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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001510

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl, Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski, Nydza Vichroski, James Montellese, and Roxann Montellese, Individually, Derivatively, and on Behalf of All the Mount Vintage Homeowners Association Members . . . . . Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales Plantation, LLC, and Mount Vintage Plantation Homeowners Association, Inc. *a/k/a* Mount Vintage Homeowners Association, Inc. . . . . Defendants,

Of which LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC are the . . . . . Appellants.

APPELLANTS' RETURN IN OPPOSITION TO RESPONDENTS' MOTION TO STRIKE

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1. On October 27, 2025, Respondents filed a Motion to Strike the document identified as "Attachment B" to Appellants' Motion to Compel Settlement, which is titled "Addendum to Oct. 7, 2025 MV Settlement Agreement." Appellants' Motion to Compel Settlement is still pending with this Court.

2. As an initial matter, Appellants would draw the Court's attention to "Attachment A" to Appellants' Motion to Compel Settlement, which is the very settlement document Appellants have asked this Court to enforce.

3. The Settlement Agreement is compliant with Rule 43(k), SCRCP, and is capable of enforcement. In fact, it should be enforced.

4. Respondents' Motion to Strike asserts that "[n]one of the exceptions to the protections afforded to mediation communications enumerated in S.C. ADR Rule 8(c) applies to the Appellants' filing of the Proposed Addendum." (Resps.' Mot. Strike at ¶ 7.) However, Rule 8(c)(4), SCADR, specifically provides that "no confidentiality attache[s] to information" when "offered for the limited purpose in judicial proceedings of establishing, refuting, approving, voiding, or reforming a settlement agreement reached during a mediation."

5. Appellants have specifically requested this Court to enforce the Settlement Agreement, which would seem to fall squarely in the ambit of "judicial proceedings" "for the limited purpose" "of establishing, refuting, approving, voiding, or reforming a settlement agreement."

6. Respondents have conceded, as they must, that the Settlement Agreement was achieved at mediation on October 7, 2025. (Resps.' Mot. Strike at ¶ 1.) Ostensibly,

Respondents must also concede that Agreement's validity; at least, they have not asserted that the Agreement fails to comply with Rule 43(k).

7. In any event, Appellants firmly believe that the Settlement Agreement is valid, binding, and enforceable. Respondents disagree. And the very evidence of their disagreement—the "refutation" of Appellants' assertion that the Settlement Agreement is valid, binding, and enforceable—is established by the Addendum. It would be odd for Appellants to seek enforcement of the Settlement Agreement without also showing to the Court how and why Respondents are seeking to avoid their settlement obligations, particularly when the ADR Rules expressly contemplate that such communications would be put before the Court.

8. Respondents have asserted that "[t]he Proposed Addendum's existence does not affect whether the Mediation Settlement Agreement that Appellants seek to enforce is in fact valid or enforceable." (Resps.' Mot. Strike at ¶ 8.) Respectfully, they're wrong.

9. As discussed above, the Settlement Agreement complies with Rule 43(k). It unambiguously states that "Plaintiffs agree to settle and release all claims, acquit and forever discharge Defendants, their principals, agents, servants, representatives, successors, assigns, and affiliates from Plaintiffs' claims [in this and another case] and to dismiss this matter with prejudice." (Appellants' Mot. Compel Settlement, Att. A, at 1.) It further states, explicitly, that, "[once] signed, this agreement shall be irrevocable." (Id.)

10. It appears to be Respondents' contention that a so-called "Financial Contingency" in the Settlement Agreement creates a condition precedent that allows Respondents to avoid their settlement obligations, or renegotiate the terms of settlement, whenever they please and for whatever reason.

11. The "Financial Contingency" that Respondents reference is found in Paragraph 4 of the Settlement Agreement, which provides that "[a]gt contingent on disclosure and acceptance of all non-public, material financial transactions (not including any previously disclosed in audits or minutes)."

