

ORDERED.

Dated: February 17, 2023



Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:17-bk-06512-FMD
Chapter 7

Martin J. McCarthy and
Laura McCarthy,

Debtors.

**ORDER SUSTAINING IN PART DEBTORS' OBJECTION TO
RAVENWOOD HOME, LLC'S SECURED CLAIM AND
ALLOWING CLAIM AS AN UNSECURED CLAIM IN A REDUCED AMOUNT**

Ravenwood Homes, LLC ("Ravenwood") built Debtors' home in Punta Gorda, Florida (the "Home") under a construction agreement with Debtors. In July 2017, Debtors filed a bankruptcy petition, and Ravenwood filed a secured proof of claim in the bankruptcy case for the balance owed on the construction agreement, plus

attorney's fees and related charges (the "Claim").¹ Debtors objected to both the amount of the Claim and its secured status.²

After a trial, this Court entered an order that (1) allowed the Claim for the unpaid balance and interest; (2) disallowed Ravenwood's Claim for attorney's fees and legal costs; and (3) held that Ravenwood was entitled to an equitable lien against Debtors' Home in the reduced, allowed amount of its Claim (the "Bankruptcy Court Order").³

Debtors appealed the Bankruptcy Court Order. On July 18, 2022, the District Court entered an order in the appeal (the "Remand Order").⁴ The District Court affirmed this Court's reduction of the amount of Ravenwood's Claim but vacated and remanded the Court's imposition of an equitable lien on Debtors' Home.

After carefully considering the entire record as supplemented by the parties after the Remand Order, the Court finds that Ravenwood is not entitled to an equitable lien on Debtors' Home and allows Ravenwood's Claim as an unsecured claim in the reduced amount.

¹ Claim No. 5-1, as amended by Claim Nos. 5-2 and 5-3.

² Doc. No. 43.

³ Doc. No. 98.

⁴ Doc. No. 209.

I. BACKGROUND⁵

Debtors own a parcel of real property in Punta Gorda, Florida (the “Property”). On August 26, 2013, Debtors signed a *Notice of Commencement*, which Ravenwood recorded the next day in the public records of Charlotte County, Florida. On September 16, 2014, Debtors and Ravenwood entered into a construction agreement for Ravenwood’s construction of the Home on the Property (the “Construction Agreement”). Aileron Interim Credit Fund, LLC (“Aileron”) provided a loan to Debtors for the construction of the Home (the “Construction Loan”). On August 20, 2015, Debtors signed a second *Notice of Commencement* that was recorded on August 21, 2015.⁶

Ravenwood built the Home, and on December 28, 2015, Charlotte County issued a Certificate of Occupancy. Around that same time, Debtors took possession of the Home, changed the locks, and denied Ravenwood access to the Home.

On January 26, 2016, Ravenwood signed a *Conditional Waiver and Release on Final Payment* (the “Conditional Release”).⁷ Although the Conditional Release was conditioned on payment to Ravenwood of \$80,898.81 – the balance that Ravenwood

⁵ The background facts are largely found in the Bankruptcy Court Order at Doc. No. 98, pp. 2-5, and accepted in the Remand Order at Doc. No. 209, pp. 2-3.

⁶ Doc. No. 225, ¶ 2 and p. 7.

⁷ Doc. No. 88-8, p. 3.

claimed was due under the Construction Agreement—Debtors did not approve the final draw under the Construction Agreement, and the payment was never made.

In August 2016, Aileron filed a foreclosure complaint against Debtors and Ravenwood in the Circuit Court of Charlotte County, Florida (the “Foreclosure Action”). On December 14, 2016, Ravenwood filed an *Answer with Crossclaims* in the Foreclosure Action.⁸

In Count I of its crossclaim against Debtors, titled “Breach of Contract,” Ravenwood alleged (a) that the parties had entered a Construction Agreement; (b) that Ravenwood had completed construction of the Home; (c) that Debtors had failed to pay Ravenwood; and (d) that the failure to pay was a breach of contract. In Count II of the crossclaim, titled “Quantum Meruit,” Ravenwood alleged that it constructed the Home, that Debtors acquiesced in the construction and knew that Ravenwood expected to be paid, and that Debtors were unjustly enriched by taking possession of the Home without paying all construction draws.

In December 2016—the same month that Ravenwood filed the crossclaim—Debtors refinanced the Construction Loan and satisfied the debt to Aileron. However, the balance due Ravenwood, its final draw under the Construction Agreement, was not paid through the refinancing.

