

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. Thomas W. McGee, III, Circuit Court Judge

Appellate Case No.: 2025-002591

Stephen L. Kampney, III, Trustee of the Stephen L. Kampney III Revocable Living Trust dated May 14, 2018 and any amendments thereto..... Plaintiff/Respondent,

vs.

The Estate of Jessica D. Ulmer a/k/a Jessica Dantzler Ulmer a/k/a Jessica Valarie Ulmer a/k/a Jessica Valarie Dantzler Ulmer; James Shadrach Ulmer, Jr.; Angeline Maria Ulmer Williams, &, Any and all unknown heirs of Jessica D. Ulmer a/k/a Jessica Dantzler Ulmer a/k/a Jessica Valarie Ulmer a/k/a Jessica Valarie Dantzler Ulmer and any other persons who are unknown who may claim or have any right, title, estate, interest in, or lien upon the real estate described in the Complaint herein, being a class designated JANE DOE; and Any unknown persons under a legal disability, a Minor or person incarcerated, being a class designated as RICHARD ROE; and Any unknown persons who may be in the military service of the United States of America, being a class designated as JOHN DOE; said real property is shown on Lexington County, South Carolina Tax Map No. 013800-01-045,... Defendants,

And

Angeline Maria Ulmer Williams..... Counter Plaintiff/Third-Party
Plaintiff/Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court properly deny enforcement of the proposed settlement agreement under common law contract principles and Rule 43(k) of the South Carolina Rules of Civil Procedure when essential terms of the settlement were incomplete, and two of the three parties thereto had not signed the agreement?

STATEMENT OF THE CASE

On March 25, 2024, Respondent filed a Summons and Complaint seeking an easement by necessity or implied prior use for landlock property in his possession. (Comp. ¶ 23; ¶ 26.) Appellant answered Respondent's Complaint on May 8, 2024. (Def. Answer & Counterclaim.) Appellant filed a Motion to Enforce Settlement on October 16, 2025. (Def. Mot. to Enforce Settlement.) A hearing on Appellant's Motion was held on December 2, 2025, in which the presiding Judge denied Appellant's Motion. (Order Electronic Form 4.)

STATEMENT OF FACTS

On or about November 7, 2016, Stephen Lewis Kampney III purchased approximately 80.81 acres of a 103.00 acre tract at a tax auction in Lexington County, SC for Eight Thousand (\$8,000) Dollars, assigned a Tax Map Number of 013800-01-030 ("Parcel '1'" hereinafter). On June 4, 2018, a Tax Title to Real Estate was recorded in the Lexington County Register of Deeds in Book 20052 at Page 237 granting title to the subject property unto Stephen Lewis Kampney III. Through this case, Kampney is attempting to confirm the underlying tax sale's validity.

On or about March 25, 2024, Respondent filed a Summons and Complaint seeking an easement by necessity or implied prior use in regard to Parcel '1'. (Comp. ¶ 23; ¶ 26.) On May 8, 2024, Appellant filed an Answer and Counterclaim in which Appellant contested the sale on the grounds that the requirements of the law for the sale of the property at issue were not met, the Tax Sale is invalid, and the recorded Tax Deed is void and has no legal effect of conveying or vesting title in the Respondent. (Def. Answer & Counterclaim.) In response, discussions of a settlement arose, and Respondent sent an unsigned draft settlement agreement, to Appellant and counsel for Lexington County to facilitate ongoing settlement discussions. (TR 6, lines 20-25; TR 8, line 1.) This proposed settlement offer was not finalized, as several essential terms remained incomplete.

However, Appellant, on her own initiative, signed the agreement, and sent a check and a copy of the signed agreement to Respondent. (TR 6, line 25; TR 7, lines 1-9.) The check was never cashed, and Respondent sent the check back to Appellant. (TR 7, lines 9-11.) During this time, Respondent decided he did not want to proceed with the settlement agreement and informed Appellant of this decision.

