

lawsuit on September 17, 2020, against the named Defendants. Plaintiff then pursued uninsured motorist coverage under the Allstate policy covering the automobile he was occupying at the time of the accident. After reaching a settlement agreement with Allstate in March of 2022, Plaintiff sought additional uninsured motorist coverage through State Farm, who appeared in this action in April of 2022. It was later determined that Essentia Insurance Company also had potential uninsured motorist coverage and Plaintiff served Essentia with the lawsuit in October of 2022.

The parties mediated this case on May 11, 2023. Present at the mediation were Plaintiff and his counsel, Brian T. Smith; State Farm and its counsel, E. Hood Dawson; and Essentia and its counsel, Susan D. DuBose. The mediator was Rob Hassold. Over the course of nearly four hours, the parties negotiated the case and were eventually able to come to a settlement wherein Plaintiff agreed to settle the entire case in exchange for the total payment of \$25,500.00, which was split between State Farm and Essentia in pro-rata shares. Pursuant to Rule 6(f) of the South Carolina ADR Rules, this agreement was memorialized in a written document prepared by Mr. Hassold and signed by all parties, including Plaintiff, and their respective counsel (hereinafter “Settlement Agreement”).¹ The following day, May 12, 2023, Mr. Hassold’s office filed Proof of ADR, notifying the Court that this matter had been fully settled at mediation. On May 16, 2023, the Court entered a Form 4 Order dismissing the case pursuant to the Settlement Agreement.

Several days later on May 23, 2023, while awaiting check instructions, counsel for State Farm and Essentia received email correspondence from Plaintiff’s counsel indicating that Plaintiff was terminating their relationship and counsel would be moving to be relieved. On June 1, 2023, Plaintiff’s counsel filed a Consent Motion to Be Relieved. Plaintiff’s counsel was relieved by order of the Court June 5, 2023. On the same day that Plaintiff’s counsel filed the Consent Motion to Be

¹ State Farm’s counsel signed for the claims representative by proxy with her written permission.

Relieved, counsel for State Farm and Essentia received correspondence from Plaintiff himself that he was proceeding *pro se* and was seeking to be released from the settlement agreement. He indicated he was considering petitioning the Court to rescind the Settlement Agreement and re-open the case. Plaintiff indicated that he had reservations during the mediation and “should not have agreed under the circumstances for which I was subjected.” Plaintiff subsequently filed Plaintiff’s Motion on June 6, 2023, alleging that he was under duress and intimidated into settling the case. As a result of these facts, State Farm and Essentia filed Defendants’ Motion on June 8, 2023, seeking to enforce the Settlement Agreement.

During oral argument on July 24, 2023, Plaintiff argued that he was subjected to intimidation during mediation and executed the Settlement Agreement under duress and/or coercion. Plaintiff argued that Mr. Smith, Mr. Hassold, Mr. Dawson, and Mrs. DuBose intimidated him into executing the Settlement Agreement by threatening to suspend his license and threatening to expose his criminal record. He further argued that his anxiety was used against him by counsel for State Farm and Essentia. On this basis, he argued that he was threatened that if he did not execute the Settlement Agreement, he would not receive any financial remedy for his alleged injuries if he proceeded to trial and thus, was coerced into executing the Settlement Agreement. Plaintiff further argued that he had significant issues with his previous counsel, Mr. Smith. His issues included not being counseled appropriately at mediation, not being able to receive certain information from counsel, and having personal medical information disclosed to counsel for State Farm and Essentia. Plaintiff further argued that he did not receive a response to a subpoena he sent to Mr. Hassold for a video recorded of the mediation, which was held via Zoom.

In response, counsel for State Farm and Essentia argued that the Settlement Agreement was fully binding and enforceable under Rule 43(k) of the South Carolina Rules of Civil Procedure.

