

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, IN AND FOR PALM BEACH COUNTY

JERRY MILLER, as Trustee of
the James F. Miller Irrevocable Trust,

CASE NO.: 4D09-0760

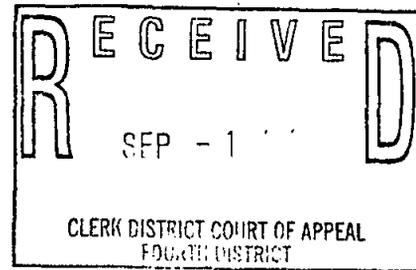
Appellant,

L.T.No.: 2003 CA 005002 AO

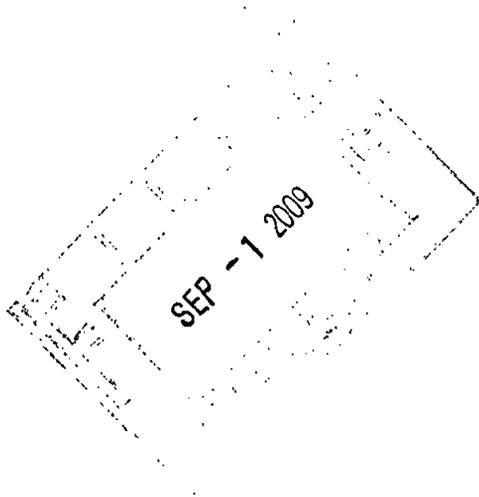
vs.

GARY KRESSER,

Appellee.



INITIAL BRIEF



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PRELIMINARY STATEMENT

Citations to the record of appeal shall be designated as (R.____); Citations to the trial transcript “Final Judgment in Proceedings Supplementary In Favor of Barbara Miller and Against Jerry Miller as Trustee of James F. Miller Irrevocable Trust” shall be designated as (T.____); Citations to the Appendix shall be designated as (A. ____).

DEFINITIONS OF TERMS/NAMES

- “Bastani:” Ken Bastani, third-party purchaser of Islamorada Property, which was owned, at the time of sale, 1/3 by the James F. Miller Irrevocable Trust, dated April 29, 2004.
- “Elizabeth Trust:” the Elizabeth Miller Revocable Trust, dated May 5, 2003.
- “Final Judgment:” the trial court’s order in proceedings supplementary named “Final Judgment in Proceedings Supplementary in Favor of Barbara Miller and Against Jerry Miller as Trustee of James F. Miller Irrevocable Trust” dated February 3, 2009.
- “James:” the Defendant, James F. Miller, in any capacity.
- “James Trust:” The James F. Miller Irrevocable Trust, dated April 29, 2004.
- “Jerry Miller:” Impleaded Third Party Defendant; Jerry Miller as Trustee of James F. Miller Irrevocable Trust, dated April 29, 2004.

- “Kresser:” the Plaintiff, Gary Kresser.
- “Kresser Judgment:” the trial court’s order against James F. Miller, individually, and one of James Miller’s individual businesses, Castles Construction and Development LLC dated September 10, 2007.
- “Mrs. Miller:” Elizabeth Miller, the settlor of the James F. Miller Irrevocable Trust, dated April 29, 2004.

STATEMENT OF THE CASE AND THE FACTS

This appeal is from the trial court's Final Judgment. This appeal concerns the trial court's (1) invalidation of the spendthrift clause contained in the James Trust and (2) Kresser's attachment of a 1/3 interest in real property owned by the James Trust until its sale in April 2008 (A. 1) *and* all current and future assets belonging to the James Trust.

Kresser obtained the Kresser Judgment on September 10, 2007. (R.187) The Kresser Judgment awarded Kresser \$1,019,095.82, exclusive of interest and attorneys fees and costs. Kresser, unable to collect on his judgment from James, individually, brought proceedings supplementary against James' former wife, Barbara Miller, and against Trustee of the James Trust, Jerry Miller. (R.210, 211)

The issue in the instant case, as framed by Kresser, was as follows:

"The Court: The issue is, as I understand it, as framed by your pleadings, is whether the single spendthrift provision has been negated because of the control by the beneficiary of the trust, which wouldn't cause a complete failure of the trust because that's something that [the control] occurred after the trust was created."

