IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

CASE NO.: 4D16-0444
LOWER TRIBUNAL NO.: 502013CA012409XXXXMB

SKENDER & BEBA HOTI,

APPELLANT,

V.

DAVID GARTEN,

APPELLEE.

REPLY BRIEF OF APPELLANT SKENDER HOTI

TABLE OF CONTENTS

TABLE OF CITATIONS AND AUTHORITIES

TABLE OF CASES:

Miller v. First American Bank & Trust 607 So.2d 483 (4th DCA 1992)

Uhley v. Tapio Constr. Co., Inc., 573 So.2d 390 (Fla. 4th DCA),rev. denied, 583 So.2d 1037 (Fla. 1991)

Mercy Hosp., Inc. v. Johnson, 431 So.2d 687 (Fla. 3d DCA), pet. for review denied, 441 So.2d 632 (Fla. 1983)

In re Estate of Simon, 402 So.2d 26 (Fla. 3d DCA 1981), appeal after remand, 427 So.2d 235 (Fla. 3d DCA 1983)

Browne v. Costales, 579 So.2d 161 (Fla. 3d DCA) (abuse of "unit billing"), rev. denied, 593 So.2d 1051 (Fla. 1991).

CONGRESS PARK OFFICE CONDOS II LLC v. FIRST CITIZENS BANK TRUST COMPANY Florida, Fourth District Court of Appeals. No. 4D11–4479. (January 16, 2013)

Shahar v Green Tree, DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA (January 2013)

Ocean View Towers, Inc. v. First Fid. Sav. & Loan Ass'n, 521 So. 2d 325, 326 (Fla. 4th DCA 1988)

PROGRESSIVE EXPRESS INSURANCE COMPANY v. DONALD SCHULTZ, Case No. 5D06-444. District Court of Appeal of Florida, Fifth District (2007)

Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985)

Ziontz v. Ocean Trail Unit Owners Ass'n, 663 So. 2d 1334 (4th DCA 1996)

In re Estate of Lopez, 410 So.2d 618 (Fla. 4th DCA 1982);

STATUTES:

CHAPTER 726

FRAUDULENT TRANSFERS

726.101 Short title.

726.102 Definitions.

726.103 Insolvency.

726.104 Value.

726.105 Transfers fraudulent as to present and future creditors.

726.106 Transfers fraudulent as to present creditors.

726.107 When transfer made or obligation incurred.

726.108 Remedies of creditors.

726.109 Defenses, liability, and protection of transferee.

726.110 Extinguishment of cause of action.

Other Authorities:

Bankruptcy Code, 11 U.S.C. Sec. 101, et seq. 17,22

Title 11 of the United States Code, 1lU.S. C.A. Sec. l0l-t532

RULES:

Florida Statewide Court Fraud Policy

INTRODUCTION

Skender and Beba Hoti are referred to as the Appellants herein. Attorney David Garten is referred to the Appellee. Appellant has filed a supplemental Appendix with this Reply brief to Supplement the Record on Appeal. The Supplemental Appendixes consist of Appellant's Motion for Rehearing in the related underlying Fee dispute Case, Appellee's Answer in response, and the Record on Appeal from the underlying Fee Dispute Case under 4th District Court of Appeals CASE NO. 4D14-4826, LOWER TRIBUNAL NO. 2012CA011639XXXXMB AJ. References to Appellants' Initial Brief are made as "IB".

STATEMENT OF THE CASE AND FACTS

As the Court should be aware, this Appeal of an alleged "fraudulent transfer" arose after a "Billing case" by one David Garten who had been retained by Appellant in relation to the unlawful detention and taking into "Guardianship" of his adopted mother Gwendolyn Batson by one Elizabeth Savitt and others working in concert with Elizabeth Savitt, the new wife of 15th Judicial Circuit Judge Martin Colin

who originally presided over the case where David Garten was retained but later was removed. The related Appeal under Case No. 4D-14-4826 is raised herein. As shown herein, not only is the Record on Appeal devoid of any competent, substantial evidence by Appellee to show intent to delay or hinder for purposes of fraudulent transfer, but the Appellants have been insolvent at all times and any transfer at issue was done at the direction of licensed counsel from an Attorney who works in real estate with the transfers exempt and protected under FS 726.109(b) as "made in the ordinary course of business or financial affairs of the debtor and the insider".

