

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)
)
)
 Santander Bank, N.A., f/k/a Sovereign)
 Bank, N.A.)
)
 Plaintiff,)
 vs.)
)
 Saluda Motor Sales, Inc., Benjamin)
 G. Bradshaw, Kelly W. Sanders a/k/a Kelly)
 Wesley Sanders, Sanders Paint & Body,)
 Inc., Sanders Auto Sales, and Sanders)
 Holdings, Inc.,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION: 2019-CP-41-00018

**ORDER DENYING PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

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SC Court of Appeals

This matter comes before me upon motion of Plaintiff Santander Bank, N.A. f/k/a Sovereign Bank, N.A., (“Plaintiff”) to Enforce Settlement Agreement filed December 29, 2021. Defendant Benjamin G. Bradshaw (“Bradshaw”) filed an Objection to Motion to Enforce Settlement on July 15, 2022. Appearing at the hearing held on July 21, 2022 were Ian D. McVey on behalf of Plaintiff and W. Harrison Penn on behalf of Saluda Motor Sales, Inc. (“SMS”) and Bradshaw (collectively with SMS the “Defendants.”) Defendant Benjamin G. Bradshaw was likewise present.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff filed the action against Defendants on January 30, 2019 including causes of action against Bradshaw for Breach of Guaranties, Enforcement of Security Interest, Conversion, Fraudulent Conveyance, Appointment of Receiver and Injunctive Relief. Thereafter, Plaintiff and Defendants entered into a Settlement Agreement. Pursuant to the terms of the Settlement Agreement, Bradshaw agreed to assign all claims he may have against Defendant Kelly Sanders

(“Sanders”) to Plaintiff. Specifically, the Settlement Agreement signed in January 2020 provides as follows:

SMS and Bradshaw shall assign for the benefit of Santander, either through the receiver or directly to Santander as may be deemed appropriate by Santander, all claims that SMS or Bradshaw may have against Kelly Sanders, any entities controlled or related to him or any third party against which SMS or Bradshaw may have related to the operation of SMS including without limitation any party or parties that may have received assets or transfers from SMS or Kelly Sanders.

Thirty months after Bradshaw executed the above agreement, Sanders entered a Plea Agreement in a criminal case filed in the United States District Court, District of South Carolina, Greenwood Division, bearing Case No. 8:21-cr-00605-DCC-1, in which he pled guilty to the charge of wire fraud, a violation of 18 U.S.C. § 1343, and stipulated to the payment of restitution to Bradshaw in the amount of \$364,261.00 (“Restitution Funds”). Further restitution was to be paid to Santander Bank in the amount of \$1,631,187. On July 12, 2022, the District Court issued a Judgment in the criminal case providing a payment schedule under which Sanders was to pay restitution to certain parties, including Bradshaw. The first payment under this schedule consisted of \$500,000.00 and has been submitted to the District Court, which is holding these funds pending disbursement.

Despite multiple attempts by Plaintiff, to obtain an additional executed Assignment of Claims from Bradshaw, Plaintiff was informed that Bradshaw refused to provide one leading it to file the instant Motion to Enforce Settlement Agreement. The apparent purpose of the new and updated Assignment of Claims form is for Santander to collect the funds directed to Bradshaw through court ordered restitution.

Plaintiff maintains that it is entitled to Bradshaw’s allocation of the disbursement of this initial payment. Bradshaw claims that he cannot execute the Assignment of Claims because Plaintiff will attempt to enforce this settlement to recover the Restitution Funds. Bradshaw asserts

that, because the funds being held by the District Court are for restitution, they cannot be assigned to Plaintiff and that these funds are exempt from assignment pursuant to S.C. Code Ann. § 15-41-30.

CONCLUSIONS OF LAW

“In South Carolina jurisprudence, settlement agreements are viewed as contracts.” *Kinghorn v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748, 750, (Ct. App. 2019) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802, (Ct. App. 2009) “An action to construe a contract is an action at law.” *Id.* (quoting *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct. App. 2012). “It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.” *Id.* at 152, 825 S.E.2d at 750, (quoting *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992).

There is no dispute as to whether the parties entered the Settlement Agreement, that it was in writing or if it was properly executed. Therefore, it is a valid settlement that can be enforced by the Court. *Kinghorn*, at 153, 825 S.E.2d at 751. The Settlement Agreement clearly states that “Bradshaw shall assign ... to Santander... *all claims* that SMS or Bradshaw may have against Kelly Sanders.” *See supra* (emphasis added.) Plaintiff alleges that Bradshaw receiving restitution is a “claim” as he is demanding money as of right as a result of the damage caused to him by Saunders’ criminal activity. Further, Santander contends that the court ordered restitution award is a “claim” covered by the January 2020 settlement agreement.

