

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4600438
 2013CP4600440

Robert Clay Sparrow	Mickey Crowe	Fort Mill Holdings LLC	David Baucom
Robert Clay Sparrow	Mickey Crowe	Maurer Holdings LLC	David Baucom

RECEIVED
 JUN 16 2016
 SC Court of Appeals
 DEFENDANT(S)

Submitted by: The Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

Order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Robert Clay Sparrow Mickey Crowe	Fort Mill Holdings LLC, David Baucom & Maurer Holdings LLC	1,427,347.56 (plus interest at the rate of \$273.74 per diem from October 7, 2014 until the date of the entry of this Order of Judgment)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

/s/S. Jackson Kimball

Circuit Court Judge

CPFORM4Cm
 SCCA SCRPC Form 4C (Revised 3/2013)

3063

Judge Code

3/29/2016

Date

This judgment was entered on **March 30, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **March 31, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

James Mixon Griffin PO Box 999 Columbia, SC 29202

Paul S. Landis 209 E. Washington St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert Clay Sparrow and
Mickey Crowe,
Plaintiffs,

Case No. 2013-CP-46-00438

**ORDER FOR
JUDGMENT**

v.
Fort Mill Holdings, LLC, and
David Baucom,

Defendants.

FILED-RECEIVED
2016 MAR 30 AM 8:52
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert Clay Sparrow and
Mickey Crowe,
Plaintiffs,

Case No. 2013-CP-46-00440

**ORDER FOR
JUDGMENT**

v.
Maurer Holdings, LLC, and
David Baucom,

Defendants.

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SC Court of Appeals

This matter came before me on March 24, 2016, upon Plaintiffs' Motion to Compel enforcement of the terms of a written settlement agreement reached between the parties in these two actions during mediation pursuant to the South Carolina Rules for Alternative Dispute Resolution ("ADR Rules"). Plaintiffs were represented by James M. Griffin, and Defendants were represented by Paul S. Landis. After considering the arguments of counsel, briefs of the parties and the record in this matter, I make the following findings and conclusions.

BACKGROUND

On December 1, 2011, Plaintiffs sold separate parcels of land to the Defendants. Defendant Fort Mill Holdings, LLC ("Fort Mill"), executed a promissory note to Plaintiffs in the sum of \$907,300.00 in exchange for certain property secured by the purchase money mortgage duly recorded December 30, 2011, in the RMC Office for York County ("Note 1"). Defendant Maurer Holdings, LLC ("Maurer"), executed a promissory note to Plaintiffs in the sum of

M
\$1

\$284,500.00 in exchange for certain property secured by the purchase money mortgage duly recorded December 30, 2011, in the RMC Office for York County ("Note 2"). Defendant David Baucom ("Baucom") executed Note 1 and Note 2 (the "Notes") as guarantor. The sum of the Notes bore an interest rate of 7% per annum until paid, or until default. In the event of default, the Notes accrued interest at a rate of 15% per annum until paid.

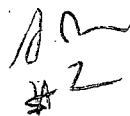
Beginning in June, 2012, Defendants did not make timely and full payments due under the Notes, and were therefore in default. As a result, Plaintiffs notified Defendants Fort Mill and Maurer ("Corporate Defendants") of Plaintiffs' election to demand immediate payment of the principal amount remaining on the Notes, with applicable interest.

As a result of Defendants' failure to pay the Notes, Plaintiffs filed these actions on February 8, 2013, seeking judgment against Defendants and foreclosure of the mortgages in the amounts due and owing under the Notes, together with taxes and insurance premiums, and costs and attorneys fees. In response, Defendants filed a Motion to Dismiss Defendant Baucom, and Answers and Counterclaims in both actions. Prior to these actions coming to trial, all parties and their counsel participated in mediation on October 7, 2014, pursuant to the ADR Rules. This resulted in an agreement to settle all parties' then pending claims. The terms of the settlement were reduced to writing and signed by all parties and their counsel.

Pursuant to 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. On their part, Defendants agreed to execute a contingent confession of judgment in favor of Plaintiffs as follows: (1) Principal and Interest under the Notes for \$1,356,752.10 (at 7% interest through October 7, 2014); (2) Real Property Taxes of \$70,595.46; and, (3) the combined amount of (1) & (2) to bear interest at a rate of \$273.74 per diem until the judgment was paid in full.

Plaintiffs agreed not to file the confession of judgment until the earlier of October 7, 2015, or until the sale of the mortgaged properties by Defendants resulted in a deficiency. In such case, the confession of judgment would be reduced by the proceeds of the sales paid to Plaintiffs. If a sale of the properties resulted in excess proceeds over the judgment, the excess would go to Defendants. Additionally, Plaintiffs would 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'

Handwritten signature and initials, possibly "A. M." and "#2".

counsel, and the mediator.¹ Following execution of the settlement agreement, Plaintiff Sparrow paid the outstanding real estate taxes of \$70,595.46 per the terms of the agreement.

