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JUL 29 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullin, Circuit Court Judge

Case No. 2016-001278

Mildred Ann Kinghorn as
Trustee for the Mildred Ann
Kinghorn Trust, dated
28 April 2004,

Respondent,

v.

George Sakakini,

Appellant.

MEMORANDUM ON APPEALABILITY

July 27, 2016

M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, South Carolina 29402
(843) 416-1047
Attorney for Appellant

ISSUE

The Honorable Court of Appeals has requested that the parties brief the issue of appealability of the Orders now on appeal under the cover caption of this brief. It is understandable that a neutral third party who was not privy to the original proceedings may be confused as to the appealability of the orders in that the two form 4 orders are scant of detail and appear on their face to be contradictory. However, many of these issues will become manifest with the filing of the Record on Appeal. Until such time, the Appellant submits certain documentation herewith so that the Honorable Court may review the appealability of this particular action.

RELEVANT FACTS

The Plaintiff and Defendant mediated the case at hand.

The Plaintiff alleged that the parties reached a tentative settlement at mediation which was subject to certain contingencies. (Settlement attached hereto as Exhibit 4)

The Plaintiff moved the trial court to compel the enforcement of the alleged settlement.

Defendant opposed the Plaintiff because the contingencies had not been met.

A hearing was held on the matter.

Subsequent to the hearing, the Defendant filed a motion for special discovery and a hearing on the question of whether there was a settlement or not (contract or no contract) as argument from Plaintiff's counsel during the hearing of the motion intimated that there had been no meeting of the minds at mediation.

Subsequent to that, the trial court issued a form 4 order which reads only "Plaintiff's motion to enforce the settlement, heard by this Court on March 30, 2016, is hereby granted." (This order is attached hereto as exhibit 1).

The trial judge then checked the box “[t]his order does not end the case.”

The Defendant filed a timely motion for alteration or amendment of judgment.

Subsequent to that, the court scheduled a hearing on the Defendant’s outstanding motion for special discovery and a hearing on “contract or no contract.”

Plaintiff corresponded with the court by the letter attached as exhibit 3 which indicates that she felt that the initial order mooted the motion.

Subsequent to that, the trial court summarily denied the motion to reconsider without hearing, and also concurred with the Plaintiff that the original order mooted the Defendant’s motion for special discovery and a hearing on “contract or no contract.”

However, on this subsequent order, the trial judge checked the block that stated the order ended the case.

Defendant timely appealed both orders.

ISSUES BRIEFED

- I. The Orders in Question are Immediately Appealable Because the Orders Are Final Orders, and the Case has been Terminated.**
- II. Whether the Orders in Question are Final or not is Immaterial inasmuch as the Orders Affect a Substantial Right of the Defendant.**
- III. Whether the Orders in Question are Final or not is Immaterial inasmuch as the Orders are Interlocutory Orders Involving an Injunction.**

Whether a matter is appealable or is not appealable is controlled by statute in South Carolina. See *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). South Carolina Code Annotated §14-3-330 states in full:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

This statute is applicable to equity cases as well as cases at law. See *Ex Parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005). See also *Charleston Cnty. Dep't. of Soc. Servs. V. Father*, 317 S.C. 283, 454 S.E.2d 307 (1995). It also controls appealability of cases in the Court of Appeals as well as the Supreme Court.

I. The Orders in Question are Immediately Appealable Because the Orders Are Final Orders, and the Case has been Terminated.

The general rule regarding the appealability of most orders is that the orders be final orders. See *Wilson*, 367 S.C. 7, 625 S.E.2d 205. The orders in this case are, indeed, final orders. The fact that the trial court used form 4 orders, which were vague on their face, and one of which was mismarked, makes it difficult to ascertain the fact that the orders are final on first glance. However, when scrutinized, it becomes clear that the orders are final, and that the case has been terminated by those very orders of the trial court.

The first order itself merely states "Plaintiff's motion to enforce the settlement, heard by this Court on March 30, 2016, is hereby granted." (Exhibit 1). The trial judge then checked the box "[t]his order does not end the case." Both counsel for Plaintiff and Defendant were rather surprised that the court checked the box as the grant of the order to compel an alleged settlement reached at mediation did, *de facto*, terminate the case. If there was a settlement as alleged, there was nothing left to adjudicate. (See terms of exhibit 4).

