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Jan 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-002035
Civil Action No. 2023-CP-23-00347

Nelson & Galbreath, LLC,

Respondent,

v.

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

Of Whom Americas Signature Homes, LLC is the,

Appellant.

MOTION TO DISMISS APPEAL

Bernie Ellis
104 South Main Street, Suite 700
Greenville, SC 29601
(864) 271-4940
Attorney for Respondent

Desa Ballard
Harvey M. Watson, III
Haley Hubbard
226 State Street
West Columbia, SC 29169
(803) 796-9299
Attorney for Appellant

Pursuant to Rules 220(b)(2), 240 and 269, SCACR, Respondent Nelson & Galbreath, LLC
moves to dismiss this appeal on the grounds that it is moot.

BACKGROUND

This matter arose from a fraudulent real estate transaction on or about December 27, 2022, in which a putative buyer, presented by the name of Eric K. Ricardo, acquired title to real property owned by Appellant Americas Signature Homes, LLC (“Appellant”) by issuing a fraudulent check to Respondent, Nelson & Galbreath, LLC (“Respondent”). Respondent served as the closing attorneys for the transaction. Prior to discovery that the check was fraudulent, Respondent paid to have the deed recorded, paid \$360.42 for the 2022 property taxes, and disbursed seller proceeds to Appellant in the amount of \$17,349.27. On December 30, 2022, United Community Bank determined that the check was fraudulent. On January 6, 2023, Respondent transferred funds from its operating account to its trust account to replenish the funds disbursed to Appellant and used to pay the property taxes. Respondent also asked that Appellant return the disbursed funds until title could be restored to Appellant. Appellant refused to return the funds.

On January 24, 2023, Respondent filed this action to set aside the deed to restore title to Appellant and request that a constructive trust be imposed over the funds disbursed to Appellant. An order setting aside the deed to the subject property was entered on August 16, 2023, and Appellant was able to sell the property to a legitimate buyer in March 2024. (See **Exhibit A**, August 16, 2023 Order Setting Aside Deed and **Exhibit B**, Deed dated March 15, 2024).

Meanwhile, on March 22, 2023, Appellant filed a legal malpractice claim in Greenville County against Respondent for the handling of the escrow funds and real estate closing at issue (“the legal malpractice matter”). On August 14, 2024, Appellant filed a Motion to Consolidate this matter with the legal malpractice matter. On October 4, 2024, Respondent filed a Motion for Summary Judgment on the grounds that title had been restored to Appellant, Appellant had sold the property, and that the only remaining issue was determining whether Respondent’s trust funds,

in Appellant's possession since December 27, 2022, should be returned to Respondent, along with reimbursement for the 2022 property taxes and prejudgment interest.

Judge Perry H. Gravely for the 13th Judicial Circuit heard oral arguments October 16, 2024 on Respondent's Motion for Summary Judgment and Appellant's Motion to Consolidate. Judge Gravely entered an Order on October 30, 2024, granting Respondent's Motion for Summary Judgment, ordering that Appellant pay Respondent a judgment in the amount of \$20,497.69, and denying Appellant's Motion to Consolidate as moot because Respondent was entitled to summary judgment. (See **Exhibit C**, Order Granting Summary Judgment to Respondent). On November 12, 2024, Appellant voluntarily paid to Respondent the full judgment of \$20,497.69. Accordingly, a Satisfaction of Judgment was filed on November 13, 2024 with the Greenville County Clerk of Court (See **Exhibit D**, Satisfaction of Judgment). Twenty (20) days later, on December 3, 2024, Appellant filed its Notice of Appeal from the October 30, 2024 Order entering the judgment, even though she had already satisfied the judgment in full.

DISCUSSION

A "satisfaction" is generally defined as "[t]he discharge of an obligation by paying a party what is due to him" or "[t]he performance of a substituted obligation in return for the discharge of the original obligation." Bowers v. Department of Transportation, 360 S.C. 149, 155, 600 S.E.2d 543, 546 (Ct. App. 2004) (quoting BLACK'S LAW DICTIONARY 1342 (6th ed.1990)). Because title was restored, Appellant was able to sell the property, Appellant paid the judgment, and Respondent discharged Appellant's obligation, there remains no further controversy in this matter. It is well-established that an appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001), cert. denied, 535 U.S. 926, 122 S.Ct. 1295, 152 L.Ed.2d 208 (2002).