⁸ Claim 5-3, pp. 23-30.

On July 26, 2017, Debtors filed a Chapter 13 bankruptcy petition and claimed the Home as their exempt homestead property.⁹ Ravenwood filed its secured Claim in the bankruptcy case in the amount of \$98,636.57. Debtors objected to the Claim, and the Court conducted a trial.¹⁰

Following the trial and submission of post-trial briefs, the Court allowed Ravenwood's Claim in the reduced amount of \$73,875.04 and ruled that Ravenwood was entitled to an equitable lien on the Home in that amount.

Debtors appealed the Court's ruling and the District Court affirmed the Court's determination of the amount of the Claim. However, the District Court vacated and remanded the Court's ruling to the extent of its award of an equitable lien.

II. PROCEEDINGS AFTER THE REMAND ORDER

After entry of the Remand Order, the Court conducted two status conferences. At the August 25, 2022 status conference,¹¹ the Court addressed the issue of its subject matter jurisdiction because, after the Court entered the Bankruptcy Court Order (a) Debtors converted their Chapter 13 case to a Chapter 7 case, and (b) the Chapter 7 trustee certified that the bankruptcy estate was fully administered as a "no asset"

⁹ Doc. No. 1; Doc No. 11, p. 9.

¹⁰ Doc. No. 90.

¹¹ Doc. No. 217.

case.¹² As a result, the resolution of the dispute between Debtors and Ravenwood would have no effect on Debtors' Chapter 7 estate.

The parties submitted legal memoranda on the jurisdictional issue, and on October 5, 2022, the Court entered an *Order on Subject Matter Jurisdiction Following Remand of Debtors' Objection to Claim No. 5-3 of Ravenwood Homes, LLC, and Scheduling Status Conference Regarding Issues to be Resolved on Remand* (the "Jurisdiction Order").¹³ In the Jurisdiction Order, the Court considered the factors outlined by the Eleventh Circuit Court of Appeals in *In re Morris*¹⁴ and exercised its discretion to retain jurisdiction for the purpose of ruling on the equitable lien issue, even though the resolution of Ravenwood's Claim would have no effect on Debtors' Chapter 7 estate.

In the Jurisdiction Order, the Court also listed the following issues identified by the District Court in the Remand Order:

- (a) Is the Home Debtors' exempt homestead?
- (b) What was the date on which Ravenwood last furnished labor or material under the Construction Agreement?
- (c) Were Debtors, under Florida law, unjustly enriched by Ravenwood's services?

¹² See Chapter 7 Trustee's Report of No Distribution dated April 27, 2020.

¹³ Doc. No. 221.

¹⁴ 950 F.2d 1531 (11th Cir. 1992).

(d) Did Debtors use Ravenwood's Conditional Release to refinance the Construction Loan or were they able to refinance the Construction Loan because more than one year had passed since the Home was completed?

(e) Did Ravenwood timely assert its claim for an equitable lien under Fla. Stat. § 95.11(5)(b)? And if so, in order to establish an equitable lien on homestead property under Florida law, is Ravenwood required to show that Debtors engaged in fraud or egregious conduct or was it sufficient that Debtors contracted for and were unjustly enriched by Ravenwood's services on the Property?¹⁵

Finally, the Jurisdiction Order scheduled a second status conference to consider the record and issues under the Remand Order.

At the October 27, 2022 status conference, the Court determined that further evidence and briefing was necessary to resolve the five issues listed above. Therefore, the Court entered an order establishing a schedule for the parties to file (a) affidavits and responsive affidavits related to the factual issues identified in the Jurisdiction Order, and (b) written memoranda on the legal issues identified in the Jurisdiction Order.¹⁶

Ravenwood filed the affidavit of its principal, David Wishtischin, which addressed the issue of "the date work was last performed" at Debtors' Home.¹⁷ Mr.

¹⁵ Doc. No. 221, pp. 7-8.

¹⁶ Doc. No. 227.

¹⁷ Doc. No. 224-1.

Wishtischin attested that (a) Ravenwood obtained the Certificate of Occupancy on December 28, 2015 “as dated by the Charlotte County Government;” (b) Debtors prepared a “punch list” on December 29, 2015; (c) Debtors did not permit Ravenwood to access the Home in connection with the punch list; and (d) Debtors made direct contact with Ravenwood’s subcontractors regarding the punch list.¹⁸ In its legal memorandum, Ravenwood contends that it last furnished labor or materials on December 29, 2015, the date that it received the punch list.¹⁹

Debtors filed a joint declaration which addressed at least three issues.²⁰ First, they attested that they (a) have resided in the Home continuously since approximately January 6, 2016; (b) currently reside in the Home; (c) intend to reside in the Home permanently; and (d) consider the Home to be their homestead.

