

STATE OF ALABAMA)
)
SHELBY COUNTY) NOTICE OF LIS PENDENS

TO THE JUDGE OF PROBATE OF SHELBY COUNTY:

You are hereby notified that on the 10th day of August, 2001, suit was begun by the undersigned in the Circuit Court of Jefferson County, Alabama, and that the following are the names of all parties to said suit:

Name of Plaintiff:

AmSouth Bank

Name of Defendants:

Alan S. Hill, an individual; Hill Building Co., L.L.C., an Alabama limited liability company; and Hill Development, L.L.C., an Alabama limited liability company.

In said suit, the following described real estate parcel, situated in Shelby County, Alabama, is involved, to-wit:

“Parcel I”: From a 1" pipe at the accepted SW corner of the SW 1/4 - SE 1/4 of SEction 33, Township 19 South, Range 1 West, being the point of beginning of herein described parcel of land, run thence North along the accepted West boundary of said SW 1/4 - SE 1/4 a distance of 778.87 feet to a 1: crimped pipe; thence turn 89°55'04" right and run 589.98 feet to a 1" crimped pipe; thence turn 90°05'12" right and run 490.56 feet to a ½" pipe on the Northwesterly boundary of Shelby County Highway #338 (80' ROW); thence turn 49°08'05" right and run 441.11 feet along said highway boundary to a 1" crimped pipe on the accepted South boundary of the aforementioned SW 1/4 - SE 1/4; thence turn 40°46'30" right and run 256.52 feet to the point of beginning of herein described parcel of land, situated in the SW 1/4 - SE 1/4 of Section 33, Township 19 South, Range 1 West, Shelby County, Alabama.

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12:16 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 NSB 56.00

Inst # 2001-34670

The kind of suit brought as above stated is set out in the Complaint for unjust enrichment, money had and received, money paid by mistake, money lent, money paid by Plaintiff for Defendant, general assumpsit/quasi-contract, restitution, enforcement of mortgagee's rights, constructive trust, equitable lien, accounting, and injunctive relief, a copy of which Complaint is attached hereto and made a part hereof as Exhibit A. The nature of the lien, right and interest enforced is fully and completely set out in Exhibit A attached hereto and made a part hereof.

This the 14th day of August, 2001.

Walston, Wells, Anderson & Bains, LLP

By: Randall D. Marks
Attorney for AmSouth Bank

Sworn to and subscribed before me on this 14th day of August, 2001.

Deanna Ann Sanders
Notary Public

MY COMMISSION EXPIRES OCTOBER 8, 2001

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

**AMSOUTH BANK, individually and)
as the assignee of Central Alabama Title)
Company, Inc.,)**

Plaintiff,)

v.)

**ALAN S. HILL, an individual; HILL)
BUILDING CO., L.L.C., an Alabama)
limited liability company; and HILL)
DEVELOPMENT, L.L.C., an Alabama)
limited liability company,)**

Defendants.)

**CIVIL ACTION NO.
CV0104959**

FILED IN OFFICE

AUG 10 2001

**ANNE-MARIE ADAMS
Clerk**

COMPLAINT

Comes now plaintiff, AmSouth Bank ("AmSouth"), individually and as the assignee of Central Alabama Title Company, Inc. ("Central Alabama Title"), and for its Complaint says as follows:

PARTIES

1. Plaintiff AmSouth is an Alabama banking corporation with its main office in Jefferson County, Alabama.

2. Defendant Alan S. Hill ("Hill") is an adult resident of Jefferson County, Alabama.

3. Defendant Hill Building Co., L.L.C. ("Hill Building"), is an Alabama limited liability company with its principal place of business in Jefferson County,

EXHIBIT A

Alabama. Upon information and belief, defendant Alan S. Hill is the sole member of Hill Building.

4. Defendant Hill Development, L.L.C. ("Hill Development"), is an Alabama limited liability company with its principal place of business in Jefferson County, Alabama. Upon information and belief, defendant Alan S. Hill is the sole member of Hill Development.

BACKGROUND FACTS

5. In or around January 2001, Central Alabama Title served as the closing agent for a loan obtained by Hill for the refinancing of a mortgage loan on what was then Hill's residence at 108 Edgewood Boulevard, Birmingham, Alabama (the "Edgewood Residence").