Additionally, the Court of Appeals need not address a point that is without merit or is frivolous. Rules 220(b)(2) and 269, SCACR. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy because an intervening event renders any grant of relief impossible for the reviewing court. Curtis v. State, 345 S.C. at 568, 549 S.E.2d at 596; see also J&W Corporation of Greenwood v. Broad Creek Marina of Hilton Head, LLC, 441 S.C. 642, 665-66, 896 S.E.2d 328, 341 (Ct. App. 2023) (quoting Sloan v. Friends of Hunley, Inc. (Friends I), 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006)). The restoration of title so that Appellant was able to sell the property and Appellant's payment of the judgment entered resolves the issues in this case so that there is no remaining relief needed by the reviewing court. It is well-established in South Carolina that "there can be only one satisfaction for an injury or wrong." See Garner v. Wyeth Laboratories, Inc., 585 F.Supp. 189, 192 (D.S.C.1984). Since Respondent chose to satisfy the judgment entered, there is no additional satisfaction available for Respondent even if the lower court's decision was reversed.

The case of Sennewald v. Tiger Aviation, Inc., 2005 WL 7083846 decided March 18, 2005, is instructive. Although it is an unpublished opinion, the Court of Appeals dismissed Tiger Aviation, Inc.'s appeal of a judgment entered against it pursuant to Rule 220(b)(2), SCACR, after the Respondent filed a satisfaction of judgment. Likewise, Appellant's appeal should be dismissed because it voluntarily paid and satisfied the judgment rendered against it by the lower court prior to filing its appeal.

CONCLUSION

For the above reasons, Respondent requests that the Court dismiss the appeal.

BURR & FOREMAN LLP

BY: s/Bernie W. Ellis
Bernie W. Ellis
SC Bar No. 64841
E-Mail: bellis@burr.com
Poinsett Plaza
104 South Main Street, Suite 700
Greenville, SC 29601
(864) 271-4940

Attorneys for Respondent Nelson & Galbreath, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	CIVIL ACTION NO. 2023-CP-23-00347
Nelson & Galbreath, LLC,)	
)	
Plaintiff,	)	ORDER SETTING ASIDE DEED
)	
v.)	
)	
Eric K. Ricardo, Americas Signature)	
Homes, LLC and Everardo A. Gutierrez,)	
)	
Defendants.)	
_____)	

Pursuant to Rule 53(b), the above-entitled matter was referred to the Master in Equity by Order of Reference filed on June 15, 2023 to make appropriate findings of fact and conclusions of law with authority to enter a final judgment, and to hear and determine any post-judgment proceedings. Any appeal from this Order is to the South Carolina Supreme Court or to the Court of Appeals, as provided by the South Carolina Appellate Court Rules.

Following the filing of that Order of Reference, this court recused itself from hearing the contested issue between Plaintiff and Defendant Americas Signature Homes, LLC (“ASH”) regarding whether funds disbursed from Plaintiff’s office to ASH, in conjunction with the delivery and recording of a deed from ASH to Defendant Erik K. Ricardo, should be returned to Plaintiff concurrently with the setting aside of the deed. The parties agreed that the issue concerning entitlement to and custody of those funds could be heard separately from the matter regarding setting aside the deed. Therefore, whether and/or when funds received by ASH from Plaintiff should be returned to Plaintiff is not being determined at this time. This order deals strictly with whether the deed at issue in this case should be set aside.

Pursuant to the Order of Reference, a hearing was held on Wednesday, August 9, 2023, which was attended by counsel for the Plaintiff and by counsel for the Defendant ASH.

The Plaintiff herein, Nelson & Galbreath, LLC (“NG”), filed and served its Summons and Complaint on January 24, 2023, seeking, in pertinent part, an Order from the Court to set aside and declare null and void a deed that was recorded as the result of a fraudulent conveyance to the Defendant Eric K. Ricardo (“Ricardo”). The subject deed was recorded on December 27, 2022 in the office of the Register of Deeds for Greenville County in Deed Book 2676 at Page 5775 (the “Deed”).

The Defendant Ricardo was served by Publication, and has failed to answer or file any responsive pleadings and therefore was held in default, as evidenced by the Certificate of Default and of Non-Military Service filed on June 9, 2023. The Defendant Everardo A. Gutierrez (“Gutierrez”) filed an Answer to the Plaintiff’s Complaint on April 28, 2023.

