In the South Carolina Court of Appeals

Vince Coates, Respondent,

v.

Dorothy Renee Simchon, Appellant.

AND

Bay Island Sportswear, Inc., Sam Simchon, Individually,
Appellants,

v.

v.

Vince Coates, Individually, Xcentric Ventures, LLC, Edward Magedson and John or Jane Doe 1-7 and XYZ Company X-Z, Defendants,

Of whom Vince Coates, Individually, is the Respondent.

Appellate Case No. 2014-002729

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STATEMENT OF THE CASE

On November 29, 2011, Vince Coates filed an action against Dorothy Renee Simchon in the Court of Common Pleas for Greenwood County, South Carolina, alleging malicious prosecution and abuse of process. Ms. Simchon filed an answer and counterclaim on April 3, 2012. Coates replied to the counterclaim on April 11, 2012. An amended answer and counterclaim was filed on November 15, 2013. A reply to the amended counterclaim was filed on December 24, 2013.

On July 25, 2012, Bay Island Sportswear, Inc., and Sam Simchon (husband of Dorothy Renee Simchon) filed an action in the Court of Common Pleas for Abbeville County, South Carolina, against Vince Coates, Xcentric Ventures, LLC, Edward Magedson and John or Jane Doe 1-7 and XYZ Company X-Z, alleging defamation and seeking injunctive relief. The gravamen of the Abbeville County action was that Coates made defamatory statements about Bay Island Sportswear and Sam Simchon on a website known as "RipoffReport.com." Coates served an answer and counterclaim in the Abbeville Case on August 22, 2012. Bay Island and Simchon filed a reply to this counterclaim on January 11, 2013. Xcentric Ventures, LLC and Magedson were dismissed on jurisdictional grounds by order dated March 28, 2013.

On February 3, 2014, the Greenwood County case was called to trial. Prior to jury selection, counsel for the parties informed the presiding judge, Hon. Eugene C. Griffith, Jr., that they had reached a resolution of that case and the Abbeville County case. Judge Griffith asked that the resolution be placed on the record. Accordingly, Appellants' counsel stated as follows:

> Your Honor, it is my understanding that the parties have agreed to the resolution not only in this case but also in the pending case in Abbeville County. .... Your Honor, it is my understanding that the plaintiff has agreed to voluntarily dismiss this case, that there will be a payment made of $4,500.00 dollars to the plaintiff's attorney in exchange for that voluntary dismissal. In addition, Your Honor, the

plaintiff has agreed to enter into a consent dismissal of the Abbeville case which will also request that any search engine carrier would block or remove from their data base a certain comment that was posted on ripoffreports.com. This is my understanding of the agreement.

Transcript of Record of February 3, 2014 at 2: 9-23. The following colloquy ensued:

THE COURT: So there is mutual releases of each of them provided that these terms are met.

MR. MCCALLUM: That's correct, Your Honor.

MR. HENRY: Provided the terms are met.

THE COURT: All right.

MR. MCCALLUM: And those settlement documents will be confidential.

THE COURT: Very good.

MR. HENRY: That's fine.

THE COURT: All right. Anything else I need to hear on the record before y'all get out of here?

MR. HENRY: No, sir. There will be a written document after this to memorialize.

THE COURT: Okay. Good enough.

Id. at 3: 6-19.

After the settlement was announced, counsel for the Appellants set about preparing a dismissal order for the Abbeville County case. In so doing, counsel took into account the fact that a request for removal or blocking of internet content must include reasons supporting the request. Guidelines published by the search engine Bing, for example, state that "we might remove a displayed search results containing allegedly defamatory content. For example, we might remove a displayed search if we receive a valid and narrow court order indicating that a particular link has been found to be defamatory." *Ret. to Mot. Enforce Settlement* at Exhibit D, p. 2. Similarly, Google will review court orders against third parties who have posted "allegedly unlawful content." *Id.* at Exh. D, p. 13. The request must identify the section of the court order which mandates removal of content. *Id.*

Appellants' counsel therefore prepared a consent order which, in his view, contained recitations complying with guidance posted by search engine providers. The Respondent, however, refused to consider the inclusion of any such recitations in the dismissal order for the Abbeville County case. "There was no settlement agreement other than the one in the transcript," wrote counsel for the Respondent; "There are no additional terms to the agreement except for what is in the transcript." *Ret. to Mot. Enforce Settlement* at Exh. B.

