

**IN THE CIRCUIT COURT FOR THE 15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA**

CASE NO: 50-2017-CA-007780

ANNA KARAMBELAS, and HELEN
BISIGNANO,

Plaintiffs,

v.

BRYAN KARAMBELAS, as Personal
Representative of the Estate of Michael Anthony
Karambelas, and THE PATIO OF BOCA
BARWOOD CONDOMINIUM ASSOCIATION,
INC.,

Defendants.

DEFENDANT’S TRIAL MEMORANDUM

Defendant, Bryan Karambelas, submits this Memorandum in connection with the trial scheduled to commence on February 22, 2018.

I. INTRODUCTION

Contested lawsuits do not get more black and white than this. Michael Karembeles (the “Decedent”) owed Plaintiffs a debt under a Note and Mortgage. Nearly nine years ago, Plaintiffs signed and notarized a document forgiving the debt (the “Debt Forgiveness Letter”). The Debt Forgiveness Letter explicitly stated: “the debt is forgiven and considered paid in full.” Given these straight-forward facts, it is hard to believe that this lawsuit was ever filed, no less litigated through trial.

Sadly, the reason so much time, money, and judicial resources have been wasted has little to do with the elderly Plaintiffs – neither of whom have any recollection of the Debt Forgiveness Letter – but was caused by the cynical strategy of Plaintiff’s son, Chris Karembeles. Despite knowing full-well that the debt had been forgiven, Chris persuaded the elderly Plaintiffs to bring

this lawsuit, recognizing that the Defendant had limited resources to defend himself. Worse yet, after it became clear that the Defendant would not simply rollover, Chris and the Plaintiffs have taken positions with this Court that they knew were a sham.

From the time this lawsuit was filed until last week, Plaintiffs repeatedly misrepresented that the Debt Forgiveness Letter was fake:

- In response to Requests for Admissions, both Plaintiffs denied signing the Debt Forgiveness Letter;
- In response to Defendant's Interrogatories, both Plaintiffs "dispute[d] the validity of the September 1, 2009 letter"; and
- In response to Defendant's Motion for Summary Judgment, Plaintiffs "denied having executed the Letter."

Chris and the Plaintiffs even went so far as to impugn the integrity of the Defendant and claim that the Debt Forgiveness Letter was "fraudulent" and a "forgery."

Plaintiffs' misleading argument forced the Defendant to track down the notary of the Debt Forgiveness Letter, who testified that he reviewed the Plaintiffs' identification and watched them sign the Letter. But even that was not enough. Only after Defendant spent more money to hire a former law enforcement handwriting expert to testify to the authenticity of the signatures, did Plaintiffs finally concede and stipulate that the Debt Forgiveness Letter was genuine.

Now, less than 48 hours before trial, Plaintiffs have devised a new theory: the Debt Forgiveness Letter, which states in the present tense that debt was "forgiven" and is to be "considered paid," was not supposed to take effect until the Plaintiffs passed away. Since this argument was conceived this week, it has never been noted in a pleading, addressed in discovery, or mentioned in a deposition. Nevertheless, Plaintiffs now ask the Court to buy-in to their latest gambit and disregard a signed and notarized document that states in plain English – the "debt is forgiven and considered paid in full." Plaintiffs' specious claim should be denied.

II. FACTUAL BACKGROUND

1. On July 11, 2016, Decedent passed away.
2. Defendant is Decedent's only child and, thus, the sole intestate heir.
3. Plaintiff Anna Karambelas is Decedent's mother.
4. Plaintiff Helen Bisignano is Decedent's aunt.
5. Chris Karambelas is the Decedent's brother and the son of Plaintiff Anna Karambelas.
6. On or about May 11, 2006, Plaintiffs purchased a property in Boca Raton, FL (the "Property").
7. On or about October 16, 2008, Decedent signed a \$125,000 Note and a Mortgage on the Property in favor of Plaintiffs.
8. On or about September 8, 2009, Plaintiffs forgave the note and executed and notarized the Debt Forgiveness Letter. [Attached as **Exhibit A.**]
9. The subject of the Debt Forgiveness Letter is the Property and it explicitly states:

Anna Karambelas and Helen Bisignano . . . give and bequeath to Michael Karambelas all rights and obligations he may have to us regarding the above mentioned property. . . . This debt is forgiven and considered paid in full.
10. The Debt Forgiveness Letter was executed by the Plaintiffs and notarized by Edward Karlsberg.
11. Despite the fact that the Decedent's debt to Plaintiffs was forgiven, on May 18, 2017, Plaintiffs made a demand for payment of the Note by filing a claim against the Decedent's estate in the amount of \$125,000.00.
12. On May 22, 2017, the Personal Representative filed an objection to the Claim because the debt was forgiven.