Further, because Appellant adequately showed the lower tribunal the Fraud on the Court and unlawful "billing scheme" by Appellee and his attorneys, it was an abuse of discretion for the Lower Court to strike Appellants' pleadings, Answers, affirmative defenses and issue Final Judgment voiding transfers of several properties and issuing fee awards.

Because the Fraud on the Court is clearly shown by the utter lack of proper, substantial, competent evidence to support the underlying Fee award in the Fee dispute case, this Court has a mandatory duty to Reverse and Vacate All Orders and Judgments against Appellants in both appeals with sanctions against Appellee David Garten and his attorneys issued in favor of Appellants.

ARGUMENT

I. Appellee has failed to bring forward competent and substantial evidence to show a fraudulent transfer while Appellant's showed exempt transfer and fraud by Appellee and thus the Lower Court abused it's Discretion and must be vacated and reversed.

Appellee's brief and the Record on Appeal are wholly lacking in showing any fraudulent intent or fraudulent transfer by Appellants while to the contrary, Appellant showed the lower court Fraud on the Court and a false Billing scheme and good faith transfers advised by licensed counsel.

Appellee filed the underlying Fee dispute case in June of 2012. (R. 63-64). Appellant contested and filed a counterclaim for legal malpractice. (R. 72). Appellee's fee dispute claimed approximately $32,000 in fees after being Discharged by Appellant for cause and achieving no results for Appellant. Appellant's transfer of properties was only to include his wife on the properties and was done on or around October of 2012 over 3 months after the Billing case started while there was no judgment against Appellant, nor injunction or restraining Order. See Record on Appeal, devoid of injunction or restraining order against Appellant.

Appellant's filed an Answer and Affirmative Defenses in Nov. of 2013 against the alleged fraudulent transfer charges. Record on Appeal pages 154-157. These defenses showed adequate proof that no fraudulent intent was present. Further, that any such transfer was exempt under FS 726.109 "Defenses, liability, and protection of transferee.—(b) If made in the ordinary course of business or financial affairs of the debtor and the insider"

Appellants' further filed an Emergency Motion to Stop Harassing and Extorting Money by Appellee David Garten which not only claimed and showed these actions as a "bill padding" case, but further attached the Actual proof of payments to Appellee for several checks over a several month period totalling $35,000.00 made by Appellant. See Record on Appeal 204-213.

A review of Appellee's "complaint" for fees in the fee dispute case shows a conclusory claim to fees, no Payment history, no Account history, no proof of Notice of the Bills to the Appellant, and no documentation to support the work done. This Complaint was entered into the Record on Appeal in this case. See Record on Appeal pages 371-381.

Appellant had filed a Motion to Dismiss this Fraudulent Transfer case which included the factual allegations that Appellee wholly failed to attach or provide any supporting documentation or exhibits to support his fee award. See Record on Appeal pages 396-397.

Appellants filed further motions showing fraud on the Court, abusive discovery and objections to any judgment by motions found at Record on Appeal pages 398-402; 981-984; 1218-1222 and others.

The Record on Appeal is Devoid of any competent, substantial evidence to show the Appellant's were not sufficiently solvent in Oct. of 2012 to satisfy any alleged claim for Attorney's Fees in the amount of approximately $32,000.00 although only Fees in the amount of $6,413.35 have any remote support in the Record in the Fee case or in the Record on Appeal in this case.

Under FS Sec. 726.108(1)(a) avoidance of any transfer that can be shown to be fraudulent nonetheless is only allowed "**to the extent necessary to satisfy the creditor's claim".** Both the Record on Appeal in this case as well as the fee dispute case are devoid of any competent, substantial evidence remotely beyond the amount of $6,413.35 and yet even with this amount, the Record in both cases is filled with Abuse of Civil process and civil fraud and torts by Appellee against the Appellants to offset even such amount of $6,413.35. Thus, if anything, it is the Appellee and his attorneys who should be setting aside properties and assets to satisfy the Appellants

.