Specifically, they are argued that all parties to the Settlement Agreement and their counsel signed the Settlement Agreement, as contemplated by Rule 43(k). Moreover, State Farm and Essentia stated that no threats or intimidating comments were made during the course of mediation and they did not use Plaintiff's anxiety against him. Indeed, they argued that the mediation was originally scheduled to be in person, but was changed to a fully virtual mediation last minute to accommodate Plaintiff's anxiety. State Farm and Essentia further argued that the crux of Plaintiff's desire to vacate the Settlement Agreement was his allegations of ineffective counsel. They argued that Plaintiff may be unhappy with his counsel, indicated by his legal malpractice lawsuit filed against Mr. Smith, but that had no bearing on the Settlement Agreement itself and it was still fully binding and enforceable. Plaintiff had recourse against Mr. Smith if he so desired and enforcing the Settlement Agreement would not preclude him from seeking redress if he so chose. Thus, on these bases, State Farm and Essentia argued that the Settlement Agreement was fully binding and enforceable and Plaintiff could not vacate the Settlement Agreement due to any alleged intimidation or issues with the performance of his chosen attorney.

STANDARD OF REVIEW

In South Carolina jurisprudence, settlement agreements are viewed as contracts. *Kinghorn as Trustee for the Mildred Ann Kinghorn Trust dated 28 April 2004 v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748, 749 (Ct. App. 2019). An action to construe a contract is an action at law. *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct. App. 2012). In an action at law, on appeal of a case tried without a jury, the judge's findings will not be disturbed unless they are without evidentiary support. *Id.* The appellate court reviews all questions of law de novo. *Miller v. Dillon*, 432 S.C. 197, 206, 851 S.E.2d 462, 467 (Ct. App. 2020).

LAW AND ANALYSIS

A. THE SETTLEMENT AGREEMENT IS A VALID, FULLY BINDING, AND ENFORCEABLE AGREEMENT UNDER RULE 43(K) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

The Settlement Agreement between Plaintiff, State Farm, and Essentia is a valid, fully binding, and enforceable agreement under Rule 43(k) of the South Carolina Rules of Civil Procedure.

The purpose of Rule 43(k) of the South Carolina Rules of Civil Procedure is to prevent fraudulent claims or oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. *Ashfort Corp. v. Palmetto Const. Group, Inc.*, 318 S.C. 492, 496, 458 S.E.2d 533, 535 (1995) (quoting 83 C.J.S. Stipulations § 4 (1953)). Rule 43(k), SCRCP, applies to settlement agreements. *South Carolina Human Affairs Comm'n v. Zeyi Chen*, 430 S.C. 509, 519, 846 S.E.2d 861, 866 (2020). Under Rule 43(k), SCRCP:

No agreement between counsel affecting the proceedings in an action shall be binding unless (1) reduced to the form of a consent order or written stipulation, or (2) unless made in open court and noted upon the record, or (3) reduced to writing and signed by the parties and their counsel.

In *South Carolina Human Affairs Comm'n v. Chen*, the Court examined a scenario very similar to the instant case. There, the parties came to a settlement agreement at mediation that was signed by all parties and counsel except for counsel for the respondents. *Chen*, 430 S.C. at 516, 846 S.E.2d at 864. The mediator then filed Proof of ADR or Exemption with the circuit court and indicated a consent order would later be filed by the parties. *Id.* Despite efforts by the appellants to complete the consent order, respondents never executed their consent and eventually decided to back out of the settlement. *Id.* Appellants filed a motion to enforce the settlement agreement, but

the circuit court denied the motion on the basis that the requirements of Rule 43(k), SCRCPP, had not been satisfied. The basis for this ruling was that respondents' attorney had not signed the settlement agreement.

On appeal, appellants argued that the circuit court erred when it denied their motion to enforce the settlement agreement. Holding that Rule 43(k) mandates strict adherence and that substantial compliance with the Rule is insufficient, the Court affirmed the circuit court's decision. The Court held that in a similar scenario, for the settlement agreement at mediation to be binding upon the parties, it must have been signed by the parties and their counsel under the third prong of Rule 43(k). This is precisely what occurred in the instant matter.

