

DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO.: 3D22-2136
L.T. NO.: 14-30864

ADEENA WEISS,

Appellant,

v.

CAROLINE WEISS, et al,

Appellees.

ANSWER BRIEF

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INTRODUCTION

The appellant Adeena Weiss-Ortiz (“Adeena”) has regularly and serially sued her mother Caroline Weiss (“Caroline”) seeking control of properties held by Caroline. See *Weiss v. Weiss*, 317 So.3d 167, 168 (Fla. 3d DCA 2021) (“This is another episode in the longstanding dispute between the mother, Weiss, and her daughter, Adeena Weiss Ortiz (“Ortiz”) regarding property of significant value on Biscayne Bay in Coconut Grove.”); *Ortiz v. Weiss*, 282 So.3d 949 (Fla. 3d DCA 2019); *Ortiz v. Weiss*, 227 So.3d 689 (Fla. 3d DCA 2017).

In this case, Adeena sued her mother in 2014, challenging ownership for real property located at 4865 N.W. 7th Street, Miami, Florida (the “Property”).¹ Adeena alleged that Caroline fraudulently transferred the properties to corporate entities because she had no ownership interest in them. R1771-1927. Adeena claimed that within seven days after her father, Jack Weiss (“Jack”) was tragically hit by a car and killed on February 21, 1995, his widow held a meeting and signed a series of documents on March 1, 1995, gifting 50% of the Property to Adeena, a then 22-year-old student

¹ References to the record on appeal are designated by “R” and the page number. The Appendix is designated as “App.” followed by “Ex.” and the exhibit number.

with no job. R6475. Caroline counterclaimed asserting a claim of slander of title. R2415-2438.

The case was tried before the Honorable Migna Sanchez-Llorens, non-jury for seven days, only on Adeena's claims of Quiet Title and Declaratory Relief, as Caroline's Counterclaim was severed and bifurcated by an agreed order. R4314-4316. Adeena did not prevail in the trial and a partial final judgment was entered against her (the "Final Judgment"). R6457-6489. In the Final Judgment the trial court made findings that Adeena's March 1, 1995, version of the facts, was not credible based upon her conflicting and contradictory testimony and the actual documents. R 6487. As part of the Final Judgment, the remaining counts of Adeena's sixth amended complaint were dismissed with prejudice. R6395.

Adeena was the plaintiff in the lower court, and will be referred to as Plaintiff, Appellant, or by name. Towers of Blue Lagoon Inc., Towers of Blue Lagoon 1 Inc., Towers of Blue Lagoon 2, Inc. and Intercontinental Investment Bankers, Inc. were corporate defendants in the lower court are referred to collectively as the "Blue Lagoon Entities." Caroline Weiss was the individual defendant in the lower court, and will be referred to as Defendant, Appellee, or by name. The additional corporate defendants are 7 at Blue Lagoon (1),

Inc. (“7 at Blue Lagoon 1”) and 7 at Blue Lagoon (2), Inc. (“7 at Blue Lagoon 2”).

STATEMENT OF THE CASE AND FACTS

“When a cause is tried without a jury, the trial judge’s findings of fact are clothed with a presumption of correctness on appeal, and these findings will not be disturbed unless the appellant can demonstrate that they are clearly erroneous.” *J & R United Indus., Inc. v. Miron*, 353 So. 3d 1250, 1252 (Fla. 3d DCA 2023) (quoting *Sunshine State Ins. Co. v. David*, 117 So. 3d 1142, 1144 (Fla. 3d DCA 2013)).

Appellant begrudgingly acknowledges this standard. Initial brief at 36. Yet, Appellant’s 33-page statement of facts ignores Judge Sanchez-Llorens detailed findings. Instead, it projects a one-sided highlight reel of Plaintiff-friendly testimony and findings. Thus, Appellee restates the facts as Judge Sanchez-Llorens found them—with plenty of evidence to support them.

A. Facts relevant to the appeal

Since 2012, Adeena, the daughter, has serially sued Caroline, her mother, in various capacities in various court divisions, resulting in several

appellate rulings which detail some of the history between the parties.²
R6458-6461.

In sequential order, Adeena brought an involuntary guardianship proceeding against Caroline in late December 2012, Case No.: 2012-006216-MH-05 and Case No.: 2013-0850-GD-05, (collectively the “Guardianship Proceedings”).

In May 2014, Adeena sued Caroline trying to establish ownership for property located on Royal Road, Miami, Florida, Case No.: 2014-11578 CA (31) (the “Royal Road Lawsuit”). In that case, the trial court granted summary judgment for Caroline which was affirmed by this Court in *Ortiz v. Weiss*, 282 So. 3d 949, 952 (Fla. 3d DCA 2019).

Adeena started this lawsuit against her mother on December 5, 2014. The core issue in this case is a determination of ownership of the several companies that own multiple acres located at 4865 N.W. 7th Street, Miami, Florida 33125 (the “Property”) based upon an alleged transfer of the shares of certain shares owned by Caroline to Adeena **on March 1, 1995**. The Blue Lagoon Entities were the record owners of the Property until July 20, 2012, when the Property was transferred by Caroline to various entities including

² *Ortiz v. Weiss*, 317 So.3d 167 (Fla. 3d DCA 2021); *Ortiz v. Weiss*, 282 So.3d 949 (Fla. 3d DCA 2019); *Ortiz v. Weiss*, 227 So.3d 689 (Fla. 3d DCA 2017).

newly formed entities Appellees, 7 at Blue Lagoon 1 and 7 at Blue Lagoon 2. R6460. Adeena alleges that Caroline fraudulently transferred the Property because her mother had no ownership interest in the Blue Lagoon Entities.

After losing the Royal Road Lawsuit, Adeena amended her complaint in this case to remove any claim that involved receiving her ownership interest in the Blue Lagoon Entities from the Estate of Jack Weiss (her father) or because of the filing of an assignment and disclaimer of interest in the Estate of Jack Weiss proceedings by Caroline, and she dismissed the estate as a party. R6460-6461. Adeena's sole claim to ownership of 50% of the Blue Lagoon Entities is based on alleged gift by Caroline to Adeena. R6461. Adeena stipulated that she was only relying on the March 1, 1995, corporate documents to prove her case against her mother. R4595, 4610, 6461.

By agreed order on severance and bifurcation, from April 4 to April 12, 2022, the trial court held a non-jury trial on Count I (Action to Quiet Title) and Count II (Declaratory Relief) of the Plaintiffs' Sixth Amended Complaint and the Weiss Defendants' Affirmative Defenses. R4314-4316.

The trial court heard testimony from the following witnesses: Adeena, Caroline, Alitza Weiss, Caroline's daughter, and Adeena's sister ("Alitza") by deposition, Joel Hirschhorn, Esq. ("Hirschhorn"), Joshua Rosenberg, Esq. ("Rosenberg"), and Adeena's husband, Damian Ortiz, Esq. ("Ortiz").

At trial, Adeena claimed that on March 1, 1995, Caroline gifted her 50% interest in the Blue Lagoon Entities to Adeena. R6461. Adeena also claimed that as of March 1, 1995, Caroline was no longer an officer or director of the Blue Lagoon Entities and that Adeena and her sister, Alitza, were the sole owners, officers, and directors of the Blue Lagoon Entities. R4762-4764, 6461.

Caroline claimed that she owns 100% of the Blue Lagoon Entities and the Property, and that Adeena (and Alitza) merely had a future “expectation” to inherit Caroline’s interests in these entities and the Property upon Caroline’s death. R6461.

The parties stipulated that prior to his death on February 21, 1995, Caroline’s husband, Jack, was 50% owner of the Blue Lagoon Entities together with Caroline, and that Jack and Caroline were the sole officers and directors of the Blue Lagoon Entities since 1979. R5091-5094. It is undisputed that the Blue Lagoon Entities were formed in 1990 by Caroline and Jack. *Id.*

It is also undisputed that Adeena lived in Miami from Feb 20, 1995, until going to law school in Chicago sometime in August 1997 and was in her early twenties when the alleged gift occurred. R5087-5087.

i. Stipulations by Appellant at trial

Adeena stipulated to several essential facts at trial, including her claims to the ownership interests of the Blue Lagoon Entities (and hence the Property) solely based on the following documents(R4595, 4610):

Shareholders Agreement for the Blue Lagoon Entities was executed on March 1, 1995. App., Ex.1.

Minutes of Special Meeting and Resolution of the Board of Directors of the Blue Lagoon Entities dated March 1, 1995. App., Ex.2.

Waiver of special meeting of the Board of Directors of the Blue Lagoon Entities and conveyance of shares dated March 1, 1995.; App., Ex. 3.

The Resignation of Caroline of any corporate office with the Blue Lagoon Entities dated March 1, 1995. App., Ex. 4.

Certification of the share interest in the Blue Lagoon Entities dated March 1, 1995. App., Ex.5.

The Blue Lagoon Entities Complete Corporate Book Binder (the "Corporate Books") given to Adeena on March 1, 1995. App., Ex. 6.

Collectively referred to herein as the "Corporate Documents."

Other than these Corporate Documents signed on March 1, 1995, Adeena stipulated and admitted at trial that she was not relying on any other legal theory to prove ownership of the Blue Lagoon Entities. R4595, 4610.

