

IN THE SUPREME COURT OF FLORIDA

**CASE NO.: SC14-2025
THIRD DCA CASE NO.: 3D13-1854**

LESLIE GOLAN and YALI GOLAN,

Petitioners,

vs.

DR. MARC PULEO,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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STATUTES

§ 726.105, Fla. Stat. 2

GLOSSARY

1. **Addendum to the Lock Up Agreement**: The May 2, 2008 Addendum to the Lock Up Agreement filed with the SEC by Scorpion.
2. **District Court**: The Florida Third District Court of Appeal.
3. **Golans**: Petitioners Yali Golan and Leslie Golan.
4. **Leslie**: Petitioner Leslie Golan.
5. **Opinion**: The District Court June 18, 2014 Opinion.
6. **Petition**: Petitioners' Brief on Jurisdiction filed on October 29, 2014.
7. **Postnuptial Agreement**: The March 15, 1999 postnuptial agreement between Yali and Leslie.
8. **Puleo**: Respondent/Judgment Creditor Dr. Marc Puleo.
9. **Scorpion**: Scorpion Performance, Inc.
10. **SEC**: The United State Securities and Exchange Commission.
11. **Trial Court**: The Miami-Dade County Circuit Court.
12. **Trial Order**: The Final Order Denying Judgment Creditor's Fraudulent Transfer Claims rendered on June 18, 2013 by the Trial Court.
13. **Yali**: Petitioner/Judgment Debtor Yali (also known as Eial) Golan.

Respondent Marc Puleo (“Puleo”) opposes discretionary review by this Court of the Third District Court of Appeal’s June 18, 2014 Opinion (the “Opinion”; Petitioners’ Appendix at pp. 1-15) sought by Petitioners Yali Golan and Leslie Golan (the “Golans” or “Petitioners”) in their Brief on Jurisdiction (the “Petition”). In support, Puleo states as follows:

A. INTRODUCTION

The Court should not invoke jurisdiction over this case. Simply, there is no conflict between the district courts of appeal. Petitioners’ purported conflict arises solely from their mischaracterization of, or unwillingness to comprehend the ruling of the Third District Court of Appeal (the “District Court”). Indeed, in seeking discretionary jurisdiction, Petitioners erroneously analyze and conveniently ignore the findings of the District Court. Petitioners’ argument for discretionary review flows from their baseless assertion that the District Court “reconsidered the evidence below to reach a factual conclusion different from that reached by the trial court . . .” Petition at p. 9. Similarly, Petitioners erroneously claim that the District Court reconsidered the Trial Court’s “factual conclusion” that the Postnuptial Agreement precluded Yali from individually owning shares of Scorpion stock. Petition at p. 9. But this was indisputably a legal finding (albeit erroneous) and not a “factual conclusion.” And Petitioners inanely continue to tout as “competent, substantial evidence” their self-serving, unsupported testimony that

the Scorpion Shares were owned by the entirety, even when none of the documents or other facts corroborate this unsupportable testimony.

Petitioners' arguments are baseless and misrepresent the findings of the District Court. First, the Trial Order (which was reversed by the Opinion) contained not only factual findings that were unsupported by competent substantial evidence, but also contained legal error which the District Court corrected. As the District Court determined, Puleo established a prima facie case of actual and constructive fraudulent transfer from Yali to Yali and Leslie under § 726.105(1)(a) and (b), and Petitioners failed to rebut Puleo's prima facie showing. *See* Opinion at pp. 12-15. This alone warranted reversal of the Trial Order.

Second, the District Court determined that Petitioners' testimony was neither competent nor substantial with respect to their far-fetched claim that the Scorpion Shares were already owned jointly before the fraudulent transfer. Specifically: (i) the overwhelming evidence presented by Puleo discredited Petitioners' testimony and showed that Yali owned the shares individually before the fraudulent transfer, and; (ii) Petitioners' conduct with respect to personal property during their marriage contradicted their self-serving trial testimony that they owned all of their property by the entirety.¹ Further undermining Petitioners' testimony, the

¹ In Yali's underlying lawsuit against Puleo, before Puleo brought these fraudulent transfer claims, Yali sued Puleo claiming to own individually shares of PetMed Express, Inc., a company founded by Puleo, and made no mention of

District Court determined that, as a matter of law, the (secret, unrecorded) Postnuptial Agreement could not, in any way, “affect the rights of any subsequent creditor of either or both of the Golans . . .” Opinion at p. 11.

