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### Holland v. Anthony L. Barney, Ltd., 139 Nev. Adv. Op. 49 (Nev. Ct. App.) (Nov. 22, 2023)

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*Holland v. Anthony L. Barney, Ltd.*, 139 Nev. Adv. Op. 49 (Nev. Ct. App.) (Nov. 22, 2023)<sup>1</sup>

DISTRICT COURT BARRED FROM PRESCRIBING NEW RELIEF FOR APPELLEE  
UNDER DOCTRINE OF RES JUDICATA; COURT OF APPEALS PERMITS  
EQUITABLE LIEN TO TRANSFER TO NONDEBTOR SPOUSE AS A CONDITION OF  
DIVORCE UNDER THE DOCTRINE OF COMMUNITY PROPERTY

**Summary**

Appellant Gail Holland (“Holland”), an individual, brought this action to appeal the Eighth Judicial District Court’s granting of summary judgment for constructive trust and quiet title to Respondent, Anthony L. Barney, Ltd. (“Barney, Ltd.”).<sup>2,3</sup> The asset in contention, real property located at Loma Portal Avenue (“Loma Portal”) in Northwest Las Vegas, has been litigated over the span of 15 years in both state and federal courts after Holland’s ex-husband, Gloyd Green (“Green”), embezzled money from the Howard Family Trust (“Howard Trust”) in part to buy the aforementioned property. Following a complex procedural history discussed below, the instant case asked the Court of Appeals whether the District Court erred when it made a ruling for Respondent-Creditor that contravenes preceding bankruptcy<sup>4</sup> and divorce<sup>5</sup> (family court) judgments. In a 3-0 decision authored by Judge Bulla, the Court reversed and remanded the District Court’s ruling.

**Background**

This case is characterized by Green’s embezzlement of Howard Trust funds and its beneficiaries’ attempts (from 2008-2022) to claw back the stolen money and/or gain relief as a matter of law. Formed in 1998, the Howard Trust designated Green as successor in 2005 when the remaining settlor died. As successor<sup>6</sup>, the record reflects that Green used the funds in unauthorized ways. In 2008, the trust’s beneficiaries began action in probate court to determine whether there was a breach of fiduciary duty on Green’s part.<sup>7</sup> As result of Green’s noncompliance in the proceedings, he was officially removed as successor trustee in April 2008. In 2012, the probate court enforced the trust’s forfeiture clause against Green requiring “any and all current property of the [Howard Trust] previously taken by [Green]” to be returned.<sup>8</sup>

That same year, Holland and Green purchased the Loma Portal property under the Holland-Green Family Trust (“HG Trust”), with Holland and Green as its sole beneficiaries.<sup>9</sup> In response to the probate court’s forfeiture action, the Howard Trust parties filed a civil suit in the Eighth

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<sup>1</sup> By Keegan Davis, Junior Staffer – NLJ Vol. 24.

<sup>2</sup> See *Anthony L. Barney, Ltd. v. Green*, A-21-832240-C, 2022 WL 2071957, at \*4-5 (Nev. Dist. Ct. Mar. 23, 2022).

<sup>3</sup> *Anthony L. Barney, Ltd.*, the law firm representing a prior party in interest (“Howard”), was assigned “an interest and right to recovery of the judgment” and remains of the only respondent before the Court of Appeals. See *Holland v. Anthony L. Barney, Ltd.*, 139 Nev. Adv. Op. 49, at 10 (Nev. Ct. App. Nov. 22, 2023).

<sup>4</sup> *In re Gloyd Green, Gail Holland*, 2:14 BK-15981 (Bankr. D. Nev. 2016).

<sup>5</sup> Divorce proceedings occurred sometime after Holland was discharged of Green’s bankruptcy in April 2019.