6. Pursuant to Hill's refinancing agreement, Central Alabama Title issued a check dated January 24, 2001 (the "Check"), for \$196,628.92. The Check was drawn on Central Alabama Title's escrow checking account with AmSouth. The payee of the Check was an entity known as PCFS Financial Services ("PCFS"), which at that time held the mortgage on Hill's residence that was to be refinanced with the payment from Central Alabama Title.

7. On or about January 25, 2001, the day after the date of the Check, Hill attempted to cancel the loan transaction. After Hill changed his mind about the refinancing loan, Central Alabama Title asked AmSouth to stop payment on the Check.

8. The stop payment request identified the Check by its check number, 19260, which was located near the upper right corner of the Check. Due to a printing error by an outside printer, however, the number in the upper right corner of the Check did not match the coded check number that appeared near the bottom of the Check. Consequently, because of the incorrect coding on the check, the Check was automatically processed and paid by AmSouth on or about January 29, 2001.

9. PCFS applied the \$196,628.92 in proceeds from the Check to satisfy Hill's mortgage on the Edgewood Residence, and PCFS released the mortgage. Thus, as a result of the mistaken payment of the Check, Hill received a benefit in the amount of \$196,628.92 when the encumbrance for that sum was removed from his Edgewood Residence. Hill, however, did not pay any sum of money to PCFS, Central Alabama Title or AmSouth in return for the satisfaction and release of the PCFS mortgage.

10. Upon information and belief, Hill subsequently sold the Edgewood Residence free and clear of the PCFS mortgage that had been satisfied with the proceeds of the Check. At the time of the sale of the Edgewood Residence, Hill knew that the Check has been paid in error and that the PCFS mortgage had been satisfied, but he took no action to compensate AmSouth, Central Alabama Title or PCFS for the great financial benefit he had received.

11. Hill ratified and confirmed the payment of the Check and the satisfaction and release of the PCFS mortgage when he accepted and retained the \$196,628.92 benefit that resulted from the release of the PCFS mortgage.

12. The Check mistakenly paid by AmSouth enabled Hill to sell the Edgewood Residence free and clear of the PCFS mortgage, which thereby increased Hill's personal gain and net proceeds from the sale by \$196,628.92.

13. Upon information and belief, Hill diverted proceeds from the sale of his Edgewood Residence, including money that he had received as a result of the mistaken payment of the Check, to his two companies, Hill Building and Hill Development. Hill Building and Hill Development received these proceeds with knowledge of the source of the funds and the fact that Hill had been unjustly enriched as a result of the mistaken payment of the Check.

14. AmSouth reimbursed Central Alabama Title \$196,628.92 for the amount of the Check. Central Alabama Title assigned to AmSouth all of Central Alabama Title's rights and claims against Hill in connection with the Check and the satisfaction of the PCFS mortgage.

15. AmSouth has requested and demanded that Hill reimburse AmSouth for the amount of the Check, \$196,628.92. Hill has refused to make such payment.

16. The mistaken payment of the Check and the resulting satisfaction and

release of the PCFS mortgage resulted in an unjustified windfall for Hill, to the detriment of AmSouth individually and as the assignee of Central Alabama Title.

COUNT ONE – UNJUST ENRICHMENT

17. AmSouth adopts by reference the averments of paragraphs 1-16, as if set out here in full.

18. Hill was unjustly enriched in the amount of \$196,628.92 by the mistaken payment of the Check and the resulting satisfaction and release of the PCFS mortgage on his Edgewood Residence. Hill has received the benefit of funds that, in equity and good conscience, should be repaid to AmSouth individually and as the assignee of Central Alabama Title.

19. Hill Building and Hill Development were unjustly enriched upon receiving proceeds from the sale of Hill's Edgewood Residence with knowledge of the source of the funds and of the mistaken payment of the Check.

COUNT TWO – MONEY HAD AND RECEIVED

20. AmSouth adopts by reference the averments of paragraphs 1-19, as if set out here in full.

21. Hill owes AmSouth, individually and as the assignee of Central Alabama Title, the sum of \$196,628.92 for money had and received in the form of the benefit resulting from the payment of the Check and the satisfaction and release of the PCFS mortgage on the Edgewood Residence.

