FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN R. DOYLE III
JUDGE

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

August 16, 2010

W. Ryan Snow, Esquire
Crenshaw, Ware & Martin, P.L.C.
1200 Bank of America Center
One Commercial Place
Norfolk, Virginia 23510

Steven R. Zahn, Esquire
Bowman, Green, Hampton & Kelly, PLLC
501 Independence Parkway, Suite 201
Chesapeake, Virginia 23320

RE: N.R.H.A. v. The St. Joe Company
Civil Docket No.: L09-6569

Dear Counsel:

This matter came before the Court for argument on August 10, 2010 upon cross-motions for Summary Judgment on Count I (Constructive Trust) and Count II (Unjust Enrichment). The Court has considered carefully the briefs and arguments submitted by counsel in this matter. After consideration, the Court GRANTS the Motion for Summary Judgment in favor of N.R.H.A. on Count 1 and Court 2 and DENIES the Motion for Summary Judgment for The St. Joe Company on both Count 1 and Count 2.

I. BACKGROUND

This case arises out of a dispute as to the character and ownership of certain monies The St. Joe Company ("St. Joe") took possession of in July 2009. St. Joe came into possession of these funds when it asserted its authority under the Deposit Account Control Agreement to seize Advantis Real Estate Services Company's ("Advantis") operating accounts in the

event that Advantis defaults on its obligations to St. Joe. The money in dispute totals to $115,343.06.

At the time of the seizure by St. Joe, Advantis was also a party to the 1999 Management and Leasing Services Agreement ("Management Agreement") with N.R.H.A. Under the terms of this agreement, N.R.H.A. granted Advantis the right to serve as its agent and enter into contracts on its behalf. Under this authority, Advantis entered into two contracts on behalf of N.R.H.A. with respect to renovations for a commercial building owned by N.R.H.A. on Granby Street in Norfolk, Virginia, one with Eastern Waterproofing and Restoration of Virginia, Co., LLC and one with DLM Architects ("Contractors").

After the Contractors completed the renovations, Advantis sent invoices to N.R.H.A. describing the exact costs of these services as well as their management fee, which was agreed upon by Advantis and N.R.H.A. in the Management Agreement. N.R.H.A. sent two checks to Advantis in reference to these invoices, and both were cashed by Advantis and placed into its general operating account. As of July 20, Advantis had not distributed the funds to the Contractors, and N.R.H.A. demanded that Advantis do so in Cure Notices sent on July 17 and 20, 2009. Before Advantis distributed these funds to the appropriate Contractors, St. Joe asserted its authority to freeze the funds in Advantis' accounts.

N.R.H.A. argues that when St. Joe seized the funds from the operating account of Advantis, it took funds that actually belonged to N.R.H.A. by virtue of the Management Agreement between Advantis and N.R.H.A. St. Joe argues that the funds did belong to Advantis, and that N.R.H.A. was merely an unsecured creditor and not the owner of the funds, which gave it the right to seize the money pursuant to the Deposit Account Control Agreement.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment may only be entered if there are no material facts genuinely in dispute. *Renner v. Stafford*, 245 Va. 351, 353, 429 S.E.2d 218, 220 (1993); Va. Sup. Ct. R. 3:20. When a court considers a motion for summary judgment, "the court must rule, as a matter of law, on the sufficiency of the evidence; it [should] not weigh the evidence as a finder of fact." *Piland Corp. v. League Constr. Co.*, 238 Va. 187, 189 (1989). The deciding court may grant summary judgment only if, viewing the facts in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law. *See e.g., Freeman v. Norfolk*, 221 Va. 57, 60 (1980).

III. ANALYSIS

In this case, summary judgment is appropriate because there are no genuine issues of fact in dispute and there is sufficient evidence to uphold a finding in favor of N.R.H.A.

The Court finds that to resolve this case, it must determine which party is the true owner of the $115,343.06 in dispute. More specifically, the Court must determine as a matter of law, whether N.R.H.A. is an unsecured creditor or rather is the owner of the funds in question. The Court considered many factors in its determination, and concludes as a matter of law that the funds were the property of N.R.H.A.

Under the Management Agreement, Advantis was granted authority to act on behalf of N.R.H.A. as its agent, to enter contracts for N.R.H.A., to manage the properties of N.R.H.A., and to receive and make payments on behalf of N.R.H.A. where necessary. Pursuant to the authority granted in the Management Agreement, Advantis entered into contracts with the Contractors, on behalf of N.R.H.A., to complete renovations and repairs to N.R.H.A. property. Upon completion of these projects, Advantis sent two

separate invoices to N.R.H.A. for the work done by the contractors. The invoices delineated the exact amount due to the contractors for their work and to Advantis for its Management Fee provided for in the Management Agreement.

The funds described as "Management Fees" belong to Advantis, as payment for its performance as N.R.H.A.'s agent with respect to these contracts. However, the invoice designates the remaining money to be paid through Advantis to roofing repair company. This money was paid over to Advantis for the specific purpose of making payments to the Contractors on N.R.H.A.'s behalf. N.R.H.A. argues, and the court agrees, that this money was held by Advantis in trust, for a specific purpose, and Advantis was not permitted to use the money in any manner other than that provided for in the specific invoices – payment of the Contractors.

