

**IN THE DISTRICT COURT OF APPEAL  
FIFTH DISTRICT OF FLORIDA**

Case No.: 24-0483  
L.T. CASE NO: 2018-CA-24861

---

**ROBERT A. GRIGGS, INDIVIDUALLY AND AS TRUSTEE OF THE  
ROBERT A. GRIGGS TRUST DATED JANUARY 30, 2014, AS  
AMENDED AND RESTATED v MATTHEW J. MONAGHAN,  
CANTWELL & GOLDMAN, PA, MATTHEW KENNEDY, B & H GUN  
SALES, INC., B & H POLICE SUPPLY, LLC, B & H GUN RACK,  
INC., BLACKSIDE TACTICAL, INC., ET AL**

---

**REPLY BRIEF OF APPELLANT, ROBERT A. GRIGGS**

---

RANDOLPH BROMBACHER  
Florida Bar Number: 069876  
CAITLIN BRONSTEIN  
Florida Bar Number: 113241  
GLEN LINDSAY  
Florida Bar Number: 059200  
**Saavedra | Goodwin, P.A.**  
888 South East Third Avenue  
Suite 500  
Fort Lauderdale, Florida 33316  
954-767-6333  
[rbrombacher@saavlaw.com](mailto:rbrombacher@saavlaw.com)  
[cbronstein@saavlaw.com](mailto:cbronstein@saavlaw.com)  
[glindsay@saavlaw.com](mailto:glindsay@saavlaw.com)  
*Counsel for Robert A. Griggs,  
individually, and as Trustee of the  
Robert A. Griggs Trust Dated  
January 30, 2014, as Amended and  
Restated*

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
CERTIFICATE OF SERVICE.....	iv-v
CERTIFICATE OF COMPLIANCE .....	vi
REPLY ARGUMENT .....	1
<b>I. C&amp;G Parties’ arguments rely on incorrect standards for both Closing Agent and Escrow Agent and rewrite the record. Under the proper application of Florida law, the trial court’s determination that no reasonable jury could not find that C&amp;G Parties acted as Escrow Agent and/or Closing Agent cannot stand. ....</b>	<b>1-5</b>
<b>II. C&amp;G Parties’ argument on Kennedy’s repledging of stock misapprehends the record and misses the point. A party is not permitted under Florida law to repledge or transfer a security - in express violation of the party’s agreement (which C&amp;G Parties co-authored) – regardless of whether such repledge is subordinate to original party. ....</b>	<b>5-14</b>
<b>III. C&amp;G Parties’ argument that nominal damages were not preserved conflates nominal damages with special damages. Nominal damages are general damages in cases alleging breach of fiduciary duty .....</b>	<b>14-16</b>
CONCLUSION.....	16-17

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Am. Honda Motor Co. v. Motorcycle Info. Network, Inc.</i> , 390 F. Supp. 2d 1170, 1179 (M.D. Fla. 2005) .....	8
<i>Askew v. Allstate Title Abstract Co.</i> , 603 So. 2d 29, 31 (Fla. 2d DCA 1992) .....	2,3
<i>Levy v. Levy</i> , 862 So.2d 48, 53 (Fla. 3d DCA 2003) .....	8,9
<i>Pressley v. Farley</i> , 579 So. 2d 160 (Fla 1 <sup>st</sup> DCA 1991).....	10
<i>Ruiz v. Ringling College of Art and Design, Inc.</i> , 656 F.Supp.3d 1340, 1349 (M.D. Fla. 2023) .....	8
<i>The Florida Bar v. Bennett</i> , 276 So.2d 481, 482 (Fla.1973) .....	10
<i>The Florida Bar v Brown</i> 905 So 2d 76, 81 (Fla. 2005) .....	9,10
<i>The Florida Bar v. Della-Donna</i> , 583 So. 2d 307 (Fla. 1989) .....	10
<i>The Florida Bar v. Hefty</i> , 213 So. 2d 422 (Fla.1968) .....	10
<i>The Florida Bar v. Hooper</i> , 507 So. 2d 1078 (Fla.1987) .....	10
<i>The Florida Bar v. Hosner</i> , 520 So. 2d 567 (Fla. 1988) .....	10
<b>Additional Authority</b>	
<i>Fla. Jur. 2d Attorneys at Law</i> § 117. (June 2024) <i>Business dealings as ground for discipline; unlawful act or act contrary to honesty and justice</i> .....	10
<i>Restatement (Third) of Law Governing Law</i> § 52. (2000) <i>The Standard of Care (Proof of violation of professional rules are admissible as evidence of negligence)</i> .....	10

