

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR  
MARTIN COUNTY, FLORIDA

CASE NO.: 2022-928CA

ERICA HERMAN,

CIVIL DIVISION

Plaintiff,

v.

JUPITER ISLAND IRREVOCABLE  
HOMESTEAD TRUST,

Defendant.

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**MOTION TO INTERVENE**

Non-party, Eldrick Woods, moves pursuant to Rule 1.230 of the Florida Rules of Procedure to intervene as a defendant in this action, and states:

**I. Introduction**

In this action brought under the Florida Residential Landlord-Tenant Act, Mr. Woods' former girlfriend, Erica Herman, seeks damages in excess of \$30 million for breach of an alleged oral tenancy agreement that Ms. Herman alleges permitted her to live rent-free and expense-free in Mr. Woods' personal residence (the "Residence") for the next five years. (Compl., ¶¶ 6, 12) The alleged oral tenancy was purportedly consideration for Ms. Herman's agreement to perform personal services while living in the Residence with Mr. Woods during the course of their six-year relationship. (Compl., ¶ 6) Ms. Herman's complaint alleges that the oral tenancy agreement was breached when Mr. Woods terminated his romantic relationship with her and, among other things, advised her that she was no longer a welcome guest in the Residence. (Compl., ¶¶ 7-8)

Though this action involves Mr. Woods' personal residence and arises out of Mr. Woods' decision that Plaintiff should no longer live in his home following the breakup, Plaintiff did not

sue Mr. Woods. Rather, to avoid an agreement Plaintiff made to arbitrate all disputes with Mr. Woods, Plaintiff sued a trust owning only a limited remainder interest in the Residence. Mr. Woods has a substantial, direct, and sufficient interest in this litigation to support intervention. The disputes raised by Ms. Herman in the lawsuit against the trust are, in fact, disputes between Ms. Herman and Mr. Woods. Furthermore, Mr. Woods has an indisputable right to intervene in this action because he is a beneficiary of the trust against which Ms. Herman seeks over \$30 million in damages and because he is the occupant of and owner of a life estate in the Residence at issue.

## **II. Factual Background**

### **A. The Jupiter Island Homestead Trust**

On February 28, 2017, Mr. Woods established the Jupiter Island Irrevocable Homestead Trust (the “Trust”) under an agreement (the “Trust Agreement”) between Mr. Woods, as trust settlor, and Christopher J. Hubman, as Trustee. That same day, by Special Warranty Deed, Mr. Woods, as grantor, transferred a remainder interest in the Residence to the Trustee of the Trust, while retaining a life estate in his individual name. Mr. Woods and his two minor children are the only potential beneficiaries of the Trust. No one other than Mr. Woods or his children has any right to the Trust’s remainder interest in the Residence.

Meantime, Mr. Woods continues to own a life estate in the Residence and has a right to exclusive possession of the Residence during his lifetime. Under the terms of the life estate, during Mr. Woods’ lifetime, Mr. Woods is to be “solely and exclusively responsible for all costs and expenses” relating to the Residence. The Trustee is to have “no liability or responsibility of any nature” with respect to the Residence.

**B. Plaintiff's Claims**

Mr. Woods and Ms. Herman commenced a romantic relationship roughly six years ago, though they never married. Shortly after commencing the relationship, Mr. Woods and Ms. Herman entered a Non-Disclosure And Acknowledgement Agreement (the "Agreement") dated August 9, 2017. In the Agreement, Ms. Herman agreed that "the exclusive manner of resolution of any and all disputes, claims or controversies arising between [Ms. Herman and Mr. Woods] of any nature whatsoever . . . shall be resolved by mandatory BINDING confidential Arbitration to the greatest extent permitted by law." (capitalization in original)

During their relationship, Mr. Woods invited Ms. Herman to live with him as his guest in the Residence. Mr. Woods never negotiated an oral tenancy agreement with Ms. Herman. Nor was there ever a written tenancy agreement between Mr. Woods or the Trust, on the one hand, and Ms. Herman, on the other hand. Mr. Woods never transferred to Ms. Herman any ownership interest in or rights of possession to the Residence. On October 13, 2022, Mr. Woods notified Ms. Herman that he was breaking off their relationship. At that time, he informed Ms. Herman that she was no longer welcome in the Residence. Mr. Woods arranged for Ms. Herman to stay at a local luxury resort and provided funds she could apply toward a new residence.