The real property described in the Deed is an unimproved lot located at 119A Woodland Drive, Fountain Inn, South Carolina, Lot D, containing 0.42 acres, more or less on a Plat entitled “Lots A, B, C, D, & E, Woodland Heights Subdivision”, prepared by Rykard Land Surveying, LLC, dated 9/30/21 and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 1416 at Page 50 (the “Lot”). The mortgage held by Gutierrez on the Lot was recorded on May 31, 2022 in the Greenville County Register of Deeds in Mortgage Book 5693, at Page 3451. The Plaintiff agrees that Gutierrez holds a first priority mortgage lien on the Lot and does not contest the validity of the Mortgage; therefore, Gutierrez was dismissed from the case with prejudice, by virtue of a Consent Order filed on June 14, 2023. ASH filed an Answer to the Complaint on May 25, 2023, which sought among other things, that the court set aside the Deed that was fraudulently conveyed to Ricardo.

FINDINGS OF FACT

Having failed to respond to the Complaint and having been held in default, pursuant to SCRCP 55(a), Defendant Ricardo is deemed to have admitted all facts alleged in the Complaint.

Those relevant facts are:

1. Ricardo is the individual who acted as the buyer in the Sale and is the current owner of record of the Lot by virtue of the recording of the Deed in the Greenville County Register of Deeds on December 27, 2022 at Book No. 2676 at Pages 5775-5776.

2. On December 7, 2022 Ricardo and ASH entered into a sales contract in which ASH agreed to sell and Ricardo agreed to buy the Lot (the "Contract").

3. Pursuant to the Contract, Ricardo was required to pay to ASH an agreed upon purchase price for the Lot

4. On or about December 13, 2022 Ricardo delivered to NG a cashier's check purportedly issued by Fifth Third Bank in the amount of \$90,000.

5. At the time that the cashier's check was delivered, the NG was not aware that the check was fraudulent and that no funds were available to pay the purchase price owed to the Seller.

6. On December 27, 2022, after the Sale was closed, the Deed was recorded in the Greenville County Register of Deeds on December 27, 2022 at Book No. 2676 at Pages 5775-5776. All fees associated with the recordation of the Deed were paid by NG.

7. On or about December 27, 2022, NG also paid the property taxes due on the Lot in the amount of \$360.42.

8. On or about December 27, 2022, the NG also paid to ASH, the net proceeds that would have been payable to had the Sale been properly supported by consideration.

9. Shortly after NG had recorded the Deed, NG paid the taxes on the Lot and paid to Seller the net sales proceeds, NG learned that the cashier's check presented by Ricardo was fraudulent and that there were no funds to support the Sale or to pay the purchase price for the Lot.

ASH agreed in its Answer, filed May 25, 2023, that the check used to pay the purchase price for the Lot was fraudulent, and in her prayer for relief, asked that the sales contract between ASH and Ricardo be rescinded and that the Deed be set aside.

CONCLUSIONS OF LAW

Based upon the undisputed facts, this Court finds that the sale contract should be rescinded, and that the Deed should be set aside. As noted above, the remaining issue as to whether and/or when ASH should repay or be otherwise accountable for what would have been its portion of the proceeds of sale should be determined by another judge. Therefore, that issue shall be returned to the court of common pleas for determination.

THEREFORE, it is hereby ORDERED that:

1. The sales contract between ASH and Ricardo for the sale of the Lot is rescinded;
2. The Deed from ASH to Ricardo is hereby set aside and declared null and void;
3. The Defendant Ricardo and all persons claiming under him are forever barred from making any claims to or interests in the Lot;
4. The Mortgage held by Gutierrez is a first lien on the Lot.
5. A copy of this Order shall be filed with the Office of the Register of Deeds for Greenville County, South Carolina and shall be indexed properly in the chain of title for the property.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

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

Case Number: 2023CP2300347

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Exhibit B



2024014824

6 Pgs

DEED Book: DE 2714 Page: 0026 - 0031

March 15, 2024 11:50:52 AM Cons: \$35,500.00

Rec: \$15.00 Cnty Tax: \$39.05 State Tax: \$92.30

E-FILED IN GREENVILLE COUNTY, SC

Timothy J. Hanney

Prepared By:

Blair Cato Pickren Casterline, LLC
406-A East Butler Road
Mauldin, SC 29662

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

GENERAL WARRANTY DEED

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENTS, that **America's Signature Homes LLC**, in the State aforesaid, for and in consideration of the sum of THIRTY-FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$35,500.00), the receipt and sufficiency of which is hereby acknowledged, and subject to all easements and restrictions of record and otherwise affecting the property, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said:

AME Construction LLC

All Grantor's right, title and equitable or legal interest in and to:

See Exhibit "A" attached hereto and made a part hereof.

