

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

**STEVEN MICHAEL FLOCKHART,
Defendant**

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Case No.:

18CR0881

RESTITUTION MEMORANDUM AND CONSENT ORDER

Defendant entered a plea of guilty to multiple counts of Forgery on January 6, 2020. At that time, he was sentenced to 10 years to serve on probation, with the issue of restitution left open for further hearing by the parties. The hearing on restitution was not heard due in large part to the judicial emergency stemming from the COVID-19 pandemic and ADA John Tully, who originally negotiated the plea, leaving the District Attorney's Office.

Upon review, the plea encompasses two separate instances of fraud. Defendant and victim (Arnold Mill, LLC) entered into a contract for the lease of commercial property in March of 2015. Following difficulties making the rent, Defendant signed a new contract in April 2016, amending the previous terms, and setting up a balloon payment structure. This document, however, required surety signatures, and to accomplish this, Defendant signed off on names of others (some members of his church). This criminal act begins the term where criminal damages are appropriate.

The second instance of fraud occurred in November of 2016. At this time, Defendant signed a "surrender and release" contract, wherein he agreed to pay a lump sum in order to be released from the terms of the contract. This act, like the previous act, required the signature of sureties, and again,

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Defendant signed the same names of others who did not give him consent to do so. Under the terms of the forged surrender contract, Defendant would have left the property in April 2017. However, the property itself was abandoned in November 2016. The property itself required additional work before it could be rented again, as well.

O.C.G.A. § 17-14-2 defines “damages” as:

“all special damages which a victim could recover against an offender in a civil action, including a wrongful death action, **based on the same act or acts for which the offender is sentenced**, except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium. Such special damages shall not be limited by any law which may cap economic damages. Special damages may include the reasonably determined costs of transportation to and from court proceedings related to the prosecution of the crime.”

Damages in a criminal case must stem from the criminal act. The case at hand presents a difficult study in the fine line that often blends criminal law and contract law, and here, the initial contract provides guidance on how restitution must be determined.

The original contract provided for all standard civil remedies should it have been violated. Violating a contract is not a criminal act. In the case at hand, the forged documents are the criminal act, and we must determine what damages flow from that violation (and both sides to this action can attest that that has been no easy task). To determine those damages, the criminal act invalidates any modifications made to the original contract. The April 2016 and November 2016 contract must be set aside, and from there, damages will flow. Under the terms of the original contract, Defendant was to pay **\$5060.32 a month**. The April 2016 forgery modified those terms. But that modification is null, meaning Defendant owed what was owed under the original contract. Pulling from bank account records of both parties, the damage breakdown appears as follows:

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<u>Month</u>	<u>Amount Owed</u>	<u>Amount Paid</u>
April 2016	\$5062.32	
May 2016	\$5062.32	
June 2016	\$5062.32	\$3060.32, \$3060.32
July 2016	\$5062.32	\$3310.32
August 2016	\$5062.32	\$3310.32
September 2016	\$5062.32	
October 2016	\$5062.32	\$3310.32
November 2016	\$5062.32	\$2750.00, \$4740.00

The total owed based on the above is **\$40,482.56**. The amount paid was **\$23,541.60**. This leads to damages in the amount of **\$16,940.96**.

The analysis does not end here however, and the question to be answered is whether any criminal damages flow from the second forgery, which made a promise to pay a bulk sum in order to be released from the underlying contract. However, as previously discussed, that amendment is null and void, so the original contract and its civil remedies kick in. Defendant abandoned the property in November 2016 which was contemplated by the original contract, and provides for the appropriate civil remedy.

Additionally, O.C.G.A. § 17-14-11 provides that a set off is appropriate where damages are paid in a civil context. Here, Defendant paid a security deposit in the amount of **\$4250.00** when the contract was entered, and that amount has been forfeited. That set off should be considered when determining restitution in this matter. When the original amount of damages are reduced by the

deposit amount, a total of \$12,690.96 is reached. That number reflects damages owed to victim, and should be paid accordingly as a condition of his probation. This number does not reflect all damages owed, and victim has an avenue under the terms of the original contract to proceed civilly against Defendant.

IT IS HEREBY ORDERED that Defendant's sentence shall be amended to include the above-mentioned restitution amount. Restitution shall be made to:

Arnold Mill, LLC
2500 Hidden River Trace
Woodstock, GA 30188

SO ORDERED this ____ day of November, 2020.

Hon. David Cannon, Jr.
Judge, Superior Court
Blue Ridge Judicial Circuit

Order prepared by:

David Holmes
Deputy Chief Assistant District Attorney
Blue Ridge Judicial Circuit
GA State Bar No. 422789

Consented to by:

Bart Glasgow
Attorney for Defendant

Steven Flockhart
Defendant