

IN THE CIRCUIT COURT OF THE 19th  
JUDICIAL CIRCUIT IN AND FOR  
SAINT LUCIE COUNTY, FLORIDA

CASE NO.: 2019-CA-002023

ISABEL GIMENEZ ACOSTA,  
a foreign individual,

Plaintiff/Counter-Defendant,  
v.

LOBIZONA, LLC, a Delaware limited  
liability company,

Defendant/Counter-Plaintiff.

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**CORRECTED<sup>1</sup> AMENDED ORDER GRANTING DEFENDANT'S MOTION FOR FINAL  
SUMMARY JUDGMENT AND RELEASE OF LIS PENDENS**

**THIS CAUSE** came before the Court on October 21, 2022 Lobizona's Motion for Summary Judgment filed on August 19, 2022. The Court having reviewed the court file, including the pleadings and filings, the present motion, the Plaintiff's Response to Motion For Summary Judgment ("Opposition"), and the record evidence, having considered the arguments of counsel and relevant laws, and being otherwise fully advised on the premises, it is **ORDERED AND ADJUDGED**, as follows:

**INTRODUCTION**

Horacio Contreras, decedent ("Mr. Contreras" or "Plaintiff"), was a businessman and an Argentinean citizen, and the owner of Defendant Lobizona, LLC ("Lobizona" or "Defendant"), a Delaware entity. Lobizona purchased certain townhouses and a clubhouse in Port Saint Lucie for

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<sup>1</sup> On September 8, 2023, the Court amended its November 1, 2022 summary judgment order to add the required finality language. While doing so, the Court inadvertently mistated the hearing date, which should have been October 21, 2022, instead of October 21, 2023. This order corrects that mistake.

approximately \$2.4 million on November 10, 2011 (the “Property”). Upon Mr. Contreras’s death in 2018, Plaintiff, Isabel Gimenez Acosta (“Acosta”), who was his romantic partner for many years, alleged in her Second Amended Complaint, dated October 21, 2020 (the “Complaint”) that she had loaned Mr. Contreras the funds to purchase the Property. Specifically, Ms. Acosta states that she withdrew the funds from her safe deposit box in Argentina and “*provided*” the funds to Mr. Contreras. The Second Amended Complaint consists of two counts seeking a vendor’s lien and an equitable lien against the Property, and claims that the funds Ms. Acosta allegedly loaned to Mr. Contreras were transferred to the United States and used to purchase the Property. Among other exhibits to the Opposition, Ms. Acosta produced an unsecured promissory note (the “Note”), Defendant’s tax return filings, and the deposition transcript of Jacqueline Rodriguez, Lobizona’s former tax CPA (“Ms. Rodriguez”), to support her claim.

Defendant alleges that Ms. Acosta has provided *zero* evidence that the funds allegedly loaned pursuant to the Note were transferred to Mr. Contreras, to Lobizona, or to the United States, or used in any way to purchase the Property. Instead, Defendant states that the record shows, through deposition transcripts, affidavit of corporate representative for Lobizona and Mr. Contreras’ bank records, that Mr. Contreras used his own funds to purchase the Property, funds which were in his account many months prior to the alleged loan. In addition, Defendant<sup>2</sup> alleges that the Note is an unsecured note, does not mention any property interest or mortgage, is not in default and it does not come due until 2026. Defendant further asserts that during Ms. Acosta’s deposition, she denied her own allegations in the Complaint about any misrepresentations or fraud by Mr. Contreras, thus negating her claims for equitable relief.

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<sup>2</sup> For purposes of this hearing on Defendant’s Motion for Summary Judgment, Defendant does not dispute the validity of the Note.

## **LEGAL STANDARD FOR SUMMARY JUDGMENT**

The summary judgment standard provided for under Florida Rule of Civil Procedure 1.510(c) is to be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *See* Amendment to Fla. R. Civ. Pro. 1.510(c). Consequently, a summary judgment shall be granted when the record shows that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp.*, 477 U.S. at 323-25.

If the nonmoving party fails to make “a sufficient showing on an *essential element* of the case with respect to which she has the burden of proof,” the moving party is entitled to summary judgment. *Celotex Corp.* 477 U.S. at 323. Likewise, “[a] mere ‘scintilla’ of evidence supporting the [nonmoving] party’s position will not suffice; there must be enough of a showing that the jury could reasonably find for that party.” *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990) (citing *Anderson*, 477 U.S. 242).

## **FINDINGS**

**THE COURT FINDS** that Defendant is entitled to summary judgment on all counts against Plaintiff. First, Plaintiff has not offered a single piece of evidence, *not even a scintilla of evidence*, that would indicate the tracing of the alleged \$2.4 million from Argentina to the U.S. bank account used to purchase the Property, or even any evidence that places the funds in the hands of Mr. Contreras. If the Plaintiff had made a legal money wire or a bank transfer of \$2.4 million to the Defendant, *there would certainly be records of such transfer* and none has been provided by the Plaintiff. Quite simply, there is absolutely *no evidence- not a single*

*receipt, of a wire or bank transfer* made from the Plaintiff in Argentina to the Defendant in the United States.

The evidence relied on by the Plaintiff, primarily the deposition transcript of Lobizona's former CPA, Ms. Rodriguez, was insufficient, as she did not know where the cash was from, and only assumed it was Plaintiff's by association, but did not have a single document that sustained that the purported loan in Defendant's tax returns had originated from Plaintiff's funds. In fact, the tax returns relied on by Plaintiff to substantiate her case, do not state where the money came from or what the source of the funds were, they simply indicate a loan purportedly existed. Thus, there is no reasonable basis or adequate substantiation for Plaintiff's claims that she gave \$2.4 million to the Defendant at any moment, in any way. Instead, the evidence in the record indicates that Defendant's bank records show, *clearly and unequivocally*, that the funds from his account were used to purchase the Property, funds that had been in Mr. Contreras's account months before Ms. Acosta supposedly gave him the loan. This evidence is unrefuted by the record. Additionally, the Court finds Plaintiff's testimony in her depositions about how she kept her funds in Argentina and how she sent them to the United States to be conflicting. Given that the record evidence does not show that Plaintiff gave any funds to the Defendant that can be traced to the purchase of the Property, Plaintiff cannot be entitled to the claims asserted in her Complaint, seeking equitable relief against the Property. Therefore, Defendant is entitled to summary judgment on all counts.

Accordingly, it is hereby **ORDERED AND ADJUGED** that:

1. Lobizona's Motion for Summary Judgment filed on August 16, 2022, is **GRANTED**.

2. The Bond required by the Court, pursuant to Florida Statute § 48.23, Fla. Stat. Ann., after an evidentiary hearing held on June 11, 2021, and Order of the Court dated June 15, 2021, is discharged and the Clerk of Court is hereby directed to disburse the funds held in the Registry of the Court, in the amount of \$46,467.82, to the Defendant.

3. The Notice of Lis Pendens filed on June 12, 2020, and any and all extensions granted by the Court, shall be immediately dissolved, and released as to the properties that are the subject matter of this action, located in St. Lucie County, Florida, as further described in the attached **Schedule A**.

4. The Court retains jurisdiction for a determination of attorney fees and costs in excess of the bond amount, pursuant to § 48.23, Fla. Stat. Ann.

**5. The Plaintiffs shall take nothing by this action, and that Defendant, shall go hence without day.**

DONE AND ORDERED in Chambers at Saint Lucie County, Florida, this 29th day of September 2023, *nunc pro tunc* November 1, 2022.



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ROBERT E. BELANGER  
CIRCUIT JUDGE

Copies furnished to:

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