

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

2-BAL BAY PROPERTIES, LLC;)
JOHN OLSEN, an individual;)
DANIEL COOSEMANS, an individual;)
and TAMIWEST, LLC, a Florida)
limited liability company,)
)
Appellants/Cross Appellees,)
)
v.)
)
ASSET MANAGEMENT HOLDINGS,)
LLC, a/k/a AMH USA, LLC,)
)
Appellee/Cross Appellant.)
_____)

Case No. 2D18-2873

Opinion filed February 7, 2020.

Appeal from the Circuit Court for Sarasota
County; Frederick P. Mercurio, Judge.

Mark A. Levy and Benjamin Sunshine of
Brinkley Morgan, Ft. Lauderdale, for
Appellants/Cross Appellees.

Erik Johanson and David S. Jennis of
Jennis Law Firm, Tampa, for Appellee/
Cross Appellant.

BADALAMENTI, Judge.

2-Bal Bay Properties, LLC, John Olsen, Daniel Coosemans, and
Tamiwest, LLC (collectively, "2-Bal Bay") appeal and Asset Management Holdings, LLC

(AMH) cross-appeals from a final judgment finding in favor of AMH on 2-Bal Bay's complaint for eviction and awarding damages to AMH on AMH's counterclaim. We agree with 2-Bal Bay that the trial court erred, in part, by awarding \$200,548.17 in damages to AMH on its claim of unjust enrichment and in finding in favor of AMH on AMH's claim of fraudulent transfer. Accordingly, we reverse those portions of the final judgment. We affirm the final judgment in all other respects, and we further affirm AMH's cross-appeal without comment.

AMH is a Florida limited liability company engaged in the business of purchasing and servicing residential debt. It is managed and owned by Thierry Cassagnol. In the early 2000s, Olsen and Coosemans entered into a business relationship with AMH whereby Olsen and Coosemans provided the funding to acquire pools of mortgages, and AMH, in turn, serviced those mortgages. When AMH needed a new location to operate its business, AMH approached Olsen and Coosemans with the idea of purchasing a piece of commercial real estate together. Because Olsen and Coosemans were more experienced in handling real estate transactions than Cassagnol, Olsen and Coosemans agreed to assist AMH in structuring a transaction to purchase a building located on Tamiami Trail in Nokomis, Sarasota County. Olsen and Coosemans took out a loan from BankUnited and subsequently purchased the property under the name of 2-Bal Bay Properties, LLC.¹ This appeal stems from a dispute surrounding this property. In all events, the plan was for AMH to own one-half of the property, but AMH was never transferred an interest in the property despite paying one-

¹In exchange, Olsen and Coosemans executed a promissory note in favor of the bank that was secured by the property.

half of the down payment. Nevertheless, AMH moved into the second floor of the property and began paying rent to 2-Bal Bay. AMH also performed several renovations to the property, totaling \$200,548.17.

Due to AMH's financial difficulties, the business relationship between AMH and Coosemans and Olsen deteriorated, necessitating the separation of the parties' business relationship. When the parties were unable to amicably resolve their differences, 2-Bal Bay served AMH with a three-day notice to pay rent or deliver possession of the premises and then filed a complaint against AMH for eviction and unpaid rent. AMH answered the complaint, raising several affirmative defenses and asserting a counterclaim for, among other things, unjust enrichment and fraudulent transfer against 2-Bal Bay, Olsen, and Coosemans. While the litigation was ongoing, Olsen and Coosemans, as agents for 2-Bal Bay Properties, LLC, quitclaimed the property to another entity owned and managed by the two of them, Tamiwest, LLC.

In its claim for unjust enrichment, AMH asserted that it was its understanding that it was going to own one-half interest in the property with 2-Bal Bay. With this understanding in mind, it contributed funds toward the property's purchase price, closing costs, and capital improvements. Because AMH was never given an ownership interest in the property by Olsen and Coosemans, AMH alleged that 2-Bal Bay was unjustly enriched by these financial contributions toward the property.

