

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

CHITTRANJAN K. THAKKAR,

Case No. 6D23-1546

Appellant,

v.

GOOD GATEWAY, LLC, and
ORLANDO GATEWAY
PARTNERS, LLC,

Appellees.

_____ /

On Appeal from the Circuit Court of the Ninth Judicial
Circuit in and for Orange County, Florida

APPELLEES' ANSWER BRIEF

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INTRODUCTION

Chittranjan K. Thakkar, the judgment debtor, will be referred to as “Appellant.” Good Gateway, LLC and Orlando Gateway Partners, LLC, will be referred to as “Appellees.” Citations to the record on appeal will be indicated as (R ___), with the appropriate page number inserted.

SUPPLEMENTAL STATEMENT OF CASE AND FACTS

Appellant’s Statement of the Case and Facts is incomplete. Therefore, pursuant to Florida Rule of Appellate Procedure 9.210(c), Appellees have included a Supplemental Statement of the Case and Facts to ensure that this Court obtains a complete briefing of the appeal.

Appellant barely touches on some of the extensive post-judgment litigation engendered both in federal and state courts as a result of his determined ten-year effort to avoid responsibility for satisfying the valid money judgments entered against him and his related business entities in 2014 and affirmed by the Fifth District Court of Appeal on May 16, 2017. *See Noble v. SEG Gateway, LLC*, 226 So. 3d 852 (Fla. 5th DCA 2017).

The valid judgments, in the approximate amounts of \$2.5 million, \$12 million and \$15 million (with interest continuing to accrue), were entered in 2014 and are predicated on causes of action including fraud and conversion which the jury found were committed by Appellant against the Appellees (R 31,729). The trial court additionally had entered a post-judgment order in the litigation detailing Appellant's commission of fraud on the court, which as part of the appeals was also affirmed.

This appeal is from a final summary judgment entered against Appellant, the judgment debtor, after Appellant's family members (including his Wife, Saloni Thakkar) and related LLCs were ordered impleaded (R 31,808-24) and proceedings supplementary maintained against them pursuant to section 56.29, Florida Statutes (R 31,825-59)(Order Granting Good Gateway, LLC's and SEG Gateway, LLC's Motion for Impleader of Third Parties and Motion for Proceedings Supplementary, hereinafter the "Impleader Order") (R 31,823-25). Appellant's brief makes not a single reference to the federal bankruptcy court's order granting Appellees' motion to implead and for proceedings supplementary, nor does Appellant address section 56.29, Florida Statutes- the primary source for the remedy of which

they complain which was contained in Appellees' motion for summary judgment and argued in the summary judgment hearing.

The extensive post-judgment litigation in multiple jurisdictions has ensnared Appellant's family members because Appellant has made fraudulent transfers for no consideration to various family member insiders in violation of section 726.102, Florida Statutes, of monies, personal debt forgiveness to the various LLCs he controls as well as real property to his Wife, and assets to his two adult sons/business associates, Niloy and Rohan, in avoidance of satisfaction.

The final summary judgment at issue is one of many final judgments and orders entered in Florida alone related to Appellant's post-judgment efforts to avoid and evade payment of these valid judgments.¹ At least three different circuit judges in the Orange

¹ See also *Chittranjan Thakkar and Saloni Thakkar v. Good Gateway, LLC, Orlando Gateway Partners, LLC, and SEG Gateway, LLC, et al.*; Case No. 6D23-4062 (Order Granting Plaintiffs' Second Motion for Final Summary Judgment Against Saloni Thakkar); and *Chittranjan K. Thakkar v. Good Gateway, LLC, Orlando Gateway Partners, LLC, Nilhan Hospitality LLC, Niloy & Rohan, LLC, Orlando Gateway, LLC, Steven C. Smith, et al.*, Case No. 6D24-212, (Amended Order Granting Plaintiffs' Amended Fourth Ex-Parte Motion for Proceedings Supplementary Against Defendants and Judgment Debtors Chittranjan K. Thakkar, Niloy and Rohan, LLC, and Rohan

County Business Court, Judges Jordan, Beamer and Strowbridge, have entered these post-judgment orders adverse to Appellant.

The present iteration of the proceedings supplementary involves entry of final summary judgment in favor of Appellees on one of their many enforcement actions seeking to set aside fraudulent transfers made by Appellant.² The instant summary judgment was entered against Appellant and his Wife who was impleaded into the proceedings by way of the Impleader Order (R 31,822-27), and further were the subject of Counts XI and XII of the supplemental third-party complaint for recovery of fraudulent transfers made by Appellant (R 31,853-56).

Thakkar, for Supplemental Relief to Execute Upon Judgment Debtors' Choses in Action/and Final Judgment, the "Choses in Action Final Judgment") for which judicial notice has been requested, The Choses in Action Final Judgment specifically enjoins Thakkar from taking any action on this appeal, and Order Granting Plaintiffs' Motion to Enforce the Chose In Action Final Judgment, entered March 20, 2024). This Court by Order of April 11, 2024 has denied Appellant's request for an emergency stay of the "Choses in Action Final Judgment."

² See e.g., *Good Gateway v. Thakkar*, 163 A.D.3d 449 (N. Y. 1st Dep't. 2019); *Thakkar v. Good Gateway*, 351 So. 3d 192 (Fla. 5th DCA 2022).

Appellant vigorously litigated these proceedings in certain respects, both in the federal bankruptcy court which entered the Impleader Order, and after remand, filing baseless motions to recuse judges (R 2,938; 3,602; 11,897) as well as a plethora of other fruitless pleadings.

Appellant brushes the federal court proceeding aside as irrelevant asserting “Upon remand, over 20,000 pages of federal court filings were simply placed in the trial court record. Fortunately, the issues on appeal do not require the Court to decipher those portions of the record” (Initial Brief, p. 3).

Appellant only wishes this were true as he has waived any argument as to the trial court’s authority under section 56.29, Florida Statutes, and the Impleader Order, both of which were before the trial court when considering the summary judgment motion and in entering the judgment. Appellant’s brief completely ignores section 56.29 and the Impleader Order, and no wonder. The Impleader Order (together with the underlying motions for impleader and for proceedings supplementary, the supplemental complaint, and affidavit of service on Saloni Thakkar were filed in federal court and

again on the state court docket upon remand, R 31,808-59) and ordered:

During these proceedings supplementary, the Court may enter any order or judgment consistent with § 56.29, Fla. Stat.

(R 31,825).

One recurring theme of this enforcement litigation involves the Appellant and his Wife's repeated failures to comply with applicable statutes and rules of court procedure. For instance, Wife did not timely file an answer to the supplemental complaint and a clerk's default was entered against her (R 31,732). She filed a motion to set aside the default but never caused the motion to be called up for a hearing and ruling (R 31,732). Wife subsequently filed a belated answer asserting defenses of Appellant's alleged solvency and reasonable value relating to Appellant's transfer of assets to her (R 27,359; 31,783-86).

