

**RECEIVED**

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

JAN 12 2016  
SC Court of Appeals

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2305113

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 DEC 17 PM 10 23

**Brian Duff vs. Donald Mordas**

**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.
- 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;  Statement of Judgment by the Court;

**NOTICE**

This is a notice to you that an Order of Judgment in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to [cnoblitt@greenvillecounty.org](mailto:cnoblitt@greenvillecounty.org). If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 17th day of December, 2015.

Court Reporter:

**PRESIDING JUDGE -**

Adam Crittenden Bach Eller Tonnsen Bach, LLC  
2201 Augusta Street, Suite 200 Greenville, SC 29605

Cameron Grant Boggs PO Box 65 Greenville, SC  
29602-0065

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA DEPUTY CLERK OF COURT IN THE COURT OF COMMON PLEAS  
GREENVILLE CO. S.C. THIRTEENTH JUDICIAL CIRCUIT  
COUNTY OF GREENVILLE PAUL B. WICKENS, JR.

Brian and Jacqueline Duff, 2015 DEC 17 AM 10:23

Plaintiffs,

vs.

Donald Mordas,

Defendant.

ORDER

C.A. NO. 2013-CP-23-5113

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SC Court of Appeals

This matter came before the Court for jury trial during the October 19, 2015, jury term of court in the Greenville County Court of Common Pleas. Adam C. Bach and J. Trey Odom of the law firm Eller Tonnsen Bach, LLC ("ETB") represented the plaintiffs. Cameron "Bozzie" Boggs of Boggs Law Firm, LLC represented the defendant. The case was tried for four days.

The case concerned breach of a real estate contract. The plaintiffs brought claims for breach of contract and breach of the covenant of good faith and fair dealing. The defendant counterclaimed for breach of contract and breach of contract accompanied by a fraudulent act. During the four day trial, eight witnesses were called to testify and more than 50 exhibits were entered into evidence. During trial, the plaintiffs offered evidence that they suffered approximately Seventeen Thousand Seven Hundred Sixty and 52/100ths (\$17,760.52) Dollars in damages. The plaintiffs also offered evidence that Jacqui Lanier of the Lanier Law Firm, LLC is still holding earnest money deposited by the plaintiffs in the amount of Four Thousand Two Hundred Thirty and 00/100ths (\$4,230.00) Dollars.

At the conclusion of evidence, the Court directed verdict in favor of the plaintiffs as to the defendants' counterclaims. The plaintiffs' claims were sent to the jury. The jury returned a

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verdict in favor of the plaintiffs in the amount Twenty-Five Thousand and 00/100ths (\$25,000.00) Dollars.

Following trial, the defendant made a motion to reduce the amount of the award to the amount of actual damages offered into evidence by the plaintiffs. The defendant also made an oral motion for a new trial based on the Court's refusal to allow evidence concerning reimbursements allegedly received by the plaintiff. The defendant also made both an oral and written motion for judgment notwithstanding the verdict, arguing that the contract could not have been completed on the date of closing because no closing attorney was present and the contract expired at 5 PM on the proposed date of closing.

Counsel for the plaintiffs made a motion for an award of his attorneys and costs and for an award of prejudgment interest. The contract between the parties provides that in the event of litigation concerning the contract, the prevailing party shall be award their reasonable attorneys' fees and costs. The plaintiffs' submitted two affidavits in support of their motion for attorneys' fees and costs, one from attorney Adam C. Bach and another from attorney Jack D. Griffeth, who reviewed ETB's itemized time entries and found them reasonable. The Court also reviewed ETB's time entries *in camera* in order to assess the reasonableness of the amount requested in light of the factors enunciated in Seabrook Island Prop. Owners' Ass'n v. Berger, 616 S.E.2d 431, 434 (S.C. Ct. App. 2005).