Second, although Debtors did not state the date on which Ravenwood last provided labor, material, or services, they affirmatively stated that Ravenwood did not provide any labor, material, or services after December 28, 2015, the date they took possession of the Home.

And third, Debtors attested that they (a) were unable to convert their Construction Loan with Aileron to a permanent mortgage because of their dispute with Ravenwood; (b) refinanced the Aileron Construction Loan with a permanent

¹⁸ Doc. No. 224-1, ¶¶ 5-8.

¹⁹ Doc. No. 228, pp. 2-3.

²⁰ Doc. No. 225.

mortgage and later refinanced the new mortgage; and (c) never provided the Conditional Release “to the lender, closing agent, title company, or anyone else.”

Neither party filed a responsive affidavit or declaration to rebut the factual statements made in the other party’s affidavit.

III. ANALYSIS

A. The Home is Debtors’ exempt homestead.

Under the Florida Constitution, a natural person’s homestead is exempt from forced sale to the extent of one-half acre of contiguous land if located within a municipality.²¹ Three constitutional exceptions to the homestead exemption are limited and narrowly construed.²²

To qualify for the homestead exemption, an individual must have an ownership interest in the residence, must actually use and occupy the home, and must express an actual intent to permanently live in the home. Once these requirements are met, there is little that a homeowner can do to lose the homestead protection.²³

Debtors claimed the Home as their exempt homestead on their bankruptcy schedules.²⁴ Under Fed. R. Bankr. P. 4003(b)(1), a party in interest may object to the list of property claimed as exempt “within 30 days after the meeting of creditors held

²¹ Fla. Const. Art. X, § 4.

²² *In re Potter*, 320 B.R. 753, 757 (Bankr. M.D. Fla. 2005).

²³ *Bank of America, N.A. v. Elnicki*, 2020 WL 6870740, at *5 (M.D. Fla. Sept. 22, 2020) (citations omitted).

²⁴ Doc. No. 11, p. 9.

under § 341(a) is concluded.”²⁵ Even if a debtor had no colorable basis for the exemption, the claimed exemption cannot be challenged after the 30-day objection period.²⁶

Here, Debtors’ § 341 meeting of creditors was held and concluded on August 24, 2017, and no creditor or interested party objected to the claimed exemption within 30 days thereafter. Therefore, Debtors’ claimed homestead exemption was allowed in their bankruptcy case.

Ravenwood did not rebut Debtors’ declaration that the Home is their homestead. However, Ravenwood appears to argue in its legal memorandum that it may “pierce” the homestead exemption because Debtors’ Property includes an undisclosed vacant lot adjacent to the Home.²⁷ But Ravenwood did not produce any evidence to show that Debtors’ Property – the Home and the adjacent vacant lot – exceeds the constitutional limits for a homestead or that ownership of the adjacent vacant lot negates the homestead character of Debtors’ Home.

For these reasons, the Court concludes that Debtors meet the constitutional requirements to claim the Home as their homestead, and the Home is Debtors’ exempt homestead.

²⁵ Fed. R. Bankr. P. 4003(b)(1).

²⁶ *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992) (cited in *In re Cannon*, 568 B.R. 859, 864 (Bankr. M.D. Fla. 2016), and *In re Man*, 428 B.R. 644, 650-51 (Bankr. M.D.N.C. 2010)).

²⁷ Doc. No. 228, p. 2.

B. There is no record evidence of the date on which Ravenwood last furnished labor or material under the Construction Agreement.

The Court's Jurisdiction Order – that listed the issues identified by the District Court in the Remand Order – and the Court's December 6, 2022 Order Setting Briefing Schedule²⁸ provided Ravenwood with the opportunity to submit a factual affidavit to evidence the date on which it last furnished labor or materials under the Construction Agreement.

But Mr. Wishtischin's affidavit does not state the date that Ravenwood last furnished labor, services, or materials to improve the Home,²⁹ or state any details that would allow the Court to determine that date, *e.g.*, when a representative, employee, or subcontractor of Ravenwood last visited the job site, when Ravenwood or a subcontractor last purchased supplies for the Home, or when Ravenwood or a subcontractor last submitted information to Charlotte County to meet the County's construction requirements for the issuance of a Certificate of Occupancy.