After a bench trial, the trial court entered a final judgment finding in favor of AMH on 2-Bal Bay's complaint and awarding damages to AMH on AMH's counterclaim. The trial court found that AMH paid \$219,500.00 toward the acquisition of the property and \$200,548.17 toward improvements to the property, totaling

\$420,048.17. It also found that Olsen and Coosemans improperly refused to provide AMH with an ownership interest in the property. Reasoning that it would be inequitable for Olsen and Coosemans to retain the value of AMH's contributions to the property, the trial court entered judgment against 2-Bal Bay, Olsen, and Coosemans, jointly and severally, in the amount of \$420,048.17.

On appeal, 2-Bal Bay argues that the trial court erred in awarding AMH damages equal to the money it spent to improve the building. It contends that AMH should only be compensated for the amount that the improvements enhanced the value of the property. See 14th & Heinberg, LLC v. Terhaar & Cronley Gen. Contractors, Inc., 43 So. 3d 877, 880 (Fla. 1st DCA 2010) ("[W]hen improvements have been made to real property, the measure of damages in an unjust enrichment case is the enhanced value of the property from the perspective of the owner, and not the cost of the improvements."). 2-Bal Bay is correct. See Arey v. Williams, 81 So. 2d 525, 525-26 (Fla. 1955). Because competent, substantial evidence establishes that the improvements to the property enhanced the value of the property by \$65,000 from its original purchase price, we reverse the portion of the final judgment that awarded AMH damages in the amount of \$200,548.17 and remand for a reduction of the award to \$65,000.00. This will reduce the overall damages awarded to AMH for this count to \$284,000.00.

Next, 2-Bal Bay argues that competent, substantial evidence does not support the trial court's finding that it fraudulently transferred the property to Tamiwest because the property was fully encumbered by BankUnited's valid lien at the time of the transfer, and thus does not qualify as an asset under Florida's Uniform Fraudulent

Transfer Act (UFTA). See Chapter 726, Fla. Stat. (2015). Under the UFTA, "any transfer made with 'actual intent to hinder, delay or defraud' any present or future creditor is a fraudulent transfer." Lab. Corp. of Am. v. Prof'l Recovery Network, 813 So. 2d 266, 270 (Fla. 5th DCA 2002) (quoting § 726.105(1)(a), Fla. Stat. (1998)).

" 'Transfer' means every mode . . . of disposing or parting with an asset or an interest in an asset" § 726.102(14), Fla. Stat. (2015). And "asset" is defined as "property of a debtor, but the term does not include . . . [p]roperty to the extent it is encumbered by a valid lien." § 726.102(2)(a); see Cafaro v. Zois, 693 Fed. Appx. 810, 817 (11th Cir. 2017) (holding that property encumbered by a valid IRS tax lien was not an "asset" under § 725.102(2)(a)). In other words, for a transaction to be considered a fraudulent transfer under the UFTA, the property being transferred must qualify as an asset. The evidence at trial, however, revealed that when 2-Bal Bay transferred the property to Tamiwest, BankUnited had a valid lien encumbering the property in excess of \$2,000,000.00, and the property was worth no more than \$1,700,000.00. Accordingly, AMH failed to prove by competent, substantial evidence that the property qualified as 2-Bal Bay's "asset" because the property was "encumbered by a valid lien" at the time of the transfer, and thus does not meet the definition of an "asset" set forth by the plain and unambiguous language of section 726.102(2). We thus reverse the trial court's finding that 2-Bal Bay committed a fraudulent transfer.

In conclusion, we reverse the portion of the final judgment awarding AMH damages in the amount of \$420,048.17 for its claim for unjust enrichment and remand for a reduction of that amount to \$284,000.00. We also reverse the trial court's finding

that 2-Bal Bay fraudulently transferred the property to Tamiwest. We affirm the final judgment in all other respects.

Affirmed in part, reversed in part, remanded.

SILBERMAN and SMITH, JJ., Concur.