Adeena also stipulated that the Blue Lagoon Entity stock certificates were not signed by Caroline. R5107, 6007. Adeena stipulated that the back of the stock certificates indicating the transfer of the certificates was not filled

out for any of Blue Lagoon Entities. R4662, 4768. Adeena admitted that she never received any stock certificates from Caroline or viewed any original stock certificate signed by Caroline transferring Caroline's interest in the Blue Lagoon Entities to Adeena. R5107, 5510, 6007.

ii. Testimony at trial

Credibility was a key factor on deciding whose version of the facts was believable:

THE COURT: Mr. Baumgarten [Adeena's counsel], isn't this case at the end of the day, aside from all the research that I'm doing, that once I become familiar with respect to the stock certificates, doesn't it go to a credibility issue? Who is this Court going to believe; correct? R5479.³

³ The response from Adeena's trial counsel is remarkable:

MR. BAUMGARTEN: Not entirely.

THE COURT: But part of it is right?

MR. BAUMGARTEN: But only on the issues of the case; not credibility about Adeena Weiss, if she said that she made turkey last night and she made chicken. That's not an issue in the case.

THE COURT: You are being absolutely ridiculous, Mr. Baumgarten, that's --

MR. BAUMGARTEN: I don't believe so. That's a collateral issue.

THE COURT: Why are you speaking over me and not letting me perfect the record as to what it is that I want to say. Stop speaking over me.

MR. BAUMGARATEN: I apologize, Your Honor.

a. Adeena's testimony

The parties disputed the events of March 1, 1995, the day of the alleged execution of the Corporate Documents which Adeena exclusively relied on to support her claims. Adeena contends that Caroline went immediately back to work on February 27, 1995, days after her husband's untimely and shocking death and that Appellant was working and assisting her mother at the office at the same time. R6071-6072. Adeena confirmed that the office was shut down and in shambles after Jack's death. R6442, 6372. Adeena testified that the directors of the Blue Lagoon Entities were her parents until Jack's death and then Caroline became the sole director. R503-5094.

Adeena believed because of the execution of the Shareholder's Agreement, that the Stock Certificates are only symbolic and not necessary to be signed to transfer ownership. R4657, 4662. When asked by the trial

THE COURT: You continually do this and muddy the record. I want to be able to lay out on the record what it is that I have seen and heard and, obviously, it's clear. We are not talking about someone cooking at all.

Absolutely not. We're talking about these stock certificates, and what happened and didn't happen with them, and people are testifying with respect to them, so credibility, of course, becomes very, very important.

It is something this Court needs to weigh, and I think that's where Mr. Schlesinger is going, just like you have with respect to the reputation evidence of Caroline.

court, Adeena could not recall Caroline stating any words to her when the alleged gift occurred. R5486-5487.

Adeena also testified that she does not have possession of any “original” ink signed Corporate Documents alleged to be signed on March 1, 1995, and part of the Corporate Books. R5510, 5970. Adeena testified that Alitza signed all the Corporate Documents simultaneously on March 1, 1995. R4603, 4727, 4775, 4788, 4790.

At trial, Adeena for the first time produced a corporate book as she had only produced excerpts of the corporate documents claimed to be in corporate books received on March 1, 1995. Given the surprise of the production of this new document at trial, the trial court ordered Adeena to produce the entire Corporate Book to Caroline in native form. R5495-5498. App., Ex. 6. Caroline discovered numerous documents in the Corporate Book that were never produced by the Plaintiff. R5194, 5474, 5638-5639.

Adeena testified that she witnessed Caroline sign the Corporate Documents on March 1, 1995. R4716, 5098. Adeena testified that on March 1, 1995, Caroline called a meeting attended by Adeena, Caroline, Alitza, and

Robert McNabb (“McNabb”) at the office, specifically in McNabb’s office and then all simultaneously executed the Corporate Documents.⁴ R4628, 5095.

Adeena testified that that the Corporate Documents were created by McNabb at the direction of Caroline. R4658. Adeena further testified that when she arrived, McNabb, an employee of Caroline’s company, had several documents in “books” ready for her and Aliza to execute which transferred ownership of the Blue Lagoon Entities to Adeena and Alitza. R, 4660.

Adeena identified McNabb’s writing on the stock ledger, and she testified that on March 1, 1995, she saw McNabb (not Caroline) open the Corporate Books enter the writing in a stock ledger. R4660, 5507, 5963-5965. McNabb told her to keep the Corporate Books and told her to keep them in a safe place. R4657, 4718, 4735. Adeena did not recall if the Shareholder’s Agreement was separate from the Corporate Books. R4636.

⁴ There was some confusion on the date of the Shareholder’s Agreement, whether it was March 1, 1995, or March 18, 1995. At trial, Adeena took the position for the first time that the documents were signed on March 18, 1995. Caroline objected to this change of testimony as numerous sworn depositions given by Adeena as well as pleadings had the date of signing as March 1, 1995. The trial court overruled the objection and ruled that the date of the document was March 18, 1995. R 5279, 5505. Adeena later retracted the sworn testimony that the documents were signed on March 18, 1995, and that a meeting occurred on that same date R4607. The trial court took notice of Adeena’s flip-flopping testimony and obviously factored this into its credibility determinations of Adeena’s testimony including ordering Caroline to file the transcript for the day of Adeena’s testimony. R5280.

Adeena testified that the shares she received in the Blue Lagoon Entities were the original issuance and that there was no transfer of shares from Caroline to Adeena. R4602-4603, 5508.

Adeena testified that she received a copy of the Corporate Books and all the Corporate Documents **on March 1, 1995**. R4603, 4727, 4775, 4788, 4790. According to Adeena when she came into the office on March 1, documents were all ready and waiting to be signed. R4621. Adeena testified that she reviewed documents before signing them. R4654. Adeena did not know if any changes were made or recall seeing any drafts prior to signing. R4621.

i. Adeena's inconsistent and conflicting testimony

Contrary to her claim that all the Corporate Documents were signed on March 1, 1995, on cross-examination, Adeena could not explain why on March 1, 1995, certain Corporate Documents and other items in the Corporate Books included a signature line for Caroline as the Personal Representative of the Estate of Jack Weiss when Caroline was not appointed Personal Representative until May 31, 1995. R4801-4810. App., Ex. 16.

The trial court was puzzled by this dubious claim:

THE COURT: I truly believe he's [Caroline's counsel] allowed to explore that because quite frankly, it does not make sense that you have someone die in such a manner and then all of a

sudden, what appears, and based on what the evidence has been so far, is that within a short period of time, there are documents that miraculously appear for everyone to sign.

R4625.

Adeena testified that Alitza received a copy of the Corporate Book on the same day (March 1, 1995) and Alitza signed at the same time as Adeena. R4661, 4764. Adeena could not explain why the Blue Lagoon stock certificate had a “post-it note” indicating that Alitza should “sign here” when Adeena previously testified that all documents were signed simultaneously on March 1, 1995, by Alitza in Adeena’s presence on March 1, 1995. R4811-4817. App., Ex. 9.

Adeena testified that there were corporate filings for the Blue Lagoon Entities after March 1, 1995, that listed Caroline as a director or as an officer. R. 5978-5980. When faced with documents that listed Caroline as an owner, director, or officer of the Blue Lagoon Entities, Adeena, for the first time in the history of the near decade long case, testified at trial, that she consented to Caroline acting as the officer and director of the Blue Lagoon Entities. R5976-5978, 5983- 5984. App., Ex.12.

Finally, Adeena had no explanation why there was an unsigned version of the Shareholder’s Agreement faxed to Caroline’s home while Adeena was living there in April 1997. R6003-6006, 7085-7087. App., Ex.10.

ii. Adeena's inconsistent acts on ownership claim

Adeena testified that she was aware of Caroline filing bankruptcy for the Blue Lagoon Entities and that Caroline put the Property up for sale in November 2010. R5980-5982, 5989, 6981. Adeena admitted that she was not listed in the contact sheet as an owner of the Property with the brokers when Caroline was offering the Property for sale. R5989-5991. Adeena could not recall any act that she did as a director or secretary of the Blue Lagoon Entities since March 1, 1995. R5997-5999. Since March 1, 1995, Adeena admitted that she did not make any payments to stop foreclosure of the Property. R5988. Since March 1, 1995, Adeena admitted at trial that she could not recall hiring any lawyers or architects for the entities as director for the Blue Lagoon Entities (and admitted that Caroline had done so). R5998-5999. Since March 1, 1995, Adeena could not testify to a single act that she did as a director or secretary of the Blue Lagoon Entities since March 1, 1995. R5997-6000.

Adeena filed two sworn Petitions in the Guardianship Proceeding where she stated under oath that Caroline owned the Property. R6828-6884. App., Ex.11. At trial, and for the first time ever, Adeena claimed that the statements in these Petitions that Caroline owned an interest in the Property was a "mistake" or "scrivener's error." R5632-5634. But Adeena admitted

that she never amended or retracted these statements to the Probate Court. R5632-5634. On cross-examination, Adeena admitted that the Petitions she signed under oath correctly stated that Caroline was the responsible party that owed and did not pay the real estate taxes and was seeking a tax reduction for the Property. R6011-6013.

b. Caroline's testimony

Caroline testified that in 1978, she separated ownership of 35 acres into 4 separate companies (R6107-6108) and that Jack and Caroline owned 50% of these entities. R6107.