Defendants were unable to sell the property, and have refused to execute the confession of judgment as required by the terms of the settlement agreement. Further, the property has since been sold by York County for subsequent unpaid property taxes, accruing following mediation and execution of the settlement agreement. As a result, Plaintiffs filed the instant motion seeking to compel Defendants' compliance with the settlement agreement.

DISCUSSION / ANALYSIS

In South Carolina, settlement agreements are viewed as contracts, and a settlement to which all parties agree is valid and binding. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct.App. 2008); see *Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association*, 343 S.C. 335, 540 S.E.2d 843 (2001). "Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the settlement." *Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E.2d 833, 834 (1993). Nor can a party rescind a settlement agreement upon the ground that he has entered into it by mistake based erroneous advice of his attorney. *Kirkland v. Moseley*, 109 S.C. 477, 96 S.E. 608 (1917).

In the present case, I find and conclude that the terms of the settlement agreement are not ambiguous; nor was the agreement the a product of any fraud. The agreement was reduced to writing and signed by all parties and their counsel as required by Rule 43(k), SCRPC. Accordingly, the settlement agreement should be enforced.

It is clear from the face of the agreement that the parties agreed that Defendants would execute a confession of judgment in favor of Plaintiffs in a specified amount, accruing a specified rate of interest until the debts were repaid. Plaintiffs agreed the confession of judgment would remain unfiled for one year, until October 7, 2015. If during the year, Defendants were able to sell the properties and repay Plaintiffs the amount owed, Plaintiffs would forgo filing the judgment. However, if the Defendants were unable to repay Plaintiffs \$1,427,347.56, with interest, prior to October 7, 2015, then Plaintiffs were entitled to file the confession of judgment.

There is no evidence before the Court that fraud or mistake induced the Defendants to enter into the settlement agreement. Rather, the fact that Plaintiffs, Defendants, and their

¹ On October 1, 2014, for value received, Plaintiff Crowe assigned his interests in the Notes and mortgages securing the same to Plaintiff Sparrow; thus, Sparrow executed the settlement agreement on behalf of Plaintiff Crowe.



respective counsel were present at the mediation, participated in the mediation, and voluntarily executed the settlement agreement, illustrates that all parties were apprised of, and agreed to, the terms of the agreement when it was executed. Enforcement of the settlement agreement would not be substantially unfair to Defendants.

Defendants argue that the North Carolina's 'anti-deficiency' statute prevents Plaintiffs from obtaining a deficiency judgment in the foreclosure action, and that therefore, they are not required to execute the confession of judgment. Defendants assert that if they had been aware of this statute when they mediated these cases, they would not have entered into the settlement agreement. Plaintiffs contend that the anti-deficiency statute does not apply to these transactions. Whether the statute applies or not is not material to the conclusion herein that the settlement agreement is binding upon the Defendants. The present case pertains only to enforcement of a voluntary settlement agreement made in accordance with applicable South Carolina rules and case law. Defendants' assertion of the protection of the statute, if it applies, is left for a later date should the issue actually present itself.

Furthermore, it would be substantially unfair to Plaintiffs if the settlement agreement were not enforced. As set forth in the mortgages on the properties, Defendants were responsible for paying all property taxes on the mortgaged properties. In the event Defendants failed to timely pay the same, and Plaintiffs' incurred the expense, such monies were also secured by the mortgages. As part of the settlement agreement, Plaintiffs agreed to pay \$70,595.46 in property taxes owed by Defendants on the properties in exchange for Defendants' agreement to abide by the terms of the settlement agreement. Following Defendants' execution of the settlement agreement and in reliance on its terms, Plaintiffs paid the taxes. However, Defendants refused, and continue to refuse, to sign the confession of judgment that was the critical component in Plaintiffs' acceptance to the terms of the settlement agreement. Such refusal is without justification or legal excuse.

Accordingly, Plaintiffs' motion is granted because the terms of the settlement agreement are not ambiguous, and not influenced by fraud or mistake. Additionally, there is no evidence of substantial injustice to Defendants in the enforcement of the agreement. Finally, the agreement complies fully with Rule 43(k), SCRPC.

CONCLUSION

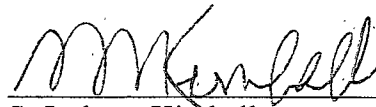
Therefore, based on the record presented, and the discussion and analysis herein, it is

APM
AJ

ordered that judgment be entered in favor of the Plaintiffs, Robert Clay Sparrow and Mickey Crow against Defendants Maurer Holdings, LLC, Fort Mill Holdings, LLC, and David Baucom in the principal amount of \$1,427,347.56, plus interest at the rate of \$273.74 per diem from October 7, 2014, until the date of the entry of this Order of Judgment.

AND IT IS SO ORDERED.

March 29, 2016



S. Jackson Kimball
Special Circuit Court Judge
York County

HS