III. LEGAL ARGUMENT

Plaintiffs' claims fail as a matter of law because the Debt Forgiveness Letter unambiguously forgave the Decedent's debt to Plaintiff. Even if, however, the Debt Forgiveness Letter did not explicitly state that the debt for the Property was "forgiven and considered paid in full," Plaintiffs complete lack of any memory of the events precludes them from arguing at trial that they had any other intent besides the plain language of the document. Plaintiffs' latest argument, that the Debt Forgiveness Letter was "testamentary," ignores the law of contract interpretation and has no support in the record. Therefore, Plaintiffs' claims should be denied.

A. The Debt Forgiveness Letter Unambiguously Forgave the Decedent's Debt.

The Debt Forgiveness Letter unambiguously forgave the debt Decedent owed to Plaintiffs for the Property. "Where the language of a contract is unambiguous, there is no occasion for judicial construction. Clear contract language controls." *Harris v. Sch. Bd. of Duval County*, 921 So. 2d 725, 733 (Fla. 1st DCA 2006). In this case, the subject of the Debt Forgiveness Letter is the Property: "9170 SW 14th St., Apt. 4508, Boca Raton, Fla." [Ex. A.] And the Debt Forgiveness Letter clearly states that Plaintiffs "give and bequeath to [Decedent] all rights and obligations he may have to us regarding the above mentioned property. . . . This debt is forgiven and considered paid in full." [Ex. A.] A release cannot be any more explicit than saying in the present tense that the debt is "forgiven" and "considered paid in full." *See Barakat v. Broward County Hous. Auth.*, 771 So. 2d 1193, 1195 (Fla. 4th DCA 2000) ("Contracts are to be construed in accordance with the plain meaning of the words contained therein."). Moreover, Plaintiffs have stipulated that they signed the Debt Forgiveness Letter. [Pretrial Stip at p. 3.] Thus, Plaintiffs' claims for a lien on the Property and to foreclose on the mortgage should be denied as a matter of law.

B. Plaintiffs' Argument that the Debt Was Not Forgiven is Baseless.

In addition to claiming that the Debt Forgiveness Letter is somehow ambiguous, Plaintiffs now attempt to argue that although they signed the document, they did not actually intend to forgive to the Note and Mortgage. Specifically, Plaintiffs argue that the intent of the Debt Forgiveness Letter was “to release the obligations related to the Note and Mortgage only upon the deaths of the Plaintiffs.” [Pl Trial Memo at p. 5.] Since Plaintiffs can no longer contest the authenticity of the Debt Forgiveness Letter, they now, for the first time, argue that the document was to “operate as a will or some other form of testamentary document.” [*Id.*] As more fully described below, Plaintiffs’ assertion ignores the plain language of the Debt Forgiveness Letter and misapplies Florida contract law.

a. Plaintiffs' Argument is Contrary to the Laws of Contract Interpretation.

Even if the Debt Forgiveness Letter did not unambiguously forgive the debt, and the Court was forced to apply the rules of contract interpretation, the result of this case would not change. As Plaintiffs point out, “every provision in a document should be given meaning and effect and apparent inconsistencies reconciled if possible.” *Excelsior Ins. Co. v. Pomona Park Bar and Package Store*, 369 So.2d 938, 941 (Fla. 1979). In this case, Plaintiffs’ interpretation of the Debt Forgiveness Letter as a solely testamentary document violates this basic premise by giving no effect at all to the provision that: “This debt is forgiven and considered paid in full.”¹ The only interpretation that gives meaning to all provisions in the Debt Forgiveness Letter is that the Plaintiffs were attempting to give any interest they had in the Property to the Decedent and forgive the debt completely.

¹ See Fla. Stat. § 673.6041(1)(b) (a “person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument [b]y agreeing not to sue or otherwise renouncing rights against the party by a signed writing.”).