Appellees' January 28, 2021, motion for summary judgment against Thakkar and Wife was based on the Impleader Order entered on December 22, 2015 (R 31,722-27) and Counts XI and XII of the supplemental third-party complaint (R 31,853-56). The motion did

not rely on Wife's default.³ Upon remand to the trial court, Appellees filed their notice of filing the motions for impleader, supplemental complaint, affidavit of service on Saloni Thakkar and the Impleader Order (R 31,808-59). The filing was discrete as to the proceeding supplementary, not the "tens of thousands of pages. . ." asserted by Appellant which distracts this Court from the simple fact that Appellant has waived any argument related to the Impleader Order and the authority provided section 56.29 which the trial court had before it in granting summary judgment. The Impleader Order was not appealed.

Appellees' summary judgment motion recounts an extensive series of post-judgment fraudulent transfers engaged in by Appellant to a joint account with his Wife, concealed by Appellant and only discovered by Appellees in May 2020 (R 31,734-35). The motion additionally referenced Appellant's 2012 execution of a fraudulent

³ At the summary judgment hearing, Appellees' counsel stated, "We are not basing our motion for summary judgment on that clerk's default. We're not going to concede the default is not effective, but we don't believe it is necessary or relevant to the Court to find in favor of Plaintiffs summary judgment" (R 35,558).

deed to Wife during the underlying litigation in an effort to thwart execution on his Manhattan Fifth Avenue condominium.

By summary judgment dated April 30, 2020, a New York court cancelled Appellant's 2012 deed made without value to Wife as constituting a fraudulent transfer (R 32,075-76). This New York litigation involved defenses raised by Appellant and Wife of "fair consideration" and "solvency" which were litigated and expressly rejected by the court. The New York orders found "numerous badges of fraud in the documentary evidence" (R 31,953) that Appellant's solvency was irrelevant (R 32,017) and that intra-family transfers were made for no consideration (R 32,076).

The New York orders were domesticated in Florida and filed by Appellees as exhibits H (R 31,874-75) and Z (R 32,075-76) in support of the summary judgment motion. Appellees maintained that these New York orders should be given preclusive effect against Appellant and his Wife in this litigation wherein they argue the same defenses to the four transfers which they had litigated, and which were rejected, by the New York court.

Additionally, Appellees specifically asserted in its summary judgment motion that after they engaged in extensive and

unsuccessful efforts at discovery from Appellant, Appellees learned in May 2020 from check and bank statements obtained via subpoena from third parties and which Appellant never produced in discovery that Appellant was concealing fraudulently transferred checks to a joint account belonging to he and his Wife in an effort to shield his assets from collection (R 31,734-35).

Appellant was notorious for failing to provide required discovery. Indeed, Judge Jennemann of the bankruptcy court had jailed Appellant for contempt for failing to produce documents and financial records (R 27,052-56). Yet more instances of Appellant's failure to comply with applicable law, this time concerning post-judgment discovery provided for in section 56.30, Florida Statutes,

These transfers by Appellant included the following four checks totaling \$789,236.37: (1) check from Riversource Life Insurance Co., dated February 26, 2015 for \$245,371.56 payable to Appellant (alone) and deposited to Appellant and Wife's joint checking; (2) check from Residence Inn Secaucus, N.J., dated July 27, 2018 for \$462,650.48 payable to Appellant (alone) and deposited to Appellant and Wife's joint checking; (3) check from JS Hotels, LLC, dated March 15, 2019 for \$80,806 payable to Appellant (alone) deposited to

Appellant and Wife's joint checking; and (4) check from Universal Lodging, LLC, dated December 29, 2017 for \$408.33 payable to Appellant (alone) and deposited to Appellant and his Wife's joint checking with notation "Interest on \$70K." Appellees filed copies of these checks written by Appellant during these proceedings supplementary as exhibit J to its motion for summary judgment (R 31,897-903).

The alleged fraudulent transfers were undisputed. Appellant never controverted the four checks, nor the affidavit of the bank's records custodian who authenticated the checks (R 32,380-82). Appellant instead responded by filing a meritless motion for sanctions against Appellees on March 18, 2021 (R 32,131-37). Meanwhile, Appellees filed more support for their motion (R 32,341-82).

On April 13, 2021, a hearing was conducted on Appellees' summary judgment motion. Consistent with the ongoing theme of ignoring court rules, neither Appellant nor his Wife filed a timely written response contesting the grounds of and exhibits attached to Appellees' motion for summary judgment (R 35,552-55).

Three days before the hearing, Appellant filed an untimely “Amended Response to Motion for Summary Judgment in a Proceeding for Which This Court Lacks a Pending Action and Lacks Subject Matter Jurisdiction” (R 32,332-33). Appellant cites to what he calls a “memorandum” which he filed but offers the same record cite as the “Amended Response” (R 32,332).

Despite the provisions of Florida Rule of Civil Procedure 1.510, this “Amended Response” did not specifically contest the facts relating to Appellant’s transfers to the joint account asserted in Appellees’ summary judgment motion but instead focused the court on completely discredited contentions—that the trial court lacked jurisdiction because a separate legal action purportedly had not been properly filed in state court and because the bankruptcy remand to the state circuit court contained an alleged technical flaw (R 32,332-36). The Amended Response did not cite any authority despite the Business Court Procedure 5.2 requirement for a memorandum.

At the April 13 hearing, Appellees’ counsel noted “Rule 1.510(f) provides an opportunity for an opponent to file affidavits and seek more time. There have been no affidavits filed, Your Honor, against our motion for summary judgment, not a single one. The amended

response does not cite one single case or any authority, none. The gravamen of the response is – I will take the liberty of trying to paraphrase the amended response—is that there is no subject matter jurisdiction” (R 35,551).

Further, Rule 1.510(d) provided Appellant with the opportunity to ask the trial court to defer considering Appellees’ motion to allow more time for Appellant to obtain affidavits or declarations or to take discovery. Appellant did nothing and is now constrained by the record before the trial court.

Appellees’ counsel explained to the court that Appellant’s trial counsel, Moffa, had actually previously filed an answer and affirmative defense stating, “Admitted that the nature of this action seeks relief under 56.29(5)(6)(b) and (9) Florida Statutes 2016, and that this court has subject matter jurisdiction over the stated causes of action and that this Court is the appropriate venue” (R 35,569).

Appellees’ counsel further emphasized to the court that “There has not been one single challenge to [the] checks.” Appellant’s trial counsel was pointedly questioned by the trial court, Judge Jordan, during the hearing:

Judge Jordan: . . . did you file a response within 30 days?

Mr. Moffa: I did not, Judge. I did not.

Judge Jordan: Did you request the Court additional time to file a response?

Mr. Moffa: I did not, Judge.

* * *

Judge Jordan: ... no response was filed within 30 days of the motion. So this amended response...why did you call it amended?

Mr. Moffa: Because I knew there were other things that were filed regarding this particular proceeding supplementary...

