THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity Judge

Case No.: 2010-CP-CP-23-1321
Appellate Case No.: 2014-002381

Deutsche Bank National Trust Company as Trustee for First Franklin Mortgage Loan Trust 2006-FFI Pass-Through Certificates, Series 2006-FFI,	Respondent,
v.	
Dora S. Morrow, Ray Martin, and Lease and Rental Management Corp. d/b/a Auto Use and Auto Loan, a Massachusetts Corporation, Southern New Hampshire Bank and Trust Company, a New Hampshire Bank, and Edman Hackworth,	Defendants.

Edman Hackworth,	3rd Party Plaintiff,
v.	
John Morrow	3rd Party Defendant.

John Morrow and Dora Morrow, 3rd Party Plaintiffs, Of whom John Morrow and Dora Morrow are the	Appellants,
v.	
Edman Hackworth and Debbie Hackworth, 3rd Party Defendants, Of whom Edman Hackworth is the	Respondent.

INITIAL BRIEF OF APPELLANT

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2. Did the trial court err by enforcing the settlement agreement where Dora Morrow revoked her assent prior to entering into a written agreement signed by all parties and counsel as required by Rule 43(k), *South Carolina Rules of Civil Procedure*?

3. Did the trial court err by granting Hackworth's motion to enforce settlement where the settlement agreement expired per its own terms?

STATEMENT OF CASE

Appellant Dora Morrow owned real property located at 6 Ladbroke Court, Greenville, SC (the "Property"). Said Property was encumbered by a mortgage recorded in the Office of the Register of Deeds for Greenville County on October 26, 2005, in Mortgage Book 4457 at Page 1030 **(See Complaint, ¶8)**. Through a series of assignments, said mortgage came to be owned by Deutsche Bank National Trust Company as Trustee for First Franklin Mortgage Loan Trust 2006-FF1 Mortgage Pass-Through Certificates, Series 2006 FF1 ("Deutsche Bank") **(See Complaint, ¶10)**. On or about April 1, 2009, Dora Morrow defaulted on the mortgage loan secured by the Property **(See Complaint, ¶14)**. On February 18, 2010, Deutsche Bank filed an action to foreclose its mortgage on the Property. At this time, counsel for Deutsche Bank was identified as Joseph T. Merli of the Finkel Law Firm, LLC. **(See Complaint)**.

On or about August 10, 2009, prior to the initiation of the foreclosure action, Respondent Edman Hackworth ("Hackworth") entered into a contract with Appellants Dora Morrow and her husband John Morrow **(See Lease Agreement, Exhibit 2 to Hackworth Answer, Cross-Claims and Third Party Complaint)**. The contract provided for a four (4) year lease period wherein Hackworth would make rental payments totaling $937.24 per month, with an option to purchase the property for $110,000.00. On the face of the agreement, it appeared that the parties lined-through provisions that all payments would offset the purchase price **(See Lease Agreement, Exhibit 2 to Hackworth Answer, Cross-Claims and Third Party Complaint, sections III, IV, and XII(A))**.

Subsequent to the filing of the foreclosure action, a dispute arose between Hackworth and the Morrows about whether rental payments made under the contract would offset the purchase price. Hackworth was made a party to the foreclosure action, and he filed cross-claims and third party claims against Dora Morrow and John Morrow relating to payments made and costs incurred by Hackworth according to and in reliance on the terms of the contract to purchase the Property subject to foreclosure. Hackworth alleged that, after discussions with John Morrow, the parties agreed the lined-through provisions would be effective **(See Hackworth Answer, Cross-Claims and Third Party Complaint, ¶13)**. These claims were filed on June 12, 2012, by counsel for Hackworth, Thomas E. Dudley, III, of Kenison, Dudley & Crawford, LLC **(See Hackworth Answer, Cross-Claims and Third Party Complaint)**.