Defendants argued that they should be entitled to receive the plaintiffs itemized attorney fee bill for analysis and challenge. Counsel for defendant had asked for the same prior to trial and renewed their request post trial. The plaintiffs argued that the itemized billing statements are an attorney-client communication subject to the attorney-client privilege and protected from disclosure to opposing parties. Counsel for the defendant argued that the plaintiffs' claim of

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attorney-client privilege is waived once the plaintiffs moved for an award of their attorneys' fees from the Court.

BASED UPON THE FOREGOING, THE COURT FINDS AS FOLLOWS:

The defendants' motion for a new trial is denied for the reasons stated in the Court's order at trial preventing the introduction of evidence related to reimbursements allegedly received by the plaintiffs.

The defendants' motion for judgment notwithstanding the verdict is also denied. The Court finds that there was sufficient evidence at trial to show that the failure of a closing attorney to attend closing was caused by the defendant or his agents. Additionally, there was sufficient evidence at trial to show that the defendant was in breach of his obligations under the contract before the day of closing, had communicated to the plaintiff his unwillingness to meet his obligations prior to closing, and there was evidence that the defendant could not have complied with his obligations under the contract even if a closing attorney had appeared at closing.

The defendant's request to review the billing records of ETB is also denied. The Court finds that ETB's billing records are an attorney-client communication protected from disclosure by the attorney-client privilege. The plaintiffs have not waived the privilege by requesting their attorneys-fees. A review by the Court of ETB's billing records *in camera* shows that they contain a detailed narrative of all work performed by ETB on this case and contain information that would give the defendant a window into ETB's handling of the case.

An award of attorneys' fees is left to the discretion of the trial judge. The contract between the parties calls for an award of attorneys' fees to the prevailing party. Upon consideration of the affidavits of Adam C. Bach and Jack D. Griffeth, the time entries and

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billing records of ETB reviewed *in camera*, and in consideration of the factors set forth in Seabrook, the Court finds that the attorneys' fees and costs sought by the plaintiffs are reasonable and awards the plaintiffs their attorneys' fees in the amount of Thirty-Five Thousand Four Hundred Ninety-Two and 00/100ths (\$35,492.00) Dollars and costs in the amount of Three Thousand Two Hundred Seventy-Seven and 64/100ths (\$3,277.64) Dollars.

The verdict against the defendant shall be reduced to the amount of damages shown by the plaintiffs, Seventeen Thousand Seven Hundred Sixty and 52/100ths (\$17,760.52) Dollars.

The Court finds that an award of prejudgment interest is not appropriate and denies the plaintiffs' request for an award of prejudgment interest.

The plaintiffs are also entitled to a return of their earnest money pursuant to the terms of the contract.

THEREFORE, IT IS ORDERED:

1. The defendant's post-trial motions are denied.
2. The plaintiff's request for prejudgment interest is denied.
3. Judgment against the defendant, Donald Mordas, shall be entered in the amount of Seventeen Thousand Seven Hundred Sixty and 52/100ths (\$17,760.52) Dollars, plus attorneys fees in the amount of Thirty-Five Thousand Four Hundred Ninety-Two and 00/100ths (\$35,492.00) Dollars, plus costs in the amount of Three Thousand Two Hundred Seventy-Seven and 64/100ths (\$3,277.64) Dollars for a total judgment of **Fifty-Six Thousand Four Hundred Sixty-Seven and 16/100ths (\$56,467.16) Dollars.**

4. The plaintiffs are directed to file the ETB billing records considered by the Court *in camera* under seal. The Court is directing the filing to be under seal because the records contain communications between ETB and the plaintiffs that are protected from disclosure by

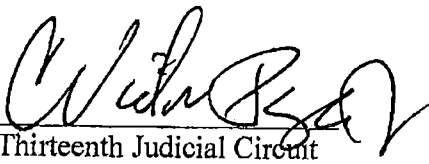


the attorney-client privilege and maintaining the confidentiality of these communications protects important public policy interests.

5. Attorney Jacqui Lanier is directed to release and pay the earnest money held by her to the plaintiffs upon receipt of this order.

AND IT IS SO ORDERED.

12/16/15

  
\_\_\_\_\_  
Judge, Thirteenth Judicial Circuit

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