<sup>6</sup> Successor trustee – the person or institution who takes over the management of a living trust property when the original trustee has died or become incapacitated. *Successor trustee*, CORNELL LEGAL INFO. INST., [https://www.law.cornell.edu/wex/successor\\_trustee#:~:text=Successor%20Trustee%20is%20the%20person,has%20died%20or%20become%20incapacitated](https://www.law.cornell.edu/wex/successor_trustee#:~:text=Successor%20Trustee%20is%20the%20person,has%20died%20or%20become%20incapacitated) (last visited Jan. 16, 2024).

<sup>7</sup> Holland was not a party in the 2008 probate action before the Eighth Judicial District Court.

<sup>8</sup> *Holland*, 139 Nev. Adv. Op. 49, at 3.

<sup>9</sup> That is, HG Trust held the deed of sale.

Judicial District Court in August 2012 against Holland, Green, and the HG Trust for compensatory and punitive damages related to the embezzled funds. A \$1,276,854.14 judgment was rendered for the Howard Trust via oral pronouncement<sup>10</sup>, but before the order was documented the action was removed to United States Bankruptcy Court for the District of Nevada.<sup>11</sup>

The Bankruptcy proceedings were split into two parts: 1) settlement negotiations and 2) adversary proceedings. *First*, the Howard Trust parties allowed Holland and Green to purchase Loma Portal for \$340,000<sup>12</sup> in untainted funds.<sup>13</sup> In return, Holland and Green agreed to settlement terms that made Loma Portal subject to existing liens and encumbrances held exclusively by the Howard Trust (and its trustees and beneficiaries).<sup>14</sup> Put simply, Holland and Green purchased Loma Portal and kept it as community property subject to any liens by the Howard Trust. *Second*, the adversarial bankruptcy proceedings ensued. Following a three-day trial on ten counts of federal and state causes of action,<sup>15</sup> Holland was absolved of all wrongdoing; for Green, the Court found for the Howard Trust on breach of fiduciary duty, intentional misrepresentation, and fraud and rendered a judgment of \$1,570,145.36 for the trust.<sup>16</sup> The Court proffered that this judgment, in tandem with the \$340,000 bona-fide payment made for Loma Portal, should satiate the Howard Trust's losses. Further, the Court placed an equitable lien on Loma Portal for \$340,000 – the value of Green's property interest – in favor of other avenues of relief.<sup>17</sup> Notably here, with an equitable lien in place, the trust's request for constructive trust relief (on Loma Portal) was denied.<sup>18</sup>

After leaving bankruptcy in April 2019, Holland filed for divorce in the Family Division of the Eighth Judicial District Court. Her complaint alleged marital waste of community property by Green.<sup>19</sup> Green failed to participate in these proceedings enabling the Family Court to grant Holland sole ownership of Loma Portal to offset Green's arrearages. In order to effectuate and expedite this process, the Court ordered Holland to execute a quitclaim deed on Loma Portal to remove Green's residual interest. Now, Holland was the sole owner of a property subject to an equitable lien for a trust she did not embezzle from, and a debt she did not incur.

In April 2021, Barney Ltd. initiated the civil suit that gave rise to this instant action in the Eighth Judicial District Court seeking four claims of relief: (1) constructive trust, (2) quiet title,

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<sup>10</sup> Comprising \$638,427.07 in both compensatory and punitive damages.

<sup>11</sup> Holland and Green initially petitioned for Chapter 11 bankruptcy protection which was rejected by the Bankruptcy Court for being made "in bad faith." Promptly after, parties converted to Chapter 7.

<sup>12</sup> The actual amount paid by Holland and Green was \$377,553.71. *Holland*, 139 Nev. Adv. Op. 49, at 6, n. 6.

<sup>13</sup> That is, monies independent of the Howard Trust.

<sup>14</sup> *Holland*, 139 Nev. Adv. Op. 49, at 5–6.