"Mr. Gache: You nailed it exactly... It is the spendthrift provision only, which, if it fails, allows the creditor to reach in and grab the assets that are in the trust. It is not a fraudulent transfer case vis-à-vis the trust..." (T. Page 63, L14-25, L4-10)

At trial, Kresser argued, and the trial court agreed, that through James' "control" over Jerry Miller and the James Trust assets, James had "de facto" control over the assets of the James Trust, thus invalidating the spendthrift clause

and thereby subjecting the James Trust assets to Kresser's reach. The remainder beneficiaries of the James Trust were not parties to this action. The trustees of the Elizabeth Trust, as well as its beneficiaries or creditors, were not a party to this action. Bastani was also not a party to this action.

By way of background, the James Trust is an irrevocable trust created by the now deceased Mrs. Miller, the mother of James and Jerry Miller. Mrs. Miller used certain assets of hers to fund the James trust. The James Trust is to be administered for the benefit of James during his lifetime and then for the benefit of James' children upon his death. Mrs. Miller appointed Jerry Miller as Trustee of the James Trust.

The James Trust contains a spendthrift clause. As to the James Trust, there is no dispute that it was Mrs. Miller's intent to create a trust that provides for James, while simultaneously protecting against James' own mismanagement and/or his creditors. It is also undisputed that the James Trust, including, but not limited to the spendthrift clause, was valid at the time of the James Trust's creation. As such, the trial Court found: "At the time Mrs. Miller, mother of James Miller, settled the trust [James Trust] she did so with a valid spendthrift provision at the time of settlement of the trust..."(T. Pg 849, L15-19).

James had no role either in the creation or the funding of the James Trust or the Elizabeth Trust. (A. 2) (T. Page 298, L15-20).

The James Trust is a “discretionary” trust. The James Trust provides in pertinent part:

“The Trustee is authorized, from time to time and in his absolute discretion:

(1) to pay to Jimmy (James F. Miller) so much of the net income and principal of the trust as the trustee, in its sole discretion, deems necessary or advisable for his health, education, support and maintenance; (2) to pay to Jimmy’s Qualified Spouse so much of the net income and principal of the trust as the trustee, in its sole discretion, deems necessary or advisable for her health, education, support and maintenance; (3) to pay to Jimmy, in addition to any amount or amounts distributable pursuant to paragraph (1) of this Subdivision, so much of the net income and principal of the trust for any other purpose that the independent trustee deems to be worthwhile and in his best interest; and (4) to pay to Jimmy’s Qualified Spouse, in addition to any amount or amounts distributable pursuant to paragraph (1) of this Subdivision, so much of the net income and principal of the trust for any other purpose that the independent trustee deems to be worthwhile and in her best interest. Any net income not paid to Jimmy and/or Jimmy’s Qualified Spouse shall be accumulated and added to the principal of the trust at least annually. (A. 1)

As such, any distributions to James are subject to the exercise of discretion by the trustee of the James Trust. The trustee of the James Trust operates under a “support and maintenance” standard of distribution, an ascertainable standard as defined in the relevant Internal Revenue Code sections, including 26 U.S.C.A. § 2041 and 2514. Under the James Trust document, James has no power of appointment or other power to direct or control any aspect of the James Trust, including the management or the disposition of its assets. (A. 1).

At the time of its sale in April 2008, the James Trust owned a 1/3 interest in real property, referred to as the “Islamorada Property”. A lis pendens was recorded on said property, prior to its sale, by Kresser. However, the title company involved in the sale, Commonwealth Land Title Insurance Company, issued a title commitment, and later a title policy, without any reference of the lis pendens. (A. 3).

Approximately 10 months prior to the trial Court’s ruling in this matter, the Islamorada Property was sold to a third party, Bastani. No evidence was presented that Jerry Miller either knew about the lis pendens on the property or that he was served with the lis pendens prior to the property’s sale.

