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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

The Honorable Jean Hoefer Toal

Retired Chief Justice Acting as Circuit Court Judge

Case No. 2008-CP-23-3665

Appellate Case No. 2021-000341

OPINION NO. 2025-UP-022 (S.C. Ct. App. filed January 29, 2025)

William F. Tomz and Francis W. Tomz,
Individually and as Class Representatives, Respondents,

v.

Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad,
And Arthur M. Field, Defendants,

Of Which Capital Investment Funding, LLC, by and through its Receiver,
Jerry T. Saad is a Respondent and Arthur M. Field is the Petitioner.

In Re: Kathryn Taillon, Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners Arthur Field and Kathryn Taillon certify that the South Carolina Court of Appeals issued an opinion in this case, Unpublished Opinion No. 2025-UP-022, on January 29, 2025. Petitioners timely filed a Petition for Rehearing and Suggestion for Rehearing En Banc on February 12, 2025. The Court of Appeals denied the Petition by Order dated May 14, 2025.

Field and Taillon join in this Petition, but each reserves the right to appear separately before this Court and in all future proceedings.

TABLE OF CONTENTS

QUESTIONS PRESENTED

I. Did the Court of Appeals err in upholding enforcement of the belated Addendum to a mediated class action settlement agreement (GSA), despite:

a) its complete failure to comply with SCRCP 43(k) requiring signature by all parties (*pro se* or represented), and all counsel, thereby contravening the well-settled precedents of *S.C. Human Affairs Comm'n v. Zeyi Chen, Young v. Cooler* and *Ashfort Corp. v. Palmetto Construction*;

b) the lack of actual, affirmative mutual consent to all changes in material terms, as required by *Player v. Chandler,* and *Lampo v. Amedisys Holding, LLC*;

c) the absence of independent consideration to support modifications, conflicting with *Sanders v. Bagwell*, *White v. Harris, et. al*.; and

d) its approval without notice to class members, as required by SCRCP 23(c)?

II. Did the Court of Appeals err by construing the Addendum to override the GSA's broad release language, thus creating a legal ambiguity between the two documents—contrary to contract law—presenting an important matter of first impression warranting this Court's clarification?

III. Did the Court of Appeals err by holding that a broad "release of claims" in a class settlement agreement does not bar subsequent enforcement of a judgment derived from such claims, where the federally-mediated GSA explicitly waived "all rights and actions otherwise derived from such claims"—in direct conflict with established precedent and the plain language of the GSA releases?

IV. Did the Court of Appeals err in affirming enforcement of a civil restitution judgment that was void *ab initio* due to pervasive due process violations, including:

a. lack of subject matter and personal jurisdiction;

b. failure of service on necessary parties;

c. denial of discovery, hearing, and jury trial rights;

d. improper re-characterization of pleadings without notice; and

e. violation of statutory safeguards for civil restitution judgments under Article I, §24 of the South Carolina Constitution and SC Code §§ 17-25-322, 17-25-323?

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This is a complex civil case spanning sixteen years of litigation in multiple forums, growing out of a related criminal case. The Court of Appeals presents legal conclusions based on a factual recitation (Op. pp. 1-4) bearing little resemblance to the actual events, recapped below:

The Global Mediated Settlement Agreement

This case arises from the prolonged wind-up of Capital Investment Funding, LLC (CIF), a South Carolina investment firm managed by Arthur Field. Petitioners Arthur Field and his wife, Kathryn Taillon, are Florida residents. Taillon, a party to the Global Settlement Agreement (GSA), co-owns the Florida homestead now targeted for enforcement based on a disputed civil judgment.

The litigation intersects with related civil and criminal proceedings. In 2008, the Tomz class sued CIF on behalf of approximately 650 noteholders less 8 opting out, i.e. *Tomz v. Capital Investment Funding, LLC and Field,* 2008-CP-23-03665 ("03665"). In 2009, Jerry Saad was appointed Receiver and Manager of CIF. Saad operated under a Court Order allowing plaintiff class counsel to "oversee" his activities, blurring the line between fiduciary neutrality and adversarial litigation. Saad remained an active participant in all subsequent proceedings.

After Field's 2013 plea agreement 2012-GS-47-08, five overlapping civil cases were pursued against him. (R. p. 155) In 2017, a court-ordered mediation before U.S. District Judge Hendricks produced the GSA (R. pp.137-138 (EDF #317)), which was signed by all 26 parties to finally resolve all litigation through broad mutual releases--executed on March 8, 2017. (R. pp.145, 154-169 (EDF #440)) The settlement included substantial payments and property transfers by Field and affiliated parties, including Taillon. In return, CIF and the class agreed to dismiss all actions with prejudice and waive all claims past, present, and future. The GSA ¶8 explicitly stated elimination of all restitution was a condition precedent to the Agreement (*Id.,* p. 146; R. pp. 156–157). Because Field did not have sufficient assets, several 'related' persons agreed to add large sums to satisfy Receiver's demands in order to obtain full release, dismissals with prejudice and satisfaction of restitution.[1]

On March 10, 2017, Receiver moved to ratify the GSA on behalf of the *Tomz* Class. The 640 remaining Class members were notified in accordance with Rule 23, SCRCP. Judge Miller held a fairness hearing on March 27, 2017. (R. pp. 297–299) During the next 5 months, the 'defendant parties' substantially performed their GSA obligations, delivering significant money, real and personal property to Receiver (see n.1).