COUNT THREE - MONEY PAID BY MISTAKE

22. AmSouth adopts by reference the averments of paragraphs 1-21, as if set out here in full.

23. Hill owes AmSouth, individually and as the assignee of Central Alabama Title, the sum of \$196,628.92 for money paid by mistake in January 2001 when the Check was mistakenly paid and its proceeds were used to satisfy and obtain the release of the PCFS mortgage, for the benefit of Hill.

COUNT FOUR - MONEY LENT

24. AmSouth adopts by reference the averments of paragraphs 1-23, as if set out here in full.

25. The proceeds of the Check constituted a loan to Hill for the refinancing of the PCFS mortgage.

26. Hill attempted to rescind his agreement for the refinancing loan, but, by knowingly accepting the benefit that he received as a result of the mistaken payment of the Check, Hill ratified the refinancing loan.

27. Hill owes AmSouth, individually and as the assignee of Central Alabama Title, \$196,628.92 for money lent to Hill for the purpose of paying the balance due on the PCFS mortgage on Hill's Edgewood Residence.

COUNT FIVE – MONEY PAID BY PLAINTIFF FOR DEFENDANT

28. AmSouth adopts by reference the averments of paragraphs 1-27, as if set out here in full.

29. Hill owes AmSouth, individually and as the assignee of Central Alabama Title, \$196,628.92 because of money paid by AmSouth or Central Alabama Title for Hill in January 2001, which payment was ratified by Hill.

COUNT SIX – GENERAL ASSUMPSIT/QUASI-CONTRACT

30. AmSouth adopts by reference the averments of paragraphs 1-29, as if set out here in full.

31. Hill received and accepted the benefit of the mistaken payment of the Check. Consequently, Hill is obligated by a contract implied in law to repay the amount of the check, \$196,628.92, to AmSouth, individually and as the assignee of Central Alabama Title.

COUNT SEVEN – RESTITUTION

32. AmSouth adopts by reference the averments of paragraphs 1-31, as if set out here in full.

33. AmSouth, individually and as the assignee of Central Alabama Title, is entitled to restitution from Hill, Hill Building and Hill Development in the amount of \$196,628.92.

COUNT EIGHT – ENFORCEMENT OF MORTGAGEE’S RIGHTS

34. AmSouth adopts by reference the averments of paragraphs 1-33, as if set out here in full.

35. As a result of the satisfaction of the PCFS mortgage with the proceeds from the Check, AmSouth, individually and as the assignee of Central Alabama Title, is subrogated to the rights and interest that PCFS had as a creditor of Hill before the mistaken payment of the Check and the satisfaction and release of the PCFS mortgage. The debt that Hill owed to PCFS, \$196,628.92, now is owed to AmSouth as the result of the satisfaction of the PCFS mortgage on Hill’s behalf.

COUNT NINE – CONSTRUCTIVE TRUST

36. AmSouth adopts by reference the averments of paragraphs 1-35, as if set out here in full.

37. Hill, Hill Building and Hill Development acted in a deceitful and inequitable manner in accepting the benefits of the Check, including the satisfaction and release of the PCFS mortgage, without attempting to report or correct the mistaken payment. Because of this deceit and inequitable conduct, the defendants should be held to be constructive trustees for AmSouth, individually and as the assignee of Central Alabama Title, of all benefits received from the Check and the resulting satisfaction and release of the PCFS mortgage.

38. Upon information and belief, some or all of the additional \$196,628.92 that Hill received from the sale of his Edgewood Residence as a result of the release of the PCFS mortgage was used by Hill, Hill Building and Hill Development to repair, improve or otherwise invest in separate parcels of real property located in Jefferson County and Shelby County and described as follows:

