

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH
DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

MICHELLE J. KANE

CASE NO.: 4D2023-1637
L.T. No. 502017CA013497

Appellant(s),
vs.

**STEWART TILGHMAN FOX & BIANCHI, P.A.,
et al.,**

Appellee(s),
_____ /

Appeal from the Circuit Court of Palm Beach County

INITIAL BRIEF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing original document was filed with the Clerk of Court via the Florida Courts eFiling Portal, which will send an automatic message with a true and correct copy of the foregoing document to Charles W. Throckmorton, Esq., Kozyak, Tropin & Throckmorton LLP, 2525 Ponce de Leon, 9th Floor, Coral Gables, FL 33134 at cwt@kttlaw.com; and Harley N. Kane, Harley.N.Kane@gmail.com, on this **25th** day of January 2024.

/s/ Michelle J. Kane, Esq.

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Initial Brief of Appellant, Michelle J. Kane

Incorporation by Reference: The Appellant adopts and incorporates the Initial Brief of Appellant Harley N. Kane. The Appellant supplements it as follows:

Supplemental Table of Contents

Supplemental Table of Authorities.....	3
Statement of the Case and Facts.....	3
Summary of the Argument.....	3
Argument.....	4
<u>Point One:</u> The Unities of Tenants by the Entireties.....	4
1. No unities addressed.....	4
2. TBE is presumed.....	4
<u>Point Two:</u> Appellant Owed Nothing to the Appellees.....	4
3. No obligation to Appellees.....	5
4. MJKPA was 50% Owner of Kane Lawyers.....	5
5. MJKPA Separately Existed.....	5
6. Harley N. Kane Owned Nothing Alone.....	5
7. No conspiracy.....	5
<u>Point Three:</u> Nothing in Evidence Can Strip the Appellant of Co-ownership in MJKPA.....	5

8. TBE Always Existed.....	5
9. “Alter Ego” Changes Nothing Material.....	5
<u>Point Four</u> : No pre-suit right to levy or impose a lien on anything pertinent.....	6
10. MJKPA Never Encumbered by Obligation to Appellees...6	6
11. MJKPA not formed solely by Harley N. Kane.....6	6
12. No scheme to defraud.....6	6
<u>Point Five</u> : Nothing Solely Owned by Harley N. Kane.....6	6
13. Co-ownership as TBE never changed.....6	6
14. “Alter Ego” does not change ownership of MJKPA.....6	6
<u>Point Six</u> : No proof Harley N. Kane Caused Anything, an Essential Element of the Claim.....	7
15. No instrument of transfer in the record.....7	7
16. Nothing tends to show Harley Kane caused anything.....7	7
<u>Point Seven</u> : No Wrongful Conduct by the Appellant.....8	8
17. “Alter Ego” is Not Enough.....8	8
18. Even Purposeful Organization to Avoid Personal Responsibility Does Not Justify Disregard of Corporate Entity.....9	9
19. No fraudulent conduct of the Appellant.....9	9

<u>Point Eight: Material and Harmful Erroneous Jury Instructions</u>	12
20. Material Accurate Instructions Refused Causing Harm to the Appellant.....	12
<u>Point Nine: The judgment denied due process to the Appellant as set forth in the Initial Brief of Harley N. Kane</u>	12
21. Denial of Summary Judgment.....	12
22. Denial of Directed Verdict and Judgment Notwithstanding the Verdict.	12
Conclusion.....	13
Certificate of Service.....	13

Supplemental Table of Authorities

<u>Snyder v. Dinardo</u> , 700 So.2d 726 (Fla. 2d DCA 1997)	6
<u>Lipsig v. Ramlawi</u> , 760 So. 2d 170, 187 (Fla. 3 rd DCA. 2000).....	9
<u>Solomon v. Betras Plastics, Inc.</u> , 550 So. 2d 1182, 1185 n.3 (Fla. 5th DCA 1989).....	11

Statement of Case and Facts: The Appellant adopts the Statement of the Case and Facts, as set forth in the Initial Brief of Appellant Harley N. Kane.