In response, Dora Morrow and John Morrow filed their Answer to Crossclaim and Third Party Complaint and Counterclaim on July 3, 2012 **(See Morrow Answer to Crossclaim and to Third Party Complaint and Counterclaim)**. The Morrows denied any agreement that payments would offset the purchase price, and argued that the intentions of the parties were apparent on the face of the contract **(See Morrow Answer to Crossclaim and to Third Party Complaint and Counterclaim, ¶¶8, 18)**. At that time, Appellants were represented by attorney David B. Greene of Greene Law Firm, P.A. However, Mr. Greene was later relieved of his representation of Appellants on December 20, 2012 **(See Order Relieving Counsel)**.

The matter was referred to the Honorable Charles B. Simmons, Jr., as Master-in-Equity for Greenville County, by Order of Reference filed March 4, 2010 **(See Order of Reference)**. On or about August 12, 2013, Judge Simmons heard the trial of the claims

against Hackworth and Morrows. Hackworth was represented at trial by his attorney Thomas Dudley, and Deutsche Bank was represented by Sam Phillips of the Finkel Law Firm. John Morrow appeared *pro se*, and Dora Morrow did not appear **(See Order as to Claims between Hackworth and Morrows, p. 2)**. After the trial, the trial court issued its order filed September 12, 2013, finding in favor of Hackworth, and granting judgment in favor of Edman Hackworth against Dora Morrow and John Morrow, jointly and severally, for the total amount of $88,301.75 **(See Order as to Claims between Hackworth and Morrows, p. 8, ¶4)**.

During the pendency of the claims between Hackworth and Morrows and the foreclosure action of Deutsche Bank, the parties attempted to reach a settlement agreement that would resolve the claims between Hackworth and Appellants Dora and John Morrow, as well as the pending foreclosure action against the Property by Deutsche Bank. Under the terms of the purported settlement agreement, Dora Morrow was to deed the Property to Hackworth, and Hackworth was to pay Deutsche Bank a purchase price for the Property totaling $52,000.00 to fully and finally resolve the pending foreclosure action by satisfying the mortgage on the Property, with Deutsche Bank waiving its right to a deficiency judgment against the Morrows **(See Transcript of April 2014 Hearing, page 3, ll. 4-21; see also Order to Enforce Settlement, p. 2)**. In the jargon of foreclosure litigation this type of resolution between a foreclosing lender and borrower is known as a "short sale."

The proposed settlement agreement was purportedly set forth in a contract for the sale of real estate executed by Dora Morrow and Hackworth on August 23, 2013 **(Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement)** and by

letter from Deutsche Bank's loan servicer, Bank of America, dated November 27, 2013 **(Letter, Exhibit B to Hackworth Motion to Enforce Settlement) (See Transcript of April 2014 Hearing, page 3, ll. 4-21)**. The August 23, 2013 contract of sale signed by Dora Morrow and Hackworth was entered into prior to the trial court's judgment in favor of Hackworth filed September 12, 2014 **(See Order as to Claims between Hackworth and Morrows)**. Said contract of sale was not signed by John Morrow, Deutsche Bank, or counsel for Deutsche Bank **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 4)**. The November 27, 2013 letter approving the short sale was not signed by Deutsche Bank or its representative, nor was it signed by counsel to Deutsche Bank **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement)**.

The August 23, 2013 contract of sale stated that closing must take place by September 30, 2013 **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 1, section 3)**. The November 27, 2013 letter stated that closing must take place by January 14, 2014, or Deutsche Bank's approval was void **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement, pp. 1-2, section 1)**. The November 27, 2013 letter also stated that Deutsche Bank required additional documentation to be executed by Dora Morrow to effectuate the short sale, including an Assignment of Unearned Insurance Premium Refund **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement, p. 7)**. John Morrow notified Hackworth that Dora Morrow would require an additional payment in cash to sign additional documents waiving rights that were not set forth in the original agreement between the parties **(See Hackworth Motion to Enforce Settlement p. 2; and Hackworth Motion to Seek Contempt Against Dora Morrow and Motion to Enforce Settlement as to**

Deutsche Bank, p. 3). When Hackworth refused the additional terms demanded by the Morrrows, the Morrows refused to finalize the settlement agreement, and on March 24, 2014, Hackworth filed a motion to enforce settlement directed at Dora Morrow **(See Motion to Enforce Settlement)**. In his motion to enforce settlement, Hackworth alleged that the settlement agreement "completely complies with S.C. Rules Civil Procedure 43" **(See Motion to Enforce Settlement, p. 2)**.

