IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

THIRD DISTRICT

Appeal Case Number: 3D2024-0184
Lower Tribunal Case Number: 2021-008831-CC-24

S&S1 Properties, LLC, a Florida Limited Liability Company,

Appellant,

v.

1100 West Investments, LLC, a Foreign Limited Liability Company,

Appellee.

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

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

This appeal challenges the trial court's final order granting summary judgment in favor of 1100 West Investments, LLC ("1100 West" or "Appellee") in a fee dispute with S&S1 Properties, LLC ("S&S1" or "Appellant"). The trial court misapplied Florida law and overlooked substantial evidence of genuine issues of material fact regarding the existence of an accord and satisfaction and the wrongful withholding of funds. Therefore, this Court should reverse the decision and remand for further proceedings.

STATEMENT OF THE CASE

This appeal originates from the Circuit Court of the Eleventh Judicial Circuit in Miami-Dade County, Florida, where S&S1 Properties, LLC ("S&S1" or "Appellant") filed a lawsuit against 1100 West Investments, LLC ("1100 West" or "Appellee"). (R. 12-112). The core dispute involves billing discrepancies and accounting practices related to fees for units 402 and 1404 in the Mondrian South Beach Condominium.

In response, 1100 West filed a Motion for Summary Judgment on all four counts of the complaint, including conversion, declaratory judgment, breach of oral contract, and unjust enrichment. (R. 400-669). S&S1 subsequently filed its own Motion for Summary Judgment on the counts of

conversion, declaratory judgment, and breach of oral contract (R. 670-744). The trial court granted summary judgment in favor of 1100 West, dismissing all of S&S1's claims. (R. 816-837). S&S1 timely appealed this decision (R. 789-813).

STATEMENT OF FACTS

S&S1 owned Units 402 and 1404 in the Mondrian South Beach, subject to fees managed and collected by 1100 West. (R. 13). Disputes arose over billing discrepancies and accounting practices, leading S&S1 to challenge the assessed fees. Despite several attempts to resolve these issues, 1100 West issued demand letters on March 8, 2021, claiming overdue fees, special assessments, reservation fees, accumulated interest, and attorney's fees. (R. 35-37; 48-50). The letters demanded payment within thirty days via two separate checks made payable to Persaud Law Group's trust account.

Seeking to settle the dispute, S&S1 issued two checks on June 15, 2021: Check #1005 for $22,444.51 (Unit 402) and Check #1006 for $20,560.76 (Unit 1404). (R. 235). Both checks were conspicuously marked "Full & Final Satisfaction" and hand-delivered to the Association's management office. (R. 235). 1100 West deposited both checks on June 21,

2021, and subsequently issued an Estoppel Certificate for Unit 1404 on June 30, 2021, indicating a zero balance as of July 31, 2021. (R. 719).

Despite these actions suggestive of settlement, 1100 West demanded an additional $13,103.51 during the closing of S&S1's sale of the units on August 10, 2021. (R. 346-354). To avoid jeopardizing the closing, S&S1 paid this amount under protest and subsequently filed suit alleging conversion, declaratory judgment, breach of oral contract, and unjust enrichment. (R. 346-354). The trial court granted summary judgment in favor of 1100 West, erroneously concluding that no accord and satisfaction had occurred based on its flawed application of Fla. Stat. § 718.116(3).

STANDARD OF REVIEW

On appeal from a summary judgment, this Court reviews the lower court's decision de novo. Summary judgment is appropriate only when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510. In evaluating summary judgment claims, the court must draw all reasonable inferences in favor of the non-moving party and determine whether the moving party has met its burden of demonstrating entitlement to judgment as a matter of law. Fla. R. Civ. P. 1.510(c). *See also Simmons v. Pub. Health Tr. of Miami-Dade Cnty.*, 338 So. 3d 1057, 1060 (Fla. 3d DCA 2022).

