

**FORD v. TYCAM HOME BUILDERS INC**  
**FORD et al. v. TYCAM HOME BUILDERS, INC. et al.**

**No. A04A0432.**

**-- May 25, 2004**

R. Keith Prater, Newnan, for appellant.Stone & Bellus, P.C., John E. Bellus, Jr., Atlanta, for appellees.

On September 28, 2000, Alfred Ford filed an action in the Coweta County Magistrate Court against Tycam Home Builders, Inc., and its principal officer Anthony Pourhassan, alleging that construction on his new home had not been completed. On October 27, 2000, Ford filed a second action in the magistrate court against Tycam, again alleging defects in the construction of his house. In March 2001, Ford voluntarily dismissed both of these actions.

In July 2001, Alfred and Evanthia Ford filed an action in the Coweta County State Court against Tycam and Pourhassan, once again claiming defects in the construction of the home. That action was stayed pending arbitration, and on October 31, 2002, an ex parte arbitration award was entered in favor of the Fords. They did not, however, then move the trial court to confirm the award, but instead voluntarily dismissed the state court action.

Several days later, the Fords filed another action against Tycam and Pourhassan, this time in the Coweta County Superior Court, seeking confirmation of the arbitration award and damages. Based on the three prior voluntary dismissals, the superior court dismissed the action with prejudice pursuant to OCGA § 9-11-41(a). The Fords appeal.

OCGA § 9-11-41(a) provides that a plaintiff may voluntarily dismiss an action without permission of the court, and that such a dismissal is without prejudice. However, the unambiguous language of that statute further provides that the third dismissal<sup>1</sup> from any court of an action based upon the same claim operates as an adjudication on the merits.<sup>2</sup>

In the instant case, Ford brought three actions based on the same claims of faulty house construction and voluntarily dismissed all three of those claims. Even though the third action resulted in an ex parte unconfirmed arbitration award, the voluntary dismissal of that action before any final judgment by the trial court operates as an adjudication on the merits against the Fords.<sup>3</sup> Consequently, they are barred from bringing a fourth action against the same builder based on the same claims, and the trial court correctly dismissed that fourth action with prejudice.<sup>4</sup>

Judgment affirmed.

FOOTNOTES

1. The amended version of this Code section, which took effect after the dismissals in the instant case, now provides the filing of a second notice of dismissal operates as an adjudication on the merits. OCGA § 9-11-41(a)(3).
2. *Zohoury v. Zohouri*, 218 Ga.App. 748, 749(1), 463 S.E.2d 141 (1995).
3. See *Hosp. Auth. of Calhoun County v. Walker*, 224 Ga.App. 163, 164(2), 480 S.E.2d 849 (1996).
4. *Id.*

JOHNSON, Presiding Judge.

SMITH, C.J., and PHIPPS, J., concur