as a shield to bar this action.

CASE LAW REVIEW

Equitable Estoppel

The doctrine of equitable estoppel applies "in all cases where one, by word, act or conduct, willfully caused another to believe in the existence of a certain state of things, and thereby **induces him to act on this belief injuriously to himself**, or to alter his own previous condition to his injury." Major League Baseball v. Morsani, 790 So.2d 1071 (Fla. 2001) (quoting State ex rel. Watson v. Gray, 48 So.2d 84, 87-88 (Fla.1950)). [emphasis added]

> In Major League Baseball v. Morsani, 790 So.2d 1071 (Fla. 2001) plaintiffs filed a complaint 8 years after the cause of action accrued, alleging interference with advantageous contractual and business relationships and violation of antitrust laws. The defendant argued plaintiffs are estopped from asserting SOL as a defense, *"because the defendants had induced the plaintiffs to forbear suit on the Minnesota Twins transaction."*. Id. The trial court granted summary judgment in defendant's favor as a matter of law, pursuant to the SOL. Id. However, the district court reversed, holding Florida's tolling statute did not apply, and later the Florida Supreme Court affirmed.
>
> In Florida DHRS v. SAP, 835 So.2d 1091 (Fla. 2002), the plaintiff asserted a claim that HRS was negligent in 1979, and then covered up her abuse, under the theory of Equitable Estoppel. The SAP court found the Defendant was estopped from arguing SOL as a defense, notwithstanding the fact that incidents giving rise to the Complaint accrued decades earlier. The SAP court held this was because HRS *"...actively concealed the facts concerning the negligence that is the basis of this complaint..."* Id.
>
> Conversely, in Rubio v. Archdiocese of Miami, Inc., 114 So.3d 279 (Fla. App. 2013), the court declined to extend this rule in SAP. In Rubio, the Complaint alleged the Plaintiff endured SA by a parish priest 35 years earlier, and that the Archdiocese failed to report the sexual abuse as required by law. Id. However, the Rubio court held that the doctrine of estoppel did not apply, and that the suit was barred by the SOL, due to "*the plaintiff's failure to allege acts by the Archdiocese that explain how he was induced by the Archdiocese to wait almost three decades to sue for abuse*"..." Id.

In Artis v District of Columbia, 138 S. Ct 594, 598 (2018), the court held state causes of actions survive and are tolled back to the date of the filing of the Federal case, for 30 days after the federal case is disposed of. Thus, even when cases are litigated for several years and SOL has long passed on the state claims, the clock is stopped on the date the Federal case was filed and does not start up again until 30 days after the Federal case is dismissed. "the tolling provision of 28 U.S.C. § 1367 operates to suspend or "stop-the-clock" on supplemental state court claims while the concordant federal suit is pending and for 30 days thereafter" Id at 598

Relation Back Doctrine

Kopel v. Kopel, 229 So. 3d 812 (Fla. 2017) came before the Florida Supreme Court after 21 years of two brothers litigating against their nephew over deteriorating business relationships within the family. The Kopel court held that the relation back doctrine relates back to the original complaint, even if new causes of action are brought before the court, if the same facts giving rise to the action accruing were alleged in the previous lawsuits.

SOL Clock

In Count II Unjust Enrichment (as to Marian Greiser), the SOL clock ran from date of sale of Unit 214: December 22, 2016, until PFA filed on September 9, 2018 (20 months and 18 days) and again from the date PFA lifted: May 30, 2019, until the claims were raised in the proposed amended complaint on March 9, 2020 (9 months and 10 days), and again from the date the appeal by the Third Circuit was finally denied on April 5, 2022 (plus 30 days as per *Artis v. District of Columbia, 138 S. CT 594, 598, (2018),* until *Grieser Jr. v. Greiser* (CACE 23014503) was filed on June 7, 2023 (13 months and 2 days). Thus, Count II was filed 3 ½ years after the cause of action accrued, well within the 4 year SOL.

In Count III: Tortious Interference with a business relationship (as to Joanne Drinkard), the SOL clock ran from the date of the sale of Unit 214 sale: December 22, 2016, until May 18, 2018, the date plaintiff filed a complaint in the SDFL, alleging the same set of facts that caused the causes of action to accrue as he did here (16 months and 27 days), and continued from April 5, 2022 (plus 30 days as per *Artis)* when The US District Court of Appeals for the Third District upheld the closing of the EDPA Case, until September 3, 2023 (17 months), when Drinkard was added as a Plaintiff in the instant case. Thus, Count III was filed a little under 3 years after the cause of action accrued, well within the 4 year SOL.

A. Breach of Contract (Count I - Unit 210)

Defendants argue that Plaintiff's breach of contract claim fails because Plaintiff is not entitled to 50% of the gross proceeds from the sale of Unit 210. However, this argument misrepresents the terms of the Trantalis Contract. Plaintiff seeks his share of the net proceeds, as defined by the contract. Defendants have not provided an accounting or the financial documents concerning the sale of unit 210, as such, it appears the Defendants sold the property for $75,000.00 and the only expense (because there was no mortgage or attorney fees) would be a $4,500.00 realtor's commission which would leave $10,500.00 in net proceeds. Plaintiff is entitled to half of these net proceeds, or $5,250.00, as Florida law upholds the principle that a

party who has performed under a valid contract is entitled to damages resulting from the other party's breach. *See Perera v. Diolife LLC*, 274 So.3d 1119 (Fla. 4th DCA 2019). Defendants' failure to pay the full amount owed under the contract constitutes a clear breach, entitling Plaintiff to relief.

B. Unjust Enrichment (Count II - Unit 214)

Defendants claim that the statute of limitations and the statute of frauds bar Plaintiff's unjust enrichment claim. These arguments are misplaced.

1. Statute of Limitations: The four-year statute of limitations for unjust enrichment does not bar Plaintiff's claim because equitable estoppel applies. on September 10, 2018, ***both*** J. Drinkard and M. Greiser filed Temporary Protection from Abuse petitions claiming that Greiser Jr. had "Contact friends for information" and "Filed 3rd lawsuit against me in S Florida." Marian Greiser left her Temporary PFA to remain in effect until May 30, 2019, when it was dismissed by the Court.

Defendants wrongfully ousted Plaintiff from Unit 214 in July of 2016, and the sold Unit 214 on December 13, 2016, despite objections from the Plaintiff who sought legal recourse shortly thereafter. Additionally, the application of equitable estoppel is appropriate where, as here, Defendants' misconduct (i.e., the wrongful ouster, the sale of Unit 214 against Greiser Jr.'s wishes, and the filing of a PFA Petition) prevented Plaintiff from timely asserting his rights. See Machules v. Dep't of Admin., 523 So.2d 1132, 1134 (Fla. 1988).

2. Statute of Frauds: While oral contracts related to real property are generally subject to the statute of frauds, Plaintiff's claim for unjust enrichment does not depend on the enforceability of the oral agreement but on the benefits conferred upon Defendants. Plaintiff performed extensive renovations to Unit 214, increasing its value by approximately $57,500 (Unit 214 purchased in 2010 for $110,000 and sold in 2016 for $167,500). By unjustly retaining the benefits of these improvements without compensating Plaintiff, Defendants have been unjustly enriched. Florida courts have consistently held that claims for unjust enrichment are valid where services rendered confer a benefit to the defendant. See Dooley v. Gary the Carpenter Constr., Inc., 388 So.3d 881, 883 (Fla. 3rd DCA 2023).

C. Tortious Interference (Count III - Unit 214)

Defendants argue that Plaintiff lacks a legally cognizable business interest in Unit 214. However, Plaintiff's business relationship with M. Greiser, based on his renovations and contributions to the property, constitutes a protectable interest under Florida law. Furthermore, Defendant Drinkard's interference was not privileged. By convincing M. Greiser to oust Plaintiff and sell the property without compensating him, Drinkard intentionally disrupted Plaintiff's expectancy of receiving his share of the proceeds.

Under Florida law, a tortious interference claim requires: (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) intentional and unjustified interference, and (4) damages. *See Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla. 1985). Plaintiff has sufficiently pleaded these elements, and the claim should proceed to discovery.

D. Statute of Limitations Arguments

Defendants assert that the statute of limitations bars several of Plaintiff's claims, including those for unjust enrichment and tortious interference. However, Defendants' arguments overlook critical aspects of Florida law, particularly the doctrines of equitable tolling and equitable estoppel, which apply in this case due to Defendants' misconduct. These doctrines prevent Defendants from benefiting from their wrongful conduct in delaying or preventing Plaintiff's timely filing.

