

12-1-2011

Order on Motion for Summary Judgment and Entry of Final Judgment (BEALE))

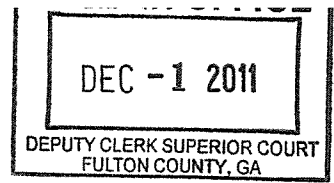
Melvin K. Westmoreland
Superior Court of Fullton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

SCOTT A. BEALE,)
)
Plaintiff,)
)
vs.)
)
RODERICK O'SHEA,)
)
Defendant.)

CIVIL ACTION
FILE NO. 2010 -CV-180216

**ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AS TO COUNTS 1 & 3 AND ENTRY OF FINAL JUDGMENT**

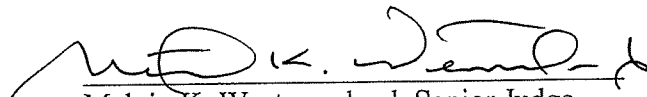
On November 29, 2011, counsel appeared before the Court to present oral argument on Defendant's Motion for Summary Judgment as to Counts One & Three as a Consequence of Final Judgment on Count Two. After having considered the motion, the briefs submitted on the motion, the oral arguments presented by counsel, and all other matters of record, the Court finds Beale pled Count One (Fraud), Count Two (Breach of Contract) and Count Three (Breach of Fiduciary Duty) in the alternative. On October 12, 2011, at the request of Beale, this Court entered final judgment, pursuant to O.C.G.A. § 9-11-54(b), on his breach of contract claim by executing the proposed order which Beale submitted. Beale elected his remedy and is not entitled to pursue his claims for fraud and breach of fiduciary duty, which could otherwise result in a double or triple recovery. Accordingly, summary judgment is GRANTED in favor of O'Shea as to Counts One and Three.

As to Beale's contention that he is still entitled to pursue an award of attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11 arising from Count Two, this Court finds the claim for breach of contract has been fully adjudicated and the only award of damages resulting from Count Two was set forth in the October 12, 2011 Final Judgment certified

pursuant to O.C.G.A. § 9-11-54(b). Accordingly, because the Final Judgment was the ultimate disposition of the breach of contract claim, Beale is precluded from seeking attorneys' fees and other expenses of litigation pursuant to O.C.G.A. § 13-6-11 as an additional element of damages for breach of contract.

Wherefore, no claims remain to be tried, and the Court enters this Order as a FINAL JUDGMENT dismissing the case in its entirety and directs the Clerk to make an entry consistent with this Order.

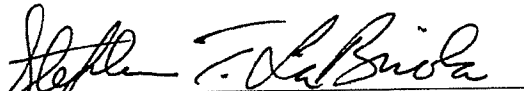
So ORDERED this 30th day of November, 2011.



Melvin K. Westmoreland, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Presented by:

FELLOWS LABRIOLA LLP



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CERTIFICATE OF SERVICE

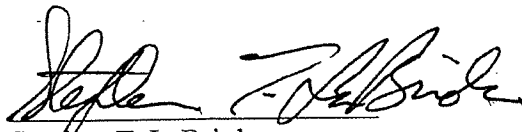
I hereby certify that I have this day served a true and correct copy of the foregoing pleading upon all counsel of record in this matter by e-mail and U.S. Mail with sufficient postage thereon to ensure delivery, addressed as follows:

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This 29th day of November, 2011.


Stephen T. LaBriola