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IN THE SUPREME COURT OF FLORIDA

Case No.: SC15-977

JBK ASSOCIATES, INC. f/k/a COASTAL INSULATION, INC,

Petitioner,

v.

SILL BROS., INC., PATRICK T. SILL, STEPHEN D. SILL, LISA D. SILL, AND BARBARA H. SILL,

Respondents.

Lower Tribunal Case No.: 4D14-3049

RESPONDENT, PATRICK T. SILL'S, ANSWER BRIEF

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I. STATEMENT OF THE CASE AND FACTS

The facts in this case are not in dispute. In fact, at the trial in this matter, counsel for Sill had Mr. Sill present and, upon agreement of JBK's counsel, proffered Sill's testimony. This proffer was accepted, without objection, by JBK's counsel.

The Statement of the Case and Facts set forth by the Appellant in this case incorrectly paraphrases the proffer and, as such, the correct facts are set forth below.

Mr. Sill and his then wife purchased a home in 2010 and continued to live in the home until its ultimate sale in October, 2013.

At the end of 2012, due to marital difficulties, Sill and his wife started divorce proceedings which culminated in a final divorce decree in the early part of October, 2013.

As part of the divorce, the homestead property was to be sold and the proceeds of the sale split evenly between the two parties. Submitted into evidence as Sill's Trial Exhibit "A" before the court was the HUD-1 Settlement Statement dated October 28, 2013. This was the date of the actual closing on the sale of the property.

Also included within Exhibit "A" were the Warranty Deed dated October 24, 2013 and the Bill of Sale dated October 24, 2013, both of which had been prepared for the closing.

In anticipation of the closing on October 28, 2013, Mr. Sill moved out of the property on October 26, 2013, two days prior to the closing. This was so that the Buyers could do a walk through and the property could be transferred immediately upon closing.

Mr. Sill's portion of the sale proceeds, in the amount of $458,696.67, was placed into a new account labeled "FL Homestead Account" with Wells Fargo Advisors. This account was then split into three subaccounts. The bank statements were submitted into evidence as Defendant's Trial Exhibit "B". As of February 28, 2014, the subaccounts contained the following assets:

a. Cash $139,274.66;

b. Mutual Funds $297,422.65; and

c. Unit Investment Trust $25,136.89.

The undisputed testimony was also that Mr. Still instructed the broker to invest only in conservative investments and that the money needed to be readily available so that he could take it when he found a home to purchase. In addition to the above, Mr. Sill had contacted real estate brokers and was looking to purchase a home in the range of $500,000.00, thus indicating the intent to use all of the

proceeds to purchase the new home. Defendant's Trial Exhibit "C" consisted of a series of real estate listings showing all of the properties Mr. Sill had looked at prior to his accounts being frozen and evidencing his intent to invest the money into a new home.

JBK stipulated and agreed that Mr. Sill had gone out and seen realtors and had been looking to purchase a new home (Hearing Transcript, page 40, lines 5 to 7). It was also stipulated that the only funds initially placed into the Homestead account were from the homestead. In fact, the court noted that JBK was not disputing these facts, stating at Hearing Transcript page 41, lines 17 to 22, "because you are not taking issue, as you candidly indicated to me, with respect to the fact that he has consulted with realtors and listing agents and has been actively seeking to find another property for his share of the proceeds from the homestead property sale".

JBK then argued to the court that because some of the subaccounts contained mutual funds and/or securities which then either received interest or dividends which were reinvested in the account, the funds either were not being used solely to invest in a new homestead and/or that funds were comingled. In response to this, the court stated at page Hearing Transcript, page 42, lines 6 to 18:

> "Purchasing liquid securities as an alternative to the zero interest that is being paid by traditional banking institutions is not of concern to me as long as they are safe, marketable securities, which so far, based upon what you have told me. I have a reasonably good knowledge of

> the securities market, and those are completely and entirely liquid. So that doesn't concern me.
>
> Seeking some bit of interest on your money in this day and age is much more suitable with sound conservative investments in the stock market than it would be in a banking institution because you get nothing. So, I don't have a problem with that."

The court then granted Sill's Motion to Dissolve Writ of Garnishment as to this account, without prejudice to the judgment debtor reasserting his interest in the funds if the applicable reasonable time standard under Florida law was not met. The trial court further set the case for a status check over one month later to determine the status of Sill's use of funds. No additional proceedings were held as Sill had entered into a contract to purchase a new home, the closing of which occurred on October 14, 2014, wherein all of the proceeds of this account were invested into a new homestead.