Hackworth served his motion to enforce settlement on Dora Morrow on March 24, 2014 **(See Affidavit of Service filed April 2, 2014)**. A hearing was set for April 23, 2014, and a Notice of Hearing was served on Dora Morrow on March 26, 2014 **(See Notice of Hearing filed March 31, 2014, and Affidavit of Service filed April 8, 2014)**. It does not appear that either the motion or the notice of hearing were directed to or served upon John Morrow or Deutsche Bank.

A hearing on Hackworth's Motion to Enforce was held on April 23, 2014, attended by Thomas Dudley representing Hackworth, and by John Morrow, appearing *pro se* and on behalf of his wife, Dora Morrow. The hearing was not attended by counsel for Deutsche Bank. Following off-the-record discussions, the trial court acknowledged on the record its understanding of the terms of the purported settlement agreement, as set forth in the August 23, 2013 contract of sale, and the November 27, 2013 letter from Bank of America, as well as Hackworth's contention that the documents were enforceable as a settlement agreement **(See Transcript of April 2014 Hearing, p. 2, ll. 9-25)**. John Morrow was allowed to speak and requested a continuance on the basis that his counsel was out of town, but the request for continuance was denied **(See Transcript, p. 4, l. 13-p. 6, l. 19)**. Following the denial of the request for continuance, John Morrow

declined to say anything further based on advice of counsel **(See Transcript, p. 6, l. 10-11)**. Thereafter, the trial court granted the motion to enforce settlement, and directed counsel for Hackworth to prepare an order requiring Dora Morrow to comply with the settlement within ten (10) days under threat of contempt of court **(See Transcript, p. 6, l. 12-16)**.

The trial court's Order to Enforce Settlement was filed April 28, 2014, and held that Hackworth filed his motion to enforce settlement pursuant to Rule 43, *SCRCP*, and further held that it "resolves the judgment entered against Morrow and ends the pending foreclosure on Ms. Morrow," and that Dora Morrow would be required to comply with the settlement agreement by signing all documents required to effectuate the short sale **(See Order to Enforce Settlement, p. 3)**.

On April 30, 2014, a new attorney for John and Dora Morrow forwarded a letter to the Master-in-Equity advising that circumstances surrounding the mortgage loan made it impossible for the Morrows to comply with the purported settlement agreement. Specifically, counsel for the Morrows stated it was impossible for the Morrows to comply because the loan was no longer serviced by Bank of America and the new loan servicer would not approve the short sale, and also because it was not an arms-length transaction **(See April 30, 2014, letter from counsel for Morrows)**.

Thereafter, on May 7, 2014, attorney J.J. Andrighetti of Kehl Culbertson Andrighetti & Kornfeld, LLC, filed a Motion for Relief from Order to Enforce Settlement on behalf of John Morrow and Dora S. Morrow. At that time, Mr. Andrighetti was aware an Order to Enforce Settlement had been filed on April 28, but was not in receipt of a signed copy. Out of an abundance of caution, Mr. Andrighetti was forced to file the

motion before receipt of the Order to comply with the ten (10) day time limit prescribed by Rule 59, *South Carolina Rules of Civil Procedure*. The Morrows' Motion for Relief from Order asked the court to alter or amend its Order requiring compliance with the settlement agreement pursuant to Rule 59, or to vacate the agreement entirely pursuant to Rule 60 **(See Motion for Relief from Order)**.

On or about May 8, 2014, while Appellants' Motion for Relief from Order was pending, Hackworth filed a Motion to Allow Access requesting that the trial court allow Hackworth access to the Property so it "can be inspected and an appraisal can be conducted in order for closing to occur on the subject property" **(See Motion for Access, p. 1).** Presumably, as late as May, 2014, Hackworth's readiness to close the settlement agreement for which he sought enforcement was still subject to the results of the inspection and appraisal.

