De Fernandez v. Seaboard Marine Ltd

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA Case No. 20-cv-25176-BLOOM/Otazo-Reyes ODETTE BLANCO DE FERNANDEZ, née Blanco Rosell, Plaintiff, v. SEABOARD MARINE, LTD., Defendant. _____/

ORDER ON MOTION FOR PARTIAL RECONSIDERATION THIS CAUSE Defendant Seaboard Marine, Ltd. The Court has carefully reviewed the Motion, all opposing

and supporting materials, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is denied. I. BACKGROUND

Plaintiffs initiated this action against Defendant to recover damages under 22 U.S.C. § 6021, et seq. ECF No. [1]; see also ECF No. [45]. According to the Amended Complaint, Odette Blanco De Fernandez née Bl

corporations and assets in Cuba that were confiscated by the Cuban Government in 1960 . See ECF No. [45] ¶¶ 16-33. Ms. Fernandez, the estates of the four Blanco Rosell Siblings four Blanco Rosell Siblings

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

2 (Confiscated Property. 22 U.S.C. § 6082(a)(1)(A).

did not have an actionable ownership interest in the Confiscated Property because they acquired

their claims after March 12, 1996. See confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim see also Gonzalez v. Amazon.com, Inc., No. 19-23988-CIV, 2020 WL 2323032, at *2 (S.D. Fla. May 11, 2020), , such

omitted)).

On July 27, 2021, the Court dismissed the claims of the Inheritors and the Estates from this action. ECF No. [66] deceased Blanco Rosell Siblings died after March 12, 1996, the Inheritors could not have acquired a claim to the Confiscated Property before the statutory cutoff. Id. at 15; see also ECF No. [45] ¶¶ 17-20. With respect to the Estates, the Court found that they too did not have an actionable

ownership interest in the Confiscated Property. ECF No. [66] at 15-16. The Court rejected ll Siblings, their assets became property

Id. at 16. See Depriest v.

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

3 Greeson, 213 So. 3d 1022, 1025 (Fla. 1st DCA 2017); Sharps v. Sharps, 214 So. 2d 492, 495 (Fla. 3d DCA 1968) see also

of the testator is the event that vests the right to devises unless the testator in the will has provided

Plaintiffs now move pursuant to Federal Rule of Civil Procedure 59(e) for the Court to reconsider dismissal of the Estates only. See ECF No. [68]. Specifically, Plaintiffs maintain that Sharps nor Depriest stand for the proposition that the estates in those cases acquired Id. s simply Id.; see also Fla. Stat. § 731.201(14) s also § 732.101(2), 732.514 statutes do not provide that an heir acquires ownership of any property upon the death of the

decedent, nor could [they] be read to immediately pass owne

it is formally distributed by Id. Defendant opposes the Motion. See generally ECF No. [70]. II. LEGAL STANDARD

Burger King Corp. v. Ashland Equities, Inc. burden is upon the movant to establish the extraordinary circumstances supporting

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

4 Saint Croix Club of Naples, Inc. v. QBE Ins. Corp., No. 2:07-cv-00468-JLQ, 2009 WL 10670066, at *1 (M.D. Fla. June 15, 2009) (citing Taylor Woodrow Constr. Corp. v. Sarasota/Manatee Airport Auth., 814 F. Supp. 1072, 1073 (M.D. Fla. 1993)).

A motion for reconsideration must do two things. First, it must demonstrate some reason why the court should reconsider its prior decision. Second, it must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. Courts have distilled three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice. Cover v. Wal-Mart Stores, Inc., 148 F.R.D. 294, 295 (M.D. Fla. 1993) (citations omitted).