Finally, the Court should deny the Petition because Petitioners did not brief the jurisdictional basis for review of the order that they designated in their Notice to Invoke Discretionary [*sic*] Jurisdiction. Petitioners have sought to invoke the jurisdiction of this Court with respect to the District Court’s October 1, 2014 Order Denying Petitioners’ Motion for Rehearing instead of appealing the Opinion. *See* Petitioners’ October 16, 2014 Notice to Invoke Discretionary [*sic*] Jurisdiction. But the Petitioners’ jurisdictional brief concerns the Opinion rather than the order subject of the Notice to Invoke Discretionary [*sic*] Jurisdiction. Simply stated, Petitioners prepared a jurisdictional brief of the wrong order (the Opinion), over which they did not seek appellate review in their Notice to Invoke Discretionary [*sic*] Jurisdiction. Based on this error, the Court should decline jurisdiction because Petitioners have not raised any basis upon which this Court would have jurisdiction over an appeal of the District Court’s October 1, 2014 Order Denying Petitioners’ Motion for Rehearing in their Petition.

Leslie’s purported ownership in those shares. *See* Opinion at pp. 2-4. This is an indisputable example of Yali contending that he owned property individually while he was married to Leslie.

B. ARGUMENT

I. The District Court Appropriately Determined That The Trial Court Erred As A Matter Of Law By Failing To Shift The Burden Of Proof To Petitioners

Petitioners mischaracterize the Opinion by asserting that the District Court only reversed factual findings of the Trial Court. But the District Court unambiguously reversed clear legal error by the Trial Court as well. *See* Opinion at pp. 12-15. The Trial Court inappropriately placed the burden of proof on Puleo, even after Puleo had presented a prima facie fraudulent transfer case under Florida’s Uniform Fraudulent Transfer Act. *See* Opinion at pp. 12-15. The District Court rectified this legal error and correctly determined that Petitioners failed to provide proof “that their transfer was not made to delay, hinder, or defraud creditors” such as Puleo. *See* Opinion at pp. 12-15.

Notably, the Petition fails to mention the District Court’s critical determination of legal error below, which is more than adequate to merit the relief rendered by the District Court in the Opinion. Hence, all of Petitioners’ arguments relating to “conflicting evidence” and “contradictory record evidence” do not have any impact on the District Court’s reversal of clear legal error. Simply, the Petitioners failed to meet their burden in the Trial Court as required by the Florida Uniform Fraudulent Transfer Act, and the District Court reversed this clear legal error.

II. Petitioners Ignore The Competent, Substantial Evidence Relied On By The District Court In The Opinion

Astonishingly, Petitioners continue to claim that their testimony in the Trial Court was competent and substantial despite irrefutable and extensive documentary evidence dispelling their claims that they owned all property by the entirety. *See generally* the Petition. But as set forth in Section B.I, above, this argument is rendered moot by the District Court's finding of legal error and Petitioners' failure to meet their burden of proof. *See* Section B.I, above. Notwithstanding the finding of legal error, Petitioners' argument about competent substantial evidence is completely belied by the record, which in no way supports, and actually contradicts, their self-serving testimony.