Ms. Herman responded to the breakup by filing this action against the Trust. In her complaint, Ms. Herman claims for the first time that as consideration for her performing "valuable services" for Mr. Woods that were "extensive and of an extraordinary nature," she negotiated an "oral tenancy agreement" relating to the Residence with an "agent" of the Trust. (Compl., ¶¶ 5-6.) According to Ms. Herman's complaint, for the past six years, Ms. Herman performed services and lived in the Residence pursuant to the oral tenancy agreement, which allegedly had approximately five years remaining at the time Mr. Woods broke off their relationship. (Compl.,

¶¶ 5-6.) Ms. Herman seeks injunctive and monetary relief from the Trust, including damages in excess of \$30 million, arising from (i) Mr. Woods' refusal to permit Ms. Herman to continue to occupy the Residence; (ii) the removal of Ms. Herman's personal belongings from the Residence; and (iii) the alleged misappropriation of \$40,000 cash purportedly belonging to Ms. Herman. (Compl., ¶¶ 8-9.)

The Trustee of the Trust moved to dismiss the complaint because, based on Ms. Herman's allegations that the purported oral tenancy agreement extends for five more years, Ms. Herman does not qualify as a "tenant" entitled to protection under the Florida Residential Landlord Tenant Act. *See Fla. Stat. §§ 83.43(4), 83.43(7); Toledo v. Escamilla*, 962 So. 2d 1028 (Fla. 3d DCA 2007). Additionally, based on the allegations that the oral tenancy agreement was for a period of more than one year, the Trustee sought dismissal with prejudice because such an oral agreement violates Florida's statute of frauds and any amendment to assert a contractual claim would be futile. *See Fla. Stat. § 725.01; DK Arena, Inc. v. EB Acquisitions I, LLC*, 112 So. 3d 85 (Fla. 2013); *Campo v. Tafur*, 704 So. 2d 730 (Fla. 4th DCA 1998).

That Ms. Herman's claims against the Trust are really disputes directly between Ms. Herman and Mr. Woods is evidenced by the following:

- a. Ms. Herman's claims arise from the breakup of her relationship with Mr. Woods.
- b. Ms. Herman's claims arise from an alleged oral tenancy agreement purportedly reached with Mr. Woods.
- c. The subject of the alleged oral tenancy agreement is Mr. Woods' personal residence, which he shares with his two children.
- d. Ms. Herman's claim that she was wrongfully prevented from reentering the Residence involves conduct of Mr. Woods' agents acting pursuant to instructions from Mr. Woods.
- e. Ms. Herman's claim regarding the misappropriated \$40,000 involves the conduct of Mr. Woods' agents.

- f. By claiming the right to occupy the Residence, Ms. Herman's claims are directly adverse to the personal interests of Mr. Woods and his two children, who are the current occupants of the Residence.
- g. By claiming damages against the Trust, Ms. Herman's claims are directly adverse to the personal interests of Mr. Woods and his children because they are the only beneficiaries of the Trust and because the only asset of the Trust is the Residence, which Mr. Woods shares with his two children.
- h. The Trustee holds legal title to the Residence, whereas Mr. Woods and his children hold all equitable title to the Residence. As a result, Ms. Herman's claim against the Trust is necessarily a dispute implicating Mr. Woods' equitable interest in the Trust.

Ms. Herman's claim that her disputes are with the Trustee of the Trust, and not with Mr. Woods, is disingenuous. Ms. Herman's decision to sue the Trust rather than Mr. Woods is nothing more than a transparent attempt by Ms. Herman to avoid her contractual obligation to arbitrate and to gain leverage by litigating her disputes with Mr. Woods in a public forum. As described below, Ms. Herman's conduct following her filing the complaint in this action serves only to confirm Ms. Herman's improper motive in suing the Trust.

### **C. The Abated Arbitration**

After Ms. Herman sued the Trust in this action, Mr. Woods commenced an arbitration proceeding (the "Arbitration Proceeding") before the American Arbitration Association ("AAA") by filing a Demand for Arbitration and a Statement of Claim on December 22, 2022. Simultaneously, the Trust moved to compel the claims in this action to arbitration.

In the arbitration, Mr. Woods seeks an award establishing that (i) Ms. Herman's claims in her Landlord-Tenant action against the Trust constitute a dispute between Ms. Herman and Mr. Woods and, therefore, the parties are required to arbitrate the claims (Count I); (ii) Ms. Herman has no right to occupy the Residence and is not entitled to money damages against Mr. Woods, or the Trust, for breach of the alleged oral tenancy agreement (Count II); and (iii) Ms. Herman is not entitled to damages arising from the removal of her personal belongings from the Residence, or

the alleged misappropriation of \$40,000 cash purportedly belonging to Ms. Herman (Count III). In other words, in the arbitration proceeding, Mr. Woods seeks to arbitrate the very same claims that Ms. Herman raises in her action in this Court against the Trust.

On January 26, 2023, however, the AAA placed the arbitration in abeyance after Ms. Herman invoked 9 U.S.C. § 402(a) arguing that she cannot be compelled to arbitrate her claims before the AAA because her claims alleging breach of an oral tenancy agreement involve a “sexual harassment dispute.” Unsurprisingly, Ms. Herman also invoked 9 U.S.C. § 402 when responding to the Trust’s motion to compel arbitration filed in this action. Under 9 U.S.C. § 402(b), a court must determine whether Ms. Herman’s claims under the Florida Residential Landlord Tenant Act involve a “sexual harassment dispute” before the arbitration can resume.