Because

or law of a strongly convincing nature to demonstrate to the Court the reason to reverse its prior With Disabilities v. Hood, 278 F. Supp. 2d 1337, 1339, 1340 (M.D. Fla. 2003) (citations omitted). As such, a court will not reconsider its prior ruling without a Bhogaita , No. 6:11-cv-1637-Orl-31, 2013 WL 425827, at *1 (M.D. Fla. Feb. 4, 2013) (quoting Am. Home Assurance Co. v. Glenn Estess & Assoc., 763 F.2d 1237, 1239 (11th considered and decisions rendered, the only reason which should commend reconsideration of that decision is a change in the factual or Taylor Woodrow Constr. Corp., 814 F. Supp. at 1072-73; see also Longcrier v. HL-A Co., 595 F. Supp. 2d 1218, 1247 n.2 (S.D. Ala. s obliged to rule twice on the same arguments by

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

5 PaineWebber Income Props. Three Ltd. Partnership v. Mobil Oil

Corp., 902 F. Supp. 1514, 1521 (M.D. Fla. 1995); see also Lamar Advertising of Mobile, Inc. v. City of Lakeland for rehashing arguments the Court has already rejected and should be applied with finality and

. . . to instruct the court

Hood v. Perdue 700 (11th Cir. 2008) (citation omitted).

It is improper for defendant to utilize its Motion to Reconsider as a platform for rearguing (and expounding on) an argument previously considered and rejected in the underlying Order. See Garrett v. Stanton, [No. 08-0175-WS-M, 2010 WL flawed assumption that any adverse ruling on a dispositive motion confers upon them license to move for reconsideration . . . as a matter of course, and to utilize have already been decided, to champion new arguments that could have been made - Hughes v. Stryker Sales Corp., [No. 08-0655-WS-N, 2010 WL 2608957, at *2] (S.D. Ala. June 28, 2010) (rejecting notion that motions to

Smith v. Norfolk S. Ry. Co., No. 10-0643-WS-B, 2011 WL 673944, at *2 (S.D. Ala. Feb. 17, 2011).

the Court has patently misunderstood a party, or has made a decision outside the adversarial issues Kapila v. Grant Thornton, LLP, No. 14-cv-61194, 2017 WL 3638199, at *1 (S.D. Fla. Aug. 23,

2017) (quoting Z.K. Marine Inc. v. M/V Archigetis, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)). Burger King Corp., 181 F. Supp. 2d at 1369. U Case 1:20-cv-25176-BB Document 75 Entered on FLSD Docket 10/21/2021 Page 5 of 9

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

6 Arch Specialty Ins. Co. v. BP Inv. Partners, LLC, No. 6:18- cv-1149-Orl-78DCI, 2020 WL 5534280, at

*2 (M.D. Fla. Apr. 1, 2020) (quoting Region 8 Forest Serv. Timber Purchasers Council v. Alcock, 993 F.2d 800, 806 (11th Cir. 1993)). III. DISCUSSION

In the Motion, Plaintiffs argue that the Court erred in determining that the Estates do not have an actionable ownership interest in the Confiscated Property and cannot maintain Title III action on behalf of the deceased Blanco Rosell Siblings. See generally ECF No. [68]. In its Response, Defendant argues that Plaintiffs show no basis for reconsideration, and that Plaintiffs should not be permitted to reargue the same issue already considered by the Court or assert new arguments previously available but not presented. See generally ECF No. [70].

Upon review, taken and reconsideration is not warranted under the circumstances of this case. Specifically, the Motion fails to raise any new issues or arguments that support granting the requested relief; rather, Pla Motion presents nothing See Z.K. Marine Inc. is an improper use of the motion to reconsider to ask the Court to rethink what the Court already

thought through rightly or This attempt to relitigate issues that the Court previously considered and rejected runs afoul of the well-established when there is mere disagreement with a prior order, reconsideration is a waste of Roggio v. United States, No. 11-22847- CIV, 2013 WL 11320226, at *1 (S.D. Fla. July 30, 2013) (internal citation and quotation marks omitted); see also Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc. Case 1:20-cv-25176-BB Document 75 Entered on FLSD Docket 10/21/2021 Page 6 of 9

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

7 reconsideration just reiterated [] already- . As such,

Even so, the Court does not find a basis to disturb its conclusion that the Estates do not have an actionable Title III claim. In determining whether a cause of action survives death, the contrary intent, the United States v. NEC Corp., 11 F.3d 136, 137 (11th Cir. 1993) (emphasis added) (citing James v. Home Constr. Co. of Mobile, 621 F.2d 727, 729 (5th Cir. 1980)). The congressional intent is clear that those who acquired claims to confiscated property after Mach 12, 1996 cannot assert a cause of action under Title III. See 22 U.S.C. § 6082(a)(4)(B).