- a. "Parcel I": From a 1" pipe at the accepted SW corner of the SW 1/4 - SE 1/4 of SEction 33, Township 19 South, Range 1 West, being the point of beginning of herein described parcel of land, run thence North along the accepted West boundary of said SW 1/4 - SE 1/4 a distance of 778.87 feet to a 1: crimped pipe; thence turn 89°55'04" right and run 589.98 feet to a 1" crimped pipe; thence turn 90°05'12" right and run 490.56 feet to a 1/2" pipe on the Northwesterly boundary of Shelby County Highway #338 (80' ROW); thence turn 49°08'05" right and run 441.11 feet along said highway boundary to a 1" crimped pipe on the accepted South boundary of the aforementioned SW 1/4 - SE 1/4; thence turn 40°46'30" right and run 256.52 feet to the point of beginning of herein described parcel of land, situated in the SW 1/4 - SE 1/4 of

Section 33, Township 19 South, Range 1 West, Shelby County, Alabama.

- b. "Parcel II": Lot 1A of the Hill Building Company resurvey as recorded in Map Book 201, page 13, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

39. To the extent that Hill, Hill Building or Hill Development continue to hold any portion of the \$196,628.92 that Hill received through the sale of his Edgewood Residence as a result of the mistaken payment of the Check, any such sum should be declared to be held by the defendants in a constructive trust for the benefit of AmSouth, individually and as the assignee of Central Alabama Title.

COUNT TEN - EQUITABLE LIEN

40. AmSouth adopts by reference the averments of paragraphs 1-39, as if set out here in full.

41. To whatever extent Hill, Hill Building or Hill Development used the \$196,628.92 benefit from the mistaken payment of the Check to repair, improve or otherwise invest in Parcel I or Parcel II, AmSouth, individually and as the assignee of Central Alabama Title, is entitled to an equitable lien on said properties.

COUNT ELEVEN - ACCOUNTING

42. AmSouth adopts by reference the averments of paragraphs 1-41, as if set out here in full.

43. Upon information and belief, Hill, Hill Building and Hill Development have spent and disbursed in various ways the \$196,628.92 that Hill received as a result of the payment of the Check, including repairs, improvements or other investments in Parcel I and Parcel II, and also including investments or expenditures for matters involving other real property. In light of their uses of the money that Hill received as a benefit from the mistaken payment of the Check, Hill, Hill Building and Hill Development should be required in equity to account for the \$196,628.92 benefit.

COUNT TWELVE - INJUNCTIVE RELIEF

44. AmSouth adopts by reference the averments of paragraphs 1-43, as if set out here in full.

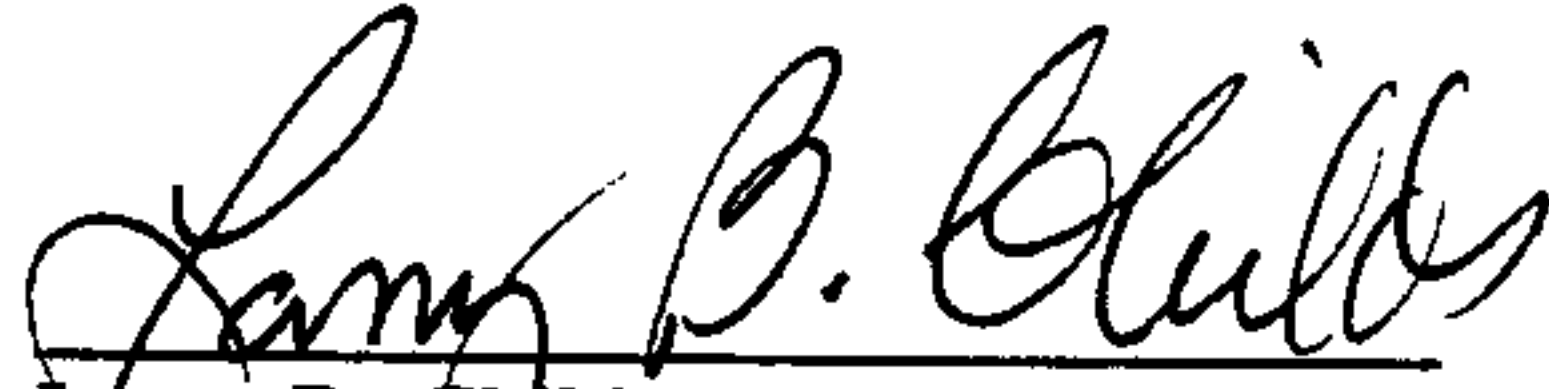
45. Hill, Hill Building and Hill Development have acted intentionally and inequitably to take advantage of the mistaken payment of the Check by using proceeds from the sale of Hill's Edgewood Residence to repair, improve or otherwise invest in Parcel I and Parcel II.

