

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:18-bk-01936-FMD
Chapter 7

LTG, LLC,

Debtor.

Robert E. Tardif, Jr., as Chapter 7 Trustee
of the bankruptcy estate of LTG, LLC,

Plaintiff,

v. Adv. Pro. No. 9:18-ap-195-FMD

Nunez Litigation Assistance Corp.,
a Florida corporation,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

THIS PROCEEDING came before the Court to consider *Plaintiff's Motion for Partial Summary Judgment on Counts I (Declaratory Judgment), II (Turnover of Property of the Estate), and III (Avoidance and Recovery of Post-Petition Transfers) of Supplemental Amended Complaint against Defendant, Nunez Litigation Assistance Corp.* (the "Summary Judgment Motion"),¹ Plaintiff's affidavit filed in support of the Summary Judgment Motion,² Defendant's Memorandum of Law in Opposition to the Summary Judgment Motion,³ the Affidavit of Rafael Nunez,⁴ the testimony of Rafael Nunez and Jay Bisson offered on Defendant's behalf at the December 4, 2018

hearing on Plaintiff's motion for temporary injunction,⁵ and Plaintiff's Reply to Defendant's Opposition.⁶

A. The Facts

Debtor is a Florida limited liability company headquartered in Fort Myers, Florida, doing business as Ace Rent A Car. Debtor operated short-term car rental businesses in three locations: the Orlando International Airport, the Southwest Florida International Airport in Fort Myers, and the Denver International Airport. Patrick Lewis ("Mr. Lewis") was Debtor's manager, president, and chief operating officer.⁷

The Acquisition of the Vessel

In April, May, and June 2017, Debtor made a series of six payments totaling \$455,381.75 to MarineMax East, Inc. ("MarineMax") in connection with the purchase of a 35-foot Boston Whaler (the "Vessel").⁸ On June 9, 2017 (the "Closing Date"), Debtor made the final payment, and Mr. Lewis signed a "Purchase and Sale Agreement"⁹ and an "Acceptance of Vessel."¹⁰ Both documents named Mr. Lewis as the buyer of the Vessel.

In addition, Mr. Lewis signed, on his own behalf and on behalf of Debtor, a document titled "MarineMax, Inc. Assignment" (the "Assignment"). The Assignment states as follows:

The undersigned hereby assigns to PATRICK ALLEN LEWIS all it [sic] rights, title and interest in and to that certain assigned Purchase agreement dated June 9, 2017 between PATRICK ALLEN LEWIS and MarineMax, Inc. for the purchase of the boat mentioned below.

¹ Doc. No. 109.

² Trustee's Affidavit, Ex. 1 to Doc. No. 109.

³ Doc. No. 115.

⁴ Doc. No. 116.

⁵ Transcript, Doc. No. 83.

⁶ Doc. No. 118.

⁷ Main Case, Doc. No. 8.

⁸ Trustee's Affidavit, Ex. 1 to Doc. No. 109, ¶¶ 15, 16, and Exhibits B and C to the Affidavit.

⁹ Trustee's Affidavit, Ex. 1 Doc. No. 109, Ex. B, pp. 32-34.

¹⁰ Trustee's Affidavit, Ex. 1 to Doc. No. 109, Ex. B, p. 48.

I LTG LLC, give my permission for the funds paid by WIRES in the amount of 455,381.75 that shows LTG LLC as the remitter to be used as Purchase for a 2017 Boston Whaler Inc 350OR. I also give my permission for the above mentioned boat, to be in the name of PATRICK ALLEN LEWIS and LTG LLC will hold no claim or interest.¹¹

Additional documents were prepared on or around the Closing Date: a “Product Registration” form showing Mr. Lewis as the owner of the Vessel;¹² an “Engine Service Log Entry” showing Mr. Lewis as the customer,¹³ a “Boat Registration” that appears to have been issued by Brunswick Boat Group showing Mr. Lewis as the customer;¹⁴ and a “Notice of Pending Documentation” and “Request for Coast Guard Documentation from Newcoast Financial Services” identifying Mr. Lewis as the buyer.¹⁵

After its purchase, the Vessel was docked at 6120 Tarpon Estates Boulevard, Cape Coral, Florida (the “Residence”).¹⁶ Mr. Lewis lived in the Residence, but the Residence was owned by Debtor.¹⁷

Debtor’s Loan Transaction with Defendant

Rafael Nunez (“Mr. Nunez”) is an attorney admitted to practice law in the State of Florida. He owns and operates Defendant Nunez Litigation Assistance Corp (“Defendant”), a Florida corporation.¹⁸ Mr. Nunez resides in the Orlando area.