<sup>15</sup> (1) Intentional misrepresentation, (2) Fraud, (3) Breach of fiduciary duty, (4) Conversion, (5) Constructive fraud, (6) Unjust enrichment, (7) Embezzlement, (8) Civil theft, (9) Breach of constructive trust, and (10) Unfair and deceptive trade practices. The federal basis for these claims is found under 11 U.S.C. § 523. *Id.* at 6-7.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.* See also, constructive trust is a remedial device by which the holder of legal title to the property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it. *Constructive Trust*, CLEAR COUNSEL L. GRP., <https://www.clearcounsel.com/constructive-trust/#:~:text=A%20constructive%20trust%20is%20a,Locken%2C%2098%20Nev> (last visited Jan. 16, 2024).

<sup>19</sup> Marital waste of community property occurs "when one spouse spends community assets either irresponsibly or for their sole benefit." *What is Marital Waste?*, LJ LAW (Sept. 4, 2021), <https://ljlwlv.com/what-is-marital-waste-2/>.

(3) fraudulent transfer, and (4) conversion.<sup>20</sup> In requesting summary judgment on these claims, Barney Ltd. argued that because the equitable lien was \$1,276,854.14, Green lacked the right to convey his interest in Loma Portal to Holland resulting from his divorce. Moreover, Barney Ltd. claimed that the equitable lien ran with the property and was an immutable characteristic of Loma Portal regardless of the change in property ownership. In refuting these points, Holland argued that the lien applied only to half of the property's value under the doctrine of community property; therefore, the \$340,000 settlement payment from 2019 would have appeased this. Following a hearing on the matter, the district court granted summary judgment for Barney, Ltd. on all four counts based on res judicata (from Bankruptcy proceedings) and the Court's understanding that Loma Portal should have been conveyed to the Howard Trust pursuant to the Probate Court's 2012 order. On May 2, 2022, five weeks after judgment, Barney Ltd. initiated eviction proceedings against Holland in an apparent act of dominion over Loma Portal. Following a denied motion for relief from judgment, Holland sought appellate review which was granted by the Nevada Supreme Court and delegated to the Court of Appeals. A stay remained in force until a final judgment was rendered.

## **Discussion**

### ***Standards of Review.***

#### *Summary Judgment*

A district court is empowered to grant summary judgment when “[shown] that there is no genuine dispute as to any material fact.”<sup>21</sup> Accordingly, the court's decision to overcome summary judgment is based on a showing of “specific facts demonstrating the existence of a genuine factual dispute supporting claims” by the nonmoving party.<sup>22</sup> If issues of fact linger, summary judgment *cannot* be granted. Finally, district courts are required to view evidence “in a light most favorable to the nonmoving party” for purposes of justice.<sup>23</sup>

#### *Constructive Trusts and Equitable Liens, Generally*

In general terms, the Court of Appeals affirmed that both constructive trusts and equitable liens are “proper” ways to restore stolen funds under Nevada law.<sup>24</sup> The intent for these forms of relief is to “restore property belonging to another,” further noting in Nevada “a plaintiff may have the ‘option of seeking to enforce one or the other, based upon whichever result will maximize recovery.’”<sup>25,26</sup> Therefore, Barney Ltd.'s remedy could theoretically be either if justiciable on appeal. In reviewing the record, the Court had to determine if Barney Ltd.'s remedy was previously

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<sup>20</sup> *Holland*, 139 Nev. Adv. Op. 49, at 10.

<sup>21</sup> *Id.* at 14 (citing NRCP 56(a)). *Wood v. Safeway*, 121 P.3d 1026, 1029 (Nev. 2009).

<sup>22</sup> *Id.* (Citing *Wood*, 121 P.3d at 1030-31).

<sup>23</sup> *Id.* (citing *Wood*, 121 P.3d at 1029).

<sup>24</sup> Citing *Maki v. Chong*, 75 P.3d 376, 379 (Nev. 2003) for equitable lien relief, and *Namow Corp. v. Egger*, 668 P.2d 265, 267 (Nev. 1983) for constructive trust relief.

<sup>25</sup> *Holland*, 139 Nev. Adv. Op. 49, at 15.

<sup>26</sup> *Id.* at 16 (citing 51 Am. Jur. 2d *Liens* § 30 (2023)).

prescribed by probate or bankruptcy courts. From the bankruptcy judgment, this appeal turned on the doctrine of claim preclusion, or res judicata.

