

Pinero v. Rodriguez (In re Rodriguez)

Decided May 10, 2022

8:20-bk-08324-RCT Adv. 8:21-ap-00318-RCT

05-10-2022

In re: Orlando Rodriguez and Loreta Barbara Ramirez, Debtor. v. Orlando Rodriguez and Loreta Barbara Ramirez, Defendants. Helens Pinero d/b/a Epic Title Group, Plaintiff,

ROBERTA A. COLTON UNITED STATES BANKRUPTCY JUDGE.

ORDER DENYING PLAINTIFF RELIEF FOR THE CLAIMS IN HER COMPLAINT AND GRANTING DEBTORS ATTORNEY'S FEES INCURRED IN DEFENDING AGAINST PLAINTIFF'S CIVIL THEFT CLAIM

ROBERTA A. COLTON UNITED STATES BANKRUPTCY JUDGE.

A trial was held on April 29, 2022 on Plaintiff's complaint. Plaintiff asserts four claims: (1) constructive trust due to fraud and unjust enrichment; (2) reduction in Debtors' homestead exemption under [11 U.S.C. § 522\(o\)](#); (3) denial of discharge as to Debtors' debt to Plaintiff; *1 and (4) civil theft.¹ On the morning of trial, Plaintiff announced her intention to abandon her civil theft claim, and the trial proceeded on her three other claims. As explained below, the Court finds that Plaintiff is not entitled to relief on any of her claims.

¹ Doc. 1.

I. Background²

² Three witnesses testified during the trial—Plaintiff Helens Pinero and Defendant-Debtors Orlando Rodriguez and Loreta Barbara Ramirez. The exhibits entered into evidence at trial (Doc. 26, 27) are filed at Docket Numbers 24 and 26. The parties' closing arguments are filed at Documents 28 and 29.

This Court makes the following findings of fact based on the testimony and evidence presented at trial. Plaintiff Helens Pinero d/b/a Epic Title Group was the title agent involved in the sale of Debtor-Defendants Orlando Rodriguez and Loreta Barbara Ramirez's Hialeah home. Plaintiff acted as an agent for Fidelity National Title ("Fidelity"), the company that issued the title insurance for the sale. The closing took place on October 31, 2018.

Debtors are a Spanish-speaking couple, and a translator was used to assist them in this trial. Their highest level of education is the completion of high school, and both are currently retired.³

³ At the time of trial, Mr. Rodriguez was 65 years old, and Mrs. Ramirez was 59 years old.

During the time leading up to the closing, Plaintiff and Debtors spoke about the existing mortgages on Debtors' home. There is no dispute that there were two mortgages on Debtors' home and that Plaintiff was aware of this fact. Debtors had a first mortgage with Wells Fargo, and they had a second mortgage with the Secretary of Housing and Urban Development ("HUD"). The HUD mortgage is central to the parties' dispute.

Debtors had only been making mortgage payments to Wells Fargo, so they believed that both mortgages were with Wells Fargo. Plaintiff knew that Debtors' second mortgage was with HUD, as evidenced by the fact that the HUD mortgage had been recorded and the title commitment issued by Fidelity contains this information.⁴

⁴ Def. Ex. 9; Def. Ex. 6, Schedule B-I, ¶ 8.

Plaintiff called Wells Fargo to obtain the payoff information for both mortgages, but Wells Fargo only provided the payoff information for its first mortgage. According to Plaintiff, Wells Fargo advised her that if the FHA case number on the HUD mortgage matched the Wells Fargo mortgage, the payoff information for the Wells Fargo mortgage would include the amount due to HUD. Plaintiff later learned (after the closing) that this information was incorrect.⁵ Despite the fact that both mortgages contained the same FHA case number, the payoff information for the Wells Fargo mortgage did not include the amount owed to HUD.

⁵ To add to the confusion, the HUD mortgage was prepared by Wells Fargo and appears to have been part of an FHA HAMP modification of the Wells Fargo loan. (Def. Ex. 9).

Debtors sold their home and received the net proceeds after paying off the Wells Fargo mortgage.⁶ At the time of the closing, all parties believed that the HUD mortgage was also paid off. It is undisputed that the parties were mistaken, as the HUD mortgage was not paid off. Debtors used the net sales proceeds to purchase their current home in Spring Hill and to make repairs to it.

⁶ Def. Ex. 2. Plaintiff did not attend the closing.

