

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT JACKSON

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WHITEHAVEN COMMUNITY  
BAPTIST CHURCH, FORMERLY  
KNOWN AS FAIRWAY MISSIONARY  
BAPTIST CHURCH, and T. L. JAMES,  
SR.,

Plaintiffs,

v.

ALCUS HOLLOWAY and  
GENEVA HOLLOWAY,

Defendants.

CHARLES R. CURBO, Memphis, Attorney for Plaintiff.

HERSCHEL L. ROSENBERG, Van, Eaton & Rosenberg, Memphis, Attorney for  
Defendants.

*AFFIRMED*

Opinion filed:

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TOMLIN, Sr. J.

Whitehaven Community Baptist Church (“Whitehaven”) and T. L. James, Sr. (“James”) (or collectively “Plaintiffs”) filed suit in the Chancery Court of Shelby County against Alcus and Geneva Holloway (“Defendants”) seeking to have that court set aside a recorded warranty deed that had heretofore been executed by Whitehaven to defendants, and to reform certain documents executed by the parties. In addition, James sought to have that court enforce a lien against the real property for unjust enrichment. Defendants’ filed an answer and a counterclaim.

Following the filing of the deposition of James, and answers to interrogatories and affidavits, defendants filed a motion for summary judgment, which was granted, on the ground that there existed no genuine issue as to any material facts. The order granting summary judgment was made final. On appeal, plaintiffs’ sole issue is whether or not the trial court erred in granting summary judgment. We are of the opinion that there was no error. Defendants seek to have this court declare this appeal to be frivolous. We decline to do so.

By way of background, Whitehaven was the owner of a parcel of land located on

Shelby Chancery No. 105011-2(1)  
C.A. No. 02A01-9604-CH-00071

**FILED**

**March 31, 1997**

Hon. Neal Small, Judge  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

Elvis Presley Boulevard in Memphis, on which they desired to build a new sanctuary. As part of the purchase price of this property Whitehaven had given a first mortgage as security for a \$120,000.00 promissory note, payable to the sellers. Whitehaven entered into a contract with James, its pastor, to be the general contractor in connection with the construction of the new church building. Whitehaven was unable to obtain a construction loan from a commercial lender. James, acting on behalf of Whitehaven, began negotiations with defendants, seeking to obtain a short-term loan that would provide Whitehaven with funds to complete construction of the building. These negotiations resulted in an agreement between Whitehaven, acting by and through its Trustees, and defendants. The agreement was prepared by Garvin Holland, attorney, (hereafter "Holland") who had represented both plaintiffs several times in other real estate transactions.

By this agreement, defendants agreed to loan Whitehaven the sum of \$100,000.00 to be used in financing the construction of their new building. The agreement as entered into reads in pertinent part as follows:

This agreement entered into this 3<sup>rd</sup> day of May, 1991 by and between the Trustees of and for Fairway Missionary Baptist Church, parties of the first part and Alcus Holloway and Geneva Holloway, parties of the second part.

**WHEREAS**, the Trustees of Fairway Missionary Baptist Church is the owner of lots 1, 2, 3, 8 and one-fourth Half of lot 4, Block 2, Minna Palmer Wall's Whitehaven Park Subdivision as recorded in Plat Book 9, page 142, in the Register's Office of Shelby County, Tennessee; and

**WHEREAS**, the Trustees of Fairway Missionary Baptist Church are in the process of constructing a building upon the said lots; and

**WHEREAS**, said trustees have had difficulty in obtaining construction funds for the completion of the building, and

**WHEREAS**, Alcus Holloway and Geneva Holloway have agreed to furnish \$100,000.00 in construction funds to finish the building.

**NOW, THEREFORE**, the parties agree that under the following terms and conditions Alcus Holloway and Geneva Holloway will furnish \$100,000.00 in construction funds:

1. The Trustees of Fairway Missionary Baptist Church must obtain a firm take-out commitment of \$260,000.00 from a recognized lending institution. Also building must meet their specifications.

2. The Trustees must carry a builders-risk insurance policy while under construction.

3. Property deeded to Alcus Holloway and Geneva Holloway with the understanding when the church building is finished and meets the city code inspection approval. The property is to have a clear title and no liens against it.

4. Alcus Holloway and Geneva Holloway are to furnish One Hundred Thousand Dollars (\$100,000.00) as construction money. Alcus Holloway is to disburse this money for labor and materials, when he sees the material has gone into the building by eye-sight and receipt, then he is to pay off. There is to be bids taken for each job to complete the building.

5. Mr. T. L. James has agreed to pay Alcus Holloway and Geneva Holloway \$120,000.00 plus 10% interest at the closing. When all the agreements have been fulfilled, Mr. T. L. James absolutely will have the rights and will buy the property back. All the expense will be the obligation of Mr. T. L. James to pay.

