

# Third District Court of Appeal

## State of Florida

Opinion filed July 22, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-149  
Lower Tribunal No. 18-8555

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**Enrique Silva,**  
Appellant,

vs.

**Adria de la Noval, et al.,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Harvey D. Rogers, P.A., and Harvey D. Rogers, for appellant.

Billbrough & Marks, P.A., and Geoffrey B. Marks, for appellees.

Before SCALES, HENDON, and LOBREE, JJ.

HENDON, J.

Enrique Silva (“Silva”) seeks to reverse an order denying his motion to vacate the final judgment, his motion for new trial, and his motion for rehearing. We affirm.

Silva filed a motion for ejectment of Adria de la Noval and her boyfriend, Luis Peralta (collectively, “Appellees”), alleging that Appellees unlawfully possessed residential property he claimed to own. The Appellees filed a counterclaim in which they sought to impose a constructive and resulting trust on the real property. They also asserted counts for unjust enrichment, breach of an oral agreement, equitable lien, and for betterment. The Appellees affirmatively pled that they were the parties who actually paid for the property and that Silva was a straw buyer who agreed to purchase the property and transfer the title to Appellees after closing. The Appellees alleged they paid Silva a fee for allowing the use of his credit for approval of the purchase. Appellees also made all of the closing payments. The Appellees alleged that they had expended approximately \$89,000.00 to substantially improve the property, and made all of the mortgage payments during the previous seven years.

At the September 2018 bench trial, Appellee de la Noval testified that she had a close personal relationship with Silva for many years. She testified that Silva proposed that he would lend her his credit, and in exchange Appellees would pay Silva \$15,000 for the use of his credit to purchase the house. Appellee de la Noval further testified that Silva promised to convey title to the subject property to

Appellees after the closing. He did not. At trial, the parties stipulated that Silva held bare legal title to the property. The evidence admitted at trial shows that at the time of the purchase, the house was uninhabitable, and that Appellees contributed approximately \$89,000 to rehabilitate and improve the house before they moved in.

Herman Mora, a paralegal who worked at the title company, corroborated Appellee's testimony. Mora testified that he had conversations with Silva in which Mora agreed to prepare a quitclaim deed in order to convey the property to Appellee de la Noval after the closing. Mora testified that he agreed to meet Silva in order to get Silva's signature on the quitclaim deed, but Silva never showed up for the meeting. Thereafter, Silva left for Nicaragua for a few years.

Silva testified that he never moved into the subject property. He alleged that the Appellees were actually paying rent. However, Silva did not provide a lease or a tax return that indicated rental property income. The rent that Silva claims he was charging the Appellees showed changes to amounts due that corresponded to adjustments to the mortgage and escrow payments on the loan, which tended to corroborate Appellees' claim that they were not paying a fixed rent to Silva, but rather were actually making mortgage payments. At Silva's insistence, the Appellees made the mortgage payments directly to Silva's bank, and Silva in turn paid the mortgage from those deposits. Silva did not give the Appellees receipts.<sup>1</sup> In

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<sup>1</sup> By Appellees' counsel to Appellee de la Noval:

fact, neither Appellant nor Appellees were able to show bank statements or check receipts that supported their opposing allegations. The Appellees submitted multiple home improvement and contractor receipts, and Appellee de la Noval's testimony supported her contention that they would not have invested close to \$89,000 to significantly improve the property if they were merely tenants, as opposed to owners. Silva was unable to explain why he had no home improvement receipts, why all three parties were on the same bank account following the closing, why he had no rent invoices or payment receipts, or why he did not move into the property in the years following the closing.

The trial court found that clear and convincing evidence supported the legal conclusion that Silva purchased and held bare legal title to the property, and that he was actually holding the title for the benefit and use of the Appellees. The trial court

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Q After the closing, what was your conversations with Mr. Silva regarding payment of the mortgage?

A Okay. We had opened an account, all three of us. We went together. He said for us to open an account. He was the main - - you know, the main one in the was all - - in the in the bank, because you know, the lien under his - the house was under his name. So we three went to open an account.

By Appellees' counsel to Appellee de la Noval:

Q And what was your agreement with Mr. Silva?

A Our agreement was that we -- we opened this account to - for me to put my - - the mortgage money inside this account. After a month, he decided to close it and he starts telling me that let's just put it under his account. You know, that I should trust him, that he's not going to take the house away from me, and just to let, you know, the money go inside his account.

entered final judgment in favor of the Appellees, granted their request for imposition of a constructive trust on the real property, and granted vested title to the Appellees in their names. The court denied Silva's motion for rehearing, his motion for a new trial, and his request to vacate the final judgment.

