

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
Wells Fargo Bank, N.A.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT  
Docket No.: 2015-CP-02-02849

Plaintiff

ORDER

vs.

Michael G. Morgan; Margaret H. Fitch, M.D.;  
Eric J. Olig; South Carolina Department of  
Revenue; Linda Lawrence Bowen  
Defendants

**RECEIVED**  
**Mar 14 2025**  
SC Court of Appeals

The defendant, Michael G. Morgan, filed an Amended Motion to Withdraw and Strike the Stipulation Dismissing Counterclaims, Consent to Foreclosure and Waving Deficiency Judgment. He relies on *Rule 41 (a) (1) (B), SCRPC*, to argue the stipulation filed by the Defendant Morgan with previous counsel was done without his consent and there is no Order issued by the court stating the stipulation is without prejudice. The movant’s position is that since the stipulation was not reduced to an Order specifying the dismissal is with prejudice, the Defendant may rescind his purported consent to the stipulation. The Defendant further argues *Rule 41 (a) (2) SCRPC*, provides that even an Order dismissing the action at Plaintiff’s request or dismissing counterclaims at a Defendant’s request is without prejudice.

The grounds for Defendant Morgan withdrawing the stipulation is:

- a. Stipulation was filed on July 13, 2023 but this Defendant denies any knowledge of the stipulation until July 8, 2024. He denies he approved or authorized his prior attorney to consent to the stipulations.
- b. If not stricken, the stipulation denies the Defendant of substantial rights.
- c. The motion was filed less than one year since the July 13, 2024 stipulation was filed. Defendant believes he is entitled to relief pursuant to *Rule 60, SCRPC*.
- d. Defendant argues the consideration given for the stipulation has no value because any claim of value is speculative. Morgan believes the likelihood of a deficiency judgment is small and provides no value.

Wells Fargo Bank, N. A. filed its opposition to the motion on August 12, 2024. The Plaintiff claims the defendant's motion is frivolous as the United States Bankruptcy Court for the District of South Carolina has already rejected Morgan's attempts to avoid the settlement. The Plaintiff relies on the bankruptcy court Order findings of fact to which no appeal was filed. The Plaintiff believes collateral estoppel prevents Morgan from re-litigating this matter.

The Affidavit of Michael Morgan was served on the Plaintiff on October 11, 2024. The Defendant's motion to amend was filed on July 13, 2024. *Rule 6 (d), SCRCPP*, states " when a motion is to be supported by affidavit, the affidavit shall be served with the motion; ... The moving party may serve reply affidavits at any time before the hearing commences." Defendant Morgan's affidavit states it is the Affidavit of Michael G. Morgan and is not entitled as a reply affidavit. Plaintiff filed a motion to strike the affidavit in reliance on *Rule 6, SCRCPP*.

Morgan's Affidavit describes a class action but fails to establish his relevance to the current action and the court finds this information is not relevant to the motion to amend. The Defendant failed to attach any documents other than the Mediated Settlement Agreement and the Confidential Settlement Agreement and Release and the Docu Sign information. As stated above, the detailed settlement agreement discusses dismissing the counterclaims with prejudice. The defendant's attorney at the time, following the \$200,000.00 payment to Morgan, filed a dismissal of the counterclaims with prejudice.

The Plaintiff also raises the issue of collateral estoppel. " A party claiming preclusive effect under collateral estoppel must demonstrate that particular issue was " (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support prior judgement." *Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782, Crosby v Prysmian Commc 'ns Cables and Sys USA, Rule 41 and Rule 43 (k), SCRCPP* was not raised in bankruptcy court and the court will examine and rule on those issues as well as considering defendants claim that he did not execute the settlement document submitted.

On April 25, 2008, Wachovia Mortgage FSB ("Wachovia") made a loan, as evidenced by an adjustable rate note executed by Morgan in the original amount of \$1,300,000.00. The maturity date of the Note is May 15, 2038. The Note was secured by a mortgage executed by Morgan in

favor of Wachovia on the same date whereby Morgan granted a lien and security interest in the real property located at 415 Chesterfield St. S., Aiken, SC 29801. The mortgage was recorded on May 6, 2008 in the Aiken County RMC Office in Book No. 4201, Page 1737. Wells Fargo is the successor in interest to Wachovia.

Plaintiff alleges Defendant Morgan has made no payments on the loan since 2011. The foreclosure action was filed in Aiken County on December 2, 2015. Morgan filed a counterclaim and on March 31, 2023, the parties participated in mediation with Karl S. Folkens acting as the mediator. Both parties were represented by counsel and the resolution was reached and memorialized in an agreement that is referred to as the Mediation Agreement. This document was signed by the Defendant Morgan, Morgan's attorney, Holly R. Stevens on behalf of the Plaintiff and Stacie C. Knight, representing the interest of the Plaintiff. This agreement provided the following:

- 1) Wells Fargo was to pay Defendant Morgan \$200,000.00 within 30 days of the agreement.
- 2) Wells Fargo will proceed with the foreclosure action uncontested by Defendant Morgan who will dismiss the counterclaims with prejudice.
- 3) The judicial foreclosure sale will be set no sooner than September 1, 2023 and the Plaintiff agreed to waive any deficiency judgment.
- 4) Defendant Morgan had the right to pay \$1,300,000.00 in certified funds or wired funds to the Plaintiff to pay the note and mortgage in full.
- 5) The parties also agreed in the Mediated Settlement Agreement that a more comprehensive release would be executed incorporating the terms of that agreement.
- 6) Plaintiff also states that Defendant Morgan was informed that he would be required to execute a W-9 in order to receive the settlement payments.

The parties then executed a written Confidential Settlement Agreement and Release which was signed by Defendant Morgan on May 24, 2023 and by Wells Fargo Senior Company Counsel on May 26, 2023. That agreement provided the following:

- 1) Wells Fargo was to deliver payment of \$200,000.00 by check made payable to Defendant Morgan and his attorney within 14 days of the latter of the following

- events: i) receipt by Wells Fargo counsel of one original counterpart of the agreement executed by Morgan; and ii) receipt by Wells Fargo's Counsel of a completed 2023 W – 9 tax forms for Defendant Morgan and his attorney as set forth in paragraph one of the Settlement Agreement.
- 2) Within five business days of the receipt of the payment from Wells Fargo, Morgan and his attorney would file a dismissal of the counterclaim with prejudice. Defendant Morgan also agreed to take no further action to prosecute the counterclaims against Wells Fargo or impede the litigation.
  - 3) Defendant Morgan received the \$200,000.00 payment from Wells Fargo on June 7, 2023. He did not make any payments to the Plaintiff as a result of the Mediation Agreement or the Settlement Agreement. On July 13, 2024 Defendant Morgan's attorney filed a Stipulation Regarding Dismissal of Counterclaims, Consent to Foreclosure, and Waiver of Deficiency Judgment on Morgan's behalf. That document specified that Morgan's counterclaims were being dismissed with prejudice.

When the original foreclosure hearing was scheduled for September 6, 2023, Defendant Morgan filed a Chapter 11 Bankruptcy Petition which served to stay the foreclosure action. The Plaintiff filed a motion for relief from the stay on January 11, 2024 and Defendant Morgan filed an objection on January 25, 2024. Morgan appeared at the hearing with counsel. Based on the documents submitted, Defendant Morgan argued he had made handwritten changes to the Settlement Agreement he signed on May 24, 2023 before he returned the document to his attorney. Those changes were not included in the final signed document. Plaintiff notes that there was no documented evidence submitted at the hearing to support that testimony. The United States Bankruptcy Court for South Carolina concluded that the Settlement Agreement was enforceable and that Morgan was bound by the terms of the agreement. The quote submitted by the Plaintiff is as follows:

“There is no dispute that [Morgan's] attorney in the [the instant lawsuit] transmitted the Settlement Agreement to opposing counsel bearing [Morgan's] signature and the opposition relied on that Settlement Agreement, [Wells Fargo] made the \$200,000.00 payment that [Morgan]

accepted in exchange for the releases set forth therein, and otherwise relied on the agreement. There is nothing in the record sufficient to convince the Court that there was a mistake or fraud sufficient to repudiate the agreement. [Morgan] is bound by the Settlement Agreement.”

Following this ruling, defendant Morgan hired another attorney who filed the current motion on July 12, 2024. Plaintiff notes that motion makes no mention of the Settlement Agreement or the Bankruptcy Court Order.

### **Mediation and Agreements**

The parties, represented by counsel, agreed to participate in mediation. At the conclusion of the mediation, the parties reached an agreement and executed a Mediated Settlement Agreement. The document was signed by Michael Morgan, his attorney, Drew Radeker, Holly R. Stevens, and Stacie Knight.

The Defendant presents the argument that Morgan may rescind his consent pursuant to uppercase rule *41 (a) (1) (B)*, *SCRCP*, which states, “... Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice...” The Defendant relies on this language and states he never knew or consented to the stipulation dismissing the counterclaims prior to the week of July 8, 2024.

The Plaintiff relies on the document signed by the Defendant, his attorney, and the Plaintiff. Following the mediation, the parties executed the Mediated Settlement Agreement as described above. The parties acknowledge that a more comprehensive release would be executed. The Declaration of Stacie C. Knight, an attorney for the Plaintiff, includes an exhibit of the numerous emails and negotiated agreement language between the attorneys. On May 25, 2023, Mr. Morgan’s attorney provided an agreement signed by Mr. Morgan entitled Confidential Settlement Agreement and Release. The document was fully executed on May 30, 2023.

Pursuant to the terms of the agreement, the Plaintiff paid \$200,000.00 to Mr. Radeker as the attorney for Mr. Morgan. It appears the check was negotiated and the funds have never been returned to the Plaintiff. The Stipulation regarding Dismissal of Counterclaims, Consent to Foreclosure and Waiver of Deficiency Judgment was signed and filed in Aiken County on July 13, 2023. Subsection (a) states that Defendant Morgan’s counterclaims are dismissed **with prejudice.**

Paragraph three of the Confidential Settlement Agreement and Release is a provision entitled Dismissal with Prejudice, which states, ‘Within five (5) business days of receipt of the Wells Fargo Payment, Morgan shall cause Morgan’s Counsel to dismiss the Counterclaim with prejudice. From and after the execution of this Agreement, Morgan agrees to take no further action to prosecute the Counterclaim against Wells Fargo or otherwise impede the conclusion of the Litigation.’ *Rule 41(a)(1)(B), SCRCP* states, “Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice...” In this matter, the stipulation specifically states the dismissal of the counterclaims is with prejudice. As stated above, the settlement agreement also provides that the dismissal of the counterclaims will be with prejudice. Therefore, the court finds the language of *Rule 41(a)(1)(B), SCRCP* would not allow Morgan to rescind his dismissal of the counterclaims. To the extent the Defendant argues that *Rule 41, (a) (2)* would apply, the court finds that the dismissal of the counterclaims with prejudice was by agreement of the parties and not through an Order of the Court. Defendant Morgan further argues he should be allowed to rescind the alleged consent of the dismissal of the stipulations since he did not consent to the terms of the agreement for settlement and was not aware of the specifics until July 8, 2024. Based on the exhibits attached to the Declaration of Stacie C. Knight, there is no dispute that Mr. Morgan’s attorney was fully aware of the terms and presented a document purportedly executed by Mr. Morgan indicating his agreement with those terms. A similar argument was made before the United States Bankruptcy Court, District of South Carolina and in its Order filed on August 12, 2024, that court correctly cited the reasons why the settlement agreement is enforceable. The Court stated, “Acts of an attorney are directly attributable to and binding upon the client. Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the agreement.” *Shelton v Bressant*, 312 S.C. 183, 184-85, 439 S.E.2d 833,834 (1993) (quoting *Arnold v Yarborough*, 281 S.C. 570, 572, 316 S.E.2d 416,417 (Ct. App. 1984) (holding that a litigant’s “contention that the suit was not settled according to his instructions [ did] not entitle him to rescind the agreement.”) Any communication, failure, or mistake on the part of an attorney is directly attributable to his client. See *Kirkland v Moseley*, 109 S.C. 477, 96 S.E. 608 (1918) (a party cannot set aside settlement agreement signed pursuant to attorney’s erroneous legal advice); see also *Graham v Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594,598 (1978) (“The general rule in this jurisdiction is that the neglect of the attorney is attributable to the client”).