While Appellants' Motion for Relief from Order and Respondent's Motion for Access were pending, Deutsche Bank retained new counsel **(See Notice of Appearance)**. On May 29, 2014, attorney Daniel Orvin of Womble Carlyle Sandridge & Rice, LLP, sent an email to the Master-in-Equity advising the trial court of Deutsche Bank's position that the purported settlement agreement "was not entered into by [Deutsche Bank] and cannot be enforced against him." Mr. Orvin argued the November 27, 2014, letter from Bank of America was not enforceable by Hackworth because Hackworth lacked privity of contract with Deutsche Bank, and because Deutsche Bank's approval of the short sale expired on January 14, 2014.

On or about August 14, 2014, while the Morrows' Motion for Relief from Order and Hackworth's Motion for Access were still pending, Hackworth filed a Motion

Seeking Contempt Against Dora Morrow and Motion to Enforce Settlement as to Deutsche Bank, together with an Affidavit of Edman Hackworth in Support of Motion Seeking Contempt and Motion to Enforce **(See Motion and Hackworth Affidavit)**. Hackworth's affidavit expressly states that he "no longer had access to the property [he] was purchasing and was unable to schedule an inspection and an appraisal, which, along with D. Morrow's refusal to sign the additional paperwork from Bank of America, prevented [him] from closing on the property by January 14, 2014, which was the deadline set forth in the Bank of America approval letter." **(See Hackworth Affidavit, p. 2-3) (See also Motion Seeking Contempt and to Enforce Settlement, p. 5).**

In response to the motions, the trial court issued a Rule to Show Cause to Dora Morrow to appear before the Master-in-Equity on September 19, 2014, to execute any and all necessary documents to finalize the settlement between Hackworth and Morrow **(See Rule to Show Cause)**. Appellant Dora Morrow's attorney, Mr. Andrighetti, filed a Return to Rule to Show Cause arguing that the April, 24, 2014, Order to Enforce Settlement was not yet ripe for enforcement because the trial court had not ruled on Morrows' Motion for Relief from Order filed on May 7, 2014 **(See Return to Rule to Show Cause)**.

On September 19, 2014, a hearing was held on Appellants' Motion for Relief from Order and Hackworth's Motion Seeking Contempt Against Dora Morrow and Motion to Enforce Settlement Against Deutsche Bank. Appearing at the hearing were Thomas Dudley, counsel for Hackworth; J.J. Andrighetti, counsel for the Morrows; and Matthew Tillman, counsel for Deutsche Bank. At the hearing, counsel for the Appellants argued to the trial court that there simply was no settlement agreement for the court to

enforce, and there had never been a meeting of the minds as a result of the timing issues **(See Transcript, p. 6, l. 19-p. 7, l. 1; p. 7, ll. 12-13)**. Counsel for the Appellants further argued that the documents comprising the purported settlement agreement were before the trial court in April 2014 when it made its Order Granting Enforcement of Settlement Against Dora Morrow, therefore the court could determine whether the August 23, 2013, contract of sale expired by its own terms in September of 2013, well before Bank of America purportedly accepted the settlement agreement on behalf of Deutsche Bank in November of 2013 **(See Transcript of September, 2014, Hearing, p. 6, ll. 10-18)**. Counsel for Deutsche Bank argued that an order enforcing the purported settlement agreement as to Deutsche Bank was not appropriate, because the bank was not a party to any settlement agreement, that it did not sign any short sale agreement, and that the short sale approval letter expired by its own terms in January of 2014 **(See Transcript, p. 8, ll. 1-11)**.

At the hearing, the trial court denied Dora Morrow's Motion for Relief from Order and granted the motion by Hackworth to enforce the purported settlement agreement against Dora Morrow and Deutsche Bank **(See Transcript, p. 11, l. 20-p. 12, l. 2)**. After the hearing, the trial court issued an Order Motion Seeking Contempt for Non-Compliance filed October 6, 2014, which formalized the trial court's verbal order **(See Order)**.