On November 24, 2017, approximately six months after the Vessel was purchased, Debtor entered into a Revenue Purchase Agreement with Defendant (the “Revenue Agreement”).¹⁹ Under

the Revenue Agreement, Debtor agreed to “sell” its accounts receivable to Defendant for \$270,000.00; Defendant agreed to provide a “capital investment” of \$200,000.00; and, Debtor agreed to make daily payments of \$1,088.70 to Defendant until the \$270,000.00 was paid in full.²⁰

To secure Debtor’s obligations under the Revenue Agreement, Mr. Lewis, on Debtor’s behalf, signed an “Additional Collateral Security Agreement” (the “Security Agreement”). In the Security Agreement, Debtor granted Defendant a security interest in the Vessel and warranted that Debtor was the owner of the Vessel free from any adverse liens or encumbrances.²¹

Mr. Nunez testified in court at a December 4, 2018 preliminary injunction hearing that he examined the title to the Vessel prior to entering into the agreement with Debtor and confirmed that Mr. Lewis was the owner of the Vessel.²² However, there is no certificate of title in evidence before the Court.

Debtor’s Bankruptcy Filing and the Sale of the Vessel to Defendant

On March 14, 2018 (the “Petition Date”), Debtor filed a Chapter 11 case. According to Debtor’s Case Management Summary, Debtor’s financial problems were the result of its expansion to the Denver, Colorado, airport location, and the interruption to Florida’s travel and tourist industry caused by Hurricane Irma and the resulting impact on the income generated at Debtor’s Fort Myers, Florida location.²³

On March 20, 2018, less than a week after the Petition Date—and almost four months after Defendant entered into the Revenue Agreement and obtained the Security Agreement signed by Mr.

¹¹ Trustee’s Affidavit, Ex. 1 to Doc. No. 109, Ex. B, p. 49.

¹² Trustee’s Affidavit, Ex. 1 to Doc. No. 109, Ex. B, p. 52.

¹³ Trustee’s Affidavit, Ex. 1 to Doc. No. 109, Ex. B, p. 53.

¹⁴ Trustee’s Affidavit, Ex. 1 to Doc. No. 109, Ex. B., p. 54.

¹⁵ Trustee’s Affidavit, Ex. 1 to Doc. No. 109, Ex. B, pp. 55-56.

¹⁶ Transcript, Doc. No. 83, p. 56, ll. 9-20.

¹⁷ Main Case, Doc. No. 121, p. 5.

¹⁸ Transcript, Doc. No. 83, p. 60, ll. 18-22.

¹⁹ Exhibit 3 to Doc. No. 61.

²⁰ Exhibit 3 to Doc. No. 61, p. 4.

²¹ Exhibit 3 to Doc. No. 61, pp. 18-20.

²² Transcript, Doc. No. 83, p. 63, ll. 1-10.

²³ Main Case, Doc. No. 8.

Lewis on Debtor's behalf—Defendant filed a UCC-1 Financing Statement in the Florida Secured Transaction Registry.²⁴ The UCC-1 identified Mr. Lewis as the debtor, Defendant as the secured party, and the Vessel as the collateral.

On April 6, 2018, Debtor filed a motion to convert its Chapter 11 case to a Chapter 7 case. The motion was granted the same day.²⁵ Plaintiff Robert Tardif was appointed as the Chapter 7 trustee (the "Trustee").²⁶

Within days of the conversion of Debtor's bankruptcy case to a Chapter 7 case, Mr. Lewis agreed to sell the Vessel to Defendant in exchange for a cash payment of \$130,000.00 and the satisfaction of Debtor's unpaid balance on the Revenue Agreement of approximately \$170,000.00.²⁷ On April 16, 2018, Mr. Nunez withdrew \$30,000.00 in cash from his account at Chase Bank in Orlando. He also wired \$60,000.00 from the same Chase account to his friend Jay Bisson. Jay Bisson had a social and business relationship with Mr. Lewis and, apparently, with Mr. Nunez.