Appellants' counsel invited Respondent's counsel to prepare his own request in a form likely to satisfy the various search engine providers, but received no response. *Id.* at Exh. C. On March 24, 2014, Coates moved to enforce the terms of the parties' settlement agreement. Simchon filed a return to this motion on June 3, 2014. The matter was heard by Judge Griffith on June 4, 2014. By order dated September 8, 2014, Judge Griffith granted the Respondent's motion. *Order of Sept. 8, 2014.* The order enforcing settlement also provided that either party could

> prepare a supplemental order directing any 'internet service' entity maintaining the comments, to remove the publications which either party deems harmful or disparaging to him or her. The supplemental order shall contain specific and sufficient factual details of the published comments which are sought to be removed and shall be consistent with the South Carolina Rules of Civil Procedure. The order may allow service of the order upon the service provider with a provision that a hearing be held in Greenwood County. The order may further provide reasonable sanctions against the provider for failure to comply. Neither party shall be compelled to admit any liability, wrongdoing, or negligence in the supplemental order.

Id. at p. 2.

Ms. Simchon filed a motion to alter or amend Judge Griffith's order on September 17, 2014. Her motion argued that the order should be clarified to provide that the parties' dismissals were to be without prejudice, that the court should provide guidance as to the form of the mutual release to be executed by the parties, that the supplemental order should be filed in the Abbeville

County case rather than the Greenwood County case, and that the order should provide for some form of relief in the event it was later declared void. Ms. Simchon also asked Judge Griffith to reconsider his decision to enforce the settlement. In an order dated November 24, 2014, Judge Griffith agreed that his supplemental order should be filed in Abbeville County. *Order of Nov.24, 2014* (Greenwood Case). With respect to the terms of dismissal, Judge Griffith found that "the parties' clear intent was for this case and the related Abbeville County case to be dismissed with prejudice." *Id.* at 1. He denied the remainder of Ms. Simchon's motion. Ms. Simchon appealed from this order on December 22, 2014.

Also on November 24, 2014, Judge Griffith entered an order in the Abbeville County case directing "the internet entity RipOffReport.com" to remove Coates' derogatory statements from its website. *Order of Nov. 24, 2014* (Abbeville Case). In another motion to alter or amend filed on December 9, 2014, Bay Island and Mr. Simchon pointed out that Xcentrix Ventures, LLC, proprietor of the RipoffReport.com website, had previously been dismissed from the case. They requested that the order be amended to refer to search engine carriers generally, as had been previously ordered, and sought the other relief requested in Ms. Simchon's motion to alter or amend in the Greenwood County case. In an order dated February 4, 2015, Judge Griffith removed the reference to RipoffReport.com and broadened the relief in his previous order to include all internet service entities. The remainder of the motion to alter or amend was denied. Bay Island and Mr. Simchon appealed from this order on February 12, 2015. By order dated April 21, 2015, the appeals in the Greenwood County and Abbeville County cases were consolidated.

ARGUMENT

As of this writing, a Google search for "Sam Simchon" will return, as the second result in the list, a posting on "RipoffReport.com" which twice describes Mr. Simchon as "a crook." The same derogatory post appears on the second page of results for Mr. Simchon's business, Bay Island Sportswear, Inc. Mr. Simchon and Bay Island Sportswear agreed to resolve their defamation claim against Mr. Coates for one reason--so they could clear their good names. So far they have been denied the benefit of their bargain. The Respondent's unreasonably narrow interpretation of the parties' agreement would deprive Mr. Simchon and his business of any hope of relief with respect to their online reputations. The lower court should not have endorsed the Respondent's overly restrictive construction of the parties' agreement. Neither should the lower court have interpreted that same agreement liberally, when it came to the terms of the respective dismissals.

It has been held that the determination whether to enforce or vacate a settlement agreement is within the trial court's discretion. *See Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 419 S.E.2d 841, 842 (Ct. App. 1992). That said, the parties' compliance with Rule 43(k), SCRCP, appears subject to a *de novo* review standard. *See Young v. Cooler*, 347 S.C. 362, 365, 555 S.E.2d 410, 412 (Ct. App. 2001) (reversing lower court's enforcement of settlement because of failure to comply with Rule 43(k), SCRCP). Furthermore, a court's interpretation of the parties' settlement agreement, assuming it is to be enforced, can involve issues both of fact and law, depending on the circumstances. Thus in *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct. App. 2012), this Court held that the usual standards of review in an appeal from a non-jury case applied to an appeal from an order enforcing settlement.