II. ARGUMENT

1. SILL'S CONSTITUTIONAL HOMESTEAD PROTECTION PROHIBITS APPELLANT'S CLAIM

Article X, Sec. 4 of the Florida Constitution states, in pertinent part,

> There shall be exempt from forced sale under process of any court, and no judgment decree or execution shall be a lien thereon, except for payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: (1) a homestead. . . .

This Court has long emphasized that the homestead exemption is to be liberally construed in the interest of protecting the family home. Havoco of America Ltd. v.

Hill, 790 So.2d, 1018 (Fla. 2001). See also, Milton v. Milton, 63 Fla. 553, 58, So. 718, 719 (1912) (organic and statutory provisions relating to homestead exemptions should be liberally construed in the interest of the family home).

The concomitant in harmony with this rule of liberal construction is the rule of strict construction as applied to exceptions. Havoco, Supra. at 1021. See also, Quigley v. Kennedy & Ely Insurance, Inc., 207 So.2d 431, 432 (Fla. 1968) and Osborne vs. Dumoulin, 55 So.3d 577 (Fla. 2011).

In support of this liberal construction of exemptions, and strict construction of exceptions to exemptions, this Court has held that acquiring a homestead with non-exempt funds with the specific intent of hindering, delaying or defrauding creditors does not void the homestead exemption (Havoco, Supra.); that civil forfeiture of a debtor's home after that debtor has been convicted of racketeering (Butterworth v. Caggiano, 605 So.2d 56 (Fla. 1992)) or drug dealing (Tramel v Stewart, 697 So.2d 821 (Fla. 1997)) would be impermissable.

With this background, we turn to the Appellant's arguments:

A. THE SALE PROCEEDS WERE HELD SOLELY FOR THE PURCHASE OF ANOTHER HOMESTEAD

Appellant's argument is that Sill did not hold the funds solely for the purchase of another homestead because they were placed, in part, in a securities account. Appellant cites no law to support his proposition other than a suggestion of a strict reading of Orange Brevard Plumbing & Heating Co. v. La Croix, 137

So.2d 201 (Florida 1962). As this Court is well aware, in Orange Brevard, this Court held that when a party voluntarily sells a home, the funds from that sale do not lose their exempt status as long as they meet certain tests. The primary test is an abiding good faith intention prior to and at the time of the sale of the homestead to reinvest the proceeds thereof in another homestead. In addition, this Court stated that (1) the funds must not be comingled with other monies of the vendor but be kept separate and apart; (2) the funds must be held for the sole purpose of acquiring another home; and (3) the funds only lose their homestead character if they are not reinvested in another homestead within a reasonable time or if they are held for the general purpose of the vendor.

The bank statements, and the testimony presented to the court, were that the only money placed into this account was money from the sale of the homestead. The account itself is labeled a FL Homestead Account. A portion of the funds was used for conservative investments while Sill shopped for a new home. There is no question, and it is undisputed, that he had a good faith intention to reinvest the proceeds in a new home. It is undisputed that the funds were not comingled and that the proceeds were kept separate and apart and held for the purpose of acquiring a new home.

Appellant attempts to argue that by placing the money in an account which purchased conservative securities while looking for a new home somehow changes

the purpose. In Orange Brevard, this Court was clear that if the funds were being used for the general purposes of the vendor, the proceeds might lose their homestead character. The funds at issue were not used to make mortgage payments, pay electric bills, make car payments, pay insurance, buy food, or any other item that could be deemed the general purpose of the vendor. The money was left solely in the account and conservative investments were made in an effort to have the amount grow and provide more money for use in purchasing a new home.

Neither this Court, nor any other court interpreting Orange Brevard has ever stated that the funds must be placed in an interest-free account so that the funds remained in the exact amount without any growth.

In its brief, the Appellant completely misconstrues the Orange Brevard decision. The Appellant attempts to argue a strict and narrow interpretation of Orange Brevard and further argues that to support the Appellee's position, and that of the lower courts, would turn every court into a fact finder as to the level of risk level of the investment account.

