

APPENDIX

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APPENDIX A

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DERRICK JACKSON,)
Plaintiff,)
)
v.) Case No. 2023CV375542
ARTHUR MCCRACKEN)
JULIE MCCRACKEN,)
Defendants.)

**ORDER ON DEFENDANTS' MOTION FOR
ATTORNEY'S FEES**

The Court having granted the Defendants' Motion for Summary Judgment on all remaining issues, and the Defendants having filed a Motion for Attorney's fees under O.C.G.A. § 9-15-14 (a) and (b), and the Court having reviewed the billing of the Defendants' attorneys, the file, and the law finds as follows:

THE CASE

1.

On May 17, 2020, the Defendants, Arthur McCracken and Julie McCracken leased their home and property located at 955 Tiverton Lake, Johns Creek, Fulton County, Georgia to the Plaintiff Derrick Jackson. On that same date the Plaintiff, Derrick Jackson, executed an Option to purchase the said

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property under certain terms and conditions. The option to purchase could not be exercised until May 16, 2025. See Exhibit C and D to Plaintiff's Third Amended Complaint.

2.

The Lease and Option to Purchase contained provisions that interrelated the two agreements including: "Any termination of this lease prior to the exercise of the Option to Purchase will automatically terminate the Purchase agreement." Additionally, Paragraph 22 (E) of the lease states: "Entire Agreement: This lease and any attached addenda and exhibits thereto shall constitute the entire agreement between the parties and no verbal statement, promise, inducement, or amendment not reduced to writing and signed by the parties shall be binding."

3.

The Plaintiff became behind in his payments under the lease and dispossessory litigation required that the Plaintiff make the payments into the registry of the Court. The Plaintiff became late in his payments into the Court's registry and the Dispossessory action proceeded.

4.

On October 24, 2022, the Plaintiff filed a Bankruptcy Petition in the Bankruptcy Court for the Northern District of Georgia, Case Number 22-58536, 2256981.

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The Lease provided specifically in paragraph 18 (A) and subparagraph (A)(2.) as follows:

18. Default Generally: Tenant shall be in default of this lease upon the occurrence of any of the following:

2. Tenant files a Petition in Bankruptcy (in which case this lease shall automatically terminate, and Tenant shall immediately vacate the Premises leaving it in the same condition it was in on the date of possession, normal wear and tear excepted).

5.

Under the paragraph 18 (B) of the lease, it states: “ ... Any termination of this lease upon any default of the Tenant or at any time prior to the exercise of the option to purchase, the Property will automatically terminate the Purchase agreement...”

The Option to Purchase could not be exercised until May, 2025.

6.

Therefore, the filing of a Petition for Bankruptcy automatically terminated the Lease and the Option to Purchase and the Plaintiff had absolutely no further interest in the property.

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7.

While not binding on this Court, the Bankruptcy Court explained to the Plaintiff that he had no interest in the property at all and that the Lease and Option to Purchase were extinguished.

8.

The Plaintiff sent an e-mail to the Defendants telling them that this was not the end, and he would follow them for life.

9.

On January 26, 2023, the Defendant was evicted from the property.

10.

Despite the fact that the Plaintiff had no legal interest in 955 Tiverton Lake, Johns Creek, Fulton County, Georgia, on January 31, 2023, the Plaintiff filed this action against these Defendants and others for Quiet Title, Breach of Contract, Specific Performance, and attorney's fees seeking relief against the Tiverton Road property and the Defendants, Arthur McCracken and Julie McCracken.

11.

The Plaintiff filed a Motion for a Special Master, and, after one was appointed, moved to set aside the

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Special Master and withdrew his request for the Special Master.

12.

The Plaintiff then filed an Anti-SLAPP Motion. The Defendants had responded to remove the Lis Pendens from the Public record and Plaintiff filed the Anti-SLAPP Motion claiming it was an issue of public interest and that therefore the Anti-SLAPP Act applied. The Court denied the Motion for Anti-SLAPP and the Plaintiff has appealed-Appeal Number A24A0114.

13.

The Defendants, McCracken, filed a Motion for a TRO, Preliminary Injunction, and Permanent Injunction which were denied by the Court.

14.

On May 30, 2023, the Plaintiff amended his complaint to seek additional relief by adding counts for Promissory Estoppel, Unjust Enrichment, and Fraud and Deceit.