#### Standard of Review.

The standard of review on a denial of a motion to vacate a final judgment is abuse of discretion. Lewis v. Fifth Third Mortg. Co., 38 So. 3d 157, 160 (Fla. 3d DCA 2010). Similarly, our standard of review on denial of a motion for new trial is whether the trial court abused its discretion. Graham Cos. v. Amado, 45 Fla. L. Weekly D877 (Fla. 3d DCA Apr. 15, 2020).

#### Constructive Trust

In order to impose a constructive trust, it is necessary for the plaintiff to establish the claim by clear and convincing evidence. Abreu v. Amaro, 534 So. 2d 771, 772 (Fla. 3d DCA 1988). Constructive trusts have two objectives: "to restore property to the rightful owner and to prevent unjust enrichment." Provence v. Palm Beach Taverns, Inc., 676 So. 2d 1022, 1025 (Fla. 4th DCA 1996) (citing Abreu, 534 So. 2d at 772). Courts impose constructive trusts either upon property acquired by fraud, or when it is "against equity" that someone who acquired property without fraud should continue to retain possession. See Provence, 676 So. 2d at 1025 (citing Quinn v. Phipps, 113 So. 419, 422 (Fla. 1927)). In order to impose a constructive

trust the court must find the following: (1) the existence of a promise express or implied, (2) transfer of the property and reliance thereon, (3) the existence of a confidential relationship, and (4) unjust enrichment. See Abreu, 534 So. 2d at 772 (citing 5 G. Thompson, *On Real Property* § 2345, at 134 (1979 Repl.)). The person seeking to impose a constructive trust must prove those factors giving rise to a trust by clear and convincing evidence. Id.; see also In re Kyle, 123 B.R. 111, 113 (Bankr. S.D. Fla. 1990) (holding that, under Florida law, a constructive trust is warranted only if the movant establishes, by clear and convincing evidence, the existence of “(1) a confidential relationship; (2) by which one retains an advantage; (3) which one should not, in good equity and conscience, retain”).

Findings of fact by a judge in a nonjury case will be affirmed where there is competent and substantial evidence to support those findings. Abreu, 534 So. 2d at 772 (citing Laufer v. Norma Fashions, Inc., 418 So. 2d 437 (Fla. 3d DCA 1982)). In the case before us, the final judgment sets forth those record facts brought out at trial which support the elements of a constructive trust: Silva and Appellee de la Noval had a close personal relationship for many years; the Appellees testified that Silva offered his good credit to purchase a house for the Appellees, and promised that upon closing he would transfer title to Appellees; the Appellees invested significant funds to improve the house, and regularly transferred the mortgage payments to

Silva's account, and; Silva resided in Nicaragua for several years, and upon his return sought to eject Appellees from the property.

Having found by clear and convincing evidence that the Appellees proved each of the elements of a constructive trust, the trial court concluded that Silva's action for ejectment<sup>2</sup> failed. If a review of the record establishes that conflicting evidence was presented at trial, an appellate court cannot conclude that a trial court abused its discretion making its factual findings. See 50 State Sec. Serv., Inc. v. Giangrandi, 132 So. 3d 1128, 1133 (Fla. 3d DCA 2013); see also Brown v. Estate of Stuckey, 749 So. 2d 490 (Fla. 1999). In Brown, the Florida Supreme Court articulated the following test for determining whether the trial court abused its discretion:

[A]n appellate court must recognize the broad discretionary authority of the trial judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion. If an appellate court determines that reasonable persons could differ as to the propriety of the action taken by the trial court, there can be no finding of an abuse of discretion.

Because we find that the trial court's factual findings and conclusions of law are supported by the record, they should not be disturbed. Turner v. Bustamante, 493

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<sup>2</sup> Ejectment is a statutory cause of action allowing a person with a superior right to possession of real property to maintain an action of ejectment to recover possession of the property. § 66.021, Fla. Stat. (2018). In order to prove an action for ejectment, the plaintiff must prove, "that (1) the plaintiff has title to the land, (2) the plaintiff has been wrongfully dispossessed or ousted, and (3) the plaintiff has suffered damages." Partridge v. Partridge, 940 So. 2d 511, 512 n.2 (Fla. 4th DCA 2006).

So. 2d 36, 37 (Fla. 3d DCA 1986). Finding no abuse of discretion in the trial court's denial of Silva's motion to vacate the final judgment and motion for new trial, we affirm the trial court's final judgment imposing a constructive trust and vesting title to the property in Appellees' names.

Affirmed.