12. The Addendum itemizes Respondents' "Financial Contingency" issues.

13. The first is referred to in Paragraph 2 of the Addendum as "the Usry contract," and relates to an employment agreement between the Mount Vintage HOA and its golf pro. Yet, as evidenced by Appellants' Reply in Support of the Motion to Compel Settlement, this agreement was provided to Respondents' counsel before the Settlement Agreement was signed. Appellants do not understand how a "Financial Contingency" can arise as to an issue that was expressly disclosed to Respondents, in writing, at mediation, and which was actually known by Respondents and accepted prior to their execution of the Settlement Agreement.

14. Additionally, Paragraph 2 of the Addendum refers to an "adjustment in debt being forgiven." Debt forgiveness is contemplated in § 1(b) of the Settlement Agreement, which provides that "[a]ll HOA developer debt & accrued interest to be forgiven estimated to be in the amount of $1.25m." (emphasis added.) This is distinct from the "Financial Contingency" provision of the Settlement Agreement, and the amount is expressly agreed to be an estimate of indebtedness; whatever the amount of debt is, that's the amount that is to be forgiven. In short, this matter—which Respondents are relying on to refute the existence of a valid, enforceable settlement agreement—is not a "Financial Contingency" to Respondents' obligations.

15. Paragraph 3 of the Addendum demands the appointment of "three nominees . . . to the [HOA] Board of Directors for purposes of processing the liquor license renewal for the golf

club." This issue was not known prior to the October 7 mediation, and regardless, is not within the ambit of the "Financial Contingency" Respondents are relying upon.

16. Paragraph 4 of the Addendum seeks to reduce the scope of the release that Plaintiffs agreed to provide, from full and complete releases in favor of Appellants (and their affiliates and related parties), to something that provides far less protection. Regardless, this is not a "Financial Contingency" to Respondents' settlement obligations.

17. Paragraph 5 of the Addendum requires indemnification "for any uninsured, involuntary outcome of the Maness suit." As described in Appellants' Reply in Support of the Motion to Compel Settlement, "the Maness suit" refers to a lawsuit brought by another homeowner against the HOA related to that homeowner's compliance with the covenants regarding a structure built upon his property. Appellants are not parties to that lawsuit. Moreover, it is not a "transaction" within the meaning of the "Financial Contingency" section of the Settlement Agreement, and—by virtue of its existence in publicly available records—it is not "non-public." Additionally, it cannot be forgotten that the Mount Vintage HOA—despite being the party named in the Maness suit—was not invited to the mediation, even though its presence would almost certainly have obviated this issue.

18. The larger point is this: each and every of the items raised in Respondents' proposed Addendum to the Settlement Agreement is not a valid basis on which they may now, after the fact of fully executing the Settlement Agreement, seek to avoid its obligations. The Addendum itemizes the very bases on which Respondents presently seek to refute their settlement obligations, and by rule, the Addendum is appropriately before the Court.

19. Finally, Rule 8(c)(1), SCADR, would seem to provide an additional basis for which the Addendum may be presented to the Court. This provision explains that

confidentiality may be waived or stipulated. Importantly, the Settlement Agreement expressly states that "[a]ny dispute as to the language of the Settlement Documents will be submitted to the Court or Mediator for final and binding resolution."

20. As explained above and in other filings, Respondents' present position with respect to the enforceability of the Settlement Agreement appears to be based on their misapprehension of the plain language of what they agreed to, and to use that misapprehension to create "Financial Contingencies" to avoid settlement—or perhaps to extract more out of settlement—than what they agreed to. Regardless, the parties agreed to present a dispute of this very type to the Court for resolution, which is exactly what Appellants have done.

CONCLUDING STATEMENT

Consistent with the foregoing discussion, the proposed Addendum to the Settlement Agreement is properly before the Court, and Respondents' Motion to Strike the Addendum from the record must be denied.

Respectfully,

s/ Steven Edward Buckingham

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PROOF OF SERVICE

The undersigned counsel for Appellants hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

Document(s): Appellants' Return in Opposition to Respondents' Motion to Strike

Counsel Served: For Respondents

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Respectfully,

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