

DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S  
APPELLATE PANEL  
W.C.C. FILE NO. 0902709

RECEIVED

JAN 29 2016

SC Court of Appeals

GERALD GARNER,

EMPLOYEE/APPELLANT,

-v-

CERES MARINE TERMINALS, INC.,

EMPLOYER,

-and-

TOKIO MARINE & NICHIDO FIRE INS. CO.,

DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia,  
South Carolina on October 19, 2015 per notices timely  
and properly served on all parties in interest.

Appellate Panel Decision and Order filed

December 31<sup>st</sup>, 2015

APPEARANCES:

Claimant/Appellant appeared pro se.

Defendants/Respondents represented by  
Roy A. Howell, III, Esquire, Trask & Howell, LLC,  
Mt. Pleasant, South Carolina.

## STATEMENT OF THE CASE

The parties were heard by Commissioner Melody L. James on March 4, 2015 in Saint George, South Carolina to determine issues as set forth in the Claimant's Form 50. Specifically, the Claimant sought additional benefits and/or compensation for injuries he sustained related to a February 23, 2009 accident. The Claimant sustained admitted injuries to the back and neck in a February 23, 2009 accident. The parties reached an agreement to settle the matter in its entirety for \$249,000.00, subject to approval by the South Carolina Workers' Compensation Commission. The parties executed a Final Lump Sum Agreement and Release ("clincher") on June 3, 2011. The clincher was filed with the Commission on June 7, 2011. In addition, the Claimant settled his Longshore and Harbor Workers' Compensation Act claim for \$49,000.00.

The Claimant filed a Form 50, requesting a hearing, on July 29, 2014. He argued at the hearing that at the time of the settlement, he was in distress, on medication, and being coerced. He requested that the clincher that he signed on June 3, 2011 be invalidated.

The Respondents argued that the Claimant validly settled his claim for \$249,000.00 on June 3, 2011. He executed a clincher and Form 19 at that time, which were both filed with and approved by the Commission. The claim was then closed at the Commission. The Defendants contended that the Claimant is unable to request, more than three years after his receipt of the settlement funds, that the settlement be invalidated.

On July 6, 2015, Commissioner James issued the following:

### FINDINGS OF FACT

1. The Claimant was represented by Counsel during the agreement and signed such agreement which stated "it is stipulated and agreed between the parties that, upon filing with the Commission, this Agreement shall not be subject to review,

modification or amendment by the Commission or the Courts of this State.” (Settlement of June 7, 2011, page 4). Furthermore the “agreement and release [was] adopted as an award of the South Carolina Workers’ Compensation Commission [which] finally end[ed] th[e] matter.” (Settlement of June 7, 2011, page 5).

2. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant’s medical condition worsens, unless otherwise specifically provided for in the document. 25A S.C. Code Ann. Reg. 67-801(E) (Supp. 2009).
3. The Agreement and Release in this matter complies with the provisions of § 42-9-390 and R.67-801.
4. The Claimant’s request for additional medical treatment and compensation are based on his assertion that the final agreement and release was “fabricated” and that he was “in distress and on medication being coerced” at the time of settlement.
5. The Act provides for review of a matter within one (1) year of the payment of the award for a change of condition for the worse. Section 42-17-90. The Claimant’s one year filing period for review under this Section would have expired in June of 2012. The Act does not have a specific provision for fraud for review of an order or an award, such as that found in the South Carolina Rules of Civil Procedure. The Workers Compensation Act is a creature of statute and must be applied statutorily.

None the less, although there does not appear to statutory relief for an agreement that is validly entered into, they Claimant asserts that the agreement was not validly entered into, so an analysis is performed under general principles of fraud.

6. To prevail on a cause of action for fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003).

Furthermore,

[i]t is largely because the law of fraud requires a Plaintiff to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning.

*Id.* At 673, 582 S.E.2d at 445, (quoting *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 180, 375 S.E.2d 331, 333 (Ct.App.1998)).

7. To establish a claim or defense of fraud in the inducement, the following three elements must be proven in addition to the nine elements of fraud: "(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting

fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the misrepresentation made to him.” *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct. App. 2010) aff’d, 395 S.C. 492, 719 S.E.2d 656 (2011).