## **REPLY ARGUMENT**

Rather than seriously engaging the initial brief's arguments for why the trial court did not reversibly err in determining that no reasonable jury could find that the C&G Parties did not ever act as either an Escrow Agent or Closing Agent, the C&G Parties' Answer Brief (AB) invites this Court to ignore the law, rely on incorrect standards, and rewrite the record. The Court should refuse to do so and reverse and remand the matter for a trial on these merits of Griggs' constructive fraud claims (Count VIII and Count IX) and conspiracy claims (Count X and Count XI) against C&G Parties.

**I. C&G Parties' arguments rely on incorrect standards for both Closing Agent and Escrow Agent and rewrite the record. Under the proper application of Florida law, the trial court's determination that no reasonable jury could not find that C&G Parties acted as Escrow Agent and/or Closing Agent cannot stand.**

C&G Parties' arguments -that no reasonable jury could find that the C&G Parties were acting as closing agent or escrow agent for the Acquisition Agreement closing (see AB at 19-31) - gets Florida law wrong in three keyways. They (1) ignore the law, (2) rely on incorrect legal standards, and (3) rewrite the record. Under the proper application of Florida law, the trial court's findings that no

reasonable jury could find that the C&G Parties did not act in the capacity as closing agent or escrow agent cannot stand.

In asserting an absence of duty as closing agent, the C&G Parties cite to *Askew v. Allstate Title Abstract Co.*, 603 So. 2d 29, 31 (Fla. 2d DCA 1992) to support its contention that there is no duty on a closing agent to inform all parties of any information outside of the closing documents. However, the C&G Parties conveniently ignore the *Askew* court's finding that given the dual nature of a closing agency actual conflicts may arise, which, like in the instant case, creates an affirmative duty to withdraw. *Id.* Here, the C&G Parties, in their unique position as co-author of the Closing Documents and the Merger Agreement, had actual and constructive knowledge that any repledging of the collateral without Griggs' prior written approval was an immediate breach of the Security Agreement (and Acquisition Agreement) and that they had a duty to withdraw as closing agent (and escrow agent). Indeed, the trial court specifically recognized that "[t]he duty of a closing agent is ... related to the documents prepared", which, in this matter, includes the Security Agreement (and Acquisition Agreement). **(R. 14961)**.

Further, the assertion in *Askew* that the duty to disclose is limited to closing documents is not supported where the subject documents are specific documents which the C&G Parties themselves “prepared” or where such documents are “material facts relevant to the [closing] agency”. See *Sudberry v. Lawke*, 403 So. 2d 1117, 1118 (Fla. 5<sup>th</sup> DCA 1981). Finally, it is axiomatic to the ruling in *Askew* (and the Rules of Professional Conduct, discussed *infra*) that it is improper for counsel to draft two agreements which are to be closed simultaneously and where the execution and closing of one agreement is an immediate breach of the other.

Additionally, in asserting an absence of duty as closing agent, the C&G Parties state that Ganon Studenberg (“Studenberg”), Griggs’ counsel for the subject transaction, conceded that he had no opinion regarding the C&G Parties acting as closing or escrow agents. However, Studenberg subsequently proffered testimony regarding the C&G Parties operating as closing agent, testifying that “they handled the closing transaction.” **(R. 4931)**.<sup>1</sup>

---

<sup>1</sup> In the underlying matter, Griggs asserted specific responses to discovery requests regarding Studenberg’s representation which the C&G Parties asserted were fraud upon the Court. The Court referenced certain fraudulent conduct in its analysis of the Order on Motion to Dismiss for Fraud and/or for Sanctions,