(R 35,553-54).

Moffa's disingenuous answer revealed the sharp practice which concerned Judge Jordan. There was never any response filed to the summary judgment motion which was subject to being "amended." The style was deceptive; Moffa was unable to offer a cogent explanation for why the belated response was labelled "Amended Response" since no response had been filed (Id). Appellees objected to any consideration of this "Amended Response" (R 35,555-56).⁴

⁴ Appellant's brief (Initial Brief, p. 15) states that "Chittranjan Thakar filed a "memorandum." The so-called "memorandum" is the "Amended Response." Significantly, the "memorandum" failed to preserve the pleading argument raised on appeal as it focused the

Appellees noted that Appellant and Wife failed to timely challenge the grounds in the summary judgment motion or exhibits attached thereto so as to even try and raise a disputed issue of fact (R 35,548-50). Appellees noted Appellant and Wife did not contest the \$789,236.37 in checks deposited by Appellant to the couple's joint account during the proceedings supplementary and attached to the summary judgment motion (R 35,556-57). Appellees also urged that Appellant and Wife's claims of Appellant's solvency and adequate consideration for Appellant's asset transfers had been fully litigated and decided adversely to them in the New York litigation to which they were parties.

Appellant orally raised various arguments at the hearing but Appellees informed the court "These arguments were not in any papers for me to address properly . . ." (R 35,577). Among the arguments were that the trial court lacked subject matter jurisdiction because the 2015 remand from the bankruptcy court was not properly effected due to a clerical issue, that the proceeds transferred by Appellant to his Wife, other than the Riversource Life Insurance

trial court on none of the authorities presented by Appellant in his brief.

monies, occurred after the filing of the 2015 supplemental complaint and are not identified in that complaint, and that under Florida law, proceeds from life insurance are exempt from levy (R 35,559-77). Appellant did not present any evidence in support of its position.

Appellant further argued that despite the New York adjudication, he was solvent in 2014 and 2015. However, as Appellees responded, Appellant again offered mere argument of counsel on the matter of his purported solvency, not the necessary sworn evidence such as an affidavit, and Appellees asked the court to strike the unsubstantiated argument (R 35,566-69). Appellees further indicated to the court that Appellant's own information sheets filed in aid of execution in this case reflected his insolvency (R 35,572-73).

The trial court, after hearing argument, took the matter under advisement. By order of May 5, 2021, the court notified the parties it would apply Florida's new summary judgment standard and permitted Appellant to supplement its opposition with a "sur reply." (R 32,645-46). Appellant notes he refiled his prior "Amended Response," this time labelling it "Second Amended Response." (Initial Brief, p. 16). What is of critical importance is that despite a second

opportunity, Appellant filed no affidavits or evidence in opposition to Appellees' summary judgment evidence.

On June 30, 2021, the court entered summary judgment, finding that Appellant and Wife "did not file and have never filed, a responsive pleading, and therefor pursuant to Business Court Procedure 5.12, as of the filing of this notice, [Appellees'] motion is deemed uncontested as to entitlement" (R 35,550). The court provided a stay of execution of the judgment pending valuation of some assets previously recovered by Appellees in another supplemental proceeding.

Appellant's motions for rehearing were denied (R 34,604; 35,540).

The court ultimately entered a final summary judgment in favor of Appellees in the amount of \$789,236.37 plus accrued interest. Meanwhile, on April 20, 2022, the trial court vacated the stay, finding any further delay in execution was "inequitable" (R 42,656-59).

SUMMARY OF THE ARGUMENT

Point I. Summary judgment was properly entered against Appellant who did not timely or properly contest the motion. Not only did Appellant fail to respond to the motion within the time periods provided by Rule 1.510 (twenty days before the hearing) and the Business Court Procedures (thirty days after service of the motion), but the untimely Amended Response he filed (which amended nothing) just three days before the summary judgment hearing was insufficient to contest the summary judgment motion. Despite the evidence filed by Appellees in support of their motion, Appellant never offered any evidence to counter Appellees evidence or to support his position including purported defenses.

Further, Appellant was afforded a second opportunity to file a response to the summary judgment motion but filed the same baseless response. The Appellant was afforded a hearing on the summary judgment motion. No error, let alone fundamental error, occurred in connection with entry of summary judgment as uncontested.

Point II. Not only was summary judgment proper because it was uncontested, but it was proper on the merits. Counts XI and XII

of the supplemental complaint alleged fraudulent transfers by Appellant. Appellant does not contest that he continued to transfer personal assets to others, including the four transfers involved here, to a joint account he had with his Wife, while the supplemental complaint was pending. Appellant's contention that Appellees were required to file amended complaints every time Appellant made another fraudulent transfer is unsupported by the law and contrary to the remedial purposes underlying section 56.29, Florida Statutes, by which these proceedings supplementary were pursued.

Appellant was not only fully aware of the transfers he continued to make while the proceedings supplementary were pending but he hid these transfers from discovery. Under the circumstances of this case, no prejudice or reversible error occurred in connection with the pleading issue raised on appeal.

Despite ample opportunity. Appellant failed to provide any evidence to support his claim of purported defenses. Appellant was deemed to be insolvent by the New York court relating to the 2012 deed to his wife and Appellant presented no evidence whatsoever countering the presumption of insolvency set forth in section

726.103(2) or reflecting he had returned to solvency when he made the four fraudulent transfers in this case.

The trial court correctly entered a money judgment against Appellant pursuant to section 726.108, Florida Statutes, because he was not only a fraudulent transferor but also a fraudulent transferee in this case.

ARGUMENT

ISSUE I: THE TRIAL COURT DID NOT ERR IN DEEMING APPELLEES' SUMMARY JUDGMENT MOTION UNCONTESTED GIVEN APPELLANT FAILED TO TIMELY AND ADEQUATELY DISPUTE THE CONTENTS OF THE MOTION AS PER THE APPLICABLE RULES OF PROCEDURE.

Standard of Review

Appellees agree that the standard of appellate review is *de novo*.

Argument

The Supreme Court adopted changes to the Florida Rules of Civil Procedure which mandate the timing and content of summary judgment papers. There is ample authority that a trial court does not abuse its discretion in finding a motion undisputed where, as here, there is violation of the timeliness provisions. *See e.g., Guess v. Aberdeen Golf & Country Club, Inc.*, 358 So. 3d 449 (Fla. 4th DCA 2023).

The summary judgment order is based on the fact that the motion was uncontested as well as on the extensive evidence, all provided by Appellees and unchallenged by Appellant.

Appellees' summary judgment motion was 26 pages long (R 31,727-52) and attached Exhibits A-DD (R 31,753-32,096). The

motion specifically asserted and included exhibits showing that “It is undisputed that [Appellant] transferred cash from his solely owned bank accounts to accounts held jointly with Saloni Thakkar in his ongoing pattern of fraudulent transfers.” Appellees also filed additional support for their motion (R 32,341-82).