Mr. Nunez then travelled to Fort Myers where, on the morning of April 17, 2018, Jay Bisson and another friend, Matt Wykes, picked up him up. The three men drove to Sanibel Captiva Community Bank, where Jay Bisson withdrew—in cash—the \$60,000.00 that Mr. Nunez had wired to him the day before. The three men then travelled to another branch of Sanibel Captiva Community Bank where Mr. Nunez withdrew an additional \$40,000.00 from his own account (apparently the first bank branch did not have sufficient funds on hand). While he was there, Mr. Nunez withdrew the balance in his Sanibel Captiva bank account, with the bank issuing him a cashier's check for approximately \$3,200.00.²⁸

Mr. Nunez placed the \$130,000.00 in cash—and the \$3,200.00 cashier's check—in a backpack and the three men drove to MarineMax, where they met Mr. Lewis. After Mr. Lewis confirmed that the backpack contained the \$130,000.00,²⁹ he signed a "Department of Homeland Security U.S. Coast Guard Bill of Sale" transferring the Vessel to Defendant.³⁰

Mr. Nunez testified that he reviewed the title to the Vessel and confirmed that Mr. Lewis was its owner.³¹ He then signed, on Defendant's behalf, a "Satisfaction or Release of Mortgage, Claim of Lien or Preferred Mortgage" that listed Mr. Lewis as the mortgagor³² and a State of Florida Department of Highway Safety and Motor Vehicles Division of Motorist Services "Lien Satisfaction" that listed Mr. Lewis as the registered owner.³³ The Lien Satisfaction form has a space for "title number." This space was left blank.

The four men then went their separate ways, with Matt Wykes piloting the Vessel to another location. Mr. Lewis left in his own car; he removed the \$130,000.00 from the backpack and tossed the backpack out the window of his car.³⁴ Unfortunately, Mr. Nunez had forgotten that he had left his \$3,200.00 cashier's check in the backpack and he was compelled to have the bank reissue the check.³⁵

On May 18, 2018—a month after Mr. Lewis sold the Vessel to Defendant—Debtor filed its bankruptcy schedules. The schedules, which Mr. Lewis signed under penalty of perjury, listed Debtor's ownership of "Two Boston Whalers (book value of \$786,621.48 as of 12/31/17)" and the value of Debtor's interest as "unknown."³⁶

B. Procedural History

On April 25, 2018, the Trustee filed his initial complaint against Defendant, Mr. Lewis, and Mr.

²⁴ Exhibit 4 to Doc. No. 61.

²⁵ Main Case, Doc. Nos. 75 and 77.

²⁶ Main Case, Doc. No. 78.

²⁷ Transcript, Doc. No. 83, pp. 68-70.

²⁸ Transcript, Doc. No. 83, pp. 63-66.

²⁹ Transcript, Doc. No. 83, p. 53.

³⁰ Doc. No. 61, Ex. 5, p. 2.

³¹ Transcript, Doc. No. 83, p.63.

³² Doc. No. 61, Ex. 5, p. 3.

³³ Doc. No. 61, Ex. 5, p. 4.

³⁴ Transcript, Doc. No. 83, pp. 53- 54.

³⁵ Transcript, Doc. No. 83, pp. 66-67.

³⁶ Main Case, Doc. No. 121, p. 5.

Lewis's father, for turnover of the Vessel and a second Boston Whaler, for an accounting, and for a preliminary and permanent injunction.³⁷ The Trustee also filed a motion for temporary restraining order and preliminary injunction.³⁸ On April 26, 2018, the Court entered a temporary restraining order (the "TRO"), directing *inter alia*, the Defendants to preserve the Vessels and any proceeds thereof until a hearing on the Trustee's motion for preliminary injunction.³⁹

On August 14, 2018, the Court entered an order modifying the TRO to permit Defendant to sell the Vessel, with the proceeds of the sale to be held by Defendant's attorney until agreement with the Trustee or further order of the Court.⁴⁰ The Vessel was later sold for \$350,000.00; the proceeds are currently held in Defendant's attorney's trust account.⁴¹

On October 22, 2018, the Trustee filed his Supplemental Amended Complaint (the "Complaint") against Defendant.⁴² The Trustee seeks a declaratory judgment to establish that the sale proceeds of the Vessel constitute property of Debtor's estate; the turnover of the sale proceeds and a demand for an accounting; to avoid and recover the postpetition transfer of the Vessel to Defendant; and a judicial determination that the Revenue Agreement is unenforceable as being usurious.