15.

After dismissing parts of his previous petition, on July 20, 2023, the Plaintiff filed his Second Amended Complaint on the grounds of Quiet Title, Breach of Contract, Specific Performance, Attorney's Fees,

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Promissory Estoppel, Unjust Enrichment, and Fraud and Deceit.

16.

The Defendants Arthur McCracken and Julia McCracken filed a Motion for Summary Judgment on all counts. Then the Plaintiff filed his third amendment to his complaint, striking the count for Quiet Title. All other Defendants had been dismissed.

17.

The Court granted the Defendants' Motion for Summary Judgment on September 8, 2023, a copy of that order is attached hereto.

18.

The Plaintiff filed a Notice of Appeal on October 6, 2023 – Court of Appeals Case Number A24A0653.

19.

The Defendants timely filed the Motion for Attorney's Fees which is the subject of this order. An affidavit was filed setting out all the necessary facts, and the time sheets were attached. Counsel for the Defendants testified as to their truthfulness in open Court. The fact of the attorney's fees was legally established.

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THE LAW

20.

In *Yost v. Torok*, 256 Ga. 92 (1986), the Court held that litigants are entitled to be recompensed when they are forced to expend their resources in contending with claims, defenses, and other positions in respect to which there exists such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a Court would accept the asserted claim, defense or other position.

21.

From this case O.C.G.A. § 9-15-14 (a) and (b) were created and passed. O.C.G.A. § 9-15-14 (a) quoted the language from *Yost*, *supra*, and added the following:

Attorney's fees and expenses so awarded shall be assessed against the party asserting such a claim, defense, or other position, or against that party's attorney, or against both in such manner as is just.

22.

Therefore, the Defendants are entitled to an award of attorney's fees against the Plaintiff, and his attorney under O.C.G.A. § 9-15-14. The Plaintiff and his attorney knew that the Plaintiff had no interest whatsoever in the property involved as it had been extinguished by the Plaintiffs own acts prior to the filing of this lawsuit.

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23.

Under O.C.G.A. §9-15-14 (b) the Court may award attorney's fees if it: "... finds that an attorney or party brought or defended an action or any part thereof, that lacked substantial justification ..." O.C.G.A. §9-15-14 (b) proceeds by clarifying "lacked substantial justification" as "substantially frivolous, substantially groundless or substantially vexatious." The Defendants are entitled to attorney's fees against the Plaintiff and his attorney under this provision also.

24.

Attorney's fees are awarded where the action is brought without sufficient ground for winning purely to cause annoyance to and oppression to the other party. *McNair v. McNair*, 343 Ga. App. 41. The Plaintiff had threatened the Defendants with lifelong torment before this action was filed.

25.

In *CB Lending, LLC v. Strategic Prop. Consulting Grp., C*, 353 Ga. App. 114, The award of attorney's fees against the party and the attorney was affirmed. The creditor's action to quiet title was found to be in bad faith and was stubbornly litigious.

26.

In *Belcher v. Belcher*, 346 Ga. App. 141 (2018), the attorneys' fees against the party and the attorney

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were approved because the Petition filed was “frivolous at best, malicious at worst”.

27.

Belcher v. Belcher, supra, goes on to say that the fees awarded must be related to the sanctionable conduct and that the Court must review the application for fees to find those that are recoverable. It must limit the fees to those caused by sanctionable conduct.

28.

When this action was filed, any of the Plaintiffs interest in the land involved was completely extinguished. There existed such a complete absence of any justiciable issue of law and fact that it could not be reasonably believed that the Plaintiff could prevail. It lacked substantial justification from the beginning.

29.

The Plaintiff brought Count One for Quiet title. While he eventually dismissed it, the Defendants were required to litigate it until then. An action for Quiet title can only be brought by a party having a title to land that is being challenged. In Smith v. Georgia Kaolin Co., 269 Ga. 4 75 (1998), the Court held that Smith failed to prove ownership of the disputed property and action for Quiet Title would not lie. Here, the Plaintiff had no title to the land in this case. The Plaintiff knew that before he filed this action.

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30.

Count Two sets out a claim for Breach of Contract and Specific Performance, there is no viable contract and thus there can be no specific performance of it. This Plaintiff failed to make the payments under the lease and filed Bankruptcy. The contract was over prior to the filing of the lawsuit.