The Defendant subsequently filed a timely motion under SCRCP 59 (which is to be a part of the record on appeal). Subsequent to the filing thereof, the trial judge summarily denied the motion for reconsideration on another form 4 without hearing. This order of 25 May 2016 (exhibit 2), shows the court noting that the "Defendant's Motion for Reconsideration is hereby denied without a hearing. Defendant's Motion for Limited Discovery is therefore rendered moot." However, this time, the court checked the block that stated "[t]his order ends the case." The Court of Appeals should note that both this order and the 22 April 2016 order have been appealed.

As the judge in the second order was obviously responding to a motion to alter or amend, her changing the "does not end the case" to "does end the case" clearly shows that she was amending the erroneous annotation on the first order indicating that the order did not end the case. Even if such were not the case, the second order clearly terminated the case; and other than the appeal, there is no case pending in Beaufort County as a result. Consequently, all orders made during the action are currently reviewable on the appellate level, including the first order.

Even Respondent believed the first order ended the case. Appellant had filed a motion prior to the entry of the first order for special discovery on the issue of "contract or no contract"

on the settlement agreement Respondent was seeking to have enforced.¹ After the recordation of the first order, but before the second, the Respondent wrote to the court and indicated that the first order had mooted the Appellant's motion because it resolved the case. (This correspondence is attached hereto as exhibit 3). The judge clearly agreed with her as the judge subsequently altered the first order to so indicate. The judge did three things and three things only in her second order, to wit: (1) denied Appellant's Motion for Reconsideration, (2) dismissed the Motion for Special Discovery and a Hearing on Contract or No Contract, and (3) completely dismissed the case. In other words, she did partially amend the first order by dismissing the action whereas she had not done so before. Such a failure to do so in the first order was obviously a ministerial error or inadvertence.

This is manifest when one understands the nature of the motion which was the subject of the first grant. (The motion and alleged settlement are attached hereto as exhibits 4 and 5 respectively.) The motion is to compel an alleged settlement. The dismissal of the action was a part of the settlement sought to be compelled. When the court ordered that "Plaintiff's motion to enforce the settlement, heard by this Court on March 30, 2016, is hereby granted," the order was enforcing the whole of the settlement including the part that dismisses the action. The relief sought, by its very nature terminated the action.

However, even if the second order were not viewed as a modification or amendment of the first, it is indisputable that the second order terminated the case. As stated above, there is no

¹ The issue hinges around whether there was a meeting of the minds in mediation. Facts began to emerge that the parties may not have had a meeting of the minds, and that there may be no settlement as a result. Appellant sought to investigate the matter, and requested that the court hold the Respondent's motion in abeyance until a hearing could be had on that issue. The trial court did not wait and issued the original order compelling the settlement. The trial court subsequently dismissed the case denying the Appellant any avenue to challenge the validity of the alleged settlement. With the case closed, the only recourse of the Appellant is the recourse to this Honorable Court granted him by the South Carolina Legislature under South Carolina Code Annotated § 14-3-330, and the South Carolina Constitution at Art. V § 5.

longer a case pending in Beaufort County as a result of the second order. The case only exists at the appellate level at this point. If the first order could be viewed as once having been interlocutory, it is nevertheless now appealable as the second order terminated the case.

In summary, this is a final order of an action “commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction...” It is appealable as such under South Carolina Code Annotated § 14-3-330(1).

II. Whether the Orders in Question are Final or not is Immaterial inasmuch as the Orders Affect a Substantial Right of the Defendant.

If the Court can somehow conclude that the orders in question were not final, they would still be appealable under § 14-3-330(2) instead of § 14-3-330(1). This provision allows for an immediate appeal of a non-final order “affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action...” *Id.*

Certainly, the grant of the Respondent’s motion to enforce the alleged settlement affects a substantial right of the Appellant. It forces him to pay certain charges, and to quitclaim certain real property rights, which are all substantial rights impacted by the order. Moreover, it terminates his defenses against Respondent, and dismisses the action thereby denying him of the right to trial on the matter, and thus “prevents a judgment from which an appeal might be taken.”