Assuming Mr. Woods is permitted to intervene in this action, he and the Trust will seek an immediate determination from this Court that (i) Ms. Herman’s landlord-tenant claims do not constitute a “sexual harassment dispute” as defined in 9 U.S.C. § 401, and (ii) Ms. Herman must be compelled to arbitrate. To be perfectly clear, by filing this motion, Mr. Woods is not waiving his right to arbitrate his disputes with Ms. Herman. To the contrary, given Ms. Herman’s specious argument that 9 U.S.C. § 402 applies to her claims in this action as well as Mr. Woods’ claims in the arbitration proceeding, Mr. Woods seeks to intervene in this action as a necessary means of enforcing his right to arbitrate disputes with Ms. Herman. *See* 9 U.S.C. § 402(b) (“The applicability of this chapter to an agreement to arbitrate . . . shall be determined by a court, rather than an arbitrator.”).

### **III. Standard for Intervention**

Rule 1.230 of the Florida Rules of Civil Procedure provides that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the

intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.” Rule 1.230 should be liberally construed, consistent with the policies which it is intended to advance. *Nat’l Wildlife Fed’n Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1st DCA 1988) (“Intervention should be liberally allowed.”).

The Supreme Court of Florida has set out a two-step process for determining whether an individual has a right to intervene in an action. “First, the trial court must determine that the interest asserted [by the potential intervenor] is appropriate to support intervention.” *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992). The appropriate interest permitting intervention “must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.” *Id.*

The second step requires the trial court to “determine the parameters of the intervention.” *Id.* at 508. Unless the court, in its discretion, places conditions or limitations on an intervenor, “[t]he intervenor becomes a party to the action; he has the right to litigate on the merits the claim or defense for which he intervenes. In view of the aim of the rules to allow liberal joinder of parties and claims, the intervener should be permitted to counter-claim, cross-claim, and implead third parties.” Fla. R. Civ. P. 1.230, *Author’s Comment – 1967*. In determining whether to place conditions on allowing intervention, “the court should consider whether the intervener has an absolute right to intervene or only a permissive one, the stage at which the application for intervention is made, the nature of the intervener's claim, and other factors.” *Id.* If the trial court’s limitation “completely bars the intervenors from addressing their concerns, it is an abuse of the

trial court's discretion.” *Genauer v. Downey & Downey, P.A.*, 190 So. 3d 131, 135 (Fla. 4th DCA 2016).

#### **IV. Argument**

Mr. Woods has a direct and immediate interest in this litigation such that he will gain or lose as a direct result of any judgment. As a beneficiary of the Trust and as the current occupant and owner of a life estate in the Residence at issue, Mr. Woods has an indisputable right to intervene in this action as a defendant without conditions or limitations. “Nothing is more sacred to one than his home.” *Wags Transp. Sys., Inc. v. City of Miami Beach*, 88 So. 2d 751, 752 (Fla. 1956). Any limitation placed on Mr. Woods’ intervention would limit his ability to protect his rights in his home.

##### **A. Mr. Woods’ Interest Is Appropriate To Support Intervention**

Mr. Woods has a substantial, direct, and immediate interest in this litigation. Mr. Woods has an indisputable right to intervene in this action as the current beneficiary of the Trust and as the occupant of and owner of a life estate in the Residence at issue. In either capacity, Mr. Woods “will gain or lose by the direct legal operation and effect of the judgment.” *See Carlisle*, 593 So. 2d at 507.

##### **i. Beneficiaries Are Entitled To Intervention When The Trustee Is A Party**

As a beneficiary of the Trust, Mr. Woods is entitled to intervene in a suit where the trustee is a party. *See Genauer v. Downey & Downey, P.A.*, 190 So. 3d 131, 135 (Fla. 4th DCA 2016). In *Genauer*, a former trustee’s attorney sued the successor trustee of a trust to recover attorney fees and damages for malicious prosecution. *Id.* The beneficiaries of the trust moved to intervene arguing that the attorney’s claims for fees were adverse to the beneficiaries’ beneficial interests and that a judgment in favor of the attorney would affect the beneficiaries’ inheritance. *Id.* at 134.