I. THE TRIAL COURT SHOULD HAVE REQUIRED THE RESPONDENT TO COMPLY WITH THE SPIRIT OF THE PARTIES' SETTLEMENT AGREEMENT

By the Respondent's lights, Bay Island and Sam Simchon received little, if any, benefit as a result of the parties' settlement agreement. Bay Island and Simchon are to dismiss their case against Coates, apparently with prejudice, in exchange for what? According to Coates, a dismissal order containing little more than a half-hearted "request" that internet search providers cease to index Coates' highly defamatory statements on RipoffReport.com. Apparently this request cannot include any explanation as to why a court might be requesting such action. This very narrow application of the parties' agreement conflicts with reality.

A. THE COLLOQUY OF FEBRUARY 3, 2014 WAS NOT A COMPREHENSIVE STATEMENT OF THE PARTIES' AGREEMENT

First, contrary to Coates' contention, the announcement to Judge Griffith on February 3, 2014, was clearly not a comprehensive description of the parties' settlement agreement. The 115-word summary by Appellants' counsel was exactly that--a summary outline of the parties' agreement rather than an exhaustive statement. The lower court itself acknowledged that, "[u]pon announcing the settlement the parties and counsel left the court room, thus some pertinent details *were omitted* by the attorney [referring to Appellants' counsel] in order to protect the clients, the details were to be incorporated in the order." *Order Sept. 8, 2014* at 2 (emphasis added). Respondent's counsel also stated that a "written document" memorializing the settlement would need to be drafted. *Feb. 3, 2014 Transcript* at 3: 17-18. Indeed, the settlement announced in court contemplated the drafting of at least two significant documents. As the lower court mentioned, the parties were to prepare and execute mutual releases. Additionally, a consent dismissal order of the Abbeville case, with provisions requesting search carriers to block or remove Coates' derogatory statements on RipoffReport.com, was also required. The colloquy of February 3, 2014 did not specify the details of these additional papers.

Given the clear need for additional documents to fill in the "omitted" details, opposing counsel's later insistence that "[t]here are no additional terms to the agreement except for what is in the transcript" makes no sense. If all necessary terms were set forth in the transcript, why the need for a "written document" memorializing the settlement?

B. THE PARTIES' AGREEMENT CLEARLY CONTEMPLATED A REQUEST WHICH MET THE REQUIREMENTS OF INTERNET SEARCH ENGINE OPERATORS

Second, a request that internet search engines like Google "block or remove from their data base" disparaging website content must obviously furnish some reasonable basis for the request. Search engines do not suppress content just because someone asks. In today's internet age, it is universally understood that internet content providers publish detailed terms and conditions dealing with all manner of issues, including the circumstances in which offensive or objectionable content will be removed. Not surprisingly, internet content providers are reluctant to remove content without good reason. The search engine Bing, for example, "might" remove a displayed search result if provided with "a valid and narrow court order indicating that a particular link has been found defamatory." *Ret. to Mot. to Enforce Settlement* at Ex. D, p. 2. Similarly, Google will review court orders against third parties who have posted unlawful content. *Id.* at p. 12. The party requesting action must identify the section of the court order which mandates the content's removal. Even these procedures are voluntary; neither Google nor Bing promises to take any action, even when provided with a compelling request for removal of defamatory or otherwise unlawful internet content.

Granted, the colloquy of February 3, 2014, did not spell out in exacting detail the manner in which the request to search engine operators was to be submitted, or the specific form of words to be incorporated into the request. The lower court acknowledged that certain details of the agreement were kept confidential to protect the parties. The agreement did, however, clearly

contemplate some form of court order which would be used to request search providers to block Coates' defamatory statements. Surely it was an implicit term of settlement that this order contain a plausible basis for the request. Respondent Coates, however, has taken refuge in the *verbatim* transcript before Judge Griffith, despite his clear knowledge that "pertinent details" were omitted in court. He insists, paradoxically, that if terms were not included in what was clearly an incomplete description of a settlement, he is not interested in discussing them.

