
IN THE DISTRICT COURT OF APPEAL
FOR THE THIRD DISTRICT OF FLORIDA

Case No. 3D23-1310
L.C. Case No.: 2012-42957-CA-44
PROCEEDINGS SUPPLEMENTARY CASE OF:

CAPITAL BUILDING, LLC, and
SPARTAN LENDING, LLC

Appellants,

v.

FORTUNE OCEAN, LLLP, OCEAN RESIDENCES GP, LLC, FORTUNE INTERNATIONAL MANAGEMENT, INC., and EDGARDO DEFORTUNA,

Appellees.

On Appeal from the Circuit Court of the Eleventh Judicial Circuit
in and for Miami-Dade County, Florida

APPELLANTS' REPLY BRIEF

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PROCEEDINGS SUPPLEMENTARY CASE OF APPELLANTS

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"The pivotal point of any appeal from a judicial proceeding, be it civil or criminal, jury or nonjury, juvenile court or probate, is 'fairness.'…Without fairness, the system would not function and the proper administration of justice would fall by the wayside." *Morgan v. State*, 341 So.2d 201, 202 (Fla. 2d DCA 1976. *See also Hall v. State*, 444 So.2d 1019 (Fla 3d DCA 1984)**Error! Bookmark not defined.** (holding that this Court's function was to "determine the result of this and every other appeal in accordance with the demands of essential justice to all litigants in the cause."). With this principle in mind, Appellants Capital Building and Spartan Lending continue to pursue since December 2018, through proceeding supplementary efforts, the collection of the $2,670,609.80 that was rightfully awarded to them by the trial court. [R. 8835-39]. Proceedings supplementary "are equitable in nature and should be liberally construed." *Zureikat v. Shaibani*, 944 So. 2d 1019, 1023 (Fla. 5th DCA 2006). In their Answer Brief, Appellees take exception to the liberal application of proceedings supplementary actions, and instead advance an unduly narrow interpretation of the scope of such actions. Appellants submit that Appellees' suggested application should be rejected and the trial court's Order Granting Fortune Defendants' Motion for Summary

Judgment [R. 13344-55] and Order on Defendants' Motion to Dismiss Impleader Complaint [R. 13356-60] should be reversed.

I. Appellants' Alter Ego Claims Were Improperly Rejected by the Trial Court

First, Appellees remind us of the oft-cited principle that "[p]roceedings supplementary are post-judgment proceedings that permit a creditor to effectuate a judgment lien already existing; they are not independent causes of action." *Zureikat* at 1022. [Answer Br. at 10]. This quotation is a confirmation of the prerequisite codified in Florida Statute §56.29 wherein only a person holding an unsatisfied judgment could utilize proceedings supplementary to advance collection efforts. *Id.* It is clear that both Appellants qualify as such, and are therefore not pursuing "an independent cause of action" as Appellees suggest. Appellees' emphasis on this single quote is misplaced. Moreover, the holding of *Zureikat* rejected arguments that both *res judicata* and the statute of limitations barred post-judgment efforts to establish an equitable lien on real property of the judgment debtor. "[T]he question of [the debtor's] fraud was not actually litigated in the case in which the underlying judgment was rendered[,]" as well as that "even the passage of over six years will not prevent, by operation of statute of limitations, a judgment creditor from initiating proceedings supplementary." *Id.* at 1023. Accordingly, *Zureikat* establishes the precedent that Appellants

are permitted to bring exactly the type of claims they brought in their proceedings supplementary action, as opposed to such claims being precluded as Appellees state. [Answer Br. at 21]. *See* In. Br. at 36-7. *Zureikat* supports, as opposed to precludes, Appellants' post-judgment collection efforts pursued before the trial court, and subject to this requested review.

