SUPREME COURT OF FLORIDA

Case No. SC05-____
Second District Court of Appeal Case No: 2D03-2698
Twentieth Judicial Circuit Case No. 99-7699-CA-JSC

PHILIP F. MILLER and GLORIA MILLER DAIGH,

Petitioners,

vs.

SHARON J. COLLINSON,

Respondent.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT OF FLORIDA

JURISDICTIONAL INITIAL BRIEF OF PETITIONERS

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FACTS

The decision below recites many of the facts of this case. See Collinson v. Miller, 30 Fla. L. Weekly D952 (Fla. 2d DCA April 13, 2005). However, the most relevant for purposes of this Court's determination of jurisdiction are as follows.

In 1972, Philip F. Miller Jr. ("Philip Jr.") married Barbara Jenks Miller. At the time of their marriage, each had three adult children from prior marriages. Two of Philip Jr.'s children are the Petitioners, Philip F. Miller III ("Philip III") and Gloria Miller Daigh. One of Mrs. Miller's children is the Respondent, Sharon J. Collinson. Their other children are not parties to this action.

In May 1976, Philip Jr. purchased two adjacent waterfront lots on Boca Grande, taking title in his name alone. Subsequently, a home was built on each lot, one of which was considered the "main house" and the other was considered the "guest house." In September 1976, after learning that he was suffering from a serious illness, Philip Jr. transferred ownership of the properties to his wife and himself as tenants by the entireties. He did so in reliance upon their confidential relationship as husband and wife and Mrs. Miller's promise that, upon her death, Philip Jr.'s children, her step-children, would receive the properties.[1] Upon Philip

[1] Although the Second Amended Complaint alleged that she promised to bequeath the property "or its equivalent value," the trial court found in its Final Judgment that there was a promise "that the properties would be given to the children of

Jr.'s death in 1978, the properties passed solely to Mrs. Miller, who resided in the main house thereafter. In 1982, Mrs. Miller advised her step-son, Philip III, that she no longer wished to incur the taxes and expenses associated with the guest house and offered to sell it to her step-children. In response, her step-son, Philip III, noted the oddness of the offer given her prior promise, and proposed that she instead gift the guest house to her step-children subject to their payment of any gift tax attributable to the transaction. Mrs. Miller's son-in-law, Jeffrey Collinson, responded to Philip III's proposal on her behalf in a letter indicating that Mrs. Miller intended to provide the houses "or a value equivalent thereto" to her stepchildren in her will, that she would use or dispose of the houses at her election, and that her original offer was intended to give her step-children an opportunity to buy the guest house before she sold it to others. Following various negotiations, Philip III purchased the guest house from Mrs. Miller in 1983 for its fair market value of $450,000.

Following the sale of the guest house, Mrs. Miller continued to reside in the main house. However, in 1990, she conveyed a remainder interest in the main house to her own daughter, Sharon Collinson, thereby making impossible her promise to provide it to her step-children upon her death and abusing the

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Philip F. Miller, Jr. (including Plaintiffs) upon Barbara Miller's death." That finding was not overturned on appeal.

confidence reposed in her by her deceased husband. Also in 1990, with the assistance of Sharon's husband, Jeffrey Collinson, Mrs. Miller changed her will to bequeath a specific monetary devise to her step-children based upon a 1990 valuation of the main house, less certain capital gains and estate taxes. Unlike with the guest house, Mrs. Miller never notified her step-children of her intent to sell a remainder interest in the main house. In fact, Mrs. Miller's step-children did not learn of that sale until after her death in March 1999.

Shortly after learning that Mrs. Miller had not bequeathed the main house to them as she had promised their father, Philip III and his sister Gloria filed suit against Mrs. Miller's estate and Mrs. Collinson. Count One of that suit sought a constructive trust on the main house. At some point, the claims against Mrs. Miller's estate were settled. However, the claim against Sharon Collinson for constructive trust proceeded to trial. That claim was supported in part by Jeffrey Collinson's participation in the above-described events, evidencing his wife's knowledge of her mother's prior promise, and evidence that Mrs. Miller gave her daughter Sharon a gift of $200,000, in 1991, only a year after selling the remainder interest in the main house to her for $233,655.

After considering the evidence, the trial court determined that Mrs. Miller abused the confidence reposed in her by Philip Jr. by conveying the remainder interest to Sharon Collinson, that Sharon Collinson was not a bona fide purchaser

for value, and that she was unjustly enriched by the conveyance. The trial court granted the constructive trust against the main house, imposing an equitable lien of $795,762 thereon. Thereafter, Mrs. Collinson appealed, and the Second District Court of Appeal reversed the trial court's final judgment. See Collinson, 30 Fla. L. Weekly at D955. In so doing, the Second District concluded (1) that a constructive trust is not an independent cause of action but rather a remedy imposed based upon an established cause of action, (2) that any claim to a constructive trust against the property in this matter, whether founded on fraud or breach of contract, accrued in 1982 or 1983, and (3) that a four-year statute of limitations barred that claim. See id. at D954-55.

