The Supreme Court of South Carolina

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POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 25, 2013

The Honorable Mary P. Brown
Clerk of Court
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: Ronald E. Price v. Investors Title Ins. - Appellate Case No. 2011-199386
Lower Court Case No. 2007CP0800458

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

Daniel E. Shearouse

CLERK

cc: Emily H. Farr, Esquire
James Y. Becker, Esquire
Tobias Gavin Ward, Jr., Esquire
James Derrick Jackson, Esquire
Hamilton Osborne, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ronald E. Price and Diana R.B. Price, Respondents,

v.

Investors Title Insurance Company, Petitioner.

Appellate Case No. 2011-199386

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Berkeley County
Kristi Lea Harrington, Circuit Court Judge

Memorandum Opinion No. 2013-MO-029
Heard October 3, 2013 – Filed October 9, 2013

CERTIORARI DISMISSED AS IMPROVIDENTLY GRANTED

Hamilton Osborne, Jr., James Y. Becker, and Emily H. Farr, all of Haynsworth Sinkler Boyd, PA, of Columbia for Petitioner.

Tobias G. Ward, Jr. and J. Derrick Jackson, both of Tobias G. Ward, Jr., PA, of Columbia, for Respondents.

PER CURIAM: We granted certiorari to review the court of appeals' reversal of the circuit court's dismissal of this case. We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ronald E. Price and Diana R.B. Price,
Appellants,

v.

Investors Title Insurance Company, Respondent.

Appeal From Berkeley County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2011-UP-359
Submitted April 1, 2011 – Filed June 30, 2011

REVERSED AND REMANDED

Tobias G. Ward, Jr. and J. Derrick Jackson, both of Columbia, for Appellants.

James Y. Becker and Emily H. Farr, both of Columbia, for Respondent.

PER CURIAM: Ronald and Diana Price (the Prices) appeal from the trial court's order granting Investors Title Insurance Company's (Investors) motion for specific performance and to enforce a settlement agreement. We reverse and remand.[1]

FACTS

In 2003, the Prices purchased a tract of land in Eagle Harbor Subdivision in Berkeley County. Investors issued a title insurance policy covering the property. After closing, the Prices discovered alleged defects they contended were covered under the policy. The Prices filed this action against Investors seeking coverage. Having relieved prior counsel, the Prices represented themselves and agreed to mediation.

The case was mediated on November 20, 2008, and the parties signed a settlement agreement. The agreement stated Investors would pay the Prices $12,500, and it further

provided:

> 2. Counsel for the Defendants shall prepare a Release and Consent Order of Dismissal of the above action, which shall be executed by the Plaintiffs . . . .
>
> 3. The terms of this Settlement Agreement shall satisfy the requirements of the South Carolina Rules of Civil Procedure regarding a stipulation for settlement and conclusion of the above Case, and in the absence of a Consent Order as referenced above, may be entered into record by any Party to this action to conclude this Case, with prejudice as to all claims which were or could have been asserted therein.

The following week, the Prices revoked the agreement by facsimile to the mediator, copying counsel for Investors. The Prices allegedly expected to receive further documentation, in the form of a "Consent Order," which would include additional terms. The Prices contended they discussed the matter with Investors' counsel shortly after sending their revocation. Investors' counsel sent a revised "Settlement Agreement and Release." The Prices did not believe the revised agreement was consistent with the parties' negotiated terms. In December 2008, Investors filed a "Motion for Specific Performance and to Enforce Mediation Agreement."

Several months later, the parties again negotiated, with Investors' counsel emailing the Prices, stating: "We are very close to being able to confirm whether or not we will be able to settle with you under the terms you discussed previously . . . ," and "Ms. Price: I am optimistic that we can agree on all the terms you and I last discussed." Investors' counsel sent a second revised "Settlement Agreement and Release." The Prices argued this revision also failed to include the new terms, and the Prices allegedly sent another agreement, which Investors rejected.

On July 27, 2009, the trial court heard arguments on Investors' motion to enforce the settlement agreement. The Prices hired counsel, who filed a Notice of Appearance in October 2009. The court granted Investors' motion and dismissed the Prices' complaint in an order filed December 14, 2009. The court denied the Prices' motion to alter or amend. This appeal followed.

STANDARD OF REVIEW

At issue in this case is the interpretation of Rule 43(k), SCRCP. The interpretation of a rule or statute is reviewed de novo. Limehouse v. Hulsey, Op. No. 4805 (S.C. Ct. App. filed June 2, 2011) (Shearouse Adv. Sh. No. 18 at 26, 37); see Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (stating the interpretation of a statute is a question of law, which the appellate court is free to decide with no particular deference to the trial court).

LAW/ANALYSIS

I. Rule 43(k), SCRCP

At the time this settlement agreement was signed, Rule 43(k) provided in relevant part: "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." Rule 43(k), SCRCP (amended effective April 29, 2009).[2] "To be enforceable, settlement agreements must either

be entered into the court's record or acknowledged in open court and placed upon the record." Motley v. Williams, 374 S.C. 107, 110, 647 S.E.2d 244, 246 (Ct. App. 2007). A party can comply with this version of Rule 43(k) in three ways: (1) a written stipulation signed and entered into the court record; (2) a consent order signed and entered into the court record; or (3) a settlement agreement announced in open court and noted upon the record. Lisa J. Hincher, Court Strictly Construes Rule 43(k) to Settlement Agreements, 48 S.C. L. Rev. 15, 19 (1996).