***Claim Preclusion Applies to the Prior Bankruptcy Order in this Matter.***

Claim preclusion “aims to achieve a finality by preventing another lawsuit based on the same facts as in an initial suit.”<sup>27</sup> It is notable that claim preclusion’s versatility “applies equally to actions at law or...equity.”<sup>28</sup> Under the Court’s current analysis, claim preclusion applies when “(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case.”<sup>29</sup> Therefore, parties cannot relitigate the same matter if judgment was lawfully reached in pursuit of definitive justice and judicial economy.

Here, the Court used the *Five Star* analysis to determine whether the bankruptcy judgment precluded the district court from granting summary judgment for Barney Ltd. on, among other things, constructive trust of Loma Portal. In its analysis, the Court found that elements 1-2 applied to the bankruptcy court’s judgment granting Howard an equitable lien while denying it constructive trust. First, Barney Ltd. “[stepped] into the shoes of the Howard Trust and its beneficiaries,” meaning that “Barney Ltd. and the Trust [were] identical” in the eyes of privity.<sup>30</sup> Second, the bankruptcy judgment (rendered *at least* two years prior to the district court case in this action) comprised a final judgment. In reversing summary judgment on constructive trust, the Court found that the district court erred in relying on the probate judgment because it neither constituted a final judgment under *Five Star*’s second element, nor was Holland a party in that action. Under claim preclusion, the district court was unable to award a new remedy previously taken off the table by the bankruptcy court.

***The District Court Erred When it Granted Summary Judgment to Barney, Ltd. on Four Claims of Relief.***

Incorporating the standard of review discussed above, the Court reviewed the district court’s summary judgment analysis on Barney, Ltd.’s claims for constructive trust, quiet title, fraudulent transfer, and conversion.<sup>31</sup> Each is discussed in turn: for constructive trust, the Court found that the district court erred in disregarding the bankruptcy judgment, further noting that claim preclusion barred this form of relief; for quiet title, the Court determined that because this issue was not raised during the bankruptcy proceedings, it could not be introduced here<sup>32</sup>; for fraudulent transfer, akin to quiet title, the Trust (now Barney, Ltd.) is barred from raising the issue here for failure to raise it during bankruptcy; and for conversion, the Court determined was improperly plead by Barney, Ltd. because it alleged Holland had dominion over real property

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<sup>27</sup> *Id.* at 17 (citing *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 712 (Nev. 2008)).

<sup>28</sup> *Id.* (citing 50 C.J.S. *Judgments* § 926)).

<sup>29</sup> *Id.* (citing *Five Star*, 194 P.3d at 712)).

<sup>30</sup> *Id.*

<sup>31</sup> Constructive trust judgment discussed in Claim Preclusion section.

<sup>32</sup> Citing *Five Star*, 194 P.3d at 713 (“claim preclusion bars claims that were or *could have been* raised in the prior action...”) (emphasis added).

owned by the Howard Trust, instead of dominion over Barney Ltd.'s *personal* property as required under Nevada case law.<sup>33</sup>

While this all may be interpreted as a categorical victory for Holland, the Court was intrigued by Barney Ltd.'s fraudulent transfer argument, analyzing it against the Nevada Uniform Fraudulent Transfer Act. Under the act, district courts can “void the transfer and return the title to the debtor”<sup>34</sup> or alternatively “levy execution on the asset transferred or its proceeds” when a debtor wrongly moves property away from of a creditor’s reach.<sup>35</sup> Here, Barney, Ltd. argued that fraudulent transfer occurred when Green’s moved Loma Portal to Holland, a nonparty to the Trust, pursuant to Green and Holland’s divorce decree. Scrutiny then moved to the circumstances surrounding Holland’s acquisition of Loma Portal in its entirety.

