



Karl Duskocil <kduskocil@gmail.com>

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**revised proposed orders**

1 message

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**Mike Brackett** <MBrackett@mkb-law.com>

Tue, Oct 25, 2011 at 7:20 AM

To: Karl Duskocil <kduskocil@gmail.com>

Karl,

Attached are the revised orders. I plan to send these to the judge this week.

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B. Michael "Mike" Brackett

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
803-461-2312 (direct dial)

803-461-2309 (fax)

**3 attachments**

 **B. Michael Brackett.vcf**  
1K

 **Order Granting Rule 59 motion 10.25.11.pdf**  
32K

 **Order granting motion final 10.25.11.pdf**  
21K

STATE OF SOUTH CAROLINA )  
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 COUNTY OF RICHLAND )  
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 Karl A. Dorskocil and John M. Dorskocil, )  
 )  
 ) Plaintiffs, )  
 )  
 vs. )  
 )  
 )  
 Patricia Gail D. Culp, Trustee of Karl V. )  
 Dorskocil Trust U/A/D December 14, )  
 1995, )  
 )  
 ) Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

2002-CP-40- 0229

Order Granting Plaintiff  
 Karl Dorskocil's Rule 59(e)  
 Motion for Reconsideration and,  
 Alternatively, Granting Motion to Rescind  
 or Set Aside Settlement Agreement

Order granting motion final 10.25.11.pdf  
 21K

By Order dated September 29, 2010, the Court granted the Defendant's motion to compel settlement and ordered that the terms of a disputed settlement agreement placed on the record on October 21, 2008 be compelled and executed. Each Plaintiff filed and served a motion for reconsideration, and Plaintiff Karl Dorskocil also moved, in the alternative, that the purported settlement agreement be vacated. Frank Dorskocil, a party to a related action but not a party to the above-captioned action, but someone who was a disputed party to the purported settlement agreement, also filed a motion to vacate the settlement agreement.<sup>1</sup>

On April 27, 2011 the three pending motions were before the court for hearing. In attendance were: Karl Dorskocil and his attorney Mike Brackett; John Dorskocil, appearing *pro se*; and Defendant's attorney Brian D. Newman. Neither Frank Dorskocil nor his attorney George McMaster was present, but for reasons set out below, Frank Dorskocil's pending motion is resolved

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<sup>1</sup> Karl Dorskocil and Frank Dorskocil each supported his respective motion with a supporting affidavit.

by this Order.

The Court considered the prior proceedings, the submissions filed by the parties with respect to the motions being heard, and the arguments of parties and attorneys at the hearing. The Court is persuaded that Plaintiff Karl Dorskocil's alternate motions should be granted. Accordingly, the Court has reconsidered its Order dated September 29, 2010, and now alters said Order to hold that Defendant's motion to compel settlement is denied. The terms of the less-than-an -agreement that were placed on the record left open many material and essential terms with respect to the creation and management of the LLC. An agreement to agree in the future is not an enforceable contract. Trident Const. Co., Inc. v. Austin Co., 272 F. Supp.2d 566 (D.S.C. 2003); affirmed 93 Fed. Appx. 509; Savannah Guano Co. v. Fogle, 100 S.E. 59 (S.C. 1919) (no contract where only a promise to enter into a contract in the future); Holliday v. Pegram, 71 S.E. 367 (S.C. 1911) (no contract where defendant promised to make a contract or arrange agreement at a future date).

Further, and alternatively, the Court finds and concludes (a) that the Defendant's failure to act within a reasonable time to carry out the terms of the purported settlement agreement according to the terms placed on the record on October 21, 2008 constitutes an abandonment or repudiation of the agreement,<sup>2</sup> (b) and, alternatively constitutes laches - an unreasonable delay in carrying out those terms, (c) leading to a significant change in circumstances with respect to Karl Dorskocil's ability to carry out the terms of the agreement, making it now unjust and inequitable to enforce the agreement after such a long passage of time.<sup>3</sup> The settlement agreement, assuming for sake of

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<sup>2</sup> Rather than performing the agreement placed on the record, the Defendant subsequently signed and proposed an entirely new and different agreement.