In South Carolina "settlement agreements are viewed as contracts." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009); *Byrd*, 398 S.C. at 241, 727 S.E.2d at 621; *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 708, 711 (Ct. App. 2001). "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007) (citing *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958). In interpreting a contract, "the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered." *Ecclesiastes Prod. Ministries*, 649 S.E.2d at 502 (citing *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977); *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962); *Mattox v. Cassady*, 289 S.C. 57, 61, 344 S.E.2d 620, 622 (Ct.App.1986). The Supreme Court's opinion in *Mishoe* quotes the following passage from *Corpus Juris*:

> The words of a contract will be given a reasonable construction, where that is possible, rather than an unreasonable one, and the court will likewise endeavor to give a construction most equitable to the parties, and which will not give one of them an unfair or unreasonable advantage over the other. So that interpretation which evolves the more reasonable and probable contract should be adopted, and a construction leading to an absurd result should be avoided.

Mishoe, 234 S.C. 182, 189, 107 S.E.2d 43, 47 (quoting 13 *C.J.* § 511).

Here, the lower court made no effort to ascertain the parties' intentions, at least with respect to the search provider request, when enforcing the settlement (the court actually rejected the suggestion that a settlement agreement is a form of contract, *Feb. 3, 2014 Transcript* at 14:25). The lower court recognized that internet service providers would not remove content "absent a court order." *Order of September 8, 2014* at 2. Yet when the court found it difficult to ascertain the parties' intent in that regard, in part because the parties chose to keep certain terms confidential, it simply absolved Coates of any obligation to cooperate with the Appellants in effectuating the settlement.

Instead, the lower court substituted the novel concept of a "supplemental order" purporting to direct internet service entities, none of whom were before the court, to remove harmful or disparaging publications on penalty of contempt. *See Order Feb. 4, 2015.* This was not what the parties had in mind when the settlement was announced. Fairly interpreted, the agreement announced on February 3, 2014, contemplated a dismissal order with terms reasonably calculated to support a request (not an injunction) to internet search providers.

In enforcing the settlement in the manner urged by Coates, the lower court denied the Appellants the benefit they expected from the agreement–a dismissal order in a form necessary to support a request to the search engine providers. The lower court erred by failing to accord a fair interpretation to the agreement and in not requiring Coates to uphold his side of the bargain. *See Riley v. Ford Motor Co.*, 408 S.C. 1, 17, 757 S.E.2d 422, 431 (Ct. App. 2014), *reh'g denied* (Apr. 3, 2014), cert. granted (Sept. 24, 2014) ("settling parties must support the settlement agreement with consideration for the release of both claims").

The lower court's one-sided enforcement of the settlement agreement was error. This Court should vacate Judge Griffith's orders enforcing settlement and remand with instructions to

require Coates to perform by entering into a consent dismissal of the Abbeville County case upon terms reasonably calculated to support a request for removal of disparaging internet content.

II. ALTERNATIVELY, THE TRIAL COURT SHOULD NOT HAVE ENFORCED THE SETTLEMENT AGREEMENT.

As noted above, the trial court as much as said that it could not make out the parties' agreement based on what was recited in court on February 3, 2014. Although the court found that the settlement was announced in accordance with Rule 43(k), SCRCP, it also acknowledged that pertinent details of the settlement were omitted "in order to protect the clients" and were to be incorporated in a later order. *Sept. 8 Order* at 2. In its settlement enforcement order, the trial court found it "impossible ... to determine what the parties intended of the other party in providing 'consent' or 'assistance' to the other..." *Id.* Unable to fathom the parties' actual agreement, the lower court substituted its own resolution of the case: a "supplemental order" effectively enjoining the internet search engine industry--Google, Bing, Yahoo *et al* --from publishing certain content. The lower court's other option, given the acknowledged lack of clarity, was to deny the Respondent's motion to enforce the settlement. Yet the lower court enforced the settlement, as reformed to include its novel "supplemental order."

It is of course well established that a settlement agreement must comply with Rule 43(k), SCRCP, in order to be enforceable. *See Ashfort Corp. v. Palmetto Construction Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (S.C. 1995); *Motley v. Williams*, 374 S.C. 107, 110, 647 S.E.2d 244, 246 (Ct. App. 2007). The purpose of announcing a settlement on the record or reducing it to a written stipulation is to memorialize the material terms of any such agreement, to prevent disputes regarding those terms, and to eliminate the need for the Court to resolve any such disputes. *See Young v. Cooler*, 347 S.C. 362, 555 S.E.2d 410, 412 (Ct. App. 2001). The fact that

a settlement is admitted or announced in some fashion does not necessarily meet the requirements of Rule 43(k). "Where the parties agree on the amount of the settlement, but not the terms of the settlement, it is not admitted so as to remove Rule 43(k)'s requirements." *Reed v. Associated Investments of Edisto Island, Inc.*, 339 S.C. 148, 154, 528 S.E.2d 94, 97 (Ct. App. 2000); *see also Ashfort*, 318 S.C. at 495, 458 S.E.2d at 535 ("the order or written stipulation must set forth the terms of the settlement to comply with Rule 43(k"); *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 604, 567 S.E.2d 514, 518 (Ct. App. 2002) (enforcing settlement because "material terms" were placed on record).

Even where material terms are stated in open court and on the record, a disagreement regarding the meaning of those terms which arises during the memorialization of those terms will preclude enforcement. The Fourth Circuit case of *Ozyagcilar v. Davis*, 701 F.2d 306 (4th Cir. 1983), is instructive. There the parties agreed before trial to resolve a case pending before the United States District Court for the District of South Carolina. An "outline agreement" drafted by counsel was read into the record in open court. *Id.* at 307. A dispute later arose as to the meaning of one of the terms in the outline agreement. The Court of the Appeals for the Fourth Circuit reversed the lower court's enforcement of the settlement; "where there was never a meeting of the parties' minds," a court does not have the power to impose a settlement agreement on the parties. "Where there has been no meeting of the minds sufficient to form a complete settlement agreement, any partial performance of the settlement agreement must be rescinded and the case restored to the docket for trial." *Id.* at 308.

As noted above, settlement agreements are subject to the rules of contract law. *See supra* at 9. Enforcement of contracts requires a meeting of the minds on all material terms of the agreement. *See Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891, 893 (1989); *Patricia Grand*

Hotel, LLC v. MacGuire Enters., Inc., 372 S.C. 634, 643 S.E.2d 692, 694 (S.C. Ct. App. 2007). The same requirement applies to settlement agreements. In *Caine Co. v. Sanders*, 293 S.C. 153, 156, 359 S.E.2d 92, 93 (Ct. App. 1987), the parties "did conduct settlement negotiations and, apparently, at one time believed they had settled this dispute." 293 S.C. at 156, 359 S.E.2d at 93. The trial court properly refused to enforce settlement because it was "clear from the record there was never a meeting of the minds over the exact terms." *Id.*

Here, the trial court found it "impossible" to determine the parties' intentions insofar as the request to internet providers was concerned. *Sept. 8 Order* at p. 2. This was presumably because "pertinent details" had been deliberately reserved for later determination. If so, the parties did not make their full agreement in open court, as Rule 43(k) requires. Moreover, it would appear clear from the trial court's findings that the parties never had a meeting of the minds with respect to the terms of dismissal for the Abbeville case. The Appellants' understanding was that the dismissal order would include reasons for the blocking or removal of disparaging internet statements, *i.e.* a recitation that those statements were defamatory or otherwise unlawful. Coates seems to have had in mind something along the lines of a footnote to the dismissal order, asking search engine operators to please overlook his comments on RipoffReport.com. Appellants submit that, as of February 2014, it was well known to all that suppression of internet content requires more than a polite request. But if that was indeed Coates' understanding, the parties failed to reach agreement on an essential term of the settlement.

Given the trial court's frank acknowledgement that the parties' intention on an essential term of settlement could not be discerned, the proper course was to deny Respondent's motion to enforce settlement. As in *Ozyagcilar*, the Appellants and Mr. Coates disagree as to the meaning

of the material terms of their settlement agreement. Enforcing a settlement agreement in such circumstances not only ignores the common law requirement that there be a meeting of the minds, but also frustrates Rule 43(k)'s purposes. The trial court clearly erred in enforcing the settlement agreement.

III. THE TRIAL COURT SHOULD NOT HAVE ORDERED THE DISMISSAL OF THIS CASE WITH PREJUDICE.

Although the lower court refused to read anything into the Respondent's agreement to request relief from internet search providers, it did not hesitate to supplement the February 3, 2014 transcript with respect to the terms of dismissal. At that appearance, neither party stated whether the respective dismissals of the Greenwood and Abbeville cases were to be with or without prejudice. Yet the lower court found that "the parties' clear intent was for this case and the Abbeville County case to be dismissed with prejudice." *Order Nov. 24, 2014* (Greenwood Case) , at 1.

Voluntary dismissal of actions is governed by Rule 41, SCRCP. If a case is to be dismissed after other parties have appeared, those parties must all sign the dismissal stipulation. Rule 41(a)(2), SCRCP. The rule specifically states that a notice or stipulation is without prejudice "[u]nless otherwise stated in the notice of dismissal or stipulation." *Id.*

Here, counsel for the Respondent insists that the settlement agreement "was placed, in full, on the record," and has refused to interpret the agreement as contemplating any performance on his client's part other that what was detailed on February 3, 2014. That same record, however, states only that Coates would agree to "voluntarily dismiss" his case in exchange for a $4,500 payment. Similarly, the parties agreed to a "consent dismissal" of the action brought by Bay Island Sportswear and Sam Simchon. In neither case was the dismissal to be with prejudice. The phrase "with prejudice" does not appear anywhere in the colloquy of February 3, 2014. The

Respondent should not have it both ways. If all of the material terms of settlement were specified on the record before Judge Griffith, the requirement of dismissals with prejudice was not among them. If the Respondent seeks a more liberal reading of the agreement insofar as this one term is concerned, he should not be heard to argue against the same liberality with respect to other terms of the agreement. The Appellants would agree that the intention of the parties is relevant to enforcement of a settlement. But the court should consider the parties' intent with respect to all material terms, not just those favorable to one side. Assuming this Court does not remand with instructions as to the Respondent's further performance of the settlement agreement, it should reverse the lower court's decision to require dismissals with prejudice in the absence of a specific agreement to that effect. It would be better, however, either to require Coates to perform according to the spirit of the settlement agreement, or not to enforce the agreement at all.

IV. THE TRIAL COURT SHOULD HAVE PROVIDED ALTERNATIVE OR SUPPLEMENTAL RELIEF IN THE EVENT ITS ORDER DIRECTED TO INTERNET SERVICE PROVIDERS IS HELD INVALID.

As stated above, the lower court essentially substituted a remedy for the performance the Appellants believe is owed by Respondent Coates. The Appellants believe they bargained for a consent order containing recitations sufficient to support a colorable request for removal or blocking of internet content. The trial court instead substituted a remedy of its own devising, namely an order directed to internet service entities collectively, requiring them to remove online content any of the parties deemed harmful or defamatory.

The validity of this relief is obviously open to question. No internet service entities were joined in any of the cases. Federal law essentially precludes defamation actions against services which provide access to, but do not create, internet content. *See* 47 U.S.C. § 230(c)(1). Bay Island and Mr. Simchon attempted to join the proprietor of RipoffReport.com in their defamation

action against Coates, but were unable to obtain personal jurisdiction over this defendant. *See Order of March 28, 2013*. An injunction is "binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who received actual notice of the order by personal service or otherwise." Rule 65(d), SCRCP. There is every likelihood that search engines such as Google, Yahoo *etc.* will vigorously contest the validity of Judge Griffith's supplemental order, both on jurisdictional grounds and on the merits.

The Appellants wish to resolve these cases if possible, and are hopeful that the lower court's supplemental order will be construed as a meritorious request for the removal or blocking of internet content. But it seems far more likely that the supplemental order will simply provoke action on the part of the concerned entities to vacate that order. It seems most unlikely that such entities will fail to contest the order, on all available grounds, should anyone seek the contempt sanctions provided in the supplemental order. If the internet entities succeed, Bay Island and Mr. Simchon will have been denied any benefit from their agreement to settle their defamation claims against Coates.

For that reason, the Appellants moved to amend the lower court's order of November 24, 2014, to allow for additional relief in the event the supplemental order is later declared void. The lower court refused to amend its original supplemental order in that manner. The Appellants submit that this was an abuse of the lower court's discretion. If the lower court wished to resolve the parties' disagreement over the terms of the original settlement by imposing relief no one had asked for, it should have at least made some provision for further action in the event the relief it imposed proved ineffectual.