Caroline testified about the details of Jack being hit and killed by a car on February 21, 1995, and that his funeral was on February 24, 1995. R6113-21.⁵ Caroline testified that Alitza and Maurice Ray spoke at the funeral and Adeena did not. R6122. Caroline testified that for days after Jack's death, Adeena kept to herself staying in her room understandably upset over the death of her father. R6123-6125.

After Jack's death Caroline testified that she was in mourning and very busy with guests and people coming into the house while she and her

⁵ The trial court found that Jack's funeral occurred on February 24, 1995. R4616, 4618.

daughters sat “shiva”⁶ for ten days after the funeral. R6127. Caroline also testified that she was dealing with the death of her mother and mother-in-law that occurred just prior to Jack’s death and that the last thing on her mind was the transfer of any assets. R6261. Caroline testified that her business office was closed, and she did not go there until about 3 weeks after Jack’s death. R6121. Caroline testified that McNabb was her assistant and she believed he was unpaid. R6134.

With regard to the Corporate Documents and the March 1, 1995, meeting alleged by Adeena, Caroline testified that:

- She did not attend any meeting on March 1, 1995, with McNabb, Adeena, and Alitza. R6129.
- She did not sign any of the Corporate Documents and had not seen them until this lawsuit. R6128.
- She never had the Corporate Documents drafted on her behalf by McNabb or anyone. R6128, 6134.
- She never gave or gifted any of her assets to anyone. R6128, 6156.
- She never saw the Shareholder’s Agreement until this case. R5 6187.
- She never saw any of the stock certificates, signed or unsigned, for the Blue Lagoon Entities. R6128.

⁶ Mirriam-Webster Dictionary defines “Shiva” as a traditional seven-day period of mourning the death of a family member that is observed in Jewish homes.

- She never resigned and was always an officer and director of the Blue Lagoon entities. R5204-5205.

Caroline testified that she always held herself out as the owner of Blue Lagoon Entities and the Property to real estate brokers, developers, architects, financial institutions, and charitable institutions after March 1, 1995. R6140-6141. Caroline tried to sell the Property after March 1, 1995, including putting the Property up for sale by auction, paid the auction fee, and that Adeena had no role in the auction and never objected to the sale of the Property. R6142-6144. Adeena provided no testimony to contradict these facts.

Caroline testified that she paid all the expenses for the Property and the Blue Lagoon Entities including taxes, insurance, professional fees, and filing. R6144-6145. Caroline testified that she paid real estate taxes that were owed from the settlement of Jack's wrongful death claim from her share of the settlement proceeds, after giving both her daughters their shares. R6153. This testimony was unrefuted, except Adeena claimed that she paid a portion of the property taxes owed on the Property from the settlement that went to Caroline and the Estate. R5545. However, the trial court did not find this to be credible testimony, like the ownership claims, because Adeena did not submit any documentary or third-party evidence to support this testimony

such as Adeena deducting the tax payment from any income during the year it was allegedly paid. R6459.

Finally, Caroline testified that she had planned to leave her daughters her assets upon her death but, understandably, changed her intent when Adeena instituted the Guardianship Proceedings in late 2012. R6156.

c. Alitza's Testimony

Alitza testified by deposition at trial. Alitza testified that her parents owned the Blue Lagoon Entities, that Caroline is the owner, and that she and Adeena were never owners of Blue Lagoon Entities. R5290-5293. Alitza testified that Caroline never transferred ownership to Alitza or Adeena. R5277. Alitza further testified that Caroline runs the day-to-day operations of the Blue Lagoon Entities and the Property because Caroline is the sole owner. R5407.

Alitza testified that it appeared to be her signature on the Corporate Documents but did not recall signing or seeing these documents or knowing McNabb. R5280-5282. Alitza testified that the signature on the Corporate Documents appeared to be Caroline's signature, but she was not aware that Caroline resigned as a director or officer, and again does not recall seeing these documents. *Id.* Alitza testified that she has an expectation to inherit on the passing of Caroline. R6460.

During the trial, the trial court made a finding that Alitza had a volatile relationship with Caroline and Adeena, as evidenced by the emails introduced into evidence. R5358-5359. The trial court considered this volatile relationship when it evaluated Alitza's testimony and considered its weight in making its findings. R6470.

d. Other witnesses' testimony

Adeena presented the testimony of Hirschhorn and Rosenberg in order to counter and spin her story on the inconsistent positions she took in the sworn Petitions in the Guardianship Proceedings. Hirschhorn testified that Adeena had told him prior to filing the Guardianship that she was the owner of both Royal Road and the Blue Lagoon properties. R4970-4971. The trial court, in conducting credibility evaluations, noted that Hirschhorn had a financial interest in a pending case with Adeena and has worked with her in the past. R5001.

Rosenberg testified that the portions of the sworn Petitions which referred to Caroline owning the Blue Lagoon Property were mistakes or "scrivener's error" because of the urgency to file and that Adeena's counsel made him aware of the errors during the course of this litigation. R4978-9. Rosenberg stated that he (and his firm) knew that Adeena was claiming that

she owned the Blue Lagoon Entities prior to and after the filing of the two sworn Petitions in the Guardianship Proceedings. R4978-4979.

Rosenberg's testimony was impeached by his own time records filed in the Guardianship Proceedings. Rosenberg did not dispute the records which showed that he met with Adeena for hours prior to filing of the Petitions with the Probate Court. R5795-5797. This was clearly inconsistent with Adeena's testimony that she, a practicing lawyer in 2012, did not review the Petitions prior to executing them under penalties of perjury and that the inconsistent statements of Caroline's ownership of the Property were the result of errors by her attorneys. R5005, 6010. Lastly, the trial court asked both Adeena the following questions as to whether the sworn Petitions were retracted or amended at any time:

THE COURT: Not read into it. Just tell me what you see is vague or unclear. Go ahead. Let me get clarification. So you signed the document, correct, that we are looking at?

[Adeena]: Yes, Your Honor.

THE COURT: Did you ever make anyone aware immediately – and this document was signed December 21st, 2012. I see your signature on there.

[Adeena]: Yes.

THE COURT: Did you ever make anyone aware at the law firm that there were glaring errors and mistakes?

R5632.

THE COURT: Going back to the question that I just originally asked you. Were there any amendments ever made to the document that you signed on December 21st, 2012?

[Adeena]: I don't think there are any amendments because shortly after this was filed there was a mediated settlement agreement with Judge Gerstein less than two months later. R5634

R5634.

Adeena's last witness was her husband, Ortiz, who testified about an Assignment of Interest Adeena signed before a notary in 2000. R6004-7. However, Adeena did not present any independent corroborating evidence or witnesses to show she held herself out to anyone after March 1, 1995, as the 50% owner of Blue Lagoon Entities. R6004-6007.

Caroline also proffered into evidence, with the stipulation and non-objection of Appellant, that Alan J. Kluger, Esq. would testify that Caroline retained him to represent the Blue Lagoon Entities in various lawsuits after March 1, 1995 (and not Adeena the alleged owner). R6269.

iii. Documentary evidence

The trial court reviewed numerous documents in addition to the Corporate Documents. For example, the Articles of Incorporation for the Blue Lagoon Entities show that Caroline and Jack were the initial subscribers. R7234-7236, 7299-7301. Adeena attempted to dispute the meaning of

“Subscribers” in section 607.0141, Florida Statutes.⁷ R5967-9. The trial court in the Final Judgment found that the “initial shareholders” of the Blue Lagoon Entities were Caroline and Jack. R6472. The trial court also reviewed corporate filings for the Blue Lagoon Entities filed after March 1, 1995, which had Caroline listed as director and/or an officer. R7051-7053. App., Ex. 12.

The trial court also reviewed the bankruptcy court filings for the Blue Lagoon Entities filed by Caroline on January 17, 1996. R7101-7118. These records showed that Caroline filed legal proceedings after March 1, 1995, as the owner of the Blue Lagoon Entities.

The trial court also reviewed a Mediated Settlement Agreement dated March 27, 1996, from a foreclosure action that was pending prior to Jack’s death which was executed by Caroline as the owner and director for the Blue Lagoon Entities and as Jack’s Personal Representative after March 1, 1995 (and which lawsuit Caroline testified affected the title of the Property).⁸ R6969-7038.

⁷ Section 607.0141, Florida Statutes defines “subscriber” as a person who subscribes for shares in a corporation, whether before or after incorporation.

⁸ The Mediated Settlement Agreement signed by Caroline resolved several lawsuits after the untimely death of Jack, specifically, *Florida National Bank v. Intercontinental Bank, Caroline and Jack*, Case No. 89-45306-CA-01: *Intercontinental Investment Bankers, Inc., Towers of Blue Lagoon I, Inc., Towers of Blue Lagoon II, Inc., Caroline, Jack J, and Towers of Blue Lagoon, Inc. v. First Union National Bank of Florida, FNB Properties, Inc., Jose Milton*;

The trial court reviewed the Affidavit of Title and Ownership filed by Caroline on December 21, 2007, stating that Caroline was the owner of the Blue Lagoon Entities. R7075. App., Ex. 13. The trial court reviewed the Auction documents for the sale of the Property from November 8, 2010, which was controlled by Caroline as the owner of the Blue Lagoon Entities that did not mention of Adeena. R6890-6968.