Although Mr. Wishtischin attested to the date on which Ravenwood received Debtors' punch list, that date is not evidence of the last date on which Ravenwood last provided labor, materials, or services to the Home, and Ravenwood admits that it did not address the punch list after it was received.

²⁸ Doc. No. 227.

²⁹ "In Florida, the test to determine whether labor, services, or materials were furnished is whether the work was: (i) performed in good faith; (ii) within a reasonable time; (iii) in pursuance of the terms of the contract; and (iv) whether the work was necessary to a 'finished job.'" *In re Jennerwein*, 309 B.R. 385, 388 (Bankr. M.D. Fla. 2004) (citation omitted).

In other words, there is no evidence in the record of the exact date that Ravenwood last furnished labor, services, or materials to Debtors' Home.

C. Ravenwood did not record a claim of lien under Florida's Construction Lien Law.

Chapter 713 of the Florida Statutes (the "Construction Lien Law") provides the mechanism for a contractor in privity with an owner to enforce the obligations owed to it for the labor and materials that it furnished to improve the owner's property, including an owner's homestead property.³⁰

The Construction Lien Law serves the dual purpose of protecting contractors who furnish labor or materials to property and also protecting the property owners by requiring notice of the liens asserted on their property.³¹ As part of this "dual purpose," the law is intended to prevent the unjust enrichment of owners at the expense of contractors who improved their property.³² However, because construction liens are created by statute, and because notice of a claimed lien is a key provision of the statute, contractors seeking the benefits of the Construction Lien Law must strictly comply with its requirements, including its time limits.³³

Under Florida Statutes § 713.05, a contractor who complies with Chapter 713 has a lien on real property for "labor, services, materials, or other items required by,

³⁰ See *In re Jennerwein*, 309 B.R. 385 (Bankr. M.D. Fla. 2004).

³¹ *Trytek v. Gale Industries, Inc.*, 3 So. 3d 1194, 1199 (Fla. 2009).

³² *CDC Builders, Inc. v. Riviera Almeria, LLC*, 51 So. 3d 510, 513 (Fla. 3d DCA 2010).

³³ *In re Starlight Homes, Inc.*, 297 B.R. 856, 860 (Bankr. M.D. Fla. 2003); *Premier Finishes, Inc. v. Maggiras*, 130 So. 3d 238, 242 (Fla. 2d DCA 2013).

or furnished in accordance with, the direct contract and for unpaid finance charges due under the lienor's contract." Under Fla. Stat. § 713.08(5), to perfect its lien, a contractor is required to record a claim of lien "not later than 90 days after the final furnishing of the labor or services or materials by the lienor."

Here, Ravenwood did not record a claim of lien in the Clerk's office of Charlotte County, Florida in the time required by Fla. Stat. § 713.08.³⁴ Therefore, Ravenwood does not hold a valid construction lien under Fla. Stat. § 713.08.

D. There is no record evidence that Debtors used Ravenwood's Conditional Release to refinance the Construction Loan.

In his affidavit, Mr. Wishtischin did not address the issue of whether Debtors used Ravenwood's Conditional Release to refinance the Construction Loan, and neither he nor Ravenwood provided any evidence that Debtors used the Conditional Release for any purpose.

In their declaration, Debtors attested that on November 30, 2016, they refinanced the Construction Loan with a permanent mortgage from Pineapple Lending, LLC, and that they did not provide Ravenwood's Conditional Release to Pineapple Lending, LLC, the closing agent, the title company, or anyone else in connection with the transaction.³⁵ Debtors further attested that on December 31, 2016,

³⁴As stated in the Bankruptcy Court Order, no claim of lien appears in evidence, and Ravenwood does not assert that it recorded a claim of lien as required by the statute (Doc. No. 98, p. 7).

³⁵ Doc. No. 225, ¶ 6.

they refinanced the Pineapple Lending mortgage with a loan and mortgage from Loanwise Financial, LLC, and that they did not provide Ravenwood's Conditional Release to Loanwise Financial, LLC, the closing agent, the title company, or anyone else in connection with the transaction.³⁶

Based on the filings by Ravenwood and Debtors, the Court concludes that there is no record evidence that Debtors used Ravenwood's Conditional Release to refinance the Construction Loan.