The lower tribunal had ample evidence in the Record below to have halted Appellee and make Appellee prove his claim. Instead, what has been allowed is an abuse of process, Scheme to generate fees by "invention" and creation.
All Judgments and Orders of the Lower Tribunal must now be reversed. See, Farish v. Lum's Inc., 267 So. 2d 325, 327-8 (Fla. 1972).

II. Because of the complete lack of Substantial and Competent Evidence to Support any Award of fees to Appellee in the underlying fee dispute claim beyond possibly $6,413.35 as shown by the Records on Appeal in Case No. D16-0444 (1244 Pages) and Case No.4D14-4826 (1353 Pages), the 4th DCA is Demanded to Perform it's Mandatory duty to Reverse and Vacate All Orders, Decisions and Judgments against Appellant in both cases and issue sanctions against Appellee and attorneys.

The 2,597 Pages of Records on Appeal from the 2 Cases show the "Virus is Loose" again as the 4th DCA noted in 1996 with respect to Billing Schemes; Appellee has had nearly 2600 Pages of Appellate Records to Demonstrate the Basis for the Original Fees and has Failed to Do So; the 4th DCA is Mandated to Act to Vacate the Fraud and Stop the "Virus"

Attached as Appendix 1 is Appellant's Motion for Rehearing in the Fee Dispute Case that clearly demonstrated that the Appellee had showed an utter lack of competent and substantial evidence to justify his original claim for Fees in the underlying case. In fact, even on such a motion, in response Appellee still did not bring forward any proof to justify his original claim to fees of approximately $32,000 by an answer filed with this Court in Case No. 4D14-4826 on July 5, 2016. See Appendix 2. The entirety of the Record on Appeal from Case No. 4D14-4826 shows no competent, substantial evidence to justify the original fees. See, Appendix 3 ROA Case No. 4D-4826. Nor is there any competent, substantial proof in the Record on Appeal in this case.

As this Court noted in Miller v First American Bank and Trust, "On the face of it, the order embodies an unacceptable, even incredible result. **No court is obliged to approve a judgment which so obviously offends even the most hardened appellate conscience and which is so obviously contrary to the manifest justice of the case. Indeed, it is obliged not to.** Florida Nat'l. Bank v. Sherouse, 80 Fla. 405, 406, 86 So. 279, 279 (1920) **("[I]f a decree is manifestly against the weight of the evidence, or contrary to the legal effect of the evidence, then it becomes the duty of the appellate court to reverse the same.")**; Newman v. Smith, 77 Fla. 633, 650, 82 So. 236, 241 (1918) ("Where the finding of a trial judge is contrary to the legal effect of the evidence on the issues made the appellate court

should reverse the finding even though the trial judge personally saw and heard the witnesses testify, and even though there were conflicts in the testimony, and there was some evidence tending to support the finding."). Accord Howell v. Blackburn, 100 Fla. 114, 129 So. 341 (1930); Boyd v. Gosser, 78 Fla. 64, 82 So. 758 (1918); Fuller v. Fuller, 23 Fla. 236, 2 So. 426 (1887); John D.C. v. State, 16 Fla. 554 (1878); Uhley v. Tapio Constr. Co., Inc., 573 So.2d 390 (Fla. 4th DCA), rev. denied, 583 So.2d 1037 (Fla. 1991); C.M. Life Ins. Co. v. Ortega, 562 So.2d 702 (Fla. 3d DCA 1990), rev. denied, 576 So.2d 289 (Fla. 1991). See, Miller v. First American Bank and Trust, 607 So. 2d 483 - Fla: Dist. Court of Appeals, 4th Dist.

