

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Robert Clay Sparrow and
Mickey Crowe,

Plaintiffs,

v.

Fort Mill Holdings, LLC, and
David Baucom,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

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JUN 16 2016

Case Nos. 2013-CP-46-00438

SC Court of Appeals

**ORDER DENYING
MOTION TO ALTER OR AMEND
JUDGMENT**

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DAVID HAMILTON
J.C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Robert Clay Sparrow and
Mickey Crowe,

Plaintiffs,

v.

Maurer Holdings, LLC, and
David Baucom,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case Nos. 2013-CP-46-00440

**ORDER DENYING
MOTION TO ALTER OR AMEND
JUDGMENT**

This matter came before me on May 10, 2016, upon Defendants' Motion pursuant to Rule 59(e), SCRCP, to alter or amend the order entered March 30, 2016, in these two cases. Plaintiffs were represented by James M. Griffin, and Defendants were represented by Paul S. Landis. Specifically, Defendants move the Court to alter, amend and reconsider its Order on the following grounds:

1. By its own terms, the Settlement Agreement was not consummated;
2. The Settlement Agreement is contrary to the North Carolina anti-deficiency statute, and thus prohibited by governing law; and,
3. The Settlement Agreement is void due to its violation of the statute and public policy.

After considering the arguments of counsel, and upon careful consideration of Defendants' Motion and the entire record in these two cases, I make the following findings and

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conclusions, and address each asserted error separately.

A. Consummation of Settlement Agreement.

The Settlement Agreement entered into between the parties is clear, unambiguous and fully complies with Rule 43(k), SCRPC. Under the terms of the Settlement Agreement, Plaintiffs agreed to pay the outstanding real estate taxes on the property so that the property would not be sold at a tax sale, and Defendants agreed to execute a contingent confession of judgment in favor of Plaintiffs. Plaintiffs also agreed not to file the confession of judgment until the earlier of October 7, 2015, or a sale of the properties by Defendants resulting in a deficiency, in which case the confession of judgment would be reduced by the proceeds of the sales paid to Plaintiffs. If the sale of the properties resulted in proceeds exceeding the judgment, the excess belonged to Defendants. Additionally, Plaintiffs agreed to release the mortgages on the two properties prior to closing of any *bona fide* sale of the property by Defendants. The settlement agreement was signed on October 7, 2014, by all parties, the parties' counsel, and the mediator.

Defendants contend that the Settlement Agreement was not consummated because the parties did not execute "formal documents", and Plaintiffs did not file a dismissal.¹ The Settlement Agreement provided that "Plaintiffs will consent to and counsel will execute a dismissal, with prejudice, of the referenced action upon execution of more formal documents." The Agreement further provided that "Counsel will prepare more formal settlement documents and the contingent confession, whereupon execution [sic] by all parties."

Here, Plaintiffs partially performed under the Settlement Agreement by paying outstanding property taxes of \$70,595.46. Moreover, Defendants do not dispute that counsel prepared a contingent confession of judgment as contemplated by Settlement Agreement, and that Plaintiffs were ready, willing and able to perform their part of the Agreement, but were unable to do so because of Defendants' refusal.

In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Ingram v. Kasey's Associates*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000).

¹ Defendants' position may be likened to arguing that a Purchaser may not enforce a contract for the purchase and sale of real estate because the Seller refuses to sign a deed.

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Under the circumstances of this case, I find and conclude that Plaintiffs are entitled to an order compelling enforcement of the Settlement Agreement.

B. North Carolina Law and Public Policy Considerations.

Defendants further argue that the Settlement Agreement should not be enforced because the promissory notes have a choice of law provision, stating that the notes in the underlying transaction should be governed and construed in accordance with North Carolina law. Thus, Defendants assert, the Settlement Agreement is void as against the public policy of North Carolina as expressed in North Carolina's anti-deficiency judgment statute.

The Settlement Agreement is governed by South Carolina law, not North Carolina law. The Settlement Agreement was entered into in South Carolina, and resolved a dispute being litigated in the courts of this State, which involved land located in South Carolina. Unlike the initial promissory notes, there is no choice of law provision in the Settlement Agreement.

The act of the parties in entering into a contract at a particular place, in the absence of anything shown to the contrary, sufficiently indicates their intention to contract with reference to the laws of that place; hence the rule as it is usually stated is that a contract as to its validity and interpretation is governed by the law of the place where it is made, the *lex loci contractus*; or more accurately, that contracts are to be governed as to their nature, validity and interpretation by the law of the place where they are made. *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 144, 494 S.E.2d 449, 455 (Ct.App. 1997).

Thus, the law of South Carolina, as the *lex loci contractu*, governs the interpretation and application of the Settlement Agreement in this case.

Further, under South Carolina law, there is a strong public policy favoring settlement in lieu of litigation. See *Poston by Poston v. Barnes*, 294 S.C. 261, 363 S.E.2d 888 (1987); and, *Darden v. Witham*, 258 S.C. 380, 188 S.E.2d 776 (1972).² That policy favors enforcement of the settlement in this action, notwithstanding policy considerations supporting North Carolina's anti-deficiency statute.

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in

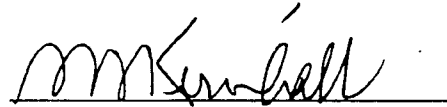
² That public policy is further expressed in the South Carolina Supreme Court's expansion of the mandatory mediation requirement to all counties in the State as of January 1, 2016. See, Rule 1, SC ADR Rules-Editors Note.

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the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order. Therefore, it is ordered that Defendants' Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

May 20, 2016



S. Jackson Kimball
Special Circuit Court Judge
York County

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