Mrs. Miller died on September 10, 2007, pursuant to her will, all of her probate estate pours over into the Elizabeth Trust. James and Jerry Miller are the designated and acting co-Trustees of the Elizabeth Trust. The Elizabeth Trust, after making provision for trust obligations, expenses and specific gifts, distributes the remainder of her assets, 1/2 to Jerry Miller, individually, and 1/2 to the James Trust. (A. 2) As of the date of the Final Judgment in this matter, no distributions had been made from the Elizabeth Trust to any specific or remainder beneficiary, including the James Trust.

The trial court was supplied with the following credible and uncontroverted testimony regarding the James Trust:

- 1) Jerry Miller admitted to having limited knowledge about trusts, generally, and the James Trust document itself. (T. Page 216, L3-9).
- 2) James Miller had possession of the James Trust checkbook and sometimes made out the checks for Jerry Miller's signature. (T. Page 484, L15-18).
- 3) James asked Jerry Miller for particular distributions; Jerry Miller made many of these distributions. (T. Page 215, L1-4).
- 4) Jerry Miller understood that was acting as trustee under the James Trust document. (T. Page 210, L 25).
- 5) Jerry Miller understood that had the sole authority to release monies out of the James Trust bank account and did not allow James to withdraw money or authorize James to sign his name in order to effectuate a James Trust transfer. (T. Page 211 L1, 4-10; Page 485, L5-7); (R. 348 Page 25 L3-14).
- 6) Jerry Miller made inquires as to the needs of James prior to making distributions. (T. Page 229, L25; Page 474 3-12).
- 7) Jerry Miller participated in settlement negotiations regarding the James Trust and Grand Bank & Trust (T. Page 194, L18-25; Page 195, L1-4).

8) Jerry Miller believed that he had the final decision as to whether, and how much of, a distribution would be made to James from the James Trust. (T. Page 498, L15-25, Page 499, L1-7).

The trial court found Jerry Miller to be the “most honest guy” in the courtroom and stated as follows:

The Court: “...Jerry [Miller] was the nicest guy in the courtroom.”

Mr. Gache: “And probably the most honest, too.”

The Court: “He really was.”

Mr. Gache: “Very candid.”

The Court: “Nicest guy, candid, just a great guy to listen to and the most believable here...” (R. 348 Page 15, L 7-17).

The trial court ruled that James had utilized Jerry Miller to accomplish James’ financial goals regarding the management and distribution of the James Trust, and ultimately found that James “had absolute control and dominion over the James Trust assets and the spendthrift clause does not protect the assets of the James Trust against the reach of the Kresser Judgment.” (R. 347)

Thus, the Final Judgment was entered on February 3, 2009, granting Kresser’s prayer for relief and attaching: (1) current James Trust assets; (2) a prior James Trust asset, the 1/3 interest in the Islamorada property; (3) future Trust assets, including any and all assets received by the James Trust from the Elizabeth Trust.

The Final Judgment also precluded either James or Jerry Miller from “loaning, assigning, pledging, conveying, transferring, selling or distributing any of the Elizabeth Trust assets unless they are utilized to satisfy the Kresser Judgment or upon further order of the Court.” (R. 347).

This appeal followed.

SUMMARY OF THE ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT INVALIDATED THE SPENDTHRIFT CLAUSE OF THE JAMES F. MILLER IRREVOCABLE TRUST UNDER A THEORY OF “DE FACTO” CONTROL

The trial court erred when it invalidated the spendthrift clause of the James Trust pursuant to an unrecognized theory of “de facto” control and attached the James Trust’s prior, current and future assets for the benefit of Kresser. The James Trust is a discretionary trust with a spendthrift provision. Kresser is a creditor of James, individually.

It was undisputed that the spendthrift provision was valid at the time of the James Trust’s creation and that the settlor of the trust, Elizabeth Miller, intended to protect the James Trust assets from James’ creditors.

A spendthrift provision restrains the alienation of a beneficiary's equitable interest in a trust. Croom v. Ocala Plumbing & Elec. Co., 57 So. 243 (Fla. 1911). Thus, a creditor or assignee of the beneficiary may not reach, or attach, a trust’s assets before: (1) they are received by the beneficiary; or (2) the beneficiary has a vested interest and is entitled to the assets but has not or refuses to take possession. Landmark First National Bank of Fort Lauderdale v. Haves, 467 So.2d 839 (Fla. 4th DCA 1985). Florida law provides no exception to the well settled standards set forth above based on the theory of a “de facto trustee.”