SUMMARY OF ARGUMENT

The trial court erred in granting summary judgment to 1100 West Investments, LLC, by misapplying Florida law and disregarding material facts that demonstrate a valid accord and satisfaction. Specifically, the court incorrectly applied Fla. Stat. § 718.116(3) to a dispute beyond its intended scope and failed to consider evidence showing 1100 West's actual knowledge of S&S1's settlement offer.

Additionally, the trial court wrongly dismissed S&S1's conversion claim, overlooking the wrongful withholding of $13,103.51 at closing—a specific and identifiable sum constituting conversion under Florida law.

Lastly, S&S1 maintains standing to pursue this appeal despite the subsequent sale of the units, as the injury occurred before the sale. Due to these legal misapplications and factual oversights, the trial court's decision should be reversed and the case remanded for further proceedings.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT ON ACCORD AND SATISFACTION.

The trial court erred when it granted summary judgment for 1100 West, concluding that no accord and satisfaction existed between the parties. (R. 822-830). The record clearly indicates genuine issues of fact regarding the

parties' intentions and actions, thereby making summary judgment inappropriate. *In re Amendments to Fla. Rule of Civ. Procedure 1.510*, 317 So. 3d 72 (Fla. 2021).

a. Section 718.116(3) Does Not Apply to 1100 West.

The trial court fundamentally erred by misapplying Section 718.116(3) of the Florida Statutes, leading to an incorrect conclusion about the existence of an accord and satisfaction. This statute is designed to address the allocation of payments received by a condominium association itself and does not extend to disputes involving unit owners and third parties.

1. Inapplicable to Disputes between Unit Owners and Third Parties.

Section 718.116(3) of Florida Statutes exclusively pertains to payments made directly to the condominium association. The language of the statute is definite:

> Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any

> administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

§ 718.116(3), Fla. Stat. (2024). This subsection outlines the allocation of such payments to accrued interest, administrative fees, attorney's fees, and delinquent assessments. Importantly, § 718.116(3) does not extend its governance to disputes involving unit owners and third parties, such as the hotel operator in the present case.

The trial court acknowledged the distinct identities of the Mondrian South Beach Condominium Association and 1100 West, thereby reinforcing the inapplicability of § 718.116(3) to this dispute. According to Section 718.103(3), Florida Statutes, the condominium association is defined as the entity responsible for managing the common elements. *See* § 718.103(3), Fla. Stat. (2024) ("Association property means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.") (internal citations omitted). Therefore, 1100 West does not assume the role of the association merely by collecting fees, as it remains a separate entity under the statute.

2. Disputed Charges Not "Assessments" under Chapter 718.

Even if one attempts to broaden the scope of § 718.116(3) to include 1100 West, the disputed charges clearly fall outside the definition of "assessments" as defined in Chapter 718. Florida Statutes § 718.103(2) defines an "assessment" as: “a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.” § 718.103(2), Fla. Stat. (2024). The fees in question here are not standard condominium assessments but arise from the independent operations of the hotel, encompassing shared costs for amenities and services provided by the hotel entity. Consequently, these charges are beyond the purview of § 718.116(3).

b. The Disputed Amounts Were Unliquidated.

The trial court incorrectly classified the debts as liquidated, ignoring clear evidence of ongoing disputes regarding the amounts owed. A liquidated debt must be fixed, certain, and undisputed. *Kennedy v. George Cully Real Estate, Inc.*, 336 So. 2d 484 (Fla. 3d DCA 1976). Here, S&S1 consistently challenged 1100 West's billing, seeking clarification and documenting opaque accounting practices. This persistent dispute over the validity and amount of the charges demonstrates that the debts were unliquidated, making them eligible for resolution through accord and

satisfaction. *See Air Ambulance Pros., Inc. v. Thin Air, Inc.*, 809 So. 2d 28, 31 (Fla. 4th DCA 2002) (holding that a dispute over a debt's validity or amount renders it unliquidated).

c. 1100 West Had Actual Knowledge of S&S1's Settlement Offer.

Despite arguments regarding § 718.116(3) and debt classification, the record irrefutably shows that 1100 West was aware of S&S1's intent to reach a full accord and satisfaction.