The Fourth District Court of Appeal held that “[t]he beneficiaries of a trust are permitted to so intervene in a suit where the trustee is a party . . . to secure its proper administration and distribution.” *Id.* at 135. Because the beneficiaries could lose a substantial amount of their inheritance from the trust if the former trustee’s attorney were successful in his lawsuit, the beneficiaries’ interest was “of such a direct and immediate character that they will . . . lose by the direct legal operation and effect of the judgment.” *Id.*

Just as the beneficiaries’ interest in *Genauer* was sufficient to grant intervention, Mr. Woods’ beneficial interest in the Trust at issue in this case warrants intervention. If Ms. Herman were to prevail in her claims and be awarded damages against the Trust, Mr. Woods and his children would lose a substantial amount of their beneficial interest in the Trust, the only asset of which is the remainder interest in the Residence. Under the Fourth DCA’s holding in *Genauer*, it would be an abuse of discretion to deny Mr. Woods the right to intervene in this action.

ii. Mr. Woods Is A Necessary Or Proper Party

Rule 1.230 of the Florida Rules of Civil Procedure “may be utilized by an omitted party if the plaintiff has left out a necessary or proper party.” FLA. R. CIV. P. 1.230, *Author’s Comment – 1967*. Mr. Woods is certainly a proper party, if not also an indispensable party. By virtue of being the record owner of a life estate in the Residence and having exclusive possession of the Residence during his lifetime, and by virtue of holding a reversionary right to the Trust’s remainder interest in the Residence, Mr. Woods’ interest in the outcome of this litigation is more than sufficient to warrant intervention and status as a party defendant.

Ms. Herman has alleged that the purported oral tenancy agreement for the Residence extends five years beyond her October 2022 breakup with Mr. Woods. Under the terms of the Trust Agreement, as long as Mr. Woods is alive, he has the exclusive right of possession to the

Residence. Thus, by alleging the existence of an oral tenancy agreement continuing for the next five years, Ms. Herman alleges that she is entitled to possession of the Residence during a time when Mr. Woods is entitled to exclusive possession of the Residence. Mr. Woods' life estate in the Residence alone is sufficient to make him a proper and, indeed, an indispensable party to this action.

Additionally, when the youngest of Mr. Woods' children reaches the age of eighteen years, the Trust's remainder interest reverts to Mr. Woods, at which point the Trust will no longer hold any interest in the Residence and Mr. Woods becomes the exclusive owner of the property. Mr. Woods' youngest child will be eighteen years old in February 2027. As set forth in Ms. Herman's complaint, the five-year term of the alleged oral tenancy agreement extends, at a minimum, to October 2027, meaning that Mr. Woods (assuming he is living) will own all right title and interest to the Residence during the latter part of the alleged tenancy. Mr. Woods' right of reversion as set forth in the Trust Agreement provides a separate and independent reason why Mr. Woods is a proper and indispensable party to this action.

Lastly, the Complaint in this action alleges that Mr. Woods' denial of Ms. Herman's access to the Residence constitutes irreparable harm entitling her to injunctive relief with respect to the Residence. (Compl., ¶¶ 11, 13.) By these allegations, Ms. Herman seeks an order from this Court that the Trust must allow her to remain in the Residence where Mr. Woods resides with his children. Ms. Herman's request for an order allowing her to live in Mr. Woods' residence, simultaneous to Mr. Woods' right to reside in the Residence with his children, clearly implicates Mr. Woods' rights and confirms that the Court cannot adjudicate Ms. Herman's claims without Mr. Woods as a party. Thus, Mr. Woods is an indispensable party and should be permitted to intervene.

**B. Mr. Woods' Intervention Should Be Granted Without Conditions**

When an “intervenor is an indispensable party to the action, the intervenor occupies, in effect, the same status as the main parties to the action, and, accordingly, should have the same privileges.” *Al Packer, Inc. v. First Union Nat. Bank of Fla.*, 650 So. 2d 165, 166 (Fla. 3d DCA 1995) (rule that intervening party takes case as he finds it, in subordination to and in recognition of the propriety of main proceeding, does not apply to intervention of indispensable party). “An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action.” *Fla. Dep't of Revenue v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006).

Mr. Woods, as an indispensable party, has such an interest in this controversy that a final adjudication cannot be made without affecting his interests. Pursuant to the Warranty Deed and Trust Agreement, Mr. Woods has a life estate in and exclusive possession of the Residence during his lifetime. When his youngest child reaches the age of eighteen years, the remainder interest held by the Trust terminates and Mr. Woods becomes the outright owner of the Residence. As an indispensable party, Mr. Woods should occupy “the same status as the main parties to the action.” *Al Packer, Inc.*, 650 So. 2d at 166.

WHEREFORE, Mr. Woods respectfully requests that this Court (i) grant his Motion to Intervene, (ii) grant him full-party status in this matter as a defendant, and (iii) grant him such further relief as the Court deems just and proper.

Respectfully submitted,

**GUNSTER, YOAKLEY & STEWART, P.A.**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 8, 2023 a true and correct copy of the foregoing document was filed and served via e-mail through the Florida Court's E-Filing Portal to all counsel of record.

/s/ J.B. Murray  
John B.T. Murray, Jr.

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