

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Common Pleas Case No. 2004-CP-46-2659
Appellate Case No. 2012-2066

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OCT 17 2013

S.C. SUPREME COURT

Carol M. Kimmer, Personal Representative of the Estate of Richard Kimmer,
deceased.....Petitioner

v.

Philip E. Wright.....Respondent

**JOINT AGREEMNT TO DISMISS PROCEEDING NOW PENDING BEFORE
THE SUPREME COURT PURSUANT TO RULE 260(b), SCACR**

COUNSEL OF RECORD

Thomas H. Pope, III
Pope & Hudgens, PA
Post Office Box 190
Newberry, South Carolina 29108
P: 803-948-9263
Attorneys for Petitioner

Warren C. Powell, Jr.
Bruner Powell Robbins Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260-1110
P: 803-252-7693
Attorneys for Respondent

The parties to this appeal have reached an agreement resolving all issues in this suit and, therefore, request that the within proceeding now pending before the Supreme Court be dismissed pursuant to Rule 260(b), SCACR, with each party bearing their own costs. The parties offer the following in support:

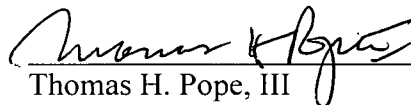
1. On June 6, 2013, the Supreme Court issued its Order granting the petition for a writ of certiorari to review the Court of Appeals decision in *Kimmer v. Wright*, 396 S.C. 53, 719 S.E.2d 265 (Ct. App. 2011).

2. Both parties have filed their briefs with the Clerk of the Supreme Court.

3. On Monday, October 14, 2013, the parties agreed to settle all issues between them through payment by Respondent to Petitioner of a sum the parties wish to remain confidential, and have agreed to do so, said settlement funds to become due and payable upon the issuance of the order of the Supreme Court dismissing the appeal now pending before it, or 10 days after the parties have executed the Settlement and Release Agreement, whichever is later.

4. The parties will enter a separate Settlement and Release Agreement in which the Petitioner will release Respondent for all claims asserted and which could have been asserted in this action.

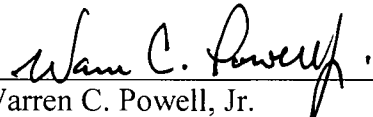
WE JOINTLY MOVE:



Thomas H. Pope, III
Pope & Hudgens, PA
Post Office Box 190
Newberry, South Carolina 29108
P: (803) 948-9263
Attorneys for Petitioner

Newberry, South Carolina

10/16, 2013



Warren C. Powell, Jr.
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260
Phone: 803-252-7693
Attorneys for Respondent

Columbia, South Carolina
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Moreover, in conjunction with the execution of this Agreement, Kimmer and Wright, by and through their duly authorized counsel, agree to execute a Stipulation of Dismissal of all claims with prejudice. Payment of the Confidential Settlement sum will be due on the date the Supreme Court issues its order dismissing the appeal or within ten days of the date of this agreement, whichever occurs later.

2. Release of Wright by Kimmer:

Upon payment of said confidential sum to Kimmer from Wright as set forth herein, Kimmer, his and her heirs, agents, representatives, and assigns, hereby release, discharge, waive and acquit Wright, his respective heirs, agents, representatives, successors, officers, insurers, attorneys, directors, shareholders and assigns, from and against any and all damages, demands, actions, suits (at law or in equity), judgments, claims brought or which could have been brought and costs arising out of or in any way related to the underlying lawsuit, bearing Civil Action No. 2004-CP-46-2659.

3. Merger Clause:

This Settlement and Release Agreement and the Joint Agreement to Dismiss Proceeding Now Pending before the Supreme Court Pursuant to Rule 260(b), SCACR, are the only agreements between the parties. Each party represents to the other that such party has not relied upon any statement or representation, which is not expressly contained herein. No statements or representations concerning the subject matter of this Settlement and Release Agreement shall be relied upon by any party or be enforceable against any party unless expressly set forth in this document.