Summary of the Argument: The Appellees did not allege and the record does not tend to show a scheme to defraud involving the Appellant. The Appellees did not allege and the record does not tend to show the

Appellant owed anything including any duty at any time to the Appellees, that the Appellant did not own MJKPA as co-tenant by the entirety with her spouse, Harley N. Kane, that Kane Lawyers did not issue and pay the 2015 distribution solely to MJKPA, nor that Harley Kane caused anything pertinent and relevant.

The trial court refused to give timely requested applicable jury instructions that were material. The refusal was harmful. Even so, a status of “alter ego” does not change or alter ownership of profits owned by MJKPA and the Appellant as co-owner of those profits further distributed to the Appellant and her husband as tenants by the entirety. The Appellants are entitled to and should have been granted summary judgment, a directed verdict and judgment notwithstanding the verdict. That denial has resulted in a manifest injustice to the Appellants that is evident on the face of the record.

Argument

Point One: The Unities of Tenants by the Entireties.

1. No unities addressed. The Appellees never addressed the 6 unities of ownership of property co-owned by the Appellant with her spouse as tenants by the entirety.

2. Tenancy by the entirety is presumed. That ownership, including ownership of MJKPA, is presumed owned as tenants by the entirety and the extent of unequal contribution thereto by the spouses is irrelevant. Gibson v. Wells Fargo Bank, 255 So.3rd 944, 950-951 (Fla. 2d DCA 2018) (income tax refund owned as tenants by the entirety despite unequal contribution to the income reported). The trial court erred by applying a distinction limiting the tenancy by the entirety to a tax refund holding that ownership was only established by the interests in the refund, not the income reported on the return. (T 265: 12 – 267:14). The trial court did not find that the income was not first deposited to a bank account owned indirectly by Harley N. Kane and Michelle J. Kane, as tenants by the entirety. The Complaint did not allege that MJKPA was never owned as entirety property nor does the record tend to show it was not so owned. The jury was not asked to find it was not so owned. Proceeds of the distribution from Kane Lawyers were never shown solely owned by Harley N. Kane nor that MJKPA was not owned by its shareholders, Harley N. Kane and Michelle J. Kane, presumed to own their interests as tenants by the entirety, especially by the intent established in its name when

formed. Use of proceeds lawfully obtained by MJKPA in a transaction not in fraud of the Appellants does not alter the exempt character of them. See Snyder v, Dinardo, 700 So.2d 726 (Fla. 2d DCA 1997) (escrow agreement between husband and wife and their attorney for the proceeds of sale of entireties property clearly established intent to create an entireties estate even though the escrow agent was given sole signatory authority over the account). Here, MJKPA, owned by Harley N. Kane and Michelle J. Kane, as tenants by the entireties, was used as the conduit to distribute those lawfully obtained funds to them without altering the entireties estate.

Point Two: Appellant Owed Nothing to the Appellees.

3. No obligation to Appellees. Nothing ever tended to show the Appellant was obligated to do or refrain from doing anything pertinent. The Appellant was not a judgment debtor at any time material. The Appellant was always free to form a Florida professional association owned by her and her husband, as TBE.
4. MJKPA was 50% Owner of Kane Lawyers. The undisputed record shows MJKPA was formed as an unfunded corporation engaged in business as 50% owner of Kane Lawyers, PLLC.

5. MJKPA Separately Existed. The corporate existence of MJKPA was lawfully maintained at all times material as the record shows and as explained in the Initial Brief of Harley N. Kane.
6. Harley N. Kane Owned Nothing Alone. The undisputed record shows Harley N. Kane never solely owned anything pertinent and the evidence does not tend to show an interest solely owned by him in Kane Lawyers, PLLC.
7. No conspiracy. There is no allegation of or evidence tending to show any conspiracy involving the Appellant.

Point Three: Nothing in Evidence Can Strip the Appellant of Co-ownership in MJKPA.

