

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

CIRCUIT CIVIL DIVISION

CASE NO.: 19-011000-CA-01

DISTRICT COURT CASE NO. 24-1996

REBECCA VARGAS  
FUENMAYOR, an individual

Plaintiff,

vs.

RUTH VARGAS FUENMAYOR,  
an individual; REELIAH SILVA  
VARGAS, an individual; and  
OCEAN BANK, a Florida  
Corporation

Defendants.

/

**AMENDED NOTICE OF APPEAL**

NOTICE IS GIVEN that REBECCA VARGAS FUENMAYOR, Plaintiff/Appellant, appeals to the Third District Court of Appeal, the order of this court (the "order") rendered October 8, 2024, a conformed copy of which is attached. The nature of the order is one granting final summary judgment in favor of RUTH VARGAS FUENMAYOR, REELIAH SILVA VARGAS, and OCEAN BANK. The order was originally entered on September 20, 2023, and its rendition was tolled until October 8, 2024, the date the court filed a

signed, written order disposing of Plaintiff/Appellant's timely filed motion for rehearing. A conformed copy of this order is also attached.


The order disposed of all claims in the action except for OCEAN BANK's counterclaim and crossclaim for interpleader, which were due to be dismissed. On December 3, 2004, a Joint Stipulation for Dismissal Without Prejudice was filed dismissing OCEAN BANK's counterclaim and crossclaim for interpleader. A conformed copy of this dismissal is also attached.

### **CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished the following counsel of record via the Florida Courts E-Filing Portal and via email on this 17<sup>th</sup> day of December 2024:

Ronald G. Neiwirth, Esq.  
Lori A. Sochin, Esq.  
LUBELL | ROSEN  
9130 S. Dadeland Blvd., Suite 1504  
Miami, FL 33156  
Tel: (305) 655-3425  
Fax: (954) 755-2993  
[rqn@lubellrosen.com](mailto:rqn@lubellrosen.com)  
[las@lubellrosen.com](mailto:las@lubellrosen.com)  
[maria@lubellrosen.com](mailto:maria@lubellrosen.com)  
*Attorneys for Ruth Vargas Fuenmayor and Reelaiah Silva Vargas,  
Appellees*

Brian Recor, Esq.  
Ocean Bank Legal Department  
780 N.W. 42nd Ave.  
Suite 625  
Miami, FL 33126-5540

STATE OF FLORIDA, COUNTY OF MIAMI-DADE  
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE  
ORIGINAL ON FILE IN THIS OFFICE 12-20 AD 2024  
JUAN FERNANDEZ-BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County  
Deputy Clerk 



T: 305-569-8461  
[brecor@oceanbank.com](mailto:brecor@oceanbank.com)  
[mguerra@oceanbank.com](mailto:mguerra@oceanbank.com)  
*Attorneys for Ocean Bank, Appellee*

J. Michael Wermuth, Esq.  
Wermuth Panell & Ortiz, PLLC  
1989 N.W. 88th Court, Suite 101  
Miami, Florida 33172  
Tel: (305) 715-7157  
Fax: (305) 715-8982  
[Michael@wpolaw.com](mailto:Michael@wpolaw.com)  
[astrid@wpolaw.com](mailto:astrid@wpolaw.com)  
*Attorneys for Rebecca Vargas Fuenmayor, Appellant*

s/THOMAS A. KROEGER  
THOMAS A. KROEGER  
Florida Bar No. 19303  
COLSON HICKS EIDSON  
*Attorneys for the Plaintiff/Appellant*  
255 Alhambra Circle, Penthouse  
Coral Gables, Florida 33134  
T: (305) 476-7400/F: (305) 476-7444  
E-mail: [Tom@colson.com](mailto:Tom@colson.com)  
Secondary: [eservice@colson.com](mailto:eservice@colson.com)  
[Lina@colson.com](mailto:Lina@colson.com)

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

CASE NO: 2019-011000-CA-01

SECTION: CA04

JUDGE: Carlos Guzman

**Rebeca Vargas Fuenmayor**

Plaintiff(s)

vs.