Appellant never controverted this record evidence.

The applicable rules and case law support that untimely and incomplete opposition may be deemed “uncontested.” Appellant’s “amended response” was clearly untimely. Fla. R. Civ. Pro. 1.510(b). *See Guess*, 358 So. 3d at 449.

Under Florida Rule of Civil Procedure 1.510(c)(5), the nonmovant “must serve a response that includes the nonmovant’s supporting factual position” This must be done at least twenty days prior to the hearing. *Id.* A court may ignore evidence which is untimely proffered under this rule. *See e.g., Full Pro Restoration v. Citizens Ins.*, 373 So. 3d 1189 (Fla. 3d DCA 2023)(trial court properly ignored evidence proffered six days before the summary judgment hearing).

Not only did Appellant fail to file an appropriate response but Appellant’s trial counsel, Mr. Moffa, did not submit an affidavit as to

why Appellant could not adequately respond to summary judgment, including the need to conduct additional discovery. See Rule 1.510(d).

Because Appellant did not file a response with a supporting factual position, the trial court properly deemed Appellees' motion for summary judgment uncontested. *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131 (Fla. 4th DCA 2022). The record establishes the complete lack of evidence to support Appellant's purported defenses which renders summary judgment proper. See *Patient Depot, LLC v. Acadia Enterprises*, 360 So. 3d 399 (Fla. 4th DCA 2023).

On appeal, Appellant raises several contentions which were never fully argued in opposition to entry of summary judgment. Meanwhile, Appellant's Brief is completely silent as to section 56.29, Florida Statutes, which provides the specific legal authority for Appellees' proceeding. Section 56.29 offers a comprehensive mechanism for relief to judgment creditors such as Appellees. Subsection 56.29(1) provides:

When any judgment creditor holds an unsatisfied judgment or judgment lien obtained under chapter 55, the judgment creditor may file a motion and an affidavit so stating, identifying, if applicable, the issuing court, the

case number, and the unsatisfied amount of the judgment or judgment lien, including accrued costs and interest, and stating that the execution is valid and outstanding, and thereupon the judgment creditor is entitled to these proceedings supplementary to execution.

§ 56.29(1), Fla. Stat.

Subsection (6)(a) allows the court to order any property of the judgment debtor not exempt from execution or any property, debt or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the notice to appear to be levied upon and applied toward satisfaction of the judgment debt. The subsection continues that “The court may enter any orders, judgments or writs required to carry out the purpose of this section.”

Subsection (9) gives the court broad authority to fulfill the purpose of the statute:

The court may entertain claims concerning the judgment debtor’s assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 brought under this section shall be initiated by a supplemental complaint and served as provided by the rules of civil procedure, and the claims under the supplemental complaint are subject to chapter

726 and the rules of civil procedure. The clerk of the court shall docket a supplemental proceeding under the same case number assigned to the original complaint filed by the judgment creditor or the case number assigned to a judgment domesticated pursuant to s. 55.01, shall assign a separate supplemental proceeding number, and shall assign such supplemental proceeding to the same division and judge assigned to the main case or domesticated judgment.

§ 56.29(9), Fla. Stat.

Appellees' motion which led to entry of the Impleader Order cited subsection (9) which authorizes the court to enter any orders, judgments or writs required to carry out the statutory purpose "against any impleaded defendant" (R 31,818). A motion for impleader which leads to an order of impleader is a sufficient pleading to support affirmative relief. *See Polizzi v. Paulshock*, 52 So. 3d 786 (Fla. 5th DCA 2010).

Appellant's position completely ignores the purpose of section 56.29 which is to provide a useful and efficacious remedy to enable a judgment creditor not only to discover assets which may be subject to its judgment but to subject them to a prompt and direct proceeding in the same court in which the judgment was recovered. *Estate of Jackson v. Ventas Realty*, 812 F.Supp.2d 1306, 1309 (M.D. Fla.

2011), citing *Regent Bank v. Woodcox*, 636 So. 2d 885, 886 (Fla. 4th DCA 1994).

Regent Bank explains that this statutory procedure “was designed to avoid the necessity of the judgment creditor initiating an entirely separate action for a creditor’s bill.” 636 So. 2d at 886. Appellees’ motion, which led to entry of the Impleader Order, emphasized that section 56.29 is “designed to avoid the necessity of a judgment creditor having to initiate an entirely separate action in order to reach assets of a judgment debtor” (R 31,819).

As expressed in *Mission Bay Campland, Inc. v. Sumner Fin. Corp.*, 72 F.R.D. 464, 466 (M.D. Fla. 1976), through this statutory mechanism, the Florida Legislature intended to provide “a swift, summary disposition of issues through the relief of equitable remedies.”

It is axiomatic that section 56.29 is to be liberally construed to assist judgment creditors against recalcitrant judgment debtors and provide such creditors with the most complete relief possible. *Mejia v. Ruiz*, 985 So. 2d 1109, 1112 (Fla. 3d DCA 2008). *See LB Judgment Holdings, LLC v. Boschetti*, 271 So. 3d 115 (Fla. 3d DCA 2019); *National Marine Services, Inc. v. Straub*, 979 F.Supp.2d 1322, 1327

(S.D. Fla. 2013). Courts have “broad discretionary powers” to carry out the purpose and intent of section 56.29 which is equitable in nature. *Donan v. Dolce Vita Sa, Inc.*, 992 So. 2d 859. 861 (Fla. 4th DCA 2008).

The trial court’s summary judgment ruling not only comports with Rule 1.510, but it also comports with these well-established principles governing proceedings supplementary under section 56.29, principles which Appellant does not and cannot contest.

Additionally, the present action is a post-judgment proceeding to set aside fraudulent transfers made by Appellant to avoid valid judgments. As an equitable proceeding, there is no right to a jury trial in a proceeding supplementary seeking to set aside a fraudulent transfer. *Mission Bay*, 72 F.R.D. at 466.

Appellant’s actions in failing to comply with the applicable rules of procedure and now seeking relief from such non-compliance, are clearly designed to frustrate and defeat the clear and salutary legislative purpose underlying section 56.29.

Appellant correctly points out that since the summary judgment was decided on February 17, 2023, after the amendment to Florida Rule of Civil Procedure took effect on May 1, 2021, the amended rule

governs this case. *See In re Amends. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 77 (Fla. 2021)(providing that “rule 1.510 takes effect on May 1, 2021. This means that the new rule must govern the adjudication of any summary judgment motion decided on or after that date, including in pending cases”). The amended rule adopts the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

As amended, Rule 1.510(a) provides that the trial court “shall state on the record the reasons for granting or denying” summary judgment. Appellant, availing itself of the amended rule, erroneously contends that the trial court failed to do so.

In the order granting final summary judgment, the trial court set forth two grounds, one of which was that the motion is deemed uncontested as Appellant and Wife “did not file, and have never filed a responsive pleading, and therefore pursuant to Business Court Procedure 5.12 [Appellees’] Motion is deemed uncontested as to entitlement” (R 32,128; 32,817). The trial court’s determination is amply supported by the facts, Rule 1.510 and the Business Court Procedures.

