

IN THE SUPERIOR COURT OF COLUMBIA COUNTY  
STATE OF GEORGIA

CLERK OF SUPERIOR COURT  
JUVENILE COURT  
FILED FOR REC'D

2018 MAY 11 PM 2:04

AUGUSTA CUSTOM CONSTRUCTION, LLC, )  
Plaintiff, )

GRADY MASON CLERK  
COLUMBIA COUNTY GEORGIA

vs. )

Civil Action No.:  
2015CV0932

JOHN S. ROWE, )  
First Defendant, )

and )

CHARLOTTE A. ROWE )  
Second Defendant. )

**ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEY  
FEES PURSUANT TO O.C.G.A. § 9-15-14(b) AND  
AWARDING JUDGMENT AGAINST THE PLAINTIFF**

The Defendants' Motion Pursuant to O.C.G.A. § 9-15-14(b) having come on for a hearing on April 30, 2018, the Honorable James G. Blanchard, Jr. Judge presiding. A hearing was held upon the Motion on April 30, 2018. Present was Plaintiff's representative, Jimmy Raborn, Jr., but no attorney at law was present on behalf of the Plaintiff. The Defendants were present and represented by their counsel of record, J. Andrew Tisdale, the Honorable James G. Blanchard, Jr. Judge presiding. Based upon a review of the pleadings, evidence presented and argument of counsel, the Court enters the following order upon the Defendant's Motion:

**STATEMENT OF FACTS**

In this case, Plaintiff brought claims for breach of contract, breach of fiduciary duty and conversion for Defendants' alleged

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failure to pay a \$24,725.00 contract price. Meanwhile, Defendants brought claims for breach of contract, negligent construction and negligence *per se*, alleging that the workmanship was well below industry standards and Plaintiff violated Georgia law in entering into and performing a contract without licensure or permit.

On or about October 1, 2015, the parties signed a written agreement for Plaintiff to "complete internal repairs and construction due to rotten wood and structural damage in areas due to a leak that was discovered at [Defendants'] residence while roofing repairs were completed." (*Complaint*, ¶ 6). The total contract price was \$24,735.00, and the line items were not broken out by price. In other words, a single lump-sum price was quoted in consideration for all contract work. (*Complaint*, ¶ 8; *Defendants' Ex. 7*). But the Plaintiff never held a state-issued license as a residential contractor, and his lack of licensure to perform the work contained in the subject contract acted as an absolute bar to his claims. Pursuant to Georgia law:

As a matter of public policy, any contract entered into on or after July 1, 2008, for the performance of work for which a residential contractor or general contractor license is required by this chapter and not otherwise exempted under this chapter and which is between an owner and a contractor who does not have a valid and current license required for such work in accordance with this chapter shall be unenforceable in law or in equity by the unlicensed contractor. ...

O.C.G.A. § 43-41-17(b). The subject contract required Plaintiff to be licensed, which it was not, and thus O.C.G.A. § 43-41-17(b)

completely precluded Plaintiff's claims.

Plaintiff's claims for breach of fiduciary duty and conversion were likewise unavailing. Permitting such claims would undermine the entire purpose of O.C.G.A. § 43-41-17(b) which broadly prohibits any claim "in law or in equity." Moreover, a claim for conversion in this context would fail anyway because Plaintiff's claim is for fungible, intangible property - money. See Taylor v. Powertel, Inc., 250 Ga.App. 356, 551 S.E.2d 765 (2001). Here, the obligation that Defendant alleges against Plaintiff is simply for the \$24,725.00 contract price, and that obligation (if it existed at all) could have been fulfilled from any funds. The parties never specifically agreed upon the source of those funds. Therefore, all of Plaintiff's claims failed as a matter of law and this Court granted partial summary judgment in favor of the Defendants upon all of the Plaintiff's claims on March 10, 2017.

#### **LEGAL ANALYSIS**

O.C.G.A. §9-15-14(b) authorizes an award of reasonable and necessary attorney fees upon a finding that an action or any part thereof lacked substantial justification, was interposed for delay or harassment, or an attorney or party unnecessarily expanded the proceeding by other improper conduct. "The damages authorized by § 9-15-14 'are intended not merely to punish or deter litigation abuses but also to recompense litigants who are forced to expend their resources in contending with (abusive litigation).'" Abt v.

Abt 289 Ga. 166, 709 S.E.2d 806 (2011) citing to O'Keefe v. O'Keefe, 285 Ga. 805, 806, 684 S.E.2d 266 (2009).