8. TBE Always Existed. Nothing ever tended to show the Appellant was not a co-owner as TBE of MJKPA. Nothing alleged nor in the record tends to show any of the 6 unities of TBE did not exist.
9. "Alter Ego" Changes Nothing Material. The status of "alter ego" at the time of distribution does not alter co-ownership.

Point Four: No pre-suit right to levy or impose a lien on anything pertinent.

10. MJKPA Never Encumbered by Obligation to Appellees. The Appellees never owned a pre-suit right nor acquired a right to levy

on MJKPA or the co-owned interest in it held by the Appellant as TBE.

11. MJKPA not formed solely by Harley N. Kane. The Appellees never alleged and the record does not tend to show MJKPA was formed solely by Harley N. Kane, never alleged and the record does not tend to show Harley N. Kane transferred any property to Kane Lawyers, PLLC on which the Plaintiffs had the right to levy or impose a lien.
12. No scheme to defraud. The Appellees never alleged and the record does not tend to show MJKPA was formed as part of a scheme to defraud.

Point Five: Nothing Solely Owned by Harley N. Kane.

13. Co-ownership as TBE never changed. The Appellees never alleged and the record does not tend to show the 2015 distribution made by Kane Lawyers, PLLC was solely owned by Harley N. Kane. The Appellant owned the right to a share of profits distributed to MJKPA by Kane Lawyers, PLLC whether or not MJKPA was the alter ego of Harley N. Kane at the time of distribution.
14. “Alter Ego” does not change ownership of MJKPA. The status of “alter ego” does not change the ownership of property. The record

does not tend to show MJKPA was the “alter ego” of HK as nothing tends to show all the necessary elements for it at any time. Further distribution by MJKPA as “alter ego” could not and did not change the ownership of funds distributed to a bank account co-owned by the Appellant and her spouse as TBE. Gibson, supra.

Point Six: No proof Harley N. Kane Caused Anything, an Essential Element of the Claim.

15. No instrument of transfer in the record.

16. Nothing tends to show Harley Kane caused anything. The bank account of MJKPA was never shown to be under the sole control of Harley N. Kane, nor does the record tend to show who caused MJKPA to distribute anything. The record does not include anything tending to show who executed anything on behalf of MJKPA.

Point Seven: No Wrongful Conduct by the Appellant.

17. “Alter Ego” Not Enough. The asserted status of “alter ego” must still show the wrongful conduct of the co-owner of MJKPA. “Under Florida law, the mere ownership of a corporation by a handful of shareholders is an insufficient reason to pierce the corporate veil and hold shareholders individually liable for a corporate employee's errors. See, e.g., Advertects, Inc. v. Sawyer, Indus., Inc., [84 So.2d](#)

[21, 23](#) (Fla. 1955) (holding that "[t]he mere fact that one or two individuals own and control the stock structure of a corporation does not lead inevitably to the conclusion that the corporate entity is a fraud or that it is necessarily the alter ego of its stockholders to the extent that the debts of the corporation should be imposed upon them personally."). Moreover, even if a corporation is merely an alter ego of its dominant shareholder or shareholders, the corporate veil cannot be pierced so long as the corporation's separate identity was lawfully maintained. See Mayer v. Eastwood-Smith Co., Inc., [122 Fla. 34, 42, 164 So. 684, 687](#) (1935) (holding that "[s]o long as proper use is made of the fiction that [the] corporation is [an] entity apart from stockholders, [the] fiction will not be ignored.") (citation omitted) [U]nless there is a showing that a corporation was formed, or at least employed, for an unlawful or improper purpose — as a subterfuge to mislead or defraud creditors, to hide assets, to evade the requirements of a statute or some analogous betrayal of trust, for the corporate veil cannot be pierced. See Aztec Motel, Inc. v. State ex rel. Faircloth, [251 So.2d 849, 852](#) (Fla. 1971) (holding that "courts will look through the screen of corporate entity to individuals who compose it in cases in which corporation is a mere device or sham to

accomplish some ulterior purpose, or is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or where the purpose is to evade some statute or to accomplish some fraud or illegal purpose"); see also Munder v. Circle One Condo., Inc., [596 So.2d 144, 145](#) (Fla. 4th DCA 1992) (directors, officers and stockholders may lose their insulation from liability for corporate acts if they engage in fraud, self-dealing, unjust enrichment or betrayal of trust)." Lipsig v. Ramlawi, Id. at 187 (Fla. 3rd DCA 2000).