Even though the current iteration of Rule 1.510 was not in effect at the time of the April 13, 2021, summary judgment hearing, Appellant had been offered by the trial court a second opportunity, on May 5, 2021, to properly contest the merits of Appellees' motion for summary judgment (R 32645-46). Appellant once again passed up this opportunity by merely re-filing in essence the same worthless "amended response" (R 32,780). In addition, he was accorded a hearing on the summary judgment motion. Appellant's contention on appeal that he was somehow denied due process in connection with his failure to properly contest Appellees' summary judgment motion or that fundamental error occurred in the process leading to entry of summary judgment is preposterous.

The present version of Rule 1.510(c) sets forth the procedures for moving for summary judgment. Appellees, as movant, bore the initial responsibility of informing the court of the basis for its motion and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. Appellees could discharge this burden by directing the court's attention to the fact that there is an absence of evidence to support the non-movant's defenses. *Patient Depot*, 360 So. 3d at

399; *Jeffrey v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593-94 (11th Cir. 1995).

Appellees buttressed the supporting factual positions in its motion by citing to and serving upon Appellant, the judgment debtor, numerous exhibits establishing, *inter alia*, Appellant's direction of checks made out to him personally instead to a joint account he held with his Wife "in an effort to shield his personal assets from collection" (R 31,735). In addition, the motion provides evidence that Appellant's identical defenses had previously been rejected by the New York courts (relating to fraudulent actions taken by the Appellant in that state) and that Appellant offered no evidence demonstrating triable defenses to his fraudulent transfers.

Once Appellees met their burden, the onus shifted to the Appellant to come forward with affirmative evidence in support of its position. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 252, 257 (1986). Appellant could not simply rest on mere allegations or denials of the Appellees' evidence but was required to set forth specific proof showing a genuine issue for trial. *Celotex*, 477 U.S. at 322; *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997).

See Rule 1.510(c) which sets forth the need to support factual positions “by citing to particular parts of materials in the record ...”

Appellees met its initial burden of demonstrating fraudulent transfers of monies belonging to Appellant to the joint account and the lack of a viable defense. The bank checks showing the judgment debtor transferred personal funds into the joint account were supported by the uncontroverted affidavit of the bank records custodian (R 32,380-82). Appellant never controverted these transfers.

Appellant, rather than contest the summary judgment averments and evidence, failed to timely respond to assert that any of the facts relied upon by Appellees in their motion were not supported by admissible evidence or to offer his own supporting factual position. As required by rule 1.510(c)(5), “At least 20 days before the time fixed for the hearing, the nonmovant must serve a response that includes the nonmovant’s supporting factual position ...” Subsection 1.510(e) addresses a nonmovant’s failure to properly address a fact:

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or **fails to properly address**

another party's assertion of fact as required by rule 1.510(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials-including the facts considered undisputed- show that the movant is entitled to it; or
- (4) issue any other appropriate order.

Fla. R. Civ. P. 1.510(e)(emphasis added).

As our supreme court has explained, the reason for this timing-related aspect of Rule 1.510 is “to reduce gamesmanship and surprise and to allow for more deliberative consideration of summary judgment motions.” *In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 77 (Fla. 2012).

Appellant’s tactics were precisely what the amended rule is designed to prevent. Appellant utilized gamesmanship and ambush in seeking to contest the summary judgment just three days before the hearing by way of his disingenuously labelled “Amended Response” but which he ultimately acknowledged amended nothing (R 35,555-56).

More importantly, this so-called “Amended Response” (R 32,332-39) focused the trial court on discredited theories which related to the court’s purported lack of jurisdiction, theories which are not even raised as argument by Appellant in his Initial Brief. This “Amended Response” did not contest the critical facts alleged in the summary judgment motion and accompanying Exhibits. This “Amended Response” was not accompanied by affidavits, depositions, or controverting evidence. Nor did it cite to any legal authority as required by Business Court Procedure 5.2. The “Amended Response” posed no impediment whatsoever to entry of summary judgment. Nor did Appellant’s Second Amended Response (R 32,780-88) which is a pure rehash of the “Amended Response.”

Appellant’s attempt at the summary judgment hearing to improperly contest Appellees’ summary judgment motion was properly rejected by the trial court since Appellant had failed to timely and properly contest the facts and allegations of the Motion. Appellant’s effort to do so at the hearing came far too late. Notwithstanding, the transcript of the hearing demonstrates that the trial court still considered the “merits” of Appellant’s untimely

response and Appellant's oral argument, rather than summarily enter judgment solely on untimeliness.

The record conclusively confirms that Appellant failed to timely and properly contest Appellees' factual assertions or law contained in the summary judgment motion as required by rule 1.510 and the Business Court Procedures.

Appellant further completely ignored the Ninth Circuit Business Court Procedures ("BCP"). BCP 5.13 entitled "Failure to File and Serve Motion Materials" provides:

The failure to file a memorandum in opposition or reply within the time specified in this section shall constitute a waiver of the right thereafter to file such memorandum in opposition or reply, except upon a showing of excusable neglect. A motion unaccompanied by a required memorandum may, in the discretion of the court, be summarily denied. **Failure to timely file a memorandum in opposition to a motion may result in the pending motion being considered and decided as an uncontested motion.**

BCP 5.7 provides that the party opposing a motion for summary judgment file a memorandum in opposition within thirty days of service of the summary judgment motion. Appellees' motion was served on January 28, 2021 (R 31,727) and Appellant admitted at

the hearing that he did not file a written response within thirty days (R 35,551-55). Nor did he file a response at least 20 days before the time fixed for the hearing.

BCP 5.5 provides that summary judgment motions “shall be considered and decided” based upon summary judgment evidence “and, if a hearing is not waived, based on arguments at the summary judgment hearing.” However, because a timely memorandum in opposition to Appellees’ summary judgment motion was not filed as required by BCP 5.07, and rule 1.510(c)(5), the trial court properly determined that Appellees’ summary judgment motion was uncontested as per BCP 5.13.

Appellant was in fact afforded a hearing on Appellees’ summary judgment motion and was permitted to be heard (R 35,559-79). However, the trial court correctly determined at the conclusion of the hearing that Appellees’ summary judgment motion, including the facts and law contained therein, was uncontested as Appellant failed to timely file a written response properly contesting said motion. Appellant never asked the court, by motion or at the hearing, for a continuance, or to defer ruling to give Appellant time to garner and file evidence in opposition. Fla. R. Civ. Pro. 1.510(f).

By rule, Appellant's failure to timely file a written response was a waiver of the right to offer a response. Appellant's belated effort, three days before the hearing, to file the "Amended Response" in opposition to summary judgment and to try and contest summary judgment was properly rejected both because it was untimely and because it was legally insufficient.