Months after the closing, Debtors received a letter from HUD stating that the HUD mortgage was not paid off and needed to be paid. Debtors attempted

to enter into a payment plan with HUD and sent in a payment to HUD for \$600; that was all that they could afford to pay.

After Debtors received the letter from HUD, Plaintiff went to a HUD office to try to determine why the HUD mortgage had not been paid off. According to Plaintiff, HUD informed her that it was Wells Fargo's fault for not informing her that she needed to seek the payoff amount from HUD's servicer for Debtors' mortgage loan, which was NOVAD.

Ultimately, Fidelity paid off the HUD mortgage, which after incurring significant interest, totaled \$45,298.76 at the time of Fidelity's payment on March 5, 2020.⁷ Thereafter, Fidelity asserted a claim against Plaintiff, which Plaintiff settled by paying Fidelity \$10,000 and agreeing to send her title commitment business to Fidelity until that directed business offset the amount that Fidelity had to pay to HUD.

⁷ The Court takes judicial notice of Fidelity's claim filed in the underlying bankruptcy case.

On November 6, 2020, Debtors filed a petition for bankruptcy relief under Chapter 13. The last day to file a proof of claim was January 15, 2021, and Fidelity filed a late proof of claim on March 17, 2021, to which no objection has been filed. Plaintiff did not file a proof of claim; instead, she initiated this adversary proceeding on September 20, 2021.

In her adversary complaint, Plaintiff asserts four claims: (1) constructive trust due to fraud and unjust enrichment; (2) reduction in Debtors' homestead exemption under 11 U.S.C. § 522(o); (3) denial of discharge as to Debtors' debt to Plaintiff; and (4) civil theft. Plaintiff proceeded to trial on the first three claims, all of which require a showing of wrongdoing. At trial, Plaintiff attempted to show that Debtors made misrepresentations in two affidavits that they signed related to the sale of their home—the

Affidavit as to Debts, Liens and Possession ("Debt Affidavit") and the No Lien, Possession and Gap Affidavit ("Gap Affidavit").⁸

⁸ Pla. Ex. 1; Def Ex. 8.

With respect to the Debt Affidavit, Plaintiff focuses on paragraph 5, which states in relevant part:

That there are no . . . unpaid or unsatisfied Mortgages, Claims of Liens or other matters, EXCEPT as set forth in Exhibit "B", that constitute a lien or encumbrance against the property . . .⁹

4 *4

Any defect, lien, encumbrance, adverse claim, or other matter that . . . is created, attached, or is disclosed between the Commitment Date [October 1, 2018] and the date on which all of the Schedule B, Part I-Requirements [of the Title Commitment] are met.¹⁰

⁹ Pla. Ex. 1.

¹⁰ Pla. Ex. 1.

Schedule B, Part I of the Title Commitment sets forth certain requirements that must be met.¹¹ Paragraphs 7 and 8 set forth the requirements that both the Wells Fargo and HUD mortgages be satisfied and the notes cancelled.¹² When these documents are read together, it is clear that Debtors did not make any misrepresentation in the Debt Affidavit—they stated that there were no unsatisfied mortgages on their home except for the Wells Fargo and HUD mortgages.

¹¹ Def. Ex. 6.

¹² Def. Ex. 6.

Likewise, with respect to the Gap Affidavit, Plaintiff focuses on paragraph 8, which states in relevant part:

[T]he Property is free and clear of all liens, taxes, and mortgages, encumbrances and claims of every kind, nature and description whatsoever, . . . except as otherwise indicated on the Title Commitment.¹³

¹³ Def. Ex. 7.

However, as already noted, the Title Commitment refers to both the Wells Fargo and HUD mortgages.¹⁴ Thus, Debtors did not make any misrepresentation in the Gap Affidavit.

¹⁴ Def. Ex. 6.

II. Analysis of Plaintiff's Claims

Plaintiff went to trial on three claims: (1) constructive trust due to fraud and unjust enrichment; (2) reduction in Debtors' homestead exemption under 11 U.S.C. § 522(o); and (3) denial of discharge as to Debtors' debt to Plaintiff.⁵ To succeed on these claims, Plaintiff was *5 required to show some wrongdoing. However, based on the testimony and evidence presented at trial, it is clear Plaintiff did not prove any misrepresentation, fraud, or other wrongdoing. An insurable mistake occurred regarding whether a separate payoff amount was needed for the HUD mortgage. If Plaintiff, a title agent, was not aware that a separate payoff amount was needed, there is no basis for her contention that Debtors, who do not speak English, were aware of this fact and hid it from her. Thus, as explained below, the Court finds that Plaintiff is not entitled to any relief.