<u>The Modification of Restitution</u>

On November 1, 2017, Judge Maddox heard Field's Motion to terminate restitution, vigorously supported by Receiver and Class Counsel, but opposed by the S.C. Attorney General.[2] Receiver told Judge Maddox the GSA monies were "the best they felt they could get from defendant Field". (R. p.82) However, Deputy Attorney General Waters objected, expressing concerns Field might renege and that the State could not appear to "walk away" from an existing restitution order. (R. pp. 80–82)

[1] Allyson Field assigned her home valued at $1.2 Million. Arthur Field, Bart Kelley and Brad Kelley surrendered interests in CIF. Taillon/Field delivered roughly $140,000 cash and Taillon assigned a Note worth over $175,000. Kirsten White gave up her home with substantial equity. Davyd Field previously gave a $2.5 Million factory in Anderson, SC. (Collectively 'defendant parties') CIF gave them nothing in return other than the release from all past, pending or future litigation as set forth in GSA 3-5, 14. (R. pp. 158-165, 168-169, GSA ¶14(A)-(H)) The Court of Appeals ignored all of this, incorrectly focusing solely on the subsequent deletion of GSA ¶8.

[2] Pursuant to the State Grand Jury Act, the proceeding was held with no public allowed to attend.

At Judge Maddox's direction, the parties negotiated a compromise. CIF and the Class maintained their full waiver of claims, but the GSA was modified solely to address the Attorney General's objections regarding restitution. (R. pp. 86-87) Based thereon, Judge Maddox ruled:

1) Restitution payments would be immediately terminated, consistent with the GSA.
2) The GSA remained with all releases intact unless Field failed to comply with GSA ¶14. (R. pp.86-88, 158-159)
3) The Attorney General, however, retained the right to convert any remaining restitution into a civil judgment against Field, pursuant to SC Code §§ 17-25-322, 323. (R. pp. 87,171)
4) The civil judgment would be in favor of the criminal victims as set forth in such statutes, Order 11/27/17, par. 4(e).

Judge Maddox said the changes were necessary despite all civil litigants agreeing CIF and the Class would not pursue <u>any</u> future claims whatsoever. Judge Maddox noted Receiver concluded he was better off with the more immediate and certain consideration provided by the GSA than the alternative of continuing to seek the entire amount of alleged losses. Hence, Receiver, CIF and Class would continue to receive only the payments they had bargained for in the GSA.

On November 27, 2017, Judge Maddox clarified that the "criminal victims" entitled to restitution under SC Code §§ 17-25-322, 17-25-323(B), (D), and (E) were distinct from CIF and the *Tomz* Class plaintiffs. (R. pp. 86–88) On November 1, 2017, Judge Maddox stated the civil plaintiffs and the parties to whom restitution was owed were not the same groups. (R. p. 80 ("some" of civil plaintiffs "are the victims in this criminal action"); p. 81 (the civil plaintiffs "represent some of the victims")) The original GSA bargain remained intact unless Field failed to comply.

<u>The Addendum</u>

On November 27, 2017, Judge Miller held a motion hearing in the 03665 *Tomz* case without providing additional notice to: the 640 Class Members, as required under Rule 23, SCRCP, or any of the GSA parties, including several *pro se* litigants. The motion was not directly related to the November 1, 2017, proceedings before Judge Maddox.

The only GSA 'person' attendees were Field, Brooks and Finch, who were parties to *Brooks v. Field*, 6:14-cv-02267-BHH (R. pp. 251-254) and Saad. None of the other GSA signing persons were parties to the 03665 case, and were not required to be at the hearing. (R. pp. 154, 167-169) Taillon, Allyson Field, T. Brad Kelley, T. Bart Kelley and *pro se* persons Kirsten White and Davyd Field were absent. Class Lead Plaintiffs Tomz and Class Counsel Connell were also absent, raising concerns about the proceeding's legality under Rule 23(c), SCRCP.

During this hearing, the following took place:

- CIF's attorney Brandt suddenly introduced a new, last minute Addendum drafted by CIF's attorneys anticipating Judge Maddox's Order. (R. pp. 238, ll. 6-20; 180-184);
- When asked by the Court, Brandt admitted the Addendum had not been circulated to anyone else beforehand. (R. p. 251, ll. 5-13, 254);
- Brandt confirmed Judge Maddox required modifications to the GSA and **<u>all</u> 26 original GSA signers had to approve, and <u>all</u> 26 had to sign the Addendum.** (*Id.*)

Only CIF had advance notice of the Addendum, which did not revise the release language in GSA ¶¶ 3–5, 14(I)(ii),(v), but modified the GSA ¶8, as required by the Attorney General. The modifications included:

a) Originally, GSA ¶8 made the agreement contingent on termination of Field's restitution.

b) The Addendum removed this contingency, allowing the agreement to proceed even if a civil judgment was later entered by the Attorney General. (R. p.31)

c) It surgically deleted only the words "return of earned salary" from GSA ¶14(I)(v), as requested by the Attorney General, but left the ¶14(I)(v) release language in place.

d) All other GSA release language in all paragraphs was left intact. (R. pp. 170–184, 166)

Thus, all litigation between the Receiver and all the released 'defendant parties' was concluded. The Court of Appeals failed to note these changes. (See Arguments II and III, *infra.*)

Only Field (facing potential contempt--R. p. 156 #9), CIF Manager Saad, Brooks, Finch, and their attorneys signed the Addendum (*Tomz*, were absent, but signed later). Judge Miller ratified the GSA and Addendum by order dated December 1, 2017, declaring that the 03665 case was dismissed with prejudice. (R. pp. 30–33) Field was dismissed per GSA ¶ ¶3-5, 14(I).