The test of Orange Brevard is actually very simple. The court makes factual determinations as to whether the debtor had a good faith intent to reinvest the proceeds of the sale of his homestead into a new property within a reasonable period of time. That is the true test. It is that upon which courts must make a

factual finding. As a factor in reaching that finding, the court certainly can look at whether they were placed into risky investments as opposed to conservative investments and/or whether the stock was liquid. Nothing in Orange Brevard precludes this. Only a draconian, strict interpretation, contrary to every finding this Court has ever made with regard to exemptions, could lead to this result.

The debtor testified that he planned on purchasing a new home. He provided documentation of his search for a new home. All of the proceeds were placed into an account and not comingled with any other funds of the debtor. The funds were not used for the general purpose of the debtor. They were simply left in an account. The funds were reinvested in another homestead within a reasonable time, so all of the elements of Orange Brevard were met. The mere fact that a portion of the funds was placed into an account which contains securities is simply not a violation of the Orange Brevard standards.

The purpose of the fund is still to purchase a home. The Appellant seems to try to equate this activity with day trading and buying and selling corporations for profit. This is simply not what occurred. As the trial court specifically noted at the beginning of page 41, line 23 through page 42, line 22 of the Hearing Transcript,

> "The fact, as I said before, these purchased securities is not of any real concern to the court. If you could show me, for example, that he purchased a $300,000 Lamborghini or a $500,000 yacht, that has a degree of permanency to it, that I would be interested in. Because that would be circumstances and facts here that would go to reasonableness.

> Purchasing liquid securities as an alternative to the zero interest that is being paid by traditional banking institutions is not of concern to me as long as they are safe, marketable securities, which so far based upon what you've told me. I have a reasonably good knowledge of the securities market, and those are completely and entirely liquid. So that doesn't concern me.
>
> Seeking something of interest on your money in this day and age is much more suitable with sound, conservative investments in the stock market than it would be in a banking institution because you get nothing. So I don't have a problem with that.
>
> Or, again, if you show me proof that he invested in a whole life policy or an annuity where there is permanency involved, clearly that would sway my consideration."

As the court noted, the securities account was entirely liquid, which was the undisputed testimony. The Appellant cannot point to a single decision supporting his contention. On the contrary, there are cases which support Sill's position. In In re Binko, 258 B.R. 515 (Bankr. SD Fla. 2001), the debtors sold their home and intended to use the proceeds to purchase a less expensive home. They did not find their home before they were forced to move and were required to temporarily lease an apartment. Their funds were deposited into a command account at Prudential Securities designated as a homestead account [similar to the account at bar]. The monies were not comingled with any other incoming funds from another source While attempting to find a new home, the debtors had financial issues and were forced to withdraw a portion of the money from their Prudential securities account to pay some living expenses while they looked for a new home. Objection was

made to the remainder of the funds being used as homestead. The court therein found that the mere withdrawal of some of the funds did not void the exemption as to the other funds and did not seem to care that the account was an investment account.

The case of In re Bertola, 2012 WL 1945426 (Bankr. Colorado 2012) is instructive. In this case, Colorado has a homestead law which is similar to Florida law, and which makes the proceeds of the sale exempt for two years. The Colorado court also talks about the liberal construction in favor of the homestead, similar to that of Florida. The Bertola court also found that the language of the exemption statute also required proceeds of the sale be maintained separate and apart from other monies, always be identified, and that the funds be used timely to purchase a new home.

In the Bertola case, the debtor also took the money from the sale of his homestead and placed them in an investment account and purchased various stocks. The court found that the debtor did not lose his homestead exemption. By keeping the funds and the purchased stock in the segregated brokerage account, separate from other funds or property, the debtor complied with the requirements of separation and identifiability which are similar to the requirements of Florida law. The court therein also noted, much as Florida law, that there appears to be no

requirement under Colorado law that the debtor hold the proceeds in only one form or face forfeiture of the homestead exemption benefit.

The Fourth District Court of Appeal, in its opinion in this case, cited to the case of Sun First Nat'l Bank of Orlando vs. Gieger, 402 So.2d 428 (Fla. 5th DCA 1981).

In Gieger, the judgment debtor sold their home, received a portion of the sale proceeds in cash, and for the remainder took a note and mortgage on the prior homestead from the buyer. The judgment debtor intended to use the proceeds of that mortgage to pay the mortgage on his current residence. In affirming the decision to dissolve a writ of garnishment the court stated: "The Orange Brevard case clearly stands for the proposition that homestead property can change into proceeds and still be protected. The issue is whether those proceeds must be cash proceeds in order to come under the protection of Orange Brevard." Id. at 431. The Fifth District Court of Appeal then performed an extensive analysis of Florida law and noted that proceeds of the sale of a homestead are essentially deemed a temporary form of the homestead which is then to be reinvested or converted back in to a real property homestead within the Orange Brevard reasonable time period.