A. Constructive Trust/Equitable Lien

Plaintiff showed at trial that Debtors used the net proceeds from the sale of their Hialeah home to purchase and renovate their Spring Hill homestead property. And, since the net sales proceeds included an amount that should have been used to pay off the HUD mortgage, Plaintiff seeks the imposition of a constructive trust or equitable lien on Debtors' Spring Hill home to the extent of the excess net sales proceeds that they received.¹⁵

Plaintiff, however, has not shown that such equitable relief is warranted under the facts of this case, as homestead property is given significant protection under Florida law.

¹⁵ Plaintiff uses the terms "constructive trust" and "equitable lien" interchangeably. *Cf.* Doc. 1 to Doc. 29.

The Florida Supreme Court's decision in *Havoco of America, Limited v. Hill*,¹⁶ is instructive. In *Havoco*, the court analyzed the following certified question-whether Florida's homestead exemption protects Florida homestead property when the debtor acquired the homestead property using non-exempt funds with the specific intent to hinder, delay, or defraud creditors.¹⁷ The court stated that while "the homestead exemption is to be liberally construed *6 in the interest of protecting the family home . . . [it] is not to be so liberally construed as to make it an instrument of fraud."¹⁸

¹⁶ 790 So.2d 1018 (Fla. 2001).

¹⁷ *See id.* at 1019.

¹⁸ *Id.* at 1020.

The *Havoco* court explained that Florida's constitution only allows a "forced sale [of homestead property] for (1) the payment of taxes and assessments thereon; (2) obligations contracted for the purchase, improvement or repair thereof; or (3) obligations contracted for house, field or other labor performed on the realty."¹⁹ However, the court acknowledged that it had "strayed from the literal language of the exemption where the equities have demanded it" but that it had "done so rarely and always with due regard to the [three] exceptions provided in" the Florida constitution.²⁰

¹⁹ *Id.* at 1022.

²⁰ *Id.* at 1023-24.

The *Havoco* court then answered the certified question in the affirmative, stating:

The transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors is not one of the three exceptions to the homestead exemption provided in [the Florida constitution]. Nor can we reasonably extend our equitable lien jurisprudence to except such conduct from the exemption's protection. *We have invoked equitable principles to reach beyond the literal language of the exceptions only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.*²¹

²¹ *Id.* at 1028 (emphasis added).

Thus, the Florida Supreme Court acknowledged that it had implicitly created a fourth exception to the homestead exemption when funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.²²

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²² This exception has been applied in situations where the owner of the homestead did not participate in a fraud to obtain the funds used to purchase the homestead property, but it can be shown that the funds used were, in fact, obtained by fraud. *See, e.g., Palm Beach Savings & Loan Association, F.S.A. v. Fishbein*, 619 So.2d. 267, 270-71 (Fla. 1993); *In re Lee*, 574 B.R. 286, 293 (Bankr. M.D. Fla. 2017), *aff'd*, 603 B.R. 161 (M.D. Fla. 2018).

In the instant case, Debtors did not engage in any fraudulent or egregious conduct to obtain the funds that they used to purchase their Spring Hill home. Instead, they obtained excess net sales proceeds due to a mistaken belief held by all parties that the HUD mortgage was paid off at the closing. Therefore, based on *Havoco*, an equitable lien on Debtors' Spring Hill home is not warranted.²³

23 See, e.g., *In re Financial Federated Title and Trust, Inc.*, 347 F.3d 880, 888 (11th Cir. 2003) (stating that "the *Havoco* decision has upheld the equitable lien cases where the funds obtained through fraud or egregious conduct can be directly traced to the investment, purchase or improvement of homestead"); *Crawford v. Silette*, 608 F.3d 275, 279-80 (5th Cir. 2010) (stating that "under Florida law, to impose an equitable lien on a homestead, three conditions must exist: (1) the owner used fraudulently obtained funds to purchase or retire a mortgage interest in the homestead; (2) the owner was unjustly enriched; and (3) the owner would be no worse off if the court imposed an equitable lien in favor of the fraud victim").

Plaintiff, however, argues that a finding of fraud or other egregious conduct is not required, as long as she shows that Debtors have been unjustly enriched. While the Florida Supreme Court's decision in *Palm Beach Savings and Loan Association, F.S.A. v. Fishbein*²⁴ might, at first glance, appear to support Plaintiff's argument, a closer reading is required.