By agreement of the parties, the modified TRO remained in effect and the preliminary injunction hearing was continued from time to time. On December 4, 2018, the Court conducted an evidentiary hearing on the Trustee's request for a preliminary injunction. Mr. Nunez and Jay Bisson testified on Defendant's behalf. At the conclusion of the hearing, the Court granted the Trustee's motion and entered a preliminary injunction enjoining Defendant from disbursing the proceeds of the Vessel.⁴³

C. The Summary Judgment Motion

The Trustee moved for partial summary judgment on its claims in Counts I, II, and III of the Complaint, seeking a determination that the Vessel was property of Debtor's bankruptcy estate on the Petition Date under § 541 of the Bankruptcy Code⁴⁴ and thus subject turnover to the Trustee under § 542; that the transfer of the Vessel to Defendant is void as a postpetition transfer under § 549⁴⁵ and subject to recovery by the Trustee under § 550; and that the sales proceeds of the Vessel are property of Debtor's estate and subject to turnover under § 542.⁴⁶

The Trustee's claims under §§ 542, 549, and 550 each require the Trustee to establish that the Vessel was, as of the Petition Date, property of Debtor's bankruptcy estate under § 541. The Trustee contends he has met his burden of proof on this element because Debtor's ownership of the

³⁷ Doc. No. 1. The Trustee's initial complaint addressed a second Boston Whaler that the Trustee alleged had been titled in the name of Gary Lewis, Mr. Lewis' father and Debtor's chief executive officer. On April 23, 2018, Gary Lewis sold the second boat to East Coast Marine, LLC, and received net sale proceeds of \$200,000.00. After the Trustee filed this adversary proceeding, Gary Lewis turned over \$192,000.00 of the sale proceeds to the Trustee. (Doc. No. 61, n. 4.) The initial complaint also stated claims against Mr. Lewis and Gary Lewis for breach of fiduciary duty. The claims against Mr. Lewis and Gary Lewis were severed and re-filed as a separate adversary proceeding, Adv. Pro. No. 9:18-ap-535-FMD. Ultimately, the Trustee settled his claims against Mr. Lewis and Gary Lewis, with the Court approving the compromise of the Trustee's claims against them in exchange for the payment of \$800,000.00. (Main Case, Doc. Nos. 207 and 209.)

³⁸ Doc. No. 2.

³⁹ Doc. No. 6.

⁴⁰ Doc. No. 41.

⁴¹ Doc. No. 61, ¶ 29; Doc. No. 64, ¶ 29.

⁴² Doc. No. 61.

⁴³ Doc. No. 72.

⁴⁴ Unless otherwise stated, citations to statutes are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

⁴⁵ Under § 549(a), the Trustee may avoid a transfer of property of the estate that that occurs after the commencement of the case and that was not authorized under title 11 or by the court.

⁴⁶ Under § 542, the Trustee may compel turnover of property of the estate.

Vessel on the Petition Date is demonstrated by the undisputed facts that Debtor paid the purchase price of the Vessel, Debtor listed the Vessel as its property on its bankruptcy schedules, and the Revenue Agreement and Security Agreement provided to Defendant reflected Debtor's ownership of the Vessel on November 20, 2017.⁴⁷

Defendant contends that all of the documents evidencing the purchase of the Vessel from MarineMax demonstrate that Mr. Lewis owned the Vessel and the Trustee has not presented any evidence to demonstrate that the Vessel was ever in Debtor's possession or control.⁴⁸ Defendant also contends that *if* a transfer of the Vessel took place, it occurred when Mr. Lewis, on Debtor's behalf, executed the Assignment giving MarineMax permission for the Vessel to be in his name, rather than Debtor's name, and disclaiming Debtor's interest in the Vessel.

D. Analysis

Summary Judgment Standard

Under Fed. R. Civ. P. 56(a), the Court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."⁴⁹ A dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.⁵⁰ In considering a motion for summary judgment, "courts must review the record and draw all reasonable inferences in the light most favorable to the non-moving party."⁵¹

⁴⁷ Doc. No. 109, p. 12.

