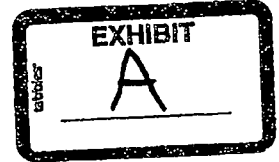


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STATE OF SOUTH CAROLINA
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COUNTY OF HORRY MELANIE HUGGINS-WARD
CLERK OF COURT

Rabon & Rabon, Inc.,

Plaintiff,

vs.

Karon Mitchell and Kyle Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-26-07862

ORDER DENYING DEFENDANTS'
MOTION, GRANTING PLAINTIFF'S
MOTION, ORDERING DEFENDANTS
TO PERFORM PURSUANT TO
MEDIATION SETTLEMENT
AGREEMENT, AND ENJOINING
DEFENDANTS FROM TAKING
ACTIONS INCONSISTENT WITH
MEDIATION SETTLEMENT
AGREEMENT

This matter came before the Court on January 20, 2016 on Plaintiff Rabon & Rabon, Inc.'s Motion for Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement ("Motion to Compel Settlement") and Defendants Karon Mitchell and Kyle Mitchell's Motion for Dismissal of the Mediation Settlement Agreement on the Grounds of Coercion and Mental Duress ("Motion to Dismiss"). For the reasons set forth below, Plaintiff's Motion to Compel Settlement is granted, and Defendants' Motion to Dismiss is denied.

FACTUAL BACKGROUND

1. This case is one of pending civil actions in which Karon Mitchell and Kyle Mitchell ("Defendants") are adverse to Karon Mitchell's brother, Jack I. Rabon, Jr., individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon (Karon Mitchell and Jack Rabon's deceased mother), and/or Rabon & Rabon, Inc. (collectively "Rabon"). ~~A fifth civil action (No. 2015-CP-26-01628) was recently dismissed without prejudice by Defendants after their previous attorney filed a motion to be relieved as counsel.~~ *mk*

2. On October 30, 2015, a mediation was held to resolve the disputes which underlie this civil action, as well as the other civil actions between Defendants and Rabon.

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3. Defendants were represented in the mediation by Rachael Dain of the law firm Attorney Dain, LLC. Rabon was represented by Lane Jefferies of the McNair Law Firm. The mediator was Dalton Floyd, of the Floyd Law Firm.

4. The mediation resulted in the Defendants and Rabon signing a Mediation Settlement Agreement ("Agreement"). The Agreement is in writing, signed by the Parties and their respective counsel. Subsequently it was filed with the Horry County Clerk of Court.

5. The Agreement provides for both a "Plan A" and a "Plan B," which are mutually exclusive. Plan A would be triggered upon Defendants' achieving certain goals before November 30, 2015. If the Defendants' failed to achieve said goals before November 30, 2015, then Plan B would be triggered instead of Plan A. Additionally, the Agreement requires, among other things, that the Defendants execute and place into escrow certain documents prior to November 30, 2015, regardless of which plan is triggered. Defendants did not execute or place into escrow any of the required documents.

6. On December 1, 2015, Rabon informed Defendants that since Plan A had not been triggered due to their failure to meet the agreed upon goals, and that therefore, pursuant to the terms of the Agreement, Plan B was triggered and in effect.

7. Defendants did not perform under Plan B, and on December 10, 2015, Rabon filed the Motion to Compel Settlement.

8. On December 15, 2015, Defendants filed their Motion to Dismiss, which set forth, as Defendants' sole ground, the allegation that Defendants signed the Agreement under duress.

CONCLUSIONS OF LAW & FINDINGS

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution." C-Sculptures, LLC v. Brown, 403 S.C. 53, 56 (2013). Defendants and Rabon entered into the Agreement as a result of a mediation pursuant to this strong public policy.

This Court has inherent jurisdiction to enforce the Agreement. Kumar v. Third Generation, Inc., 324 S.C. 284, 289-90 (Ct. App. 1995). Enforcement of the Agreement is not barred by Rule 43(k), South Carolina Rules of Civil Procedure, ("SCRCP"). Rule 43(k), SCRCP; Ashfort Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 495 (1995); Pee Dee Stores, 381 S.C. 234, 241-42 (Ct. App. 2009); Reed v. Associated Invs. of Edisto Island, Inc., 339 S.C. 148, 152 (Ct. App. 2000).