E. Ravenwood is not entitled to an equitable lien on Debtors' Home.

In order to establish its claim for an equitable lien on the Home, Ravenwood must show, first, that it timely asserted its claim, and second, that it otherwise satisfies the requirements of Florida law for the imposition of an equitable lien on homestead property. For the reasons that follow, the Court concludes that Ravenwood is not entitled to an equitable lien on Debtors' home.

1. Ravenwood did not timely assert an equitable lien under Fla. Stat. § 95.11(5)(b).

Under Fla. Stat. § 95.11(5)(b), an action to enforce an equitable lien must be commenced within one year "from the furnishing of labor, services, or material for the improvement of real property."³⁷ Here, because Ravenwood has not established

³⁶ Doc. No. 225, ¶ 7.

³⁷ Fla. Stat. § 95.11(5)(b); *Jax Utilities Management, Inc. v. Hancock Bank*, 164 So. 3d 1266, 1269 (Fla. 1st DCA 2015).

the date that it last furnished labor or materials under the Construction Agreement, it cannot demonstrate that it timely asserted an equitable lien.³⁸

Ravenwood filed its crossclaim against Debtors in the Foreclosure Action on December 14, 2016. The crossclaim contains a claim for breach of contract and a claim for “quantum meruit,” but it does not include a claim to impose an equitable lien on the Home. As discussed below, to establish an equitable lien against Debtors’ homestead property, Ravenwood must allege that Debtors engaged in fraudulent or egregious conduct. Therefore, the crossclaim as filed is insufficient to state a claim for an equitable lien.

And if Ravenwood attempted to amend the crossclaim to assert an equitable lien, the proposed amendment would not relate back to the date that Ravenwood filed its original crossclaim. Under Fla. R. Civ. P. 1.190(c), an amended pleading relates back to the date of the original pleading when the claim asserted in the amendment “arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.” In *Kopel v. Kopel*, the Supreme Court of Florida recognized that “while amendments with new claims do not always

³⁸ In construing Florida’s Construction Lien Law, the court in *In re Starlight Homes, Inc.*, 297 B.R. 856, 860 (Bankr. M.D. Fla. 2003) stated that “the burden of proving that the claimant furnished labor or material for the improvement of the property is on the claimant.”

relate back, *they can do so if the claims are not factually distinct from those within the original complaint.*"³⁹

Here, to assert a claim for an equitable lien, Ravenwood would be required to allege that Debtors did more than breach the Construction Agreement by failing to pay the contract balance. Specifically, Ravenwood would need to include additional factual allegations showing Debtors' fraud or egregious conduct. Because such allegations are "factually distinct" from the allegations in Ravenwood's December 2016 crossclaim, they would not relate back to the original pleading.

More importantly, even if Ravenwood amended the crossclaim to assert an equitable lien, and even if the amendment related back to the original crossclaim,⁴⁰ the Court could not find that the claim is timely because Ravenwood did not prove the date that it last worked on the Home. In other words, in order for an equitable lien claim filed on December 14, 2016, to be timely under § 95.11(5)(b), Ravenwood would be required to show that it furnished labor or materials after December 14, 2015. But as discussed above, Ravenwood has not produced any evidence of the date that it last provided labor, material, or services to the Home, and the Court cannot

³⁹ *Kopel v. Kopel*, 229 So. 3d 812, 817 (Fla. 2017) (emphasis supplied). See also *Herrera v. Jarden Corp.*, 334 So. 3d 637, 643 (Fla. 4th DCA 2022).

⁴⁰ Debtors assert that any amended crossclaim by Ravenwood would not have related back to the original pleading, "because it required proof of additional facts (*i.e.*, fraud or inequitable conduct) and does not arise 'out of the conduct, transaction, or occurrence' set forth in the crossclaim, which sounded only in contract. Fla. R. Civ. P. 1.19(c). See *Kopel v. Kopel*, 229 So. 3d 812 (Fla. 2017)." (Doc. No. 226, p. 5.)

find that Ravenwood furnished any labor, material, or service after December 14, 2015.

The Court concludes that Ravenwood did not timely assert its equitable lien claim under Fla. Stat. § 95.11(5)(b).

2. Ravenwood does not meet the requirements for the imposition of an equitable lien under Florida law.

Even if Ravenwood had timely commenced an action under Fla. Stat. § 95.11(5)(b), it is not entitled to the imposition of an equitable lien on Debtors' Home.