Appellees' summary judgment motion was rightly considered by the trial court to be uncontested. It is evident that the trial court had no patience with Appellant's efforts to manipulate and disrespect **both** the summary judgment and Business Court rules in this proceeding supplementary, and to frustrate the legislature's intent in enacting section 56.29, that such proceedings provide "a swift, summary disposition of issues through the relief of equitable remedies." *Mission Bay*, 72 F.R.D. at 466. The trial court's decision was correct and rejected Appellant's ongoing practice of fraudulent transfer of assets intended to evade Appellees' ability to lawfully execute on money judgments validated by the Fifth District Court of Appeal in 2017.

ISSUE II. THE TRIAL COURT DID NOT ERR IN ENTERING FINAL SUMMARY JUDGMENT FOR THE APPELLEES BASED ON THE UNCONTESTED MOTION.

Standard of Review

See Issue I.

Argument

Appellant neither timely nor properly contested the factual allegations or grounds contained in the motion for summary judgment. Appellant vigorously attempts to do so on appeal, but this is improper, and the belated effort comes far too late and must be rejected.

As a result of Appellant's failure to properly contest, the facts were admitted and are settled. As per Appellees' summary judgment motion, Appellant, the judgment debtor, is deemed to have made the four transfers of specifically identified checks made out to him, totaling \$789,236.37, to the joint account held by him and his Wife in an effort to shield his personal assets from collection under the valid judgments and to lack a meritorious defense to these fraudulent transfers (R 31,735).

A. Belated Claims and Purported "Potential Defenses" Raised on Appeal.

Appellant belatedly argues on appeal that he has “potential defenses” to what he labels as “surprise” and unpled grounds contained in Appellees’ January 28, 2021, summary judgment motion. The real “surprise” is that despite having ample opportunity below to timely and properly raise and provide legal and factual support for these purported “potential defenses” including alleged pleading deficiencies in opposition to the motion, Appellant did not do so. Instead, he seeks to argue them now as forming a basis for reversal on appeal.

This is yet another example of Appellant using non-compliance with the rules of court, in this instance governing summary judgment, in an effort to evade the remedies provided by the legislature in section 56.29 for satisfaction of valid judgments, a critical provision ignored in Appellant’s Initial Brief.

Appellant had every opportunity to timely assert and provide necessary support for his claimed “potential defenses” in opposition to the motion but admitted below that no response was filed to the motion within 30 days of service and no request for an extension was sought (R 35,552-55). Further, Appellant did not file a proper

response at least twenty days prior to the hearing to support his factual positions.

Appellant's claims of prejudice suffered in connection with the entry of summary judgment are the direct and natural result of his own doing. In fact, to accept Appellant's position on appeal would severely and unjustly prejudice Appellees in its efforts to satisfy valid judgments.

Appellant's refusal to comply with the rules governing summary judgments resulted in Appellant's failure to engage on the purported "potential defenses" he now urges on appeal. Had he properly raised and supported these defenses in opposition to the motion for summary judgment, they could have been timely and properly addressed in the trial court. If the court deemed summary judgment improvident, it could have so ordered, and the case could have progressed accordingly. Instead, it is obvious that Appellant was not interested in moving the proceedings toward a decision but rather wished to delay and interfere with the orderly administration of justice.

Significantly, not one of Appellant's purported "potential defenses" he raises on appeal deny that Appellant, during the

pendency of the execution proceedings, engaged in the series of post-judgment transfers of his personal assets to accounts held jointly by he and his Wife, as set forth in the summary judgment motion, including:

- a) a check from Riversource Life Insurance Company, dated February 26, 2015, for \$245,371.56, payable to “Chuck Thakkar” and deposited into his and his wife’s joint account;
- b) a check from Residence Inn Secaucus, dated July 27, 2018, for \$462,650.48, payable to “Chuck Thakkar” and deposited into his and his wife’s joint account;
- c) a check from JS Hotels LLC dba Comfort Suites Augusta Georgia, dated March 15, 2019, for \$80,806, payable to “Chuck Thakkar” and deposited into his and his wife’s joint account;
- d) a check from 328 Universal Lodging I LLC dba Fairfield Inn and Suites Atlanta Airport North, dated December 29, 2017, for \$408.33, payable to “Chuck Thakkar” and bearing the memo “Interest on \$70k,” and deposited into his and his wife’s joint account.

(R 31,735; 43,809).

Not only did Appellant fail to timely contest the allegations in the summary judgment motion, but Appellant also concedes on appeal that he continued to engage in the substantial transfer of his personal assets to family members well after the supplemental

complaint alleging he engaged in fraudulent transfers to his Wife and other family members had been filed (Initial Brief, pp. 34-35). It was further unchallenged that Appellant concealed from disclosure during discovery in aid of execution the four transfers of personal assets to the joint account (R 31,734-35).

Appellant's argument, that these fraudulent transactions were not specifically pled in Appellees' supplemental complaint based on fraudulent transfers and could not form the basis for judgment should be rejected. The cases relied upon by Appellant, none of which were cited to the trial court, involve the failure to plead, prejudgment, causes of action. Not a single case relied upon on appeal by Appellant for reversal involves a post-judgment action such as the instant one brought pursuant to section 56.29 involving proceedings supplementary. Nor do Appellant's cited cases involve circumstances where, as here:

- (1) the trial court determined, and the record establishes that summary judgment was uncontested, *i.e.*, Appellant failed to timely and properly challenge entry of judgment as sought by Appellees, and
- (2) the cause concerned supplemental proceedings of an equitable nature brought against Appellant, the judgment debtor

alleging fraudulent transfers wherein it was conclusively established that Appellant: (A) continued while the proceedings supplementary were pending to repeatedly engage in the transfer of his personal assets to other family members, and (B) concealed these transfers from discovery.

None of the pleading cases cited by Appellant apply in the context of a proceeding brought pursuant to section 56.29 and under the circumstances presented. Appellant was fully aware of the transfer of his personal assets at issue; he himself made the transfers. Appellant continued to make fraudulent transfers even after the supplemental complaint alleging that he made fraudulent transfers was filed in 2015 and was pending. Appellant suffered no prejudice in connection with the state of the pleadings.

Appellant's refrain of some pleading "surprise" rings completely hollow; the true "surprise" to Appellant regarding his continued transfer of personal assets to family members during the proceedings supplementary is that Appellees was able to discover these transfers despite Appellant's concealment during discovery (R 31,734). Simply put, Appellant's actions were clearly designed to frustrate the legislative purpose underlying section 56.29 and his argument

claiming an unfair pleading surprise and inability to raise “potential defenses” which the summary judgment proceeding showed he lacked is baseless.

To borrow from *Exceletech, Inc. v. S.W. Williams*, 579 So. 2d 850, 852-53 (Fla. 5th DCA 1991)(*en banc*), approved 597 So. 2d 275 (Fla. 1992), a case involving proceedings supplementary, “Fair notice of the allegations by [Appellees] in seeking to collect on [their] judgment was afforded to [Appellant] and [Appellant] was given the opportunity to present its case at a hearing before an impartial decision maker.”