When a litigant voluntarily accepts an offer of settlement, either directly or indirectly through the duly authorized actions of his attorney, the integrity of the settlement cannot be attacked on the basis of inadequate representation by the litigant's attorney. In such cases, any remaining dispute is purely between the party and his attorney. *Shelton at 185, 439 S.E.2d at 834 (quoting Petty v The Timken Corp., 849 F.2d 130, 133 (4th Cir. 1988).*

*Rule 43 (k) SCRPC* states, "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." In this matter, Michael Morgan, his attorney, and the attorneys representing the interest of the plaintiff, executed the Mediated Settlement Agreement. The Confidential Settlement Agreement and Release was signed by Michael G Morgan on May 24, 2023 and by Holly Stevens, Senior Company Counsel for Wells Fargo Bank, N. A. On May 26, 2023. The court finds that *Rule 43 (k) SCRPC* has been complied with since the agreements were reduced to writing and signed by the parties and their counsel.

There is no dispute that Debtor's attorney in the Foreclosure Lawsuit transmitted the Settlement Agreement to opposing counsel bearing Debtor's signature and the opposition relied on that Settlement Agreement. Creditor made the \$200,000.00 payment that Debtor accepted in exchange for the releases set forth therein, and otherwise relied on the agreement. There is nothing in the record sufficient to convince the Court that there was a mistake or fraud sufficient to repudiate the agreement. Debtor is bound by the Settlement Agreement. The Settlement Agreement provides that the opportunity to settle the debt for \$1.300.000.00 expired on September 4, 2023, at 11:59 p.m., and therefore, Debtor's reliance on the \$1.300.000.00 payoff figure after that date is misplaced."

This court believes the Order issued by the United States Bankruptcy Court's statement of the law and its finding on this issue are correct. The relief requested by Defendant Morgan to withdraw and strike the stipulation dismissing the counterclaim, consent to the foreclosure and waiving the deficiency judgment is denied.

Defendant Morgan's amended motion filed on July 12, 2024 also asserts the stipulation should be stricken pursuant to *Rule 60, SCRPC*, on the grounds that the stipulation was entered without his consent by mistake or inadvertence. *Rule 60 (b) (1), SCRPC*. "The movement in a *Rule*

60 (b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief.” *Nelson v Nelson*, 428 S. C. 152, 833 S.E.2d 432 (Ct. App. 2019). While the Defendant alleges he was not aware of the stipulation being filed, he participated in a mediation which led to the execution of the Mediated Settlement Agreement. That document states, “Plaintiff will proceed with the foreclosure action uncontested by Defendant, and Defendant will dismiss his counterclaims with prejudice.” This document is dated March 31, 2023. In May 2023, the Defendant executed the Confidential Settlement Agreement and Release. Both parties were represented by counsel and the Plaintiff has submitted a chain of emails concerning the negotiations the attorneys conducted before the final agreement was submitted. There is no evidence Defendant Morgan questioned the payment of \$200,000.00 to him and he retained that payment as part of the settlement. The settlement agreement expressly states the counterclaims will be dismissed with prejudice and that was filed on July 13, 2023.

The Defendant has failed to show any mistake or inadvertence related to the mediation, settlement documents, the payment to the Defendant, and the stipulation of dismissal filed by his attorney. Any relief requested pursuant to *Rule 60 (b) (1)* is denied.

**IT IS SO ORDERED**

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**Aiken County Master in Equity/M. Anderson Griffith**



Aiken Common Pleas

**Case Caption:** Wells Fargo Bank NA VS Michael G Morgan , defendant, et al

**Case Number:** 2015CP0202849

**Type:** Master/Order/Other

AND IT IS SO ORDERED

s/M Anderson Griffith-3076