

2-9-2012

Order on Motion for Summary Judgment Regarding "Bad Check" Claim (KHAN)

Alice D. Bonner

Superior Court of Fulton County

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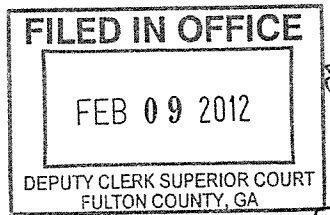
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



ISHTIAQ A. KHAN AND CHOICE)
CARE OCCUPATIONAL MEDICINE)
AND ORTHOPAEDICS, LLC, ISHTIAQ)
A. KHAN, as Trustee, MJ & KJ Khan)
1990 Family Trust)

Plaintiffs,)

v.)

M. SHAILENDRA, KIRAN)
SHAILENDRA, SHAILENDRA)
GROUP, LLC, SG CONTRACTING,)
INC., SG CONSULTING, INC.,)
LEE'S MILL, INC., SG BROKERAGE,)
LLC, 966 INVESTMENTS, LLC, S&S)
ENGINEERS, INC., SAKET PAUL)
SHAILENDRA, SACHIN DEV)
SHAILENDRA, PINNACLE AT)
EAGLE'S POINT,)

Defendants.)

VIRGINIA HAMMOND KHAN)
KRISHAN G. GUPTA)
ENTERPRISE BANKING CO.)

Nominal Parties.)

Civil Action File No.
2010CV194327

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**ORDER ON PLAINTIFF ISHTIAQ A. KHAN'S AND CHOICE CARE OCCUPATIONAL
MEDICINE AND ORTHOPAEDICS, LLC'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO "BAD CHECK" CLAIM**

On February 1, 2012, counsel appeared before the Court to present oral arguments with respect to the Plaintiffs Ishtiaq A. Khan's and Choice Care Occupational Medicine and Orthopaedics, LLC's claim for "bad checks" received from Defendants M. Shailendra and Pinnacle at Eagles Point, LLC. These claims were Count VIII in the Third Amended Complaint, and this Count was unchanged but renumbered as Count

VII in the Fourth Amended Complaint filed by Plaintiffs prior to the hearing on February 1, 2012.

After reviewing all matters of record, and hearing argument of counsel, the Court **GRANTS** the Plaintiffs' motion for summary judgment. The Court finds that there are no genuine issues of material fact, and that, as a matter of law, Defendants M. Shailendra and Pinnacle at Eagles Point, LLC are liable to the Plaintiffs as set forth below.

Based on the record, the Court finds that Plaintiffs made a prima facie showing as to the Defendants' liability on the checks. There is no dispute, and Defendants admit in their response, that Mr. Shailendra executed the checks for himself and on behalf of Defendant Pinnacle, and Plaintiffs have shown that they made demand for payment of the checks pursuant to O.C.G.A. §13-6-15. While Defendants M. Shailendra and Pinnacle at Eagles Point, LLC have asserted a defense based on lack of consideration, the Court finds that Defendants have failed to come forward with any admissible, competent evidence establishing a defense with respect to the checks. Consumer Solutions Financial Services, Inc. v. Heritage Bank, 300 Ga. App. 272 (2009). Accordingly, without such a showing by Defendants, the Plaintiffs are entitled to summary judgment. Id.

Defendants request that the Court continue ruling on this motion to permit them to conduct further discovery. However, the motion was filed in September, and the Court finds that this is adequate time to engage in discovery sufficient to mount a defense to this motion.

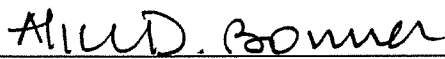
The Court **GRANTS** summary judgment in favor of Plaintiffs Ishtiaq A. Khan and Choice Care Occupational Medicine and Orthopaedics, LLC and against Defendant

Shailendra in the amount of \$200,000 for check numbers 1378 (with a face amount of \$50,000), 1379 (with a face amount of \$50,000) and 1387 (with a face amount of \$100,000), plus a five percent service charge and \$500 for each check as provided by O.C.G.A. §13-6-15, for a total of \$211,500.

The Court **GRANTS** summary judgment in favor of Plaintiffs Ishtiaq A. Khan and Choice Care Occupational Medicine and Orthopaedics, LLC and against Defendant Pinnacle at Eagles Point, LLC in the amount of \$200,000 for check numbers 2238 (with a face amount of \$100,000) and an unnumbered counter check dated November 6, 2009 (in the face amount of \$100,000), plus a five percent service charge and \$500 for each check as provided by O.C.G.A. §13-6-15, for a total of \$211,000.

Finally, the Court finds pursuant to O.C.G.A. §9-11-54(b) that there is no just reason to delay entry of final judgment on this claim, and accordingly **DIRECTS** the clerk to enter final judgment in favor of Plaintiffs Ishtiaq A. Khan and Choice Care Occupational Medicine and Orthopaedics, LLC and against Defendant Shailendra in the amount of \$211,500, and against Pinnacle at Eagle Point, LLC in the amount of \$211,000.

SO ORDERED this 9 day of February, 2012.



ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Order Prepared (with modifications) by:

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