Ravenwood cites *Crane Co. v. Fine*⁴¹ for the proposition that a contractor who fails to file a construction lien may nevertheless claim an equitable lien to recover amounts owed to it for materials or services.⁴² In *Crane*, the equitable lien claimant was the fabricator for a plumbing subcontractor whose product was incorporated into the construction project. When the plumbing subcontractor became insolvent and abandoned the job, the fabricator claimed a lien on funds held by the general contractor.⁴³ Under these circumstances, the court ruled that the fabricator was entitled to an equitable lien on the "hold-back" funds, even though the fabricator had not timely filed a claim of lien under the mechanic's lien law.⁴⁴

⁴¹ 221 So. 2d 145 (Fla. 1969).

⁴² Doc. No. 228, p. 7.

⁴³ *Crane Co. v. Fine*, 221 So. 2d at 146.

⁴⁴ *Id.* at 148.

But the fabricator in *Crane* was in a very different position from Ravenwood. First, the fabricator was a subcontractor who had no direct agreement with the property owner. Here, Ravenwood contracted directly with Debtors to build Debtors' residence and was, therefore, a contractor in privity with Debtors. And second, the *Crane* fabricator asserted its lien on funds held by the general contractor specifically for the purpose of paying subcontractors. Here, Ravenwood asserts its equitable lien on Debtors' homestead property.

In its Remand Order, the District Court identified the two sources from which an equitable lien may arise under Florida law:

(a) A written contract that indicates an intent to charge a particular property with a debt or obligation. The District Court commented that this Court "made no express determination as to whether the contract between the parties indicates an intention to charge [Debtors'] property with a debt or obligation."⁴⁵

(b) A declaration by a court of equity "out of general consideration of right or justice as applied to the relations of the parties and the circumstances of their dealings in the particular case."⁴⁶ The District Court noted that the imposition of an equitable lien "may depend on the homestead status of the property, in which case

⁴⁵ Doc. No. 209, p. 7.

⁴⁶ *Id.* at p. 7 (citations omitted).

‘some fraudulent or otherwise egregious act by the beneficiary of the homestead protection must be proven.’”⁴⁷

The District Court also noted that an equitable lien may be appropriate in cases of unjust enrichment, even if the property owner was not aware of the underlying fraud.⁴⁸ The District Court cited to the Eleventh Circuit’s decision in *In re Financial Federated Title and Trust, Inc.*⁴⁹ There, a husband and wife used the proceeds of a Ponzi scheme to purchase a home. Although the wife had no knowledge of or involvement with the Ponzi scheme, the court affirmed the bankruptcy court’s imposition of an equitable lien on the property, stating that, under Florida law, “it is the fraudulent nature of the funds which is of utmost importance.”⁵⁰

(a) No Intent to Charge Debtors’ Home

In *In re Marcum*,⁵¹ the court recognized a line of cases in which courts—without a showing of fraud or other egregious conduct—imposed an equitable lien on a debtor’s homestead because the parties’ contract showed an intention to charge a particular property with a debt.

In *Marcum*, the claimant lent money to the debtor for payment of the real estate taxes on the debtor’s home, and the debtor signed a promissory note clearly stating

⁴⁷ *Id.* at pp. 7-8 (citations omitted).

⁴⁸ *Id.* at p. 8.

⁴⁹ 347 F.3d 880, 887-91 (11th Cir. 2003).

⁵⁰ *Id.*, 347 F.3d at 890.

⁵¹ 508 B.R. 499 (Bankr. M.D. Fla. 2014).

that “such amount owing shall be secured as a lien upon the property owned by” the debtor; however, the debtor did not sign and deliver a separate mortgage. The court concluded that the language in the note clearly and unambiguously evidenced the debtor’s intent to provide a mortgage for the amount of the loan, and that the circumstances supported the imposition of an equitable lien.⁵²

Here, Debtors signed the two Notices of Commencement and the Construction Agreement to document their contract with Ravenwood,⁵³ but these documents do not contain any language evidencing Debtors’ intent to charge the Home with a debt to Ravenwood. To the contrary, Debtors obtained the Construction Loan through Aileron to finance Ravenwood’s construction of the Home, the Construction Loan was secured by the Home, and Ravenwood expected to be paid from draws on the loan under a progress payment schedule.

The Court concludes that the Notices of Commencement and Construction Agreement did not evidence the parties’ intent to charge Debtors’ Home with the debt owed to Ravenwood.

⁵² *Id.* at 503.

⁵³ Doc. No. 88-5; Doc. No. 225, p. 7; Doc. No. 88-2.