24 619 So.2d. 267 (Fla. 1993).

In *Fishbein*, a husband forged his wife's signature on a mortgage on homestead property while they were going through a divorce.²⁵ After their divorce, the wife was awarded the homestead property, and the bank initiated foreclosure proceedings.²⁶ The trial court permitted the bank to have an equitable lien on the homestead property to the extent that its funds were used to satisfy the preexisting mortgages and taxes on the property.²⁷ The appellate court reversed, because the wife was innocent of any wrongdoing and the court reasoned that an equitable lien could only be imposed when the owner of the property was guilty of fraudulent or otherwise egregious conduct.²⁸ In reversing the appellate court, the

8 *Fishbein* court stated: *8

25 See *id.* at 268.

26 See *id.* at 269.

27 See *id.*

28 See *id.*

[I]t is apparent that where equity demands it this Court has not hesitated to permit equitable liens to be imposed on homesteads beyond the literal language of article X, section 4 [of the Florida constitution]. However, the court below was not so concerned with the constitutional language as it was with its belief that an equitable lien could not be imposed because [the wife] was not a party to the fraud. Yet, there was no fraud involved in either *La Mar* or *Sonneman*. In those cases, the equitable liens were imposed to prevent unjust enrichment.²⁹

29 *Id.* at 270.

After *Fishbein*, some courts have construed this language to hold that fraud or other egregious conduct is not required for an equitable lien if the plaintiff shows that the defendant has been unjustly enriched. However, the *Fishbein* case itself involved fraud; the proceeds used to pay off the mortgages and taxes on the homestead property were obtained by fraud, even though the wife did not participate in or know of the fraud. Whenever fraud can be traced to the proceeds used to pay for the current owner's homestead property, the owner of the property will necessarily have been unjustly enriched by the use of those fraudulently obtained funds.

Furthermore, *Fishbein's* statement that "there was no fraud involved in either *La Mar* or *Sonneman*" in which equitable liens were granted only tells part of the story. In *La Mar v. Lechliden*,³⁰ the court specifically stated that "[i]t was undoubtedly the intention of both [the owners of the homestead property] and [the couple that funded the improvements on the homestead property] that, by the construction of the improvements thereon, [the couple funding the improvements] should acquire

an interest in the land herein involved."³¹ The *La Mar* court explained that because an owner of the homestead property gave his consent to the making of improvements on his land, such was a sufficient basis for the imposition of an equitable lien.³²In coming to this conclusion, the *La Mar*

9 court stated: *9

³⁰ 185 So. 833 (Fla. 1939).

³¹ *Id.* at 835.

³² *See id.* at 836.

This Court holds that the lien of plaintiffs is enforceable against the homestead of defendants, upon the theory that since the plaintiffs have innocently, and in the belief that they had the right to do so, with the consent of the holder of the legal title, placed on his land permanent and valuable improvements, it would be inequitable to permit the owner to retain the improvements without compensating the parties who placed them there for their reasonable value; that so to permit him to retain them would be unjustly to enrich him. . . . To say that a lien could not be decreed against the homestead under the facts in this case would be to make the homestead an instrument of fraud.³³

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³³ *Id.* at 836, 837.

Thus, the *La Mar* court found that an equitable lien was warranted given the egregious conduct of the property owner knowingly allowing the plaintiffs to make valuable improvements to his property without compensation. Unlike *La Mar*, there was no knowing egregious conduct by Debtors in this case.

Likewise, in *Sonneman v. Tuszynski*,³⁴ the defendant and the plaintiff had a mother-son relationship, and the defendant told the plaintiff that he would take care of her for the remainder of her life.³⁵ This resulted in plaintiff giving up her job, assisting him in his jobs, providing funds for

him to purchase the homestead property, and providing him with housekeeping services.³⁶ Eventually, the defendant met and married a woman and forced the plaintiff to leave the homestead property (which was also used as a tourist camp) "at a time when [the plaintiff] was 78 years of age, penniless, with no relatives or friends, and in need of the common necessities."³⁷ In finding that the plaintiff was entitled to an equitable lien, the court stated:

³⁴ 191 So. 18 (Fla. 1939).

³⁵ *See id.* at 18.

³⁶ *See id.* at 18-19.

³⁷ *Id.* at 19.

The conclusion is inescapable when reading the record that the plaintiff advanced money to the defendant from time to time for a long time discharged duties as housekeeper and performed for the defendant other domestic services, with the expectation that the defendant would observe and fully perform his agreement or

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contract to support and maintain her the remainder of her life, which he refuses to do and forced the plaintiff to leave the tourist camp.