The Debt Forgiveness Letter also bears no resemblance to a will – it does not use the words “will”, “testament”, “death”, “demised”, “inherit”, or anything similar. Similarly, the Debt Forgiveness Letter does not meet the two witness requirement for a valid will. *See Fla. Stat. 732.502; Malleiro v. Mori*, 182 So. 3d 5, 7 (Fla. 3d DCA 2015) (“the creation of a will in Florida requires compliance with certain formalities, the first and foremost being the witnessed signature of the testator.”). Plaintiffs’ argument that the Debt Forgiveness Letter is actually a will – an argument that was never pled or even addressed until two days before trial – is unsupported by the plain language of the document and Florida law.

b. Plaintiffs’ Argument is Contrary to the Their Own Testimony.

Plaintiffs can present no evidence in support of their new argument that the Debt Forgiveness Letter was intended to be a will, because they have already testified that they cannot recall even executing the Debt Forgiveness Letter. Less than three weeks ago, on February 5, 2018, Plaintiff Anna Karambelas testified that she had no recollection of the Debt Forgiveness Letter:

Q: So today is the first time you’ve seen this forgiveness letter?

A: Yes.

...

Q: Do you recall signing this forgiveness letter?

A: No, I do not.

...

Q: So it’s your testimony that you denied knowing about the forgiveness letter before filing the foreclosure lawsuit?

A: I had never heard of a forgiveness letter. I’m sorry. Maybe I’m wrong.

[Defendant Karemabelas Dep., p. 17:2-4, 17:15-16, 24:2-6.] Similarly, Plaintiff Helen Bisignano, who was deposed on February 1, 2018, also had no recollection of the Debt

Forgiveness Letter. [Plaintiff Bisignano Dep., pp. 28:6-11, 39:2-4, 61:5-10.] Plaintiff Bisignano even went so far as to claim the Debt Forgiveness Letter was a forgery:

Q: But do you have any theory of how your signature came to appear upon the forgiveness letter?

A: Yes. A forgery.

[Plaintiff Bisignano Dep., p. 61:23-25.] Yet a mere two weeks after claiming the Debt Forgiveness Letter was a “forgery” – and making no mention of the Property being a testamentary gift – Plaintiffs stipulated that the signatures on the Debt Forgiveness Letter were genuine. [Pretrial Stip at p. 3.] It would defy credulity for Plaintiffs to now claim that they recollect their intent when signing the Debt Forgiveness Letter – and any such testimony should be given no weight by the Court.

c. Plaintiffs Argument is Contrary to U.S. Tax Law.

To support their specious claim that the Debt Forgiveness Letter was “testamentary,” Plaintiffs mistakenly argue that Decedent would have had to report the forgiveness of the Note to the IRS as income. Specifically, Plaintiffs argue that Decedent “would have been obligated to report the forgiveness of the note and release of the mortgage as income, but there is no evidence that he ever did so.” [Pl Trial Memo at p. 3.] Plaintiffs have the gift tax law backwards, as gifts are only taxable events for the donor, not the donee. *See* 26 U.S.C.A. s. 2502(c) (“the tax imposed by section 2501 shall be paid by the donor.”).² That is, receiving a gift is not a taxable event, so if forgiving the debt was a gift, Decedent should not have reported it as income. *See Roe v. Roe*, 124 So. 734, 735 (Fla. 1929) (“A debt may be the subject of a gift by the creditor to his debtor and is generally referred to as a forgiveness of the debt.”). This basic error in Plaintiffs’ “evidence” is indicative of the weakness of their claims.

² 26 U.S.C.A. s. 2501 addresses the “Imposition of tax” for the “Gift Tax.”

IV. CONCLUSION

After a year of pushing the frivolous theory that the Debt Forgiveness Letter was a forgery, Plaintiffs would now have this Court disregard the plain language of a signed and notarized document stating that the “debt is forgiven and considered paid in full.” Not only do the terms of the Debt Forgiveness Letter not support Plaintiffs’ assertion, but Plaintiffs have no recollection of their intent for signing the document or even its existence. The simple fact is this lawsuit should never have been filed and, at best, should have been dropped once the notary confirmed the authenticity of the Debt Forgiveness Letter. The Court should not buy-in to Plaintiffs’ misleading and fluid arguments and should enter judgment in favor of Defendant.

Dated: February 21, 2018

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court by using the Courts E-portal filing system and to Plaintiffs via Electronic Mail on February 21, 2018 upon: **Benjamin P. Bean, Esquire, Counsel for Plaintiffs**, (bbean@gjb-law.com), Genovese Joblove & Battista, P.A., 200 East Broward Boulevards, Suite 1110, Fort Lauderdale, FL 33301.

/s/ Sean Gregory Perkins
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