Second, Appellees similarly misapply the holding of *Longo v. Associated Limousine Servs., Inc.*, 236 So.3d 1115 (Fla. 4th DCA 2018) by arguing that "Appellants could only assert claims in proceedings supplementary against Fortune Ocean, the judgment debtor, or an alleged alter ego of Fortune Ocean." [Answer Br. at 22]. The *Longo* decision is not as narrow as Appellees suggest, nor does it stand for the limiting proposition they propose. Like *Zureikat*, the decision in *Lungo* is founded in Florida Statute §56.29, concluding that

> Furthermore, to provide clarity on remand, we conclude that in cases alleging alter ego liability, the description requirement of section 56.29(2) is satisfied if the judgment creditor describes any property of an alter ego of the judgment debtor not exempt from execution **in the hands of any person**, or any property, debt, or other obligation due to an alter ego of the judgment debtor which may be applied toward the satisfaction of the judgment.

Longo at 1121. (emphasis added). The use of the phrase "in the hand of any person" explicitly includes more than simply the judgment debtor and any alter ego thereof. This would necessarily include the Appellees in this action.

Moreover, *Longo* further holds that a "judgment debtor and an alter ego are treated as the same entity, [and] section 56.29(2)'s required description of 'any property of the judgment debtor ... or any property, debt, or other obligation due to the judgment debtor' may include property of an alleged alter ego of the judgment debtor." *Id.* In this matter, Appellants presented evidence in opposition to summary judgment which identified property in the form of specific payments and transfers to Appellees, as required by Florida Statute §56.29, which is consistent with the holding of *Longo*. Therefore, akin to the application of the *Zureikat* principals, *Longo* supports Appellants' right to bring the proceeding supplementary claim against Appellees as pled.

Appellees themselves fail to present any legal support for the assertion that a party cannot seek to pierce the corporate veil of successor companies, or an "alter-ego-of-an-alter-ego," as the trial court termed. This is to be expected, since the alter-ego of a person or company is treated under the law as one and the same of its principal. *See Longo* at 1121. Notably, the trial court's conclusion that a claim to pierce the corporate veil of "the alter-ego of an alter-ego" is not permitted under Florida law does not provide any supporting legal authority. [R. 13368, ¶¶31-33]. As stated in the Initial Brief, Appellants believe that the trial court's determination was in error, and warrants reversal. In. Br. at 14-5. In an effort to buttress the trial court's

decision after-the-fact, Appellees present *Seminole Boatyard, Inc. v. Christoph*, 715 So.2d 987 (Fla. 4th DCA 1998) as support. However, even a cursory reading of *Seminole Boatyard* demonstrates that the issue considered was whether a trustee in bankruptcy could pursue a claim on behalf of a creditor based on an alter ego theory. The court concluded that it does not have standing to pursue such a claim, not because of an "alter-ego-of-an-alter-ego" theory, but because the trustee (and the attendant estate) was not the real party in interest to bring such a claim, as the money attempted to be collected was not owned to the estate and therefore precluded by bankruptcy law. *Id*. at 990.

Moreover, the trial court's rejection of Appellants' alter ego claims suffers from two significant infirmaries which, if allowed to stand, would create problematic results for both Appellants and the public at large. First, the preclusion applied by the trial court in its decision leaves Appellants without an adequate remedy at law to pursue their claims, which is antithetical to the intentionally broad function of proceedings supplementary. The trial court's prohibition on "alter-ego-of-an-alter-ego" framework was decided absent an express prohibition on seeking to pierce the corporate veil of a series of closely held and stacked companies, all of whom report to and are owned by the single individual Edgardo Defortuna. In doing so, the trial

court failed to consider the liberal construction of proceedings supplementary, which require that Appellants claims be permitted. "Proceedings supplementary are equitable in nature and should be liberally construed." *Mejia v. Ruiz*, 985 So.2d 1109, 1112 (Fla. 3d DCA 2008) (citing *Ferguson v. State Exch. Bank*, 264 So.2d 867 (Fla. 1st DCA 1972). As this Court expressed in *Mejia*, "[u]nder the decisional law interpreting section 56.29, there are two jurisdictional prerequisites for proceedings supplementary: (1) a returned and unsatisfied writ of execution; and (2) an affidavit averring that the writ is valid and unsatisfied, along with a list of third persons to be impleaded." *Id*. (citing *Tomayko v. Thomas*, 143 So.2d 277, 229-30 (Fla. 3d DCA 1962). Appellants allegations with respect to their causes of action seeking to pierce the corporate veil of the stack of related corporate entitles maintained by Appellees met these pleading requirements, and in fact were allowed to proceed in spite of Appellees efforts to have those claims dismissed. [R. 9634-36; R.10689-91].