1. Conspicuous "Full & Final Satisfaction" Notation on Checks.

The notation "Full & Final Satisfaction" on both checks issued by S&S1 clearly conveyed the intent to resolve the dispute with these payments. (R. 337-338). This unambiguous language, combined with the timing of the payments, creates a genuine issue of material fact regarding 1100 West’s awareness of the settlement offer. Under Florida Rule of Civil Procedure 1.510(c), disputed facts must be viewed in favor of S&S1, the non-moving party.

2. S&S1's Counsel's June 23, 2021, Emails.

Two days after depositing the checks, S&S1's counsel sent emails to 1100 West's designated agent explicitly mentioning "full and final satisfaction." (R. 130). These communications unequivocally clarified S&S1's intentions and should have dispelled any doubts for 1100 West. Additionally, 1100 West retained the funds from the cashed checks after receiving this clarification, further indicating acceptance of the settlement offer.

3. Estoppel Certificate for Unit 1404.

1100 West issued an Estoppel Certificate for Unit 1404 on June 30, 2021, just two weeks after depositing the "Full & Final Satisfaction" check. This further confirms the existence of a settlement. This certificate unambiguously declared a zero balance on the unit as of July 31, 2021. (R. 719). 1100 West's issuance of this document, explicitly stating the absence of any outstanding debt on the unit, after having both received and deposited the check clearly designated as a full and final settlement, offers compelling evidence that 1100 West, at that point in time, considered the debt for Unit 1404 definitively settled.

4. Actual Knowledge Despite Delivery Deviation.

The trial court focused on the deviation from the recommended check delivery method, neglecting 1100 West's actual knowledge. Under Section 673.3111(4), Florida Statutes, a debt is discharged if the claimant knows the payment was intended as full satisfaction. Additionally, Section 671.201(26) defines "notice" to include actual knowledge.

The combination of the "Full & Final Satisfaction" notations, the clarifying emails, and the zero-balance Estoppel Certificate collectively demonstrate 1100 West's awareness of the settlement, warranting reversal of the trial court's decision.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE CONVERSION CLAIM.

The trial court further erred by dismissing S&S1's conversion claim, misapplying the legal standard for specific identifiability in cases involving the conversion of funds. The court concluded that the $13,103.51 withheld from S&S1 at closing lacked this requisite specific identifiability, a conclusion that disregards the core principles governing conversion of funds. (R. 831).

While S&S1 maintains that the underlying fees were unliquidated, a separate and distinct issue arises regarding this specific sum that 1100 West wrongfully withheld at closing. The unliquidated nature of the original

invoices stemmed from the ongoing dispute regarding their validity and the precise amount owed. This pre-existing disagreement, however, does not negate the fact that a specific, identifiable sum was wrongfully taken from S&S1 at closing. *See Lemon v. People's Tr. Ins. Co.*, 344 So. 3d 56 (Fla. 5th DCA 2022) (establishing that a "full and final payment" settles only the known and adjusted claims at the time of payment, without releasing future claims).

a. Traceability of Withheld Funds to Disputed Charges.

Conversion under Florida law requires demonstrating the defendant's unauthorized exercise of dominion over the property. *S.S. Jacobs Company v. Weyrick*, 164 So. 2d 246 (Fla. 1st DCA 1964). Here, the $13,103.51 withheld directly corresponds to the disputed charges for Units 402 and 1404, establishing a clear link between the funds and S&S1's ownership. 1100 West's unauthorized retention of these funds satisfies the key element of wrongful dominion necessary for a conversion claim.

b. Chronological Evidence Establishes Traceability.

The timeline clearly connects the disputed charges, the issuance of the Estoppel Certificate, S&S1's settlement efforts, and the withholding of funds at closing. S&S1 issued checks marked "Full & Final Satisfaction" to settle the matter in good faith. Although 1100 West later claimed these checks were insufficient, they accepted and deposited them, indicating initial

acceptance. At closing, 1100 West demanded an additional $13,103.51, forcing S&S1 to pay under protest. This sequence of events establishes a clear traceability of the withheld funds to the disputed charges.

c. Case Law Supports S&S1's Position.