18. Even Purposeful Organization to Avoid Personal Responsibility Does Not Justify Disregard of Corporate Entity. Even "... the organization of a corporation for the avowed purpose of avoiding personal responsibility does not in itself constitute fraud justifying the disregard of the corporate entity." Huttig v. Huffman, 151 Fla. 166, 170 (Fla. 1942) (No fraud in the creation of the corporation was alleged. Majority shareholder, not a judgment debtor, was not individually a party. Property of the corporation was not subject to levy by the judgment creditors of the spouse.)

19. No fraudulent conduct of the Appellant. No fraudulent conduct of the Appellant is alleged nor shown by the record. Nothing tends to show that MJKPA was used for an unlawful or improper purpose. Nothing prohibited the Appellant from co-owning MJKPA as tenants by the entireties. The record shows nothing done by MJKPA prior to the distribution by Kane Lawyers. Nothing tends to show Harley N. Kane solely owned anything material. MJKPA's further distribution to its shareholders was a valid corporate act as nothing tends to show it ever owed anything to the Appellees.

The record clearly shows MJKPA was lawfully formed, had no obligation to the Appellees when formed, and that its lawful existence was maintained by filing its annual reports. "A failure to follow corporate formalities (*i.e.*, properly issuing stock or keeping records) is not, by itself, a sufficient ground upon which to base individual shareholder liability. This is because a loss is normally not caused by the failure to follow corporate formalities. *Riley v. Fatt*, [42 So.2d 769](#) (Fla. 1950); *Eagle v. Benefield-Chappell, Inc.*, [476 So.2d 716, 719](#) (Fla. 4th DCA 1985)." *Solomon v. Betras Plastics, Inc.*, 550 So. 2d 1182, 1185 n.3 (Fla. 5th DCA 1989). Nothing tends to show lack of formalities harmed anyone. Nothing tends to show anything unlawful

in formation of MJKPA or that its existence was not lawfully created and maintained by the undisputed filing of its articles of incorporation and annual statutory reports. That is sufficient to maintain its lawful identity.

Point Eight: Material and Harmful Erroneous Jury Instructions.

20. Material Accurate Instructions Refused Caused Harm to the Appellant. The trial court refused to give and erred by not giving accurate and applicable jury instructions timely requested by the Appellants that caused harm to the Appellant as set forth in the Initial Brief of Harley N. Kane.

Point Nine: The judgment denied due process to the Appellant as set forth in the Initial Brief of Harley N. Kane.

21. Denial of Summary Judgment. The undisputed pre-trial record shows the Appellant was entitled to summary final judgment as set forth in the Initial Brief of Appellant Harley N. Kane.

22. Denial of Directed Verdict and Judgment Notwithstanding the Verdict. A motion for directed verdict was made at close of the Appellants' case. The record shows the Appellant was then entitled to a directed verdict. at the close final judgment as set forth in the Initial Brief of Appellant Harley N. Kane.

14. Manifest Injustice. Denial of a directed verdict and judgment notwithstanding the verdict would cause manifest injustice evident on the face of the record as more particularly explained in the Initial Brief of Harley N. Kane.

Conclusion

Nothing tends to show a scheme to defraud alleged or shown. There was no evidence tending to show the Appellant was not a co-owner of MJKPA at any time material. Nothing tends to show the Appellant did anything causing harm to the Appellees. Nothing tends to show MJKPA is the “alter ego” of Harley N. Kane according to the necessary elements thereof. There was no motion made to conform the pleadings to any proof.