Likewise, and in regard to their escrow agency, the C&G Parties acknowledge that they held \$500,000.00 on behalf of and for Kennedy – in their self-designated capacity as “Escrow Agent” – and that such monies directly provided to Griggs by C&G Parties as part of the Acquisition Agreement closing.<sup>2</sup> While the C&G Parties assert that any fiduciary duties they owed Griggs were limited as a result of the escrow agency, the C&G Parties fail to cite any law or statute permitting the trial court to determine any such limitations as a matter of law rather than being determined by the ultimate fact-finder. Curiously, one of the cases repeatedly cited by the C&G Parties, *SMP, Ltd. v. Syprett, Meshad, Resnick & Lieb, P.A.*, 584 So. 2d 1051 (Fla. 2d DCA 1991), supports a more expansive approach regarding duties to disclose. Specifically, in *SMP, Ltd.*, the Second District held that a duty to disclose may exist even where the underlying escrow agreement is vague or devoid of reference to any

---

and ultimately only adjudged that reasonable fees shall be awarded for “evasive, untruthful, or dilatory discovery practices.” **(R. 7799)**

<sup>2</sup> AB at 27.

such specific duty.<sup>3</sup> In situations like the matter at bar, the Florida Supreme Court explained:

While an evaluation of a single contract may be a question of law to be determined by the court, when there are multiple relationships along with multiple practices and procedures to be evaluated, and the totality of the evidence is susceptible to multiple inferences and interpretations, the existence and scope of an agency relationship are generally questions of fact.

See *Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 853 (Fla. 2003).<sup>4</sup> It was thus error for the trial court to determine that no reasonable jury could find the existence of an escrow relationship between the C&G Parties and Griggs – that determination, and any limitation of any duties which may have arisen from such relationship, must be left to the triers of fact.

**II. C&G Parties’ argument on Kennedy’s repledging of stock misapprehends the record and misses the point. A party is not permitted under Florida law to repledge or transfer a security - in express violation of the party’s agreement (which C&G Parties co-authored) – regardless of whether such repledge is subordinate to original party.**

---

<sup>3</sup> *Id.* at 1055; see also *Watkins v. NCNB National Bank of Florida, NA*, 622 So. 2d 1063 (Fla. 3<sup>rd</sup> DCA 1993) (“[A]s agents escrow holders have a duty to disclose **all** material facts.”) (Emphasis added.)

<sup>4</sup> See also *Mendez v. Hampton Ct. Nursing Ctr., LLC*, 203 So. 3d 146, 150 (Fla. 2016) and *Goldschmidt v. Holman*, 571 So. 2d 422, 424 (Fla. 1990) (“[T]he existence of an agency relationship is normally one for the trier of fact to determine...”).

It is undisputed and unrefuted that: a) the C&G Parties co-authored both the Security Agreement<sup>5</sup> and the Merger Agreement<sup>6</sup> (which were both entered into by the C&G Parties' client, Kennedy on March 17, 2017) and b) Kennedy's repledging of certain B&H Stock (as contractually required by the Merger Agreement): i) was made without the written consent of Griggs<sup>7</sup>, in direct contravention of the Security Agreement (**R. 702-706**)<sup>8</sup> and Acquisition Agreement (**R. 687-701**) and ii) was made "with assistance of" the C&G Parties<sup>9</sup>.

Although the trial court found in its order that Kennedy's repledging of the B&H Stock created a "**potential** encumbrance of the [B&H] stock", "fails to establish an attempt to perpetuate a fraud", and "**may be** a breach of the original [A]cquisition [A]greement"**(R. 14954-14976** - emphasis added), i) the trial court and Appellee failed

---

<sup>5</sup> AB at 21.

<sup>6</sup> See April 17, 2023, Deposition Testimony of Matthew Monaghan, Esq, (**R. 12532-12533**).

<sup>7</sup> See July 1, 2021, Affidavit of Robert Griggs (**R. 9328-9332**).

<sup>8</sup> The Security Agreement, Section 4-1 states that "Pledgor [i.e., Kennedy] shall not sell, contact to sell, encumber, hypothecate or permit or suffer any attachment, security interest lien, or other encumbrance ... or otherwise dispose of the Collateral [i.e., B&H Stock] or any part thereof **unless Pledgor shall have obtained the prior written consent of Secured Party** [i.e., Griggs]." Emphasis added.