(b) Absent a showing of fraudulent or egregious conduct, the Court may not impose an equitable lien on Debtors' Home.

In *Havoco of America, Ltd. v. Hill*,⁵⁴ the Supreme Court declined to extend Florida law on the imposition of equitable liens on homestead property beyond cases involving the debtor's fraudulent or egregious conduct. The Court stated "[w]e have invoked equitable principles to reach beyond the literal language of the [constitutional] exceptions [to homestead] only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead."⁵⁵

After *Havoco*, the Eleventh Circuit summarized Florida law as follows:

To obtain an equitable lien on a Florida homestead, a plaintiff must show by a preponderance of the evidence (1) that the defendant engaged in fraudulent or egregious conduct and (2) that the funds from that conduct can be directly traced to the purchase of, investment in, or improvement of the homestead.⁵⁶

Examples of cases in which courts have imposed equitable liens on homestead property include where the debtor disregarded a divorce judgment ordering her to pay her former husband from the sale of their marital residence and instead purchased a new residence with the proceeds,⁵⁷ where the debtor defrauded the buyer in a stock sale through "a multitude of fraudulent misrepresentations" and

⁵⁴ 790 So. 2d 1018 (Fla. 2001).

⁵⁵ *Havoco*, 790 So. 2d at 1028.

⁵⁶ *Federal Trade Commission v. American Precious Metals, LLC*, 726 F. App'x 729, 732 (11th Cir. 2018) (citation omitted).

⁵⁷ *Randazzo v. Randazzo*, 980 So. 2d 1210 (Fla. 3d DCA 2008).

used the proceeds to purchase his home;⁵⁸ and where the proceeds of a Ponzi scheme were used to purchase a home.⁵⁹

The issue here is whether Debtors engaged in fraudulent or egregious conduct. Ravenwood contends that it is entitled to an equitable lien because Debtors (i) signed two Notices of Commencement; (ii) obtained a construction loan “promising that the funds required to build were escrowed and ready to pay Ravenwood;” (iii) “unilaterally took over the finished house;” (iv) refused to allow Ravenwood to inspect the Home; and (v) avoided payment to Ravenwood by (a) “forcing” its lender to file a foreclosure action, (b) filing bankruptcy, (c) alleging construction defects, and (d) refinancing the Construction Loan without payment to Ravenwood.⁶⁰

But much of Ravenwood’s argument lacks evidentiary support. For example, the evidence does not show that Debtors “forced” Aileron to file the Foreclosure Action to eliminate Ravenwood’s claim. Rather, the evidence suggests that Aileron filed the Foreclosure Action because it deemed Debtors in default for nonpayment of the Construction Loan.⁶¹

And the evidence does not show that Debtors engaged in any fraudulent conduct to refinance Aileron’s Construction Loan. Debtors attested in their

⁵⁸ *In re Hecker*, 316 B.R. 375 (Bankr. S.D. Fla. 2004).

⁵⁹ *In re Financial Federated Title and Trust, Inc.*, 347 F.3d at 887-91.

⁶⁰ Doc. No. 228, pp. 8-11.

⁶¹ See Doc. No. 209, p. 3.

declaration that they did not provide Ravenwood's Conditional Release "to the lender, the closing agent, title company, or anyone else" when they refinanced the Construction Loan.⁶² Instead, the evidence suggests that Debtors were able to refinance the loan because the Notices of Commencement had expired and Ravenwood did not record a claim of lien before the refinancing occurred.⁶³

Even if Debtors did breach the Construction Agreement by taking possession of the finished Home and denying Ravenwood access after the Certificate of Occupancy was issued, such conduct is not fraudulent and did not abuse a position of trust or confidence. To the contrary, the evidence indicates that Ravenwood and Debtors entered into the Construction Agreement as equal bargaining parties, that the project proceeded as an ordinary home construction project, and that Debtors did not prevent Ravenwood from pursuing its rights under Florida's Construction Lien Law or from otherwise asserting its lien claim.

Finally, although Ravenwood argues that Debtors were unjustly enriched by its construction of the Home on Debtors' Property without payment in full under the Construction Agreement, unjust enrichment, standing alone, does not justify the imposition of an equitable lien.

⁶² Doc. No. 225, ¶¶ 6, 7.

⁶³ Doc. No. 226, pp. 2-4.

In *In re Rodriguez*,⁶⁴ the court discussed whether — absent a finding of fraud or egregious conduct — an equitable lien may be imposed on homestead property on the grounds that the debtor was unjustly enriched by the parties' dealings.

