IN THE SUPREME COURT OF FLORIDA

PHILIP F. MILLER, III and
GLORIA MILLER DAIGH,

Petitioners,

v.

SHARON J. COLLINSON,

Respondent.
_____/

Case No. SC05-1215

2d DCA Case No. 2D03-2698

Lower Tribunal Case No.
99-7699-CA-JSC

JURISDICTIONAL BRIEF OF RESPONDENT SHARON J. COLLINSON

On Review from the District Court of Appeal,
Second District, State of Florida

Robert E. Biasotti
Florida Bar No. 0104272
Christine R. Dean
Florida Bar No. 0569372
CARLTON FIELDS, P.A.
Post Office Box 2861
200 Central Avenue, Suite 2300
St. Petersburg, FL 33731-2861
Tel: (727) 821-7000
Fax: (727) 822-3768

Attorneys for Respondent
Sharon J. Collinson

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES, RULES, AND OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

Respondent, Sharon J. Collinson, rejects the Petitioners' statement of the facts, and defers to the facts set forth in the underlying decision. See Collinson v. Miller, 903 So. 2d 221, 223 (Fla. 2d DCA 2005). Petitioners' brief recites numerous "facts" that are not found on the face of that opinion.[1]

For example, Petitioners assert that Philip Miller Jr. built two houses and then transferred title to himself and his wife as tenants by the entireties. Pet. at 1. The decision on review states that Mr. Miller transferred title of undeveloped lots, not houses. Collinson, 903 So. 2d at 223. Petitioners also state that Mr. Miller transferred ownership "after learning he was suffering from a serious illness;" that Mrs. Miller "abused the confidence reposed in her by Philip Jr. by conveying the remainder interest to Sharon Collinson;" and that Mrs. Collinson was "unjustly enriched by the conveyance." Pet. 1, 3. None of those "facts" are found in the underlying decision.

Notably, the Second District made several significant observations that are relevant to this Court's consideration of whether it should grant discretionary review in this case. First, the court observed that "Mr. Miller's children are trying to enforce an oral agreement between their father and Mrs.

[1] When considering a brief on jurisdiction, this Court's review "is limited to the facts which appear on the face of the opinion." Hardee v. State, 534 So. 2d 706, 708 n.* (Fla. 1988).

Miller that was specifically designed and intended to evade estate taxes." Id. at 226. The court found it "odd" that a court of equity would impose a constructive trust "to enforce an oral agreement specifically designed to evade taxes." Id.

The court also stated that the property at issue was Mrs. Miller's homestead. Id. As such, if the Miller children had pursued enforcement of the oral agreement at the time of Philip Miller Jr.'s death, Mrs. Miller: a) would have, as a matter of law, been entitled to received a life estate in the properties; and b) "could have demanded an elective share equal to thirty percent of the fair market value of all property subject to administration." Id. at 226-27. The court stated that "it seems odd that twenty years later, Mr. Miller's children would have an improved claim based upon this tax avoidance scheme against Mrs. Miller's daughter who purchased the property in a method designed to comply with all tax laws." Id. at 227.

In the end, the Second District expressly held that the Petitioners' cause of action undisputedly "accrued in 1982 or 1983 when the Miller children were specifically placed on notice that Mrs. Miller did not intend to abide by the terms of the [oral] agreement." Id. Because Petitioners' action was not filed until 16 or 17 years later--in 1999--their action was barred by the statute of limitations. Id. (citing §95.11(3), Fla. Stat. (1981)).

The court also noted that the Miller children "seek redress [from Mrs. Collinson] for a violation of a promise made and broken by Mrs. Miller." Id. The court expressly held that "the Miller children did not retain a cause of action that could be pursued against Mrs. Collinson instead of Mrs. Miller." Id. at 230.

SUMMARY OF THE ARGUMENT

No conflict exists between the Second District's decision and any of the sixteen conflict cases cited by the Petitioners. First, Petitioners cite twelve cases for the proposition that a constructive trust is an independent cause of action, not a remedy. None of the twelve alleged conflict cases say that.

Petitioners also cite four cases for the proposition that a constructive trust action is not subject to the statute of limitations, but is instead controlled by equitable doctrine of laches. Notably, Petitioners' second point expressly conflicts with their first point. If, as Petitioners contend, a constructive trust is an independent cause of action, then it would necessarily be governed by Florida's default statute of limitations. In all events, because the conflict cases Petitioners rely on for its second point predate the Florida Legislature's statutory codification of the equitable doctrine of laches, no conflict exists.

