

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

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MARY H. HARRIS

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CIRCUIT & DISTRICT
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SHELBY CO.

DEWAINE JONES and JAN JONES

Plaintiffs,

v.

CREATION CONSTRUCTION, INC. and
EDDLEMAN PROPERTIES, INC.,

Defendant.

CIVIL ACTION NO. CV 05-449

20061207000594490 1/4 \$20.00
Shelby Cnty Judge of Probate, AL
12/07/2006 01:36:57PM FILED/CERT

ORDER

On Wednesday, October 4, 2006, plaintiff Jan Jones and her attorney along with counsel for defendant Eddleman Properties attended a status conference and motion hearing previously set by the Court. The Court is aware that Dewaine and Jan Jones (hereinafter the "Jones") instituted this suit against Eddleman Properties and Rick Burch d/b/a Creation Construction, Inc (hereinafter referred to as "Creation Construction"). Generally, the allegations of the complaint relate to specific claims for alleged defects in a new home built by Creation Construction on a lot previously sold by Eddleman Properties to Creation Construction.

Counsel for Eddleman Properties has previously filed a Motion for Summary Judgment, which had been pending since October 2005. Counsel for the Jones had tried to gain the participation of the co-defendant Creation Construction without success. However, appropriate service was properly served on Creation Construction earlier. A default judgment against Creation Construction was entered in April of 2006. One of the issues under consideration at this status conference was the issue of damages on the default judgment against Creation Construction, which will be discussed later. Additionally,

at the hearing, the Court was provided a pleading from a petitioner, i.e. Clayton Sweeney, Esq. That pleading was styled as an Interpleader and Request for Declaratory Relief due to the fact that petitioner Sweeney had funds in an escrow account subject to competing claims of the Jones and Creation Construction as well as by possibly others.

So, at the present time now, the Court has its consideration the following:

1. A Pro Tanto Stipulation for Dismissal between representatives of the Jones and Eddleman Properties.
2. A Petition for Interpleader and Declaratory Relief by Clayton Sweeney, Esq.
3. Consideration of an Affidavit and Evidence for proof of damages to the Jones upon their Application for Default against defendant Creation Construction.

After consideration of the arguments of counsel in open court as well as the submissions provided to the Court by way of the Jones affidavit and subsequent pleadings presented, the Court then ORDERS, ADJUDGES and DECREES as follows:

(1) Upon the stipulation of counsel for Eddleman Properties and counsel for the Jones, as evidence by Exhibit 1 to this Order, the claims by the Jones and against Eddleman Properties only are dismissed with prejudice. Each of these parties will bear their own costs of court. This will not affect the Jones' pursuit of their claims and efforts at collection of monies on their application for default against the co-defendant, Creation Construction.

(2) The request of the petitioner, Clayton Sweeney, Esq., for Interpleader and Declaratory Relief is resolved as follows: Mr. Sweeney will forward payment to the Clerk of this Court with the balance of the proceeds in his escrow account in the amount of \$13,026.00. This money will satisfy any and all competing claims to the proceeds in the

