

# **EXHIBIT A**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 01CP4004203R

Edwin M Jr Smith

David A Fedor

Edwards A G & Sons Incorporated

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Non-suit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 4 November 2013 to attorneys of record or to parties (when appearing pro se) as follows:

James R. Gilreath

Edward L. Grimsley

Leo A. Dryer Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Janette W. McBride*



Plaintiff's agreement to release all claims against him and to dismiss the underlying suit with prejudice.

Nearly eleven years after the dismissal of the case, on February 27, 2013, the Plaintiff filed the Confession of Judgment and a Partial Satisfaction of Judgment with the Court. Following the entry of the Confession of Judgment, the Defendant filed a motion pursuant to Rule 60(b)(5), SCRCF to be relieved from judgment. This motion was filed on April 23, 2013.

At the hearing held on August 26, 2013, Counsel for the Defendant urged the Court to consider only the terms on the face of the Confession of Judgment, which provides, in pertinent part, that "[t]he Defendant hereby authorizes the entry of the Order and judgment against Defendant, and in favor of Plaintiff, in the principal amount of \$350,000.00, less any payments received by Plaintiff from Defendant through the date of filing hereof. Thereafter, post-judgment interest shall accrue as allowed by law, until the judgment is paid in full."

Both parties conceded during the hearing that the Defendant has paid an amount in excess of the \$350,000.00 set forth in the Confession of Judgment. However, Counsel for the Plaintiff urged the Court to also consider certain provisions set forth by the parties in the confidential settlement agreement referenced above. According to Plaintiff's Counsel, the terms of the settlement agreement would demonstrate to the Court that the Defendant failed to satisfy his obligations, as set forth in the settlement agreement; thus, making the entry of the Confession of Judgment proper.

## **DISCUSSION**

### I. Confidential Settlement Agreement

At the time the settlement agreement was executed in 2002, Rule 43(k), SCRCF provided in relevant part that "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." Reed v. Associated Investments of Edisto Island, Inc., 339 S.C. 148, 152, 528 S.E.2d 94, 96 (Ct. App. 2000). Rule 43(k), SCRCP was later amended in 2009 to provide a third method for creating an enforceable settlement agreement, which permits parties to a settlement to reduce the agreement to a writing signed by the parties and their counsel.

In this matter, the parties acknowledged that the 2002 confidential settlement agreement was never entered into the record. Consequently, the parties failed to adhere to the version of Rule 43(k), SCRCP in effect at the time of the execution of the settlement, which renders the purported confidential settlement agreement not binding on this Court. See Buckley v. Shealy, 370 S.C. 317, 322, 635 S.E.2d 76, 78 (2006) ("Because 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."). Assuming arguendo that 2002 confidential settlement agreement complied with the 2009 amendment of Rule 43(k), SCRCP because it was reduced to writing and signed by the parties and their counsel, the agreement is still unenforceable because the amendment was prospective and not retrospective in nature. See Hercules Inc. v. S.C. Tax Comm'n, 274 S.C. 137, 143, 262 S.E.2d 45, 48 (1980) (statutes are to be construed prospectively unless there is an express provision or a clear legislative intent to the contrary). As a result, the Court will not consider the terms of the confidential settlement agreement executed by the parties.

## II. Confession of Judgment

Confessions of judgment share the legal significance of a judgment entered by the Court. "Though no adjudication is in fact required in entering a judgment of confession without action, ... it has all the qualities, incidents, and attributes of other judgments, and cannot be valid unless

entered in a court which might have legally pronounced the same judgment in a contested action." Triangle Auto Spring Co. v. Gromlovitz, 270 S.C. 386, 389, 242 S.E.2d 430, 431 (1978) (quoting Ex parte Ware Furniture Co., 49 S.C. 20, 27 S.E. 9 (1897)). Rule 60(b)(5), SCRCP provides that a judgment can be set aside if the judgment has been satisfied. Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003).

The confession of judgment at issue provides that "[t]he Defendant hereby authorizes the entry of the Order and judgment against Defendant, and in favor of Plaintiff, in the principal amount of \$350,000.00, less *any* payments received by Plaintiff from Defendant through the date of filing hereof." At the hearing, both of the parties agreed that the Defendant has in fact paid more than \$350,000.00. Thus, I find that the judgment was satisfied, and the Defendant is entitled to be relieved from the confession of judgment.

**ORDER**

For the foregoing reasons, Defendant's Motion for Relief from the Confession of Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**



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DeAndrea Gist Benjamin  
Presiding Judge

October 30, 2013  
Columbia, South Carolina

# **EXHIBIT B**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2001-CP-40-4203 **R**

Edwin M. Smith, Jr.

David A. Fedor

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
 CLERK OF COURT  
 JUL 22 2 22 PM '14  
 RECEIVED  
 CIVIL DIVISION

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : Motion for Reconsideration has been denied because the Court did not receive a copy of the motion within ten days of the motion being filed.

INFORMATION FOR THE PUBLIC INDEX

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge MB Judge Code 2161 Date 7-22-14

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of July, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Edwin L. Grimsley	Leo A. Dryer
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
Court Reporter _____	Clerk of Court <u>Jeanette W. McBride</u>

**RECEIVED**

JUL 28 2014

Gilreath Law Firm, P.A.