ARGUMENT

I. NO CONFLICT EXISTS AS TO WHETHER A CONSTRUCTIVE TRUST IS AN INDEPENDENT CAUSE OF ACTION AND NOT A REMEDY

The Florida Supreme Court only has jurisdiction to review a district court's decision when that decision expressly and directly conflicts with a decision of another district court or the supreme court on the same question of law. Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980). In the decision on review, the Second District states: "[a] constructive trust ... is not a traditional cause of action," but rather is an equitable remedy that "must be imposed based on an established cause of action." Collinson, 903 So. 2d at 228. Petitioners cite twelve alleged conflict decisions which purportedly stand for the proposition that a constructive trust is an independent cause of action and not a remedy. Simply put, none of the cases they rely on say that.

The cases Petitioners rely on all involve parties seeking a constructive trust as a remedy for some other cause of action. The reason is simple--the decisions all correctly recognize that "unjust enrichment" is an essential element of a constructive trust. See, e.g., Saporta v. Saporta, 766 So. 2d 379, 381 (Fla. 3d DCA 2000). Because a claim of unjust enrichment is itself an independent cause of action, (see Cohen v. Kravit Estate Buyers, Inc., 843 So. 2d 989, 992 (Fla. 4th DCA 2003)), an action

seeking a constructive trust as a remedy necessarily requires, as a predicate, an independent cause of action. See Bauman v. Rayburn, 878 So. 2d 1273, 1275 n.1 (Fla. 5th DCA 2004) (stating a "constructive trust" is not a cause of action but is "an equitable remedy invoked to avoid an unjust enrichment").

On first blush, the dozen cases that Petitioners rely on appear to superficially suggest conflict because they refer to a "constructive trust" as a cause of action. However, a closer review of these decisions discloses that the plaintiff in each case sought a constructive trust as an equitable remedy, which is entirely consistent with the Second District's decision here.

For example, in Abele v. Sawyer, 750 So. 2d 70, 73-74 (Fla. 4th DCA 1999), the court stated "[a] constructive trust is imposed by operation of law as an equitable remedy in a situation where there is a wrongful taking of the property of another." See also Wadlington v. Edwards, 92 So. 2d 629, 631 (Fla. 1957) (seeking to impose a constructive trust as a remedy for unjust enrichment, where title to property purchased by a widow with her own separate funds was taken in name of her late husband "by mistake and against her will"); Saporta v. Saporta, 766 So. 2d 379, 381 (Fla. 3d DCA 2000) (finding that the failure to impose a constructive trust as a remedy "would result in a windfall to the husband amounting to unjust enrichment"); Provence v. Palm Beach Taverns, Inc., 676 So. 2d 1022, 1025

(Fla. 4th DCA 1996) (finding a constructive trust is "a remedial device"). These decisions are all fully consistent with the Second District's opinion in this case--each one explaining that a constructive trust is an equitable remedy.

Likewise, in the cases cited by Petitioners, the courts make clear that a claim for constructive trust must be premised on a separate, underlying predicate cause of action. The cases recognize that a constructive trust will not be imposed absent some type of fraud, breach of contract, breach of fiduciary duty, mistake, unjust enrichment, or some other established cause of action. See Abele, 750 So. 2d at 73-74 (recognizing that the plaintiff sought a constructive trust remedy based on a defendant's alleged breach of a fiduciary relationship); Logie v. J.P. Morgan, Fla., F.S.B., 716 So. 2d 319 (Fla. 4th DCA 1998) (underlying cause of action was breach of an agreement); Varnes v. Dawkins, 624 So. 2d 349 (Fla. 1st DCA 1993) (same); Evans v. Wall, 542 So. 2d 1055 (Fla. 3d DCA 1989) (same); Steigman v. Danese, 502 So. 2d 463 (Fla. 1st DCA 1987) ("all four counts of the complaint [including the count seeking imposition of a constructive trust] are predicated primarily on allegations of fraud"); Quinn v. Phipps, 93 Fla. 805, 113 So. 419, 422 (Fla. 1927) (seeking a constructive trust based on a claimed breach of fiduciary duty); Botsikas v. Yarmark, 172 So. 2d 277, 278 (Fla.

3d DCA 1965)(seeking a constructive trust based on a claim of "unjust enrichment").

Consistent with these cases, this Court has similarly recognized that a constructive trust is a remedy that requires, as a predicate, an underlying cause of action. For example, in In re Estate of Tolin, 622 So. 2d 988, 990 (Fla. 1993), this Court imposed a constructive trust as a remedy for a mistake of fact and unjust enrichment. This Court explained:

> [a] constructive trust is properly imposed when, as a result of a mistake in a transaction, one party is unjustly enriched at the expense of another. Although this **equitable remedy** is usually limited to circumstances in which fraud or breach of confidence has occurred, it is proper in cases in which one party has benefited by mistake of another at the expense of a third party.

Id. at 990-91 (emphasis added). Likewise, in Bell v. Smith, 32 So. 2d 829 (Fla. 1947), this Court recognized:

> Because a constructive trust arises only after an act of fraud or breach of confidence or duty and as a relief against the same, it is in substance **a state of secondary rights and liabilities growing out of a primary right and liability** . . . .