⁴⁸ Doc. No. 115, p. 5.

⁴⁹ Fed. R. Civ. P. 56(a), applicable to this proceeding under Fed. R. Bankr. P. 7056.

⁵⁰ *In re SMF Energy Corporation*, 2017 WL 7788467, at *1 (Bankr. S.D. Fla. August 14, 2017)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

⁵¹ *In re Narcisi*, 539 B.R. 385, 391 (Bankr. M.D. Fla. 2015)(citing *Bedoya v. Travelers Property Cas. Co. of America*, 773 F. Supp. 2d 1326, 1328 (M.D. Fla. 2011)).

⁵² *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115-1116 (11th Cir. 1993)(cited in *In re Mongelluzzi*, 591 B.R. 480, 489-990 (Bankr. M.D. Fla. 2018)).

For issues on which the party moving for summary judgment bears the burden of proof, the moving party must come forward with credible evidence that would entitle the movant to a directed verdict, if not controverted at trial.⁵² In an action for turnover of property of the bankruptcy estate, the trustee bears the ultimate burden of proving that the property at issue belongs to the bankruptcy estate.⁵³

Property of the Estate

Property of the estate is broadly defined in § 541(a) as including "all legal or equitable interests of the debtor in property as of the commencement of the case."⁵⁴ Although federal law determines whether an interest is property of a bankruptcy estate, "[p]roperty interests are created and defined by state law."⁵⁵

Bankruptcy courts are frequently called upon to determine whether property is property of the estate; it is not uncommon for a debtor to contend that he is not the owner of the property at issue and that the property is therefore not property of the estate. For example, the court in *In re Chesley*⁵⁶ addressed the issue of whether a boat was property of the estate.

In *Chesley*, the debtor, a world class open sea boat racer, obtained a bank loan to purchase a racing boat. Although a certificate of title was never issued, the debtor possessed and used the boat for eleven years, until he filed a Chapter 13 case. When the bankruptcy case was converted to a Chapter 7 case, the Chapter 7 trustee filed a complaint seeking a judicial declaration that the

⁵³ *In re Irish Bank Resolution Corporation Limited (in Special Liquidation)*, 559 B.R. 627, 643-44 (Bankr. D. Del. 2016); *In re Santaella*, 298 B.R. 793, 799 (Bankr. S.D. Fla. 2002).

⁵⁴ 11 U.S.C. § 541(a)(1).

⁵⁵ *In re Witko*, 374 F.3d 1040, 1043 (11th Cir. 2004)(quoting *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979)).

⁵⁶ *In re Chesley*, 551 B.R. 663, 671 (Bankr. M.D. Fla. 2016). Fla. Stat. § 328.03(1)(a)-(d); § 327.02(28), § 328.03(1) and (2).

boat was property of the estate. The debtor contended that the boat could not be property of his bankruptcy estate because he did not hold a certificate of title.

In ruling on the parties' motions for summary judgment, the court noted that, under Florida law, the title registration of vessels is governed by Chapter 328 of the Florida Statutes, and that the provisions of Chapter 328 distinguish between the ownership of a vessel and the owner's obligation to obtain a title certificate to operate the vessel.⁵⁷ Under Fla. Stat. § 328.03(4), "A certificate of title is *prima facie* evidence of the ownership of the vessel." As the bankruptcy court explained,

... a certificate of title is not conclusive as to ownership of a vessel; it is only *prima facie* evidence of ownership. A person may be found to have beneficial ownership of a vessel by having control and authority over its use, even though another person holds the certificate of title.⁵⁸

In *Chesley*, the court found that the debtor had made payments on the loan he obtained to buy the boat, and that the debtor had actual possession and use of the boat from the date of its purchase until he filed bankruptcy.⁵⁹ Accordingly, the court concluded that the debtor was "the only person holding the essential attributes of ownership" of the boat, that the debtor was the beneficial owner of the boat since its purchase,⁶⁰ and that the boat was property of the debtor's bankruptcy estate. In other words, in determining that the debtor owned the boat on the date he filed for bankruptcy, the court considered the circumstances surrounding the purchase of and payment for the boat, the presence or absence of a certificate of title, *and* the control over and use of the boat by the debtor after its purchase.