[The evidence shows] that the plaintiff parted with her money and performed her services under an agreement with the defendant that he would provide for, support and maintain her in her old age. . . . [T]his Court has held that a special equity existed in behalf of a person advancing money, performing labor and otherwise helping and assisting in the accumulation of money and property and that the court decree equity as between the parties when the facts are presented. It may be reasonably inferred from the testimony adduced in this case that the money advanced by the plaintiff to the defendant was used by him in purchasing the tourist camp near Tampa during the month of January, 1934. Her services and labor were factors that aided the defendant in accumulating the money placed into the tourist camp and it appears from the evidence that an equitable lien exists in her behalf on the tourist camp property for the money advanced and the work and labor by her performed for the defendant.

The equitable lien hereby declared may be enforced against the appellees' homestead exemption.³⁸

³⁸ *Id.* at 19-21.

Thus, like *La Mar*, the *Sonneman* court found that an equitable lien was warranted given the knowingly egregious conduct of the defendant in promising to take care of the plaintiff, which resulted in her giving up her job and devoting her time, energy, and money to him and the tourist camp/homestead property.

In the instant case, there was no knowing conduct by Debtors that led to their alleged unjust enrichment caused by receiving excess sales proceeds that should have been paid to HUD. Further, to the extent that Debtors were unjustly enriched by the excess net sales proceeds, those proceeds belonged to HUD, not Plaintiff. While

Fidelity ultimately paid HUD the total amount due from the closing, Plaintiff simply settled Fidelity's claim against her. Thus, there is no evidence that Plaintiff directly conferred a benefit on Debtors, nor that Debtors *11 appreciated the benefit that was conferred upon them.³⁹ Given that there was no fraud or egregious conduct by Debtors (or by anyone for that matter) in obtaining the funds used to purchase and renovate their Spring Hill home, and given that they did not knowingly obtain the net proceeds due to HUD, the Court finds that the remedy of a constructive trust or equitable lien against their homestead property is not warranted.⁴⁰

³⁹ "To state a claim for unjust enrichment, a plaintiff must allege 'a benefit conferred upon a defendant by the plaintiff, the defendant's appreciation of the benefit, and the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof.'" *Pincus v. American Traffic Solutions, Inc.*, 333 So.3d 1095, 1097 (Fla. 2022) (quoting *Fla. Power Corp. v. City of Winter Park*, 887 So.2d 1237, 1241 n.4 (Fla. 2004)).

⁴⁰ This is not a situation where a bank erroneously adds a large sum of money to a person's bank account, the person realizes the bank's mistake, and the person then immediately invests the money into homestead property to protect it. Such action may be sufficient misconduct to warrant a constructive trust or equitable lien against the homestead due to the knowing misuse of the money. The instant case involves an unknowing use of money due to an innocent mistake by all parties. It was a mistake that did not come to light until HUD reached out, well after the closing. Moreover, both Plaintiff and Debtors reasonably presumed that Wells Fargo provided a payoff that included the modification represented by the subordinate HUD mortgage.

B. Reduction in Homestead Exemption

Next, Plaintiff seeks to reduce Debtors' homestead exemption by the amount of the excess net sales proceeds that Debtors received due to the HUD mortgage not being paid off at closing. Pursuant to [11 U.S.C. § 522\(o\)](#), for purposes of the homestead exemption, the value of the homestead property shall be reduced to the extent that such value is attributable to property that the debtor disposed of, within ten years prior to the petition date, "with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt . . . if on such date the debtor had held the property so disposed of."⁴¹ Because the Court has found that Debtors did not engage in any wrongdoing in connection with the sale of their Hialeah home and the use of the net sales proceeds to buy and renovate their Spring Hill home, Plaintiff cannot show a basis for relief under [§ 522\(o\)](#). Accordingly, Debtors are entitled to judgment on this claim. *12

⁴¹ [11 U.S.C. § 522\(o\)](#).