Appellant Demands the 4th DCA comply with it's duty to reverse and vacate the Judgements and Decisions and Orders from the 2 cases herein and report appropriately under the Statewide Court Fraud policy:

As this Court said in Miller, "The appellees claim that, in effect, we have no choice but to affirm the judgment as within the trial court's discretion, particularly since the fact that the record contains no transcript of the fee hearing requires the conclusion that the order is supported by competent evidence. See Applegate v. Barnett Bank, 377 So.2d 1150 (Fla. 1979). ***We strongly disagree***."

The Miller case goes on to note, "**This is especially true with respect to attorney's fees, with which the profession and the courts must be particularly concerned**, see Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145

(Fla. 485*485 1985),[4] ***and even more so since the case involves the notorious "billable hours" syndrome, with its multiple evils of exaggeration, duplication, and invention.*** Mercy Hosp., Inc. v. Johnson, 431 So.2d 687 (Fla. 3d DCA), pet. for review denied, 441 So.2d 632 (Fla. 1983); In re Estate of Simon, 402 So.2d 26 (Fla. 3d DCA 1981), appeal after remand, 427 So.2d 235 (Fla. 3d DCA 1983); see also Browne v. Costales, 579 So.2d 161 (Fla. 3d DCA) (abuse of "unit billing"), rev. denied, 593 So.2d 1051 (Fla. 1991)."

The Cases by Appellee herein are by "Invention" , a "Virus"and fraud on the Court and must be Vacated and Reversed:

As this Court noted in Ziontz v Ocean Trail, "**We cannot let this occasion pass without commenting on what we perceive to be the source of fee awards such as this one. Since the Florida Supreme Court's decision in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), *there seems to be a virus loose in Florida.*** As Judge Schwartz said in Miller, the obsession with hours and hourly rates required by Rowe **has spawned among lawyers moving for court awarded fees the "multiple evils of exaggeration, duplication, and invention**." Miller, 607 So.2d at 485.

The use of lawyers as expert witnesses to justify the fees sought as reasonable seems to have lead only to more exaggeration and invention. Perhaps it is quixotic to expect the lawyer witnesses who actually testify at fee hearings to do anything

but justify the fee claimed, for if they do not they simply would not be called to testify. Opposing expert witnesses may not be much of a reliable check on the claimant's lawyers, because lawyers in general profit from the patina of authority given to one's own fees by a court award of a similar one. Hence, the obsession to justify hours and rates now seems to riddle the fee process with an air of mendacity.

This obsession with hours and rates has apparently caused judges and lawyers to lose sight of a truth they formerly accepted almost universally: viz., that there is an economic relationship to almost every legal service in the market place. The value of any professional service is almost always a function of its relationship to something else — i.e., some property or other right. In this case, for example, no business could long expect to spend $60,000 to collect $100 accounts. Trial judges and lawyers used to accept a priori the idea that, no matter how much time was spent or how good the advocate, the fair price of some legal victories simply could not exceed — or, conversely, should not be less than — some relevant sum not determined alone by hours or rates. Since Rowe, that all seems lamentably forgotten.

This case appears to exemplify what has gone wrong. Fees of the kind awarded here threaten to make the respect of nonlawyers for judicial control of fees — indeed, for the very legal system itself — a thing of the past. *Because*

of the manifest justice rule in this instance, **however, and not out of any disagreement with Rowe, we conclude that this fee award must be set aside."**

See, Ziontz v. Ocean Trail Unit Owners Ass'n, 663 So. 2d 1334 (4th DCA 1996).