<sup>9</sup> See Order Granting Summary Judgment (**R. 14956, paragraph 10**) wherein trial court held that "it is undisputed that Kennedy had assistance of his counsel [C&G Parties] in effectuating the Merger Agreement".

to directly address the issues of whether the repledging of the B&H Stock without Griggs' written consent was a breach of the Security Agreement (as the prohibition to pledge the B&H Stock without Griggs' written consent is absolute - see FN 8) and ii) that the C&G Parties were on actual and constructive notice that the Security Agreement restricted **any and all** transfer, repledge, or “**suffer any attachment**” of the B&H Stock without Griggs' written consent – subordinate or not – as it is admitted by the C&G Parties that the C&G Parties “negotiated, prepared, revised, and finalized the Closing Documents” (which includes the Security Agreement).<sup>10</sup>

The C&G Parties repeatedly emphasize within their brief that Kennedy's transfer of the B&H Stock was “subordinated” to the Security Agreement<sup>11</sup> and “[Griggs'] first priority right to the pledged stock was not thwarted or affected in any way” and, as such, a) does not result in any “extreme unfairness required to establish an unconscionable advantage” so as to constitute a constructive fraud (AB at 39), b) does not “interfere” with Griggs' ability to foreclose so as to negate his conspiracy claims (AB at 45), and c) “fail[s] to

---

<sup>10</sup> See AB 4 and 21.

<sup>11</sup> See AB, pages 13, 16, 34, 39, 40, 45, 49, and 52.

establish wrongdoing by the C&G Parties” so as to preclude any finding “that Griggs was damaged”. (AB at 52).

First, Appellee’s position has ignored Florida law that a constructive fraud claim may be based upon either “abuse” **or** unconscionable advantage. The Appellee states that “‘extreme unfairness’ [is] required to establish an unconscionable advantage” in order to evidence constructive fraud. (AB at 39). However, this is not correct as constructive fraud is predicated on many factors and neither ‘extreme unfairness’ nor ‘unconscionable advantage’ is required or a singular determinant for constructive fraud (or any of Plaintiffs’ claims) as Appellee argues.

Indeed, “[c]onstructive fraud occurs when one party abuses **or** takes unconscionable advantage of a fiduciary or confidential relationship”<sup>12</sup> and “may take many forms, including misrepresentation, concealment, or taking improper advantage of a fiduciary relationship at the expense of the confiding party.”<sup>13</sup>

---

<sup>12</sup> See *Am. Honda Motor Co. v. Motorcycle Info. Network, Inc.*, 390 F.Supp.2d 1170, 1179 (M.D. Fla. 2005) (emphasis added)

<sup>13</sup> See *Ruiz v. Ringling College of Art and Design, Inc.*, 656 F.Supp.3d 1340, 1349 (M.D. Fla. 2023) citing to *Levy v. Levy*, 862 So.2d 48, 53 (Fla. 3d DCA 2003); see also Florida Pleading and Practice Forms, 3 Fla. Pl. & Pr. Forms § 26:2, (May 2024) (“Constructive fraud is a term that is applied to a great variety of transactions that equity regards as wrongful and to which it attributes the same

Florida’s legal standard (or controlling legal precedent) as to whether the C&G Parties engaged in a constructive fraud is not solely based upon whether there was “extreme unfairness” or “an unconscionable advantage” as the C&G Parties argue, but is based, in this case, upon whether the subject attorney engaged in some form of abusive conduct or whether there has been some form of “misrepresentation or concealment”.<sup>14</sup>

Moreover, the Florida Supreme Court has held that “an attorney's ethical obligations of honesty is not bounded [or defined] by contractual duties”<sup>15</sup> – such as the Security Agreement, the Merger Agreement, or whether the B&H Stock was somehow subject to a ‘subordination provision” in the then undisclosed Merger Agreement, as Appellee argues throughout their brief - but is bounded by ethical rules even when “not acting as an attorney ... because lawyers are held to a higher standard of conduct in business

---

or similar effects as those that follow from actual fraud and for which it gives the same or similar relief. Constructive fraud arises when a confidential or fiduciary relationship has been used to take advantage of the party seeking affirmative relief. Constructive fraud, or fraud in law, may exist independently of an intent to defraud.”) (citations omitted).

<sup>14</sup> *Levy* at 53.

<sup>15</sup> *The Florida Bar v. Brown*, 905 So 2d 76, 81 (Fla. 2005).

dealings than are nonlawyers”<sup>16</sup> (i.e., in the capacity as closing agent or escrow agent) and attorneys must “avoid tarnishing the professional image or damaging the public.”<sup>17</sup>

By way of example, the Florida Supreme Court in *The Florida Bar v. Brown*, in a per curiam opinion, found that attorney, who had knowingly repledged a security interest in certificate of deposit that had already been pledged to insurance company, had engaged in dishonest, fraudulent or deceitful conduct and was, as a result, suspended from the practice of law.