Moreover, even if the spendthrift provision is deemed invalid, Florida Statute 736.0504(2) provides that a creditor of a beneficiary *may not compel* a distribution from a trust, or attach an asset of a trust, when the trust is a “discretionary trust,” i.e., distributions to the beneficiary(s) is subject to the trustee’s discretion.

II. THE TRIAL COURT ALSO ERRED TO THE EXTENT IT RELIED UPON A THEORY OF MERGER OR ARTICLE V (B) OF THE JAMES TRUST TO JUSTIFY ITS RULING

The trial court also erred in using the legal doctrine of merger to justify its invalidation of the James Trust’s spendthrift provision. The merger doctrine is applicable where either the entire beneficial interest passes to the trustee or where the legal title passes to a sole beneficiary. Hansen v. Bothe, 10 So.3d 213 (Fla. 2d DCA 2009). Merger is inapplicable here. James is not the sole beneficiary; his children, Evan Miller and Lindsay Pearce Miller, are the residuary beneficiaries. Further, numerous limited liability companies, which are owned by Jerry Miller, as trustee of the James Trust, held legal title to various interests in over 6 parcels of real property. There was never an assignment of any of the membership interests in these limited liability companies from the trust to James.

III. EVEN IF THE SPENDTHRIFT PROVISION OF THE JAMES TRUST IS INVALID, THE TRIAL COURT STILL ERRED IN ATTACHING THE ISLAMORADA PROPERTY, CURRENT JAMES TRUST ASSETS AND ANY OF THE ASSETS OF THE ELIZABETH TRUST JAMES TRUST FOR THE BENEFIT OF KRESSER

Finally, even if the spendthrift clause is invalid, the trial court still erred in attaching the Islamorada Property owned by Bastani, current James Trust assets and any of the assets currently held in the Mrs. Miller's estate or the Elizabeth Trust as neither Bastani, the residuary beneficiaries of the James Trust, Lindsay Miller Pearce and Evan Miller, the co-personal representatives of the estate of Elizabeth Miller, the co-trustees of the Elizabeth Trust nor the beneficiaries/creditors of the estate of Elizabeth Miller and the Elizabeth Trust were named as parties to the suit or noticed of the proceedings. State ex rel. Phoenix Tax Title Corp. v. Viney, 120 Fla. 657 (Fla. 1935).

STANDARD OF REVIEW

This court is asked to determine whether a valid spendthrift clause contained in a discretionary, irrevocable trust can subsequently be invalidated by a beneficiary's creditor under Florida Statutes § 736.0502, § 736.0504 and applicable case law. The appellate standard governing decisions of law is referred to as the *de novo* standard as enunciated in Southern Baptist Hosp. of Florida, Inc. v. Welker, 908 So.2d 317 (Fla. 2005). Moreover, statutory interpretation is also a question of law subject to *de novo* review. Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008).

As there is no basis in the law for a beneficiary to become a "de facto" trustee, thus allowing creditors to have unfettered rights to trust assets or subjecting the trust to termination, this unique concept must also be reviewed *de novo*. Should there be a finding of "merger" between the trustee and the beneficiaries, this would equate to a determination or conclusion of law, which would also be subject to *de novo* review. Gilchrist Timber Co. v. ITT Rayonier, Inc., 472 F.3d 1329 (11th Cir. 2006).

The trial court also stated in its ruling that this is "a case of first impression," thus it should be reviewed under a *de novo* standard. (A. 4 Page 9, L2-5; Gilliam v. Smart, 809 So.2d 905, 907 (Fla. 1st DCA 2002); City of Orlando v. MSD-MATTIE, L.L.C., 895 So.2d 1127, 1128 (Fla. 5th DCA 2005).