Subsequently, Deutsche Bank filed its Motion to Reconsider the trial court's October 6, 2014 Order, which asked the trial court to reconsider whether the purported settlement agreement complied with Rule 43(k), *SCRCP*, and therefore was not binding on Deutsche Bank, and whether the agreement expired on its own terms **(See Motion to**

Reconsider). On or about November 12, 2014, the trial court issued an Order denying Deutsche Bank's Motion to Reconsider the trial court's holding that the settlement agreement is enforceable **(See Order Granting in Part and Denying in Part Motion to Reconsider, p. 2)**.

Appellants Morrow respectfully appeal the trial court's Order(s) dated April 28, 2014, and October 6, 2014, enforcing settlement and/or denying Appellant's Motion for Relief of same.

ARGUMENTS

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." Price v. Investors Title Ins. Co., 2011-UP-359 (S.C. Ct.App. filed June 30, 2011), *citing* Limehouse v. Hulsey, 397 C.C. 49, 68, 723, S.E.2d 211, 221 (Ct.App.2011), *reversed on other grounds. See also* 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).

To the extent this case involves the construction of a contract, it is an action at law, tried without a jury. "In an action at law, tried without a jury, [the Court of Appeals] is limited merely to the correction of errors of law and the circuit court's factual findings will not be disturbed unless wholly unsupported by the evidence or controlled by an error of law." Patricia Grand Hotel, LLC v. MacGuire Enterprises, Inc., 372 S.C. 634, 643 S.E.2d 692 (Ct. App.2007).

I. THE TRIAL COURT ERRED BY GRANTING HACKWORTH'S MOTION TO ENFORCE SETTLEMENT BECAUSE THERE WAS NO WRITTEN AGREEMENT SIGNED BY ALL PARTIES AND THEIR COUNSEL AS REQUIRED BY RULE 43(k), *SCRCP.*

The purported settlement agreement in question proposed to resolve the action as follows: Appellant Dora Morrow would settle the judgment against her and her husband John Morrow in favor of Edman Hackworth totaling $88,301.75 **(See Order as to Claims between Hackworth and Morrows)** by deeding the Property to Hackworth, and Hackworth would pay Deutsche Bank a purchase price for the Property totaling $52,000.00 to fully and finally resolve the pending foreclosure action by satisfying the

mortgage on the Property and waiving its right to a deficiency judgment against the Morrows. **(See Transcript of April 2014 Hearing, page 3, ll. 4-21; see also Order to Enforce Settlement, p. 2).** In the jargon of foreclosure litigation this type of resolution between a foreclosing lender and borrower is known as a "short sale."

The proposed settlement agreement was purportedly set forth in a contract for the sale of real estate that was executed by Dora Morrow and Hackworth on August 23, 2013 **(Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement)** and by letter from Deutsche Bank's loan servicer, Bank of America, dated November 27, 2013 **(Letter, Exhibit B to Hackworth Motion to Enforce Settlement) (See Transcript of April 2014 Hearing, page 3, ll. 4-21).** The August 23, 2013 contract of sale signed by Dora Morrow and Hackworth was entered into prior to the trial court's judgment in favor of Hackworth filed September 12, 2014 **(See Order as to Claims between Hackworth and Morrows).** Said contract of sale was not signed by John Morrow, Deutsche Bank, or counsel for Deutsche Bank **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 4).** The November 27, 2013, letter was not signed by Deutsche Bank or its representative, nor was it signed by counsel to Deutsche Bank **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement).**

The November 27, 2013 letter from Bank of America stated that Deutsche Bank required additional documentation to be executed by Dora Morrow to effectuate the short sale, including an Assignment of Unearned Insurance Premium Refund **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement, p. 7).** John Morrow notified Hackworth that Dora Morrow would require an additional payment in cash to sign additional documents waiving rights that were not set forth in the original agreement

"Rule 43(k) plainly applies to all settlement agreements." Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006). The Supreme Court has further held that "[t]he rule is plainly worded: 'No agreement . . . shall be binding unless' one of the three[1] requirements is met." *Id.*