**Ruth Vargas Fuenmayor et al**

Defendant(s)

**FINAL SUMMARY JUDGMENT IN FAVOR OF OCEAN BANK, RUTH VARGAS  
FUENMAYOR, AND REELAIAH SILVA VARGAS**

Name of Motions: Ocean Bank's Motion for Summary Judgment, and Defendants Ruth Vargas Fuenmayor and Reelaiah Silva Vargas's Joinder in Part to Ocean Bank's Motion for Summary Judgment

Docket Entry Nos.: 175 and Filing # 178818091

Filing Dates: April 18, 2023 and August 2, 2022

Hearing Date: August 21, 2023

THIS CAUSE, having come before the Court on the Defendant Ocean Bank's Motion for Summary Judgment, which was joined by the Co-Defendants, Ruth Vargas Fuenmayor and Reelaiah Silva Vargas (the "Co-Defendants"), and the Court having reviewed the motion, the file, and the pleadings, having heard argument of the parties (through counsel) at a specially set hearing, and having thereafter again reviewed the file, the summary judgment evidence of record, and the parties' arguments, along with the Court's hearing notes, the Court hereby makes the following findings of facts and conclusions of law:

1. This case involves Ocean Bank's post-death disposition of the funds in three depository accounts of the deceased, Rebeca Margarita Fuenmayor Rodriguez. (The "Account Holder"). The Accounts and balances at the time of the Account Holder's death were as follows: Savings Account (\$187,232.02); Checking Account (\$1.00); and Certificate of Deposit ("CD") (\$650,007.67). (Collectively, the "Accounts").
2. As of 2001, by the designation and pursuant to the instructions of the Account Holder, the sole beneficiaries on the three Accounts were the Co-Defendants. Further, post 2001 account statements and notices also reflect that the only beneficiaries on the Accounts, through the

death of the Account Holder and thereafter, were the Co-Defendants. Copies of the pertinent account records and notices are filed as summary judgment evidence.

3. Ocean Bank distributed the account funds, after the 2009 death of the Account Holder, to the Co-Defendants. § 655.82(1)(b)(h)1., (3)(b), *Fla. Stat.* (2009); *see Brown v. Brown*, 149 So.3d 108, 111 (Fla.1<sup>st</sup> DCA 2014); *Sanchez v. Sanchez de Davila*, 547 So.2d 943, 945 (Fla.3d DCA 1989). The statute codifies the principle originated in the seminal case *In Re: Totten*, 179 N.Y. 112, 71 N.E. 748 (Ct. Appeals N.Y. 1904). In addition to the statute, the common law on Totten Trusts has been adopted and applied in Florida jurisprudence. *E.g.*, *Seymour v. Seymour*, 85 So. 2d 726 (Fla. 1956); *Sanchez v. Sanchez Davila*, *supra*.
4. Approximately eighteen (18) years after the Co-Defendants were designated as the sole beneficiaries on the Accounts, the Plaintiff sued Ocean Bank and the Co-Defendants. In her Second Amended Complaint, the Plaintiff alleges that she holds a “beneficial interest” in the Accounts; that Ruth Vargas withdrew the proceeds of the CD, with the assistance of Ocean Bank’s officer; that other Accounts had been “taken” by the Co-Defendants without her knowledge; that Ocean Bank knew that a power of attorney was invalid as to the distribution of funds; and that the Bank failed to confirm the authority of the persons transacting on the Accounts after the Account Holder’s death. On these facts, the Plaintiff alleged actions for conversion, unjust enrichment, and civil theft against the Co-Defendants, and for aiding and abetting and negligence against Ocean Bank. Responses to the Second Amended Complaint were filed of record.
5. In her response to the summary judgment motion, the Plaintiff urges this Court to construe the account documents differently than the way the documents are written. The Court has carefully considered the arguments presented on this point. The original Account signature card documents are inoperative, after the account beneficiary changes reflected in the evidence filed. Further, the excerpted deposition testimony of Ocean Bank’s corporate representative, to the extent it is relevant to the issue of the beneficiaries on the Accounts, does not create any material disputed fact as to the account documents. The Plaintiff’s Amended Affidavit contains legally conclusory statements of the Plaintiff, alleging that she is a “beneficiary” or a “joint beneficiary” on the accounts; inadmissible hearsay evidence on statements made to her by the Account Holder, *see The Other Place of Miami, Inc. v. City of Hialeah Gardens*, 353 So.2d 861, 862 (Fla.3d DCA 1977), *cert. den.*, 364 So.2d 889 (Fla. 1978). and exhibits which show she was only a Power of Attorney agent, not a beneficiary, on the Accounts. The two side-by-side signature cards filed by the Plaintiff show a change of beneficiaries, to the Co-Defendants only, on both the Checking Account and the Savings Account. Further, the other related account signature cards clearly show that only the Co-Defendants were designated as beneficiaries on all of the Accounts.
6. The Court has also considered the Plaintiff’s sworn allegation that, on one Checking Account signature card, the signature is not the signature of the Account Holder. The Second Amended Complaint is devoid of any factual allegation that the now-challenged signature on this one document was not made by or with the consent of the Account Holder. Fla. R. Civ. P. 1.110(b)(2); *Cohn Realty Associates v. Skylake State Bank*, 557 So.2d 72, 72-3 (Fla.3d DCA 1990). Likewise, any denial of this one signature was not pled with specificity. *See* §673.3081, *Fla. Stat.*, *Davis v. Timeshare Travel Inter. Inc.*, 489 So. 2d 47 (Fla. 2d DCA