Notably, Appellees make no argument in their Answer Brief that the requirements for the initiation of proceedings supplementary were not met by Appellants. Instead, Appellees advance a "locked-gate" approach by asserting that in no circumstance can a judgment creditor proceed on an alter ego theory of recovery so long as there is a corporate intermediary.

[Answer Br. at 21-3, 31]. This approach is not only devoid of legal precedent, but also ignores the multitude of multiple alternative options available to the trial court, such as the application of a stay, bifurcation or severance of any contingent claims so that judicial economy is served. All of the foregoing "stairstep" options are both appropriate and preferable to the "locked gate" approach advanced by Appellees. As a result of the lack of legal basis for rejecting Counts I though III of the Amended Interpleader Complaint, the trial court's decision should, respectfully, be reversed.

Separately, but equally as important, the trial court's determination to prohibit "alter-ego-of-an-alter-ego" claims without explanation, reasoning, or exception creates the unintended consequence of preventing creditors from seeking collection against the ultimate beneficial owner of a company by piercing the corporate veil, so long as there is a corporate entity placed between the debtor and owner. Furthermore, a bar to such veil piercing claims incentivizes protentional debtors to create and stack corporate entities as a way of avoiding potential future collection efforts. This corporate stacking protection is not supported by Florida Statute §56.29 and the progeny of cases determining its application, nor does such an application promote the broad and equitable intent of proceedings supplementary. "As a fundamental rule of statutory interpretation, 'courts should avoid readings

that would render part of a statute meaningless.'" *Unruh v. State*, 669 So. 2d 242, 245 (Fla. 1996) (citing *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452 (Fla. 1992)).

Respectfully, allowing the trial court's decision to stand as decided with respect to prohibitions upon "alter-ego-of-an-alter-ego" claims in proceeding supplementary will fundamentally alter the ability for creditors to pursue rightful claims, and cause intermediate corporate ownership to be commonplace for asset protection efforts, and guarantee non-collectability for unpaid creditors, such as Appellants. For the foregoing reasons, Appellants respectfully request that the trial court's decision regarding the inability to present cohesive veil-piercing claims from being presented as a matter of law be reversed.

II. Appellants were not Afforded the Opportunity to Fully and Fairly Litigate Their Claims and Therefore Application of *Res Judicata* and Collateral Estoppel was in Error

"Generally, the issue of fraud is not a proper subject of a summary judgment. Fraud is a subtle thing requiring a full explanation of the facts and circumstances of the alleged wrong to determine if they collectively constitute a fraud." *Glantz v. Cohan*, 364 So. 2d 54, 56 (Fla. 3d DCA 1978). In this matter, Appellants were denied their ability to present full explanation of the facts and circumstances of the fraudulent conduct of Appellees which

resulted in their own enrichment to the direct and demonstrable detriment of Appellants. This denial prevents the satisfaction of the required elements of *res judicata* and collateral estoppel claim preclusion. “The essential elements of the doctrine are that the parties and issues be identical, and that the particular matter be fully litigated and determined in a contest which results in a final decision of a court of competent jurisdiction. (emphasis added).” *Dep't of Health & Rehab. Services v. B.J.M.*, 656 So.2d 906, 910 (Fla. 1995) (citing *Mobil Oil Corp. v. Shevin*, 354 So.2d 372, 374 (Fla. 1977). Given the record before this Court, it cannot be concluded that Appellants have ever fully and fairly litigated the issue of fraud before the trial court. Certainly, no such record can be found in the trial court’s January 14, 2019 Order [R.12581-85]. “’The courts have emphasized that collateral estoppel precludes relitigation of issues *actually litigated* in a prior proceeding.” *Dep't of Health & Rehab. Services* at 910. Here, that does not exist.