<sup>3</sup> This also applies to Frank Dorskocil's failure to act within a reasonable time to carry out the intent of the agreement.

argument that it rose to the status of an “agreement,” is vacated. Kumar v. Third Generation, Inc., 485 S.E.2d 626 (S.C. App. 1996) (Court’s have inherent jurisdiction to enforce settlement agreements and to vacate settlement agreements.)

This Order moots the motion filed by Frank Duskocil, and said motion is dismissed.

Plaintiff John Duskocil’s written motion also sought to have the settlement agreement vacated because the “settlement agreement as originally contemplated is now stale,” but John Duskocil amended his motion at the hearing to ask for court approval and enforcement of a modified version of the disputed settlement agreement. To the extent that John Duskocil’s motion(s) seek relief other than what is granted hereby, his motion (original and amended) is denied.

Attorney Mike Brackett orally moved at the hearing for leave to withdraw as attorney of record for Karl Duskocil. The motion is taken under advisement.

Accordingly, it is ORDERED that:

1. Plaintiff Karl Duskocil’s Motion for Reconsideration is granted, and the Court’s September 29, 2010 Order is altered to now provide that Defendant’s Motion to Compel Settlement is denied;
2. Alternatively, Plaintiff Karl Duskocil’s Motion to Vacate settlement agreement is granted;
3. Frank Duskocil’s motion is dismissed as being moot.
4. Plaintiff John Duskocil’s amended motion for approval of a modified settlement agreement is denied.
5. This matter will be returned to the general trial docket. The parties’ agreement for a non-jury

trial<sup>4</sup> will govern unless the trial court, by subsequent order, allows a jury trial.

IT IS SO ORDERED.

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Joseph M. Strickland, Richland County  
Master-in-Equity

October      , 2011

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<sup>4</sup> A non-jury trial was scheduled for October 21, 2008 until the terms of the attempted settlement were provided to the court.

STATE OF SOUTH CAROLINA )  
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 COUNTY OF RICHLAND )  
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 Karl A. Daskocil and John M. Daskocil, )  
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 ) Plaintiffs, )  
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 vs. )  
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 Patricia Gail D. Culp, Trustee of Karl V. )  
 Daskocil Trust U/A/D December 14, )  
 1995, )  
 )  
 ) Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 2002-CP-40- 0229

Order Granting Motion to be  
 Relieved as Counsel

Order Granting Rule 59 motion 10.25.11.pdf  
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Attorney B. Michael Brackett’s Motion to be Relieved as Counsel for Plaintiff Karl A. Daskocil was heard on October 20, 2011 at 3:30 PM. The Court noted that its file reflects that timely notice of the hearing had been served on the parties and attorneys of record. In attendance were attorney Brackett, Karl Daskocil and attorney Robert Rikard, representing the Defendant Trustee.

Mr. Brackett’s Motion is supported by his Affidavit that was filed and served with the Motion. Karl Daskocil made oral objection to the relief sought by the motion.

Based upon the showing made, the Court finds that the written attorney employment agreement provides that Mr. Brackett and his firm can withdraw as attorney for the client if the bills are not timely paid and if the relationship between attorney and client becomes unworkable. Brackett’s affidavit demonstrates that there has been a breakdown of the attorney-client relationship, attorney fee bills have not been paid resulting in a significant balance owing to Brackett. Karl Daskocil claimed that he would be prejudiced if forced to retain new counsel, but the Court is giving Mr. Daskocil ample time to retain new counsel. Accordingly, it is

ORDERED, that Mr. Brackett’s Motion to be Relieved as Attorney in this matter be, and it hereby is, granted. Mr. Brackett has no further duties or responsibilities owing to Karl A. Daskocil. Mr. Daskocil has until February 1, 2012 to retain new counsel and to have the new attorney enter a notice of appearance.

Mr. Daskocil orally moved to compel the Defendant to provide a trust accounting in compliance with prior orders of the Court and requests of trust beneficiaries. Attorney Rikard agreed.

IT IS SO ORDERED.

October , 2011

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Joseph M. Strickland,  
Richland County Master-in-Equity