1986), *Lipton v. S.E. First Nat. Bank of Miami*, 343 So. 2d 927 (Fla. 3d DCA 1977), and *Ferris v. Nichols*, 245 So. 2d 660, 661 (Fla. 4th DCA 1971). Further, the naming of the Co-Defendants as the sole beneficiaries on the Accounts was effectuated no later than 2001. Any unpled claim against Ocean Bank or the Co-Defendants, under any theory alleging impropriety as to this one signature, is time barred. §95.11 (2)(b), *Fla. Stat.* (2001); see *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So.2d 818, 819 (Fla. 2000). Further, this one allegation does not create a material factual dispute, because there is no competent admissible evidence which contradicts the separate account card for the same Checking Account, or the instructions from the Account Holder to designate the Co-Defendants as the sole beneficiaries on the Checking Account, or the statements and notices issued by the Bank, in accordance with its policy to list all beneficiaries on the accounts, which show that the Co-Defendants were the only beneficiaries on the Checking Account. Further, no evidence was presented that the actual Account Holder, who made these beneficiary changes to the Accounts, ever complained of or disagreed with Ocean Bank's recognition of the Co-Defendants as the sole beneficiaries on the Accounts, whom she herself designated.

7. For these reasons, and based on the admissible evidence presented, see Fla. R. Civ. P. 1.510(a) and *Jones v. Ervolino*, 339 So.3d 473 (Fla.3d DCA 2022), the Court finds that the Account Holder designated the Co-Defendants only as the beneficiaries on the Accounts, and that summary judgment is appropriately entered in favor of Ocean Bank and the Co-Defendants, and against the Plaintiff, on the Second Amended Complaint. The Court concludes that Ocean Bank, joined by the Co-Defendants, have met their burden under Fla. R. Civ. P. 1.510. The Plaintiff's arguments and theories, and the admissible evidence presented in opposition to the Motion, do not create a genuine issue of material fact.

Accordingly, it is hereby ORDERED AND ADJUDGED, as follows: Ocean Bank's Motion for Summary Judgment is granted. Summary Final Judgment is entered in favor of Ocean Bank, Ruth Vargas Fuenmayor, and Reelaiah Silva Vargas, and against the Plaintiff, as to the Second Amended Complaint. The Court reserves jurisdiction for all purposes, including consideration of any claims of Ocean Bank for costs and attorneys' fees.

**DONE and ORDERED** in Chambers at Miami-Dade County, Florida on this 20th day of September, 2023.

2019-011000-CA-01 09-20-2023 11:45 AM

2019-011000-CA-01 09-20-2023 11:45 AM

Hon. Carlos Guzman

**CIRCUIT COURT JUDGE**

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

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

**Electronically Served:**

Giselle Cruz, gcruz@oceanbank.com  
John Michael Wermuth, Michael@wpolaw.com  
John Michael Wermuth, michael@wermuthlaw.com  
John Michael Wermuth, astrid@wpolaw.com  
Lori A. Sochin, las@lubellrosen.com  
Lori A. Sochin, lori@sochinlaw.com  
Lori A. Sochin, ana@lubellrosen.com  
Louis K. Nicholas II, lnicholas@oceanbank.com  
Louis K. Nicholas II, mzaki@oceanbank.com  
Louis K. Nicholas II, mguerra@oceanbank.com  
Mariam Zaki, mzaki@oceanbank.com  
Martha Guerra, mguerra@oceanbank.com  
Reelaiah Silva Vargas, reelaiah@gmail.com  
Ronald G. Neiwirth, rgn@lubellrosen.com  
Ronald G. Neiwirth, maria@lubellrosen.com  
Ruth Vargas Fuenmayor, ruthmvargasf@gmail.com  
Ruth Vargas Fuenmayor, RM3HEARTS@GMAIL.COM  
Sixsy L Alfonso, sixsy@wpolaw.com

**Physically Served:**

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

REBECA VARGAS FUENMAYOR,  
an individual

CIVIL DIVISION  
Case No. 2019-011000-CA-01

Plaintiff,

v.

RUTH VARGAS FUENMAYOR,  
an individual; REELAIAH SILVA VARGAS,  
an individual; and OCEAN BANK,  
a Florida corporation

Defendants.