31.

The Plaintiff asks for attorney's fees. Before a Court can award attorney's fees the Plaintiff must prevail on the underlying claims. He has not, and he has known he could not before he filed this lawsuit.

32.

Counts Four, Five, and Six were brought on the grounds of Promissory Estoppel, Unjust Enrichment, and Fraud and Deceit. The Plaintiff now claims that the Defendants made certain statements to them, outside the written documents whereby they promised certain financial and other benefits. The Defendants deny this, but the Court looks at the Plaintiffs Complaint only.

33.

Paragraph 22(E) of the lease states:

Entire Agreement: This lease and any attached addenda and exhibits thereto shall constitute the entire agreement between the parties and

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no verbal statement, promise, inducement or amendment not reduced to writing and signed by both parties shall be binding.

Again, that language was in the lease that the Plaintiff signed before this lawsuit was brought.

34.

Paragraph 17(C) of the Option to Purchase states:

Binding Effect, Entire agreement, Modification and Assignment:

This agreement constitutes the sole and entire agreement between all the parties, supersedes all of their prior written and verbal agreements, and shall be binding upon the parties and their successors, heirs, and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding on any party hereto ...

35.

There can be no claim for unjust enrichment when there is an express contract. *Lay v. Clipp r Petroleum, inc.*, 319 Ga. App. 410 (2012). The Plaintiff agreed to all the terms of the Lease and Option to Purchase, and he cannot now complain about the terms. He agreed to them.

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36.

The Plaintiff made a claim for Fraud saying statements were made outside the agreement. The Plaintiff signed the Lease and Option to Purchase, and he knew that only what was contained therein was the agreement.

THE ATTORNEY'S FEES

37.

The Court has looked at the attorney's fees bills, and affidavit filed before the hearing in this matter and considered the testimony given in open Court. The Court has declined to award the fees earned for the Motion for TRO, Preliminary Injunction, and Permanent Injunction as they were not granted and not relevant to this case. They were not sanctionable conduct by the Plaintiff. The Court also deleted the fees charged for the Appeals as those are not recoverable in this Court. The Court finds that the remaining fees are fully authorized by O.C.G.A. § 9-15-14(a) and (b).

38.

The Court awards the Defendants Arthur McCracken and Julie McCracken attorney's fees against the Plaintiff Derrick Jackson and his Attorney Matthew D. McMaster in the sum of One Hundred and Sixteen-Thousand, One Hundred and Forty-Seven dollars and Twenty-Three cents, (\$116,147.23). A judgment is therefore granted in favor of the Defendants and

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against the Plaintiff and Counsel for the Plaintiff,
Matthew D. McMaster, in the amount of One Hundred
and Sixteen Thousand, One Hundred and Forty-Seven
dollars and Twenty-Three cents, (\$116,147.23).

HODGES and WATKINS, JJ.

So ORDERED this 27 December, 2023: 00:00:00

physically received in our clerk's office on the last
day of December/s/ Adele Grubbs and the day of
https://www.ga/ ADELE GRUBBS

Senior Judge, State of Georgia
Sitting by Appointment: May 9, 2023
Superior Court of Fulton County, GA
RECORDED

In the Court of Appeals of Georgia

20241687 JACKSON v. MCCracken et al.
20241688 MCMASTER v. MCCracken et al.

HODGES, Judge.

In these cases, the following circumstances exist and
are dispositive of the
appeals:

- (1) The evidence supports the judgment;
- (2) No reversible error of law appears, and an opinion
would have no precedential value;
- (3) The judgment of the court below adequately
explains the decision; and
- (4) The issues are controlled adversely to the
appellants for the reasons and authority given in the
appellees' briefs.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Doyle, P. J., and Watkins, J., concur.

APPENDIX C

SUPREME COURT OF GEORGIA

Case No. S25C0859

June 10, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**MATTHEW D. MCMASTER v. ARTHUR
MCCRACKEN et al.**

The Supreme Court today denied the petition for certiorari in this case.

*Peterson, CJ, Warren, PJ, and Bethel,
Ellington, McMillian, LaGrua, Colvin, and Pinson,
JJ, concur.*

Court of Appeals Case No. A24A1688 & A24A1687