The Prices first argue the trial court erred in not revoking the agreement under Rule 43(k) because the Prices were not represented by counsel at the time of the mediation, and the rule only applies to agreements between counsel. We agree.

In Ashfort Corp. v. Palmetto Construction Group, Inc., 318 S.C. 492, 493, 458 S.E.2d 533, 534 (1995), the parties advised the circuit court the case had been settled. The court dismissed the case. Id. A dispute arose regarding the terms of the settlement, and the circuit court reinstated the case, denying a motion to compel settlement. Id. On appeal to the supreme court, the court, sua sponte, "raised the Rule 43(k) issue." Hincher, supra, at 16. The supreme court affirmed, finding Rule 43(k) applied even though the settlement agreement was between respondent and appellants' insurer, and was merely confirmed by the parties' counsel. Ashfort Corp., 318 S.C. at 495, 458 S.E.2d at 535. The court opined:

> To take such a narrow reading of Rule 43(k) would defeat its purpose of preventing disputes such as this one. The intent of Rule 43(k) is to require all agreements regarding pending litigation to either be announced in open court or to be reduced to a consent order or written stipulation and entered.

Id.

Several years later, in Buckley v. Shealy, 370 S.C. 317, 322, 635 S.E.2d 76, 78 (2006), the supreme court applied the rule to bar the enforcement of a settlement agreement that was signed by the parties. In Buckley, Husband and Wife engaged in mediation and signed an agreement. Id. at 320, 635 S.E.2d at 77. The supreme court concluded: "[b]ecause the purported agreement the parties reached following mediation was neither entered into the court's record nor acknowledged in open court and placed upon the record, Rule 43(k), SCRCP, plainly provides that the agreement is unenforceable." Id. at 322, 635 S.E.2d at 78. Although not explicitly discussing the application of Rule 43(k) to agreements signed by the parties rather than their attorneys, Buckley indicates that where the parties signed the agreement, Rule 43(k) applies. Relying on Ashfort and Buckley, we find Rule 43(k) applies to the settlement agreement entered into by the Prices and Investors' counsel.

The Prices next argue the trial court erred in finding the settlement agreement was "a binding agreement between the parties that cannot be revoked or voided by a party . . . ." We agree.

In Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 636-38, 627 S.E.2d 724, 725-26 (2006), the supreme court addressed Rule 43(k) in an action in which one of the parties rescinded her agreement prior to the agreement meeting the requirements of Rule 43 (k). Farnsworth, through a letter by her attorney, offered to release Davis from all liability in a breach of contract and negligence cause of action. Id. at 636, 627 S.E.2d at 725. Davis' attorney accepted the offer by signing the letter. Id. Soon thereafter, Farnsworth rescinded the agreement. Id. Davis moved to compel Farnsworth to comply with the agreement. Id. In

reversing the trial court's order granting the motion, the supreme court stated: "Rule 43(k) provides that '[n]o agreement . . . shall be binding unless' one of the three conditions listed [in the Rule] is met. In other words, an agreement is non-binding until a condition is satisfied. Until a party is bound, she is entitled to withdraw her assent." Id. at 637, 627 S.E.2d at 725 (quoting Rule 43(k), SCRCP).

In this case, the parties signed the settlement agreement on November 20, 2008. The Prices revoked their agreement on November 26, 2008. Investors filed its motion to compel settlement on December 5, 2008. Under Farnsworth, we find the settlement agreement was revoked. Thus, the trial court erred in granting Investors' motion for specific performance of the settlement agreement.

II. Enforceability of the Agreement – Meeting of the Minds

The Prices argue the trial court erred in finding the parties had an enforceable agreement when there was evidence the parties never had a "meeting of the minds" as to the essential terms of the agreement. We decline to address this issue. See Bailey v. S.C. Dep't of Health & Envtl. Control, 388 S.C. 1, 8, 693 S.E.2d 426, 430 (Ct. App. 2010) (stating that an appellate court need not address remaining issues when a decision on a prior issue is dispositive).

CONCLUSION

For the foregoing reasons, the order granting Investors' motion to compel settlement is reversed, and this case is remanded for further proceedings consistent with this opinion.

REVERSED and REMANDED.

HUFF, SHORT and PIEPER, JJ., concur.

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

[2] The rule was amended effective April 29, 2009, adding at the end of the sentence quoted: "or reduced to writing and signed by the parties and their counsel." Rule 43(k), SCRCP. This settlement agreement was signed November 20, 2008. Thus, the former version of Rule 43(k) applies. See Hercules Inc. v. S.C. Tax Comm'n, 274 S.C. 137, 143, 262 S.E.2d 45, 48 (1980) (stating the general rule is that statutes are to be construed prospectively rather than retroactively, absent an express provision or a clear legislative intent to the contrary); Graham v. Dorchester Cnty. Sch. Dist., 339 S.C. 121, 124, 528 S.E.2d 80, 81-82 (Ct. App. 2000) (applying the general rule of prospective and retroactive application of statutory law changes by analogy to amendments of rules of civil procedure).