Lastly, the issue of whether all persons which would have had to be joined, served and noticed as actual parties to the instant case proceedings is subject to *de novo* review. Whether Kresser was required under the law to join other persons to the proceedings supplementary is a question of law. As to the facts; it is undisputed what persons were sued and made parties to this action. Therefore, this court is asked to apply the law to undisputed facts, thereby requiring a *de novo* review. Aravena v. Miami Dade County, 928 So.2d 1163, 1166 (Fla. 2006).



Mrs. Miller's intent.

ARGUMENT
ISSUE FOR REVIEW

I. THE TRIAL COURT ERRED WHEN IT INVALIDATED THE SPENDTHRIFT CLAUSE OF THE JAMES F. MILLER IRREVOCABLE TRUST UNDER A THEORY OF “DE FACTO” CONTROL

The trial court erred when it invalidated the spendthrift provision of the James Trust under a legally unsupported theory of “de facto” control and attached the prior, current and future assets of the James Trust for the benefit of Kresser. According to the Final Judgment, James had simultaneously become the “de facto” trustee and the sole beneficiary, in essence making decisions for himself, and, therefore, such control invalidated the spendthrift provision of the James Trust.

The basic tenet for the construction of trusts is to ascertain the intent of the settlor and to give effect to this intent. Barcardi v. White, 463 So.2d 218 (Fla. 1985). Mrs. Miller, the settlor of the James Trust, through her inclusion of a spendthrift provision, intended that the assets of the James Trust would be protected from the reach of James’ creditors. Kresser does not dispute this intent. The trial court explicitly found that Mrs. Miller had engaged in valid estate planning in forming the James Trust. (A. 4 Page 4, L14-23). Accordingly, the trial court’s subsequent invalidation of the spendthrift provision directly contravenes Mrs. Miller’s intent.

A spendthrift clause is a provision which creates a restraint on the alienation of a beneficiary's equitable interest in a trust. See, Landmark First National Bank of Fort Lauderdale v. Hayes, 467 So.2d 839 (Fla. 1985). Florida case law has long recognized the validity and effectiveness of such provisions. Id.; Croom v. Ocala Plumbing and Electric Co., 57 So. at 244. The Florida Trust Code through Florida Statute § 736.0502 gives statutory recognition to “spendthrift provisions” and applies the spendthrift requirements to both income and principal interests.

Assuming a trust has a valid spendthrift provision, Florida Statute § 736.0502(3) provides that a beneficiary may not transfer his beneficial interest in the trust and, a creditor or assignee of the beneficiary may not reach a trust’s assets before: (1) they are received by the beneficiary or (2) the beneficiary has a vested interest and is entitled to the assets but has not or refuses to take possession. The only exception, besides alimony or child support payments, applies to overdue mandatory distributions.

Florida Statute § 736.0506 defines a mandatory distribution as a distribution of income or principal that the trustee is required to make under the terms of the trust, including a distribution from, or termination, of the trust. This has been found to constitute “dominion or control” over a trust’s assets because the beneficiary, through a power explicitly set forth in the trust document itself, can

partially or fully direct the distribution of the assets of the trust. Nevertheless, the term does not encompass discretionary distributions of any sort.

The James Trust does not contain any provisions constituting a mandatory distribution to James or otherwise. The James Trust does not contain any power by James to require distribution to himself in any manner.

In the instant case, Kresser cited several cases to the court at trial in support of his “defacto” trustee theory, and the trial court utilized those cases in the Final Judgment. (R. 347)

Kresser presented, and the trial court cited in its Final Judgment, Croom v. Ocala Plumbing and Electric Co., 57 So. at 244, in support of his argument that creditors could invade a spendthrift trust when a beneficiary had exercised control over the trust and/or its assets. However, in *Croom*, the supreme Court stated that the sole reasoning behind its holding allowing a beneficiary’s creditor to invade a spendthrift trust was that the beneficiary had a specific power to convey any part of the corpus of the trust to himself and this power was spelled out in the document itself.

Kresser also utilized, and the trial court cited in its Final Judgment, In Re: Lichstrahl, 750 F. 2d 1488 (11th Cir. 1985), in support of his “dominion and control” argument. (A. 5). However, in *In Re: Lichstrahl*, the settlor/beneficiary

had the explicit power to amend or terminate the trust at any time, thus the circuit court of appeals held the trust was not exempt from the bankruptcy estate.