Plaintiff, State Farm, and Essentia mediated a settlement to fully resolve the matter. This agreement was reduced to writing and signed by the parties and their respective counsel in the Settlement Agreement. Unlike *Chen*, where one attorney did not sign the agreement, counsel for all three parties signed the Settlement Agreement in addition to Plaintiff, State Farm, and Essentia. The requirements of the third option under Rule 43(k), pursuant to *Chen*, have been fully satisfied here. The agreement signed by Plaintiff even states that it "complies with and is enforceable pursuant to Rule 43(k), SCRCPP." Moreover, when Mr. Hassold's office filed the Proof of ADR after obtaining a binding mediated settlement indicating that the case was fully settled, the Court acknowledged the settlement and dismissed the case.

South Carolina has long favored the resolution of disputes through alternative dispute resolution. See *C-Sculpters, LLC v. Brown*, 403 S.C. 56, 742 S.E.2d 359, 360 (2013). Plaintiff cannot repudiate his prior consent to settle this case at mediation and cause additional costs to the Defendant. Plaintiff granted his consent to the settlement and stipulated that the agreement complied with Rule 43(k), SCRCPP, via his signature on the binding mediation settlement dated

May 11, 2023. Allowing Plaintiff to renege on this binding agreement would unduly prejudice the defendants by forcing continued litigation over Plaintiff's allegations after he agreed to a binding settlement. There is no dispute as to the existence of the settlement agreement, the terms of the agreement, or the fact that Plaintiff signed it. There is an agreement, in writing, signed by all parties and all counsel. Thus, the Settlement Agreement is enforceable and fully binding under the strict requirements of Rule 43(k) and South Carolina law.

B. THERE IS NO BASIS TO VACATE THE SETTLEMENT AGREEMENT SIGNED BY PLAINTIFF UNDER SOUTH CAROLINA LAW

It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). Trial courts possess the inherent authority to enforce a settlement agreement and to enter judgment based on an agreement without a plenary hearing. *Millner v. Norfolk & W. Ry. Co.*, 643 F.2d 1005, 1009 (4th Cir. 1981). Plaintiff argues that he executed the settlement agreement under duress. South Carolina courts define "duress" as "a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition." *Holler v. Holler*, 364 S.C. 256, 266, 612 S.E.2d 469, 474 (Ct. App. 2005). "The central question with respect to whether a contract was executed under duress is whether, considering all the surrounding circumstances, one party to the transaction was prevented from exercising his free will by threats or the wrongful conduct of another." *Id.* 364 S.C. at 266-267, 612 S.E.2d at 475. In order to establish that a contract was procured through duress in South Carolina, a party is required to prove "(1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind." *Id.* The improper threat or coercion must be by the other party to the contract.

Id. A party is under duress if improper external pressure of influence practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition. *Blejski v. Blejski*, 325 S.C. 491, 498, 480 S.E.2d 462, 466 (Ct. App. 1997). Duress is viewed with a subjective test which looks at the individual characteristics of the person allegedly influenced, and duress does not occur if the victim has a reasonable alternative to succumbing and fails to take advantage of it. *Id.*; *Restatement (Second) of Contracts* § 175 cmt. b & c (1981).