The trial court reviewed the Petition for Appointment of Emergency Guardianship and the Petition to Determine Incapacity from December 21, 2012, both verified under oath by Adeena, and filed in the Guardianship Proceedings. R6828-6884. App., Ex. 11. In those Petitions, Adeena swore to the truth of the following allegation regarding the Blue Lagoon Entities and Property:

In addition to the Royal Road Property, **Caroline owns an interest in Real Property in Blue Lagoon, near the Miami International Airport.** The property is actual made up of four parcels and was originally owned by one entity. These properties have the folio numbers 0131310100050, 013130100051, 01310100052I, 0131310100053. The ownership of each of the parcels is difference because Caroline has transferred the properties without the knowledge of the corporate officers, to several entities. The reason for these changes, most of which occurred in July 2012, are more completely described below. The applicable deeds are attached as "Composite Exhibit D." Taxes, in excess of \$500,000.00 are owed on the four parcels combined.

Case No. 92- 05619-CA-01; *FNB Properties, Inc. v. Intercontinental Investment Bankers, Inc. , Towers of Blue Lagoon I, Inc., Towers of Blue Lagoon II, Inc., Caroline and Jack*, Case No. 93-18467-CA-01.

Tax deeds have been issued on at least one property which places it in serious jeopardy of being lost. Caroline has no assets to pay the outstanding amounts due and is not able to reasonably explain why she does nothing to generate cash for the outstanding taxes owed. In fact, she seems to believe that even if the properties are lost at auction that she can get them back by simply paying the amounts owed. She has been advised multiple times that her understanding is incorrect to no avail.

R6829 (emphasis added); App., Ex. 11.

The trial court reviewed the Petition to Appoint Successor Personal Representative filed and verified by Adeena on October 16, 2013, which referenced Caroline holding an interest in the Blue Lagoon Entities and not paying expenses (taxes) on the Property. R7040-7050. App., Ex. 14.

The trial court reviewed documents and an email regarding the settlement of the Jack Weiss Estate wrongful death lawsuit reflecting that Caroline paid the real estate taxes on the Property from the proceeds she received. R7134-7137.

The trial court also reviewed emails presented by Adeena in support of her claims of the completed gift, however even in these emails, Caroline claimed present ownership of the Blue Lagoon Entities and refers in one email to a "Trusteeship" holding the shares in the Blue Lagoon Entities. R5552, 6544, 7128.

Lastly, the trial court ordered that Adeena produce the entire “Corporate Books” in its original form as Caroline was only provided hand-picked excerpts by Adeen in discovery. R5774-5775. The trial court reviewed the entire Corporate Books to weigh the credibility of Adeena’s version of events that allegedly occurred on March 1, 1995. R7225-7420. The trial court ultimately found that Adeena’s version of the events of March 1, 1995, simply were not credible. Specifically, there were multiple documents contained in the Corporate Books that contradicted Adeena’s version which had Caroline signing as the Personal Representative of Jack’s Estate. App., Ex. 16. The trial court was provided undisputed evidence that Caroline was appointed as the Personal Representative on May 31, 1995. App., Ex. 7. It was clear to the trial court after being presented with this uncontroverted evidence that Adeena was not being truthful in her testimony.

B. The active participation of the trial court in the trial

Fatal to the Appellant’s *Berg Perlow* argument is the truth about the trial court’s active participation in the trial. Prior to trial, the trial court demonstrated a thoroughly knowledgeable command of the parties and their claims and defenses as she decided the Parties dueling summary judgment motions and the Royal Road Summary Judgment. R4344-4471, 4534-4543.

At trial, the Court took “copious notes”, conducted her own research on evidentiary issues, and made numerous rulings on the admissibility of evidence. R5017, 5279, 5712. The trial judge asked numerous questions of Adeena on the ultimate issues in the case.

THE COURT: When did you receive the corporate books?

R4605.

THE COURT: Well, let me get clarification. Why did you go to the office on March 1st?

R4623.

THE COURT: And was there a reason everyone went to the office?

R4623.

THE COURT: And do you recall, just for clarification, did anyone request to have you, your sister and your mother go to the office on March 1st specifically?

R4623.

THE COURT: Were there any discussions between you and your mom before March 1st regarding the shares?

R4725.

THE COURT: Just again for clarification, so for each signature that you gave on that day they were separate pieces of paper in a different book, right? Is that what you're saying, or no?

R4738.

THE COURT: I have a question for clarification purposes. Did your mom make any comments when these shares were issued to you? Did she say anything specifically?

R5486.

THE COURT: But prior to issuance of this stock, did she ever say anything to you with respect to, again, the stocks itself?

R5487.

THE COURT: On March 1st, 1995, remind me again what was your age? You were still in undergraduate; right?

R5491.

Moreover, the trial court voiced numerous issues during the trial concerning Adeena's gift claim and requested that the parties argue the issue after the parties rested.⁹ R5692-5693, 6289.

⁹ Adeena's argument that the trial court was not engaged is contradicted by the record. R4604-4606, 4622-4623, 5278-5279, 5486-5487. Adeena's trial counsel challenged and dueled with the Trial Judge on numerous occasions, requiring her to admonish Adeena's counsel constantly from interrupting the judge: "I am sitting here and I'm trying to take in the information and being fair to both sides, but when you continually sound like you are beating me up verbally, it's really offensive. You need to stop that." R4947.

The trial court was forced to hold Adeena's counsel in contempt: "The record will reflect fully that the Court has been patient and has stated that there's no speaking back unless, again, I need to hear from the opposing party. You are now at this point in contempt of the Court's ruling. It's a direct and you were made aware of my oral pronouncement not to do so. You insisted your responses that it was a partial response to the order. You are now being fined \$200." R5628.

Lastly, Adeena requested that the parties submit “proposed findings of facts and conclusions of law” rather than have closing argument, and the trial court consented to Adeena’s request. R5712.

C. *The Final Judgment*

The parties submitted their proposed orders on June 1, 2022. The trial court did not enter the Final Judgment until December 12, 2022, with the obvious implication that it conducted a thorough and detailed review of the trial evidence and testimony as well as the proposed and competing orders. R6457.

The Final Judgment found for Caroline on Counts I and II of the Sixth Amended Complaint, dismissing those Counts with prejudice and declaring that Caroline was and is the owner of the Blue Lagoon Entities and the Property. R6486,6456-6489. The Final Judgment also dismissed with

Adeena’s trial counsel’s contempt of the trial judge and the litigants is not confined to this case. Both in this case and the related cases of *Weiss v. BI 27, LLC*, 3D22-453; 3D22-1468, Maurice Baumgarten, trial counsel for Weiss, has intentionally ignored the requirement that “[a] lawyer shall not: . . . (d) engage in conduct in connection with the practice of law . . . knowingly or through callous indifference, disparage . . . litigants. . . .” Fla. Bar R. 4-8.4(d). In the recent oral argument in *Weiss v. BI 27* on September 5, 2023, Baumgarten repeated referred to Caroline Weiss as a thief. Putting aside the completely contrary conclusion in this case, Baumgarten’s conduct is proscribed by the ethical rules for lawyers in Florida and demonstrates a “win at all costs” mode of practice that is not tolerated in this state. See *The Fla. Bar v. Buckle*, 771 So.2d 1131, 1134-35 (Fla. 2000).

prejudice Adeena's remaining Counts in the Sixth Amended Complaint, concluding that Adeena, after having her ownership challenge rejected, lacked standing to challenge the acts of Caroline. R6486-6487.

In its Final Judgment, the trial court found that Caroline had proved her affirmative defenses of statute of limitations and laches as additional grounds for the dismissal with prejudice of Adeena's Sixth Amended Complaint. R6486. Adeena admitted that she was on notice of Caroline holding herself out as the owner of the Property and the Blue Lagoon Entities from March 1, 1995, until the institution of this action. R6466.

The trial court also dismissed Caroline's Counterclaim to Quiet Title as being moot, based on the finding that Caroline is the present owner of the Blue Lagoon Entities and the Property. R6486. Finally, the trial court reserved jurisdiction on the Weiss Defendants' Counterclaim for Slander of Title. R6486.

The trial court, in weighing the credibility of the Parties, stated in the Final Judgment: "All of these inconsistencies lead the Court to find that Adeena's version of the facts is not credible." R6476.

SUMMARY OF ARGUMENT

Adeena has not made any showing that the trial court failed to exercise its independent judgment in this case. The trial court did not commit

reversible error where it requested proposed orders from both parties, in lieu of closing argument **on Adeena's request**; both parties submitted their competing orders and served opposing counsel with their respective orders; the record supports the trial court's ruling; the trial court was actively and thoroughly engaged in the trial; and there is nothing in the record to indicate that the trial court failed to exercise its independent judgment.

