

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
)	CIVIL ACTION NO. 2023-CP-23-00347
Nelson & Galbreath, LLC,)	
)	
Plaintiff,)	ORDER ON DEFENDANT
)	AMERICAS SIGNATURE
v.)	HOMES, LLC'S MOTION TO
)	CONSOLIDATE AND
Eric K. Ricardo, Americas Signature)	PLAINTIFF'S MOTION FOR
Homes, LLC and Everardo A. Gutierrez,)	SUMMARY JUDGMENT
)	
Defendants.)	
_____)	

This matter came before the Court for a hearing on October 16, 2024 on Defendant's motion to consolidate this case with Civil Action No. 2023-CP-23-01435 and on Plaintiff's motion for summary judgment. Plaintiff was represented by Bernie Ellis. The remaining Defendant, Americas Signature Homes, LLC was represented by Haley Hubbard. The Court having determined that Plaintiff is entitled to summary judgment, Defendant's motion to consolidate is moot.

FACTS

This case arose from a fraudulent real estate transaction in which Defendant Eric K. Ricardo acquired a deed to real property owned by Americas Signature Homes, LLC by issuing a fraudulent check to Plaintiff, Nelson & Galbreath, LLC, whose attorneys served as the closing attorneys for the transaction. A judgment setting aside the deed to the subject property based upon the fraud was entered in this case on August 16, 2023. In the course of the fraudulent transaction, on December 27, 2022, Plaintiff paid to have the deed recorded, paid the property taxes on the lot in the amount of \$360.42, and disbursed \$17,349.27 to Americas Signature Homes, LLC as the seller's share of the remaining proceeds of the sale. On December 30, 2022, United Community Bank determined that the check from Ricardo to Plaintiff was fraudulent. On January 6, 2023,

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SC Court of Appeals

Plaintiff replenished the funds in its trust account that it had disbursed to Americas Signature Homes, LLC. Plaintiff also asked Americas Signature Homes, LLC to return the disbursed funds in the amount of \$17,349.27.

On January 24, 2023, Plaintiff filed this action to set aside the deed to restore ownership to Americas Signature Homes, LLC and requested to impose a constructive trust on the funds disbursed to Americas Signature Homes, LLC because Americas Signature Homes, LLC refused to return them.

The deed was set aside. The only issue remaining was determining whether the funds in Americas Signature Homes, LLC's possession should be paid to Plaintiff along with reimbursement for the taxes that Plaintiff paid on the property before the deed was set aside.

DISCUSSION

“[A] constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it; as, for example, when money has been paid by accident, mistake of fact, or fraud, or had been acquired through a breach of trust, or the violation of a fiduciary duty, and the like.” *Wolfe v. Wolfe*, 215 S.C. 530, 533, 56 S.E.2d 343, 345-46 (1949).

Americas Signature Homes, LLC obtained money that does not equitably belong to it, and, therefore, it is not entitled to withhold it from Plaintiff, who is beneficially entitled to it. In its answer to the Complaint, Americas Signature Homes, LLC admitted that the check from which its disbursement was paid was fraudulent. (Americas Signature Homes, LLC's Answer, ¶ 14). The fraudulent deed was set aside; therefore, is no basis for Americas Signature Homes, LLC to keep this money.

Americas Signature Homes, LLC argues that Rule 1.15 of the South Carolina Rules of Professional Conduct required Plaintiff, and not Americas Signature Homes, LLC, to reimburse

Plaintiff's trust account for the funds that Plaintiff had disbursed based upon an uncollected check. That is true, and Plaintiff did so, but that does not entitle Americas Signature Homes, LLC to keep the funds it received as a windfall at Plaintiff's expense, or to benefit from Plaintiff's having paid the taxes on Americas Signature Homes, LLC's property.

In its complaint, Plaintiff prayed for a constructive trust to be imposed on the funds that had been disbursed to Plaintiff and for the funds to be returned to Plaintiff once the fraudulent deed had been set aside. Plaintiff also sought reimbursement for the property taxes it had paid on the property ultimately for Americas Signature Homes, LLC's benefit in the amount of \$360.42. In addition, Plaintiff moved to amend its complaint to seek statutory pre-judgment interest on the amounts sought pursuant to S.C. Code Ann. § 34-31-20. Because the amounts sought are ascertainable and have been since this action was filed, that motion is granted.

WHEREFORE, Defendant Americas Signature Homes, LLC is ordered to pay to Plaintiff Nelson & Galbreath, LLC or its successor or assigns, the principal amount of \$17,709.69, which is the amount of the disbursement to Americas Signature Homes, LLC of \$17,349.27 plus the property taxes paid in the amount of \$360.42, plus pre-judgment interest from December 30, 2022 in the amount of \$2,788.00, for a total judgment amount of \$20,497.69.

IT IS SO ORDERED.

[E-signature of Judge Gravely to follow]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-23-00347

Nelson & Galbreath, LLC

Eric K. Ricardo, Americas Signature Homes,
LLC and Everardo A. Gutierrez,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: s/Bernie W. Ellis

Attorney for : [X] Plaintiff [] Defendant
or
[] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[X] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. [] See Page 2 for additional information.
[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [] Other
[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j), SCRPC; [] Bankruptcy; [] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [] Other
[] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [] Affirmed; [] Reversed; [] Remanded; [] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [X] See attached order (formal order to follow) [] Statement of Judgment by the Court: ORDER ON DEFENDANT AMERICAS SIGNATURE HOMES, LLC'S MOTION TO CONSOLIDATE AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

ORDER INFORMATION

This order [X] ends [] does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Row 1: Nelson & Galbreath, LLC, Americas Signature Homes, LLC, \$20,497.69

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master in Equity

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of October, 2024 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of October, 2024 to attorneys of record or to parties (when appearing pro se) as follows:

Weyman C. Carter
P.O. Box 447
Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Greenville Common Pleas

Case Caption: Nelson & Galbreath LLC vs. Eric K Ricardo , defendant, et al

Case Number: 2023CP2300347

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755