Even if the contract of sale and letter from Bank of America may be read in conjunction to satisfy the requirement that the agreement be reduced to writing, the two documents still did not meet all of the requirements of Rule 43(k). The August 23, 2013 contract of sale from Dora Morrow to Hackworth was signed only by Hackworth and Dora Morrow. It was not signed by John Morrow, who was also a party to the purported settlement, since a term of the settlement was that the judgment against him and Dora Morrow would be resolved. The contract of sale also was not signed by any representative of Deutsche Bank nor its counsel. It also is not immediately apparent on its face whether the contract of sale was signed by counsel for Hackworth **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 4)**. The November 27, 2013 letter from Bank of America was not signed by any party, so it certainly was never signed by counsel for Deutsche Bank **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement)**. Even if the requirements of Rule 43(k) can be read so broadly as to allow a settlement agreement to be reduced to multiple writings, the writings in question did not meet the requirements of the Rule because they were never signed by all of the parties, nor all of their counsel. Therefore, there was no binding agreement and it was in error for the trial court to grant order(s) enforcing settlement.

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[1] Subsequent to Farnsworth, the rule was amended in 2009 to provide to allow the additional (fourth) alternative requirement that a settlement agreement may be reduced to writing and signed by the parties and their counsel. Appellants respectfully maintain that the terms of this new alternative requirement simply were not met.

between the parties **(See Hackworth Motion to Enforce Settlement p. 2; and Hackworth Motion to Seek Contempt Against Dora Morrow and Motion to Enforce Settlement as to Deutsche Bank, p. 3)**. When Hackworth refused these additional terms demanded by the Morrows, the Morrows refused to finalize the settlement agreement, and on March 24, 2014, Hackworth filed a Motion to Enforce Settlement directed at Dora Morrow **(See Motion to Enforce Settlement)**.

In his motion to enforce settlement, Hackworth alleged that the settlement agreement "completely complies with S.C. Rules Civil Procedure 43" **(See Motion to Enforce Settlement, p. 2).** The trial court's Order to Enforce Settlement filed April 28, 2014, held that Hackworth filed his motion to enforce settlement pursuant to Rule 43, *SCRCP*, and that it "resolves the judgment entered against Morrow and ends the pending foreclosure on Ms. Morrow" and that Dora Morrow was required to comply with the settlement agreement by signing all documents required to effectuate the short sale **(See Order to Enforce Settlement, p. 3)**.

Appellants respectfully submit that the purported settlement agreement was not enforceable pursuant to Rule 43, *SCRCP,* which provides in pertinent part as follows:

> **(k) Agreements of Counsel.** 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, *or reduced to writing and signed by the parties and their counsel.* Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP (emphasis supplied).

"Rule 43(k) is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation." Ashfort Corp. v. Palmetto Construction Group, Inc., 318 S.C. 492, 493-94, 458 S.E.2d533, 534 (1995). The Supreme Court has held that

II. THE TRIAL COURT ERRED BY ENFORCING THE SETTLEMENT AGREEMENT WHERE DORA MORROW REVOKED HER ASSENT PRIOR TO ENTERING INTO A WRITTEN AGREEMENT SIGNED BY ALL PARTIES AND COUNSEL AS REQUIRED BY RULE 43(k), *SCRCP.*

"Rule 43(k) provides that '[n]o agreement . . . shall be binding unless' one of the conditions listed above 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." Farnsworth, at 637,725. Until and unless she entered into a binding agreement pursuant to Rule 43, Dora Morrow was well within her rights to demand additional consideration from Hackworth, just as Hackworth was within his rights to refuse to pay additional consideration. It was therefore an error for the trial court to grant order(s) enforcing the prior agreement if it was revoked by Appellants prior to the parties to its having been reduced to writing signed by all parties and their counsel, as required by Rule 43(k).

III. THE TRIAL COURT ERRED BY GRANTING HACKWORTH'S MOTION TO ENFORCE SETTLEMENT BECAUSE THE AGREEMENT HAD EXPIRED PER ITS OWN TERMS.

