

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 TURNER’S MARINA LLC,)
)
 Plaintiff,)
)
 vs.)
)
 R.V. RESORT AND YACHT CLUB)
 OWNERS’ ASSOCIATION, INC.,)
 SECURITAS SERVICES, INC.,)
 MIKE MORALES, and SUNSET, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2021-CP-07-01085

**ORDER DENYING TURNER’S
 MOTION TO SET ASIDE
 SETTLEMENT AGREEMENT
 DUE TO MUTUAL MISTAKE**

RECEIVED
May 23 2025
 SC Court of Appeals

This matter comes before me upon Turner’s Marina LLC’s (“Turner”) Motion to Set Aside Settlement Agreement Due to Mutual Mistake, dated May 7, 2024 (“Motion”). In support of said Motion, Turner submitted the Affidavit of Neil Turner, dated April 2, 2024 (“Turner Affidavit”). In response, the Defendants submitted the Affidavit of Chris Sibley, dated April 8, 2024 (“Sibley Affidavit”), the Affidavit of Linda Lockman, dated September 19, 2024 (“Lockman Affidavit”), and the Defendants’ Memorandum of Law dated January 17, 2025 (“Defendants’ Memorandum.”) A hearing was held on the Motion in the Beaufort County Courthouse on Tuesday, January 21, 2025, at 9:30 a.m. Appearing was Thomas C. Taylor for the Plaintiff, Christopher D. Lizzi from the Defendant R.V. Resort and Yacht Club Owners’ Association, Inc. (“POA”) and Russell P. Patterson for the Defendant Sunset Inc. (“Sunset.”) For the reasons discussed below, this Court denies said Motion.

A. Procedural Background

After three (3) years of litigation, the parties reached a settlement of all outstanding issues in this matter at mediation. All terms and conditions of the settlement were set forth in a written Settlement Agreement (“Settlement Agreement”-Exhibit 1 to Defendants’ Memorandum) signed

by all parties and their counsel at the end of mediation. The mediation process started at 10:00am on Tuesday, December 12, 2024, and ended some sixteen (16) hours later, ending at 2:00am on December 13, 2024 (Sibley Aff. § 2(b); Lockman Aff. § 3(b)). As with most mediations of a complex case, many different settlement proposals and offers were exchanged between the parties and the mediator.

Shortly after the December 13, 2024 Settlement Agreement was executed, counsel for the parties began work on preparing legal documentation required to formalize said settlement pursuant to an Amended 99 Year Lease and an amendment to the 1984 Easement. Turner thereafter asserted the Amended Lease and the Amended Easement prepared by the Defendants were not consistent with the Settlement Agreement and filed a Motion to Enforce Mediation Settlement Agreement, on February 23, 2024. The Defendants filed their Motion to Enforce Settlement Agreement on May 4, 2024, asserting the proposed documents were in compliance with the Settlement Agreement. After extensive hearings, the Court, pursuant to two (2) orders issued August 5, 2024, agreed with the Defendants that the Amended Lease and Amended Easement were consistent with the Settlement Agreement. The only change the Court made to the Amended Lease was that the Court found Turners' obligation to not install gates and employ armed security guards set forth in the Settlement Agreement did not require the Plaintiff to record a separate document to place on record these obligations. (See: Order Ruling on Plaintiff's and Defendant's Motion to Enforce Settlement Agreement, dated August 5, 2024 ("Settlement Agreement Order") , and Order Granting Defendants' Motion to Enforce Settlement as to Amended Easement, dated August 5 , 2024 ("Easement Order").

Turner filed the subject Motion seeking to overturn in its entirety the Settlement Agreement on the grounds of mutual mistake on May 7, 2024.

B. Turner Has Not Met the Required Elements to Prove a Mutual Mistake

The law involving overturning or reforming a contract on the grounds of a mutual mistake is well established in South Carolina. There are two (2) required elements Turner must show, as follows.

1. The mistake is in reference to facts upon which the contract is based, **or** where there is an omission or insertion of some material element affecting the subject matter or terms and stipulations of the contract, inconsistent with the true agreement of the parties; **and**
2. The mistake must be common to both parties and, by reason of it, each has done what neither intended.

King v. Oxford, 282 S.C. 307, 313, 318 S.E.2d 125, 128 (1984); *Truck South, Inc. v. Patel*, 339 S.C. 40, 50, 528 S.E.2d 424, 429 (2000). Turner has the burden of proof to establish these elements by clear and convincing evidence. *King*; *Truck South*.

1. No evidence of a mistake

Turner's evidence of a mistake falls short of the above standards. Turner's Affidavit provides no explanation how he and his experienced, learned counsel signed the Settlement Agreement, negotiated over sixteen (16) hours, containing language they now assert months later, was entered into based on a mistake in reference to facts or a material element of the settlement. Nothing in the Turner Affidavit evidences a mistake in reference to any facts or the subject matter dealing with the Amended Easement. The Turner Affidavit also does not state the agreement signed was inconsistent with the true agreement of the parties. The word "mistake" does not appear anywhere in his affidavit.