The trial court's decision in this non-jury trial is based on findings of fact from damning stipulations by Adeena, a story that was everchanging, a blame the lawyers claim, and hardly believable and not credible testimony by Adeena. The record is filled with competent, substantial evidence to support the trial court's final judgment. The appellant's argument would have this court ignore the standard of review and its supportive rationale that the trial judge is in the best position "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor and credibility of the witnesses." *Shaw v. Shaw*, 334 So.2d 13, 16 (Fla.1976).

The trial court was presented with the following competent and substantial evidence to support the finding that Adeena is not the owner of any interest in the Blue Lagoon Entities.

- Adeena's version of the 50% gift of the Blue Lagoon Entities by Caroline within days of her father's tragic death was contradicted by

the very documents she solely relied on, making her claim show that this was just plain false.

- Adeena did not present a single witness, other than her husband, that supported her claim to be the 50% owner of the Blue Lagoon Entities.
- Adeena could not present any documentary evidence with third parties that she was an owner, officer, director, or manager of the Blue Lagoon Entities.
- Adeena's sworn petitions from 2012 and 2013 that Caroline owned an interest in the Blue Lagoon Entities and was responsible for the payment of the real estate taxes on the Property.
- After her husband's death, Caroline, without any objection by Adeena, held herself as the sole owner of the Property and the Blue Lagoon Entities including defending and prosecuting lawsuits, offering the Property for sale, and taking steps to develop the Property.
- Caroline paid all of the expenses on the Property from March 1, 1995 and Adeena's claim to have made some payments towards the Property taxes was not supported by the evidence adduced at trial.
- Adeena failed to prove that Caroline actually gifted her 50% interest to Adeena. There was no physical delivery of the shares or endorsement of the shares by Caroline to Adeena, or statements of intent by Caroline to make a present gift to Adeena (other than a desire to leave her assets to her daughters in trust after her death). In sum, Adeena's claim was fabricated, false, and a fraud.

Finally, Adeena intentionally waited almost twenty years to bring this lawsuit while Caroline shouldered the economic responsibilities for the Property. All during the time lapse, Caroline took adverse positions to Adeena's claimed ownership of the Blue Lagoon Entities such as filing for bankruptcy and offering the Property for sale and paid all of the expenses

related to the ownership of the Property. These events alone support the finding that the statute of limitations for Adeena to assert the instant claims has long run and that the doctrine of laches applies to prevent these claims.

As a result, the Final Judgment should be affirmed.

ARGUMENT

I. Standard of Review

This is an appeal of a final judgment dismissing the Appellant's claims to title of certain property and corporate entities and declaring the Appellee the owner after a seven-day non-jury trial. The trial court's findings of fact following a non-jury trial are entitled to great deference on appeal and are reviewed only for clear error. *Fito v. Attorneys' Title Ins. Fund, Inc.*, 83 So.3d 755, 757–58 (Fla. 3d DCA 2011). "A factual finding made by a trial court in a non-jury trial is clearly erroneous only when there is no substantial evidence to sustain it, it is clearly against the weight of the evidence, or it was induced by an erroneous view of the law." *Id.* "The findings of the trial court are to be presumed correct and are to be given the same weight as a jury verdict." *Lonergan v. Estate of Budahazi*, 669 So.2d 1062, 1063 (Fla. 5th DCA 1996).

When a court hears a case without a jury, the resulting judgment comes to the appellate court "clothed with a presumption of correctness." *Federated Dep't Stores, Inc. v. Planes*, 305 So.2d 248, 249 (Fla. 3d DCA

1974); see *ZGA Aircraft Leasing, Inc. v. Webjet Linhas Areas, S.A.*, 48 Fla. L. Weekly D906 (Fla. 3d DCA May 3, 2023). This is because “the trial court is in a superior position to weigh the evidence and credibility of the witnesses.” *Smiley v. Greyhound Lines*, 704 So.2d 204, 205 (Fla. 5th DCA 1998); see *J & R United Indus., Inc. v. Miron*, 353 So.3d 1250, 1252 (Fla. 3d DCA 2023) (“When a cause is tried without a jury, the trial judge’s findings of fact are clothed with a presumption of correctness on appeal, and these findings will not be disturbed unless the appellant can demonstrate that they are clearly erroneous”) (Citation and quotation omitted).

The issue of whether a trial court delegated its own independent judgment and decision-making authority when entering a final judgment is reviewed by this Court for an abuse of discretion. *Perlow v. Berg-Perlow*, 875 So. 2d 383 (Fla. 2004).

The standard of review of a trial court’s determination of the applicable statute of limitations is de novo. *Major League Baseball v. Morsani*, 790 So. 2d 1071 (Fla. 2001).

II. The Final Judgment demonstrates independent and thoughtful decision making by the trial court

We first address an argument that permeates the Appellant’s statement of case and facts and argument. The Appellant contends that the

trial court abdicated its independent judgment in entry of the final judgment. The argument has no merit. The trial court was actively involved and engaged in the trial. R4604-6, 4622-3, 5017, 5486-7. R4604-6, 4622-3, 5017, 5486-7. The trial court took its time between submission of the orders and entry of the Final Judgment. Moreover, the trial court made edits and changes to the Appellee's proposed order.

At the conclusion of the trial, at the Appellant's request, the trial court agreed that each party could simultaneously submit their own proposed findings of fact and conclusions of law. Thereafter, the parties remitted proposed orders to the trial court for consideration on June 1, 2022. The parties had the opportunity to present their proposed order to the court, and equal opportunity to have the court consider their "positions" and "arguments" before the court made its final determinations and order.

A trial court's adoption of a party's proposed order verbatim is not per se improper. *Strand v. Escambia County*, 992 So.2d 150, 155 (Fla.2008). Pursuant to *Perlow v. Berg-Perlow*, 875 So.2d 383, 390 (Fla.2004), however, the opposing party "must be given an opportunity to comment or object prior to entry of an order by the court." In *Strand*, 922 So.2d at 155, the Florida Supreme Court explained its earlier ruling. The County filed a complaint to validate the issuance of bonds. Strand intervened and

subsequently appealed, urging that the trial court's adoption of the County's proposed judgment constituted "an improper delegation of its authority to make independent findings of fact under *Perlow*." The Florida Supreme Court rejected this argument, concluding that it lacked merit. *Id.* at 155.

The Court reasoned that:

In the instant case, unlike in *Perlow* the circuit court's adoption of the proposed final judgment does not lead to the appearance of impropriety. Rather than ruling within hours of the hearing as occurred in *Perlow*, the circuit court in this case deliberated for six weeks before adopting the County's proposed order. Although the trial court did not specifically ask Dr. Strand for a proposed final judgment, the circuit court reserved judgment until receiving memoranda from the parties, thereby giving Dr. Strand an opportunity to object and to propose a final order. Thus, Dr. Strand was afforded a meaningful opportunity to review the County's proposed final judgment, make objections, and make his own proposals. Therefore, the circuit court's adoption of the County's proposed final judgment was not improper.

Id. at 155.

This Court has rejected arguments like those made by *Adeena* where, as here, the record reflects the trial court's active participation in the proceedings, the appealing party was provided a meaningful opportunity to object and even submit its own order, and there were no inconsistencies between the order adopted and earlier pronouncements. See *Empire World Towers, LLC v. CDR Creances, S.A.S.*, 89 So.3d 1034,1045-46 (Fla. 3d DCA 2012); *Bryan v. Bryan*, 930 So.2d 693, 696 (Fla. 3d DCA 2006); *Stoppa*

v. Sussco, Inc., 943 So.2d 309, 313 (Fla. 3d DCA 2006); *Cabrera v. Cabrera*, 987 So.2d at 755 (“The trial court's active participation in the proceedings supports our conclusion that there is no appearance that the trial court did not exercise independent judgment when entering the final judgment.”);

Here, as in *Strand*, the trial court reserved ruling until the Court received proposed orders from both parties. As in *Strand*, the trial court deliberated months (not hours) before adopting the Appellee’s proposal. *See also Empire World Towers*, 89 So.3d at 1046 (Finding no impropriety where the trial court adopted a proposed order six days after submission). As in *Strand*, the Appellants were afforded a meaningful opportunity to review the Appellee’s proposed order, make objections (which they did not), and offer their own proposal (which they did). R6401-6421.

Furthermore, the Final Judgment entered by the trial court clearly evidences thoughtful consideration of all evidence and testimony presented during the seven-day trial and the determinations made by the trial court are well-supported by the evidence and the record. R6458-6485. The trial court made deletions to the law cited by the Appellees and also made certain grammar changes. R6475-6485. The trial court was also intimately

familiar with the parties and the issues between the parties in this near decade-long battle. R6457-6474.

The trial Judge clearly and actively participated in the trial by taking copious notes, reviewing exhibits, asking witnesses numerous questions, and requesting the parties to make legal arguments on key issues. R4604-4606, 4622-4623, 5017, 5486-5487. The trial court was familiar with this case the issues presented and tried, the parties' evidence, stipulations, and the Appellant's procedural request to submit proposed orders in lieu of closing, and clearly considered all of the testimony and evidence presented. R5712. *See Ness v. Martinez*, 249 So.3d 754, 756 (Fla. 1st DCA 2018) (Rejecting challenge to relocation order on the basis it violated *Perlow*, where "after actively participating in the trial, the court stated it would review the exhibits," and "neither party objected to the court's request for written closing arguments and proposed orders").