Judge Miller referred to the Addendum, but didn't enter it in the Record. Judge Miller stated the Addendum "does not affect any other party to the GSA other than Arthur Field," (R. p. 31) reinforcing CIF's rights remained fully released and the Addendum did not alter the Agreement terms between the GSA parties. [3] (R. p. 155, ¶¶ 3–5; p. 165, ¶¶ 14(I)(ii),(v); p. 31) The Addendum was not attached to the GSA Approval Order. Judge Miller set retroactive signature deadlines, which were ignored by all 11, including Class Counsel Connell. (R.pp. 27, 32, 170-173, 311–350) Nor was the Addendum included in the 2018 dismissal Order in *CIF v. Field,* 2015-CP-23-01263. It was omitted from CIF's 3:-19-cv-0606-J32 *Petition*. The partially executed Addendum vanished

[3] Judge Miller failed to enter a Form 4 in 03665. Judge Stilwell did so in *CIF v. Field,* 2015-CP-23-01263 based solely on CIF's attorney Pillsbury's representation and the GSA. (R. p. 90) In *Kumar v. Third Generation,* 324 S.C.284,288-289, 485 S.E.2d 626,628(Ct. App. 1995), the Court peripherally noted it was the obligation of the Judge to file Form 4, citing *Widewater Square Assoc. v. Opening Break of America, Inc.*, 314 S.C. 149(Ct. App. 1994) aff'd as modified 319 S.C. 243, 460 S.E.2d 396(1995). U.S.D.J. Hendricks did the federal equivalent. (R. p. 146)

from the record until CIF unearthed it in December, 2019. These defects raise serious concerns regarding its validity and enforceability under Rules 43(k) and 23. (See Argument I, *infra.*)

<u>The 2018 Judgment</u>

Despite full GSA compliance, Field was held in contempt on July 2, 2018, for statements made before the GSA was approved—allegedly violating ¶10. He was ordered to pay $1 million or serve six months. While Field was incarcerated, Saad submitted an *ex parte* accounting to Judge Maddox. On October 30, 2018, while Field was still in prison, Judge Maddox entered a civil judgment of $1,767,634.71 against Field without notice, hearing, or findings. No supporting motion or service was filed, and the amount appeared inconsistent with prior orders and accounting. (R. pp. 77-79) It was not served on Field or his attorney. (See Argument IV, *infra.*)[4]

<u>2019 Florida Collection Action</u>

CIF attempted to enforce the judgment in Florida. *Saad v. Field,* <u>CA18-1513</u>. (R. pp. 690-93) Taillon removed to federal court on May 22, 2019. (R. p.212, 0606)(M.D.Fla.) CIF requested a stay advising U.S.D.J. Corrigan it would bring a new Declaratory Judgment action in South Carolina in the 2008 *Tomz* case (R. pp. 515-529, 690-693)

<u>PROCEDURE BELOW: 2019--2025</u>

On December 31, 2019, despite the 2017 dismissal of the 03665 case under the GSA, the Receiver filed a Motion for Declaratory Relief under the South Carolina Uniform Declaratory Judgments Act (SCUDJA), SC Code §15-53-10, *et seq.* (R. pp. 147-53; 155, ¶¶ 3-5) The motion sought a ruling that CIF's judgment collection action in Florida (0606) was legally *proper* under

[4] Instead of filing it in the 03665 case, Receiver docketed it in Spartanburg County (2018-CP-42-04037), preventing the GSA parties or counsel discovering it until after the appeal deadline had passed. (EDF#3, R. p. 693). The 04037 docket does not reflect service on anyone. The Court of Appeals ignored these several procedural irregularities entirely.

the GSA. (R. p.147, ll. 1-6) The Receiver bypassed Rule 244 SCACR and further demanded $250,000 in damages for breach of contract, claiming Field's Florida filings violated the GSA with enforcement by contempt. (R. p.147, ll. 10-12; pp.152-153)

Receiver failed to file and serve Field with a Summons and Complaint. In response, Field removed the 03665 case to federal court. U.S. Magistrate Judge Austin remanded, holding the 03665 case had been closed since 2017 under the GSA. (R. pp. 94-99) Field moved to dismiss Receiver's 'Motion'. (R. pp. 192-206) CIF did not respond to it. Taillon also opposed Receiver's "Motion." (R. pp. 185-91)

On November 12, 2020, Judge Miller recused himself, and retired Chief Justice Toal was appointed in his place. (R. p. 20) However, the GSA—at CIF's and Receiver's insistence—explicitly limited jurisdiction over GSA disputes solely to Judge Miller. As a result, Judge Miller's recusal deprived the trial court of subject matter jurisdiction. Moreover, the court never obtained personal jurisdiction over Field. The Court of Appeals also incorrectly ignored U.S.M.J. Austin's ruling.

Just one month later, on December 17, 2020, without allowing discovery, a hearing, or a jury trial—and without reviewing Field's Motion to Dismiss—the Trial Court summarily:

- Granted CIF declaratory relief;
- Awarded $250,000 in damages based solely on Field's activity in the Florida case; and,
- Ordered the amount be added to Field's restitution, improperly including it in the 2017 civil judgment issued by Judge Maddox. (R. pp. 13-17) (reversed by the Court of Appeals).

Field and Taillon timely filed Rule 59(e) Motions. (R. pp. 207-216, 217-228) CIF filed a response only when ordered to do so. (R. pp. 257-267) Field then filed an opposition brief. (R. pp. 268-275)

On March 2, 2021, the Trial Court issued an Amended Order. (R. pp.1-12) The court unilaterally reinterpreted CIF's SCUDJA filing as an enforcement motion, despite CIF never raising this claim in its pleadings (R. p.5, sec. #3). Acting *sua sponte*, the Judge re-styled CIF's motion as a 'Motion to Enforce the Settlement Agreement', treating it as a motion for summary judgment—despite the case involving Florida property, over which the court had no enforcement power. Moreover, the trial court ignored the normal summary judgment rules calling for issues of fact to be resolved against the non-moving parties. (See Argument IV, *infra.*)

The Court of Appeals affirmed the enforceability of the Addendum and upheld the Florida collection effort. It ignored that the Addendum was unsigned, unauthorized, unsupported by new consideration, and introduced without notice. It also affirmed rulings obtained in a closed case without pleadings or service. The Court of Appeals reversed only on the $250,000 award. In addition, the Court of Appeals raised a totally new grounds for affirmation, (i.e. the lack of Form 4 dismissal), which neither CIF's nor the Class's counsel ever raised at any stage in any forum.

These deviations from procedural and constitutional norms render the judgment void *ab initio*, raise issues of first impression, and require this Court's intervention to preserve the integrity of class settlements, protect due process, and clarify South Carolina's enforcement doctrines. These issues also bear directly on the enforceability of class action settlements and the finality of releases under Rule 43(k).

