

Gerald Garner,)
)
 Claimant)
)
 v.)
)
 Ceres Marine Terminals, Inc.)
)
 Employer, and)
)
 Tokio Marine & Nichido Fire Insurance Co.,)
)
 Carrier, Defendants.)
 _____)

ORDER

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SC Court of Appeals

WCC FILE NO.: 0902709

The Honorable Melody L. James,
Commissioner
South Carolina Workers' Compensation Commission

Hearing held in Dorchester County,
South Carolina, on March 4th, 2015

Per notice timely and properly served upon all Parties of Interest.

Appearances: Mr. Gerald Garner, Claimant Pro Se
Roy A. Howell, III, Attorney for Defendants

Filed: July 6, 2015

STATEMENT OF THE CASE

The Claimant, Gerald Garner, while in the employ of Ceres Marine Terminals, Inc., sustained bodily injuries, including but not limited to the back and neck in an accident arising out of and in the course of employment on or about February 23, 2009, in the County of Charleston, State of South Carolina.

At the time of the accident, the Claimant and the Employer were subject to the Workers' Compensation Law of South Carolina (hereinafter called "Act") and the Carrier was the employer's insurer under said Act.

Disputes existed between the parties as to the Claimant's entitlement to further medical care, further payments of temporary disability compensation and the extent of any causally related permanent disability. The parties reached an agreement to settle the matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission. The parties settled the matter through a Final Agreement and Release ("clincher") executed and approved by the Commission on June 7, 2011.

This matter was set for a Hearing before the undersigned on March 4, 2015, to consider the issues raised on the Claimant's Forms 50. The Claimant is no longer represented by an attorney and has elected to proceed pro se.

In his hearing request, Claimant is seeking additional benefits and/or compensation for injuries he sustained related to his accident on February 23, 2009. Claimant further alleges in his hearing request that "at the time of this fabricated settlement [he] was in distress and on medication being coerced."

Claimant attempts to challenge and re-open a previously closed final settlement and agreement of the Commission that has been closed since June 7, 2011. The Claimant

acknowledged receipt of the payment of the sums awarded through the agreement on June 3, 2011 by way of a Form 19. (APA 17)

FINDINGS OF FACT AND RULINGS OF LAW

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.1988)).

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 representation 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

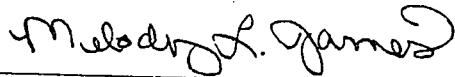
compensation.” *Atkins v. Charleston Shipbuilding & Drydock Co.*, 206 S.C. 63, 68-69, 33 S.E.2d 46, 48 (1945). However, “this is a different question from the validity and finality of a settlement fairly entered into and approved by the Commission, including a release of future claims and demands, which [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 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!



Commissioner Melody L. James

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).
July 6, 2015

By: Tamara Morris, Administrative Assistant to Commissioner James

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February 09, 2016

IN The South Carolina Court of Appeals

Jenny Abbott Kitchings, Clerk Postoffice Box 11629

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vs. Claire Allen, Deputy Clerk Columbia, South Carolina 29211

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1220 Senate Street

SC Court of Appeals

Columbia, South Carolina 29201

Re: Gerald Garner Sr. Appellant v. Ceres Marine Terminals, Inc.,
Employer, and Tokio Marine & Marina & Michido Fire Ins. CO.,
Respondents. **APPELLANT PRO-SE**

Jury Trial Demanded

Re: Filing the enclosed decision and order from the S.C.
Worker's Compensation Commission, The Honorable Melody
L. James, to be added to or be filed to [redacted] Appellant
Case No. 2016-000178, by the honorable Jenny Abbott
Kitchings, Clerk Order dated July 6, 2015

Dear Ms. Kitchings, Clerk

Notice is hereby given the Gerald Garner Sr. Appellant in
the above named, is responding to yours or the Hon. Court
Judgments, that I Gerald Garner Sr. must provide a
copy of the decision from the Hon. S.C. Worker's Com-
pensation Commission, Melody L. James, Commissioner,
Dated July 6, 2015, Thank You, GOD BLESS!

The letter I Gerald Garner Sr. received from your office
Ms. Kitching, Hon, is Dated February 02, 2016.

o' Thank you in advance for
any and all assistance you may give in this legal matter.

Certificate of Service. By Mail

The undersigned here-by certifies that I Gerald
Garner Sr., served A copy and one copy to be stamped
by the Honorable Court, and send back to me, Gerald Garner Sr.

February 09, 2016

1
 Records, to the South Carolina Court of appeals,
 Clerk the Hon. Ms. Kitchings, a copy of the decision
 from the S.C. Worker's Compensation er, the Hon. Melody
 L. James Dated July 6, 2015, and A letter to the
 Hon. Ms. Kitchings, Clerk, to be filed in the Hon.
 Courts records Dated 02-09-16, an a copy of the
 letter to the Hon. Ms Kitchings, as exhibits, in the
 above legal matter, Date 02-09-16, to the following:
 upon the South Carolina worker's compensation
 Commission's office, Clerk, Ceres Marine Terminals,
 Inc. Employer and Tokio Marine & Nichido fire Ins. Co.,
 Defendants/Respondents represented by Roy A. Howell,
 III, Esquire, Trask & Howell, LLC Mt. Pleasant S.C. of
 the same in the United States Mail, first Class
 postage prepaid and addressed as follows:

Also A original copy of the letter, send to be filed by the Clerk Dated 02-09-16

South Carolina Worker's Compensation Commission (Clerk), 1333 Main Street, Suite 500, PO Box 1715 Columbia, South Carolina 29202-1715	Ceres Marine Terminals, Inc. 565 Marriott Dr. 4 th Floor Nashville, T.N. 37214 Employer
--	---

Defendants, /respondents represent by Roy A. Howell, III,
 Esquire, Trask & Howell, LLC, Attorney at Law PO Box 2167
 Mt. Pleasant, S.C. 29465

Affirmed before me,
 This 9th day of february
 2016. *[Signature]*
 Notary Public
 My Commission Expires
 02/28/2022

The APPELLANT FOREVER PRAYS
 S/ *[Signature]* Pro-se
 Gerald Garner Sr.
 My address, PO Box 186, Goose Creek, S.C.
 29445-0186, MY Phone No. Home (843) 572-
 1930, (843) 209-0788

Gerald Garner Jr.
PO Box 186
Goose Creek, S.C.
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