

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDUCUAL CIRCUIT
CASE NO: 2017-CP-10-04112

CHRIS KHAMNEI,

Plaintiff,

v.

COLUMBUS STREET HOLDINGS, LLC,

Defendant.

**ORDER DENYING PLAINTIFF’S MOTION
TO SET ASIDE MEDIATED SETTLEMENT
AGREEMENT**

This matter is before the Court on Plaintiff’s Motion to Set Aside Mediated Settlement Agreement. The case was called for argument on February 28, 2022, and all parties appeared. For the following reasons, the Court **DENIES** Plaintiff’s Motion in its entirety.

FACTUAL BACKGROUND

Plaintiff, Chris Khamnei, entered into a residential sales agreement with Defendant, Columbus Street Holdings, LLC (“CSH”), for the sale of a residential dwelling located in Charleston County. Pursuant to the terms of the agreement, Columbus Street Holdings agreed to pay a total sales price of \$200,000. The parties further agreed that \$50,000 of this payment would be held in escrow to assure Khamnei’s compliance with certain post-closing obligations.

The closing took place on or about April 20, 2017. It is undisputed that Columbus Street Holdings came to the closing with the full \$200,000 in purchase money which was deposited with the closing attorney. The parties completed the sale and Mr. Khamnei signed the deed over to Columbus Street Holdings. The closing agent placed \$50,000 of the sales money into escrow and remitted the remaining balance to Mr. Khamnei, less other closing costs owed by Mr. Khamnei. The deed was promptly recorded evidencing Columbus Street Holding’s legal title and ownership in the property.

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SC Court of Appeals

Sometime after the closing, a dispute arose between the parties as to whether Mr. Khamnei had fully executed the requirements precedent to the release of the escrow funds. On August 11, 2017, Mr. Khamnei filed the present action, which he amended on September 7, 2017. The Amended Complaint of September 7, 2017 is the operative Complaint in this matter. In the Amended Complaint, Khamnei asserts causes of action for breach of contract and breach of contract with fraudulent intent. Khamnei seeks possession of the escrow funds, together with other “actual, consequential, and incidental damages in an amount to be proven at trial, but not less than ninety-one thousand dollars (\$91,000).” The action does not challenge Columbus Street Holding’s title to the property, nor seek rescission of the sale. Instead, the action seeks merely money damages.

Columbus Street Holdings filed an Answer and Counterclaim alleging that Khamnei had not complied with his post-closing obligations and seeking return of the \$50,000 in escrow funds. The case has been pending for 1,662 days as of the date of the hearing on this Motion, and mediation took place 383 days ago.

Prior to this hearing, the matter has gone through a procedural labyrinth with individual members of the LLC Defendant having been dismissed by Judge Nicholson (Order dated December 14, 2017), Plaintiff having been Compelled to respond to basic discovery by Judge Goodstein (Order dated April 9, 2018), and Plaintiff having failed to appear for Court after numerous continuances. Plaintiffs’ failure to appear led Judge Addy to enter an Order stating in part: “The Plaintiff is ordered to appear in person and without excuse at the time and place that any such future matter is scheduled and noticed to occur. Should Plaintiff fail to appear at any future matter, either personally or through counsel, he shall be deemed to have waived his right to argue his entitlement to the escrow funds at issue in this case, his Complaint and Answer to

Counterclaim shall be stricken, and judgment shall be entered entitling Defendant to recover the \$50,000 in disputed escrow funds, together with any additional sanction...” (Order dated October 18, 2018). After that Order, the case was dismissed by Judge Curtis for lack of prosecution on June 12, 2019. It was ultimately restored and thereafter, Plaintiff amended his suit without leave of Court adding the bank that held the escrow funds. The bank was dismissed by Judge Price via Order dated July 30, 2020. Immediately prior to the mediation, Judge Goodstein entered an Order on February 9, 2021, cancelling an improper *lis pendens* Plaintiff had filed and Plaintiff was sanctioned and compelled to participate in the mediation session. Thereafter, the case settled at the mediation session.

THE MEDIATED SETTLEMENT

On or about February 10, 2021, nearly 4 years after the sale of property subject of this action the parties mediated with attorney Thomas J. Wills, a well-respected and able mediator. After a five-hour, arms-length mediation session the parties were able to fully resolve the matter. Proof of ADR reflecting the same was filed by Mr. Wills on February 18, 2021, and is part of the record in this matter.

THE PRESENT MOTION

More than 5 months later, on July 29, 2021, Plaintiff filed this Motion to Set Aside that mediated settlement agreement on five grounds, which are:

1. Mistake, inadvertence, surprise, or excusable neglect;
2. Newly discovered evidence which by due diligence could not have been discovered in time to move for new trial under Rule 59(b);
3. Fraud, misrepresentation, or other misconduct of an adverse party;
4. The judgment is void;

5. The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

In support thereof, Plaintiff filed a memorandum rehashing the facts and merits of the case, and filed an affidavit signed by him in support thereof. After reviewing the materials, hearing oral argument, and reviewing additional materials submitted by Plaintiff after the hearing, it appears that Plaintiff's primary factual basis for this Motion is the involvement of the former escrow agent, Cobb, Dill, Hammett, LLC ("CDH"). CDH filed an interpleader on March 30, 2018, in this Court (Case No. 2018-CP-10-01622) interpleading the \$50,000.00 in escrow funds it held from the original sale of the property from Plaintiff to Defendant, and the amount disputed in this lawsuit. Both Plaintiff Khamnei and Defendant CSH were Defendants in that case and have been active in the litigation as reflected on the Court's docket. Therefore, most of Plaintiff's arguments to set aside the mediated settlement agreement fail on their face.

To wit, Plaintiff cannot claim (1) mistake, inadvertence, surprise, or excusable neglect on the basis of CDH's claim to attorneys' fees given his engagement in the litigation of the interpleader action. Clearly, he knew of CDH's claim prior to the mediation in this matter, and in fact Plaintiff Khamnei Answered the interpleader action *pro se*, almost 3 years prior to the mediation at issue on May 11, 2018. There are no other facts to support setting aside the mediated settlement agreement on the basis of mistake, inadvertence, surprise or excusable neglect.

Second, Plaintiff has failed to demonstrate any newly discovered evidence supporting a set aside of the mediated settlement agreement for the reasons stated above.

Further, Plaintiff has failed to show that CSH or any other party committed (3) fraud, misrepresentation, or other misconduct to support a set aside of the mediated settlement agreement.

Plaintiff claims that CDH participated during the mediation session and somehow he would not have agreed to settle the matter had he known that. There is no evidence that the same occurred, but even if it did, it would be customary for third-parties with an interest in litigation to have some involvement in the mediation process to the extent necessary to protect their interest. In any event, this or no other fact support setting aside the mediated settlement agreement under argument three in Plaintiff's motion.

For his fourth and fifth points, Plaintiff argues that the judgment is void or that the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. However, Plaintiff provides no facts to support either of these arguments, and in fact, the same is irrelevant to the motion as there is no judgment. Instead, there is a settlement agreement that Plaintiff and Defendant voluntarily entered into.

Simply put, there is no evidence for the relief Plaintiff seeks and the settlement must stand. Accordingly, **IT IS ORDERED** that Plaintiff's Motion to Set Aside Mediated Settlement Agreement is **DENIED in FULL**.

IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Chris Khamnei VS Columbus Street Holdings LLC , defendant, et al

Case Number: 2017CP1004112

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153