I find that Defendants' Motion to Dismiss does not allege (1) the use of physical force, or threats of physical force, or the improper use of economic power, (2) the Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) Rabon substituted his will for the Defendants' will such that Agreement was not of Defendants' volition.

I find that Defendants failed to meet their burden of pleading the elements of their sole defense of duress. Gainey v. Gainey, 382 S.C. 414, 428 (2009); In re Nightingale's Estate, 182 S.C. 527 (1937); Strode v. Barnes, 124 S.C. 403, 412 (1923); Willms Trucking Co. V. Jw Constr. Co., 314 S.C. 170, 179 (Ct. App. 1994).

I find that Defendants did not offer evidence (1) of the use of physical force, or threats of physical force, or the improper use of economic power, (2) that Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) that Rabon substituted his will for the Defendants' will such that Agreement was not of Defendants' volition. I further find that Defendants had a reasonable

alternative to entering the Agreement and did not take advantage of it. Holler v. Holler, 364 S.C. 256, 257 (Ct. App. 2005); Bleiski v. Bleiski, 325 S.C. 491, 500 (Ct. App. 1997).

An important factor is that the Defendants did not challenge the enforceability of the Agreement prior to November 30, 2015. Instead, prior to November 30, 2015, Defendants, through their attorney, represented that (a) Defendants agreed that the Agreement was enforceable, and (b) were undertaking steps to obtain funding as contemplated in Plan A. I find that Defendants' position is without merit. Therefore, Defendants' Motion to Dismiss Agreement must be and is denied.

As to the triggering of Plan B instead of Plan A, I find that the Agreement unambiguously sets forth (a) a thirty (30) day window during which Plan A could be triggered, and (b) the events which must occur in order to trigger Plan A. Pec Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242 (Ct. App. 2008). During the January 20, 2016 hearing on these motions, Defendants conceded that the events necessary to trigger Plan A had not occurred prior to November 30, 2015 nor had they occurred between November 30, 2015 and the January 20, 2016 hearing. Therefore, Plan A was not triggered within the thirty (30) day period, resulting in Plan B being triggered in accordance with the plain and unambiguous terms of the Agreement.

The Defendants have not presented any meritorious defense to inhibit the enforcement of the Agreement. Accordingly, Plaintiff's Motion to Compel Settlement must be granted. The Agreement must be enforced according to its terms which include performance of Plan B rather than Plan A. S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, 379 S.C. 645, 655 (Ct. App. 2008).

IT IS THEREFORE ORDERED that:

- A. Defendants' Motion to Dismiss is DENIED;

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B. Plaintiff's Motion to Compel Settlement is GRANTED;

C. Within fifteen days of the date of this Order, Defendants shall fully perform pursuant to the Mediation Settlement Agreement dated October 30, 2015, except with respect to those provisions contained exclusively in Plan A (the provisions of which shall not be performed). Defendants' performance pursuant to the Agreement shall include, but not be limited to, execution and delivery to Rabon's attorney all the documents necessary or advisable to effectuate the transactions described therein;

D. Defendants shall do all things required of them under the Agreement, and shall forever refrain from doing those things prohibited to them under the Agreement;

E. Defendants shall not do, or knowingly permit to be done, any act inconsistent with the terms or spirit of the Agreement and this Order, and specifically Defendants shall not commit or permit any waste with respect to any real or personal property described in the Agreement; and

F. Failure of Defendants to timely and fully comply with this Order shall subject Defendants to the contempt powers of the Court, ~~including, without limitation, the power of~~ *MAC* ~~incarceration.~~

IT IS SO ORDERED.

Georgetown,
Conway, South Carolina
Dated: Feb. 4, 2016

Benjamin H. Culbertson
The Honorable Benjamin H. Culbertson
Circuit Judge
Fifteenth Judicial Circuit