1. Unjust Enrichment (Count II - Unit 214):

Defendants argue that the four-year statute of limitations for unjust enrichment bars Plaintiff's claim, as the alleged benefits were conferred over a decade ago, beginning in 2010. However, Plaintiff was wrongfully ousted from Unit 214 in July of 2016 and Defendants sold Unit 214 on December 13, 2016, despite objections from the Plaintiff, and the statute of limitations is tolled under the doctrine of equitable estoppel. The application of equitable estoppel is appropriate where a defendant's conduct induces the plaintiff to delay filing suit. Here, Defendant M. Greiser, in collaboration with Defendant Drinkard, unlawfully barred Plaintiff from returning to the unit and receiving compensation for his contributions and paused

his filing claims against M. Greiser until March 9, 2020. Thus, the statute of limitations is tolled until the ouster and sale in December 2016, and during the 10 months the PFA Order was in effect, making Plaintiff's unjust enrichment claim timely under Florida law.

2. Breach of Contract (Count I - Unit 210):

Defendants suggest that Plaintiff's breach of contract claim is also barred by the statute of limitations. However, the sale of Unit 210 occurred on June 8, 2018, and Plaintiff's action was initiated on June 7, 2023, just within the five-year statute of limitations prescribed under Florida law for breach of contract claims. Therefore, the breach of contract claim is timely and not barred.

3. Tortious Interference (Count III - Unit 214):

Defendants argue that Plaintiff's tortious interference claim is untimely based on a four-year statute of limitations. However, as set forth above, Defendants' interference occurred when Defendant Drinkard unlawfully conspired to oust Plaintiff from Unit 214 in July of 2016, and then sell Unit 214 on December 13, 2016, despite protests from Plaintiff Greiser Jr. Under the equitable estoppel doctrine, the statute of limitations should be tolled until the sale of Unit 214 in December 2016, which effectively terminated Plaintiff's expectancy. Plaintiff's complaint, filed on May 18, 2018, within the four-year statute, is timely.

V. CONCLUSION

WHEREFORE, For the foregoing reasons, Defendants' Motion to Dismiss should be denied in its entirety. Plaintiff has adequately pleaded claims for breach of contract, unjust enrichment, and tortious interference, each of which is supported by Florida law and the facts alleged in the Third Amended Complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the E-filing Portal. On Date: October 3, **2024**

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. **CACE23014503** DIVISION: **09** JUDGE: **Levenson, Jeffrey R. (09)**

FRANCIS T GREISER JR

Plaintiff(s) / Petitioner(s)

v.

Marian K Greiser, et al

Defendant(s) / Respondent(s)

_____/

ORDER GRANTING MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

This cause having come before this Honorable Court for hearing on Thursday, October 31, 2024, upon the "Motion to Dismiss Plaintiff's Third Amended Complaint" filed and served by the Defendants, MARIAN K. GREISER and JOANNE L. DRINKARD, and this Honorable Court having reviewed the record, having considered the file, having examined the "Motion to Dismiss Plaintiff's Third Amended Complaint", having also examined the "Third Amended Complaint", having heard argument of counsel, and being otherwise fully and duly advised and informed in the premises, it is hereupon:

ORDERED AND ADJUDGED as follows:

1. The Defendants' "Motion to Dismiss Plaintiff's Third Amended Complaint" shall be and the same is hereby granted, in part.

2. More specifically, the Defendants' "Motion to Dismiss Plaintiff's Third Amended Complaint" shall be and the same is hereby granted, with prejudice, as to Count II and Count III of the Third Amended Complaint.

3. Therefore, Count II and Count III of the Third Amended Complaint shall be and the same are hereby dismissed, with prejudice.

4. Furthermore, the Defendants' "Motion to Dismiss Plaintiff's Third Amended Complaint"

shall be and the same is hereby granted, without prejudice and with leave to amend, as to Count I of the Third Amended Complaint.

5. Therefore, Count I of the Third Amended Complaint shall be and the same is hereby dismissed, without prejudice and with leave to amend one last time.

6. Finally, this action shall be transferred to County Court since the damages amount of the claim, standing alone, is substantially below the jurisdictional limit for this Circuit Court. Any amendment to Count I of the Third Amended Complaint shall be filed and served in County Court.

DONE AND ORDERED in Chambers at Broward County, Florida on 5th day of November, 2024.

CACE23014503 11-05-2024 6:52 AM

CACE23014503 11-05-2024 6:52 AM
Hon. Jeffrey Levenson
CIRCUIT COURT JUDGE
Electronically Signed by Jeffrey Levenson

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IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO.: CACE-23-014503

FRANCIS T. GREISER JR.,

Plaintiff,

vs.

MARIAN K. GREISER and
JOANNE L. DRINKARD,

Defendants.

_____x

Broward County Courthouse
201 SE 6th Street
Ft. Lauderdale, FL 33301
Thursday, October 31, 2024
10:36 a.m. - 10:47 a.m.

This cause came on for hearing before the Honorable JEFFREY R. LEVENSON, Judge of the above-styled court, at the Broward County Courthouse, pursuant to notice.

APPEARANCES

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JOHN P. SEILER, ESQ.
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Thereupon the proceedings commenced as follows:

THE COURT: We're here for Greiser versus Greiser, case number 23-14503. We're here for Defendant's Motion to Dismiss. I think we have -- let's see. We are on -- I granted the Motion to Dismiss. We are on the Fourth Amended Complaint. This is the Third Amended Complaint. Counsel for the plaintiff, please announce your appearance.

MR. FORNARO: Good morning, your Honor. Matthew Fornaro for the plaintiff.

THE COURT: Thank you, Matt, for putting on a tie.

MR. FORNARO: No problem.

MR. SEILER: Jack Seiler, your Honor, on behalf of both defendants now.

THE COURT: I read both motion and response. Please go ahead.

MR. SEILER: Judge, I think when you look at this, it's pretty clear. As to the first count -- by the way, this is a long history of litigation between this family. We had litigation going, and I represented them before Judge Dimitrouleas in federal court and that got dismissed. Then they took it to the

Eastern District of Pennsylvania. That got dismissed. Now they're back here in state court where we have been handling it. This litigation has been going on between the brother and the sister and the mother for quite some time and like I said, my involvement had been back in 2017 when all this started and then when it went up to the Eastern District of Pennsylvania, I think Mr. Trantalis got involved because he was involved --

THE COURT: I mean, the main crux, besides the fact that it's deja vu all over again, the issue is the Statute of Limitations.

MR. SEILER: But it's also the Statute of Frauds and there's also the issue of this contract, and Judge, if I could just direct you just to save time. Count 1, that's --

THE COURT: Breach of Contract, yes.

MR. SEILER: Count 1 says Breach of Contract and they said that what they have, because we did not give them one-half of the net sale price above $60,000. That's not what the contract says on its face. It says, I, Marian Greiser, agree to pay Francis Greiser, Junior one-half of all net sale proceeds above

$60,000 of unit 210. Not price. So net sale proceeds.

So when you go to that contract, it speaks for itself. It's why the Court in Pennsylvania didn't allow it to be amended again. It's why we previously had this here. This thing, it just keeps going.

So let's look at the language, and you go to the Fourth District Court of Appeal and it says in the case of Romano versus Romano, and we cite that, the plain meaning of the phrase, quote, net proceeds, closed quote, in light of a similar agreement to share such proceeds upon the sale of a house, it's the cost of sale, the closing costs, the mortgage indebtedness are to be deducted from the sales price to meet the net proceeds. So what we have here is they don't even plead that there were realtor commissions, there were closing costs. So they're trying to say the net sales price above that $60,000 when it sold for 75, Judge. This is a very small amount. They continue fighting because it's family, but the sales price was not what the contract says. It's the net sale proceeds. When you look at

that, then obviously the contract speaks for itself and if you go further, and they do recognize there's a realtor's commission. They put it in the footnote, a $4,500 realtor's commission, but if you go further, Judge, that exhibit negates the complaint, obviously in Count 1, and that document was written by Dean Trantalis, who I think the Court is aware of.

So even if this were to survive dismissal, this count is going to be somewhere less than, it'll be about a $4,000 dispute.

THE COURT: It wouldn't meet the jurisdictional requirement.

MR. SEILER: Right. So I just want the Court to be aware of that.

Count 2, unjust enrichment, that is barred by Statute of Fraud and Statute of Limitations. This one involves the other unit. They have two units in the building. This is Whittier Towers. This involves unit 214 and what he's alleged in here is that about sometime in 2010, he moved into the unit and he began renovations, which he completed, by his own testimony, by his own admission, within six months. So if in 2010 the renovations were

completed, the Statute of Limitations would have run either 2014 or 2015, depending on what theory he wants to travel under. And so the extent that they're trying to assert that the renovations he performed convey a benefit, that benefit, they're suing ten years too late.