6. The life of this loan must be closed within seven months from the date that this agreement is signed, with all agreements fulfilled.

7. I, Rev. T. L. James, will pledge my home (house) and will secure another member of the church to pledge his home (house) as collateral, to secure the first mortgage monthly notes to Palmer Brothers of \$998.00 until the Rev. T. L. James buys the church back.

This agreement was entered into on May 3, 1991. At the same time the Trustees executed a warranty deed, also prepared by Holland, conveying title to the church property to defendants as collateral for the loan, pursuant to the agreement.

As can be seen from the agreement, this loan matured seven months from the date of execution. By that time, defendants were to have been paid \$120,000.00 plus 10% interest. In exchange for this defendants agreed to reconvey the property. When the term of the loan expired, defendants had loaned Whitehaven \$120,000.00, that had not been repaid. In addition, Whitehaven had failed to obtain permanent financing from an approved lending institution. To make matters worse, because Whitehaven had defaulted in making payments on the first mortgage, defendants were compelled to pay \$122,533.00 to the holder of the note and mortgage in order to prevent foreclosure.

Whitehaven filed suit in Chancery Court of Shelby County seeking to have that court set aside the warranty deed and reform the agreement. Defendants sought

possession of the property. They ultimately obtained a writ of possession, which resulted in the formal eviction of Whitehaven from the premises. Whitehaven nonsuited this initial suit just before trial, and filed this suit, with James joining as a plaintiff, one year later.

### **I. Summary Judgment**

In determining whether or not a genuine issue of material fact exists for purposes of summary judgment, the question should be considered in the same manner as a motion for directed verdict made at the close of the plaintiff's proof, i.e., the trial court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party and discard all countervailing evidence. Byrd v. Hall, 847 S.W.2d 208, 210 (Tenn. 1993).

The party seeking summary judgment must carry the burden of persuading the court that no genuine and material factual issues exist and that it is, therefore, entitled to judgment as a matter of law. *Id.* at 211. Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or other discovery materials that there is a genuine material issue of fact dispute to warrant a trial. *Id.* at 211.

Rule 56.05 provides that the nonmoving party (here, Whitehaven and James) cannot simply rely upon the pleadings, but must set forth specific facts showing that there is a genuine issue of material fact for trial. "If he does not so respond, summary judgment shall be entered against him." Rule 56.05.

In the case before us, the trial court, as well as this court, was presented with the following facts: Plaintiff, through its trustees, conveyed legal title to the church property by warranty deed. The deed had been prepared by Garvin Holland, an attorney who handled numerous real estate transactions for both Whitehaven and its predecessor, as well as James. The loan agreement pursuant to which the warranty deed was executed was also prepared by Holland. It provides that the loan was to be paid off within seven months, at which time Whitehaven would reconvey the property to James, Whitehaven's pastor. It is conceded that the loan was never paid off.

Because of the failure of Whitehaven to keep up the payments on the first mortgage on the property, it was necessary for defendants to pay off the note secured by the first mortgage in the amount of \$122,230.00. The record reflects that defendants have expended in excess of \$282,000.00 in connection with this transaction, for the benefit of Whitehaven.

The affidavit of Garvin Holland states that the warranty deed was prepared by him and that he explained to the Trustees that they were executing a warranty deed. While one of the Trustees filed an affidavit to the effect that Holland did not explain that the instrument signed by him was a warranty deed and not a mortgage, nonetheless, the instrument itself bears the inscription "Warranty Deed" at the top and reads in fact like a warranty deed. There has been no assertion by Whitehaven that the document signed by its Trustees was not a warranty deed.

As to the issue of alleged unjust enrichment to the defendants, to the detriment of James, no specific facts have been set forth by him by means of affidavit or other discovery materials to establish that there are indeed disputed material of facts that create a genuine issue as to this allegation. In these proceedings, James admitted in open court that he was not seeking to assert any type of lien upon this property.

The only assertion of any unjust enrichment appears in the complaint. The deposition of James does reveal that there was a written construction contract between him as general contractor and Whitehaven's predecessor for the construction of the building at a cost of \$325,000.00. Of that total price, James stated that materials would cost "around \$250,000.00" with his total profit for labor and other services provided amounting to \$75,000.00. Defendants had no contractual relationship with James, but were conveyed title to the subject property by Whitehaven, the contracting party with James.

In sum, this record presents no genuine issue of material fact as to any of the issues. The trial court was correct in granting summary judgment and we accordingly affirm. Defendants' motion for a frivolous appeal is denied. Costs in this cause on appeal are taxed to Whitehaven and James, for which execution may issue if necessary.

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TOMLIN, Sr. J.

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CRAWFORD, P. J. W.S. (CONCURS)

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FARMER, J. (CONCURS)