8. The Claimant has failed to state any facts beyond his own conclusory statements to support his contention that the final settlement and release was fabricated. These uncorroborated statements, standing alone, do not constitute clear and convincing evidence of fraud.
9. In the settlement the Claimant “assert[ed] that he had been fully advised of his rights . . . and that [he] was of the opinion that the proposed settlement [was] reasonable and fair.” The Claimant’s former attorney who represented him at the time of the settlement concurred in that opinion. (Settlement of June 7, 2011, page 2). In addition, Claimant asserted that “he recognize[d] that his consent to th[e] settlement [was] a final determination and adjudication of all benefits under the South Carolina Workers’ Compensation Act, growing out of or in any way connected with any injury and/or accident occurring on or about February 23, 2009.” (Settlement of June 7, 2011, page 2-3).
10. The Claimant was represented at the time of his agreement by two attorneys. The Commission records indicate that Scott Bluestein, Esquire entered an appearance of record by correspondence that was received and entered by the Commission on April 1, 2009. Mr. Bluestein was relieved as counsel of record on September 15, 2014 by Order of the Commission. Malcolm Crosland, Esquire also entered an appearance of record by correspondence that was received and entered by the

Commission on November 5, 2010. Mr. Crosland was relieved on December 1, 2014 by Order of the Commission.

11. By signing the final agreement and release, the Claimant represented that he ascertained the truth of the document by reading it and that he understood its content and meaning. Therefore, Claimant's assertion that the settlement was "fabricated" is not supported by sufficient facts to satisfy claims of fraud or fraud in the inducement.
12. An ordinary award of the . . . Commission is not a final judgment in the sense that term is used with reference to a judgment of a Court, because . . . "such awards are reviewable at any time on the ground of change of condition, subject to the limitation that no such review shall be made after twelve months from date of last payment of compensation." *Atkins v. Charleston Shipbuilding & Drydock Co.*, 206 S.C. 63, 68-69, 33 S.E.2d 46, 48 (1945). However, "this is a different question from the validity and finality of a settlement fairly entered into and approved by the Commission, including a release of future claims and demands, which [the Supreme Court of South Carolina] regards to be valid and enforceable." *Id.*
13. The Claimant additionally asserts that he was "in distress on medication being coerced" at the time of the settlement. When a party challenges a transaction based on mental incompetence or lack of capacity, "the party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence." *In re Thames*, 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct.App.2001). The South Carolina Court of Appeals has previously defined contractual capacity as "a person's ability to understand, at the time the contract is

executed, the nature of the contract and its effect.” *Id.* At 570, 544 S.E.2d at 857. To make this determination, the court “generally inquire[s] as to whether the individual lacked sufficient mental capacity to reasonably understand the transaction, including the consequences and effects the transaction has upon the individual’s rights and interests.” *Frederick v. Dunbar*, No. 2004-UP-187, 2004 WL 6251060, at 4 (Ct. App. 2004).

14. The Claimant has not asserted any facts beyond his own conclusory statements to support his alleged incapacity at the time of the settlement. These uncorroborated statements, standing alone, do not constitute a preponderance of evidence of incapacity.
15. Pursuant to Regulation 67-801, the Claimant’s request for additional benefits is barred by the terms of the Final Lump Sum Agreement and Release.

**ORDER**

IT IS, THEREFORE, ORDERED that Claimant’s Form 50 Request for Hearing is DISMISSED WITH PREJUDICE.

AND SO IT IS ORDERED!

Within the statutory period, the Claimant filed a Form 30 Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties prior to oral argument before the Appellate Panel on October 19, 2015. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In his Form 30 Application for Review, the Claimant alleges that he was looked down upon because of his ignorance to the laws and was treated with bias by the Court. He claims his civil, state, and federal constitutional rights were violated. In his Brief to the Appellate Panel, the Claimant requests compensatory damages for injuries caused by the deprivation of his constitutional rights. The Brief further alleges that the Defendants "willfully, unlawfully, and unconstitutionally conspired" to deprive him of his rights. It claims that the attorneys involved in the case committed fraud, breach of trust, and breach of contract. The Claimant requests a jury trial in order to gain compensation and restitution.

At the Appellate Hearing, during oral argument, the Claimant argued that he was on medication for cirrhosis of the liver and hepatitis and lacked the mental capacity to enter into the settlement agreement he signed on June 3, 2011. He requested \$100,000.00 per year until he reaches age 65. The Defendants argued that the Claimant validly entered into the clincher agreement, received the settlement funds, and spent the settlement funds. They further argued that the Claimant presented no evidence that he lacked mental capacity to enter into the clincher agreement on June 3, 2011. The Defendants asked that the July 6, 2015 Decision and Order of the Hearing Commissioner be affirmed.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. 42-17-50 (1985), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusion of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, the Panel has determined that the Hearing Commissioner did not err in dismissing the Claimant's Form 50 Request for Hearing with prejudice. In fact, the overwhelming weight of the evidence in the record supports the dismissal of the Form 50 Request for Hearing with prejudice. The Appellate

Panel hereby AFFIRMS the Hearing Commissioner's Decision and Order with Amendments and enters the following Findings of Fact and Order as its own:

**FINDINGS OF FACT**

1. The Claimant was represented by Counsel during the agreement and signed such agreement which stated "it is stipulated and agreed between the parties that, upon filing with the Commission, this Agreement shall not be subject to review, modification or amendment by the Commission or the Courts of this State." (Settlement of June 7, 2011, page 4). Furthermore the "agreement and release [was] adopted as an award of the South Carolina Workers' Compensation Commission [which] finally end[ed] th[e] matter." (Settlement of June 7, 2011, page 5).
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3. The Agreement and Release in this matter complies with the provisions of § 42-9-390 and R.67-801.
4. The Claimant's request for additional medical treatment and compensation are based on his assertion that the final agreement and release was "fabricated" and that he was "in distress and on medication being coerced" at the time of settlement.

