

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF SWAIN

2011 APR -4 PM 2: 2 SUPERIOR COURT DIVISION

08-CVS-36

SWAIN CO., C.S.C.

ALARKA CREEK PROPERTIES, SS
HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

CANE CREEK DEVELOPMENT
CORPORATION,

Defendant.

JUDGMENT

THIS MATTER came on to be heard and was heard before a jury and the undersigned Judge Presiding during the February 7, 2011 session of Swain County Superior Court. The issues were duly tried and answered by the jury as follows:

Issue No. 1 Did the Defendant expressly warrant to the Plaintiff that the Alarka Creek Properties roads would conform to a promise or representation of fact or description?

ANSWER: YES

Issue No. 2 Did the Defendant breach the express warranty made to the Plaintiff?

ANSWER: YES

Issue No. 3 What amount of money damages is Plaintiff entitled to recover from Defendant for breach of express warranty?

ANSWER: \$2,400,000.00

Issue No. 4 Was an implied warranty created between Plaintiff and Defendant that the Alarka Creek Properties paved roads would meet the prevailing standard for workmanlike quality?

ANSWER: YES

- Issue No. 5** Did the Defendant breach the implied warranty?
ANSWER: YES
- Issue No. 6** What amount of money damages is Plaintiff entitled to recover from Defendant for breach of implied warranty?
ANSWER: \$1.00
- Issue No. 7** Was the Plaintiff damaged by the negligence of the Defendant?
ANSWER: YES
- Issue No. 8** Did the Plaintiff by its own negligence contribute to its damage?
ANSWER: NO
- Issue No. 9** What amount of damages, if any, is Plaintiff entitled to recover as a result of Defendant's negligence?
ANSWER: \$1.00
- Issue No. 10** Did Plaintiff and Defendant enter into a contract?
ANSWER: YES
- Issue No. 11** Did Defendant breach the contract?
ANSWER: YES
- Issue No. 12** What amount is Plaintiff entitled to recover from Defendant for breach of contract?
ANSWER: \$1.00
- Issue No. 13** Was the Plaintiff financially damaged by a negligent misrepresentation of the Defendant?
ANSWER: YES
- Issue No. 14** What amount is the Plaintiff entitled to recover from the Defendant as damages for negligent misrepresentation?
ANSWER: \$1.00

Issue No. 15 Did the Defendant do at least one of the following:

- i. Advertise the Alarka Creek Properties roads as “State approved paved roads” without intending to construct the paved roads accordingly.

ANSWER: YES

- ii. Advertise the Alarka Creek Properties paved roads as “engineered” without intending to construct the paved roads in accordance with an engineer’s specifications.

ANSWER: YES

- iii. Advertise the Alarka Creek Properties roads as “put in by environmental specifications and approved by the state environmental board” without intending to construct the paved roads and/or slopes in accordance with the approved erosion control plan.

ANSWER: YES

- iv. Represent that the Alarka Creek Properties roads were of a certain quality and not intend to build or build roads of that quality.

ANSWER: YES

- v. Submit road plans to the North Carolina Department of Environment and Natural Resources for approval and then knowingly fail to construct the roads and/or slopes in accordance with the approved plans.

ANSWER: YES

- vi. Knowingly transfer defectively constructed roads and/or slopes to Plaintiff.

ANSWER: NO

- vii. Knowingly transfer roads and/or slopes to Plaintiff that were not constructed in accordance with the approved erosion control plan.

ANSWER: YES

- viii. Represent that it would transfer the Alarka Creek Properties roads to Plaintiff in “good condition” and knowingly fail to do so.

ANSWER: NO

- ix. Knowingly fail to construct roads and/or slopes in accordance with local standards and practices in Swain County.

ANSWER: NO

Issue No. 16 Was Defendant's conduct in or did it affect commerce?

ANSWER: YES

Issue No. 17 Was Defendant's conduct a proximate cause of Plaintiff's injury?

ANSWER: YES

Issue No. 18 In what amount, if any, has Plaintiff been injured?

ANSWER: \$1.00

Issue No. 19 Did Defendant violate the Sedimentation Pollution Control Act causing damage to Plaintiff's property?

ANSWER: YES

Issue No. 20 What amount of damages, if any, is Plaintiff entitled to recover as a result of Defendant's violation?

ANSWER: \$1.00

AND THE COURT HOLDS that, based on the jury's answers to the issues set forth above, Defendant's acts constitute an unfair or deceptive trade practice in violation of N.C.G.S. § 75-1.1 and trebles the jury's award of \$1.00 to \$3.00. The Court also exercises its discretion to award Plaintiff costs as set forth below and not to award Plaintiff its reasonable attorney fees.

NOW, THEREFORE, IT IS HEREBY **ORDERED, ADJUDGED AND DECREED** that Plaintiff shall have and recover from Defendant Cane Creek Development Corporation the sum of Two Million Four Hundred Thousand and 00/100 Dollars (\$2,400,000.00), plus costs in the amount of Thirty Two Thousand Six Hundred Sixty Four and 76/100 Dollars (\$32,664.76) and interest on \$2,400,000.00 at the legal rate of eight percent (8%) per annum from the date of the

breach on May 28, 2005 to April 4, 2011, the date of entry of this judgment, in the amount of One Million One Hundred Twenty Four Thousand One Hundred Twenty and 54/100 Dollars (\$1,124,120.54) together with post-judgment interest thereafter.

This the 4th day of April, 2011.



HONORABLE ALAN Z. THORNBURG
Senior Resident Superior Court Judge Presiding