C. Denial of Dischargeability of Debtors' Debt to Plaintiff

Next, Plaintiff seeks a non-dischargeable money judgment against Debtors for \$42,455.37—the amount that Plaintiff contends represents the net sales proceeds paid to Debtors that should have been paid to HUD. This claim ultimately was reduced at trial to \$10,000 plus Plaintiff's attorney's fees, because that was the cost of satisfying Fidelity's claim against Plaintiff. In support of this claim, Plaintiff alleges the following in her complaint:

[This] money was obtained by the Debtors based upon false representations and actual fraud, that was in writing and was materially false, on which Plaintiff relied. Defendants made the misrepresentations intending that the Plaintiff reasonably rely on said representation (that there was no second mortgage on the Hialeah property). . . . The Plaintiff sustained monetary damages because of the misrepresentations and paid the Defendants \$42,455.37 of sale proceeds which they were not entitled to receive.⁴²

⁴² Doc. 1, ¶¶ 40-41.

However, the evidence at trial shows that there was no misrepresentation about the existence of Debtors' second mortgage with HUD and that Plaintiff was plainly aware of it prior to closing. There was no evidence of false representations made by Debtors or actual fraud committed by them, and as such, Plaintiff is not entitled to a money judgment on this claim.

Additionally, Plaintiff's claim of non-dischargeability, presumably under [11 U.S.C. § 523\(a\)\(2\)\(B\)](#), is not supported by the record. [Section 523\(a\)\(2\)\(B\)](#) provides that a discharge under Chapter 13 does not discharge a debtor from any debt for money to the extent obtained by the use of a statement in writing that is: (1) materially false; (2) made with respect to the debtor's financial condition; (3) on which the creditor reasonably relied; and (4) that the debtor caused to be made or published with the intent to deceive.

- ¹³ However, the Court has found that *13 Debtors did not make any materially false statements, nor did they make any statements with the intent to deceive Plaintiff. Accordingly, even if the Court found a money judgment in favor of Plaintiff was warranted, such judgment debt would be dischargeable.

III. Plaintiff's Abandoned Civil Theft Claim

On the morning of trial, to the surprise of Debtors' counsel and the Court, Plaintiff announced her intent to abandon her civil theft claim, brought pursuant to [Florida Statute § 772.11](#). To have succeeded on this claim, Plaintiff would have had to prove that Debtors: (1) knowingly (2) obtained or used Plaintiff's property with (3) felonious intent (4) either to (a) deprive Plaintiff of her right to or a benefit from the property or (b) appropriate the property to Debtors' own use.⁴³ Based on the evidence presented at trial, it is clear that Debtors did not *knowingly* obtain the portion of the net sales proceeds that should have been used to pay off the HUD mortgage; Debtors and Plaintiff believed that the HUD mortgage was paid off at closing by paying Wells Fargo. Second, the money at issue was not Plaintiff's money; it was money that should have been paid to HUD. Third, there is no evidence that Debtors acted with felonious intent. As such, there was no legal or factual basis for Plaintiff's civil theft claim.

⁴³ See *United Technologies Corp. v. Mazer*, 556 F.3d 1260, 1270 (11th Cir. 2009); Fla. Stat. § 812.014.

[Section 772.11\(1\)](#) provides that "[t]he defendant is entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim that was without substantial fact or legal support."⁴⁴ It is clear to this Court that Plaintiff pursued this claim up until the morning of trial "without substantial fact or legal support." Accordingly, Debtors are still entitled to their attorney's fees incurred in defending *14 against this claim even though Plaintiff ultimately abandoned the claim.⁴⁵

Accordingly, the Court finds that Debtors are entitled to their attorney's fees incurred in defending against Plaintiff's civil theft claim, and the Court will direct briefing as to the amount of attorney's fees to be awarded.

⁴⁴ Fla. Stat. § 772.11(1).

⁴⁵ See *Nodal v. Infinity Auto Ins. Co.*, 50 So.3d 721, 724 (Fla. 2d DCA 2010) (stating that if a plaintiff chooses to voluntarily dismiss their civil theft claim because there is no evidence to support the factual or legal basis for the claim, then the defendant is entitled to recover attorney's fees and costs expended in challenging the civil theft claim).

IV. Conclusion

As explained above, the Court finds that Debtors are entitled to judgment in their favor on all four of the claims in Plaintiff's complaint. Additionally, the Court finds that Defendants are entitled to their attorney's fees incurred in defending against Plaintiff's civil theft claim.

Accordingly, within 14 days after the entry of this order, Debtors are directed to file a motion for attorney's fees with respect to the civil theft claim (as to amount only, as liability has been established). Plaintiff is directed to file a response within 14 days after Debtors file their motion. After the Court determines the amount of attorney's fees to be awarded to Debtors on the civil theft claim, the Court will enter a separate judgment in this case for Debtors on all four of Plaintiff's claims.

It is so **ORDERED**.