As shown by Paragraphs 12-23 in Appendix Exhibit 1 herein, Appellant's motion for Rehearing in the 4D14-4826 case,

> "12. Thus, as factually shown by the Record on Appeal at pages 000007-000011 the only Billing Statement for any fees in the Original Complaint seeking $32,952.32 are some alleged factual details for the Bill totalling $6,413.35.
> 13. But even for this alleged amount, there is No Sworn Testimony from David Garten in the Record on Appeal, No full Invoice or Account History in the Record on Appeal of David Garten, and absolutely NO Factual basis in the Record on Appeal whatsoever to claim ***anything more than the $6, 413.35.***
> 14. In fact, even for this amount the Record on Appeal has no Sworn Testimony, and ***no copies of Any of the work Garten allegedly did even for this amount.***
> 15. The Bill refers to several "Draft motions" and "Draft emails" but **none of these items are contained anywhere in the Record on Appeal as these items were not provided in the proceedings below.**
> 16. The Billing Statement does give this Court a strong insight into the actions of attorney David Garten, however, as seen on Record on Appeal Page 00009 where David Garten "bills" myself as Appellant on 6-5-12 $85.00 for calling my Wife who he did NOT have a Retainer Agreement with to talk to her about me Paying his alleged Bill and then goes on 6-8-12 to Bill both of us $425.00 to have a Conference on Paying his Bill and then proceeds on Record on Appeal Page 000010 to Bill in excess of another $500 plus total AFTER he had received notice that I discharged him.

17.Thus, not only is there absolutely NO Facts in the Record nor in the original Complaint filed before Judge Lucy Brown to claim the additional $26,137.38 claimed as "Prior Balance" but even the amount where there is a Billing Statement is significantly in question.

18.There are No Invoices for the $26,137.38 in the Record on Appeal, No Sworn Testimony from David Garten in the Record on Appeal for this amount, No Invoice Notices or Proof of Sending Invoices in the Record on Appeal, no Proof of when I allegedly received such Bills in the Record on Appeal, no documents or records to show what was done for the $26,137.38 such as Motions or Hearings, nothing other than an attorney claiming he is owed some amount.

19. Nowhere in the Record on Appeal are there any Exhibits or Transcripts or Sworn Testimony to support the Arbitrator's Award found at pages Record on Appeal 00153-00158.

20. Nor are any of these items contained anywhere in this Record on Appeal to support the original Order of Judge Lucy Brown upholding the Arbitrator's Award which has to be an Abuse of Discretion under the standards established by the 4th DCA and District Courts of Appeal and Supreme Court in Florida and this must now be reversed and vacated on appeal.

21. The Arbitrator's Award says nothing other than a conclusory statement based upon alleged Testimony which **is NOT shown to be sworn** ***and in fact does not even Exist in the Record on Appeal*** that somehow the case was "complex" but there are no Facts, no motions, no records to show this as a factual matter.

22**.** Nowhere in the Record on Appeal does it show that David Garten provided these missing invoices or records in his motions to Confirm the Arbitrator's award and in fact David Garten did not even claim that these records exist or try to provide them to this Court in response when I filed the June 3, 2016 Motion for Extension of time.

23. In fact the Record on Appeal makes it crystal clear that all David Garten did was provide further Bills to the Lower Court charged ***after the Retainer Agreement was***

cancelled to then Bill Appellant to collect Fees which had not justified in the first instance." See, Appendix Exhibit 1.

As the Third DCA noted citing several 4th DCA cases, "The court should review the nature of the services rendered and the necessity for their performance, along with the reasonableness of the charges. Lyle v. Lyle, 167 So.2d 256 (Fla. 2d DCA), cert. denied, 172 So.2d 601 (Fla. 1964). **Johnson's failure to present detailed evidence of his services is fatal to his claim. In re Estate of Lopez, 410 So.2d 618 (Fla. 4th DCA 1982); Cohen v. Cohen, 400 So.2d 463 (Fla. 4th DCA 1981)**; Nevins v. Nevins, 312 So.2d 201 (Fla. 2d DCA 1975). **The opinion of an expert witness does not constitute proof that the facts necessary to support the conclusion exist.** Arkin Construction Co. v. Simpkins, 99 So.2d 557 (Fla. 1957)." See, Mercy Hosp., Inc. v. Johnson, 431 So.2d 687 (Fla. 3d DCA), pet. for review denied, 441 So.2d 632 (Fla. 1983)