The Statute of Limitations for unjust enrichment begins to run at the time the alleged benefit is conferred and received by the defendant, and Judge, we've cited the Flatirons case out of the Third DCA and the Barbara G. Banks case out of the 4th DCA where it says specifically the date the alleged benefit is conferred and received by the defendant is when the statute begins to run. That was in 2010. Then they claimed that he paid the monthly miantenance fees on the unit for unit 214 from 2010 to 2016. Again, the statute has run on those claims that he wants to be reimbursed for paying maintenance fees and then he tries to circumvent it by this new allegation that it's really an unjust enrichment action for his one-third ownership interest which was promised to him.

So he lays it all out about these

assessments and he lays it out about the maintenance and the renovations, but then his argument at the end is he has a one-third ownership interest in unit 214. Well Judge, we know that the Statute of Frauds and the Statute of Limitations would have run on that.

The Statute of Frauds says you can't convey an ownership interest in real estate not in writing. There's nothing in writing that conveys the ownership interest as one-third and arises from an oral agreement by his own admission.

So when you look at the Statute of Frauds and Statute of Limitations, Count 2 is gone and then when you go to, last thing I'll add on that, Judge --

THE COURT: Your position is they didn't have a legally enforceable agreement. Therefore no advantageous business relationship. Let me hear from him and I'll have you reply, okay.

MR. SEILER: Thank you.

THE COURT: Let me hear from Matthew.

MR. FORNARO: Do you want to hear about Count 1 first?

THE COURT: I want to hear about all the counts.

MR. FORNARO: Okay. Count 1 is very simple and shouldn't be dismissed. There's no Statute of Limitations issue with Count 1 whatsoever. It was filed --

THE COURT: I guess you're saying if I dismiss it, then you don't have anything. You don't have a controversial -- what's the amount in controversy if I dismiss 2?

MR. FORNARO: Well right now it's about $50,000 in aggregate for all three claims. If you knock out two of the three claims, then it's less than the jurisdictional amount and you'll have to transfer the case to County.

THE COURT: Jack, you might want to listen to this.

MR. SEILER: Sorry, Judge.

MR. FORNARO: If the two other counts go away, then it's less than $50,000. You transfer it to County Court. So Count 1, there's no Statute of Limitations issue.

THE COURT: Stop for a second. So if I grant 2 and 3, okay, where does that leave us with Count 1? Jurisdiction amount is going to

be 4-grand or something. Does it go to County Court?

MR. SEILER: It might even go to small claims court. It definitely goes to County Court. Under the new threshold, small claims is $7,500 or something.

THE COURT: So it's not a basis to dismiss it. It's to dismiss it to transfer it to small claims.

MR. SEILER: Except I think when you read the contract, I mean, he has to at least now re-plead what are the net sales proceeds.

THE COURT: Well that would be in a different jurisdiction. It wouldn't be here.

MR. SEILER: It would be the Fourth Amended Complaint because he still needs to re-plead.

THE COURT: I want to separate the two. I want to really focus on 2 and 3.

MR. FORNARO: Well I'll finish one real quick.

THE COURT: Let's go to 2 and 3.

MR. FORNARO: Okay, 2 and 3. So the unjust enrichment is for the moneys received. Not for the actual one-third ownership interest in the properties themselves. So the reason why, when

they argue Statute of Limitations, obviously Mr. Seiler told you about the long history of those two parties litigating against each other. So based on events that we outlined in our response regarding the case in the Eastern District of Pennsylvania, an appeal to the Third District Court of Appeal in Philadelphia, various other things, the time to bring Counts 2 and 3 was tolled from the filing of the original complaint until the filing of this complaint and we cited Koppel versus Koppel, which is a Florida case as to standing for the proposition that where it's the same nucleus of facts -- and again, that's a Florida Supreme Court case found at Florida 229 So.3d 812 -- you can relate it back to the original filing. So that's why these two counts --

THE COURT: What's the date? What's the operative date?

MR. FORNARO: We explain it in the --

THE COURT: Give me the date.

MR. FORNARO: In Count 2, it goes back to the sale of the unit, which is December 22, 2016.

THE COURT: What's the Statute of

Limitations on that?

MR. FORNARO: For unjust enrichment would be four years, but it was tolled.

THE COURT: When did you file the complaint?

MR. FORNARO: We filed the original complaint --

THE COURT: In '22; isn't it?

MR. FORNARO: Yes, but there was --

THE COURT: Well that's your problem because even if it relates back, you still violated --

MR. FORNARO: But the mother filed an action in Pennsylvania. I can't really explain an equivalent action here in Florida.

THE COURT: You're out of luck, man. I mean, even if it relates back.

MR. FORNARO: Okay. Well, she filed an action in Pennsylvania that basically issued a protective order against her, disallowing my client from interacting with her in any possible way. That wasn't dissolved until 2019. So that goes back from 2016 to 2019. That's three years right there.

THE COURT: That motion is granted with

prejudice as to that. It relates back to 2016. On its face, the Statute of Limitations survive. Let's go to 3.

MR. FORNARO: It's going to be almost the same argument.

THE COURT: Motion to dismiss with prejudice is granted. Any amendment to the complaint would be futile, Fourth Amended Complaint. The Court will not excercise discretion as to Count 1. Based on Counts 2 and 3 being dismissed with prejudice, Count 1 will be dismissed and transferred to small-claims court. Anything else from either party?

MR. SEILER: No. Thank you, your Honor.

MR. FORNARO: Thank you.

HEARING CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I, TRACIE S. PERRY, Court Reporter and Notary Public, certify that I was authorized and did stenographically report the foregoing proceedings and that this transcript is a true record of the proceedings before the Court.

I further certify that I am not a relative, employee, attorney or counsel for any of the parties, nor am I a relative of employee of any of the parties; attorney of counsel connected with the action, nor am I financially interested in the action.

Dated this 13th day of November 2024.

Tracie S. Perry

TRACIE S. PERRY

WRIT PETITION APPENDICES

VOLUME THREE

U.S. District Court Eastern District of Pennsylvania
and U.S. Third Circuit Court of Appeals
Orders and Opinions

From

The Florida Circuit Court Record on Appeal

A-188 through A-219

Whittier Towers, in Florida.[3] They socialized frequently, mainly during the winter months, as his parents would return to their home in Pennsylvania in the spring.[4] In 2014, Plaintiff's father suffered a stroke, and was in and out of the hospital for months.[5] After a visit to his parents in January 2015, Plaintiff received an e-mail from his mother in March 2015, accusing him of trying to break into the family's safe.[6] Plaintiff alleges that his sister falsely accused him to their mother.[7] His sister also allegedly gained power of attorney and had her father sign over his assets to her, and engaged in other financial misdeeds.[8]

Plaintiff's father died in May of 2016, and Plaintiff alleges that at the funeral family members told him that his sister was telling people that he had attempted to break into his parents' safe. Plaintiff later took a polygraph examination to demonstrate that he had not broken into the safe.[9] In late May and early June 2016, Plaintiff sent two demand notices to his sister to retract her statements.[10] They went unanswered.[11]

At about this same time, Plaintiff's brother, Robert Greiser, informed him that their sister was pressuring their mother into selling both units in Whittier Towers.[12] Plaintiff alleges that he

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[3] Pl.'s Am. Compl., July 2, 2018 [Doc. No. 8] at ¶¶ 49-50.

[4] *Id.* at ¶ 51.

[5] *Id.* at ¶ 52.

[6] *Id.* at ¶ 59.

[7] *Id.* at ¶ 65.

[8] *Id.* at ¶¶ 71, 80-90.

[9] *Id.* at ¶¶ 102-105. Plaintiff then took a second polygraph test about the renovations of the Florida condominium. *See id.* at ¶ 106.

[10] *Id.* at ¶¶ 108-09.

[11] *Id.* at ¶ 110.

[12] *Id.* at ¶¶ 114-15.

and his parents had orally contracted for both living rights and future interest in Unit 214 in exchange for unpaid renovation work.[13] With regard to Unit 210, Plaintiff alleges that in 2012, he and his parents began a lawsuit against Whittier Towers, regarding his ownership of the unit, which was eventually resolved with Plaintiff's name being removed from the proprietary lease for a payment of $60,000.[14] Plaintiff also alleges that his sister wrested control of the family's daycare business away from him and his brother.[15]

B. Additional Allegations in the Proposed Second Amended Complaint

In the proposed Second Amended Complaint, Plaintiff adds allegations that his father told him about a new will in 2012 that left Plaintiff some property in Florida.[16] Plaintiff accuses his sister of changing the will in 2015 and signing everything over to her.[17] During probate proceedings in Pennsylvania state court, the Orphans' Court Division of the Delaware County Court of Common Pleas determined that there was no 2012 will, and that both the penultimate will executed in 2000 and the final will executed in 2015 left all assets to the surviving spouse, Plaintiff's mother.[18] Plaintiff alleges that his sister hid assets from the probate court and that he was supposed to be left some sort of expectancy.[19] Plaintiff maintains that his sister fraudulently

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[13] *Id.* at ¶ 134.