INTRODUCTION

This Petition presents a pivotal legal question: Can a broad Settlement release be nullified by enforcing a later judgment—without a carve-out—based on a procedurally invalid Addendum that violates Rule 43(k) and established precedent? Though unpublished, the decision below undermines settlement finality, unsettles Rule 43(k) jurisprudence, and invites courts to disregard due process. Unless corrected, it risks incentivizing litigation by agreement repudiation and sets a dangerous precedent in both settlement practice and constitutional procedure. The case raises substantial questions of law with far-reaching implications for judicial finality, due process protections, and enforcement of mediated settlements, warranting this Court's intervention.

ARGUMENT

I. The Court of Appeals erred by upholding the validity of the Addendum to the GSA despite clear violations of Rule 43(k), and binding precedent in *Zeyi Chen, Chandler,* and *Bagwell*. This error undermines the finality of settlements, creating statewide legal uncertainty.

"The elements necessary for the formation of any contract are (1) an offer, (2) acceptance of the offer, and (3) the mutual exchange of benefits the law calls 'consideration'." *Lampo v. Amedisys Holding, LLC,* Op. No. 28265 (S.C. Supr. Ct. 3/5/2025) (Howard Adv. Sheet No. 10, p.20,23). The Court of Appeals erred by affirming the enforcement of the GSA Addendum, which is void due to pervasive procedural irregularities and fatal substantive defects. These include: (1) failure to comply with Rule 43(k), SCRCP; (2) absence of mutual consent to the essential terms by all the GSA parties; (3) lack of consideration; and (4) improper judicial modification of a certified class settlement agreement without class notice or fairness hearing, violating Rule 23(c), SCRCP. This Court should grant *certiorari* to prevent the erosion of well-established contractual settlement enforcement principles. This Court reviews such issues *de novo.*

Rule 43(k), SCRCP requires any settlement be "reduced to writing and signed by the parties and their attorneys." Courts interpreting this rule have consistently held that full and strict compliance is mandatory for settlements and any modifications thereof.

Rule 43(k) establishes a bright line rule. **The Addendum's non-compliance with that rule renders it void *ab initio*.**

Among the authorities establishing this proposition are the following:

- In *S.C. Human Affairs Comm'n v. Zeyi Chen*, 430 S.C. 509, 519, 846 S.E.2d 861, 866 (2020), this Court reaffirmed **Rule 43(k) is mandatory**, precluding reliance on contract or equitable principles to validate a noncompliant agreement **"Substantial compliance is not sufficient.** The purpose of Rule 43(k)…is the avoidance of uncertainty." *Id.*[5]
- *Young v. Cooler,* 347 S.C. 362, 365, 555 S.E.2d 410, 412 (Ct. App. 2001). "Rule 43(k) is to prevent disputes concerning the existence and terms of the Agreement."
- *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 495, 458 S.E.2d 533, 535 (1995). **Substantial compliance with Rule 43(k) is insufficient.** This is especially critical when *pro se* persons are party to the Agreement, as several were herein.
- *Roberts v. Gaskins,* 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App. 1997). A modification to a contractual Agreement must satisfy the same strict requirements as the original agreement to avoid further disputes, confusion and subsequent litigation.

CIF's Addendum clearly does not meet this standard:

a) It was presented 8 months after all 26 parties executed the original GSA; and, after 'defendants' had substantially performed. (R. pp. 170-175, 154-169)

b) No Rule 23(c) notice of the Addendum was given to the Class.

c) It was not circulated in advance. (R. pp. 238, ll. 6-20; 180-184)

d) **11 of 26 required signatures are still missing** including Class Counsel Connell's.

[5] Citing *Buckley v. Shealy,* 370 S.C. 317, 322 n.2, 635 S.E.2d 76, 78 n.2 (2006) (finding Rule 43(k) applies even when parties admit to reaching an agreement at mediation because the terms of the Rule are mandatory); and *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006). *See also, Lucas v. State Farm Mut. Auto. Ins. Co.*, No. 2025-UP-011, 2025 S.C. App. Unpub. LEXIS 14 (Ct. App. Jan. 15, 2025) (confirming Rule 43(k) applies to all agreements regarding "pending litigation" and denying enforcement of agreement where there was "no evidence of a consent order or a written stipulation that the parties signed").

e) Ten (10) non-signers—including Taillon, her attorney, and all *pro se* persons—were not parties to 03665 and had no actual notice of the new Addendum. (R. pp. 172-174)

f) Judge Miller lacked authority to compel signatures from nonparties. (R. pp. 27, 32)

g) The Addendum was not attached to <u>any</u> order or incorporated into the GSA until a Dec. 31, 2019 filing by Motion in the 03665 case. (R. pp. 27, 170-184)

h) Judge Miller's oblique oral reference to it—made with only 11 of the 26 'parties' present—fails to satisfy the mandates of Rules 23(c) or 43(k). (R. p.31)

Rule 43(k) affects all settled or mediated cases, not just this one. If this ruling is allowed to stand, it will create confusion in all future settlement enforcement, contradicting decades of settled precedent from *Ashfort* through *Zeyi Chen*.

<u>No Mutual Consent Or Acceptance Took Place Between All Parties to All New Terms</u>:

A valid modification requires mutual, knowing consent as to <u>all</u> new material and essential terms by <u>all</u> parties to the original contract. *Player v. Chandler*, 299 S.C. 101, 104-05, 382 S.E.2d 891, 893-94 (1989).[6] The attempted modification here fell well short of that standard:

- The Class never consented to any modification materially affecting fund distribution.
- Eleven (11) other 'GSA parties' withheld consent by refusing to sign even after being twice ordered to do so. Their 'silence' does not constitute consent. *Lampo, supra,* Howard Adv.Sheet No.10, at 26.

[6] "Any modification of written contract must satisfy all requisites of valid contract…there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." *Id.* (citing *Bishop Realty & Rentals, Inc. v. Perk, Inc.,* 292 S.C. 182, 355 S.E.2d 298 (Ct.App. 1987) (declining to enforce an unsigned modification of a contract). *Player* was cited with approval by Justice Few in *Crenshaw v. Erskine Coll.,* 432 S.C.1, 30, 850 S.E.2d 1, 16 (2020). The consent must be given without any duress.

- CIF willfully concealed its intent to extract an additional $1.7 Million, by leaving the GSA's broad Release terms unchanged: GSA ¶¶ 4, 5, 14(I)(ii),(v). *Cf., Young, supra.*
- CIF misled Field about the Addendum's true effect or created resulting ambiguity.
- Field signed under real threat of contempt, rendering the Addendum unconscionable.

It was clear and harmful error to imply consent to an unsigned, ambiguous modification. No agreement was reached by <u>all</u> parties and counsel. No meeting of the minds occurred. *Player.*

<u>Lack of Consideration Renders the Addendum *Nudum Pactum* and Unenforceable:</u>

Under *Sanders v. Bagwell*, 32 S.C. 238, 10 S.E. 946 (1890), any material modification requires new, independent consideration.[7] An increase in the amount to be paid is presumptively material—and must be supported by clear evidence of consent and fresh additional value.[8]

CIF provided none. The Addendum imposed a substantially greater burden on Field and Taillon, yet offered no additional benefit beyond the original GSA. Worse, it stripped all 10 non-signing parties of the bargained-for consideration they had secured after all of them had substantially performed months earlier in reliance of the original Agreement's terms with no notice of any subsequent, unanticipated modification.

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[7] *See also, Rabon v. State Fin. Corp.*, 203 S.C. 183, 188-89, 265 S.E.2d 501, 503 (1943) (promise of performance that is merely "repetition of a subsisting legal promise" is not sufficient consideration to support a contractual obligation); *Shamrock Entm't Corp., Inc. v. Beach Mkt., L.L.C.*, No. 2005-UP-297, 2005 S.C. App. Unpub. LEXIS 251, at *7-8 & fn. 1 (Ct. App. Apr. 26, 2005) (where an alleged contract modification is not supported by any new consideration, the court may infer that there was no mutual agreement to the modification); *Margeson v. Artis*, 776 N.W.2d 652 (IA 2009) (addendum not supported by new consideration unenforceable); *Farmers Alliance Mutual Ins. Co. v. Hulstrand Construction, Inc.,* 632 N.W.2d 473 (ND 2001) (same).

[8] *White v. Harris,* 69 S.C. 65,71, 48 S.E. 41, 43 (1904) ("Whatever changes the legal effect of the instrument is a material alteration…Any alteration…for the payment of money is material, whether such…increases or decreases that amount."); *Yadkin Valley Bank v. Oaktree Homes, Inc.*, 2016-MO-023, 2016 S.C. Unpub. LEXIS 66, fn.1 (S.C. Jul. 6, 2016), both citing *Bagwell.*

This violates *Bagwell*, *Ashfort*, *Lampo, et al,* and Rule 43(k), all of which exist to prevent judicial enforcement of incomplete or *post hoc* modifications. The Court of Appeals effectively increased CIF's recovery by $1.7 million. This not only injured Field, but rewarded CIF with an undeserved, inequitable windfall.

The burden was on CIF to prove the Addendum's validity, not on Field to prove its invalidity. *Maro v. Lewis*, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010) (party asserting a contract bears the burden of establishing its existence). Upholding the Addendum renders Rule 43(k) meaningless, opens the door to limitless post-settlement disputes, and directly conflicts with *Zeyi Chen, Player*, and *Bagwell*. Without additional consideration, mutual assent, or proper execution, the Addendum was void *ab initio*. This issue is dispositive: the original GSA remains the only valid agreement. This Court's intervention is essential to preserve the integrity of settlements, uphold Rule 43(k), and ensure uniformity and fairness in South Carolina contract law.

II The Court of Appeals erred when it allowed an anticipated civil judgment to override the GSA's broad Release Terms, creating an ambiguity between the Addendum and the GSA—contrary to settled law.

A. The Need for Certiorari—Settlement Finality and Legal Uncertainty.

This Court has never addressed whether a broad settlement release precludes enforcement of a later civil judgment arising from the anticipated conversion of a pre-existing restitution award in favor of the releasing party. Yet overlaps between civil litigation and criminal restitution are common. Clarification is now essential to ensure mediated settlements are enforced as written—without *post hoc* revisions or judicial rewriting.

In March 2017, after extensive mediation, CIF and the Class agreed to accept monetary and property consideration in full satisfaction of all claims, formalized in the GSA. CIF offered no performance beyond dismissals and a broad Release of all present and future claims. (R. pp. 297-310) Specifically, the Release consisted of three separate provisions:

- **GSA Paragraph 4:** (R. p. 154):

  This Agreement **settles with prejudice all claims of every kind and nature which were raised or could have been raised** in any above-identified litigation, including any and all causes of action, direct claims, cross-claims, counter-claims, rights of offset, grievances, complaints, **and any other rights and actions otherwise derived from such**, between and among all undersigned parties and all identified parties herein . . .

- **GSA Paragraph 5:** (R. pp.154-155)

  The parties to this Agreement do hereby release all other parties …, of and from **any and all suits, legal actions or claims of any nature whatsoever, known or unknown**, up to and including the present time, including, but not limited to, claims described in Paragraph 4 of this Agreement . . .

- **GSA Paragraph 14(I)(v):** (R. pp.164-166)

  The parties agree that any payment made by Taillon, Allyson Field, Arthur Field, or any entity or trust related to any of them, in cash or in kind, tangible or intangible . . . shall serve as sufficient consideration for (1) all releases running to all of the named parties or entities under Paragraphs 3, 4 and 5; and (2) **all dismissals with prejudice of any past, pending or future matter**….