Likewise, in *In re Le*,⁶¹ the debtors did not have legal title to two shrimp vessels, but they had

provided the down payment for the purchase of the vessels, paid all expenses on them, and derived all the income from the vessels. The court concluded that the debtors had an equitable ownership interest in the vessels.

Defendant cites *In re Lortz*⁶² for the proposition that under Florida law, "the certificate of title identifies the vehicle owner and any lien holders, and the public may rely on the information as it appears on the title."⁶³ Here, Mr. Nunez's testimony that he reviewed the title to the Vessel prior to purchasing the Vessel and that he "also examined it prior to entering into the [Revenue Agreement] with [Debtor] as well"⁶⁴ lacks credibility for two reasons. First, there is no title in evidence. And, second, if as Mr. Nunez—an attorney licensed to practice in Florida—testified, he reviewed the Vessel's title prior to entering into the Revenue Agreement with Debtor and "confirmed" that Mr. Lewis was the owner of the Vessel, he would have had Mr. Lewis sign the Security Agreement in his individual capacity instead of signing it on Debtor's behalf.

Here it is undisputed that Debtor paid the entire amount of the purchase price for the Vessel. And the timing of the bankruptcy filing, Defendant's filing a UCC-1 Financing Statement to perfect its security interest in the Vessel, and Mr. Lewis's agreement to sell the Vessel to Defendant while insisting on payment of \$130,000.00 in cash is certainly suspect. But other than Jay Bisson's testimony that Mr. Lewis used the Vessel and docked it at his Residence—a Residence owned by Debtor—and that the cost of insurance, gas, and repairs was "overwhelming" to Mr. Lewis,⁶⁵ there is scant evidence regarding who "owned and controlled" the Vessel. For example, did Mr. Lewis pay the expenses of the Vessel, or did Debtor? And was the Vessel used for Debtor's business purposes (e.g., business entertainment) or for Mr. Lewis' personal use? And there was no evidence regarding Mr. Lewis's intent when the Vessel was purchased.

⁵⁷ Under Fla. Stat. § 328.03(1), a vessel that is operated, used, or stored on Florida waters must be titled by the state. And under Fla Stat. § 328.03(4), a certificate of title is *prima facie* evidence of the vessel's ownership.

⁵⁸ *In re Chesley*, 551 B.R. at 671(citations omitted).

⁵⁹ *Id.* at 672, 674.

⁶⁰ *Id.* at 674, 679.

⁶¹ 2007 WL 4197515 (Bankr. S.D. Tex. Nov. 21, 2017).

⁶² 344 B.R. 579, 584 (Bankr. C.D. Ill. 2006).

⁶³ Doc. No. 115, p. 3.

⁶⁴ Transcript, Doc. No. 83, p. 63, ll. 1-10.

⁶⁵ Transcript, Doc. No. 83, pp. 44, 51-52, 56-57.

Absent Mr. Lewis's testimony, the Court does not ascribe much weight to his having signed Debtor's bankruptcy schedules listing the Vessel as an asset.⁶⁶

As the court explained in *Chesley*, in determining whether a boat is property of the estate under § 541, the court may consider who paid the purchase price and who is named on the certificate of title. But the court should also consider who had "control and authority over its use" in determining a boat's beneficial ownership on the petition date.⁶⁷ Here, despite Debtor's having paid the full purchase price, the Court finds that genuine disputes of fact exist regarding whether the Vessel was titled in Debtor's name as required by Fla. Stat. § 328.03, and the extent to which Debtor had actual possession and control of the Vessel after its purchase on June 9, 2017.

Accordingly, it is

ORDERED that *Plaintiff's Motion for Partial Summary Judgment on Counts I (Declaratory Judgment), II (Turnover of Property of the Estate), and III (Avoidance and Recovery of Post-Petition Transfers) of Supplemental Amended Complaint against Defendant, Nunez Litigation Assistance Corp.* is **DENIED** without prejudice. The Court will set a status conference by separate order.

DATED: August 4, 2020.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge

⁶⁶ The Court recognizes the possibility that Mr. Lewis may have been interested in minimizing his own exposure as the transferee of a fraudulent transfer.

⁶⁷ *In re Chesley*, 551 B.R. at 671-72.