Defendant Bradshaw argues that to date, Santander has not, either for itself or through the Receiver, pursued any cause of action against Kelly Sanders based upon claims that could have

been asserted by either SMS or Mr. Bradshaw. Subsequent to this Court's appointment of a Receiver in this matter, a criminal case was filed against Defendant Kelly W. Sanders in the United States District Court, District of South Carolina, Greenwood Division, which was assigned Case No. 8:21-cr-006050DCC-1 (hereafter the "Criminal Matter"). Sanders pled guilty to a charge of wire fraud, a violation of 18 U.S.C. § 1334, and stipulated to the payment of restitution to Bradshaw in the amount of \$364,261 and to Santander in the amount of \$1,631,187.

The Court finds the facts of this case present a scenario where the United States, not the Defendant, prosecuted Sanders for his crimes against both Bradshaw and Santander. The Defendant did not seek or "claim" for restitution, it was ordered by the Court in resolving Sander's guilty plea. South Carolina Courts have previously held that when a defendant is convicted of a crime causing pecuniary damages or loss to a victim the court should hold a hearing to determine the amount of restitution due the victim as a result of the defendant's criminal acts. *State v. Morgan*, 417 S.C. 338, 341–42, 790 S.E.2d 27, 29 (Ct. App. 2016). "[I]n addition to any other sentence which [the court] may impose, the court *shall* order the defendant make restitution or compensate the victim for any pecuniary damages." S.C. Code Ann. § 17–25–322(A) (emphasis added). *Id.* Section 16-3-1110(12) of the South Carolina Code defines restitution as "payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct." The statute also provides that restitution orders do not limit any civil claims a crime victim may file. *Id.*

The provisions of The Mandatory Victims' Restitution Act ("MVRA"), 18 U.S.C. §§, 18 U.S.C. § 3663(b) provides "[t]he order of restitution shall require that such defendant (1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense (A) return the property to the owner of the property or *someone designated by the owner.*" 18

U.S.C. § 3363(b), emphasis added. Federal Courts have recognized that claims for restitution can be assigned or sold to third parties. *Okun*, 2009 U.S. Dist. 76749, 10, 2009 WL 2762620 (“The MVRA clearly contemplates that restitution payments can be assigned to individuals other than the victim.”); *United States v. Turner*, 312 F.3d 1137, 1142 (9th Cir. 2002.) However, the Court does not find, after looking at the entirety of the contract, that it was either Santander’s intent to receive an assignment of victims’ restitution from Bradshaw, or Bradshaw’s intent to assign a possible restitution award from a future criminal case. Furthermore, the Court finds the funds would be exempt from any of assignment of claims pursuant to S.C. Code Ann. § 15-41-30. S.C. Code Ann. § 15-41-30 provides in pertinent part, “(A) [t]he following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:...(12) [t]he debtor’s right to receive or property that is traceable to: (a) an award under a crime victim’s reparation law.” S.C. Code Ann. § 15-41-30(A)(12)(a).

Based on the foregoing, the Court finds that the restitution order and the settlement agreement entered into by parties are separate and distinct and the court ordered restitution is not subject to the provision in the settlement agreement. The Florida Supreme Court held in *Kirby v. State*, “because civil settlements and criminal restitution are distinct remedies with differing considerations, we hold that a settlement and release of liability on a civil claim for damages between private parties does not prohibit the trial court from fulfilling its mandatory obligation to order restitution in the criminal case.” *Kirby v. State*, 863 So.2d 238, 240 (Fla. 2003). In *State v. Morgan*, 417 S.C. 338, 341–42, 790 S.E.2d 27, 29 (Ct. App. 2016), our Courts adopted this reasoning and found the rationale to be “consistent with the language of South Carolina’s restitution statutes, which permit, a sentencing judge to consider factors such as the defendant’s

resources, the victim's resources, rehabilitative effect, and the hardship on the victim.” *See* S.C. Code § 17–25–322(B). Additionally, the court held a civil judgment concerns only the victim's damages and is not limited to pecuniary loss and that the constructs of restitution and civil damages are separate and distinct. *State v. Morgan*, 417 S.C. 338, 344, 790 S.E.2d 27, 30 (Ct. App. 2016). In sum, Defendant Bradshaw is not breaching the January 2020 settlement agreement by refusing to assign the proceeds from the District Court’s July 2022 restitution order.¹

IT IS THEREFORE ORDERED that Defendant’s Objection is SUSTAINED and Santander’s Motion to Enforce Settlement is DENIED.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

¹ This Order should not be interpreted as limiting any of Santander’s other rights of recovery from the Defendants. Those issues, should they ever arise, are left to future proceedings.



Saluda Common Pleas

Case Caption: Santander Bank, N.A. F/K/A Sovereign Bank, N.A. VS Saluda Motor Sales, Inc. , defendant, et al
Case Number: 2019CP4100018
Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod