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Feb 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURGH COUNTY
Court of Common Pleas
Hon. George M. Mc Faddin, Jr.,
Circuit Court Judge

Case No. 2016-CP-45-00590, Circuit Court
Appeals Court Docket No. 2021-00849

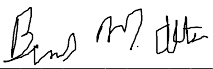
Cassandra Selph, appellant,
vs.

Barbara Boatwright; Margaret S. Daniels, Individually and as Personal
Representative of the Estate of Eli Selph; Eli Maurice Selph; and Dwayne Selph,
Defendants, of whom Margaret S. Daniels, individually and as Personal
Representative of the Estate of Eli Selph, and Dwayne Selph are the Respondents.

**PETITION/MOTION FOR REHEARING THE APPEAL, WHICH
APPEAL HAS NOW RESULTED IN THE ORDER OF THIS COURT
DATED 02/07/2024, PURSUANT TO SCAR RULE 221(a)**

Comes now on the petition/notice of motion and attaching an affirmation
of Bernard M. Alter, SC Bar No. 78125, dated February 20, 2024,
seeking rehearing of the appeal, which appeal has now resulted in the
order of this court dated 02/07/2024 pursuant to SCAR Rule 221 (a)

Dated: Brooklyn, N.Y.
February 20, 2024


Bernard M. Alter, Esq., SC Bar No. 78125
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APPEAL FROM WILLIAMSBURGH COUNTY

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Hon. George M. Mc Faddin, Jr.,

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Case No. 2016-CP-45-00590, Circuit Court

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Cassandra Selph, appellant,

vs.

Barbara Boatwright; Margaret S. Daniels,
Individually and as Personal Representative of
the Estate of Eli Selph; Eli Maurice Selph; and
Dwayne Selph, Defendants, of whom
Margaret S. Daniels, individually and as
Personal Representative of the Estate of Eli
Selph, and Dwayne Selph are the
Respondents.

AFFIRMATION/PETITION OF BERNARD M. ALTER

STATE OF NEW YORK, COUNTY OF KINGS) ss.:

Bernard M. Alter, being an attorney duly admitted to practice in the
Courts of the State of South Carolina, hereby affirms and certifies under
penalty of perjury as follows:

1. I am one of the appellant's attorneys, fully familiar with the facts, and
make this request/petition pursuant to SCAR Rule 221(a) for
reconsideration of the appeal which has now resulted in the order of
this Court dated February 7, 2024.

2. The appeal is from an order of the Circuit Court of Williamsburg County dated July 6, 2021, (R.3-10) which found appellant failed to comply with a stipulation and directed compliance and awarded costs and legal fees to respondent, Margaret Daniels.
3. A timely appeal was taken to this Court.
4. On February 7, 2024, this Court affirmed the lower court in an unpublished opinion, copy of which is attached as Exhibit A.
5. Appellant now petitions and or moves for reconsideration of this Court's order.
6. This Court determined that the lower court was correct in deciding the motion upon the affidavits.
7. I point out that the affidavits submitted by the parties contained disputed issues of fact.
8. The record is replete with appellants statements that the deeds submitted did not conform with the settlement agreement and that the respondent was actually changing the settlement agreement. (See record on appeal, R.-pp. 45-47, and R.-pp. 63-66).
9. Yet the lower court based upon conflicting affidavits from the parties, without taking any sworn testimony at an evidentiary hearing, determined appellant was in breach of the stipulation and imposed costs and attorney's fees.

10. Pursuant to SCAR 43 (k) stipulations reduced to writing are enforceable.
11. A stipulation is an enforceable contract.
12. In the case at bar, the presentation by the parties showed that there was a dispute to the enforcement of stipulation, to wit, which party was at fault.
13. Yet the lower court and this court determined that conflicting affidavits were sufficient without taking testimony at an evidentiary hearing.
14. This is contradictory to established precedent. Williams v. Chesterfield Lumber, 267 SC 607 (Sup. Ct., 1976).
15. As a result, the Court should grant the petition/motion for rehearing and vacate its order of February 7, 2024.

WHEREFORE, pursuant to SCAR Rule 221 (a), the Court should grant the petition/motion for rehearing and vacate its order of February 7, 2024, and reverse the lower Court.

Dated: Brooklyn, New York
February 20, 2024



BERNARD M. ALTER
SC BAR No. 78125

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Cassandra Selph, Appellant,

v.

Barbara Boatwright; Margaret S. Daniels, Individually
and as Personal Representative of the Estate of Eli Selph;
Eli Maurice Selph; and Dwayne Selph, Defendants,

Of whom Margaret S. Daniels, individually and as
Personal Representative of the Estate of Eli Selph, and
Dwayne Selph are the Respondents.

Appellate Case No. 2021-000849

Appeal From Williamsburg County
George M. McFaddin, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-047
Submitted January 1, 2024 – Filed February 7, 2024

AFFIRMED

Bernard Mitchell Alter, of Alter & Barbaro, of Brooklyn,
New York, for Appellant.

Walter B. Todd, Jr., of Walter B. Todd, Jr., PC, of
Columbia, for Respondent Dwayne Selph.