The trial court's role in determining the actual terms of a settlement agreement between parties is similar to its role in interpreting the terms of a contract. In interpreting contracts, the court should ascertain and give legal effect to the parties' intentions, and in enforcing the agreement the court does not have the authority to modify terms that are clear and unambiguous on their face. Patricia Grand Hotel, at 640, 695.

The August 23, 2013, contract of sale by Dora Morrow to Hackworth stated on its face that it must be closed on or before September 30, 2013 **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 1, section 3)**, and that "time is of the essence in each paragraph of the Contract where a performance time is

stipulated" **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 3, section 15)**. The November 27, 2013, letter further stated that "[c]losing must take place no later than 1/14/2014 or this approval is void" **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement, p. 1-2, section 1)**.

When the settlement agreement did not close by the September 30, 2013, performance deadline set forth in the contract of sale, it expired and Dora Morrow was within her rights to demand additional consideration to extend the performance time. Further, when the transaction did not close by the January 14, 2014, performance deadline set forth in the letter from Bank of America, she remained within her rights to refuse to close pursuant to the express terms of the agreement.

Hackworth contributed to the failure to close by the applicable deadlines, as he has conceded that he did not close by January 14, 2014, because he had not been allowed access to the property **(See Hackworth Motion Seeking Contempt Against Morrow and Motion to Enforce Settlement as to Deutsche Bank, p. 3)**. In fact, Hackworth still was not actually prepared to close on the property as late as May 2014, as represented in his Motion to Allow Access, wherein he requests access to the property "so that an appraisal can be conducted in order for closing to occur on the subject property," as "Hackworth wants to be sure the status quo has been maintained and neither Morrow nor Morrow's renter has damaged the residence" **(See Motion to Allow Access, p. 1-2)**. However, the purported settlement agreement which Hackworth has sought to enforce after its expiration expressly states the property will be conveyed "'as-is' with no warranties" and contains no contingencies or provisions for access by Hackworth for inspection or appraisal **(See Contract of Sale, Exhibit A to Hackworth Motion to**

Enforce Settlement, p. 2, section 9; See Letter, Exhibit B to Hackworht Motion to Enforce Settlement, p. 2, section 6).

Respondent Hackworth therefore has sought to have it two ways: He would not close the transaction pursuant to the additional terms demanded by Morrow, but he also would not close the transaction unless Morrow conceded to additional terms demanded by Hackworth. A result of Hackworth's conduct is that the parties' failed to close the transaction prior to the expiration of the agreement, so it could no longer be enforced by the time that Hackworth filed his Motion to Enforce Settlement on March 24, 2014 **(See Motion to Enforce Settlement)**. Therefore, even if this Court finds determines that the purported settlement agreement met one of the requirements of Rule 43(k), it still was no longer binding on the parties because it had expired by the time Respondent sought to enforce it and the court ordered it be enforced **(See Order to Enforce Settlement)**.

CONCLUSION

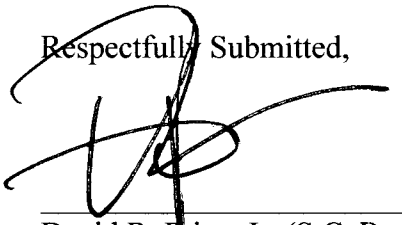
The Supreme Court has held that "Rule 43(k) plainly applies to all settlement agreements." Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006). For a written settlement agreement to be binding pursuant to Rule 43(k) to be binding, it must be "reduced to writing and signed by the parties and their counsel." Even if the August 23, 2013 contract of sale and November 27, 2013, letter from Bank of America may be read in conjunction to satisfy the requirement that the agreement be reduced to writing, the two documents still did not meet all of the requirements of Rule 43(k) **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement; See Letter, Exhibit B to Hackworth Motion to Enforce Settlement)**. There is no document signed by John Morrow, by Deutsche Bank, or by

counsel for Deutsche Bank. It is not clear whether there is any document signed by counsel for Hackworth. Therefore, there is no binding settlement agreement between the parties for the court to enforce, and Dora Morrow was within her rights to revoke her agreement. It was therefore in error for the trial court to order that the settlement be enforced.