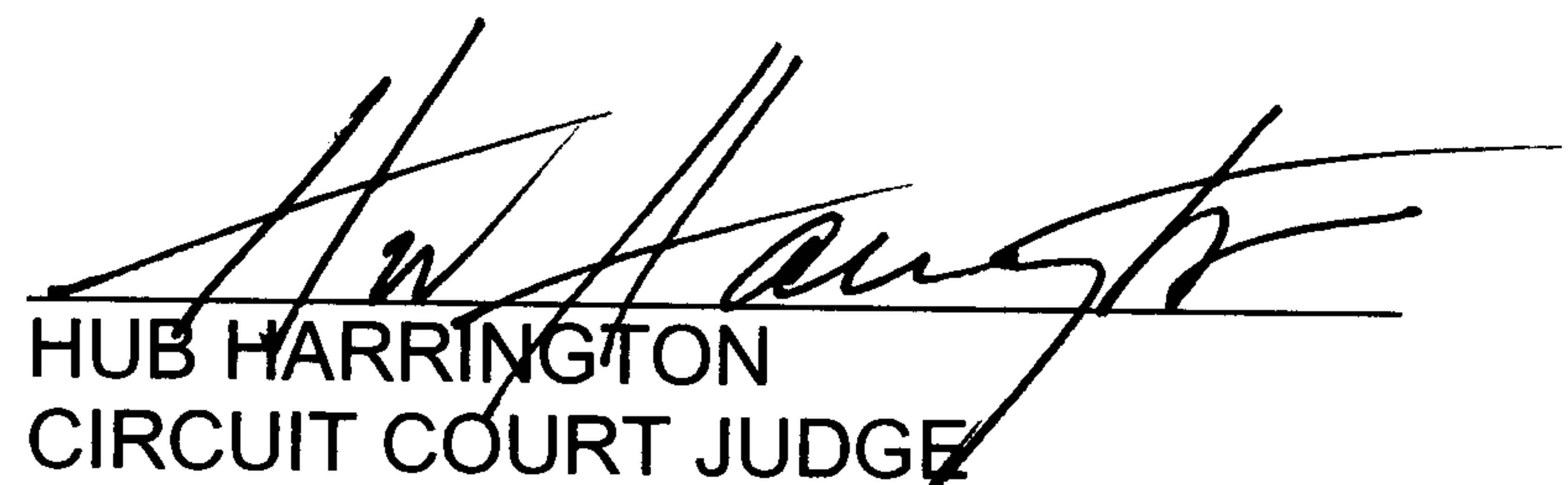
Sweeney escrow account which is described in the Petition for Interpleader. In this case herein, i.e. CV-05-449, the Jones have obtained a default judgment in an amount significantly more than that which will be deposited with the Clerk of this Court . Upon disbursement of those proceeds from the court clerk, the petitioner, Clayton Sweeney, shall be discharged from any and all liability for any competing claims to these proceeds simply by making the payment to the Clerk of the Court. The Court directs that the proceeds shall be paid over to the Jones, care of their attorney, Bernard D. Nomberg, The Cochran Firm, 505 20th Street North, Ste. 825, Birmingham, Alabama 35203. The aforementioned proceeds are only a partial payment on their claim for damages against Creation Construction. In other words, the payment from the Clerk of the Court will not constitute a complete or entire "satisfaction" of the Jones judgment against Creation Construction.


(3) The Jones have earlier obtained a default judgment against co-defendant Creation Construction. The Court has for consideration an affidavit of Jan Jones with further exhibits marked thereto. The affidavit with exhibits is attached hereto and marked as Exhibit 2, and is to be used as proof and support of the Jones claim for damages.

After consideration, the Court is aware of the significant problems the Jones have experienced relating to the construction of their home. The sworn affidavit of Jan Jones supports substantial damages to put their home in the condition that it should have been, had Creation Construction performed their obligations appropriately. Moreover, the Court is aware that the Jones are entitled to damages for mental and emotional anguish in the difficulties experienced with the construction and problems that exist with the new home. The Court is aware that the purchase of a new home is one of the largest and most substantial transactions a consumer might be anticipated to become involved with during

their life. The Court is also aware that the plaintiffs incurred significant legal fees and expenses trying to remedy this problem and collect monies against the homebuilder. Plaintiffs' claim for attorneys fee is, however, Denied, as there is no legal basis for this claim. Based on the evidence in the affidavit as well as discussions with Ms. Jones in open court, the Court awards the plaintiffs \$237,523.98 against Creation Construction only. The Court is aware that the petitioner, Clayton Sweeney, has deposited \$13,026.00 with the Clerk of the Court. Again, a payment by the clerk for this \$13,026.00 will not indicate a complete or total "satisfaction" of the judgment in the amount of \$237,523.98. The attorney for the Jones may pursue collection of the judgment to the extent allowed by law.

DONE this the 26th day of October, 2006.


HUB HARRINGTON
CIRCUIT COURT JUDGE


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