Turner's reliance on the "draft" proposed Settlement Agreement prepared by Mr. Neil Turner ("Draft Settlement Agreement") does not support any finding of a mutual mistake for at least six (6) reasons (Turner Aff. § 6, Ex. A). First, the Draft Settlement Agreement was

apparently generated on December 12, 2023 at 10:28pm, some three and one-half (3^{1/2}) hours before the actual Settlement Agreement was signed. (Sibley Aff. §§ 3(b),(c),(d),(e); Lockman Aff. §§ 3(b),(c),(d),(e). What might have occurred that long prior to the final Settlement Agreement being reached is simply not relevant to the wording of the Final Settlement Agreement.

Second, the Turner Draft Settlement Statement bears little resemblance to what was, hours later, agreed to and signed by all parties. Attached as Exhibit 2 to the Defendants' Memorandum is a redline showing the changes from the Turner Draft Settlement Agreement (Turner Aff. §6, Ex. A) and the final Settlement Agreement signed three and one-half (3^{1/2}) hours later. Very little of the language in Turner's Draft Settlement Agreement actually was incorporated into the Settlement Agreement signed by the parties.

Third, the Draft Settlement Agreement was never sent to the Defendants. Having never seen said document, it is not possible the Defendants agreed to any such language which later was somehow mistakenly not transcribed into the final Settlement Agreement. There can be no mutual mistake if the Defendants never saw the proposed language Turner purportedly had agreed to in mediation.

Fourth, a simple comparison of what Turner "expected" to be in the Settlement Agreement verses what was actually in the Settlement Agreement he and his counsel signed confirm this is not a case of a simple change in punctuation or the addition of one or two words that could have been mistakenly overlooked by said parties. Turner's December 12, 2023, 10:28pm Draft Settlement Agreement contains the following language as to the easement (Turner Aff. Ex. A, §6):

" 6. The 1984 easement will be updated to include access to parcel "B" by roadway."

The actual agreed to language some 3 ½ hours later in the fully executed Settlement Agreement (Ex. 1 to Defendants' Memorandum of Law §9) states as follows:

"9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to

include granting access to the Association, Owners of the Property, and each of their guests, lessees, invitees, and licensees to Parcel “B”. The parties agree the Parcel B is referenced in Plat Book 148 at Page 60.”

Even a cursory review of §9 by Turner and his counsel would have easily shown the agreed upon language was completely different than Turner’s private, internal draft completed 3 ½ hours earlier.

Fifth, under Turner’s version of the agreed upon settlement language as to the 1984 Easement, the Defendants would simply be afforded ingress and egress over the paved roads. Under the original 1984 Easement, Defendants already had these rights.(Easement Order ; Sibley Aff. §3(f); Lockman Aff. §3(f). Turner’s position would mean there was no change in the 1984 Easement, which would be an illogical conclusion, since the parties inserted language stating the 1984 Easement was to be “updated” pursuant to §9 of the Settlement Agreement.

Finally, Turner states in its Motion there was a mistake in the executed Settlement Agreement because Turner was “under the belief that the wording of Paragraph 9 provided for the preparation and filing of an Amended Easement that would follow South Carolina law with a required easement entry and terminus....” No such reference to this ground of mistake is found in the Turner Affidavit, and thus there is no evidence before the Court to support this argument. In addition, pursuant to the Court’s Easement Order, this legal argument has previously been rejected.

Based upon the above, Plaintiff has failed to present clear and convincing evidence of a mistake under *King* and *Truck South*.

2. No Evidence of a Mutual Mistake

Assuming, *arguendo*, Turner had somehow satisfied the above first element, there is no evidence, clear, convincing, or otherwise, of any mutual mistake. Pursuant to the Affidavits of

Sibley (§§3(d),(f) and Lockman (§§3(d),(f), 4, 5), the Defendants have unequivocally stated there was no mistake in the language in §9 of the Settlement Agreement. The right to cross over all of Parcel B referenced in §9 was the subject of prior disputes, which was resolved under the terms of the agreed language. In other words, this was a concession reached in extensive settlement negotiations.

At best, Turner may have shown a **unilateral** mistake on his part, and that of his counsel, both of whom signed the Settlement Agreement. No relief has been requested by Turner based on such a unilateral mistake, which would require clear and convincing evidence of fraud, deceit, misrepresentation, or concealment. Evidence of a mistake by one party is not sufficient to reform or void a contract (*Hann* at p. 424).

For the above reasons, Plaintiff's Motion is denied.

AND IT IS SO ORDERED.

Marvin H. Dukes III
South Carolina Circuit Court Judge

Beaufort, South Carolina
March __, 2025



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS R V Resort And Yacht Club Owners Association Inc , defendant, et al

Case Number: 2021CP0701085

Type: Order/Other

So Ordered

s/Marvin H. Dukes III #2785

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