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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Alfred and Mary Jenkins,)
)
Plaintiffs,)

Case No. 2016-CP-46-1001

v.)

ORDER

Ferrara-Buist Company, LLC, d/b/a)
Custom Crafted Homes,)
)
Defendant.)

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DAVID HAMILTON
C.C.P.S. & SS
YORK COUNTY, SC

This matter came before the Court on November 17, 2016, upon Plaintiff's motion for partial summary judgment. Herbert W. Hamilton appeared for Plaintiffs. Paul B. Ferrara appeared for the Defendant. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

This action arises out of a contract between the parties for the construction of a house for Plaintiffs by Defendant, a builder. Title to the house and land during construction remained in Defendant. The house and lot were to be conveyed to Plaintiffs upon final completion. The original contract price was \$741,095.00. After all change orders, the final contract price was \$881,868.63, as indicated on Defendant's last pay application.

Although the contract does not specify a procedure for payment to Defendant, Defendant sent periodic pay applications to Plaintiffs. With the exception of the last pay application, Plaintiffs paid all pay applications in full in a timely manner. At the time the contract was terminated, Plaintiffs had paid \$643,760.70 to Defendant. Plaintiffs made all payments to Defendant from personal funds. There is no mortgage lien on the property.

The final pay application, dated November 11, 2016, and covering a period ending November 20, 2016, was submitted by Defendant to Plaintiffs. Following receipt of the pay application, the relationship between the parties deteriorated, and they were unable to reconcile their differences. Each side contends that the other breached the contract, and that, therefore, that party was entitled to terminate the contract.

Upon termination of the contract, Defendant put the house on the market for sale.

Defendant secured a contract for the sale of the house, and the transaction was consummated. The sales price was \$850,000.00.

The Complaint in this action was filed on April 1, 2016. The Complaint contains several causes of action, one of which is an application for an equitable lien on the house by reason of the payments by Plaintiffs to Defendant. Plaintiffs filed a Lis Pendens to protect their interests. In order to allow the sale of the house to go forward, the parties agreed to place \$663,395.37 from the proceeds of the sale of the house in trust with the Clerk of Court for York County. This fund represents the payments made to Defendant by the Jenkins, plus the value of appliances and a ceiling fan purchased by Jenkins, which were installed in the house.

DISCUSSION

The case is before the Court upon Plaintiffs' motion for the release of the funds held by the Clerk of Court to Plaintiffs. Although Plaintiffs' motion is titled as a motion for partial summary judgment, it is in essence simply a motion seeking the exercise of the equitable powers of the Court to place the parties in the position they would have been in as a result of a sale of the house by Plaintiffs, without affecting any party's claim for breach of contract.

Defendant has effectively been paid in full for its work, except for the damages it claims for breach of contract. Defendant does not claim, and I find and conclude that it does not possess, any legal or equitable lien on the proceeds of the sale representing the money already paid to Defendant by Plaintiffs. Plaintiffs contend that Defendant has already been paid \$643,760.70, and that if Defendant is allowed to retain the entire proceeds of the sale of the house, it will constitute double payment.

After consideration of the arguments of counsel and the uncontested affidavits submitted by the parties, I find and conclude that, as a result of the sale of the house, Defendant has been paid in full the contract price based on the parties' contract, except for \$31,861.13.¹ Defendant argues that a substantial portion of the money held by the Clerk of Court should be retained to reimburse Defendant for consequential damages it claims to have incurred. However, I find and conclude that Defendant is not entitled to the establishment of a fund to secure collection of additional damages it may be awarded through a trial of the case. Defendant simply does not have a legal or equitable basis for the maintaining of such a fund.

¹ The last pay application submitted by Defendant shows a total contract price of \$881,868.13. The contract sale price was \$850,000.00, leaving a difference of \$31,868.13 that Defendant claims is due it. Further, Defendant has actually received \$160,588.96 in proceeds from the closing of the sale. This represents the sale price, less Defendant's share of the closing costs, and the funds on deposit with the Clerk of Court.

J.M.
#2

Both Plaintiffs and Defendant claim damages for breach of contract. There is nothing in their contract that would give rise to, or support, a claim of a lien on any proceeds of the sale of the house. The funds deposited with the Court were the result of an agreement entered into in order that all parties would receive the benefit of a sale of the house. That agreement did not establish a legal or equitable lien on the deposited proceeds.

Thus, I find and conclude that Plaintiffs are entitled to be paid the entire sum on deposit with the Clerk of Court.²

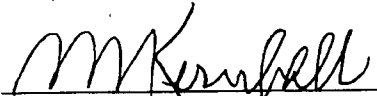
By ruling in the manner described, the Court is not ruling upon, or granting judgment of any kind, as to the claims of either party, and makes no determination as to any entitlement to damages due either party. This order simply recognizes and determines that, upon receipt of payment by Plaintiffs in the amount of \$643,760.70, and receiving the same amount at the closing of the sale of the house, Defendant has received payment in full under the parties' contract, except for \$31,861.13.³ Defendant has no claim that needs to be protected, and has no right at law or in equity for security for its claim for damages in this action.

CONCLUSION

Based on the findings and conclusions herein, it is ordered that the Clerk of Court for York County be authorized and directed to disburse to Plaintiffs the entirety of funds paid in to Court in this matter, namely \$663,395.37.

AND IT IS SO ORDERED.

November 23, 2016


S. Jackson Kimball
Special Circuit Court Judge
York County

² I recognize that my ruling at the hearing was that a portion of the proceeds on deposit representing the difference between the amount due for the house under the parties' contract and the sale price to the third party, namely, \$31,861.13, would be retained by the Clerk of Court. However, upon consideration of the record, and further review of the exhibits submitted by the parties, I conclude that there is no sustainable argument that Defendant should be entitled to be secured by those funds, and no sustainable argument that Plaintiffs should be deprived of them, pending a resolution of this dispute.

³ Defendant used, or had the use of, the money paid by Plaintiffs to pay the costs of construction as work on the house proceeded. It has no independent claim to the money on deposit with the Clerk of Court.