Greenville County Tax Map No.: 0360.00-02-001.18

Property Address: 119A Woodland Drive, Fountain Inn, SC 29644

Grantee Address: 118 Sentinel Court, Simpsonville, SC 29681

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, and Grantee's heirs and assigns forever.


AND GRANTOR DOES hereby promise, for themselves and Grantor's heirs, successors, assigns, and representatives, to warrant and forever defend the above premises unto the Grantee, Grantee's heirs and assigns, against the Grantor and Grantor's heirs, successors, assigns, and representatives and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of America Ahumada this **1st day of March** and in the year of our Lord, Two Thousand and Twenty-Four (2024) and in the Two Hundred Forty Eighth (248th) year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of:

America's Signature Homes LLC

Witness No. 1

BY: 
America Ahumada
Member

Witness No. 2 (NOTARY)

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF GREENVILLE

S.C. §30-5-30

(EFFECTIVE JANUARY 1, 1995)

The foregoing instrument was acknowledged before me by America Ahumada.

Witness my hand and seal this 1st day of March, 2024.


Notary Public for South Carolina

My Commission Expires: 11.06.2029

J. CHRIS BROWN
Notary Public, State of South Carolina
My Commission Expires 11/6/2029

EXHIBIT "A"

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as Lot D, on a plat of Woodland Heights prepared by Rykard Professional Land Surveying, LLC dated September 30, 2021, and recorded in the office of the Register of Deeds for Greenville County in Plat/Record Book 1416 at Page 50. Reference to said plat is made for a more complete and accurate description.

DERIVATION:

This being the same property conveyed to America's Signature Homes, LLC by deed of A. Greene Holdings, LLC dated May 19, 2022 and recorded May 31, 2022 in Book 2658 at Page 4176 in the Greenville County Register of Deeds Office.

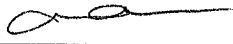
Greenville County Tax Map No.: 0360.00-02-001.18

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

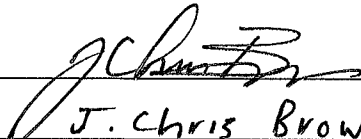
Seller(s) _____

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

America's Signature Homes LLC

BY: 
America Ahumada
Member

Subscribed and sworn to before me this 1 day of March, 2024.

By 
J. Chris Brown
Notary Public



INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership, interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), and lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitutes a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration or transfers from a trust established for the benefit of a religious organization to the religious organization, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceeding;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.



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,

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 : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> 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.
- 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: 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 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.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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

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,	)	SATISFACTION OF JUDGMENT
)	
v.)	
)	
Eric K. Ricardo, Americas Signature)	
Homes, LLC and Everardo A. Gutierrez,)	
)	
Defendants.)	
_____)	

The undersigned judgment creditor, by and through its attorney of record, does hereby release and satisfy its judgment against Americas Signature Homes, LLC in full.

Respectfully submitted this 12th day of November 2024.

s/ Bernie W. Ellis
 Bernie W. Ellis / SC Bar No. 64841
 BURR & FORMAN LLP
 Poinsett Plaza
 104 South Main Street, Suite 700
 Greenville, SC 29601
 Tel. (864) 271-4940
 Fax (864) 271-4015

Attorney for Plaintiff

RECEIVED

Jan 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2023-CP-23-00347

Nelson & Galbreath, LLC,

Respondent,

v.

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

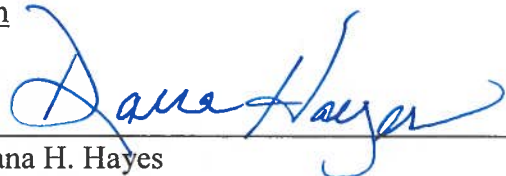
Of Whom Americas Signature Homes, LLC is the,

Appellant.

PROOF OF SERVICE

The undersigned employee of the attorney for the Respondent hereby certify that on the 28th day of January, 2025, I served the Appellant's attorneys with a copy of the **Motion to Dismiss Appeal** by emailing copies of the same as follows:

- Desa Ballard: desab@desaballard.com
- Harvey M. Watson III: harvey@desaballard.com
- Haley Hubbard: haley@desaballard.com



Dana H. Hayes
BURR & FORMAN LLP
Post Office Box 447
Greenville, SC 29602
864.271.4940
dhayes@burr.com

January 29, 2025
Greenville, South Carolina
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