The reasoning being that the an attorney’s improper repledging of collateral is violative of Rules of Professional Conduct; such violations of the Rules of Professional Conduct may be used as evidence of negligence.<sup>18</sup> In the instant case, it is undisputed that the C&G Parties misrepresented and/or concealed the repledging of the B&H Stock (as the Merger Agreement was not disclosed to Griggs),

---

<sup>16</sup> See *Fla. Jur. 2d Attorneys at Law § 117*. Business dealings as ground for discipline; unlawful act or act contrary to honesty and justice; see also *The Florida Bar v. Hosner*, 520 So. 2d 567 (Fla. 1988) (“[L]awyers are necessarily held to a higher standard of conduct in business dealings than are nonlawyers.”)

<sup>17</sup> See, e.g., *The Florida Bar v. Hefty*, 213 So. 2d 422 (Fla.1968), *The Florida Bar v. Bennett*, 276 So.2d 481, 482 (Fla.1973), *The Florida Bar v. Hooper*, 507 So. 2d 1078 (Fla.1987), *The Florida Bar v. Della-Donna*, 583 So. 2d 307 (Fla. 1989).

<sup>18</sup> See *Restatement (Third) of Law Governing Law § 52. The Standard of Care* (Proof of violation of professional rules are admissible as evidence of negligence); see also *Pressley v. Farley*, 579 So. 2d 160 (Fla 1<sup>st</sup> DCA 1991).

and, as such, engaged in conduct that was ‘dishonest, fraudulent or deceitful’, ‘extreme[ly] unfair’, ‘unconscionable’, and/or ‘abusive’.

Griggs therefore maintains that the proper standard for constructive fraud is not, in instant case, limited to ‘extreme unfairness’, ‘unconscionable advantage’, ‘abusive’, or engaging in misrepresentations, concealments, or ‘taking improper advantage of a fiduciary relationship at the expense of the confiding party’ but, where, as here, an attorney is the alleged actor/conspirator, is also governed by the Rules of Professional Conduct.

Put simply, the record evidence shows that Kennedy’s repledging of the B&H Stock i) was affected “with the assistance of” the C&G Parties, ii) was affected without Griggs’ written consent and pre-approval (or knowledge) as expressly required by the Security Agreement, and was an overt and material breach of the Security Agreement, which allowed Community and/or Blackside operational and managerial control of the Acquired Companies for nine (9) months<sup>19</sup> so as to be a proper predicate for Griggs’ constructive fraud claims and his conspiracy claims.

---

<sup>19</sup> It is undisputed that Community and Blackside took a financial, ownership, and voting rights interest in Acquired Companies Stock from date of execution of Merger Agreement on March 17, 2017, until December 22, 2017. See Merger

Here there is no question that Monaghan had actual and constructive knowledge of both the Security Agreement and the Merger Agreement (and of the provisions within the Security Agreement) and that there was an absolute prohibition within the Security Agreement against repledging or “permit[ing] or suffer[ing] any attachment, security interest lien, or other encumbrance” without Griggs’ written consent.

Despite the foregoing, incredibly, the C&G Parties argue that “there is no prohibition in Acquisition Closing Documents [including the Security Agreement]<sup>20</sup> against Kennedy entering into contracts with other parties, or requiring the knowledge and pre-approval of Griggs.”<sup>21</sup> As noted, the foregoing is not accurate or correct as the Security Agreement did place a limitation on repledging B&H Stock without Griggs’ written consent, without which there is an absolute prohibition.

---

Agreement (**R. 2573-2613**), Rescission Agreement (**R. 10430-10435**), April 17, 2023 Deposition Testimony of Matthew Monaghan, Esq, (**R. 12508**), and Statement of Facts in Response in Opposition to [C&G Parties’] Motion for Final Judgment (**R. 12807-12809**).

<sup>20</sup> Please note that the C&G Parties define ‘Closing Documents’ for the Acquisition Agreement to include the Security Agreement (see AB at 4).

<sup>21</sup> AB at 16.