***Transfer of Loma Portal During Divorce Was Not Done Fraudulently, and the District Court Further Exceeded its Jurisdiction by Invalidating Holland’s Divorce Decree.***

In evaluating the purview of Holland’s divorce, the Court reaffirmed the basic tenets Nevada family law and community property, answering Barney, Ltd.’s fraud allegation in its stead. First, judges on the Family Division of the district court (hereafter “Family court”) possess broad power to effectuate divorces under the doctrine of community property unless a compelling reason exists akin to marital waste.<sup>36</sup> For example, family courts have the power and ability to “transfer property from one spouse to another”<sup>37</sup> and retain “exclusive jurisdiction over matters affecting...divorce”<sup>38</sup> Finally, the Court recognized that Barney Ltd. cannot claim fraudulent transfer in this proceeding because neither he nor the Howard Trust were parties to Holland’s divorce. All things considered, the Court found that Holland’s divorce was completed in good faith and in accordance with Nevada law. No fraud was determined.

The Court closed this discussion by noting that by granting summary judgment for Barney, Ltd., the district court incorrectly exercised jurisdiction over the family court and Holland’s divorce decree. To the extent the district court changed the terms of Holland’s divorce, including the conveyance of Loma Portal, this was in error.

***The District Court Erred When It Failed to Enforce Equitable Lien from Bankruptcy Judgment***

Upon review of the litigation below, the Court was convinced that Holland was aware of the equitable lien on Loma Portal and therefore remains subject to it. Citing persuasive case law, the Court contended that Holland remains subject to the lien because of her (1) acquisition of the property under a community waste divorce and (2) involvement in the bankruptcy proceedings, including being a named party for some time.<sup>39</sup> Therefore, the lien remains enforceable.

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<sup>33</sup> Citing *Edwards v. Emperor’s Garden Rest.*, 130 P.3d 1280, 1287 (Nev. 2006) (stating that “conversion is a district act of dominion wrongfully exerted over *personal* property.”).

<sup>34</sup> *Holland*, 139 Nev. Adv. Op. 49, at 22 (citing NRS 112.210(1)(a) and *Tahican, LLC. v. Eighth Jud. Dist. Ct.*, 523 P.3d 550, 554 (Nev. 2023)).

<sup>35</sup> *Id.* (citing NRS 112.210(2)).

<sup>36</sup> *Id.* (citing *Kogod v. Cioffi-Kogod*, 439 P.3d 397, 406 (Nev. 2019)).

<sup>37</sup> *Id.* (citing *Lofgren v. Lofgren*, 926 P.2d 296, 297 (Nev. 1996)).

<sup>38</sup> *Id.* (citing *Landreth v. Malik*, 251 P.3d 163, 169 (Nev. 2011)).

<sup>39</sup> Citing *Bank of India v. Weg & Myers, P.C.*, 691 N.Y.S.2d 439, 445 (N.Y. App. Div. 1999).

### ***Questions of Fact Remain Regarding the Equitable Lien's Current Value.***

The Court found, and parties at oral argument conceded, that too many questions of fact remain to justify the district court's granting of summary judgment. First, ambiguities in the record show Holland and Barney, Ltd.'s disagreement over the lien's initial amount. In order to reconcile this, the Court ruled that the only known fact, the purchase price of Loma Portal for \$340,000, should stand as the valuation of the lien when first effectuated. Second, as to the total balance of the lien, the Court remanded the matter to make a "determination of first instance" as to how much of the bankruptcy settlement was applied to the lien.<sup>40</sup> Finally, the Court remands instructions to determine the value of Loma Portal for the purpose of the lien. Under community property, a valuation on Loma Portal will be halved as only Green's interest in the property is subject to the equitable lien.

### **Conclusion**

Barney, Ltd. is entitled to the equitable lien previously put into place by the bankruptcy court. While this right remains absolute, Barney, Ltd.'s pursuit to collection is inconvenienced by claim preclusion, for swifter remedies, and community property as to the valuation of the lien on one-half of Loma Portal.

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<sup>40</sup> *Holland*, 139 Nev. Adv. Op. 49, at 27.