Despite these provisions, the lower courts erred by:

- Deeming collection of the 2017/2018 civil judgment permissible despite explicit, comprehensive contractual language releasing all claims. Broad releases must be construed broadly. *Abu-Shawareb v. S.C. State Univ.*, 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005) (rejecting argument that broad and comprehensive release may be deemed ambiguous because it does not specifically identify a particular claim or cause of action); *Gecy v. Prudential Ins. Co.*, 273 S.C. 437, 440, 257 S.E.2d 709, 710-11 (1979) ("all actions, claims, and demands whatsoever that may now exist or may hereafter accrue" released all future claims, even if unknown at time of execution of release).

- Finding the Addendum implicitly modified the GSA's unambiguous release terms in GSA ¶¶4, 5, and 14(I)(ii),(v) without any express language to that effect in the Addendum.
- Concluding that the Addendum superseded the GSA's explicit releases. (R. pp. 170-173)
- Improperly shifting the burden to Field to preserve release protections, despite Field being the non-drafting party. (Panel Op. pp.6-8)
- Granting the civil judgment more substantive effect than set forth in S.C.Code §17-25-323.

South Carolina law requires courts to interpret contracts as a whole, giving effect to all provisions. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Yet the Addendum contains no language modifying the broad GSA releases or preserving the right to enforce a future civil judgment. Such an override requires clear, unmistakable terms—not implication or silence. No rational party would agree to forfeit release protections without express language. Neither Field nor Taillon did. Implying such change existed was clear error directly injuring Petitioners.

B. CIF/Receiver Bore the Burden of Explicitly Carving Out An Exception.

If the Addendum were valid *arguendo*, then either:

1. No party intended to exempt the restitution judgment from the GSA[9]; or
2. An ambiguity exists.

Under *contra proferentum,* any such ambiguity must be construed against the drafter—CIF/Receiver—who had ample opportunity to revise the GSA but failed.17A C.J.S. *Contracts* §

[9] *See, e.g., In re PersonalWeb Techn's, LLC*, 961 F.3d 1365, 1379 (Fed.Cir. 2020) ("To the extent that a plaintiff wishes to settle an … action while preserving its rights to sue the same or other parties in the future, it can do so by framing the dismissal agreement to preserve any such rights…").

324 (1999). Thus, any ambiguity must be resolved in favor of the GSA's comprehensive releases and against Receiver/CIF and their belated Motion for Declaratory Relief.[10]

The Court of Appeals concluded the GSA and Addendum unambiguously excluded the right to collect the civil judgment from the release. (Ct. App. Op. 6-7) It principally relied on the absence of any language specifically addressing the civil judgment. (Id. at 6 ("neither the GSA nor the Addendum contain any language specifically stating that Field was to be released from his restitution obligation or that the Receiver would not collect on the civil judgment."). However, this approach has it backward.

A global, all-encompassing release does not need to identify each potential claim specifically. That is the very point of using broad, general language in a release. "[I]t is uniformly considered that a general release, . . . not restricted by its terms to particular claims or demands, ordinarily covers all claims and demands due at the time of its execution, and within the contemplation of the parties." *Gardner v. Columbia Police Dep't*, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950). *See also, Bowers v. S.C. DOT*, 360 S.C. 149, 154, 600 S.E.2d 543, 545-46 (Ct. App. 2004) (where a release is general and all-encompassing, it is not necessary to list each included party or claim). The Court of Appeals deviated from this legal authority by relying on the fact that the general release language in GSA ¶¶4, 5, 14, *supra,* did not name the restitution-based civil judgment specifically. This was plain legal error.

Both lower courts failed to address the directly relevant: *Huml v. Vlazny*, 716 N.W.2d 807 (WI 2006). (R. pp. 223-224) There, the Wisconsin Supreme Court held a broad release—including

[10] *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 309, 698 S.E.2d 773, 778 (2010); *McGill,* 381 S.C. at 186, 672 S.E.2d at 575 (2009)("A contract is ambiguous when the terms of the contract are inconsistent on their face…"). *Alexander's Land Co., LLC v. M&M&K Corp.*, 390 S.C. 582, 598, 703 S.E.2d 207, 215 (2010)(inappropriate to read isolated clauses out of context of whole).

"all claims, whether known or unknown"—barred a later civil judgment for unpaid restitution. The release was upheld even though the judgment did not exist when the agreement was signed. "Preserving the right to enforce a judgment derived from a restitution order," the Court noted, "should have been as simple as including an express exception." *Id*. at 819. **It was a complete release of restitution, not a 'setoff'.** This is similar to *Abu-Shawareb, supra.*

The language in *Huml* mirrors the GSA: it covered "past, present and future claims" and was not limited to pending litigation. The Court found that enforcing a civil judgment in the face of such a release undermined the policy favoring finality, stating that litigants must clearly preserve restitution claims in settlement documents. *Id*. at 816, 819–20. The same logic controls here. The GSA releases were explicit. Receiver's failure to insert a carve-out—despite sophisticated counsel—should end the matter. The Court of Appeals improperly rewrites the parties' agreement set out in the four corners of the GSA. It grants Receiver a windfall—significant up-front settlement consideration while still pursuing litigation against Field for a decade. This devalues the GSA for all 'defendants'.

This is a matter of first impression within South Carolina. Public policy strongly favors finality. *Ashfort, supra*. The lower courts' approach destabilizes settlements statewide by permitting *post hoc* reinterpretation of release language. Unless reversed, litigants across South Carolina will face unpredictable enforcement risks even after settlement. That outcome is untenable.

III. The Lower Courts Erred by Treating Collection of a Released Judgment as Separate from the Underlying Claim

In GSA ¶¶ 3-5, 14(I)(v), *supra,* the Receiver, CIF and Class waived all past, pending and future <u>claims</u> against Field, *et al.* using broad, sweeping language, including "any other rights and actions otherwise derived from such" claims. All parties, including Receiver, knew a civil judgment could be entered per S.C. Code §17-25-323 in favor of the victims. This scenario was expressly incorporated into GSA, ¶¶4,5,8 and 14(I), which exchanged settlement funds for rescission of any remaining restitution balance. The fact Release ¶¶4, 5, and 14(I)(v) were left intact by all parties confirms such waiver was deliberate and comprehensive. Any other conclusion creates an ambiguity in the GSA.[11] Judge Maddox's November 27, 2017, Order effectively established the civil judgment, which was then subsumed within the releases of the GSA.

