

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

CACV of Colorado, LLC, )

Plaintiff, )

vs. )

Robert H. Bishop, )

Defendant. )

**RECEIVED**  
IN THE COURT OF COMMON PLEAS  
2009-CP-23-00589  
JUL 29 2016

**SC Court of Appeals**

**ORDER DENYING DEFENDANT'S  
MOTION TO RECONSIDER**

The matter is before the Court on Defendant's Motion to Reconsider filed May 19, 2016. The substance of the present motion is that the Court lacks subject matter jurisdiction as relates to the underlying Arbitration Agreement based upon the allegations that Defendant never executed the Arbitration Agreement and that the issuing arbitration forum was not an impartial entity.

The motion was argued on June 16, 2016. The Court also received and reviewed post-hearing materials from counsel on behalf of the respective positions.

Critical to note, and as set forth in the Order denying Defendant's Motion for Relief filed on May 9, 2016, Defendant was personally served with a copy of the arbitration award on February 20, 2009. Defendant never filed any opposition to the award nor contested it in any form or fashion. Pursuant to an Order of Judge Patterson filed May 7, 2009, the arbitration award was finalized and entered as a judgment against Mr. Bishop. This Order was not appealed.

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Following Defendant's Motion to Set Aside and his Motion to Reconsider filed May 19, 2016, Defendant also alleges in post-hearing correspondence to the Court that extrinsic fraud necessitates the Court setting aside the Order filed by the Court on May 7, 2009. Defendant presents arguments relative to the underlying arbitration and issues concerning the impartiality of the National Arbitration Forum (NAF).

Unfortunately, none of these issues were ever raised before the Court prior to the Order filed by Judge Patterson on May 7, 2009. Such issues could have and should have been litigated at that time. As such, and despite the zealous advocacy of Defendant's attorney, this Court is without a sufficient legal basis to set aside the Order of May 7, 2009.

Notwithstanding the above, and to the extent that extrinsic fraud issues have been raised, the Court finds such are not applicable. Extrinsic fraud, which allows relief from a judgment due to fraud upon the Court, is fraud that induces a person not to present a case or deprives the person of the opportunity to be heard. See, Chewning v. Ford Motor Co., 579 S.E.2d 605 (SC 2003); Robinson v. Estate of Harris, 698 S.E.2d 214 (SC 2010). The Court finds the present action is not a factual situation that lends itself to a claim of extrinsic fraud in that there is no evidence that Defendant was induced or limited in his ability to present a case nor an opportunity to be heard during the course of the court proceedings back in 2009.

The Court, in considering what is substantively a collateral attack on the judgment entered May 7, 2009, has carefully balanced the interest of finality against the need to provide a fair and just resolution of the dispute. Based upon the procedural history of the case, as more fully set forth above, the Court is unable to find a sufficient basis to grant Defendant's Motion to Reconsider. As such, the same is denied.

AND IT IS SO ORDERED.

**JUDGE'S ELECTRONIC SIGNATURE ON PAGE TO FOLLOW**



Greenville Common Pleas

**Case Caption:** Cacv Of Colorado Llc vs. Robert H Bishop  
**Case Number:** 2009CP2300589  
**Type:** Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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