In *Rodriguez*, the debtors sold their former home but — due to a third party's mistake — the closing agent did not pay a second mortgage on the home. Without knowledge of the mistake, the debtors received the entire net proceeds and used them to buy a new home. The court concluded that in cases where a court granted an equitable lien based on unjust enrichment, the homeowner had engaged in conduct that was either fraudulent⁶⁵ or egregious.⁶⁶ And despite the court's finding that the debtors may have been "unjustly enriched by the excess net sales proceeds," the court denied the plaintiff's request for an equitable lien because there was no fraud or egregious conduct by the debtors.⁶⁷

Here, as set forth above, Ravenwood did not establish that Debtors engaged in any fraudulent or egregious conduct, i.e., there is no evidence that Debtors fraudulently used the Conditional Release or misled Ravenwood into foregoing its lien rights. Although Debtors may have breached the Construction Agreement and

⁶⁴ 2022 WL 1599970 (Bankr. M.D. Fla. May 10, 2022).

⁶⁵ *Palm Beach Sav. & Loan Ass'n, F.S.A. v. Fishbein*, 619 So. 2d 267 (Fla. 1993).

⁶⁶ *La Mar v. Lechliden*, 185 So. 833 (Fla. 1939); *Sonneman v. Tuszynski*, 191 So. 18 (Fla. 1939).

⁶⁷ *In re Rodriguez*, 2022 WL 1599970, at *6.

been unjustly enriched, their conduct was neither fraudulent nor egregious and does not justify the imposition of an equitable lien.

(c) The equitable remedy of unjust enrichment only applies in the absence of an express contract.

Finally, Ravenwood is not entitled to an equitable lien based on Debtors' unjust enrichment because "unjust enrichment" is an equitable remedy that applies only when there is no express contract between the parties.

In *14th & Heinberg, LLC v. Terhaar and Cronley General Contractors, Inc.*,⁶⁸ the court held that the remedy of unjust enrichment is only available under Florida law when, *in the absence of an express contract*, it is necessary to *imply* the existence of a contract. The court stated:

In Florida, a claim for unjust enrichment is an equitable claim based on a legal fiction which *implies* a contract as a matter of law even though the parties to such an implied contract never indicated by deed or word that an agreement existed between them. . . .

*When a true contract exists, the parties' rights are fixed by law and by the terms of the contract.*⁶⁹

Here, the Construction Agreement was the parties' express contract; in the event of Debtors' breach of the Construction Agreement, Ravenwood was entitled to the rights established in the contract and the rights established under Florida's

⁶⁸ 43 So. 3d 877 (Fla. 1st DCA 2010).

⁶⁹ *14th & Heinberg, LLC v. Terhaar and Cronley General Contractors, Inc.*, 43 So. 3d at 880-81 (emphasis added). Also see *McIntyre v. Marriott Ownership Resorts, Inc.*, 2015 WL 162948, at *5 (S.D. Fla. Jan. 13, 2015).

Construction Lien Law.⁷⁰ Therefore, Ravenwood is not entitled to an equitable lien based on Debtors' unjust enrichment under Florida law.

IV. CONCLUSION

As set forth above, the Home is Debtors' exempt homestead, Ravenwood built the Home under a Construction Agreement with Debtors, and Debtors did not pay Ravenwood the full contract price.

However, Ravenwood did not record a claim of lien under Florida's Construction Lien Law, and it may not claim an equitable lien on the Home for the unpaid contract price because (a) Ravenwood did not timely assert an equitable lien claim under Fla. Stat. § 95.11(5)(b); (b) the Notices of Commencement and Construction Agreement do not evidence an intent to charge the Home; (c) Ravenwood did not show that Debtors engaged in fraudulent or egregious conduct; and (d) Ravenwood may not assert an unjust enrichment claim under Florida law.

Accordingly, it is

ORDERED:

1. Debtors' Objection to Claim No. 5-3 of Ravenwood Homes, LLC, (Doc. No. 43) is **SUSTAINED IN PART**.

⁷⁰ Ravenwood had the right to perfect a lien under Fla. Stat. § 713.08 by recording a claim of lien "not later than 90 days after the final furnishing of the labor or services or materials by the lienor."

2. Claim No. 5-3 of Ravenwood Homes, LLC, is **ALLOWED** as an unsecured claim in the reduced amount of \$73,875.04.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.