[14] *Id.* at ¶ 188.

[15] *Id.* at ¶¶ 194-98.

[16] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A (Proposed Second Amended Complaint) at 5.

[17] *Id.* at 6.

[18] *Id.* at 10.

[19] *Id.* at 7-9.

transferred assets of the estate.[20] Finally, Plaintiff also includes a claim alleging a breach of a written contract regarding an entitlement to proceeds from the sale of Whittier Unit 210.

II. LEGAL STANDARDS

For a complaint to survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[21] This occurs when the claim "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[22] A court must "accept as true all factual allegations in the complaint and draw all inferences from the facts alleged in the light most favorable to [plaintiff]."[23] A court is not required to accept legal conclusions as factual allegations; to overcome a motion to dismiss, the complaint must show "direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory."[24]

Federal Rule of Civil Procedure 15 guides the amended pleading standard. Under Rule 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."[25] Additionally, Rule 15(d) provides that "[o]n motion or reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that

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[20] *Id.* at 5.

[21] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[22] *Id.* (quoting *Twombly*, 550 U.S. at 556).

[23] *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008).

[24] *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)) (internal quotation marks omitted).

[25] Fed. R. Civ. P. 15(a)(2).

happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in a claim or defense."[26]

Moreover, when adding defendants, a plaintiff must also satisfy Federal Rule of Civil Procedure 20, which provides that "[p]ersons . . . may be joined in one action as defendants if: any right to relief is asserted against them jointly [or] severally . . .with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences."[27]

Leave to amend should be denied if amendment would be futile or inequitable. Amendment would be futile if "the amended complaint would not survive a motion to dismiss for failure to state a claim."[28] It is inequitable to allow amendment where there has been "undue delay, bad faith, dilatory motive, [or] unfair prejudice."[29] Finally, "pro se pleadings should be construed liberally," but still must meet the applicable legal standards.[30]

III. DISCUSSION

To the extent that claims in the Amended Complaint and proposed Second Amended Complaint overlap, the Court will analyze the claims together, and will address separately the proposed new claims against new Defendants in the motion to amend.

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[26] Fed. R. Civ. P. 15(d).

[27] Fed. R. Civ. P. 20(a)(2)(A). Federal Rule of Civil Procedure 21 states that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party."

[28] *Budhun v. Reading Hosp. & Med. Ctr.*, 765 F.3d 245, 259 (3d Cir. 2014) (citing *Travelers Indem. Co. v. Dammann & Co.*, 594 F.3d 238, 243 (3d Circ. 2010); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[29] *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

[30] *Paramount Pictures Corp. v. Davis*, 234 F.R.D. 102, 110 (E.D. Pa. 2005) (citing *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)).

A. Claims concerning Whittier Units 210 and 214

In the Amended Complaint, Plaintiff alleges claims against his sister and her husband for tortious interference with a contract, wrongful conveyance and conversion, unjust enrichment, and tortious interference with a business relationship. These claims arise from an alleged oral contract between Plaintiff and his parents for future ownership rights of Unit 214 in exchange for Plaintiff performing unpaid renovation work, and a similar claim for Plaintiff to renovate and then move into Unit 210.[31]

Defendants argue that the Florida statute of frauds bars these claims.[32] Under this statute, "no action shall be brought . . . upon any contract for the sale of lands . . . or of any uncertain interests in or concerning them, or any lease period longer than 1 year...unless the agreement or promise . . . shall be in writing and signed by the party to be charged therewith."[33] A party cannot avoid this requirement by reformulating a breach of contract claim into one for fraud, and promissory estoppel is not an exception to the statute of frauds.[34] Plaintiff argues that "it is well established in Florida that part performance will remove an oral contract from the statute of frauds and enable it to specifically enforced in equity."[35] While this is correct, "[t]he doctrine of part performance to excuse a failure to comply with the statute of frauds is not available in

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[31] Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 35.

[32] Def.'s Mot. to Dismiss, Mar. 10, 2020 [Doc. No. 73] at 11.

[33] Fla. Stat. § 725.01. As the property is in Florida, there is no dispute that Florida law applies to these claims.

[34] *Stamer v. Free Fly, Inc*, 277 So.3d 179, 181–82 (Fla. Dist. Ct. App. 2019).

[35] Pl.'s Reply to Def.'s Response to Pl.'s Mot. for Leave, Apr. 6, 2020 [Doc 80] at 8.

Florida to actions solely for money damages."[36] Plaintiff has not sought equitable relief, and because the property has been sold, equitable relief would likely not be available.

To the extent that the claim for tortious interference with a contractual or business relationship is not barred by the statute of frauds,[37] Plaintiff has failed to state a claim. The tort requires "(1) the existence of a business relationship, not necessarily evidenced by an enforceable contract; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result" of the interference.[38] Plaintiff has not alleged the existence of a valid contract, and has alleged only in conclusory terms that any interference by Defendants was unjustified given the family relationships among the parties. Claims relating to Unit 214 and Unit 210 in the Amended Complaint will be dismissed, and the motion for leave to amend will be denied as to any tort claims.[39]

B. Claims Concerning the Will of Francis Greiser, Sr.

Plaintiff asserts claims for fraudulent concealment and misrepresentation, and for tortious interference with an expectancy. The fraudulent concealment claim, which alleges that his sister failed to list all of their father's assets to the Orphans' Court, is barred by the probate exception to federal jurisdiction.[40] The probate exception applies when a "claim for relief requires a federal

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[36] *Wharfside at Boca Pointe, Inc. v. Superior Bank*, 741 So.2d 542, 545 (Fla. Dist. Ct. App. 1999) (*citing Hosp. Corp. of Am. v. Associates in Adolescent Psychiatry*, 605 So.2d 556 (Fla. Dist. Ct. App. 1992)).

[37] *See Brace v. Comfort*, 2 So.3d 1007, 1011 (Fla. Dist. Ct. App. 2008).

[38] *Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla. 1985).

[39] A claim in the proposed Second Amended Complaint for breach of an express contract regarding proceeds from the sale of Unit 210 will be discussed separately below. The tort claims do not concern this alleged breach of contract.

[40] *See* Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 46-49.

court to. . . probate or annul a will."[41] Furthermore, the probate exception bars a district court from determine whether a testamentary document is invalid.[42] Thus this Court cannot adjudicate claims relating to the will and the probate assets.[43]

To state a claim for tortious interference with an expectancy under Pennsylvania law, a plaintiff must allege "(1) [t]he testator indicated an intent to change his will to provide a described benefit for plaintiff, (2) [t]he defendant used fraud, misrepresentation or undue influence to prevent execution of the intended will, (3) [t]he defendant was successful in preventing the execution of a new will; and (4) [b]ut for the defendant's conduct, the testator would have changed his will."[44] Plaintiff alleges the family's daycare business was supposed to be left to both him and his sister as an inheritance, but in 2016 his sister changed their father's will and persuaded their parents to sign over all business holdings to her.[45] However, as Plaintiff acknowledges, the Orphans' Court determined that the final will was written in 2015 and left all assets to the surviving spouse, Plaintiff's mother.[46] There are no plausible allegations that any other disposition of assets was contemplated.[47]

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[41] *Rothberg v. Marger*, No. 11-5497, 2013 WL 1314699, at *5 (D.N.J. Mar. 28, 2013) (citing *Three Keys Ltd. v. SR Utility Holding Co.*, 540 F.3d 220, 227 (3d Cir. 2008).

[42] Id at *7 (citations omitted).

[43] In addition to the probate exception, the claims likely would be barred by the *Rooker-Feldman* doctrine, as Orphans' Court has ruled on the questions surrounding probate.

[44] *Cardenas v. Schober*, 783 A.2d 317, 326 (Pa. 2001). As the will was probated in Pennsylvania, the parties do not dispute that Pennsylvania law applies to these claims.

[45] Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 5, 50.

[46] *See* Def.'s Mot. to Dismiss, Mar. 10, 2020 [Doc. No. 73] at 8.

[47] *See id.*; *see also Cardenas*, 783 A.2d at 326.