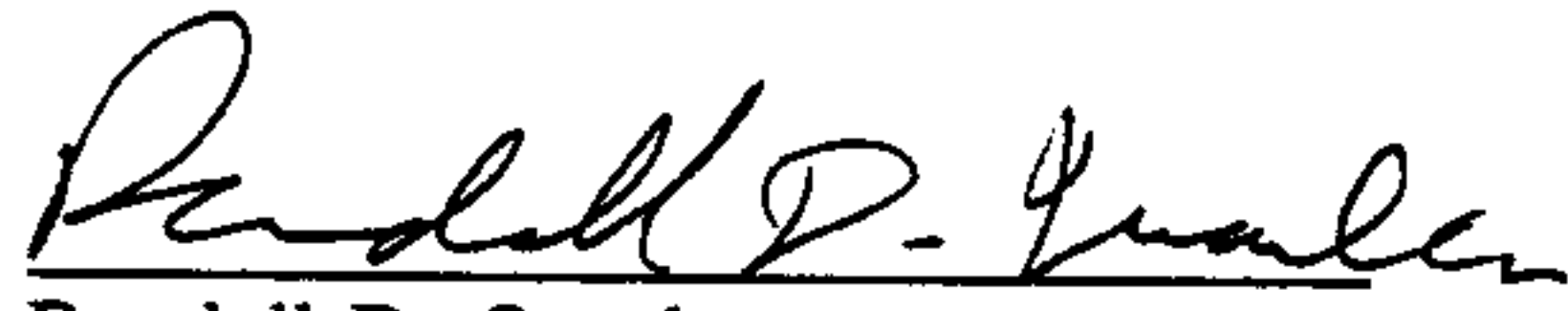
46. Preliminary and permanent injunctions are necessary to prohibit the defendants from irreparably harming AmSouth by transferring or encumbering Parcel I or Parcel II before AmSouth is made whole for the \$196,628.92 benefit that Hill, Hill Building and Hill Development received as a result of the mistaken payment of the Check.

WHEREFORE, THE PREMISES CONSIDERED, AmSouth, individually and as the assignee of Central Alabama Title, demands judgment against defendants Alan S. Hill, Hill Building and Hill Development as follows:

- a. money damages or restitution in the amount of \$196,628.92;
- b. prejudgment interest at the legal rate;
- c. costs of this action;
- d. reasonable attorneys' fees;
- e. the declaration of a constructive trust over all profits, payments and sale proceeds received and retained inequitably by the defendants as a result of the mistaken payment of the Check, including, but not limited to, Parcel I and Parcel II to the extent that said profits, payments or proceeds were used to repair, improve or otherwise invest in said properties;
- f. the declaration of an equitable lien on Parcel I and Parcel II to whatever extent the defendants used the benefit they received from the payment of the Check for the purpose of repairing, improving or otherwise investing in Parcel I and Parcel II;
- g. an accounting of the \$196,628.92 that Hill received as a benefit from the payment of the Check;

- h. preliminary and permanent injunctions prohibiting Hill, Hill Building and Hill Development from transferring or encumbering his interest in Parcel I or Parcel II; and
- i. such further and different relief as the Court may deem just.


Larry B. Childs


Randall D. Quarles

Attorneys for Plaintiff AmSouth Bank,
individually and as the assignee of Central Alabama Title Company, Inc.

OF COUNSEL:

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Telecopier: (205) 251-0700

Plaintiff's Address:

AmSouth Bank
P.O. Box 11007
Birmingham, AL 35288

Please Serve Defendants by Personal Service as Follows:

Alan S. Hill
4729 Melissa Way
Birmingham, 35243

Hill Building Co., L.L.C.
Alan S. Hill, registered agent
4729 Melissa Way
Birmingham, 35243

Hill Development, L.L.C.
Alan S. Hill, registered agent
4729 Melissa Way
Birmingham, 35243

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