CONCLUSION

In this matter, the lower court was presented with a fairly straightforward choice: enforce a settlement with due regard for the intent of the parties, notwithstanding the lack of specific agreement on all material terms; or refuse to enforce the settlement if the parties' intentions could not be discerned. Instead, the lower court enforced those settlement terms which were beneficial to the Respondent (in one case inserting a settlement term based on its view of the parties' intentions) and left Bay Island and Mr. Simchon to content themselves with a remedy which, while ambitious, is certain to be contested and likely to be declared void. This was error. If the parties reached an enforceable agreement, the lower court should have required performance from the Respondent consistent with that agreement, fairly read in the proper context. If the parties failed to agree on material terms, there was no meeting of the minds and the Respondent's motion to enforce the settlement should have been denied.

For these reasons, the Appellants request the following relief: first, that the trial court's orders of November 24, 2014 in the Greenwood County and Abbeville County cases be vacated and the cases remanded with instructions to enforce the settlement of those cases in accordance with all parties' intent; second, in the alternative, to reverse both orders and remand with instructions that both cases be restored to the trial docket; third, also in the alternative, to reverse the Greenwood County order of November 24, 2014 to the extent it requires Bay Island Sportswear, Inc. and Sam Simchon to consent to the dismissal with prejudice of their action in Abbeville County; and finally, also in the alternative, to vacate both orders and to remand with instructions for the lower court to provide for further relief in the event its supplemental order directed against internet service entities is vacated, declared void, etc., in subsequent proceedings.

June 15, 2015

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants on Vince Coates, by depositing a copy of it in the United States Mail, postage prepaid, on June 15, 2015, addressed to his attorney of record, C. Rauch Wise, 305 Main Street, Greenwood, SC 29646.

June 15, 2015

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June 15, 2015

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Vince Coates, Respondent v. Dorothy Renee Simchon, Appellant
AND
Bay Island Sportswear, Inc., Sam Simchon, Individually, Appellants v.
Vince Coates, Individually, *et al.*, Defendants
Appellate Case No. 2014-002729

Dear Ms. Kitchings:

Enclosed please find the following documents in connection with the above-referenced case:

1. Original and one copy of Initial Brief of Appellants;

2. Original and one copy of Proof of Service of Initial Brief of Appellants;

3. Original and one copy of Appellants' Designation of Matter to be Included in the Record on Appeal; and

4. Original and one copy of Appellants' Proof of Service of Designation of Matter to be Included in the Record on Appeal.

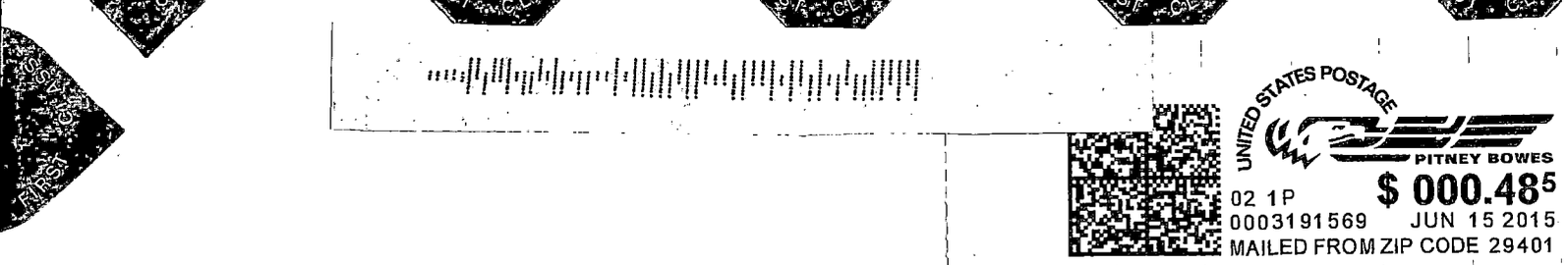
Please return filed copies of these documents in the enclosed self-addressed stamped envelope. By copy of this letter we are serving the above documents on all counsel of record.

Thank you for your assistance in this matter. Should you have questions, please do not hesitate to contact me.

Sincerely,

Julius H. Hines

JHH/glm
Enclosures
cc: C. Rauch Wise, Esq. *(w/enc.)*
Edward S. McCallam, III, Esq. *(w/enc.)*
J. Walker Coleman, IV, Esq. *(via email, w/enc.)*



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