Plaintiff also alleges that he has an interest in a $400,000 account that his father left specifically for his mother. This interest stems from Plaintiff's belief that Defendants used this money for their own personal use.[48] Since his siblings allegedly used some of the money for personal use, Plaintiff asserts that he is also entitled to some of the money in the account. Further, Plaintiff believes he is entitled to a portion of this money because Defendants were the "actual and proximate cause for a breach of contract that dictated that those proceeds were to go to mother, or in the alternative be shared equally between all the Greiser children."[49] Plaintiff cannot state a claim, as under the allegations he has raised, the money put aside was for his mother, not him. He has no legal entitlement to this money and does not state a claim upon which relief may be granted.

The proposed Second Amended Complaint also asserts claims for intentional interference with an expectancy of inheritance or gift, civil fraud, and unjust enrichment. Plaintiff alleges the existence of a 2012 will, and speculates, without any factual basis, that his sister "conjured up the 2015 Will" and hid assets as an attempt to defraud the Orphans' Court. As stated above, the Orphans' Court has already determined that there was a 2000 will and a 2015 will, and that both bequeathed all of the assets to Plaintiff's mother, the surviving spouse. Plaintiff cannot relitigate these findings in this Court and has not alleged specific facts to support a claim of fraud or of hidden assets.[50]

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[48] Pl.'s Am. Compl. July 2, 2018 [Doc. No. 8] at 53.

[49] *Id.* at 54.

[50] *See* Fed. R. Civ. P. 9(b).

C. Defamation Claims

Plaintiff seeks to assert claims for defamation by implication and defamation *per se*. These claims are time-barred under Pennsylvania law.[51] The limitations period to bring a claim for defamation is one year,[52] and begins to run when the defamatory statements are published.[53] The Amended Complaint alleges that "[d]uring 2015 and 2016 . . . Defendants spread false and malicious stories warning family members that they should beware of [Plaintiff], specifically telling third parties that [Plaintiff] was [a] 'sneaky thief.'"[54] Plaintiff does not specify when the comments were made, but does allege that he was made aware of them at his father's funeral in May 2016. Plaintiff filed this action on May 15, 2018; any defamatory statements made in 2015 or 2016 are therefore time-barred.

In the proposed Second Amended Complaint, Plaintiff alleges that he sent multiple cease and desist letters, and that the Defendant "started publication of the false defamatory words on March 15, 2015—that were consistently reported back to the Plaintiff lasting for a period of three years."[55] However, Plaintiff still fails to allege that Defendant made comments after 2016, instead alleging only that other people reported the comments back to him. Thus, amendment would be futile as these allegations cannot overcome the time bar.[56]

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[51] Plaintiff claims the statements were made in Pennsylvania, and therefore Pennsylvania law applies.

[52] 42 Pa. C.S.A. § 5523(1).

[53] *Glover v. Tacony Acad. Charter Sch.*, No. 18-56, 2018 WL 3105591, at *5 (E.D. Pa. June 25, 2018).

[54] Pl.'s Am. Compl., July 2, 2018 [Doc. No. 8] at 4.

[55] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 15.

[56] *See Budhun*, 765 F.3d at 259.

D. Claim of Intentional Infliction of Emotional Distress

Plaintiff alleges a claim of intentional infliction of emotional distress. It is not clear whether Florida or Pennsylvania law governs this claim, but Plaintiff cannot state a claim under either standard. Under Florida law, "a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe."[57] Pennsylvania law is similar but also requires a showing of physical injury.[58] Plaintiff has not met either standard. He alleges that Defendants' lies and "slander" were so severe that they "shock the conscience and are well outside acceptable social norms."[59] Both Florida and Pennsylvania courts generally follow the Restatement (Second) of Torts, which defines outrageous conduct as that "beyond all possible bounds of decency, and regarded as atrocious, and utterly intolerable in a civilized community."[60] Courts have found extreme and outrageous conduct only in the "most egregious of situations."[61] Plaintiff has not alleged conduct that meets this standard; the claim is essentially coterminous with the allegations of defamation.[62]

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[57] *Liberty Mut. Ins. Co. v. Steadman*, 968 So.2d 592, 594 (Fla. Dist. Ct. App. 2007). It should be noted that under Florida law, "proof of physical injury or impact is not necessary to sustain an action for the intentional infliction of emotional distress." *Clemente v. Horne*, 707 So.2d 865, 866 (Fla. Dist. Ct. App. 1998).

[58] *John v. Phila. Pizza Team, Inc,* 209 A.3d 380, 384 (Pa. Super. Ct. 2019).

[59] Pl.'s Am. Compl., July 2, 2018 [Doc. No. 8] at 57.

[60] *Gallogly v. Rodriguez*, 970 So.2d 470, 472 (Fla. Dist. Ct. App. 2007) (quoting Restatement (Second) of Torts § 46 cmt. d (1965)).

[61] *Cheney v. Daily News, L.P.*, 654 F. App'x 578, 583 (3d Cir. 2016) (citing Pennsylvania law); *Steadman*, 968 So.2d at 595 (under Florida law, the court must determine as a matter of law whether the conduct is "atrocious and utterly intolerable in a civilized community" (internal quotation marks and citations omitted)).

[62] The Court notes that the proposed Second Amended Complaint does not seek to assert a claim for intentional infliction of emotional distress.

E. Additional Claims Raised in the Proposed Second Amended Complaint

Plaintiff's proposed Second Amended Complaint seeks to add claims for abuse of process and wrongful use of civil proceedings against his sister and his mother, Marian Greiser, who is not currently a Defendant, and a claim for breach of contract against his mother and the Estate of Francis Greiser, Sr., which is also not a current Defendant.[63]

1. Abuse of Process

Plaintiff alleges that his mother and sister sought a Protection from Abuse order ("PFA") against Plaintiff in Pennsylvania but it was later dropped. Plaintiff states he was in Florida at the time of the filing and there was no reason to file a PFA against him. To claim abuse of process, a plaintiff must allege "that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff."[64] "Abuse of process . . . focuses on the misuse of [the] civil process . . . to achieve some object other than the legitimate purpose for which it is designed, as opposed to the wrongful initiation of legal proceedings without probable cause."[65] Furthermore, "[i]n support of this claim, the [plaintiff] must show some definite act or threat not authorized by the process . . . there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions."[66] More simply stated, "the gist of an action for abuse of process is the improper use of process after it has been

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[63] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 28-39.

[64] *Lerner v. Lerner*, 954 A.2d 1229, 1238 (Pa. Super. Ct. 2008).

[65] *Douris v. Dougherty*, 192 F. Supp. 2d 358, 366 (E.D. Pa. 2002) (quoting *Muirhead v. Zucker*, 726 F. Supp. 613, 617 (W.D. Pa. 1989).

[66] *Lerner*, 954 A.2d at 1238 (citing *Shiner v. Moriarty*, 706 A.2d 1228, 1236 (Pa. Super. Ct. 1998)).

issued."[67] The Supreme Court [of Pennsylvania] has interpreted the tort broadly, making clear that it "will not countenance the use of the legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process."[68]

These claims bear a striking resemblance to those rejected by the Pennsylvania Superior Court in *Lerner v. Lerner*.[69] In *Lerner,* Helen Lerner alleged that her brother Nathan Lerner harassed her and caused her to fear for her safety.[70] In 2003, Nathan attempted to serve legal papers to Helen's building manager and janitor, creating a scene among tenants in the lobby.[71] In response, Helen filed two criminal reports and subsequently filed for a PFA but, during the hearings, the PFA was withdrawn.[72] Nathan then filed a complaint stating that the PFA was retaliation for his legal efforts and that because he had not had any contact with Helen in over 20 years, there was no way she could have probable cause.[73] He brought claims for abuse of process and wrongful use of civil proceedings.[74] The court concluded that Nathan failed to satisfy the elements of either claim and that he failed to "aver well-pled facts which would permit the conclusion that [Helen] acted in a grossly negligent manner or without probable cause in filing her PFA."[75] The court noted the allegation that there had been no contact between the siblings

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[67] *Hart v. O'Malley*, 436 Pa. Super. 151, 160, (1994) (quoting *Rosen v. American Bank of Rolla,* 627 A.2d 192 (1993)).

[68] *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 305 (3d Cir. 2003) (citing *McGee v. Feege*, 517 Pa. 247, 535 A.2d 1020, 1026 (1987)). *See* 42 Pa. C.S.A. § 8351 (defining existence of probable cause).

[69] 954 A.2d 1229 (Pa. Super. Ct. 2008).

[70] *Id.* at 1232.