Furthermore, even if the purported settlement agreement were binding pursuant to Rule 43(k), it expired on its own terms. The trial court's role in determining the actual terms of a settlement agreement between parties is similar to its role in interpreting the terms of a contract. In interpreting contracts, the court should ascertain and give legal effect to the parties' intentions, and in enforcing the agreement the court does not have the authority to modify terms that are clear and unambiguous on their face. Patricia Grand Hotel, at 640, 695. The August 23, 2013, contract of sale by Dora Morrow to Hackworth stated on its face that it shall be closed on or before September 30, 2013 **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 1, section 3)** and that "time is of the essence in each paragraph of the Contract where a performance time is stipulated" **(See Contract of Sale, Exhibit A to Hackworth Motion to Enforce Settlement, p. 3, section 15)**. The November 27, 2013, letter further stated that "[c]losing must take place no later than 1/14/2014 or this approval is void." **(See Letter, Exhibit B to Hackworth Motion to Enforce Settlement, p. 1-2)**. Hackworth failed to close the transaction by either of these deadlines, and Morrow and Deutsche Bank lawfully refused to extend the time for performance because the purported settlement agreement had expired. It therefore was in error for the trial court to order that the settlement be enforced.

For all of these reasons, Appellants respectfully request that this Court overrule the trial court's Order(s) dated April 28, 2014, and October 6, 2014, enforcing settlement and/or denying Appellant's Motion for Relief of same.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity Judge

Case No.: 2010-CP-CP-23-1321
Appellate Case No.: 2014-002381

Deutsche Bank National Trust Company as Trustee for First Franklin Mortgage Loan Trust 2006-FFI Pass-Through Certificates, Series 2006-FFI,	Respondent,
v.	
Dora S. Morrow, Ray Martin, and Lease and Rental Management Corp. d/b/a Auto Use and Auto Loan, a Massachusetts Corporation, Southern New Hampshire Bank and Trust Company, a New Hampshire Bank, and Edman Hackworth,	Defendants.

Edman Hackworth,	3rd Party Plaintiff,
v.	
John Morrow	3rd Party Defendant.

John Morrow and Dora Morrow, 3rd Party Plaintiffs, Of whom John Morrow and Dora Morrow are the	Appellants,
v.	
Edman Hackworth and Debbie Hackworth, 3rd Party Defendants, Of whom Edman Hackworth is the	Respondent.

PROOF OF SERVICE

I certify that I have served the INITIAL BRIEF OF APPELLANT, DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, AND CERTIFICATE OF COUNSEL on the Respondents by depositing a copy of it in the United States mail, postage prepaid, on February 23, 2015, addressed to the counsels of record and unrepresented parties at the following addresses:

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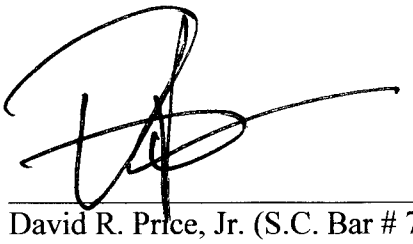

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Date: February 23, 2015

DAVID R. PRICE, JR., P.A.

ATTORNEY AT LAW

February 23, 2015

Tanya A. Gee, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Deutsche Bank v. Dora S. Morrow, et. al.
Appellate Case No.: 2014-002381

Dear Ms. Gee:

Enclosed you will find an original and two (2) copies of the ***Initial Brief of Appellants, Designation of Matter to be Included in the Record on Appeal and the Proof of Service*** in connection with the above referenced appeal.

I would ask that you please file the original and return the clocked copies to me in the envelope provided for same.

By copy of this letter to Respondent's Counsel, Thomas Elihue Dudley, III, Matthew Tillman and Daniel Q. Orvin, I am serving them a copy of same.

Thank you for your assistance. Please feel free to contact my office with any questions or concerns you may have.

Sincerely,

David R. Price, Jr.

DRP/mla
Enclosures
cc: Thomas Elihue Dudley, III, Esq.
Matthew Tillman, Esq.
Daniel Quigley Orvin, Esq.

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