

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Yuri and Alla Kovalevych
Plaintiff,

vs.

Bella's Granite, LLC, V&L Contracting, LLC,
and Vladimir Levchenko, in their individual
capacity

Defendants.

Vladimir Levchenko,
Third Party Plaintiffs

Vs.

HomeTrust Bank and Mortgage Electronic
Registration Systems, Inc.,

Third Party Defendants

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2021- CP- 42- 01189

RECEIVED
Jun 07 2024
SC Court of Appeals

ORDER AND JUDGMENT

This matter came before me for a trial. The Parties that attended the trial include Plaintiffs and Defendants. Third Party Defendant Hometrust Bank and Mortgage Electronic Registration Systems, Inc. entered an agreement as to this matter with all parties, therefore they did attend or present any case to the Court or jury.

Procedural Background

At the conclusion of the evidence, the following claims for Plaintiff were submitted to the jury: Breach of Contract, Breach of Contract Accompanied by Fraud, Negligence, and Unfair Trade Practices Act Violation ("UPTA"). Of Defendants causes of action the following were submitted to the jury: Foreclosure of Mechanics Lien, Breach of Contract and Negligence. The jury returned a verdict in Plaintiffs' favor on its claim for violation of the South Carolina Unfair

Trade Practices Act and awarded Plaintiffs' actual damages in the amount of \$40,000.00. The jury also found that Defendants were not entitled to foreclosure of its mechanics lien. Following the trial, Defendants filed the present motion seeking a JNOV on Plaintiffs' UPTA claim.

Following the trial, the Defendant timely filed a Motion for Judgement Notwithstanding the Verdict and alternatively a New Trial. Defendant also filed an Motion to Amend the Motion for Judgement Notwithstanding the Verdict and alternatively a New Trial, in which it sought to add additional arguments and bases.

Plaintiffs filed a Post Trial Motion seeking an award of attorneys pursuant to the South Carolina Mechanics' Lien Statute codified at S.C. Code Ann § 29-5-10 et al., an additional award of fees pursuant to the South Carolina Unfair Trade Practices Act ("UTPA"), and treble damages under UTPA. Plaintiffs filed a memorandum in opposition to the motion. A hearing was held on the motion. This Court entered judgment against the Defendants on February 8, 2024.

Defendants filed a Motion to Alter or Amend filed on February 14, 2024. Plaintiffs filed an Memorandum in Opposition. The Court rules on the present Motion on the briefs of the Parties.

STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'..." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (S.C. 1991) (citations omitted). The case law interpreting the requirements of Rule 59 further dictate: "[u]nlike the federal courts, this Court does not recognize a "plain error" rule. Rather, it is well settled that a contemporaneous objection must be made to preserve an argument for appellate review." *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (S.C. 1994) (citing, *Taylor v. Bridgebuilders, Inc.*, 275 S.C. 236, 269 S.E.2d 337 (1980) (where no objection made to as to applicability of statute until motion for JNOV, issue not preserved)). In the case of *State v. Beekman*, 405 S.C. 225, 238, 746 S.E.2d 483, 490 (Ct. App.

2013) the Court of Appeals reiterated that “our courts do not apply the plain error rule and, therefore, holding the appellant was not allowed to argue that the cumulative effect of several unpreserved matters deprived him of a fair trial.”

Defendant’s Motion to Alter or Amend the Order and Motion is **DENIED**.

“If a person of ordinary prudence who was engaged in trade or commerce could have ascertained his conduct violated the UTPA, such conduct is willful within the meaning of the statute.” *Wright v. Craft*, 372 S.C. 1, 23-24, 640 S.E.2d 486, 498 (Ct. App. 2006). As previously stated, this Court finds the request for attorneys’ fees, costs, and *treble damages* are reasonable. As stated by Defense Counsel, this Court did not need to set forth specific findings that the act or practice was willful or knowingly in violation of S.C. Code Ann § 39-5-20 in the Order in order to award treble damages. This Court previously found that the act or practice by the Defendant was a willful or knowing violation of § 39-5-20 based on testimony and evidence during the trial.

Defense Counsel quotes the case *Maybank v. BB&T Corp.*, 416 S.C. 541, 563, 787 S.E.2d 498 (2016) as the reason this Court was required to make specific findings in the Order. While the case does recount the Appellant Court’s reason the act or practice was willful or knowing, it does not state treble damages can only be awarded if the reasons are listed in the Order.

Accordingly, Defendant’s Motion to Alter or Amend the Order and Motion is **DENIED**.

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Spartanburg Common Pleas

Case Caption: Alla Kovalevych , plaintiff, et al VS Bella'S Granite, Llc , defendant,
et al
Case Number: 2021CP4201189
Type: Order/Amend

It is so Ordered.

s/ R. Keith Kelly - 2165