[71] *See id.*

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *Id.* at 1239.

for a period of time did not rule out a finding of probable cause.[76] Moreover, the Superior Court held that Helen did nothing more than carry out the process to its authorized conclusion, so that there was no liability regardless of her intention.[77] Finally, the bald assertion of damages did not sufficiently allege injury.[78]

As in *Lerner*, the present dispute lacks a factual basis for an abuse of process claim. Although Plaintiff asserts that there was no probable cause because he and his sister had not been in contact for eighteen months, a lack of recent contact does not vitiate probable cause. Further, Plaintiff claims the PFA's primary purpose was to "facilitate personal retribution" as well as to hinder his ability to respond to the motion to dismiss and force him to hire counsel and travel to Pennsylvania.[79] However, in the absence of allegations that the process was perverted in some way, these "bad intentions" cannot form a basis for liability. Instead, Plaintiff asserts that it was an attempt to prevent him from filing a timely answer to a motion to dismiss.[80] However, the state court granted Plaintiff an extension of time to respond to this motion and therefore he suffered no harm.[81]

Plaintiff also alleges that he had to fly to Pennsylvania, obtain counsel and defend himself, which caused great "mental pain" in addition to being "humiliated and put under a cloud of suspicion."[82] However, Plaintiff alleges that his attorney advised him that he could appear by

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[76] *See id.*

[77] *See id* at 1238.

[78] *Id.*

[79] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 31, 36-37.

[80] *See id.* at 30.

[81] *See* Order Sept. 24, 2018 [Doc. No. 34].

[82] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 39.

telephone to contest the jurisdiction rather than traveling to Pennsylvania. Plaintiff alleges that he instead chose to travel to Pennsylvania on his own.[83] Furthermore, Plaintiff never alleges how his reputation was actually damaged, or how any relationships among his neighbors or peers were damaged as a result of the PFA. Plaintiff's only allegation is that he was "put under a cloud of suspicion,"[84] which is insufficient to assert a claim of abuse of process.

2. Wrongful Use of Civil Proceedings

Plaintiff also seeks to bring claims for wrongful use of civil proceedings against Joanne Drinkard and Marian Greiser based upon the issuance of the PFAs. Wrongful use of civil proceedings occurs when: "(1) [Defendant] acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and (2) The proceedings have terminated in favor of the person against who they are brought."[85] By definition, proceedings are terminated in favor of the person against whom they are brought "by the favorable adjudication of the claim by a competent tribunal."[86] However, "[a] voluntary withdrawal of civil proceedings does not constitute a favorable termination unless the withdrawal was 'tantamount to the unbidden abandonment of a claim brought in bad faith.'"[87] With this in mind, "Pennsylvania courts have concluded that a withdrawal of proceedings is a favorable termination when the withdrawal occurred 'on the eve of trial' and the circumstances indicated

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[83] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 29–30.

[84] *Id.* at 39.

[85] *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (2011) (citing 42 Pa.C.SA. § 8351).

[86] *Id.* at 972.

[87] *Kegerise v. Susquehanna Sch. Dist.*, 325 F. Supp. 3d 564, 582 (M.D. Pa. 2018) (*citing Hyldahl v. Denlinger*, 661 F. App'x 167, 171 (3d Cir. 2016)).

that the withdrawal was a 'last-second dismissal in the face of imminent defeat.'"[88]

Defendants argue that Plaintiff failed to show that the efforts to obtain the PFA lacked probable cause and that proceedings were terminated in his favor.[89] Plaintiff raises substantially the same arguments as in the previous claim, and has not alleged a lack of probable cause.

Plaintiff also alleges that Defendants terminated the proceedings after legal counsel advised them to do so, noting that both Defendants are "unable to establish that the original proceeding against Plaintiff Greiser was instituted and prosecuted on the good faith reliance of legal counsel," and were dropped before Plaintiff had the opportunity to defend himself.[90] In essence, Plaintiff claims that the withdrawal of the PFAs was "last-second" in the "face of imminent defeat."[91] Plaintiff is seeking damages on the grounds that Defendants were the cause of reputational harm, as Plaintiff was "humiliated and put under a cloud of suspicion."[92] Plaintiff has not stated facts to allege defendants acted in a "grossly negligent manner or without probable cause" nor has he alleged facts showing the withdrawal of the PFAs was "last-second" in the "face of imminent defeat," but instead relies only on legal conclusions.[93] Therefore, leave to amend will not be granted as to these claims.

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[88] *Hyldahl* 661 F. App'x at 171 (citing *Bannar v. Miller*, 701 A.2d 242, 245, 248 (Pa. Super. Ct. 1997)); *see also Majorsky v. Douglas*, 58 A.3d 1250, 1269–70.

[89] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 32, 38.

[90] *Id.* at 32, 39.

[91] *See id.*; *see also Hyldahl* 661 F. App'x at 171.

[92] Pl.'s Mot. for Leave, March 9, 2020 [Doc. No. 71] Exh. A at 39.

[93] *See id.* at 38; *see also Lerner*, 954 A.2d at 1237.

3. Express Breach of Contract

Finally, Plaintiff seeks to add a claim against his mother and his father's estate for breach of contract, and attaches the alleged handwritten express contract (which is only between Plaintiff and Marian Greiser) as an exhibit.[94] Plaintiff alleges that under this contract he was to receive $60,000 plus one half the proceeds above $60,000 when Whittier Unit 210 was sold, in exchange for him settling the lawsuit he had against Whittier Towers, and removing his name from the lease.[95] Plaintiff alleges that Unit 210 was sold for $75,000.[96] According to a letter from an attorney then representing Plaintiff that is also attached to the proposed Second Amended Complaint, the amount due under this contract is $4,034.[97] This is the only potentially viable claim in the litigation. However, the Court determines that it would be inequitable and unwarranted under Rule 15 or Rule 20 to permit amendment for the purpose of asserting a single claim against new Defendants that would not meet the jurisdictional threshold. Therefore, the Court will deny the motion to amend as to this claim, which Plaintiff may pursue in the appropriate state court.

IV. CONCLUSION

For the reasons set forth above, the motion to dismiss will be granted, and the motion for leave to file a second amended complaint will be denied. An order will be entered.

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[94] *Id.* at 22-24; Doc. No. 72 Exh. 18.

[95] *Id.* at 23.

[96] *Id.* at 24.

[97] Doc. No. 72 Exh. 21.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1879

FRANCIS GREISER, JR.,
Appellant

v.

JOANNE L. DRINKARD; PAUL A. DRINKARD

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil No. 2:18-cv-05044)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 3, 2022
Before: GREENAWAY, Jr., PORTER, and NYGAARD, Circuit Judges

(Opinion filed: February 10, 2022)

OPINION*

PER CURIAM

Francis Greiser, Jr., appeals pro se from the District Court's dismissal of his amended complaint without leave to amend, and its subsequent denial of his motion for

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

reconsideration. For the following reasons, we will affirm the District Court's judgment.

I.

Greiser made the following allegations in his amended complaint. In 2010, his parents purchased an apartment, Unit 214, at a Florida cooperative apartment complex, Whittier Towers. He and his parents agreed that he would renovate the apartment in exchange for permanent occupancy there and ownership of the unit when his parents both passed away. Greiser initially lived in Unit 214 with his parents, but in 2011, his parents purchased Unit 210 in the same complex, and Greiser moved there.

In 2012, Greiser's parents added Greiser to their proprietary lease for Unit 210. As a result, the Whittier Towers cooperative apartment association sued Greiser and his parents to remove Greiser's name from the proprietary lease, as Greiser had not been approved by the Whittier Towers cooperative board.

In 2014, Greiser's father had a stroke and was in and out of the hospital in Pennsylvania. Greiser's sister, Joanne Drinkard, was appointed as their father's agent through a power of attorney. Greiser visited his parents in January 2015 and stayed at their home in Pennsylvania. In March 2015, his mother accused him of trying to break into a safe at his parents' home. When his father died in May 2016, Greiser learned from family members at the funeral that his sister told people that he had attempted to break into his parents' safe. His relationship with his mother never recovered.

Greiser believes that his sister convinced their father to change his will in 2015, before he died. In 2016, Greiser initiated an action in the Orphans' Court Division of the

Delaware County Court of Common Pleas to produce his father's wills and get an accounting of his father's estate. That Court identified two wills, from 2001 and 2015, and dismissed the action after noting that the sole beneficiary in both wills was Greiser's mother. Greiser believes that his sister lied and hid assets from the Orphans' Court, and that she has been using their mother's assets for her own gain.

Greiser's sister also became involved in the handling of the Whittier Towers litigation after their father died. In 2017, after years of litigation and mediation, Whittier Towers agreed to drop the lawsuit in a settlement agreement; Greiser was paid $60,000 to agree to its terms. In exchange, Greiser's name was removed from the proprietary lease of Unit 210 and Greiser moved out of the unit. Greiser's mother later sold both units.