The record before the Court clearly demonstrates that the trial court did not delegate its independent judgment and decision-making authority when entering the Final Judgment, and the appellant's argument on this point has no merit. R5712, 6401-21, 6422-53, 6457-89.

III. Adeena has not shown clear error in the trial court's Final Judgment dismissing her claims to title of certain property and corporate entities and declaring Caroline the owner

After reviewing the evidence and considering the witness testimony, the trial court found that Adeena had no basis in law or fact to claim title to the subject property and that Caroline was the owner. These findings are “presumed correct” and given “the same weight as a jury verdict.” *Lonegran*, 669 So.2d at 1063. This court cannot substitute its judgment for that of the trial court unless there is a lack of competent substantial evidence to support the findings upon which a final judgment is based. *Id.*

As this was a non-jury trial, the fact finder was called on to determine whose version of the facts concerning the March 1, 1995, events were credible based upon the testimony of witness and the evidence presented. *See Sg 2901, LLC. v. Complimenti, Inc.*, 323 So.3d 804 (Fla. 3d DCA 2021) (Trial court in a non-jury trial must make factual findings based on credibility derived from witness testimony as supported by competent substantial evidence). Credibility on the alleged gift by Caroline to Adeena was *the* issue at trial:

THE COURT: We're talking about these stock certificates, and what happened and didn't happen with them, and people are testifying with respect to them, so credibility, of course, becomes very, very important. R5480.

The found, and rightly so, Adeena’s version of the facts not credible:

The Court also finds that the Plaintiff took positions at the trial which were in conflict to cover the legal deficiencies cited above, such as claiming that her parents were not owners of the Blue Lagoon Entities because the initial stock was not issued and that the signed stock certificates were symbolic.

R6478-6479.

The trial testimony and record evidence support these determinations. As explained next, the trial court's finding that Caroline was the property owner and that Adeena had no basis in law or fact to claim ownership to the property supports affirmance of the final judgment, and Adeena has not met her heavy burden of showing that there is a lack of competent substantial evidence to support her claim.

a. Adeena's claim that Caroline gifted the shares on March 1, 1995, is not credible

The evidence presented to the trial court showed that it was impossible for Adeena's version of the events to be true. The trial court made the following credibility findings in the Final Judgment:

Here, the Court finds that Plaintiff's version of the events of March 1, 1995, is not credible based upon the evidence and testimony adduced at Trial. The Plaintiff relies on Corporate Documents that could not have been executed on March 1, 1995, as Caroline was not appointed as Personal Representative until months later.

The Court finds it implausible that within days of Jack's death that Caroline ordered the Corporate Books, which clearly refer to Jack's death, and had an assistant, McNabb, draft

comprehensive legal documents giving Caroline's interest in the Blue Lagoon Entities to Adeena (and to Alitza), who was a 22-year-old student at the time with no income. It was unrefuted at the trial that Caroline and the Blue Lagoon Entities were embroiled in litigation at the time of Jack's death where Caroline was using law firms and lawyers, such as Alan Kluger, Esq. to represent her on behalf of the Blue Lagoon Entities. It is unlikely that a "sophisticated" businesswoman like Caroline, would not use one of her lawyers to draft these complicated documents if she truly wanted to gift her daughters this valuable asset as Plaintiff claims. Moreover, Caroline's testimony was revealing, and the Court finds it improbable that she would simply sign the Corporate Documents presented to her days after her husband was tragically killed.

Throughout the trial, Adeena was adamant that all of the Corporate Documents she is relying on were signed on March 1, 1995. However, the Court as presented with an unexplained fax version of an unsigned version of the Shareholder's Agreement sent by McNabb on April 14, 1997, to Caroline's home when Adeena was still living there. Ex. EE. (See App., Ex. 10) (176: 21-25; 177: 1-11 April 5, 2022(R5100-5101)). This also leads to this Court's finding that the Corporate Documents were not executed on March 1, 1995.

Moreover, the documents that the Plaintiff relies on to prove her case show on their face show that the meeting and execution of the Corporate Documents did not occur on March 1, 1995, as alleged. For example, the Certification and Resignation which Plaintiff claims were drafted and waiting for Caroline to sign on March 1, 1995, could not have possibly been done at that time. These documents have a signature line for Caroline to sign in her capacity as the Personal Representative of the Estate of Jack Weiss. It is unrefuted that Caroline was not appointed the Personal Representative until June 1, 1995. Ex. 77. Moreover, there are other documents in the Corporate Books that cast doubt to Plaintiff's version of the execution occurring on March 1, 1995. There is a stock certificate with a note indicating to Alitza where to sign and. There are bank resolution forms for each

company that came with Corporate Books which have Caroline signing as the Personal Representative of the Estate of Jack Weiss. Ex. GG.

All these inconsistencies lead the Court to find that Adeena's version of the facts is not credible. R6475-76.

Adeena stipulated that her entire claim for ownership of any shares in the Blue Lagoon Entities rested entirely on the events and documents alleged to have been signed on March 1, 1995, which was seven days after the tragic death of Jack on February 21, 1995. The Plaintiff's claim was entirely based upon documents that the Court found not to have been executed on March 1, 1995.

b. Adeena failed to prove that a completed gift occurred

The trial court also determined that even if the meeting occurred and documents were signed on March 1, 1995, Adeena did not prove a completed gift of the shares from Caroline occurred. The Plaintiff stipulated that the stock certificates were not signed or endorsed by Caroline and that the Shareholders Agreement was only signed by Adeena and allegedly Alitza but **not** Caroline. R5107, 6007, 6462.

The governing Bylaws for the Blue Lagoon Entities (contained in the Corporate Books) required for the transfer of shares to follow the formality of being "properly endorsed by the holder of record or by his duly authorized

attorney.” R6007, 6270 App., Ex.15. Adeena stipulated that this was not done in this case. R4768, 5107, 6007, 6462. As a result, the trial court found that the transfer of the shares from Adeena to Adeena in the Blue Lagoon Entities failed to meet the legal standards under Florida law, the UCC and the Blue Lagoon Entities governing documents:

The undisputed facts show Caroline retained sole possession of the original stock certificates, treated the Blue Lagoon Entities and the Property as her own and intended to bequeath her assets to her daughters at her death and never showed the donative intent to make a present gift of her interests in the Blue Lagoon Entities.

R6481.

Here, it is admitted that the stock certificates were not signed or endorsed by Caroline and that the Shareholders Agreement was only signed by Adeena and allegedly Alitza but not Caroline. (45: 20-23 April 5, 2022)(R4969). (115: 2 (R4663); 220: 6-7 April 8, 2022)(R4768). In addition, the governing Bylaws for the Blue Lagoon Entities (contained in the Corporate Books) required for the transfer of shares to follow the formality of being “properly endorsed by the holder of record or by his duly authorized attorney.” Ex. AA, GG.(App., Exs.6,15). It is stipulated by the Plaintiff that this was not done in this case. (45: 20-23 April 5, 2022) (R4969). (220: 6-7 April 8, 2022)(R4768). Moreover, the stock ledgers presented by Adeena allegedly filled out by McNabb fail to list Caroline as the holder of record. Ex. 42.(R. 7286-7290, 7347-7354, 7413-7417) As a result, the transfer of the shares from Adeena to Adeena in the Blue Lagoon Entities fails to meet the legal standards under Florida law, the UCC and the Blue Lagoon Entities governing documents.

R6479-80.

A completed gift requires the following: a clear showing of a donative intent, delivery of possession and surrender of dominion and control over the subject gift. *Eulette v. Lynch*, 101 So.2d 603 (Fla. 3d DCA 1958) (Claim of gift of stock denied because the evidence failed to show a complete and irrevocable surrender of dominion and control of the stock certificates or delivery of the certificates); see *Ritter v. Shamas*, 452 So.2d 1057 (Fla.3d DCA 1984) (Alleged donee had burden of proving by clear and convincing evidence every requisite element of a gift). Adeena failed to prove any of the required elements to show a completed gift.

Adeena admitted that Caroline never stated any present intent to give her ownership interest to Adeena of the Blue Lagoon Entities. R5486-5487. Adeena claims that the only one who spoke to her on March 1, 1995, was McNabb who stated, “put the copies of the Corporate Books in a safe place.” R4657, 4718, 4735. There was never a delivery of the original documents to Adeena and Caroline never signed the Stock Certificates and gave up possession to Adeena. R5107, 5510, 6007, 6462. Finally, it was unrefuted at trial that Caroline, for all the years after the alleged transfer to Adeena, held herself out to the world as the owner of the Blue Lagoon Entities and paid all expenses related to the Property and the Blue Lagoon Entities. R5525, 6011, 6086. The overwhelming evidence, not just the competent and substantial

evidence, contradicted Adeena's claim of a gift on March 1, 1995.