The trial court incorrectly relied on *Belford Trucking Co. v. Zagar*, 243 So. 2d 646 (Fla. 4th DCA 1970) and *Madison at SoHo II Condo. Ass'n, Inc. v. Devo Acquisition Enters.*, LLC, 211 So. 3d 35 (Fla. 2d DCA 2016), in ruling against S&S1 as those cases are not factually analogous to this case. Unlike *Belford*, where the plaintiff failed to demonstrate specific, identifiable funds, S&S1 seeks to recover a precise sum of $13,103.51 wrongfully withheld at closing. Additionally, *Madison at SoHo II* involved insufficient evidence of the association's understanding of a settlement check, whereas this case includes clear "Full & Final Satisfaction" notations, confirming emails, and an Estoppel Certificate, establishing 1100 West's knowledge and wrongful retention of the funds.

More relevant are *Hodges v. Harrison*, 372 F. Supp. 3d 1342 (S.D. Fla. 2019) and *IberiaBank v. Coconut 41, LLC*, 984 F. Supp. 2d 1283 (M.D. Fla. 2011) to the facts of this case. In *Hodges*, the court found conversion where the defendant received assets for a specific investment purpose and failed to return the funds when the investment failed. Similarly here, S&S1

transferred funds to 1100 West for the purpose of paying fees. When a dispute arose regarding the fees, S&S1 attempted to settle the matter through payment. Despite this attempt, 1100 West ultimately withheld $13,103.51 at closing, effectively depriving S&S1 of its property without authorization. This unauthorized deprivation, mirroring the facts in *Hodges*, constitutes conversion under Florida law.

In *IberiaBank*, the court emphasized that a crucial element of conversion is the claimant's immediate right to possess the specific funds in question. In the present case, S&S1 had undisputed ownership of the $13,103.51 withheld at closing. This amount directly corresponds to the disputed charges that S&S1 attempted to settle. Despite S&S1's efforts and the issuance of an Estoppel Certificate indicating a zero balance, 1100 West retained these funds, depriving S&S1 of its rightful property.

The evidence shows a genuine issue of material fact regarding the wrongful withholding of identifiable funds, warranting reversal and remand. In this case, 1100 West's retention of the $13,103.51 despite the settlement attempts and evidence of their knowledge of the intended accord and satisfaction strongly suggests an unauthorized deprivation of S&S1's property, fulfilling the elements of conversion.

III. S&S1 HAS STANDING TO PURSUE THIS APPEAL.

1100 West's argument that S&S1 lacks standing due to the sale of the units is unfounded. Standing is determined at the time the lawsuit is filed, regardless of subsequent events. *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012). The injury—namely, the wrongful withholding of $13,103.51—occurred before the sale of the units, thereby establishing S&S1's standing when the cause of action arose. The subsequent sale does not retroactively affect S&S1's entitlement to pursue this appeal. The record clearly demonstrates that S&S1 had standing at the outset of the litigation, unaffected by the later transfer of property, and is therefore entitled to seek redress for its injuries.

CONCLUSION

For the foregoing reasons, the trial court's final summary judgment in favor of 1100 West Investments, LLC constitutes a prejudicial misapplication of the law and disregards genuine issues of material fact. S&S1 respectfully requests that this Court reverse the trial court's order, reinstate all claims, and remand the case for further proceedings consistent with this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 22, 2024, in accordance with Fla. R. Jud. Admin. 2.516, a copy of the foregoing was furnished to all parties on record via E-Service through the Florida Courts E-Filing Portal.

By: */s/ Matthew N. Shatanof*
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CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE

I hereby certify that the font used herein is Arial 14 point, which complies with the requirements of Rule 9.045 of the Florida Rules of Appellate Procedure. I also certify that the brief does not exceed 13,000 words pursuant to Rules 9.045 and 9.100 of the Florida Rules of Appellate Procedure. The brief contains 2740 words, excluding words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block.

Respectfully submitted,

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