On or about October 16, 2025, Appellant filed a Motion to Enforce Settlement. (Def. Mot. to Enforce Settlement.) A hearing on Appellant's Motion was held on December 2, 2025, in which the presiding Judge denied Appellant's Motion. (Order Electronic Form 4.)

STANDARD OF REVIEW.

Rule 43(k) of the South Carolina Rules of Civil Procedure governs the enforcement of agreements between counsel, including settlement agreements. *Ashfort Corp. v. Palmetto Constr. Grp., Inc.*, 318 S.C. 492, 494, 458 S.E.2d 533, 535 (1995). Under Rule 43(k), no agreement between counsel affecting the proceedings in an action shall be binding unless [1] reduced to the form of a consent order or written stipulation signed by counsel and entered in the record; [2] unless made in open court and noted upon the record; or [3] reduced to writing and signed by the parties and their counsel. Rule 43(k), SCRCP. Where Rule 43(k) applies, its terms are mandatory, precluding the use of contract principles to vitiate those terms. *S.C. Human Affairs Comm'n v. Zeyi Chen*, 430 S.C. 509, 521, 846 S.E.2d 861, 867 (2020).

ARGUMENT

- I. Did the trial court properly deny enforcement of the proposed settlement agreement under common law contract principles and Rule 43(k) of the South Carolina Rules of Civil Procedure when essential terms of the settlement were incomplete, and two of the three parties thereto had not signed the agreement?**

Rule 43(K) of the South Carolina rules of Civil Procedure provides that no agreement between counsel affecting the proceedings in an action shall be binding unless [1] reduced to the form of a consent order or written stipulation signed by counsel and entered in the record; [2] unless made in open court and noted upon the record; or [3] reduced to writing and signed by the parties and their counsel. Rule 43(k), SCRPC. Rule 43(k) applies to settlement agreements. *Ashfort Corp.*, 318 S.C. 492 at 494. Until Rule 43(k)'s requirements are satisfied, an agreement is not binding, and any party may withdraw assent, preventing formation of a settlement agreement. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006).

In the present case, the parties do not dispute that the matter concerns a settlement agreement. Accordingly, Rule 43(k) governs the determination of whether the settlement agreement at issue is enforceable.

Appellant nevertheless contends that the settlement agreement is enforceable as a common-law contract because the essential elements of contract formation were satisfied. But in *S.C. Human Affairs Comm'n v. Zeyi Chen*, the South Carolina Supreme Court held that when Rule 43(k) applies, its requirements are mandatory and any arguments arising under contract or equitable principles to satisfy the terms are precluded. Accordingly, Appellant's reliance on common-law contract principles is misplaced. Even if contract principles governed, the agreement could not be ratified because the drafted settlement agreement omitted several essential terms, two of the three parties did not sign it, and counsel for the county cast doubt upon the settlement agreement over concerns that any tax sale overage had escheated.

The settlement agreement likewise fails to meet the enforceability requirements as set forth in Rule 43(k). The proposed settlement agreement was not manifested in a consent order or written

stipulation signed by counsels and entered in the record; nor was it made in open court and noted upon the record. While Appellant signed the proposed settlement agreement, neither Respondent nor his counsel signed the agreement. Moreover, the county attorney did not sign or agree to the terms of the settlement agreement. As such, none of the terms of Rule 43(k) were met. Therefore, Respondent was entitled to withdraw any potential assent to the agreement and to withdraw from settlement negotiations. It follows that no binding agreement was made or entered into.

CONCLUSION

For the foregoing reasons, the trial court correctly found that a binding settlement agreement did not exist pursuant to Rule 43(k). Appellant erroneously argued that a settlement agreement existed under general contract principles. Moreover, Appellant failed to produce evidence that the requirements of Rule 43(k) were satisfied. Because Appellant failed to establish a binding settlement agreement, the trial court's ruling was proper. Accordingly, this Court should affirm the Order Denying Motion to Enforce Settlement and remand this matter to allow the Parties to proceed with the case.

RESPECTFULLY SUBMITTED

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