In *Sullivan v. American Tel. & Tel. Co.*, 230 So.2d 18 (Fla. 4th DCA 1969), the court found the alleged gift of stock from mother to son lacked donative intent based upon the following inconsistent conduct by the donor and donee:

Mrs. Sullivan:

1. retained sole possession of the stock certificates,
2. received and used all dividends,
3. treated the stock solely as her own and referred to it as such,
4. attempted a subsequent disposition of the stock to her grandson just prior to her death, and
5. intended that nothing vest in her son until her death.

Further, the conduct of Thomas E. Sullivan, the son, was also inconsistent with the concept of a present gift. His testimony reveals that:

1. he never saw the original stock certificates, nor did he know how many shares his mother had, and
2. he never questioned his mother's complete control of the stock, nor did he ever assert any rights or handle any transactions concerning the stock.

Sullivan, 230 So.2d at 20-21.

The substantial and competent evidence presented to the trial court in

this case proved that Caroline retained sole possession of the original stock certificates, treated the Blue Lagoon Entities and the Property as her own and intended to bequeath her assets to her daughters at her death and never showed the donative intent to make a present gift of her interests in the Blue Lagoon Entities. R5486-5487,5510,5559-5561,5969, 6085. Also, like the son in *Sullivan*, Adeena never questioned Caroline's actions in controlling the Blue Lagoon Entities until the filing of the instant action. *Sullivan*, 230 So. 2d at 20-21; R6481. As a result, Adeena did not meet the burden of proving that a completed gift occurred.

As stated in the Final Judgment, Adeena's ownership was not proven:

The [Trial] Court was presented with substantial, material, and unrefuted evidence that Caroline acted as the owner, officer, and director of the Blue Lagoon Entities and the owner of the Property from 1995 to date. The [Trial] Court finds that Adeena's testimony that she consented to Caroline acting as an officer and manager for the Blue Lagoon Entities [R5983-4] inconsistent with the unrefuted evidence that Caroline acted as the owner, director, and officer of the Blue Lagoon Entities after March 1, 1995. That unrefuted evidence included public filings that showed Caroline as an officer and director of the Blue Lagoon Entities, lawsuits prosecuted and defended by Caroline for the Blue Lagoon Entities, court-approved settlements signed by Caroline as owner/officer of the Blue Lagoon Entities, bankruptcy filings made by Caroline for the Blue Lagoon Entities, listing agreement and auction process to sell the Property signed and overseen by Caroline, unrefuted allegations of Caroline's attempts to date to develop and to mortgage the Property, emails by Caroline as the owner of the Blue Lagoon Entities and the Property and also Affidavit of Title filed by Caroline as President for the Blue

Lagoon Entities in the public record. R6481-82

As the trial court found in the Final Judgment:

Aside from the Corporate Documents, Adeena has offered no other documentary proof that she is an owner of the Blue Lagoon Entities. For example, Adeena did not provide the Court with any tax returns or financial statements filed from 1995 to present that show Adeena as an owner of any shares of the Blue Lagoon Entities or that this valuable asset was an asset on Adeena's financial documents. In addition, Adeena did not submit a single document from or to a third party where she holds herself out as the owner of the Blue Lagoon Entities prior to 2013. Adeena has presented no evidence that she held herself out as the owner of the Blue Lagoon Entities to any entity or person not related or affiliated with her up until the filing of this suit. On the contrary, Adeena submitted two sworn Petitions in the Guardianship Proceedings in 2013 stating that Caroline owned the Blue Lagoon Entities/Property and had failed to pay taxes on same. Again, Adeena's sworn inconsistent statements weigh on Adeena's credibility before this Court and other Court's as Adeena and her counsel never withdrew or amended the sworn statements to the Guardianship Proceedings even with the recent testimony that the inclusion of this contrary language was a "scrivener error." R6482.

Adeena also claimed at trial that she paid taxes on the Blue Lagoon Properties. R5537-5548. However, the trial court after hearing testimony and reviewing documents, rejected Adeena's claim that she paid real estate taxes on the Property from the proceeds of a settlement related to Jack's death. R6482-6483. The trial court found that:

The Court rejects Adeena's claim that she paid real estate taxes on the Property from the proceeds of a settlement related to Jack's death. The evidence submitted does not reflect that

Adeena paid any expenses on the Property or for the Blue Lagoon Entities. Even if the Court accepts that fact as true, the mere fact that Caroline was paying the property taxes on the Property versus Adeena supports the finding that Caroline is the owner of the Blue Lagoon Entities and the Property and not the Plaintiff. R6482-83

Additionally, Adeena's entire claim fails because the trial court found that the Adeena failed to show that a completed transfer of the shares of the Blue Lagoon Entities occurred:

- a. Under the Uniform Commercial Code, Chapter 678 Florida Statute (1995), Florida law.
- b. Under the Blue Lagoon Entities governing documents.
- c. Under Florida law even if the lack of corporate formalities is overlooked by the trial court. R6442.

Where the record shows only unexecuted shares of stock, there is a lack of an instrument transferring ownership of the stock. *Sackett v. Shahid*, 722 So. 2d 273, 276 (Fla. 1st DCA 1998); R6443. The Uniform Commercial Code, Chapter 678 Florida Statute (1995), sets forth the requirements for effecting the transfer of corporate securities and these provisions apply to stock of closely held securities. See §678.1031, Fla. Stat; *Sackett*, 722 So.2d at 276; R6443. Intention to transfer the shares, even with extrinsic evidence of such intention, does not satisfy the requirements of the UCC or the common law to effectuate such transfer. See *Ennis v. Phillips*, 890 So.2d

313 (Fla. 4th DCA 2005) (Directed verdict should have been granted when only evidence was a letter and there were no executed stock certificates); R6443. The UCC additionally provides that “a share or similar equity interest issued by a corporation ... is a security.” §678.1031, Fla. Stat. The comments to section 678.1031 clarify that “shares of closely held corporations are...securities.” *Rahal v. Mussel Beach Restaurants, Inc.*, No. 17-CV-80442, 2018 WL 456212, (S.D. Fla. Jan. 17, 2018). Here, the parties do not dispute that the Blue Lagoon Entities are Florida Corporations authorized to issue shares of stock.

In *Sackett*, the court held that an unexecuted document purporting to transfer stock from the sole shareholder to himself and his wife as tenants by the entirety was insufficient to transfer the stock in question. *Sackett*, 722 So.2d at 276. In discussing the importance of adhering to the corporate formalities for a valid stock transfer, the First District stated:

Because the personal property considered in the instant case is corporate stock, we look to the requirements for holding and transferring securities to determine the proof required to establish ownership of stock by the entirety. In our analysis, we start with the principle that corporate records provide a *prima facie* evidentiary basis for determining ownership of corporate stock.

The Uniform Commercial Code, Chapter 678, Florida Statutes (1995), sets forth the requirements for effecting the transfer of

corporate securities. These provisions apply to stock of closely held corporations such as Shoreline. *Allen v. Coates*, 661 So.2d 879, 881–882 (Fla. 1st DCA 1995). Section 678.313(1), Florida Statutes (1995).

The version of Chapter 678, Florida Statutes (1995), applicable to instant action was substantially revised in 1998. See Ch. 98–11, Laws of Florida (1998).

Transfer of a security ... to a purchaser occurs only:

(a) at the time, the purchaser ... acquires possession of a certificated security.

(b) At the time, the transfer ... of an uncertificated security is registered to the purchaser...

Sackett, 722 So.2d at 275 -276.

Nevertheless, where a party controls a closely held corporation and desires to establish important rights and interests through the corporation, the following of so-called “corporate formalities” is important. In fact, large parts of the field of corporate law have to do with requirements which may appear to be mere formalities. Corporations come into existence and are accorded their characteristics because of formal acts. See, e.g., §§ 607.0202, 607.0203 and 607.0302, Fla. Stat. (1997). As Federal Circuit Judge Richard A. Posner has observed, corporate law “is an area of law where formalities are important, as they are the method by which sophisticated businessmen make their contractual rights definite and limit the authority of courts to undo their deal.” *Frandsen v. Jensen–Sundquist Agency, Inc.*, 802 F.2d 941, 947 (7th Cir.1986). As a result, a person acting through a corporation disregards these formalities at his or her risk.”

Id. at 276.

In *Guthartz v. Park Centre West Corp.*, 409 Fed. Appx 248 (11th Cir. 2010), the court cited *Sackett* in holding that the UCC requirements for

transferring stock apply with equal force to gifts. The Eleventh Circuit explained that such requirements exist to prevent exactly what is claimed in the instant case: "he said/she said" lawsuits where one party asserts that a transfer was made based on some document not reflected in the corporate record. See also *In re Shabanah*, Case No. 8:18-bk-02607-RTC, 2020 WL 57445939, at 3 (M.D. Fla Jan 2, 2020) (In order to perfect the transfer of shares of corporate stock, it is necessary to comply with the requirements of Florida's UCC; the requirements apply with equal force to gifts or other transfers and it does not matter that the purported transferor wanted to or intended to transfer the stock (citing *Sackett*)).