Id. at 832 (emphasis added.) In both of these cases, the plaintiffs were seeking to impose a constructive trust as a remedy for an underlying (or primary) cause of action. That is precisely what the Second District held below.

It bears emphasis that a cause of action for a constructive trust is no more an independent action than is a claim for punitive damages. A claim for punitive damages, like a claim for a constructive trust, is often pled in a complaint as a separate count, and has elements that must be met in order to invoke that remedy. But punitive damages, like constructive trusts, do not stand alone as a separate action, without some underlying action to provide a basis to invoke that remedy.

II. NO CONFLICT EXISTS AS TO WHETHER THE STATUTE OF LIMITATIONS APPLIES TO A CONSTRUCTIVE TRUST

Petitioners contend that the decision on review conflicts with four other decisions that have held that a claim seeking a constructive trust is not subject to a statute of limitations but is instead subject to the equitable doctrine of laches. As a threshold matter, Petitioners' second point expressly and directly conflicts with their first point. If a constructive trust is itself an independent cause of action, then it would necessarily be governed by the statute of limitations, not the doctrine of laches. Plaintiffs' contradictory positions are unreconcilable.

Notably, this apparent contradiction was explained in Steigman--a case which Petitioners relied on in their first conflict point. In that case, the First District explained that when a plaintiff seeks the imposition of a constructive trust as

a remedy, the claim is controlled by the statute of limitations that applies to the underlying independent cause of action--such as fraud or misrepresentation. See Steigman, 502 So. 2d at 470.

In all events, no conflict regarding the application of the doctrine of laches exists here because the decisions cited by Petitioners all predate the enactment of section 95.11(6), Florida Statutes (1974), in which the Florida Legislature codified the limitations period for laches. Section 95.11(6) provides that when a legal cause of action exists that is equivalent to the equitable action raised, the statute of limitations applicable to the legal cause of action applies. Courts exercising equity jurisdiction must apply laches in accord with the legal limitation period in actions of an equivalent nature. See Corinthian Investments, Inc. v. Reeder, 555 So. 2d 871, 874-75 (Fla. 2d DCA 1989). Because Florida law since 1974 no longer permits a separate time bar based on laches, these cases do not conflict with the opinion below.

Moreover, even under pre-1974 Florida law, no conflict exists. In the cases cited for conflict, the courts expressly recognize that courts should apply the appropriate statute of limitations in most instances, unless special intervening equities exist. See Sewell v. Sewell Prop., Inc., 30 So. 2d 361, 573 (Fla. 1947); Fisher v. Creamer, 332 So. 2d 50, 52 (Fla. 3d DCA 1976); Albury v. Gordon, 164 So. 2d 549, 552 (Fla. 3d DCA

1967). Here, it is clear from the Second District's decision that there were no "special intervening equities" found. Indeed, to the contrary, decision below makes clear that the equities were all in Mrs. Collinson's favor. See Collinson, 903 So. 2d at 223-26 (observing that, if a constructive trust were imposed, Petitioners would benefit from a tax avoidance scheme at Mrs. Collinson's expense, even though Mrs. Collinson's purchase of the property fully complied with all tax laws).

In short, nothing in the Second District's opinion conflicts with Petitioners' cases. The Second District--consistent with the cited cases--simply held that Petitioners were aware of the facts giving rise to their action for almost seventeen years, and that their claim was therefore barred by the statute of limitations. For the same reason, the Petitioners' claims in this case would necessarily be barred by laches as well. See § 95.11(6), Fla. Stat.

CONCLUSION

Because no conflict exists between the decision under review and any of the cases cited by Petitioners, Mrs. Collinson respectfully request that this Court deny review of this case.

Respectfully submitted,

Robert E. Biasotti
Florida Bar No. 0104272
Christine R. Dean
Florida Bar No. 0569372
CARLTON FIELDS, P.A.
Post Office Box 2861
200 Central Avenue, Suite 2300
St. Petersburg, FL 33731-2861
Tel: (727) 821-7000
Fax: (727) 822-3768

Attorneys for Respondent
Sharon J. Collinson

CERTIFICATES OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail to **David A. Wallace, Esq.,** Williams, Parker, Harrison, Dietz & Getzen, 200 South Orange Ave., Sarasota, FL 34236; and **Harold N. Hume, Jr., Esq.,** Henderson, Franklin, Starnes & Holt, P.A., Post Office Box 280, Fort Myers, FL 33902-0280; attorneys for Petitioners, on this 8th day of August, 2005.

I HEREBY FURTHER CERTIFY that the type size and style used throughout this brief is 12-point Courier New double-spaced, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

By:_____
Robert E. Biasotti