In short, the argument that the “double pledging” or “repledging” was “subordinate” to the Security Agreement is not in any way controlling or dispositive to the constructive fraud claims, the conspiracy claims, or Griggs’ damages as the irrefutable fact remains that Kennedy, with assistance of the C&G Parties, breached the Security Agreement and that such assistance is a proper predicate for the constructive fraud claims, the conspiracy claims and for any damages resulting and/or arising from those claims.

Put simply, the reasoning, motive, or explanation that the B&H Stock transfer effected/assisted by the C&G Parties was “subordinate to” the Security Agreement cannot be a determinative or controlling issue pursuant to the Rules of Professional Conduct or Florida law, as the repledging is repugnant and violative to the Security Agreement, and as stated in Griggs’ response to the C&G Parties’ motion for summary judgment (**R. 12799 -12957**) (and the Initial Brief), allowed an unknown third party, Community, to have improper operational and managerial control of the Acquired Companies for some nine (9) months, which Griggs alleges resulted in his incurring damages.

In asking this Court to affirm the trial court rulings, nowhere in the Answer Brief do the C&G Parties seriously engage the fact that the repledging of the B&H Stock, without Griggs' consent, whether or not it is subordinate to the interest of the Security Agreement, was an immediate breach of Security Agreement or whether Community's operational and managerial control for some nine (9) months was improper or caused actual, consequential, or nominal damages. Instead, the C&G Parties wrongly claim that the subordination of interest somehow eliminates or negates the fact that any transfer of B&H Stock without consent of Griggs was a breach of the Security Agreement and Acquisition Agreement and asks this Court to do what the trial court did: ignore that the transfer of B&H Stock was repugnant to the Security Agreement and Acquisition Agreement and contrary to both the Rules of Professional Conduct and Florida law.

**III. C&G Parties' argument that nominal damages were not preserved conflates nominal damages with special damages. Nominal damages are general damages in cases alleging breach of fiduciary duty.**

The C&G Parties argue that Griggs failed to properly preserve any claim to nominal damages and cannot do so for the first time on

appeal.<sup>22</sup> The C&G Parties cite to two cases dealing with preservation generally, but not in the context of nominal damages, or even damages generally. Fortunately, the C&G Parties do later cite a case which deals with the issue of arguing nominal damages: *Land & Sea Petroleum Holdings, Inc. v. Leavitt*, 321 So. 3d 810 (Fla. 4<sup>th</sup> DCA 2021). In *Land & Sea*, a case involving allegations of breach of fiduciary duty, a Plaintiff did not plead nominal damages and did not even reference nominal damages until Plaintiff's counsel submitted a written closing letter and proposed final judgment, following conclusion of a non-jury trial. The Fourth District Court held that, even in those circumstances, Plaintiff had not waived its right to nominal damages.

This is because '[g]eneral damages... need not be specifically pleaded.' Indeed, '[o]nly special damages must be specially pleaded in order to be considered as an item of recovery.' And nominal damages do not constitute special damages.

*Id.* at 815 (internal citations omitted). In a jury trial context "a party's entitlement to nominal damages may be waived if such damages are not requested during closing argument, or as part of a jury

---

<sup>22</sup> AB at 50.

instruction.” *Id.* at 816.<sup>23</sup> There is no question Griggs asserted an entitlement to damages in the lower court proceedings and any failure to articulate nominal damages as a specific component of those damages is irrelevant as Griggs was not required to reference nominal damages at any time in this matter prior to closing statement and/or submission of jury instructions.

Lastly, the C&G Parties’ “invasion of legal rights” argument<sup>24</sup> is merely the unremarkable statement that if a defendant has no liability, there is no need to evaluate damages.

### **CONCLUSION**

Under the proper application of Florida law, there are issues relating to escrow agent status, closing agent status, and damages which preclude summary judgment. To affirm, this Court would have to be willing to ignore the record evidence showing that the C&G Parties acted in their capacity as both escrow agent and closing agent for the Acquisition Agreement Closing and that a reasonable jury

---

<sup>23</sup> See also *Destiny Const. Co. v. Martin K. Eby Const.*, 662 So. 2d 388, 390 (Fla. 5<sup>th</sup> DCA 1995) (reversing summary judgment for defendant, explaining that “even if [plaintiff] is not able to prove it sustained actual damages as a result of the breach, [plaintiff] would be entitled to recover nominal damages upon a showing of breach of contract.”).