Here, the trial court also found that the Adeena took positions at the trial which gave it concern that these arguments was fabricated to cover the legal deficiencies cited above such as claiming that her parents were not owners of the Blue Lagoon Entities because the initial stock was not issued and that the signed stock certificates were symbolic. R4656-4657, 4662, 5508. Specifically, the trial court found:

Like the Royal Road case, at the Trial, the Court was presented with substantial, material, and unrefuted evidence that Caroline had acted as the owner, officer, and director of the Blue Lagoon Entities and the owner of the Property from 1995 to date. The Court finds that Adeena's testimony that she consented to Caroline acting as an officer and manager for the Blue Lagoon Entities (30: 2-7 April 11, 2022) (R5976-5984) inconsistent with

the unrefuted evidence and appears to the Court as a fabricated reason to explain all the unrefuted evidence that shows that Caroline acted as the owner, director, and officer of the Blue Lagoon Entities after March 1, 1995. That unrefuted evidence included public filings that showed Caroline as an officer and director of the Blue Lagoon Entities, lawsuits prosecuted and defended by Caroline for the Blue Lagoon Entities, court-approved settlements signed by Caroline as owner/officer of the Blue Lagoon Entities, bankruptcy filings made by Caroline for the Blue Lagoon Entities, listing agreement and auction process to sell the Property signed and overseen by Caroline, unrefuted allegations of Caroline's attempts to date to develop and to mortgage the Property, emails by Caroline as the owner of the Blue Lagoon Entities and the Property and also Affidavit of Title filed by Caroline as President for the Blue Lagoon Entities in the public record. R6481-82

Recently, in *Ordway v. Karibu Properties*, 399 So.3d 424 (Fla. 3d DCA 2022), this Court decided a factually similar case involving the transfer/gifting of shares in a closely held company, following corporate formalities and whether a completed gift occurred. In *Ordway*, this Court found that donative intent was shown even if the corporate formalities were not met claiming that alleged stock certificate was void and cancelled. *Ordway*, 399 So.3d at 429. Unlike the instant case, in *Ordway*, a signed and issued stock certificate was actually delivered and the original was found further evidencing the donative intent, delivery and acceptance required for a gift. See *Tanner v. Robinson*, 411 So.2d 240, 242 (Fla. DCA 1982) (An inter vivos transfer by gift of any interest in securities is accomplished by either actual or constructive delivery

of the same, where donative intent is also present and where acceptance by the donee may be presumed or is proven directly).

Here, the trial court correctly found that Adeena failed to prove a completed gift.

c. Adeena's claims were time barred

In addition to Adeena failing to meet her burden of proving that Caroline gifted her the shares of the Blue Lagoon Entities, the trial court found that Caroline proved her affirmative defenses, thereby providing additional support for affirming the Final Judgment and the dismissal of the Sixth Amended Complaint because the claims are untimely under the applicable statute of limitations and the doctrine of laches. R6483-6485. Specifically, at trial, the evidence showed that Caroline held herself out as the owner of the Property and the Blue Lagoon Entities from March 1, 1995, to the date this suit was filed. R6004-6007. Adeena sat on her rights and is barred from asserting 19 years later that she is the rightful owner of the Property and the Blue Lagoon Entities.

i. Statute of limitations

The applicable statute of limitations for a quiet title action for real estate is five years under section 95.231, Florida Statutes. §95.231, Fla. Stat. Count I of the Sixth Amended Complaint is titled "quiet title." Adeena claims that

Caroline gave her 50% interest in the Blue Lagoon Entities on March 1, 1995. R6483. In this lawsuit, instituted 19 years later, on December 4, 2014, Adeena makes the claim for the first time that Caroline did not honor the gift and was improperly controlling the Blue Lagoon Entities.

As shown at trial, almost immediately after the alleged date that Adeena claims that she received ownership of 50% of the Blue Lagoon Entities on March 1, 1995, Caroline took actions in public filings that were antagonistic and adverse to Adeena's claim of ownership. R5550-5561, 5562, 5564-5565, 5978-80, 6484; App., Exs. 12,13. Caroline held herself out as the owner of the Blue Lagoon Entities. R5972-5973, 5976, 5993, 6085, 6484. Caroline, on behalf of the Blue Lagoon Entities put the Blue Lagoon Entities in bankruptcy on January 17, 1996. R5980-5982, 5989, 6981. Caroline also outwardly litigated cases as the owner of the Blue Lagoon Entities from March 1, 1995, to the present. R6969-7038. Caroline is named the director of the Blue Lagoon Entities corporate records in 1996 and 1997. App., Ex. 12. Finally, Caroline recorded an Affidavit of Title to the Blue Lagoon Entities in 2007. R203, 6484; App., Ex. 13.

The trial court found that these acts and evidence presented of alleged Assignment of Adeena's interest back to Caroline in 2000 were inconsistent and adverse to Adeena's alleged ownership interest triggering the accrual of

the statute of limitations. R6471, 6484. Similarly, in *GLK, LP. v. Four Seasons Hotel Ltd.*, 22 So.3d 635 (Fla. 3d DCA 2009), where this Court stated the following on accrual of a claim for statute of limitation purposes:

The operation of the statute of limitations is not postponed where Appellants are in possession of all the facts necessary to determine whether they have a cause of action but are ignorant of the law on which their claim is based. *Chidiac v. Cadillac Gage Co.*, 541 So.2d 650, 650–51 (Fla. 3d DCA 1989). The limitations period begins to run as soon as “a Appellant has actual or constructive knowledge of only ‘the facts forming the *basis* of his cause of action’ and not that of the cause of action itself.” *Becks v. Emery–Richardson, Inc.*, 1990 WL 303548, at *9 (S.D.Fla.1990) (citations omitted); see also *Vigman v. Cmty. Nat'l Bank & Trust*, 635 F.2d 455, 459 (5th Cir.1981) (specifically rejecting appellants' contention that their causes of action began to run four years after a loan transaction took place when they learned from their lawyer that they might have a cause of action).

GLK, L.P., 22 So.3d at 637.

Moreover, the statute of limitations for bringing a suit to recover personal property like the identifiable shares in stock under either section 95.11(3)(h) and is four years. R6484-5. Using any of the above statute of limitations, there can be no dispute that the statutes of limitations bar the Appellant’s claims which were raised over 19 years after the alleged gift. R6485. As a result, based upon competent and substantial evidence, the trial court also rightfully found that the Appellant’s Sixth Amended Complaint should be dismissed as untimely. R6485.

ii. Laches

The trial court also found that Adeena unreasonably delayed close to two decades to assert her ownership rights. R6485. At trial, Adeena's own admissions reflect that she had repeated notice over the years of her mother's claim to ownership of the Blue Lagoon Entities and the Property, but Adeena chose to do nothing. R6485. For almost twenty years, Adeena had done nothing and sat on her alleged ownership rights, all the while Caroline, individually or through entities owned by Caroline, transferred or encumbered the Property as it was within her legal right to do so. R6485.

The trial court also found that it was unrefuted that Caroline paid all of the expenses and upkeep for the Blue Lagoon Entities and the Property. R6485.

As a result, the trial court found that Adeena's delay is simply inexcusable under the circumstances and would cause the Weiss Appellees extreme prejudice. *See Brumby v. Brumby*, 647 So.2d 330, 331 (Fla. 4th DCA 1994) (The laches must result in prejudice against the person against whom relief is sought); *see also Corona Properties of Fl v. Monroe County*, 485 So.2d 1314 (Fla. 3d DCA 1986) (Laches bars relief where plaintiff is guilty of delay in asserting his rights by suit); R6485.

In the instant case, Adeena unreasonably delayed while Caroline paid

all the expenses on the Property and held herself out as the sole owner of the Property. Adeena's delay of close to a decade to assert her alleged ownership rights prejudices Caroline and warrants and justifies the trial court's application of laches to defeat Adeena's claim.

CONCLUSION

While an appellate court may have made different findings and reached different conclusions after hearing the same evidence, “[a]ssessing the weight of evidence and credibility of witnesses is reserved for the trier of fact.” *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1559 (11th Cir. 1988). “It is emphatically not within the province of an appellate court to reweigh the evidence and the credibility of the witnesses at trial,” but that is the thrust and substance of appellant's argument. *United States v. Hernandez*, 141 F.3d 1042, 1052 (11th Cir. 1998). In this case, the trial court reached the only reasonable, plausible, and factually supportable result. A large portion of this case rests on the complete lack of credibility in Adeena's story. Because weight and credibility are reserved for the factfinder, and Adeena has not shown any legal errors, this Court must affirm the trial court's judgment.

For the foregoing reasons, appellees Caroline Weiss, 7 at Blue Lagoon (1), Inc. and 7 at Blue Lagoon (2), Inc. respectfully request this Court to affirm the Final Judgment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of September, 2023, I will electronically file this using the Florida Courts E-Filing Portal, which will serve this filing on: **Maurice J. Baumgarten, Esquire, Torricella Law, PLLC**, 8950 S.W. 74th Court, Suite 2217, Miami, Florida 33156, maurice@torricellalaw.com.

By: /s/ Michael J. Schlesinger
Michael J. Schlesinger

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is prepared in Arial 14-point font, in compliance with Fla.R.App.P. 9.045(b) and does not exceed 13,000 words in compliance with Fla.R.App.P. 9.210(a)(2)(B).

By: /s/ Michael J. Schlesinger
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