South Carolina law is clear: a 'claim' includes all contingent rights derived from a legal obligation.[12] The lower courts erred in holding that collection is distinct from the underlying claim—an interpretation that contradicts long-standing precedent and undermines the certainty of settlement agreements. The parties deliberately negotiated the broad releases embodied in GSA Sections 4, 5 and 14. Their choice of wording must control. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) ("[This] court's duty is to enforce the contract made by the parties regardless of …the parties' failure to guard their rights carefully.")

The GSA's explicit waiver of 'any other rights and actions otherwise derived from such' claims necessarily encompassed the right to collect the judgment. The artificial distinction between a 'claim' and its enforcement is legally untenable, as the right to collect is merely a derivative extension of the underlying claim --waived by GSA Sections 4, 5 and 14's broad releases. The

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[11] *Bradley v. Family Ford Sales, Inc.,* 287 S.C. 401, 403, 339 S.E.2d 122, 124 (1986) (prior dismissal barred later claim based on circumstances giving rise to the original action, even absent intention to release specific claim.) It was CIF's burden to prove the GSA releases did not bar later collection. *Smothers v. Richland Mem. Hosp.*, 328 S.C. 566, 572, 493 S.E.2d 107 (Ct.App. 1997).
[12] *Beach First Nat'l Bank v. Gurnham*, 407 S.C. 194, 208-09, 754 S.E.2d 875, 882-83 (2014) ("claim" includes assertion of rights "dependent on some future event that may or may not happen" and that are "uncertain in amount or unenforceable until the happening of the event"); SC Code §62-3-803(a) defines 'claims' as "whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis". *Abu-Shawareb, supra*, 364 S.C. at 362-63, 613 S.E.2d at 759-60 (Ct. App. 2005) (upholding release of future claims).

Court of Appeals, without support from either the express GSA language or South Carolina case law, effectively redefined the term "claim" to exclude collection of that very claim.

A reading of the GSA in its entirety, in light of its overarching purpose, compels the conclusion Receiver and Class waived the right to collect on the civil judgment. The burden rested squarely on CIF to establish the 2018 Judgment survived the comprehensive releases. Having failed to do so, enforcement of the judgment is a blatant breach of the Agreement. This Court should rectify these errors by issuing a Writ, ensuring settlement agreements are enforced as originally written and that courts faithfully uphold their plain language, as intended by all parties.

IV. Pervasive Due Process Violations Render the Judgment Void.

The Court of Appeals erred in failing to address, let alone remedy, a pattern of severe due process violations that infected the underlying proceedings. These included: lack of personal and subject matter jurisdiction; denial of service, discovery, and jury trial; improper re-characterization of pleadings; and the entry and enforcement of a facially void restitution judgment. The cumulative effect of these systemic procedural defects undermined the Petitioners' constitutional rights and deprived them of a fair opportunity to be heard warranting reversal. *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018).

A. Lack of Jurisdiction and Required Service.

The 2019 declaratory action was not a properly initiated case. The South Carolina Uniform Declaratory Judgments Act (SCUDJA), S.C. Code §15-53-10 *et seq*., mandates a declaratory judgment be initiated through a new lawsuit and service on all interested parties. See Rules 3, 4, 57, SCRCP. CIF filed no Complaint. Nor did it serve over 20 necessary parties to the GSA. This violation of SC Code § 15-53-80 undermines the due process protections of Rule 19, SCRCP, which mandates joinder of all affected parties. (R. p.147, ll. 1-6)

Compounding these jurisdictional defects, Judge Miller improperly treated the case as active despite U.S.M.J. Austin's express ruling the case was closed based on the 2017 dismissal with prejudice per the GSA. (R. pp. 98-99) Field moved to dismiss, objecting to jurisdiction and the judgment's enforceability. (R. pp. 192-206) CIF didn't respond. Taillon warned of statutory defects in service, yet the court disregarded her objections. (R. pp. 168-169, 185-186, 208-209, 218-220) Petitioners asserted the preclusive effect of the dismissal with prejudice of 2015-CP-23-01265, which was ignored. Chief Justice Toal's assumption of jurisdiction over the dispute was also improper. The GSA explicitly limited jurisdiction over its enforcement to Judge Miller. Respondents never disputed these or many other issues.

B. Denial of Discovery, Hearing and Jury Trial

After Chief Justice Toal's appointment, a chain of rapid and serious procedural violations led to a harmful and prejudicial denial of due process, rendering subsequent rulings void *ab initio*:

1. Denial of Discovery and Fair Proceedings

a) The Trial Court issued a dispositive ruling without allowing discovery which could have altered the outcome, *Gary v. Askew,* 423 S.C. 47, 49, 813 S.E.2d 717, 718 (2018);

b) No evidentiary hearing was conducted regarding the formation of the GSA, its Addendum, or the parties' intentions, despite the mandates of SCUDJA, S.C. Code §15-53-90 and Rule 57, SCRCP;

c) Acting Circuit Judge Toal entered the case at its final stage with no knowledge of its 12-year history. The absence of <u>any</u> trial record made all legal conclusions by the trial court or the Court of Appeals without foundation, rendering such an arbitrary abuse of process-requiring reversal.