The Court finds the ownership of these funds is further established because N.R.H.A. retained control over the funds even after they were in the hands of Advantis. By July 20, 2009, Advantis had not yet made payments to the contractors based on the invoices received and paid by N.R.H.A. in May and June 2009. On July 17 and 20, 2009, N.R.H.A. sent Cure Notices to Advantis demanding that Advantis transmit the required payments to the contractors. The Cure Notice makes it apparent that N.R.H.A. and Advantis contemplated this payment scheme, and upon receipt of the funds in dispute Advantis was to make payment to the Contractors for the specified purpose stated in the invoices. At no point did these funds belong to Advantis, therefore, under the Deposit Account Control Agreement, St. Joe cannot properly seize them.

The argument put forward by St. Joe that N.R.H.A. is an unsecured creditor is not supported by the stipulated facts in this case. Unlike funds held in the hands of a debtor, Advantis had no legal rights to these funds, $115,343.06 in total. It was not permitted to spend this money in any manner, other than to make payment to the contractors for their

completed work. Advantis would not have been permitted to use these funds to pay other creditors or to invest it in any other manner – the sole purpose of these funds was to provide payments to the contractors for the work completed on N.R.H.A.'s property.

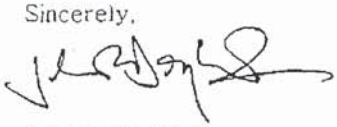
While it is true that St. Joe is a perfected secured creditor under the Deposit Account Control Agreement, this only permits St. Joe to lawfully gain access to funds that are the property of Advantis, the debtor, and not property belonging to other parties. The funds in dispute, $115,343.06, never in fact belonged to Advantis, and at all relevant times were the property of N.R.H.A. with instructions for Advantis to hold in trust and pay the Contractors for the completion of specified renovations.

IV. CONCLUSION

Based on the foregoing analysis, the Court GRANTS the Motion for Summary Judgment in favor of N.R.H.A. on Count 1 (Constructive Trust) and Court 2 (Unjust Enrichment) and DENIES the Motion for Summary Judgment for St. Joe Company on both Count 1 (Constructive Trust) and Count 2 (Unjust Enrichment).

Mr. Snow will please prepare an Order in accordance with this Court's rulings.

Sincerely,



John R. Doyle, III
Judge

JRDIII/KDO/nm

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY,

Plaintiff,

v. Civil Case No. CL09-6569

THE ST. JOE COMPANY,

and

ADVANTIS REAL ESTATE SERVICES COMPANY,
also doing business as GVA ADVANTIS,

Defendants.

JUDGMENT ORDER

THIS MATTER COMES to the Court on cross Motions for Summary Judgment filed by Norfolk Redevelopment and Housing Authority ("NRHA") and The St. Joe Company ("St. Joe"), this Court having previously entered default judgment against Advantis Real Estate Services Company ("Advantis"). Upon consideration thereof, including the memoranda of law, the stipulated facts, and the arguments of the parties at the hearing on August 10, 2010, and for the reasons stated by this Court on the record and in its Opinion issued August 16, 2010 including this Court's findings that there are no genuine issues of fact in dispute and summary judgment is therefore appropriate, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Norfolk Redevelopment and Housing Authority's Motion for Summary Judgment is GRANTED as to Count 1 (Constructive Trust) and Count 2 (Unjust Enrichment); and

2. The St. Joe Company's Motion for Summary Judgment is DENIED as to Count 1 (Constructive Trust) and Count 2 (Unjust Enrichment); and

3. Norfolk Redevelopment and Housing Authority is awarded judgment against The St. Joe Company in the amount of $115,343.06, together with interest thereon at the statutory rate of

Hazel
CS
TMFCC

6% per annum from 9-10-10* until paid and costs in the amount of $258.00, representing the filing fee for the Complaint and the costs of service upon St. Joe, pursuant to VA. CODE § 17.1-601.

ENTERED this 10 day of September 2010:

Judge John R. Doyle, III

WE ASK FOR THIS:

W. Ryan Snow, VSB No. 47423
Amy Taipalus McClure, VSB No. 77937
CRENSHAW, WARE & MARTIN, P.L.C.
1200 Bank of America Center
Norfolk, Virginia 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
Counsel for Norfolk Redevelopment and Housing Authority

*Given the nature of the parties' competing claims to ownership of the funds in question, the Court declines Plaintiff's requests for prejudgment interest and notes Plaintiff's objection to this ruling.
JRD
9-10-10

SEEN AND OBJECTED TO for the reasons set forth in the pleadings, on the record, and in our letter of September 1, 2010:

Steven R. Zahn, Esq. VSB No. 43332
BOWMAN GREEN HAMPTON & KELLY, PLLC
501 Independence Parkway, Suite 201
Chesapeake, VA 23320
Telephone: (757) 548-2323
Facsimile: (757) 548-2345
Counsel for The St. Joe Company

Assignments of Error

1. The court erred in concluding that a portion of the funds held in Advantis' master operating account remained the property of and subject to the control of NRHA and that Advantis had no right to these funds.

2. The court erred in imposing a constructive trust when there was no evidence that St. Joe exercised control over the master operating account by fraud, abuse of confidence, or other questionable means.

3. The court erred in finding unjust enrichment in the absence of any claim of fraud or evidence of inequity.

4. The court erred in imposing a constructive trust or unjust enrichment claim on funds held in an account over which a secured creditor held a perfected security interest when the deposit was not alleged to be the product of mistake or fraud.