5. The Act provides for review of a matter within one (1) year of the payment of the award for a change of condition for the worse. Section 42-17-90. The Claimant's one-year filing period for review under this Section would have expired in June of 2012. The Act does not have a specific provision for fraud for review of an order or an award, such as that found in the South Carolina Rules of Civil Procedure. The Workers' Compensation Act is a creature of statute and must be applied statutorily. Nonetheless, although there does not appear to be statutory relief for an agreement that is validly entered into, the Claimant asserts that the agreement was not validly entered into, so an analysis is performed under general principles of fraud.

6. To prevail on a cause of action for fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003).

Furthermore,

[i]t is largely because the law of fraud requires a Plaintiff to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument, and that one entering

into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning.

*Id.* At 673, 582 S.E.2d at 445, (quoting *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 180, 375 S.E.2d 331, 333 (Ct.App.1998)).

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8. The Claimant has failed to state any facts beyond his own conclusory statements to support his contention that the final settlement and release was fabricated. These uncorroborated statements, standing alone, do not constitute clear and convincing evidence of fraud.
9. In the settlement the Claimant “assert[ed] that he had been fully advised of his rights . . . and that [he] was of the opinion that the proposed settlement [was] reasonable and fair.” The Claimant’s former attorney who represented him at the time of the settlement concurred in that opinion. (Settlement of June 7, 2011, page 2). In addition, Claimant asserted that “he recognize[d] that his consent to th[e] settlement [was] a final determination and adjudication of all benefits under the South Carolina Workers’ Compensation Act, growing out of or in any way connected with any

injury and/or accident occurring on or about February 23, 2009.” (Settlement of June 7, 2011, page 2-3).

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11. By signing the final agreement and release, the Claimant represented that he ascertained the truth of the document by reading it and that he understood its content and meaning. Therefore, Claimant’s assertion that the settlement was “fabricated” is not supported by sufficient facts to satisfy claims of fraud or fraud in the inducement.
12. An ordinary award of the . . . Commission is not a final judgment in the sense that term is used with reference to a judgment of a Court, because . . . “such awards are reviewable at any time on the ground of change of condition, subject to the limitation that no such review shall be made after twelve months from date of last payment of compensation.” *Atkins v. Charleston Shipbuilding & Drydock Co.*, 206 S.C. 63, 68-69, 33 S.E.2d 46, 48 (1945). However, “this is a different question from the validity and finality of a settlement fairly entered into and approved by the

Commission, including a release of future claims and demands, which [the Supreme Court of South Carolina] regards to be valid and enforceable.” *Id.*

13. The Claimant additionally asserts that he was “in distress on medication being coerced” at the time of the settlement. When a party challenges a transaction based on mental incompetence or lack of capacity, “the party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence.” *In re Thames*, 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct.App.2001). The South Carolina Court of Appeals has previously defined contractual capacity as “a person’s ability to understand, at the time the contract is executed, the nature of the contract and its effect.” *Id.* At 570, 544 S.E.2d at 857. To make this determination, the court “generally inquire[s] as to whether the individual lacked sufficient mental capacity to reasonably understand the transaction, including the consequences and effects the transaction has upon the individual’s rights and interests.” *Frederick v. Dunbar*, No: 2004-UP-187, 2004 WL 6251060, at 4 (Cl. App. 2004).
14. The Claimant has not asserted any facts beyond his own conclusory statements to support his alleged incapacity at the time of the settlement. These uncorroborated statements, standing alone, do not constitute a preponderance of evidence of incapacity.
15. Pursuant to Regulation 67-801, the Claimant’s request for additional benefits is barred by the terms of the Final Lump Sum Agreement and Release.

ORDER

IT IS, THEREFORE, ORDERED that Claimant's Form 50 Request for Hearing is  
DISMISSED WITH PREJUDICE.

AND SO IT IS ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION

  
Susan S. Barton, Commissioner

  
Aisha Taylor, Commissioner

  
Gene McCaskill, Commissioner

WE CONCUR:

RECEIVED  
JAN 29 2016  
SC Court of Appeals

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

**By Kim Falls on December 31, 2015**