2. Deprivation of the Absolute Right to Jury Trial

a) Field and Taillon were entitled to a jury trial under S.C. Const. Art. I, §14 for contract disputes and monetary claims. (R. pp.496-514; 515-530);

b) The denial of this Constitutional right contradicts well-settled precedent. Such harmful *per se* reversible error was ignored by the Court of Appeals.[13]

3. Case Management Irregularities

a) Denied Field an opportunity to renew removal to District Court, 28 U.S.C. §1332;

b) Prevented Field/Taillon from filing an Answer or responsive pleading;

c) Summarily granted CIF's motion while disregarding Field's Motion to Dismiss (R. pp. 13-17), omitting mandatory procedural steps in Rules 13 and 16, SCRCP; [14]

d) CIF should have been held to the standard of a summary judgment motion and Field/Taillon should have received every benefit as non-moving parties; [15]

e) Summarily, and without a hearing, rejected all arguments raised by Taillon and Field in Rule 59e Motions, which again voiced strenuous objections, highlighting many flaws. (R. pp. 207-228, 1-12)

[13] *See, Legette v. Smith*, 226 S.C. 403, 85 S.E.2d 576 (1955), and *Cooper v. Poston*, 326 S.C. 46, 483 S.E.2d 750 (1997) mandating jury trials.

[14] *Askew, supra,* citing *Helena Chem. Co. v. Allianz Underwriters Ins. Co.,* 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004) ("…summary judgment should be cautiously invoked to insure that a litigant is not improperly deprived of a trial on disputed facts.").

[15] *Pee Dee Stores, Inc. v. Doyle,* 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (reversing summary judgment enforcing settlement finding agreement ambiguous); *Williams v. Jeffcoat,* 444 S.C. 224, 233-34, 906 S.E.2d 588, 593 (2024) (review all ambiguities, etc. in favor of non-movant).

4. **Judicial Overreach**

a) The Trial Court lacks *in rem* subject matter jurisdiction over Florida real property.[16] It couldn't 'enforce the settlement'. It issued an advisory opinion to the U.S. District Court, a jurisdictional overreach prohibited by Rule 244, SCACR;

b) The Trial Court *sua sponte* reclassified CIF's declaratory judgment action as a "Motion to Enforce Settlement" to circumvent the SCUDJA jurisdictional defects; (R. 5) This unsolicited act violated *U.S.A. v. Sineneng-Smith*, 590 U.S. 371,375 (2020). Judges may not unilaterally re-characterize pleadings or advocate new legal theories for represented parties;

c) The Court of Appeals also violated the *Sineneng-Smith* bar. It erroneously shifted the burden onto Petitioners to close 03665, disregarding the plain language of GSA ¶3 and Rule 41(a), SCRCP, which implicitly places this duty on plaintiff, not on defendant. (Panel Op. p. 5). *In re Morrison,* 321 S.C. 370, 468 S.E.2d 651(1996). Taillon, was never a party to the 2008 case; therefore, she lacked standing to demand dismissal. Likewise, Defendant Field was not responsible for its closure; no Answer had been filed. Judge Miller failed to file Form 4 in 03665, as Judge Stilwell did in 01263. (R. pp. 90-91);

d) Further, the Court of Appeals effectively legislated a new definition of 'claim'.

C. The 2018 Civil Judgment Was Void *Ab Initio.*

The civil restitution judgement (R. pp. 77–79) entered against Field in 2018 was constitutionally and statutorily invalid under S.C. Code §§17-25-322 and 323. It was void *ab initio* for the following reasons:

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[16] See, *Pennoyer v. Neff,* 95 U.S. 714 (1897). Only Florida courts have such jurisdiction.

- **It was entered *ex parte* without notice or hearing**, while Field was incarcerated and unaware of the proceeding.
- **The amount was based on inaccurate and incomplete financial information**, excluding proceeds from the GSA-mandated sale of Allyson Field's home.
- **It was secretly docketed in a different county**, not served on Field or any counsel, and deliberately concealed to prevent appeal.
- **It was entered in favor of "Receiver Jerry Saad,"** not the victims as specified by Judge Maddox in his 2017 Order (R. pp.80-89)—contravening S.C. Code §17-25-323(B)(2), the plain text requires a restitution judgment be payable directly to the victims, *pro rata*.[17]

CIF and its Receiver are not victims under Article I, §24(C)(2) of the South Carolina Constitution, which limits that status to natural persons who suffered direct harm. Nor are they lawful assignees of the victims' claims. See *Nat'l Cash Register v. Burns,* 217 S.C. 310, 313, 60 S.E.2d 615, 617 (1950) (receiver stands in shoes of debtor, not creditor). Under *State v. Gulledge*, 321 S.C. 399, 405, 468 S.E.2d 665, 669 (Ct. App. 1996) *aff'd* 326 S.C. 200 (1997), no civil restitution judgment may be entered against a defendant actively serving a sentence and not in default of restitution obligations. Field was in prison, had complied with the GSA, and was not in default. The judgment was procedurally defective, constitutionally invalid, and void.

D. Cumulative Effects Require a Writ of Certiorari to Cure These Defects

These due process violations were not isolated missteps. They were a cumulative breakdown of fair procedure. The judgment that followed was tainted by jurisdictional defects, lack of notice, judicial overreach, and statutory noncompliance. Together, they violate *McIntyre,*

[17] "Court will give words their plain and ordinary meaning without resort to subtle or forced construction…to expand the statute's operation." *Estate of Meier v. Burnsed*, 445 S.C. 288, 294 914 S.E.2d 130, 133 (2025).

supra. The Court of Appeals' failure to remedy these harmful errors demands this Court's intervention to uphold the constitutional and legal guarantees to which all parties are entitled, and to prevent unchecked judicial overreach.

CONCLUSION

This Court has long safeguarded the finality of settlements and the integrity of contract law. Yet the Court of Appeals' unpublished decision undermines both by disregarding Rule 43(k), rewriting a mediated agreement, and endorsing *post hoc* modifications that contravene *Zeyi Chen*, *Player*, *Lampo,* and *Bagwell*. It wrongly shifted the burden to Petitioners, ignored material ambiguities, and overlooked due process violations that strike at the heart of constitutional fairness. This Court's intervention is essential to reaffirm the rule of law, protect the legitimacy of mediated settlements, and preserve the integrity of South Carolina's judicial process.

Respectfully submitted this 11th day of June, 2025,

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