<sup>24</sup> AB at 50-51.

could, like the C&G Parties' own counsel in their own legal memorandum, make the conclusion that the C&G Parties acted as Closing Agent and Escrow Agent.

At the very least, because a series of harmful errors by the trial court - including granting summary judgment for the C&G Parties despite the fact that the C&G Parties designated themselves as Escrow Agent and disbursed some \$500,000 in their capacity as escrow agent (which was expressly authorized by Griggs), individually and cumulatively deprived Griggs of a full and fundamentally fair hearing on this matter.

Moreover, affirming the trial court's summary judgment order in this case will remove the ethical guidelines established by the Florida Supreme Court and The Florida Bar for the past forty years. Florida law sets, and this Court should enforce, much more exact standards for its practitioners.

The Court should reverse and remand for a trial upon the merits.

Dated: July 29, 2024.

Respectfully submitted,

/s/ Randolph M. Brombacher

RANDOLPH BROMBACHER

Florida Bar Number: 069876

CAITLIN BRONSTEIN

Florida Bar Number: 113241

GLEN LINDSAY

Florida Bar Number: 059200

*Counsel for Robert A. Griggs,  
individually, and as Trustee of the  
Robert A. Griggs Trust of the  
Edward Bernard Rasor Revocable  
Trust, dated January 30, 2014, as  
Amended and Restated*

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been electronically filed via the Florida E-portal on this 29<sup>th</sup> day of July 2024 and a copy of same electronically served via the e-portal upon the following:

1) Charles J. Meltz, Esq., Kirsten D. Blum, Esq. of TELAN, MELTZ, WALLACE & EIDE, P.A. 901 N. Lake Destiny Rd., Suite 450, Maitland, FL, [enotice@triallawfla.com](mailto:enotice@triallawfla.com); [cjmeltz@triallawfla.com](mailto:cjmeltz@triallawfla.com); [jclinton@triallawfla.com](mailto:jclinton@triallawfla.com); [kdblum@triallawfla.com](mailto:kdblum@triallawfla.com); [tshorb@triallawfla.com](mailto:tshorb@triallawfla.com); *Attorneys for Defendant/Appellee, MATTHEW MONAGHAN, CANTWELL & GOLDMAN, P.A. A/K/A GOLDMAN MONAGHAN THAKKAR & BETTIN, P.A. (the "C&G Parties") and upon counsel for BLACKSIDE TACTIAL, INC. and COMMUNITY SOLUTIONS PARTNER, LLC.*

2) Allan P. Whitehead, Esq., FRESE, WHITEHEAD & ANDERSON, P.A. 2200 Front Street Suite 301 Melbourne, FL 32901 [awhitehead@fresewhitehead.com](mailto:awhitehead@fresewhitehead.com); [Jhenderson@fresewhitehead.com](mailto:Jhenderson@fresewhitehead.com)

3) David G. Larkin, Esq, Jesse L. Kabaservice, Esq, of FALLACE & LARKIN, LC, 1900 Hickory Street, Suite A, Melbourne, FL 32901, [david@fallacelarkinlaw.com](mailto:david@fallacelarkinlaw.com); [jesse@fallacelarkinlaw.com](mailto:jesse@fallacelarkinlaw.com);

## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2) because it was prepared using Bookman Old Style 14-point font and because the word count from the word-processing system used to prepare this document is 3675 words.

**Saavedra | Goodwin, P.A.**  
888 South East Third Avenue  
Suite 500  
Fort Lauderdale, Florida 33316  
Tel - 954-767-6333  
Fax – 954-767-8111

/s/Randolph M. Brombacher  
RANDOLPH M. BROMBACHER  
Florida Bar Number: 069876  
CAITLIN BRONSTEIN  
Florida Bar Number: 113241  
GLEN LINDSAY  
Florida Bar Number: 059200  
[rbrombacher@saavlaw.com](mailto:rbrombacher@saavlaw.com)  
[cbronstein@saavlaw.com](mailto:cbronstein@saavlaw.com)  
[glindsay@saavlaw.com](mailto:glindsay@saavlaw.com)  
*Counsel for Robert A. Griggs,  
individually, and as Trustee of the  
Robert A. Griggs Trust Dated  
January 30, 2014, as Amended and  
Restated*