In both the underlying fee case and this case, Appellee has wholly failed to bring forward proof detailing his claim or any details at all on the alleged Prior Balance and **no Payment history to show the clear $35,000.00 actually paid. There are no Transcripts of what any alleged Expert testified to and nothing but a conclusory statement that the underlying garden variety Habeus Corpus / Release from Guardianship case was complex while Appellee has pursued abusive civil process for years. See Appendix Exhibit 2, 3.**

As the 5th DCA noted, "***Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact[,] it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It [sic] does more than that; it brings the court into disrepute and destroys its power to perform adequately the function of its creation***." See, PROGRESSIVE EXPRESS INSURANCE COMPANY v. DONALD SCHULTZ, Case No. 5D06-444. DCA Fifth District (2007)

This Court must now perform its mandatory duty to Vacate and Reverse all such Decisions, Orders and Judgments herein against Appellants from this case and the 4D-4826 case.

III. Appellee Came into the Fraudulent Transfer Case with Unclean Hands; the Judgments against Appellants must now be Vacated and Reversed.

This court has previously concluded that unclean hands, if sufficiently pled, may be asserted as an affirmative defense to a mortgage foreclosure action. See, e.g., Quality Roof Servs., Inc. v. Intervest Nat'l Bank, 21 So. 3d 883, 885 (Fla. 4th DCA 2009); cf. Congress Park Office Condos II, LLC v. First-Citizens Bank &

Trust Co., No. 4D11-4479 (Fla. 4th DCA Jan. 16, 2013) (finding that an unclean hands affirmative defense in a mortgage foreclosure case was not pled with sufficient facts).

This court has described unclean hands as follows: "It is certainly beyond question that "one who comes into equity must come with clean hands else all relief will be denied him regardless of the merits of his claim. **It is not essential that the act be a crime; it is enough that it be condemned by honest and reasonable men**." Ocean View Towers, Inc. v. First Fid. Sav. & Loan Ass'n, 521 So. 2d 325, 326 (Fla. 4th DCA 1988) (quoting Roberts v. Roberts, 84 So. 2d 717, 720 (Fla. 1956)). Recently, this court found that unclean hands is tantamount to "[u]nscrupulous practices, overreaching, concealment, trickery or other unconscientious conduct." Congress Park Office Condos II, No. 4D11-4479 at 6-7 (citation omitted). See, Shahar v Green Tree, DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA (January 2013)

The nearly 2600 PAGES of CERTIFIED Appeal Records from both cases certified by Clerk Bock shows the Appellee has come into the fraudulent transfer case with Unclean hands as 4 years later and still no proof to support the original fee claim. See ROA Case No. 4D-16-0444 and Appendix Exhibit 3, ROA Case No. 4D14-4826.

CONCLUSION

All Orders, Judgments and Decisions against Appellant must now be vacated and reversed.

WHEREFORE, Appellants respectfully pray for an Order vacating and reversing all Decisions, Orders and Judgments in Cases No. 4D-16-0444 and 4D-4826, sanctions to issue against Appellee and his attorneys, and for such other and further relief as may be just and proper,

Dated: Sept. 27, 2016

Respectfully submitted,

/s/ Skender Hoti
Skender Hoti
3103 Drew Way
Palm Springs, Florida 33406
Telephone: (561) 385-6390
skendertravel@hotmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served via email to dfitzgerald@waltonlantaff.com on Walton Lantaff Schroeder & Carson LLP 110 E. Broward Blvd. Suite 2000 Fort Lauderdale, Fl 33301-3503 on this 27th day of

September, 2016.

/s/ Skender Hoti

Skender Hoti
3103 Drew Way
Palm Springs, Florida 33406
Telephone: (561) 385-6390
skendertravel@hotmail.com

APPENDIX EXHIBIT 1 FROM CASE NO. 4D-4826

06/21/2016 Motion For Rehearing

APPENDIX EXHIBIT 2 FROM CASE NO. 4D-4826

07/05/2016 Response TO MOTION FOR REHEARING, ETC.

APPENDIX EXHIBIT 3 FROM CASE NO. 4D-4826

05/28/2015 Brief/Record Records EIGHT (8) VOLUMES