4. Voluntary and Knowing Agreement:

Each party to this Settlement and Release Agreement affirmatively represents to the other that such party has carefully read the foregoing Settlement and Release Agreement and that such party knows and understands the contents hereof and has voluntarily executed this document.

5. Non-Disclosure:

The parties agree to keep confidential and not to disclose to any nonparty (with the limited exceptions of the parties' professional advisers in their professional capacity, and on a confidential basis, or any federal, state or municipal taxing authority) the terms of this Agreement or the facts surrounding any of the Released Claims, except as may be required by a valid subpoena from a court or other government tribunal of competent jurisdiction. If either party receives such a subpoena, he will immediately notify the other party through his or her attorney so that the other party may challenge such disclosure, and the parties agree to cooperate with the other party in challenging such disclosure. The parties agree that if he or she receives any inquiries about this Agreement or the confidential information, he or she will respond by stating in substance only that "the matter was amicably resolved by the parties." The parties acknowledge that the non-disclosure covenant made by them herein is important and a key element of this Agreement. Each party agrees to indemnify and hold the other party harmless from and against any and all Claims, including court costs and reasonable attorney fees and expenses, arising out of or related to a breach by each party of their non-disclosure obligations set forth in this Section. The parties acknowledge that each would suffer irreparable harm in the event of a breach by the non-breaching party of their non-disclosure obligations set forth in this Section, and that monetary damages will be inadequate to compensate for such breach.

Accordingly, in addition to other rights or remedies, the non-breaching party will be entitled to injunctive relief in order to restrain any such breach by the other party.

6. Binding Effect:

The terms of this Settlement and Release Agreement are contractual and not merely recitals, and are to be construed as binding upon and inuring to the benefit of, as the case may be, the parties and their respective heirs, agents, representatives, successors and assigns. If any particular provision or provisions of this Settlement and Release Agreement are found to be void or unenforceable for any reason, such finding shall not affect the continued efficacy of the remaining provisions hereof.

7. Choice of Law:

This Settlement & Release Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

8. No Presumption Against Drafter:

This Settlement & Release Agreement has been drafted by both parties hereto. Therefore, the parties agree that in the interpretation and construction of this agreement, there shall be no presumption that any one party drafted the Agreement or that any ambiguities shall be construed against any party.

9. Execution in Multiple Counterparts:

The parties agree that this Settlement & Release Agreement may be executed in multiple counterparts and that the original signatures of each party on one single document are not necessary to consummate this Settlement & Release Agreement. Photocopies of the signature pages are acceptable as originals, and any grouping of counterparts that contains executed signature pages are acceptable as originals.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement, or have caused the Agreement to be executed and delivered by their duly authorized officers, to be effective as of the day and year first set forth above.

WITNESSES

**Carol M. Kimmer, Personal Representative
of the Estate of Richard M. Kimmer, Deceased**

Thomas H. B...
Witness 1

*Carol M. Kimmer, PR of the estate of
Richard Kimmer, Deed*

Betty Alexander
Witness 2

Date: *October 16*, 2013

WITNESSES

Philip E. Wright

Witness 1

Witness 2

Date: _____, 2013

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement, or have caused the Agreement to be executed and delivered by their duly authorized officers, to be effective as of the day and year first set forth above.

WITNESSES

**Carol M. Kimmer, Personal Representative
of the Estate of Richard M. Kimmer, Deceased**

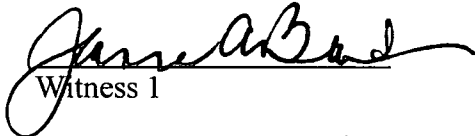
Witness 1

Witness 2

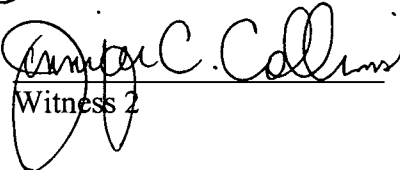
Date: _____, 2013

WITNESSES

Philip E. Wright


Witness 1




Witness 2

Date: 10/16, 2013