Kenneth Allen Davis, Tierney Felicia Goodwyn, and
Charles J. Boykin, all of Boykin & Davis, LLC, of
Columbia, for Respondent Margaret S. Daniels.

PER CURIAM: Cassandra Selph (Selph) appeals the circuit court's order granting Dwayne Selph and Margaret S. Daniels's, individually and as personal representative of the estate of Eli Selph (collectively, Respondents'), motion to compel compliance with the parties' mediated settlement agreement. Selph argues the circuit court erred by (1) considering Daniels's untimely filed affidavit, (2) ruling on Respondents' motion without allowing the parties to present additional evidence and testimony, and (3) ordering enforcement of the settlement agreement when Respondents failed to issue a written demand prior to filing their motion to compel. We affirm pursuant to Rule 220(b), SCACR.

First, as to whether the circuit court erred by considering Daniels's affidavit, we find Respondents timely served Selph under Rule 6(d) of the South Carolina Rules of Civil Procedure. *See* Rule 6(d), SCRCP ("A written motion other than one which may be heard *ex parte*, and notice of the hearing thereof, shall be *served* not later than ten days before the time specified for the hearing When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and . . . additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences." (emphasis added)). Selph incorrectly asserts Daniels's affidavit must have been *filed* ten days prior to the January 14, 2021 motion hearing. Rule 6(d) requires affidavits in support of a written motion must be *served* no later than ten days before the hearing. Although Daniels's affidavit was not filed until January 5, 2021, the notice of electronic filing indicated Daniels's affidavit was electronically served on Selph on January 4, 2021, which was ten days prior to the motion hearing. *See In re. S.C. Elec. Filing Pol'ys & Guidelines (SCEF)*, Section 4(e)(2), (3) 415 S.C. 1, 7-8, 780 S.E.2d 600, 603 (2015) (providing that (1) upon the E-Filing of a motion, the E-Filing system automatically generates and transmits a notice of electronic filing (NEF) to all authorized E-Filers associated with the case; (2) when the parties are proceeding in the E-Filing system, E-Filing of a motion along with the transmission of an NEF constitutes proper service under Rule 5 of the South Carolina Rules of Civil Procedure, as to all other parties who are E-Filers in the case; (3) service of a motion by NEF is complete at the time of submission of the motion for E-Filing as long as an NEF is transmitted and the NEF constitutes proof of service under Rule 5(b) such that the date of service shall be the date

stated in the NEF as the "Official File Stamp"); Rule 5(b), SCRPC ("Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court."). Accordingly, we find the circuit court did not err by considering Daniels's affidavit.

Second, we find the circuit court properly exercised its discretion in enforcing the mediated settlement agreement without taking additional evidence and testimony. Under Rule 43(e), of the South Carolina Rules of Civil Procedure, a circuit court has the discretion to hear a motion to enforce a settlement agreement "on affidavits in lieu of oral testimony." *Nichols Holding, LLC v. Divine Cap. Grp., LLC*, 416 S.C. 327, 341, 785 S.E.2d 613, 620 (Ct. App. 2016); *see* Rule 43(k), SCRPC ("No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.").

Lastly, as to whether the circuit court erred by enforcing the settlement agreement when Respondents failed to issue a written demand for enforcement of the mediated settlement agreement, we find this argument is without merit. *See Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 621 (Ct. App. 2012) ("In South Carolina jurisprudence, settlement agreements are viewed as contracts." (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009))); *S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) ("When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense."). The settlement agreement unambiguously required Selph pay Daniels for her interest in portion of the subject property by March 23, 2019. Further, it provided the settlement agreement was enforceable pursuant to Rule 43(k), of the South Carolina Rules of Civil Procedure, as a contract between the parties, and the parties could seek enforcement of the settlement agreement by motion. The settlement agreement did not require the party seeking to enforce the agreement issue a written demand first.

AFFIRMED.¹

WILLIAMS, C.J., and HEWITT and VERDIN, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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SC Court of Appeals

AFFIRMATION and CERTIFICATE OF SERVICE

The undersigned being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and works at Brooklyn, New York, and is a duly licensed attorney in the State of South Carolina, and affirms as follows under the penalty of perjury as follows:

That on February 20, 2024, deponent served the annexed Petition/Notice of Motion for rehearing, attorney's affirmation/certification and exhibits on:

1. Walter B. Todd, Jr., Attorney for Dwayne Selph, respondent
By sending the documents using E-mail directed to the e-mail address designated by said attorney to receive such e-mail, namely: wtodd@wbt-law.com; and

2. Boykin and Davis, LLC
Attorneys for respondent, Margaret Daniels
By sending the documents using E-mail directed to the e-mail address designated by said attorneys to receive such e-mail, namely: kdavis@boykinlawsc.com, cjboykin@boykinlawsc.com, and tgoodwyn@boykinlawsc.com.

No other party has appeared who is entitled to notice.

Dated: Brooklyn, N.Y.
February 20, 2024



BERNARD MITCHELL ALTER
SC Bar No. 78125