

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Diane W. Johnson,

Plaintiff,

v.

South Carolina Bank & Trust, Doug Holman,
Glenn Bullard, and The Estate of Wadeus(sic)
W. West,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A # 2011-CP-26-5044

ORDER

HORRY COUNTY
13 JUN 24 PM 2:30
MELANIE JOHNSON-WARD
CLERK OF COURT

This matter is before the Court on the Defendants' Motion pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure to enforce the written settlement agreement ("Settlement Agreement") between the parties dated May 9, 2012. The Court heard argument on this Motion on June 4, 2013, at the Horry County Courthouse.

In response to the Motion, the Plaintiff has filed an affidavit in which she states that she was under "duress due to the intense pressure of the process" and that she was "intimidated and pressured by the mediator to sign the Settlement Agreement." There is no dispute regarding the terms of the Settlement Agreement or the fact that she signed this document.

After reviewing the materials filed with the Court, and listening to the arguments of counsel, I hereby grant the Defendants' Motion. Rule 43(k) of the SCRCF provides that "no agreement between counsel affecting the proceedings in an action shall be binding unless ... reduced to writing and signed by the parties and their counsel." The Plaintiff has admitted that she signed the Settlement Agreement and that it was signed with the approval of her attorney at a mandated mediation conference. In addition, the Plaintiff consented to a Petition filed by the Defendants with the Probate Court of Horry County in which the Defendants requested that the

Probate Court terminate the Trust at issue and allow the Defendant Trustees to convey certain Trust assets to the Plaintiff as provided by the Settlement Agreement. Furthermore, the Plaintiff and her attorney appeared before the Probate Court on November 14, 2012 and admitted that a Settlement Agreement had been entered into by the parties. All of these actions, along with the fact that the Plaintiff signed the Agreement, lead the Court to conclude that the Plaintiff voluntarily entered into the Settlement Agreement, without any duress, and that it must be enforced. *See Byrd v. Livingston*, 727 S.E.2d 620 (S.C. Ct. App. 2012) (“subsequent actions of the parties establish that the parties had a meeting of the minds and intended to be bound by a settlement agreement”).

Consequently, the Defendants motion is granted. This action shall be dismissed with prejudice and the Lis Pendens filed by the Plaintiff shall be cancelled. The parties are ordered to comply with the Settlement Agreement. As set forth in the Settlement Agreement, the Plaintiff shall immediately sign a mutual release (“Mutual Release”), that releases the Defendants for any and all claims and provide it to her attorney, Sid Connor. Once her attorney receives the signed Mutual Release, the Defendants shall move to obtain an Order from the Probate Court (“Probate Court Order”) which terminates the Trust and allows the Defendant Trustees to distribute the Trust Assets, all of which was agreed to by the parties at the November 14, 2012 Probate Court hearing. Upon the receipt of the Probate Court Order, the Defendants shall provide the Plaintiff’s attorney with the required monetary settlement, deeds to the applicable property and a signed copy of the Mutual Release. Upon receipt, the Plaintiff’s attorney shall provide the Mutual Release to the Defendants and provide to the Defendants any other documents that are necessary to effectuate the terms of the Settlement Agreement.

AND IT IS SO ORDERED.

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge
Fifteenth Judicial Circuit

June 10, 2013

Spartanburg, SC

- The motion for summary judgment is
rendered moot.

BHC