In 2018, Greiser initiated an action in the United States District Court for the Southern District of Florida, bringing state law claims against his sister and her husband, Paul Drinkard. Greiser continues to reside in Florida, while the Drinkards are Pennsylvania residents. The case was ultimately transferred to the United States District Court for the Eastern District of Pennsylvania.

After the transfer, the Drinkards moved to dismiss Greiser's amended complaint based on a service issue. Greiser moved for leave to file a second amended complaint, but he later withdrew his request. The District Court denied the Drinkards' first motion to dismiss, and Greiser sought reimbursement for service-related costs.

On the day before the Drinkards' answer or second motion to dismiss was due, Greiser filed another motion for leave to file a second amended complaint, as well as his

proposed second amended complaint, and on the following day, the Drinkards moved to dismiss. The District Court ultimately granted the Drinkards' motion, dismissing the claims in Greiser's amended complaint with prejudice, and denied Greiser's motion for leave to amend his complaint. The District Court also partially granted Greiser's motion for costs. Greiser moved for reconsideration, which was denied, and timely appealed.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of Greiser's amended complaint. See Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). Dismissal is appropriate "if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that [the] plaintiff's claims lack facial plausibility."[1] Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011). We review the denial of a motion for reconsideration for abuse of discretion. See Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

III.

We agree that dismissal of Greiser's amended complaint was appropriate.[2] First, Greiser brought four tort claims under Florida law against the Drinkards regarding the

[1] "We may affirm on any ground supported by the record as long as the appellee[s] did not *waive* — as opposed to *forfeit* — the issue." TD Bank N.A. v. Hill, 928 F.3d 259, 276 n.9 (3d Cir. 2019).

[2] We note where Greiser made additional allegations in his proposed second amended complaint that relate to the claims against the Drinkards in his amended complaint.

sale of Units 210 and 214 at Whittier Towers. Greiser alleged unjust enrichment, wrongful conveyance and conversion, tortious interference with a contract, and tortious interference with a business relationship by the Drinkards.

Greiser cannot state a claim for unjust enrichment, as he has not alleged that he conferred a benefit on the Drinkards in the course of his mother's sale of the Whittier Towers apartments, and cannot state a claim for wrongful conveyance and conversion where he has not alleged that the Drinkards took control of the Whittier Towers units. See Agritrade, LP v. Quercia, 253 So. 3d 28, 33 (Fla. Dist. Ct. App. 2017) (explaining that one element of unjust enrichment is that the "plaintiff has conferred a benefit on the defendant, who has knowledge thereof") (internal quotation marks and citation omitted); Belford Trucking Co. v. Zagar, 243 So. 2d 646, 648 (Fla. Dist. Ct. App. 1970) ("[C]onversion is . . . an act of dominion wrongfully asserted over another's property inconsistent with his ownership of it.").

Greiser also cannot state a claim for tortious interference with a contract or with a business relationship based on his conclusory allegations about his sister's influence on their mother's decisions. As the District Court explained, given the closely tied familial relationships in this matter, Greiser's allegations are not sufficient to allege "an intentional and unjustified interference with the relationship by the defendant[s]." Font & Nelson, PLLC v. Path Med., LLC, 317 So. 3d 134, 138-39 (Fla. Dist. Ct. App. 2021) (internal quotation marks and citation omitted).

Next, Greiser brought claims for tortious interference with an expectancy and fraudulent concealment and misrepresentation under Pennsylvania law, relating to his father's will. Greiser could not a state a claim for tortious interference with an expectancy because he did not claim that his sister "used fraud, misrepresentation, or undue influence to [successfully] *prevent* execution of [his father's] intended will" in a situation where his father would have otherwise changed his will.[3] See Fiedler v. Spencer, 231 A.3d 831, 836 (Pa. Super. Ct. 2020) (emphasis added). He also could not state a claim for fraudulent concealment and misrepresentation based on allegations that his sister lied and withheld information during probate proceedings, as he does not allege that he acted in reliance on his sister's representations but rather that he contested them in court.[4] See Bortz v. Noon, 729 A.2d 555, 560 (Pa. 1999); Youndt v. First Nat'l Bank of Port Allegany, 868 A.2d 539, 545 (Pa. Super. Ct. 2005).

Greiser also brought claims for defamation by implication and defamation per se under Pennsylvania law. He claimed that his sister lied to their parents about him trying to break into their safe sometime before March 2015, and then again before their father's funeral in 2016. His proposed second amended complaint alleges that his sister has

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[3] Greiser sought to add a parallel claim in his proposed second amended complaint against his mother, but amendment would have been futile where he made no allegations that his mother prevented his father from executing an intended will.

[4] In addition to restating these allegations against his sister in his proposed second amended complaint, Greiser sought to bring a parallel fraud claim against his mother, but amendment would have been futile where Greiser made no allegations that he relied on his mother's representations.

continued to lie about the safe during the course of proceedings in the District Court and that she has continued to tell others that he is trying to steal from his mother.

An action for defamation or slander under Pennsylvania law is subject to a one-year statute of limitations. 42 Pa. Cons. Stat. § 5523(1). It is apparent from the face of Greiser's complaint that the alleged statements he identified were uttered, at the latest, at his father's funeral in 2016, but he brought his action in the District Court in 2018.[5] To the extent that Greiser additionally alleged in his proposed second amended complaint that his sister continued to accuse him of stealing to unidentified individuals at unidentified times after their father's funeral, such allegations would be too vague to allow his claims to survive dismissal. See Jaindl v. Mohr, 637 A.2d 1353, 1358 (Pa. Super. Ct. 1994) ("A complaint for defamation must, on its face, identify exactly to whom the allegedly defamatory statements were made."). Accordingly, we agree with the District Court's dismissal of Greiser's amended complaint.[6]

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[5] A statute of limitations is an affirmative defense that normally must be raised in an answer to the complaint. See Fed. R. Civ. P. 8(c). "However, the law of this Circuit . . . permits a limitations defense to be raised by a motion under Rule 12(b)(6) . . . if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations." Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002) (internal quotation marks and citations omitted). "If the bar is not apparent on the face of the complaint, then it may not afford the basis for a dismissal of the complaint under Rule 12(b)(6)." Id. (citation omitted).

[6] Greiser brought one additional claim for intentional infliction of emotional distress in his amended complaint, but because he did not raise or discuss it in his opening appellate brief, he has forfeited any challenge to the disposition of that claim. See United States v. Pelullo, 399 F.3d 197, 222 (3d Cir. 2005). We note that Greiser discusses the claim in his

Further, we conclude that the District Court did not abuse its discretion or otherwise err in denying Greiser's renewed request to file a second amended complaint.[7] See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002). Amendment would have been futile for new claims of breach of contract and promissory estoppel against Greiser's mother and his father's estate — new defendants to the action — based on his allegations regarding the Whittier Towers units. Such claims, premised on allegations of an oral contract, would be barred by Florida's statute of frauds, as the District Court explained. See Fla. Stat. § 725.01; see also Stamer v. Free Fly, Inc., 277 So. 3d 179, 182 (Fla. Dist. Ct. App. 2019) ("Florida law is clear that promissory estoppel is not an exception to the statute of frauds.").

Greiser also sought to add new claims against his mother and sister for wrongful use of civil proceedings and abuse of process under Pennsylvania law, based on new allegations that Greiser's mother and sister sought and received temporary protection

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reply brief, but we do not "reach arguments raised for the first time in a reply brief." See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 146 (3d Cir. 2017).

[7] Greiser argues that the District Court erred in ruling on defendants' motion to dismiss before considering his renewed request to file a second amended complaint. However, he provides no support for the proposition that the District Court should have considered the parties' motions in the order he would have preferred. As we have explained, "matters of docket control . . . are committed to the sound discretion of the district court," and "[w]e will not interfere with a trial court's control of its docket except upon the clearest showing that the procedures have resulted in actual and substantial prejudice to the complaining litigant." In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982) (internal quotation marks and citations omitted). Greiser was on notice of defendants' motion to dismiss and had a full opportunity to contest it. Further, Greiser had previously moved for leave to file a second amended complaint earlier in the litigation, but withdrew his request only to renew it one day before defendants' motion to dismiss was due.

from abuse ("PFA") orders against him in September 2019, alleging that he had threatened them. Ultimately, they each withdrew those petitions and their cases were dismissed, while Greiser withdrew a counterclaim against his sister.[8] Allowing Greiser to amend his complaint to add these claims would have been futile where he did not make allegations to state a claim, for the reasons given by the District Court. See Lerner v. Lerner, 954 A.2d 1229, 1238 (Pa. Super. Ct. 2008) ("[T]here is no liability [for abuse of process] where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.") (citation omitted); 42 Pa. Cons. Stat. § 8351(a) (providing that to state a claim for wrongful use of civil proceedings, a plaintiff must allege that a defendant acted "in a grossly negligent manner or without probable cause and primarily for a purpose other than that of . . . adjudication of the claim in which the proceedings are based," and that the proceedings terminated in favor of the person against whom they were brought).