Based on the evidence presented in the filings and at the hearing, the Court finds that Plaintiff does not meet the requirements for establishing that the settlement agreement was executed under duress. The Court finds that there is no evidence that State Farm or Essentia coerced plaintiff. The Court also finds that there is compelling evidence that both State Farm and Essentia provided accommodations at mediation to ensure that Plaintiff was comfortable. The Court finds that counsel for State Farm and Essentia did not use Plaintiff's anxiety against him and sought to accommodate him in order to ease his anxiety and ensure he was in a comfortable position to make a decision regarding settlement. The Court also finds that, over the course of mediation, Plaintiff was represented by counsel and his case was fully evaluated by a mediator. The Court notes that this is not Plaintiff's first time being involved in the legal system. During oral argument, counsel for Essentia argued that during his deposition, Plaintiff admitted to being involved in multiple other lawsuits stemming from other automobile collisions and a property dispute with his neighbor. The evidence presented indicates that Plaintiff is familiar with the legal process and participated in previous mediations. The Court finds that Plaintiff had the opportunity to walk away from mediation, declare an impasse, and continue to trial during the course of the nearly four hour mediation. However, Plaintiff chose not to do so and signed the settlement agreement. The Court finds that South Carolina law is clear that a party, like Plaintiff in the instant

matter, cannot subsequently repudiate a settlement agreement where he himself agreed to the terms of the settlement. *Shelton v. Bressant*, 312 S.C. 183, 439 S.E.2d 833 (1993).

A review of Plaintiff's motion, exhibits, and testimony at the hearing indicates that his motion is actually based on his belief that he was not adequately represented or advised by his counsel at the mediation. South Carolina law is very clear that the integrity of a settlement cannot be attacked on the grounds of inadequate legal representation. Rather, this issue is purely between the client and his attorney. *See Shelton v. Bressant*, 312 S.C. 183, 439 S.E.2d 833 (1993) and *Crowley v. Harvey & Battey, P.A.*, 327 S.C. 68, 488 S.E.2d 334 (1997). The Court finds that Plaintiff should be bound by the Settlement Agreement.

CONCLUSION

Based on the foregoing, the Court does not find Plaintiff's arguments that he was intimidated at mediation and placed under duress to be compelling. Plaintiff's appropriate remedy for any issues related to the performance of his counsel at mediation is through an action against that counsel. However, any remedy that he may have against his counsel is wholly unrelated to the validity of the Settlement Agreement. The Court finds State Farm and Essentia's arguments that the Settlement Agreement was fully binding and enforceable under Rule 43(k) of the South Carolina Rules of Civil Procedure and that Plaintiff has shown insufficient evidence of intimidation or duress in executing the agreement to be compelling. Accordingly, the Court hereby **GRANTS** Defendants' Motion and **DENIES** Plaintiff's Motion, thereby enforcing the Settlement Agreement and compelling Plaintiff to abide by its terms. Counsel for State Farm and Essentia shall issue payment to Plaintiff for the settlement amount minus the amount of any lien asserted by Plaintiff's former counsel within thirty days of this order. Plaintiff is hereby ordered to sign and

return the required releases to counsel for Essentia and State Farm within fifteen days of receipt of the settlement checks.

IT IS SO ORDERED!

The Honorable G.D. Morgan, Jr.
Thirteenth Judicial Circuit

August 2, 2023
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Antonio Jabbar Burts vs. Charles Antwan Sullivan , defendant, et al
Case Number: 2020CP2304294
Type: Order/Other

So Ordered

G.D. Morgan Jr.

Certificate of Electronic Notification

Recipients

Edward Dawson - Notification transmitted on 08-07-2023 10:24:41 AM.

David Moore - Notification transmitted on 08-07-2023 10:24:41 AM.

Susan DuBose - Notification transmitted on 08-07-2023 10:24:41 AM.

T. Rheney - Notification transmitted on 08-07-2023 10:24:40 AM.

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Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: Antonio Jabbar Burts vs. Charles Antwan Sullivan
, defendant, et al

Document(s) Submitted: Order/Other Order/Other

Filed by or on behalf of: Grenville D. Morgan

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

T. David Rheney for State Farm Fire And
Casualty Company

David L. Moore, Jr. for Charles Antwan Sullivan,
Terry Henry Robinson

Edward Hood Dawson, III for State Farm Fire And
Casualty Company

Susan Drake DuBose for Essentia Insurance
Company

**The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:**

Antonio Jabbar Burts for Antonio Jabbar Burts

Antonio Jabbar Burts for Antonio Jabbar Burts