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EQUITABLE LIEN ON HOMESTEAD UPHELD

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A recent decision from the Fourth District Court of Appeal is a reminder that Florida's homestead protection, while often viewed as sacrosanct, is not absolute.

In *Flinn v. Doty*, Case Nos. 4D15-2424 and 4D15-3481, the Court upheld an equitable lien on the appellant's homestead property with respect to claims that the mortgage on the property had been paid down with monies wrongfully obtained by appellant. The case involved claims regarding properties transferred by the parties' parents to the appellant, Gail Flinn. The parents executed quit claim deeds to Gail, who later sold some of the properties, and used the sale proceeds, at least in part, to pay down the mortgage on her house, which was her homestead. After their mother died and their father was incapacitated, the parties' sister, as guardian of the father, sued Gail to recover the properties and/or the sale proceeds, alleging that the father lacked capacity to execute the quit claim deeds and that Gail had improperly influenced him. The trial court agreed and declared an equitable lien on Gail's house in the amount of $206,000, the amount that she used to pay off the mortgage on the property, and an additional equitable lien in the amount of $185,000 for additional monies received by Gail from the sale of the parents' properties. When the personal representative of the father, who died during the trial proceedings, sought to foreclose on the liens through the sale of house, Gail, for the first time, asserted that the property was her homestead and, thus, exempt from forced sale.

The Fourth District held that the personal representative, Doty, could force the sale of Gail's homestead property, but only with respect to the first lien for $206,000, citing, *Palm Beach Savings & Loan Ass'n v. Fishbein*, 619 So. 2d 267, 270 (Fla. 1993). In *Fishbein*, a husband forged his wife's signature on a mortgage for their homestead property, and used the loan proceeds to pay previous mortgages and taxes on the property. After they divorced, the wife obtained title to the house and refused to pay the mortgage, and the bank sought to foreclose. The trial court denied foreclosure of the mortgage, but imposed an equitable lien on the property for the amount of the taxes paid on the property and that portion of the mortgage which had been used to satisfy the pre-existing mortgage. On appeal, the Fourth District reversed the equitable lien, reasoning that the equitable lien could not be imposed where the wife had been innocent of any wrongdoing, but only where a party was guilty of fraud or egregious conduct. The Florida Supreme effectively re-instated the trial court ruling, noting that "[t]he homestead exemption is intended to be a shield, not a sword," and rejected the conclusion that an equitable lien could be imposed only where fraud and egregious conduct are shown.

Applying *Fishbein*, the Fourth District upheld the foreclosure of the equitable lien to the extent of the $206,000 used to pay down the mortgage on the homestead property "because it was imposed to prevent unjust enrichment by appellant."

The decision serves an important reminder that, in cases of possible fraudulent or voidable transfers, parties should not overlook potential liens on real property, including property otherwise exempt from execution based on Florida's Constitutional homestead protection.

For more information on this topic, please contact the author, David Gay, on the firm's Dispute Resolution and Business Reorganization Teams.

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