The record of the proceedings before the trial court demonstrate that Appellants have been denied this right, and their claims should not be subject to preclusion by *res judicata* or collateral estoppel. Additionally, this Court should reject Appellees invitation to speculate the reasons beyond what is explicitly set forth in the January 14, 2019 non-final order of the trial court. “An interlocutory order should be entered specifying the facts that appear

without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just." *Pointer Oil Co. v. Butler Aviation of Miami, Inc.*, 293 So. 2d 389, 391 (Fla. 3d DCA 1974). It is clear that that trial court did specify any facts which would support the conclusion that the allegations of fraud had been determined and resolved in anyone's favor, much less to Appellees' vindication.

In the Answer Brief, Appellees promote outsized importance on expanding the trial court's ruling set forth in the January 14, 2019 Order [R.12581-85] by rebranding its silence as a full-throated affirmance that no fraud had occurred. An intellectually honest reading of the trial court's Order shows that the trial court never determined whether fraud did or did not occur by the Appellees. As argued in the Initial Brief in detail, the January 14, 2019 Order never determined, or even touched upon, whether fraud was committed by the Appellees. *See* In. Br. at 20-2, 36-7. As to Counts II through VIII of the Second Amended Complaint, the Court found that Appellants' claims for civil theft failed to allege the loss of specifically identifiable funds, and was thus defective. *Id.* at 2. The trial court further found that Counts V, VI, VII, and VIII of the Second Amended Complaint, all of which alleged communications fraud, were also defectively pled. *Id.* at 2-

3. Absent from the foregoing is any adjudication of the existence of fraud, despite the trial court's conclusion to the contrary.

In an effort to support the trial court's determination of identity of the parties for the purposes of claim preclusion by *res judicata* and collateral estoppel, Appellees concede that all of the Appellee related companies have mutual interests in the underlying action, and fully participated in the earlier litigation through control of the corporations. [Answer Br. at 28-29]. This is exactly why the veil-piercing claims by Appellants have merit, and should be permitted to proceed. It is illogical that Appellees Ocean Residences GP, LLC and Fortune International Management, Inc. be considered as one in the same for the purposes of analyzing claim preclusion principals, while also maintaining feigned corporate and control independence when opposing application of alter ego theories of recovery.

The trial court's Order contains a patient inconsistency. With respect to the application of *res judicata* and collateral estoppel, the trial court determined that Appellants' veil piercing claims were barred, finding: (a) identity of the persons and parties to the action, and (b) identity of the causes of action. [R. 13348-9]. Yet, the trial court, in that same decision, refused to recognize each of the Appellees as the alter ego of one another using that same logic and reasoning of identity of control. [R. 13353]. Appellees

themselves provide no explanation in their Answer Brief as to how Appellees are considered to be one in the same for claim preclusion purposes, yet at the same time independent and distinct entities for the purpose of avoiding Appellants' alter ego claims. Notably, in their Answer Brief, Appellees admit that alter ego claims in proceedings supplementary are generally allowable. *See* Answer Br. at 29-30.

III. The Continuing Fraud of Appellees Brings Appellants' Claims Outside of the Purview of the Statute of Frauds

Appellees contend that their self-dealing transfer of the RU-1 property is a single, discrete act that cannot serve as the basis for a continuing fraud. [Answer Br. at 52]. This argument misunderstands Appellants claims and the evidence presented in opposition to summary judgment before the trial court. First, Appellants presented evidence in opposition to Appellees' argument that the post-judgment transfer of the RU-1 property and immediate subsequent transfer of the money received by Coffey Burlington, P.L. was for Appellees own benefit, and not the payment of Appellants' judgments occurring within the statute of repose period. [R. 12534-8]. "[T]he defendant's last act or omission triggers Florida's fraud statute of repose." *Hess v. Philip Morris USA, Inc.*, 175 So. 3d 687, 698 (Fla. 2015) (holding that when there is evidence of wrongdoing conduct within the repose period, the statute of repose will not bar a fraud claim).