Kresser was unable to cite a case to the trial court where the exercise of dominion and control by a beneficiary was found in the absence of a explicit provision in the trust document itself. Therefore, because the James Trust has a spendthrift provision and does not provide for or allow James to demand a mandatory distribution, creditors, like Kresser, can not reach the James Trust assets.

Another legal basis also precludes creditors, like Kresser, from attaching the James Trust assets: the James Trust is a “discretionary trust.” The term “discretionary trust,” pursuant to Florida Statute § 736.0502(2), is a defined term. A discretionary trust means that a distribution to a trust’s beneficiary is subject to the trustee's discretion.

With a discretionary trust, creditors can only attach a trust asset if a beneficiary has a right to a distribution under the trust document. If distributions are purely discretionary, then a beneficiary has no “attachable” trust interest. Thus, regardless of whether or not a trust contains an effective spendthrift provision, Florida Statute 736.0504(2) provides that a creditor of a beneficiary *may not compel* a distribution from a trust that is subject to the trustee's discretion. Moreover, under this statute, a creditor can not “attach,” or otherwise reach, any

interest in the trust, where such interest is subject to the trustee's decision to make or not make a discretionary distribution to or for the benefit of the beneficiary. In essence, a trustee of a discretionary trust can properly refuse to make distributions to a trust beneficiary in order to ensure the beneficiary's creditors will not reach the trust's assets.

Jerry Miller, under the James Trust, was entrusted to make distributions to James under a "support and maintenance" standard. In reviewing the distributions made by Jerry Miller to James, it is clear they complied with the above standard and benefited James. Each distribution either: (1) supported James' in a struggling or failing business venture; (2) made loan payments on behalf of James and/or one of James' entities; or (3) was utilized to maintain James Trust real property. (T. Page 470, L19-22; Page 473, L3-7; Page 473, L8-11; Page 473, L24-26- Page 474, L 1-7; Page 474, L22-25- Page 475, L1-17; Page 477, L10-16; Page 478, L7-20; Page 479, L23-25- Page 480, L1-10; Page 481, L8-12; Page 482, L-18-20).

In summary, the James Trust appropriately combines various devices, i.e. discretionary distributions and a spendthrift provision, in order to prevent creditors from reaching the interests held in the James Trust. In the instant case, even if the spendthrift provision is invalidated, creditors cannot reach a beneficiary's interest unless and until the trustee exercises their discretion to make payments to the beneficiary, thereby creating an interest for creditors to reach.

II. THE TRIAL COURT ALSO ERRED TO THE EXTENT IT RELIED UPON A THEORY OF MERGER OR ARTICLE V (B) OF THE JAMES TRUST TO JUSTIFY ITS RULING

The trial court cited the theory of “merger” to support its determination that the James Trust assets were subject to attachment and execution by Kresser. (T. Pg 893, L 11-13). For a trust, the merger doctrine applies where either the entire beneficial interest passes to the trustee or where the legal title passes to a sole beneficiary. Hansen v. Bothe, 10 So. 3d at 213.

Upon merger of the legal and equitable titles, the holder of both interests possesses fee simple ownership of the property. Id. Merger is inapplicable here. To the extent that the trial court found that James became the trustee and the beneficiary; he did not become the sole beneficiary. James’ children, Evan and Lindsay Miller Pearce, the remainder beneficiaries, retain an equitable remainder interest. Thus, sole title to the James Trust property could not be held by James alone. In addition, merger constitutes a termination of a trust and the trial court specifically stated the Trust was not terminated. Id. (R. 348 Page 28, L17-18; Page 29, L1-2).

The trial court also cited Article V (B) of the James Trust to support Kresser’s execution or attachment of the James Trust assets. The trial court stated “Jerry Miller, by giving Miller (James) complete access to, as well as “dominion

and control” over the Trust’s (James Trust) assets, has effectively turned over to Miller all of the assets of the Trust pursuant to Article V (B) of the Trust.” (T. Pg 892, L 3-9). Article V (B) states that the Trustee of the James Trust “shall have complete discretion to terminate any trust by distributing the entire principal to the beneficiary or beneficiaries eligible to receive distributions from the trust...”