SUMMARY OF ARGUMENT

In the decision below, the Second District held that constructive trust is not a cause of action, but rather an equitable remedy that must be imposed based upon an established cause of action. However, the Second District also expressly acknowledged that decisions of other Florida courts have treated constructive trust as a cause of action. In fact, decisions of other District Courts of Appeal have (a) recited the elements of a constructive trust cause of action, which do not correlate to the elements of any other established cause of action, (b) held that a complaint sufficiently stated a cause of action for or sufficiently pled the elements of constructive trust, and (c) held that a cause of action for constructive trust was

maintainable. Therefore, the decision below expressly and directly conflicts with decisions of other District Courts of Appeal on the question of whether constructive trust is an independent cause of action.

As well, in the decision below, the Second District held that any cause of action seeking a constructive trust in this suit was barred by a four-year statute of limitations. However, decisions of this Court and other District Courts of Appeal have held that a beneficiary's claim to a constructive trust is not subject to statutes of limitations. Therefore, the decision below expressly and directly conflicts with decisions of this Court and other District Courts of Appeal on the question of whether statutes of limitations apply to a beneficiary's claim to a constructive trust.

ARGUMENT

THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL AND THIS COURT ON THE SAME QUESTIONS OF LAW

This Court has discretionary jurisdiction over a decision of a District Court of Appeal that expressly and directly conflicts with the decision of another District Court of Appeal or of this Court on the same question of law. Fla. R. App. P. 9.030(a)(2)(A)(iv). Here, the decision below by the Second District Court of Appeal expressly and directly conflicts with decisions of other District Courts of Appeal and this Court on two separate questions of law.

ISSUE I: WHETHER CONSTRUCTIVE TRUST IS AN INDEPENDENT CAUSE OF ACTION

In the decision below, the Second District held that "[a] constructive trust ... is not a traditional cause of action," but rather an equitable remedy that "must be imposed based upon an established cause of action." Collinson, 30 Fla. L. Weekly at D954, D955. However, the Second District's only cited authority for this conclusion is a footnote in a decision of the Fifth District Court of Appeal and decisions of non-Florida courts. At the same time, the Second District acknowledged that the case "present[ed] close issues on the availability and application of constructive trusts." Id. at D952. Even more importantly, the Second District acknowledged that other Florida decisions "have treated constructive trust in a manner similar to a cause of action, by discussing the 'elements' of such a claim and even treating such a claim for constructive trust as subject to dismissal for failure to state a cause of action." Id. at D954 (citing "See, e.g., Abele v. Sawyer, 747 So. 2d 415, 416 (Fla. 4th DCA 1999)").

In fact, decisions of other District Courts of Appeal have (a) recited the elements of a constructive trust cause of action, which do not correlate to the elements of any other "established cause of action," (b) held that a complaint sufficiently stated a cause of action for or sufficiently pled the elements of constructive trust, and (c) held that a cause of action for constructive trust was maintainable. See Steigman v. Danese, 502 So. 2d 463, 467-68 (Fla. 1st DCA 1987) (referring to "essential elements of a constructive trust" and holding that

"Count III states a cause of action for constructive trust"); Provence v. Palm Beach Taverns, Inc., 676 So. 2d 1022, 1025 (Fla. 4th DCA 1996) (referring to the "elements" of a constructive trust and concluding complaint sufficiently alleged the existence of a constructive trust); Saporta v. Saporta, 766 So. 2d 379, 381 (Fla. 3d DCA 2000) (referring to the four "elements" of constructive trust); Abele v. Sawyer, 750 So. 2d 70, 74 (Fla. 4th DCA 1999) (same); Abele v. Sawyer, 747 So. 2d 415, 416-17 (Fla. 4th DCA 1999) (same); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993) (holding complaint "state[d] a cause of action for the imposition of a constructive trust"); Botsikas v. Yarmark, 172 So. 2d 277, 278 (Fla. 3d DCA 1965) (holding material allegations of complaint were "sufficient to state a cause of action for recovery upon the theory of the existence of a constructive trust"); Logie v. J.P. Morgan, 716 So. 2d 319, 320 (Fla. 4th DCA 1998) (finding complaint "successfully pled facts that, if proven, would support the imposition of a constructive trust"); Evans v. Wall, 542 So. 2d 1055, 1056 (Fla. 3d DCA 1989) (holding a "cause of action for a constructive trust" was maintainable). The decision below expressly and directly conflicts with these decisions of other District Courts of Appeal on the question of whether constructive trust is an independent cause of action.