Second, Appellants further presented evidence that Appellees Fortune Ocean, LLLP and Ocean Residences GP, LLC were created for the fraudulent purpose of (1) concealing assets of Fortune Ocean, LLLP and the avoidance of repaying creditors, such as Appellants, (2) to use the funds of Fortune Ocean, LLLP and Ocean Residences GP, LLC to pay insiders and affiliates Fortune International Management, Inc. and Edgardo Defortuna amounts from fortune Ocean, LLLP for "loans" that were not reflected in any corporate documentation or resolutions, and (3) to make payment to other identified third-parties for the benefit of Fortune International Management, Inc. and Edgardo Defortuna individually, to the detriment of Fortune Ocean LLLP's creditors, the Appellants. [R. 10438-43].

Each of the foregoing evidence a continuing fraud sufficient to bring the claims presented within the statute of repose period. Appellees' description of the dozens of payments made by Fortune Ocean LLLP pursuant to the preferences above as "discrete acts occurring over a period of time" [Answer Br. at 52] is akin to describing the modern automobile as simply an assemblage of parts that serendipitously results in controlled movement. Certainly, the resulting movement is the purpose, just as the creation of the corporate stack of Appellees under unified control of Edgardo Defortuna was made for the purpose of defrauding Appellants and other

similar creditors to Fortune Ocean LLLP. Appellants respectfully submit that the trial court's determination that Counts I through III of Appellants' Amended Impleader Complaint were barred by the statutes of limitations and repose was in error.

IV. The Equitable Application Adopted by *In re Hill* Should be Adopted by this Court

Finally, Appellants believe that this court should adopt the reasoning in *In re* Hill, 332 B.R. 835 (Bankr. M.D. Fla. 2005), which holds that Florida Statute §726.110 operates as a statute of limitations subject to equitable and judicial tolling pursuant to discovery rule jurisprudence and not as a statute of repose. *Id.* at 841. Although the District Court of Appeals, Second District held that Florida Statute §726.110 operates as a statute of repose based on large part on the usage of the word "extinguishes" to describe the termination of an action due to the passage of time in *National Auto Service Centers, Inc. v. F/R 550, LLC*, 192 So.3d 498 (Fla.2d DCA 2016), an equally learned court come to an alternative conclusion in *Hill* which better fits the broad purpose and intent of proceedings supplementary considering the same statutory language as *National Auto Services Centers*. Moreover, Appellees claims of waiver are misplaced, as Appellants were denied the opportunity to conduct discovery and present evidence of such conduct, most notably with respect to the transfer of assets post-judgment. Appellants believe the

trial court's decision to preclude Appellants' claims for fraudulent transfer based upon the finding that Florida Statute §726.110 acts as a statute of repose should be reversed, and Appellants should be permitted to pursue their fraudulent transfer claims.

CONCLUSION

Appellants renew their request to have the opportunity to fully and fairly present their claims in proceedings supplementary against Appellees and obtain a determination on their merits. Absent such opportunity, Appellees will have succeeded in their goal from the day Fortune Ocean LLLP was created: the avoidance of repaying voluntary and valid debt obligations to creditors, such as Appellants, while simultaneously repaying Appellees tens of millions of dollars, all while claiming insolvency. Proceedings supplementary are intended to be liberally constructed to promote equitable results for judgment creditors, such as Appellants. Appellants have been denied such equity by the decisions of the trial court. For the reasons more fully set forth hereinabove, Appellants respectfully request that the summary judgment entered by the trial court [R. 13344-55] be reversed, that the dismissal of Appellants causes of action for fraudulent transfer be reversed [R. 13356-60], and that this matter be remanded for further proceedings, including trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this 23rd day of February, 2024, the foregoing Reply Brief was served by e-mail upon: Susan Raffanello, Esq. and Scott A. Hiaasen, Esq., Coffey Burlington, P.L., 2601 South Bayshore Drive, Penthouse 1, Miami, Florida 33133; sraffenello@coffeyburlington.com, shiaasen@coffeyburlington.com, service@coffeyburlington.com, lmaltz@coffeyburlington, and lperez@coffeyburlington.com.

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CERTIFICATE OF COMPLIANCE

I certify that this brief was composed and printed in 14-point Arial font, and is in compliance with the font requirements set forth in Florida Rule of Appellate Procedure 9.045(b) and contains 3,375 words in compliance with Florida Rule of Appellate Procedure 9.210.

/s/Nicholas M. Vicente