At the date of the Final Judgment, numerous limited liability companies, which are owned by Jerry Miller, as trustee of the James Trust, held legal title to various interests in over 6 parcels of real property. (R. 347). There was never a written assignment by Jerry Miller of any of these limited liability companies to James. Therefore, this article of the James Trust is inapplicable here.

III. EVEN IF THE SPENDTHRIFT PROVISION OF THE JAMES TRUST IS INVALID, THE TRIAL COURT STILL ERRED IN ATTACHING THE ISLAMORADA PROPERTY, CURRENT JAMES TRUST ASSETS AND ANY OF THE ASSETS OF THE ELIZABETH TRUST JAMES TRUST FOR THE BENEFIT OF KRESSER

The trial court erred in attaching the Islamorada Property, now owned by Bastani, current James Trust assets and any of the assets currently held in Mrs. Miller’s estate or Elizabeth Trust. In proceedings supplementary to execution, if rights of third persons would be affected in execution, the proceedings supplementary should not be adjudicated, unless such third parties have been first fully impleaded and brought into case as actual parties, and, as such, given

opportunity to fully present claims as parties after making up of definite issues to be tried. State ex rel. Phoenix Tax Title Corp. v. Viney, 120 Fla. at 659.

Neither Bastani, the residuary beneficiaries of the James Trust, Lindsay Miller Pearce and Evan Miller, the co-personal representatives of the estate of Elizabeth Miller, the co-trustees of the Elizabeth Trust nor the beneficiaries of the estate of Elizabeth Miller and the Elizabeth Trust were even named parties to the suit.

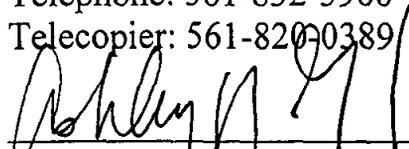
Although both James and Jerry Miller also act as co-personal representatives of the estate of Elizabeth Miller, co-Trustees of the Elizabeth Trust and are some of the beneficiaries of the Elizabeth Trust, they were not joined in those capacities as defendants.

CONCLUSION

In light of the foregoing, Appellant respectfully requests that this Court reverse the trial court's ruling against Jerry Miller as Trustee of the James F. Miller Irrevocable Trust in the "Final Judgment in Proceedings Supplementary in Favor of Barbara Miller and Against Jerry Miller as Trustee of James F. Miller Irrevocable Trust" dated February 3, 2009.

Respectfully submitted this 15th day of September, 2009.

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CERTIFICATE OF SERVICE

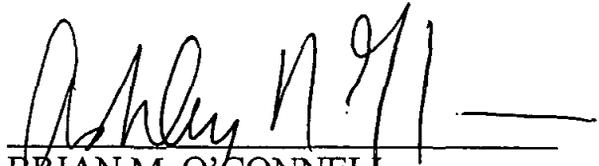
I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. MAIL to: Ronald M. Gache, Esquire, Broad and Cassel, One North Clematis Street, Suite 500, West Palm Beach, FL 33401-5552; and Norman L. Schroeder, II, Esq., 6801 Lake Worth Road, Suite 120, Lake Worth, FL 33467; and Jeffrey Berin, Esq. 1110 N. Olive Avenue, West Palm Beach, FL 33401; Christopher N. Bellows, Esquire, Holland & Knight, LLP, 701 Brickell Avenue, Suite 3000, Miami, FL 33131; James S. Lupino, Esquire, Hershoff Lupino & Yagel, LLP, 90130 Old Dixie Highway, Tavernier, FL 33070; Castles Construction and Development, LLC and Miller & Miller Holdings, LLC, c/o James F. Miller, 219 N. Dixie Highway, Lake Worth, FL 33460; and J.E. Miller Construction & Development LLC, c/o James F. Miller, 219 N. Dixie Highway, Lake Worth, FL 33460, on this 15th day of September, 2009.



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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief has been prepared and printed in Times New Roman 14-point font, and therefore complies with the font requirements of Rule 9.210(a) (2), Florida Rules of Appellate Procedure.


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