The Fifth District Court of Appeal then held

> In the Orange Brevard holding, the language used was "proceeds" from the sale, not "cash proceeds." It would seem, then, that non-cash proceeds can be eligible for exemption, so long as they serve the same function that cash proceeds do, i.e., a temporary form of the

> homestead, to be reinvested, to be converted back into real-property homestead within the Orange Brevard reasonable time period. A note and mortgage may be the "substitute homestead" so long as reinvested into a new homestead and the new homestead is purchased within a reasonable time".

At the time of the hearing before the trial court, there was only a short period between the sale of Sill's prior homestead and the garnishment, so the reasonable time factor was not at issue. The trial court correctly found, and the district court was correct in affirming, that the segregated accounts met the Orange Brevard test, and that this Court has never limited proceeds to cash proceeds. This Court has never stated that funds must held in non-interest bearing accounts. Under Appellant's argument, had the funds been placed into a savings account, Sill could have lost his exemption because the value was increased and that increase, via interest, would be considered comingling. Likewise, a short term certificate of deposit would cause Sill to lose his homestead interest under these arguments. These are just some examples of current investment tools that are safe, liquid, and allow people in today's economy to manage their money.

Under Section B of its brief, the Appellant tries to argue that dividends are not the same as interest, and that since dividends would be received in these mutual funds that were purchased, the entirety of the exemption should be lost. Once again, Appellant is advocating a strict interpretation, which would have a

draconian result, contrary to the long-standing policy and law of the State of Florida.

Appellant cites no case to support its proposition that dividends are not the same as interest. Common sense tells this Court that they are. People can shop and move their monies to different banks, which have higher interest rates than others. How is that any different from getting dividends from the best source possible. Even were this Court to agree that dividends are different from interest, any ruling should be limited to denying the exemption as to the interest/dividends only. It should not serve to destroy the entirety of the exemption. For the reasons set forth in the next section, however, the Court should not reach this decision.

B. APPELLANT'S ARGUMENTS ARE PROHIBITED BY THE DOCTRINE OF MOOTNESS

This appeal should be dismissed and/or denied based upon the doctrine of mootness. The decision of the trial court in this case was entered on July 14, 2014. Although a timely appeal was taken to the district court, no stay pending appeal was obtained. Sill located and purchased a new home using all of the proceeds of the accounts at issue on October 14, 2014. Although being made aware that a contract was entered into, and having a copy of the HUD-1 closing statement provided to it prior to the closing, the Appellant herein never obtained a stay pending appeal. Sill's home purchase is also a matter of public record in Palm Beach County. As no stay pending appeal was obtained, there is no actual

controversy remaining and the issues have ceased to exist. In Paul Jacquin & Sons, Inc. vs. City of Port St. Lucie, 69 So.3d 306 (Fla. 4th DCA 2011), the Fourth District Court of Appeal cited to the ruling of this Court in Godwin v. State, 593 So.2d 211, 212 (Fla. 1992) stating "an issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect". Paul Jacquin & Sons Inc., Supra. at 308. The Court then further stated "a case is moot when it presents no actual controversy or when the issues have ceased to exist…A moot case generally will be dismissed." Id. at 308.

The Fourth District Court did, however, note that mootness will not destroy an appellate court's jurisdiction when the questions raised are of great public importance, or likely to reoccur, or if collateral legal consequences that affect the rights of a party flow from the issues to be determined. Id. at 308. Under the facts of this case, the Appellee believes that this case should be dismissed on the grounds of mootness as a new home has been purchased, nothing in the facts of this case would meet any legal standard set forth by this Court for the imposition of an equitable lien (see, e.g. Havoco, Supra.) and, therefore, no effective relief can be given to the Appellant. Should the Court determine not to dismiss this case and enter a ruling on the issues, the doctrine of mootness would still apply and the appeal should be denied.

III. CONCLUSION

For all of the foregoing reasons, the decision of the District Court must be affirmed.

Dated: November 23, 2015.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief satisfies the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure. It was generated in Times New Roman 14 point font.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically and by U.S. Mail on November 23, 2015 on the following parties:

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