Unsurprisingly, Petitioners rely substantially on the Trial Court's oral ruling to support their claim that they provided substantial and competent evidence that the Scorpion Shares were held by the entirety. *See* Petition at pp. 9-10. But this reliance is misplaced. The Trial Court's ruling rested on the factually incorrect premise (supported by the immaterial Postnuptial Agreement (*see* Opinion at pp. 10-11 and 15)) that there was no evidence that Leslie Golan had acknowledged the divestiture of her interest in the original 500 shares of Scorpion stock. *See* Petition at pp. 9-10. But the documents produced by non-parties Scorpion and the SEC provided a completely different story. *See* Opinion at pp. 6-7 and 11-12. The Scorpion Shares were undeniably issued to Yali alone, and Leslie expressly

acknowledged that fact in the Addendum to the Lock Up Agreement. *See* Opinion at pp. 6-7 and 11-12. As explained by the District Court, per that Addendum to the Lock Up Agreement, Leslie Golan recognized and agreed, in writing, that the 10 million shares of Scorpion stock were solely owned by, and were issued to, Yali. *See* Opinion at pp. 6-7 and 11-12. And Yali Golan's individual ownership of the Scorpion Shares prior to the November 2007 fraudulent transfer was corroborated by the Scorpion stock certificates and the abundant Scorpion SEC filings. *See* Opinion at pp. 5-6 and 12. As such, the District Court was not bound by the Trial Court's factual findings because the Trial Court's findings were simply not supported by the record. "An appellate court will not substitute its judgment for that of a trier of fact when the finding of fact is supported by the record." *Spencer v. Am. Advisory Corp.*, 338 So. 2d 62, 63 (Fla. 3d DCA 1976). Here, the record did not support the Trial Court's findings. Indeed, the record—specifically the Addendum to Lock Up Agreement and SEC filings—plainly and directly refuted the Trial Court's finding that (i) Petitioners' owned the Scorpion shares by the entirety before the fraudulent transfer, and (ii) Leslie Golan never acknowledged the divestiture of her interest in the Shares. Accordingly, Petitioners' testimony was neither competent nor substantial, and the Trial Order was appropriately reversed by the District Court.

III. The Petition Should Be Denied Because Petitioners Briefed The Wrong Order

In their Notice to Invoke Discretionary Jurisdiction, Petitioners unambiguously advise the Court that they seek the review of the District Court order “rendered October 1, 2014” and not the Opinion, which was issued on June 18, 2014. *See* Notice to Invoke Discretionary [sic] Jurisdiction. Instead of filing a jurisdictional brief relating to the order designated in the Notice to Invoke Discretionary Jurisdiction (*i.e.* the District Court’s October 1, 2014 order denying their motion for rehearing), the Petition focuses exclusively on the Opinion. As such, the Petition should be denied because Petitioners have briefed the Opinion, which is not the order on appeal subject of Petitioners’ Notice to Invoke Discretionary Jurisdiction.

C. CONCLUSION

For all of the reasons set forth herein, the Court must deny discretionary jurisdiction to hear this case. No appellate conflict exists with respect to the evidentiary determinations of the District Court. And, even assuming *arguendo* that a conflict did exist with respect to the weight given by the District Court to the factual determinations of the Trial Court, the District Court properly determined that the Trial Court erred as a matter of law by failing to place the burden of proof on Petitioners. Reversal of this legal error plainly supports the entry of judgment in Puleo’s favor.

Simply, Petitioners almost got away with lying to the Trial Court. But the District Court recognized the implausibility of Petitioners' testimony given the considerable record evidence contradicting their story. And the District Court also recognized and reversed the Trial Court's legal error. These actions by the District Court plainly do not warrant review and no "express conflict" with other Florida appellate decisions exists. There is no reason for this Court to accept jurisdiction. And Petitioners' effort to manufacture an appellate conflict is simply the result of them ignoring and mischaracterizing most of the Opinion, and inappropriately juxtaposing out-of-context portions of the Opinion with other appellate rulings.

Date: December 19, 2014

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 19th day of December 2014 via email on Carlos A. Mesa, Esq. (cmesa@mesafloridalawyer.com) and Jay M. Levy, Esq. (Jay@jaylevylaw.com and Wendy@jaylevylaw.com).

By: /s/ Brian Lechich
Brian Lechich

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the font requirements set forth in Florida Rules of Appellate Procedure 9.210 by using Times New Roman 14-point font.

By: /s/ Brian Lechich
Brian Lechich