

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

CASE NO.: 2018-000931-CA-01 (44)
Complex Business Litigation Division

JOHN W. SCHMITZ,
Plaintiff/Counter-Defendant/Appellant,

vs.

DOROTHY JOAN SCHMITZ, et. al.,
Defendants/Counter-Plaintiffs/Appellees.

JOHN W. SCHMITZ,
Cross-Defendant/Appellant,

vs.

SCHMITZ DEVELOPMENT COMPANY, an
Illinois corporation,

Cross-Plaintiff/Appellee,

and

LUCILA SCHMITZ, SCHMITZ PROPERTIES,
INC., a Texas corporation, ST. LUCIE
HOSPITALITY, LLC, a Florida limited liability
company, SDC ST. LUCIE PARTNERS, LLC, a
Florida limited liability company, PEACOCK
REAL ESTATE, LLC, a Florida limited liability
company, and SCHMITZ REALTY COMPANY
d/b/a P&P BRICKELL, a Florida corporation,

Cross-Defendants/Appellees.

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff/Counter-Defendant/Cross-Defendant, JOHN W. SCHMITZ, appeals to the Third District Court of Appeal the Amended Final Judgment of this Court rendered on April 8, 2021. The nature of the order is a final order. A conformed copy of the order is attached.

RECEIVED, 05/07/2021 11:13:31 AM, Clerk, Third District Court of Appeal

Respectfully submitted,

By: /s/ Cristina Alonso

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*Counsel for Counter-Defendant JOHN W. SCHMITZ,
individually and as Director of Schmitz Development
Company, and JOHN W. SCHMITZ and LUCILA
SCHMITZ in Joint Trust With Right of Survivorship in
the capacity as shareholders of Schmitz Development
Company and as individuals*

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 5-7 AD 20 21
HARVEY RUVIN, Clerk of Circuit and County Courts
Deputy Clerk [Signature]
12667



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the court via the Florida Courts E-Filing Portal on May 6, 2021, which will transmit a service copy to all counsel of record, including: J. Raul Cosio, Esq. (raul.cosio@hkllaw.com) (elaine.starling@hkllaw.com), Jose A. Casal, Esq. (jose.casal@hkllaw.com) (josie.vila@hkllaw.com), Rebecca Canamero, Esq. (rebecca.canamero@hkllaw.com) (carla.cosio@hkllaw.com), Holland & Knight LLP, 701 Brickell Avenue, Suite 3300, Miami, FL 33131, *Counsel for Cheryl Schmitz and The Northern Trust Company*; Stephen J. Simmons

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By: /s/ Cristina Alonso

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

COMPLEX BUSINESS LITIGATION
DIVISION

CASE NO.: 2018-000931-CA-01 (44)

SCHMITZ DEVELOPMENT COMPANY,
an Illinois corporation, et. al.,

Plaintiffs/Counter-Defendants,

v.

DOROTHY JOAN SCHMITZ, individually
and as the Executrix of the Estate of
Thomas Schmitz and in capacity as Trustee
of the Thomas Schmitz Family Trust, et. al,

Defendants/Counter-Plaintiffs.

SCHMITZ DEVELOPMENT COMPANY,
an Illinois corporation,

Cross-Plaintiff,

v.

JOHN W. SCHMITZ, et. al.,

Cross-Defendants.

AMENDED FINAL JUDGMENT

THIS CAUSE came to be heard before the Court on January 21, 2020 through February 5, 2020 for a non-jury trial. The Court, having considered the record, having taken testimony, having heard argument of counsel, and having considered the applicable law, it is hereby **ORDERED AND ADJUDGED** as follows:

1. As set forth in the Court's Second Amended Findings of Fact and Conclusions of Law From Non-Jury Trial dated March 29, 2021, the Court enters Final Judgment in favor of Defendants/Counter-Plaintiffs, Dorothy Joan Schmitz, individually and as the Executrix of the Estate of Thomas Schmitz and in her capacity as Trustee of the Thomas Schmitz Family Trust ("Joan Schmitz"), Cheryl Schmitz, individually and as Co-Trustee of the Michael D. Schmitz GST Non-Exempt Marital Trust Dated 1/18/2000 ("Cheryl Schmitz"), and The Northern Trust Company, as Co-Trustee of the Michael D. Schmitz GST Non-Exempt Marital Trust Dated 1/18/2000 ("Northern Trust") (collectively, the "Counter-Plaintiffs") on Count I (Breach of Contract), Count III (Application for the Court-Ordered Inspection and Copying of Records), and Count IV (Application for Relief Pursuant to 805 ILCS 5/12.56) of their Amended Counterclaim as and against Plaintiff/Counter-Defendant/Cross-Defendant, John W. Schmitz ("John Schmitz"). The Court enters Final Judgment in favor of John Schmitz on Count II (Breach of Fiduciary Duty) as and against Joan Schmitz, Cheryl Schmitz and Northern Trust. The Court also enters Final Judgment in favor of Plaintiff/Counter-Defendant/Cross-Plaintiff, Schmitz Development Company, on Count I (Breach of Fiduciary Duty), of its Crossclaim as and against John Schmitz. The Court enters Final Judgment in favor of John Schmitz as to Counts II and VI-VIII of the Crossclaim as and against Schmitz Development Company. The Court enters Final Judgment in favor of Plaintiff/Counter-Defendant/Cross-Defendant, Lucila Schmitz, as to Count V of the

Crossclaim as and against Schmitz Development Company. In addition, as it relates to John Schmitz and Count V of the Crossclaim, the facts underlying this claim were proven against John Schmitz but Schmitz Development Company made an election for relief under Count I of the Crossclaim against John Schmitz.

2. Joan Schmitz, whose address is 3246 Mid Hollow Drive, San Antonio, Texas 78230, and Cheryl Schmitz, whose address is 1310 Wild Rose Lane, Lake Forest, Illinois 60045, shall jointly recover from John Schmitz, whose address is 375 Cocoplum Road, Coral Gables, Florida 33143, and whose social security number is xxx-xx-8401, the principal amount of \$498,554.20, plus pre-judgment interest calculated in accordance with the pre-judgment rates of interest set forth in Section 55.03, Florida Statutes, from the date of each payment through July 1, 2020, in the amount of \$68,249.89, for the total sum of **\$566,804.09**, which shall bear interest at the statutory rate provided for in Section 55.03, Florida Statutes, for which sum let execution issue forthwith.

3. Schmitz Development Company, whose address is 2423 S Orange Avenue, Suite 325, Orlando, Florida 32806, shall recover from John Schmitz, whose address is 375 Cocoplum Road, Coral Gables, Florida 33143, and whose social security number is xxx-xx-8401, the principal amount of **\$2,599,726.25**, plus pre-judgment interest calculated in accordance with the pre-judgment rates of interest set forth in Section 55.03, Florida Statutes, from the date of each payment through July 1, 2020, in the amount of **\$1,346,378.21**, for the total sum of **\$3,946,104.46**, which shall bear interest at the statutory rate provided for in Section 55.03, Florida Statutes, for which sum let execution issue forthwith.

4. The Court orders the imposition of a constructive trust over the shares of stock in Schmitz Development Company owned by John Schmitz until such time that John Schmitz

remedies his wrongdoing as detailed in the findings of the Court's Second Amended Findings of Fact and Conclusions of Law from Non-Jury Trial dated March 29, 2021.

5. John Schmitz shall complete under oath Form 1.977, Florida Rules of Civil Procedure (the "Fact Information Sheet"), including all required attachments, and serve it on the attorneys for Counter-Plaintiffs and Schmitz Development Company at the addresses provided below within 45 days.

6. The Court reserves jurisdiction to (i) determine the amount of costs to be awarded pursuant to Section 57.041, Florida Statutes; (ii) determine Counter-Plaintiffs' entitlement to an award of reasonable expenses, including counsel fees and the expenses of experts, pursuant to 805 ILCS 5/12.60(j); (iii) determine the amount of attorney's fees and costs to be awarded to Counter-Plaintiffs in accordance with this Court's June 13, 2019 and October 23, 2019 Orders; (iv) if necessary, to appoint a receiver to manage Schmitz Development Company on a temporary basis; and (v) if necessary, to enforce and liquidate the constructive trust referenced in paragraph 4 above.

7. Jurisdiction over this matter is retained to enter attorney's fees and cost judgments and such further orders as are proper, including to compel John Schmitz to complete the Fact Information Sheet, including all required attachments, and serve it upon the attorneys for Counter-Plaintiffs and Schmitz Development Company.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 04/08/21.


WILLIAM THOMAS
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 3
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials WT

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

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies Furnished To:

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