Greiser included two remaining claims against his mother and his father's estate in his proposed amended complaint. Greiser first contended that he was owed about $4000[9]

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[8] Greiser makes no mention of this counterclaim in his factual allegations, but a counterclaim is discussed in the order dismissing Greiser's sister's petition, which Greiser attached to his proposed amended complaint. See Davis v. Wells Fargo, 824 F.3d 333, 341 (3d Cir. 2016) (explaining that in evaluating whether a Rule 12(b)(6) dismissal was appropriate, we may examine "exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents") (citation omitted).

[9] This amount was included in a letter from Greiser's attorney that Greiser attached to his proposed amended complaint. See Davis, 824 F.3d at 341.

based on a written contract with his mother stating that he was entitled to certain proceeds when Whittier Towers Unit 210 was sold. He also maintained that his parents were unjustly enriched when he performed renovation work in Unit 214. It would have been inequitable to permit Greiser to pursue two new claims worth less than $75,000 in damages against two new defendants nearly two years into this diversity action.

See Grayson, 293 F.3d at 108; see also Fed. R. Civ. P. 15(a)(2). We thus perceive no abuse of discretion in denying Greiser leave to amend to add these claims.

Next, the District Court did not abuse its discretion in denying Greiser's motion for reconsideration. See Max's Seafood Café, 176 F.3d at 673. Greiser sought reconsideration in part based on a document he had acquired indicating that he received a homestead property tax exemption from 2012-2016. As the District Court noted, Greiser could have provided that document earlier, and he could have made factual allegations about this document at any time, as he claims to have filed it himself. Greiser provided no further allegations that would have prevented dismissal of his claims.

Finally, Greiser claims that the District Court should have fully granted his request for costs associated with litigating several service-related motions. We see no error in the District Court's decision to deny costs for Greiser's subscriptions to legal research services for several years, case filing fees, and non-itemized litigation expenses. See Fed. R. Civ. P. 4(d)(2).

For these reasons, we will affirm the judgment of the District Court.[10]

[10] We grant Greiser's requests to file an overlong brief and to file the second volume of his joint appendix out of time.

Exhibit D

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9

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1879

FRANCIS GREISER JR.,
Appellant
v.

JOANNE L. DRINKARD; PAUL A. DRINKARD

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 2-18-cv-05044)
Senior District Judge: Cynthia M. Rufe

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, MCKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, NYGAARD, [1] *Circuit Judges*

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

BY THE COURT,

s/Joseph A. Greenaway, Jr.
Circuit Judge

cc: Mr. Francis Greiser Jr.
K. Kirk Karagelian, Eq.
Shannon S. McFadden, Esq.

[1] Judge Nygaard's vote is limited to panel rehearing only.

Filing # 211410163 E-Filed 11/20/2024 07:09:34 PM
UCN: 062023CA014503AXXXCE

April 7, 2020

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VIA E-FILING AND U.S. MAIL
The Honorable Judge Cynthia M. Rufe
United States District Court
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106

RE: Greiser v. Drinkard Case No. 18-5044

Dear Judge, Rufe,

I write this letter on behalf of myself as the pro se plaintiff in the above noted civil action. I bring to your attention the potential for abuse of the EDPA local policy of filing a sur-reply without the need for leave of court. I believe this policy has the potential for abuse by the Defendants in my case. Currently, counsel for the Defendants has filed three sur-replies [Doc. 50, 65, 66] forcing me to respond once by sur-sur-reply. [Doc. 67]. I have yet to file a sur-reply in this case before the Court.

On March 24, 2020, I reached out to Defendants' counsel Kirk Karagelian by email concerning the above referenced issue and respectfully asked counsel to limit those filings in the future, and I would do the same. I explained my reasoning. The abuse of the sur-reply favors the seasoned attorney and disadvantages a pro se plaintiff. I also discussed my personal belief that a well-prepared Answer or Response eliminates the need for filing a sur-reply. this courtesy was sought to avoid having to file future objections and motions to strike with the Court.

Mr. Karagelian was polite in his response but informed me that he intends to file whatever his clients deem necessary, which is understandable. Now, the matter becomes the Defendant parties' abuse of the sur-reply policy to disadvantage a pro se plaintiff. I am not asking for Defendants' counsel to waive client rights. However, sur-replies without leave should be reserved for important issues of contention and not used as a tool to batter your non-lawyer opponent. As it stands now, Defendants' counsel has no incentive to file a comprehensive Answer or Response, saving that for a sur-reply to be filed after the plaintiff files his Reply. This creates an unfair advantage (and incentive) for a wait-and-see attorney to present a full argument after the pro se plaintiff files his Reply.

I am hopeful this letter entered into the record will eliminate future litigation on the issue I now bring to your attention. My hope is that opposing counsel will voluntarily use their sur-reply privileges sparingly to keep this case moving along. Without that cooperation, I will have to file to strike the sur-reply filed without leave of court and ask for sanctions, as the local policy is a privilege and not an unfettered right under the Federal Rules of Civil Procedure.

Respectfully submitted,

s/Francis T. Greiser Jr.

cc. To K. Karagelian by EC/EMF and U.S. Mail

UCN: 062023CA014503AXXXCE

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April 9, 2020

The Honorable Cynthia M. Rufe
U.S. District Court –Eastern District
James A. Byrne Court House
Room 12614
601 Market Street
Philadelphia, PA 19106

via CM/ECF

Re: Francis T. Greiser, Jr. vs. Joanne L. and Paul A. Drinkard
No. 2:18-cv-05044-CMR

Dear Judge Rufe:

As you may recall, we are counsel to Defendants, Joanne L. Drinkard and Paul A. Drinkard, in this matter. By letter to the Court dated April 7, 2019, Plaintiff, Francis T. Greiser, Jr., expressed concern regarding the filing of Sur-Reply memoranda. While we do not believe it necessary to respond to Plaintiff's communication to the Court in detail, we note that this Court's Policies and Procedures permit the filing of Reply and Sur-Reply memoranda without leave of Court. As we have informed Plaintiff, while it is not the Defendants' preference to have to file Sur-Reply memoranda, given the nature and contents of some of Plaintiff's filings, Defendants are not in a position to proactively waive their ability to do so, and Defendants intend to file whatever they deem necessary to properly advocate their positions and protect their interests in this case in accordance with applicable rules and procedures.

Respectfully yours,

Kirk Karagelian

K. Kirk Karagelian

cc: Mr. Francis T. Greiser, Jr. *(via CM/ECF and via email)*

UCN: 062023CA014503AXXXCE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS T. GREISER, JR. **Plaintiff,** **v.** **JOANNE L. DRINKARD, *et al.*** **Defendants.**	**CIVIL ACTION NO. 18-5044**

ORDER

AND NOW, this 2nd day of February 2021, upon consideration of the Motion for Fees and Costs and all related filings, it is hereby **ORDERED** that:

1. Plaintiff's Motion for Leave to File a Surreply [Doc. No. 87] is **GRANTED**.

2. Plaintiff's Motion for Fees and Costs [Doc. No. 76] is **GRANTED in part and DENIED in part.**[1] The Court awards Plaintiff **$914.58** in reasonable costs and expenses associated with the service of process.

It is so **ORDERED.**

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.

[1] Federal Rule of Civil Procedure 4(d)(2) provides that "[i]f a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant: (A) the expenses later incurred in making services; and (b) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses." As the waiver of service form provides, "'[g]ood cause' does not include a belief that the lawsuit is groundless, or that is has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property." Thus, Defendants cannot show good cause on those grounds. Defendants also argue that the waivers of service were not signed by Plaintiff, although his name, address, and other information were printed on the forms. Although the form has a signature line, the detailed requirements of Rule 4(d) do not explicitly mention a signature, and the purpose of the signature on the form appears to be related to the certification of the date the form was sent. Because Defendants do not dispute that the waiver form was mailed to them, and the failure to waive service does not concern the timing of the waiver, the lack of a signature does not constitute good cause in this case. The Court will grant the motion to the extent that it will award the costs directly related to the service of process, and which are reasonably supported by Plaintiff's declaration. *See* Doc. 84 at Exh. A, ¶¶ 3b-c. Specifically, the Court awards $759.94 paid to the process server and $154.64 in related expenses Plaintiff avers that he incurred in connection with service of process. The Court will deny the other fees and costs requested by Plaintiff, including costs for research services, other motions, and filing fees. Finally, the Court will deny the motion to the extent it seeks the imposition of sanctions.