This conflict should be resolved by this Court because, in negating the existence of the constructive trust cause of action, the Second District's decision

below will deny access to the courts traditionally enjoyed in Florida. Numerous decisions of Florida courts have indicated that a constructive trust may be imposed where one, not only through fraud or breach of confidence, but also through "other questionable means" or "mistake," gains something which in equity and good conscience he or she should not be permitted to hold. See, e.g., Quinn v. Phipps, 93 Fla. 805, 113 So. 419, 422 (Fla. 1927); In re Estate of Tolin, 622 So. 2d 988 (Fla. 1993). In fact, the relations and duties involved in a constructive trust cause of action need not be legal; they may be moral, social, domestic or personal. See, e.g., Quinn, 113 So. at 421; Botsikas, 172 So. 2d at 279. Because not every set of circumstances to which these general principles apply may fall within another "established cause of action," this Court should accept jurisdiction in order to clarify that constructive trust is a traditional cause of action. See Bell v. Smith, 32 So. 2d 829 (Fla. 1947) (stating, in discussing constructive trusts, that "[i]t is a well recognized legal maxim that for every wrong there is a remedy"). This Court should also accept jurisdiction because "[e]quity, as a separate system or body of law, was conceived and developed based on the wisdom and experience of many centuries. It should not be altered except knowingly and deliberately by those with authority and a full knowledge of the particular reasons for the origin of each of its many maxims, principles and practices and a clear vision of the effect of any

change." Hutchens v. Maxicenters, 541 So. 2d 618 (Fla. 5th DCA 1988) (Cowart, J., dissenting).

ISSUE II: WHETHER STATUTES OF LIMITATIONS APPLY TO A BENEFICIARY'S CLAIM TO A CONSTRUCTIVE TRUST

In the decision below, the Second District held that any cause of action seeking a constructive trust in this suit, whether founded on fraud or breach of contract, was barred by a four-year statute of limitations. Collinson, 30 Fla. L. Weekly at D952, D955. However, decisions of this Court and other District Courts of Appeal have held that a beneficiary's claim to a constructive trust is not subject to statutes of limitations. For example, in Wadlington v. Edwards, 92 So. 2d 629 (Fla. 1957), this Court held:

> Some of the decisions state broadly that the claim of a beneficiary under a constructive trust is subject to the bar of the applicable statute of limitations. We think, however, that a preferable statement of the rule would be that in a court of equity the claims of the beneficiary of a constrictive trust are subject to the application of the doctrine of laches which may be based on the provisions in statutes of limitations relating to actions at law of like character. This statement of the proposition recognizes that technically in the absence of a statutory provision, equity is not bound absolutely to apply a statute of limitations but in following the law, absent the presence of intervening equities to the contrary, a court of equity will base its application of the doctrine of laches on the provisions of the appropriate statute of limitations.

Id. at 632. As well, in Fisher v. Creamer, 332 So. 2d 50 (Fla. 3d DCA 1976), the Third District held that claims of the beneficiary of a constructive trust are not subject to statutes of limitations, but rather to the application of the doctrine of

laches, "and further, if there are intervening equities present, a court of equity need not base its application of the doctrine of laches on the provisions of the appropriate statute of limitations." Id. at 51; see also Albury v. Gordon, 164 So. 2d 549, 552 (Fla. 3d DCA 1964) (stating, regarding a constructive trust, "statutes of limitations are inoperative in equity" and quoting Wadlington to effect that the laches is applied "absent the presence of intervening equities to the contrary").

The Wadlington, Fisher, and Albury decisions stand for the proposition that a beneficiary's constructive trust claim cannot be barred by a statute of limitations but rather may be barred by the doctrine of laches provided there are no intervening equities, whereas the decision below holds that a constructive trust claim brought by beneficiaries is barred by a four-year statute of limitations and fails to consider whether intervening equities were present. Therefore, the decision below expressly and directly conflicts with decisions of this Court and other District Courts of Appeal on the question of whether statutes of limitations apply to a beneficiary's claim to a constructive trust. This conflict should be resolved by this Court because a claim to a constructive trust is an equitable one that should not be subject to bright-line statutes of limitations, but rather to the more flexible doctrine of laches. Cf. Sewell v. Sewell Properties, Inc., 30 So. 2d 361, 362-63 (Fla. 1947) (stating, "Where [a constructive] trustee by fraud or deception, or even by keeping quiet when he should speak and account to his cestui, causes the cestui

to be ignorant of [his or her] rights . . . laches will not be imputed to the cestui until discovery of the true condition.”).

CONCLUSION

For the foregoing reasons, it is requested that this Court accept discretionary jurisdiction in this matter.

CERTIFICATE OF FONT COMPLIANCE AND SERVICE

The undersigned hereby certifies that this computer generated brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2), as submitted in Times New Roman 14-point, and that a true and correct copy of the foregoing has been sent by U.S. Mail to **John R. Blue, Esquire and Robert E. Biasotti, Esquire**, Carlton Fields, P.A., P.O. Box 2861, St. Petersburg, Florida, 33731-2861, and **Cathy S. Reiman, Esquire**, 850 Parkshore Drive, 3rd Floor, Naples, Florida 34103, on this ____ day of July, 2005.

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