As explained above, proceedings under section 56.29 are designed to avoid the necessity of a judgment creditor having to initiate an **entirely separate action** in order to reach assets of a judgment debtor. Consistent with the purpose of section 56.29, Appellees were not required to initiate a new or amended complaint every time they uncovered yet another fraudulent transfer. Appellant’s unsupported theory of pleading in supplemental proceedings would require a judgment creditor such as Appellees to file innumerable amended complaints with ensuing answers, contrary to section 56.29’s stated purpose of “a swift, summary disposition of issues ...” *Mission Bay*, 72 F.R.D. at 466.

Neither Appellant's untimely "Amended Response" nor argument at the summary judgment hearing offered any legal authority whatsoever requiring that Appellees file amended complaints for Appellant's four undisclosed transfers at issue here. Appellant's position is contrary to the purpose of section 56.29 and the express language in the Impleader Order warning Appellant that the court may enter any order or judgment consistent with section 56.29 (R 31,825). The summary judgment is entirely consistent with section 56.29.

B. Appellant's Argument Regarding the Legal Effect of the New York Litigation and Entry of Summary Judgment Ruling He Fraudulently Transferred Assets to Wife.

Appellant failed to properly challenge Appellees' motion for summary judgment and the trial court correctly found, in granting summary judgment, that the motion was uncontested. The facts alleged in the motion were settled due to Appellant's failure to properly contest them.

In other words, by declining to properly contest the motion, Appellant failed to challenge Appellees' evidence of the four transfers to Wife and the absence of meritorious defenses to his fraudulent

transfers including his purported solvency and his purported receipt of equivalent value.

Appellees specifically asserted in its summary judgment motion that the issues of Appellant's solvency and lack of equivalent value had been resolved against Appellant and Wife by way of the April 30, 2020, New York final judgment, domesticated in Florida (R 31,898-31,903; 32,075-76)-the exact same parties to the Impleader Order, the supplemental complaint and the summary judgment order complained of. In the New York action, the New York court cancelled the deed given by Appellant to his Wife, without value, to the Manhattan condominium he owned (R 32,075-76).⁵ In doing so, the New York court rejected Appellant and Wife's defenses that Appellant was solvent or received reasonable value when he transferred the deed in 2012, during the pendency of the underlying litigation. The

⁵ Appellant unnecessarily focuses on the April 17, 2019, New York final judgment which set aside as fraudulent, transfers made by Appellant to his son, Rohan Thakkar, totaling \$3,653,199.16. While that judgment was referred to below, for purposes of collateral estoppel, application of the April 30, 2020, New York final judgment cancelling the deed is much more efficacious since as Appellant concedes, the deed lawsuit involved Appellees as well as Appellant and his Wife, each parties to the present action, and the express rejection by the New York court of the same two defenses raised by Appellant in the present action.

New York court additionally found Appellant was not a credible witness and noted that millions had disappeared from his financial statements. *Id.*

As Appellees asserted in their motion for summary judgment, the New York courts, in applying both New York and Florida law, explained that solvency is merely one badge of fraud (R 29,383), that numerous badges of fraud existed in the documentary evidence (R 31,953) and noted the existence of intra-family transfers for no consideration (R 32,076). Under section 726.105(2), Florida Statutes, the list of badges of fraud is not intended to be exclusive and no badge alone is dispositive.

Florida courts look to the totality of the circumstances surrounding a judgment debtor's transfer. *In re Ramsurat*, 361 B.R. 246, 253 (Bankr. M.D. Fla. 2006). "While a single badge of fraud may create only a suspicious circumstance, several of them together may afford a basis to infer fraud." *Mejia*, 985 So. 2d at 1113. Evidence of multiple badges creates a *prima facie* case and raises a rebuttable presumption that the transaction is void. *National Marine Servs.*, 979 F. Supp. 2d at 1328.

Courts also look to the “economic reality” of the situation and consider factors such as the good faith of the parties, the disparity of the fair value of the property and what the debtor actually received, and whether the transaction was at arm’s length. See *In re Miami General Hosp., Inc.*, 124 B.R. 383, 394 (Bankr. S.D. Fla. 1991); *In re Dealers Agency Services, Inc.*, 380 B.R. 608, 619 (Bankr. M.D. Fla. 2007). Each of these factors support a finding of fraud in this case.

Appellant acknowledges that he and his Wife were parties to the New York action and that their two defenses here, solvency and equivalent value, are identical to the defenses raised therein which were litigated and rejected in New York. Appellant argues on appeal that the time periods were different with Appellant giving the fraudulent deed in New York in 2012, while making the fraudulent transfers in this case some years later.

However, his argument is just that, mere argument and absurd argument at that. Appellant offered no evidence whatsoever in support of his claim on appeal that, despite the pending, unsatisfied multimillion dollar judgments entered against him in 2014, he may have somehow returned to solvency after 2012 and was solvent when he made the four transfers to his Wife involved in this matter. The

reason for Appellant's lack of evidence is obvious: Appellant was not solvent when he made the four transfers in this case, any more so than when he gave his Wife the fraudulent deed to his Manhattan condominium.

Further, section 726.103(2), Florida Statutes, provides that a debtor such as Appellant who is generally not paying his debts as they become due is presumed to be insolvent. No evidence was presented by Appellant countering this presumption. As Appellees pointed out to the court, without contradiction, Appellant's own information sheets, filed in aid of execution, demonstrated his insolvency in this matter (R 35,571-72).

As asserted by Appellees and unchallenged by Appellant, the issues in the New York fraudulent deed case involved the identical parties, including Appellant and his Wife, and full litigation of the very same defenses (purported solvency and lack of equivalent value) raised in the present case. In the absence of contravening evidence, the final decision in New York would have collateral estoppel effect on Appellant in this case. *See Thakkar v. Good Gateway*, 351 So. 3d at 195.

While the Fifth District in *Thakkar* ultimately reversed a summary judgment against Appellant for a fraudulent transfer, the previous New York litigation relied on in that case, unlike here, did not involve the same parties. Further the summary judgment in that case was entered under the “old” summary judgment standard and not the modified standard applicable here.⁶

The amended summary judgment rule changes the law as to when a genuine factual dispute is deemed to exist. Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Rule 1.510(a). Under the amended rule, “the correct test for the existence of a genuine factual dispute is whether ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” *In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d at 75.

As the supreme court has explained:

“Under the new rule, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no

⁶ Appellees also noted in their motion that there was no evidence that Appellant received any value whatsoever for the monies he transferred to the account jointly owned by him and his Wife. Appellant never contested this assertion which became established fact.

reasonable jury could believe it, a court should not adopt that version of facts for purposes of ruling on a motion for summary judgment. *Scott v. Harris*, 550 U.S. 372, 380 (2007). In Florida, it will no longer be plausible to maintain that the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the slightest doubt is raised.” Bruce J. Berman & Peter D. Webster, *Berman’s Florida Civil Procedure*, s. 1.510:5 (2020 ed.)(describing Florida’s pre-amendment summary judgment standard).