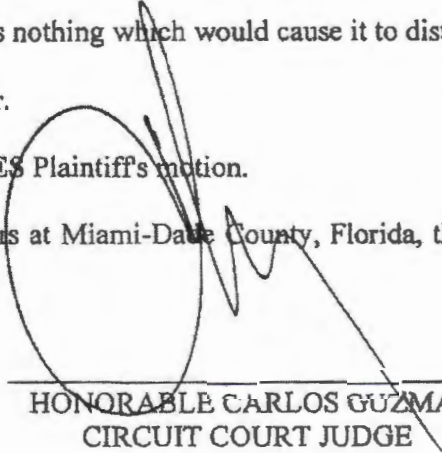
ORDER DENYING PLAINTIFF'S AMENDED MOTION FOR REHEARING AND  
RECONSIDERATION

On June 24, 2024, the Court heard oral argument at a special set hearing (In-Person) on Plaintiff's Amended Motion for Rehearing and Reconsideration of Defendants' Motion for Summary Judgment [DIN 196].

The Court has gone back and reviewed the file, pleadings, hearing notes, etc., following the special set hearing. After going back and conducting said review, the Court finds that it is satisfied with its previous analysis following the 1.510 hearing which is the basis of the Plaintiff's motion for relief. The Court respectfully finds nothing which would cause it to disturb the ruling and judgment previously entered in this matter.

As such, the Court respectfully **DENIES** Plaintiff's motion.

**DONE AND ORDERED** in Chambers at Miami-Dade County, Florida, this 8th day of  
October, 2024.

  
\_\_\_\_\_  
HONORABLE CARLOS GUZMAN  
CIRCUIT COURT JUDGE

cc: All Counsel of Record

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

CASE NO: 2019-011000-CA-01

SECTION: CA04

JUDGE: Mavel Ruiz

**Rebeca Vargas Fuenmayor**

Plaintiff(s)

vs.

**Ruth Vargas Fuenmayor et al**

Defendant(s)

**AGREED ORDER TO DISMISS COUNTERCLAIM/CROSSCLAIM AND STAY  
PROCEEDINGS PENDING APPEAL**

**THIS MATTER COMES** before the Court on the stipulation and agreement of all parties to dismiss Ocean Bank's Counterclaim/Crossclaim, and to stay these proceedings pending the Plaintiff's appeal of the Final Summary Judgment in this action, and the Court being otherwise fully advised, it is hereby:

**ORDERED AND ADJUDGED** that:

Ocean Bank's Counterclaim and Crossclaim for Interpleader is hereby **DISMISSED**, without prejudice, and all further proceedings herein shall be **STAYED**, including all motions directed to attorney's fees and costs, until this case is remanded back to this Court following the Plaintiff's pending appeal.

**DONE** and **ORDERED** in Chambers at Miami-Dade County, Florida on this 4th day of December, 2024.

2019-011000-CA-01 12-04-2024 7:38 AM

2019-011000-CA-01 12-04-2024 7:38 AM

Hon. Mavel Ruiz

**CIRCUIT COURT JUDGE**

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

**Electronically Served:**

Brian Recor, brecor@oceanbank.com  
Brian Recor, mguerra@oceanbank.com  
David S. Garbett, dgarbett@garlawfirm.com  
David S. Garbett, emiller@garlawfirm.com  
David S. Garbett, eservice@garlawfirm.com  
Giselle Cruz, gcruz@oceanbank.com  
John Michael Wermuth, Michael@wpolaw.com  
John Michael Wermuth, michael@wermuthlaw.com  
John Michael Wermuth, astrid@wpolaw.com  
Lori A. Sochin, las@lubellrosen.com  
Lori A. Sochin, lori@sochinlaw.com  
Lori A. Sochin, maria@lubellrosen.com  
Louis K. Nicholas II, brecor@oceanbank.com  
Louis K. Nicholas II, mguerra@oceanbank.com  
Louis K. Nicholas II, lnicholas@oceanbank.com  
Mariam Zaki, Esq., mzaki@oceanbank.com  
Reelaiah Silva Vargas, reelaiah@gmail.com  
Ronald G. Neiwirth, rgn@lubellrosen.com  
Ronald G. Neiwirth, maria@lubellrosen.com  
Ruth Vargas Fuenmayor, ruthmvargasf@gmail.com  
Ruth Vargas Fuenmayor, RM3HEARTS@GMAIL.COM  
Sixsy L Alfonso, sixsy@wpolaw.com  
Thomas Allen Kroeger, tom@colson.com  
Thomas Allen Kroeger, lina@colson.com  
Thomas Allen Kroeger, eservice@colson.com

**Physically Served:**