The term "lacked substantial justification" in subsection (b) of O.C.G.A. § 9-15-14 means "substantially frivolous, substantially groundless or substantially vexatious". "When a statute contains clear and unambiguous language, such language will be given its plain meaning and will be applied accordingly." McKinney v. Fuciarelli, 298 Ga. 873, 874 785 S.E.2d 861, 862 (2016) citing to Opensided MRI of Atlanta, LLC v. Chandler, 287 Ga. 406, 407, 696 S.E.2d 640 (2010). "The plain meaning of words can be found in 'their ordinary, logical and common meanings', unless a clear indication of some other meaning appears. McKinney at 874 citing to Judicial Counsel of Ga. v. Brown & Gallo, 288 Ga. 294, 297, 702 S.E.2d 894 (2010). See also Daniel Corp. v. Reed, 291 Ga. 596, 597, 732 S.E.2d 61 (2012).

'Frivolous' as defined by Merriam-Webster dictionary means "a) of little weight or importance, b) having no sound basis (as in law or fact)." (Merriam-Webster.com. Accessed December 10, 2016. <https://www.merriam-webster.com/dictionary>) 'Groundless' as defined by Merriam-Webster means "having no ground or foundation". Id. 'Vexatious' as defined by Merriam-Webster means "a) causing vexation (harassment), b) intended to harass." Id. Finally, 'substantial' as defined by Merriam-Webster means "a) consisting or relating to substance, b) not imaginary or illusory,

c)important, essential." The third definition is "considerable in quantity: considerably great". Id. Thus, giving these words their 'ordinary, logical and common meanings', the award of attorney fees under O.C.G.A. § 9-15-14(b) for bringing an action that lacked substantial justification may be made by the Court if the Court determines that the action was unsupported by evidence that was important, essential, or considerable in quantity, lacked evidence that had weight or importance, lacked evidence that had ground or foundation, or as a consequence of such lack of evidence, has the natural effect of harassment.

#### **FINDINGS AND ORDER**


Based upon the above and foregoing, this Court **FINDS** that the claims of the Plaintiff seeking payment for services that required a state issued license to perform, which license the Plaintiff never held, were unsupported by any substantial or credible evidence and were substantially frivolous, substantially groundless and substantially vexatious. Accordingly, the claims of the Plaintiff lacked substantial justification.

This Court further **FINDS** that the purposes of O.C.G.A. § 9-15-14 would be served by granting the Defendants' Motion, that is, both to deter the Plaintiff from future filings of similar claims lacking substantial justification, as well as to recompense the Defendants for those substantial monies spent defending against the Plaintiff's claims in this civil action.

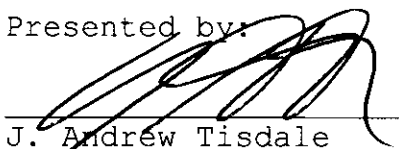
This Court further **FINDS** that the Defendants' counsel's hourly rate, his associate's hourly rate and his legal staff's hourly rate are reasonable, that the total hours devoted to the defense of the Plaintiff's claims were reasonable and necessary in defense of the Plaintiff's claims, and that the expenses incurred were reasonable and necessary in defense of the Plaintiff's claims.

**ACCORDINGLY**, the Defendants' Motion Pursuant to O.C.G.A. § 9-15-14(b) be and the same is hereby **GRANTED**. The Defendants are granted judgment against the Plaintiff for their reasonable attorney fees and expenses in the amount of \$12,662.54. Said judgement shall gather interest at the legal rate.

**SO ORDERED** this 7<sup>th</sup> day of May, 2018.

  
HONORABLE JAMES G. BLANCHARD, JR.  
JUDGE, SUPERIOR COURT OF COLUMBIA COUNTY  
AUGUSTA JUDICIAL CIRCUIT

Presented by:

  
J. Andrew Tisdale  
Attorney for the Defendants  
Georgia Bar No. 712955  
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**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the foregoing ***Order Granting Defendants' Motion for Attorney Fees Pursuant to O.C.G.A. § 9-15-14(b) and Awarding Judgment Against the Plaintiff*** upon the following by way of U.S. Mail in a properly addressed envelope with adequate postage affixed for safe and proper delivery to the following:

Augusta Custom Construction, LLC.  
615-C East Robinson Avenue  
Grovetown, GA 30813

Augusta Custom Construction, LLC.  
537 Martin Lane  
Augusta, GA 30909

This 11 day of May, 2018.



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