In the Order, the Court explained that although the Blanco Rosell Siblings acquired their claims to the Confiscated Property before March 12, 1996, ECF No. [45] ¶¶ 17-20, of the four Blanco Rosell Siblings, their assets became property of their respective estates and no

longer belonged to them individually. ECF No. [66] at 16 (citations omitted). Yet, according to Plaintiffs, Sharps in Depriest

-Sharps [that] an estate is not a legal entity Id.; see also Fla. Stat. § 731.201(14). As

such, according to Plaintiffs, the deceased Blanco Rosell Siblings still owned their claims to the Confiscated Property, no one else acquired them, and the personal representatives are authorized to manage their claims by bringing this lawsuit on their behalf. The Court is not persuaded.

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

8 In concluding that the Estates did not have an actionable claim to the Confiscated Property, the Court relied on Depriest, 213 So. 3d at 1025-26, which was decided well after the definition of in § 731.201(14), and relied on Sharps twinkling eye analogy. In Depriest, an injured motorist brought an action against

car. Id. at 1024. Before the trial court and on appeal, the parties disputed whether the estate owned the deced Id. at 1025. While the Depriest Court ultimately agreed with the they did D Id. at 1025. The court explained as follows:

Wh his estate. Sharps v. Sharps, 214 So. 2d 492, 495 (Fla. 3d DCA 1968) (holding that an uncashed check payable to the decedent became an asset of his estate the instant he died, and his widow would have to prove that it was a gift to her individually in order to obtain the proceeds for herself). See also Mills v. Hamilton, 121 Fla. 435, 163 So. 857, 858 (1935) personal property the title thereto vests in his personal representative and during the administration the personal representative is entitled to the possession of the

Although Decedent s car was an asset of the estate, it did not belong to anyone individually. Decedent s will did not bequeath the car to anyone, and his daughter and stepson were co-equal beneficiaries under the residuary clause of the will. Therefore, neither the daughter nor the stepson had any specific right to the car, nor did either of them as individuals have a superior right against the other to prohibit use of the car. The car was an asset of the estate and subject to administration. In re Vettese s Estate, 421 So. 2d 737, 738 (Fla. 4th DCA 1982) (holding that property improperly transferred directly to decedent's daughters must be returned to the estate for proper administration under the terms of the will and governing law); see also § 731.201(14), Fla. Stat. (2013) Blechman v. Estate of Blechman, 160 So. 3d 152, 157 (Fla. 4th DCA 2015) (pass either intestate or by way of a will, then it is part of the decedent s probate resolution of claims, taxes, debts, expenses of administration, and other obligations of the estate, if any. It might have ended up being sold to pay the estate s obligations, no longer belonging to the estate or any beneficiary.

Case No. 20-cv-25176-BLOOM/Otazo-Reyes

9 Id. at 1025-26; see also Sharps lifetime, it was improper to deposit the check into the account after her husband died because

Here, under the reasoning provided in Depriest and Sharps, the Court cannot conclude that original

acquisition date. Indeed, upon the death of each of the Blanco Rosell Siblings, their

purported claims to the Confiscated Property Depriest, 213 So. 3d at 1025 (citing Sharps, 214 So. 2d at 495). And as an asset of their Estates, the claim to the Confiscated Property no longer belonged to the decedents or anyone else individually. Id. at 1025- 26. Simply put, because the four Blanco Rosell Siblings died after 1996, and their purported claims to the Confiscated Property were not part of their respective Estates before the statutory cutoff, the Estates cannot maintain a cause of action under Title III. For this reason alone, the Motion is due to be denied. IV. CONCLUSION Accordingly, it is ORDERED AND ADJUDGED that Motion, ECF No. [68], is DENIED. DONE AND ORDERED in Chambers at Miami, Florida, on October 21, 2021.

_____ BETH BLOOM UNITED STATES DISTRICT JUDGE Copies to: Counsel of Record