Given the record in this non-jury fraudulent transfer case, no reasonable judge would believe Appellant’s purported defenses in these proceedings supplementary and thus summary judgment was proper.

Appellant’s argument on appeal, that Appellees erroneously relied on the April 30, 2020, New York final judgment to establish facts at issue is wrong. The facts became settled as a result of Appellant’s failure to properly contest them and under settled Florida law set out above, the evidence established Appellant’s four transfers in this matter to the joint account were fraudulent. The April 30, 2020, New York judgment has the beneficial effect of confirming the

baselessness of Appellant's purported defenses to the four transfers involved here.

C. Purported Life Insurance Defense.

Section 222.13, Florida Statutes, may in certain circumstances insulate death benefits payable under a life insurance policy from claims of creditors. The statute recognizes the wording of the life insurance policy may provide otherwise. Section 222.14, Florida Statutes, exempts cash surrender value of life insurance policies from creditors.

While Appellant argued below and on appeal that these statutes applied to the proceeds from Riversource Life Insurance Company which he transferred to the joint account, Appellant did not support his purported defense with any evidence whatsoever of the policy language or even that these monies were paid to him as a death benefit or as cash surrender value. Under these circumstances, this completely unsupported defense did not preclude entry of summary judgment.

In sum, no reversible error has been demonstrated in connection with entry of summary judgment.

D. Entry of Money Judgment Against Appellant.

Appellant contends it was error to enter a money judgment against him in this proceeding supplementary because judgments were previously entered against him in the main actions, and a money judgment cannot be entered against a fraudulent transferor. Appellant implicitly acknowledges that his argument in this regard represents the minority view of Florida law under its version of the Uniform Fraudulent Transfer Act (“UFTA”), section 726.108(1), Florida Statutes.

Section 726.109 has been held to authorize damage awards against both the fraudulent transferor or judgment debtor and the fraudulent transferee, jointly and severally. *McCalla v. E.C. Kenyon Const. Co., Inc.*, 183 So. 3d 1192, 1194 (Fla. 1st DCA 2016); *Hansard Constr. Corp. v. Rite Aid of Fla., Inc.*, 783 So. 2d 307 (Fla. 4th DCA 2001)(“a plaintiff may recover money damages against the transferor under the so-called catch-all provision” found in section 726.108 which provides that in addition to the remedies specifically enumerated, a movant may be entitled to “[a]ny other relief the circumstances may require.”).

Significantly, Appellant overlooks that in this proceeding he is **both** a fraudulent transferor **and** a fraudulent transferee. Checks

were written from his sole account to an account he owned with his wife. Entry of judgment against Appellant under section 726.109 was proper because he was not simply a fraudulent transferor, he was also a fraudulent transferee.

Appellant received two improper benefits which make his fraud all the more contemptible: (1) he evades Appellees' ability to collect on their valid judgments against him, (2) yet he continues to enjoy the benefit of the transferred assets which are now in a joint account with his wife.

Appellant relies on an Eleventh Circuit Court of Appeals decision, *SE Property Holdings, LLC v. Welch*, 65 F.4th 1335 (11th Cir. 2023), wherein the federal court predicted the Florida Supreme Court would hold judgment cannot be entered against a fraudulent transferor because section 726.108 does not explicitly authorize such remedy. The *SE Property* court believed *Hansard* and *McCalla* were wrongly decided. The *SE Property* court essentially wrote the catch-all language out of the statute, thereby constricting a judgment creditor's possible remedies for fraudulent transfers. This despite the fact that there is no indication the legislature ever attempted to legislatively overrule *Hansard* and *McCalla* to eliminate the

availability of entry of a money judgment against a fraudulent transferor.

Irrespective of *SE Property*, a money judgment against Appellant was proper because Appellant was not just a fraudulent transferor, he was a fraudulent transferee. Judgment was properly entered against him as a fraudulent transferee.

Alternatively, even based on his status as fraudulent transferor, judgment was proper. The remedies set forth in the UFTA are equitable in nature. *Hansard*, 783 So. 2d at 308.⁷ As the *Hansard* decision noted, other states which have considered the issue allow for money damages to be awarded against the transferor pursuant to the “catch-all” language in an action under the UFTA. *Id* at 309, citing *Profeta v. Lombardo*, 600 N.E. 2d 360 (Ohio App. 1991).

Section 726.108 grants courts broad equitable authority and if ever a case justified entry of a judgment against a transferor who is

⁷ This Court should reject Appellant’s pleading argument. Counts XI and XII in the Appellees’ supplemental complaint in the proceedings supplementary alleging fraudulent transfers by Appellant sought levy and execution on the assets of Appellant as well as “Such other equitable relief as the Court may deem appropriate.” As noted previously, Section 56.29 governing proceedings supplementary is to be liberally construed to afford creditors the most complete relief possible. *Meija*, 985 So. 2d at 1112.

also a transferee, this is that case. *McCalla* and *Hansard* remain correct statements of Florida law but nevertheless, judgment was properly entered against Appellant as a fraudulent transferor as well as a fraudulent transferee.

CONCLUSION

Florida statutes and case law emphasize the protection of judgment creditor's rights and liberally construe available remedies. Appellant's misuse of the judicial system to avoid satisfying Appellees' valid judgments against him should be brought to a merciful end. Appellant's undisputed and continual transfer of his personal assets to family members to evade collection while Appellees' proceedings supplementary are pending, and further concealing such transfers from discovery and ignoring court rules and procedures while demanding on appeal strict compliance with the law, should not be countenanced.

Appellant did not comply with the rules requiring properly and timely challenging the summary judgment motion which was correctly deemed uncontested. The rules having meaning, especially for vexatious litigants such as Appellant. For the foregoing reasons, Appellees respectfully requests that this Court AFFIRM the summary final judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was e-filed pursuant to Florida Rule of Judicial Administration 2.525 and that the foregoing was served by email or U.S. regular mail in compliance with Florida Rule of Judicial Administration 2.516(b)(1)(A) to: **Matthew J. Conigliaro, Esquire**, Carlton Fields, P.A., 4221 West Boy Scout Boulevard, Suite 1000, Tampa, Florida 33607 (Appellate Counsel for Appellant); **Clay Townsend, Esquire** Morgan & Morgan, 20 North Orange Avenue, Suite 1600, Orlando, Florida 32801-4624 (Email: ctownsend@forthepeople.com) (Trial Counsel for Appellees); this 12th day of April, 2024.

/s/ John N. Bogdanoff

JOHN N. BOGDANOFF, B.C.S.

Florida Bar No. 297143

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(B), as amended, this pleading was prepared using proportionately spaced Bookman Old Style 14-point font and complies with the applicable font and word count limit requirements.

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