The Respondent’s motion to compel the settlement was a motion seeking specific enforcement of the alleged settlement. The trial court, in granting the motion, ordered specific performance of the settlement. The Appellant has searched South Carolina case law for a direct case on point but has been unable to find one. Throughout all jurisdictions, an order **denying** specific enforcement is not appealable from an interlocutory standpoint. South Carolina law

mirrors this rule. However, in other states which statutorily permit interlocutory appeals from cases affecting a party's substantial rights, the courts have generally held that an award **granting** specific performance does immediately affect a party's substantial rights, and is thus immediately appealable. *Phoenix Ltd. P'ship of Raleigh v. Simpson*, 201 N.C. App. 493, 499, 688 S.E.2d 717, 721 (2009). Thus, the Courts of the various states have generally held that an order of specific performance or compelling a person to act is appealable interlocutorily. See e.g. *Erich v. Granoff*, 109 Cal.App.3d 920, 167 Cal.Rptr. 538 (Cal. App. 2 Dist., 1980). See also e.g. *Lucey v. Hero Intern. Corp.*, 281 N.E.2d 266, 361 Mass. 569 (Mass., 1972). However, the *Phoenix* case, *supra*, is particularly important inasmuch as it involves a statute with language very close to the South Carolina statute, and because as it specifically found that compelling performance of a party does involve a substantial right of the party. As a result, this order is appealable under South Carolina Code Annotated, § 14-3-330(2).

Interestingly enough, other courts around the nation allow immediate appeals from orders granting specific performance not on the grounds that they affect a material or substantial right, but because "an order for specific performance becomes **final** and appealable immediately **following its issuance by the court.**" *Djikas v. Grafft*, 344 Ill. App. 3d 1, 799 N.E.2d 887, 279 Ill.Dec. 84 (Ill. App., 2003)(Emphasis added). In other words, whether the case is terminated by the order or not, an entered order of specific performance is a final order as to that matter. Regardless of how the court approaches the issue, the order affects a substantial right of the Appellant, and as such is immediately appealable without regard to finality.

III. Whether the Orders in Question are Final or not is Immaterial inasmuch as the Orders are Interlocutory Orders Involving an Injunction.

Again, it is manifest that the case has been terminated and that all orders are final as a result. However, even if such were not the case, and if the Court concluded that §§ 14-3-330(1) and (2) were not applicable, South Carolina Code Annotated § 14-3-330(4) states in relevant part that the following orders are appealable: "An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction" The initial order granted Respondent's motion to compel the settlement which among other things mandates that Appellant quitclaim a certain amount of land, obtain and pay for a survey, etc. This is an injunction.

An injunction is a "court order commanding or preventing an action." *Black's Law Dictionary*, 788 (7th Ed. 1999). This order is an order commanding that the Defendant do all of those things required of him in the alleged settlement agreement. Specifically, this is a "mandatory injunction," or "an injunction that orders an affirmative act or mandates a specified course of conduct." *Id.* The order grants Respondent's motion, which was to compel the settlement which requires Appellant to perform "affirmative act[s]" and "mandates a specified course of conduct" as set forth therein. The order was sought upon procedural motion before the court, heard by the Court on the motion of the Respondent, and issued by the court against the Appellant in response to the motion with the court's intent that the Appellant comply with it. The order is an injunction. That it is a specific type of mandatory injunction known as specific performance does not negate the fact that it is an injunction.

This order is final as stated above. But if the Court finds that it is not final, then the Court must determine it to be interlocutory. Because under such circumstances it is both interlocutory and an injunction, it is appealable under South Carolina Code 14-3-330(4).

CONCLUSION

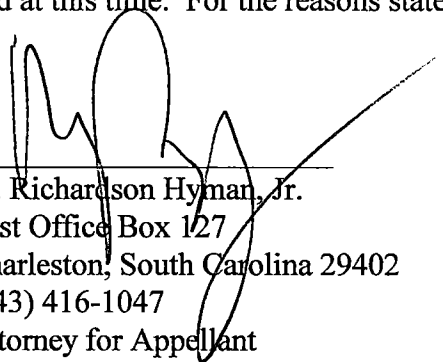
The Orders being appealed are final orders. Because the court mistakenly checked the "does not end the action" box on the first Order, it is easy to understand how one may initially assume that the action was still ongoing. However, when one examines the second order on the motion to alter or amend, it is clear that the order was amended to terminate the case because the relief granted in the first order fundamentally terminated the case in all aspects except for the formal entry of dismissal. As such, the order is immediately appealable under the relevant statute. Even if the second order were not an alteration of the first, it expressly terminated the whole case making all orders final at that point, and thus appealable.

Yet, even if the order were not a final order, which it patently is, the matter would be immediately appealable. The law permits an immediate appeal of an order affecting a substantial right. Specific performance of the alleged settlement affects a number of substantial rights of the Appellant. Other courts have generally held that an order of specific performance affects the substantial rights of the parties, while still other Courts have held that an order of specific performance is a final order when it is filed. Regardless under § 14-3-330(2), the order is immediately appealable, if *arguendo*, a case can truly be made that the order is not a final order of the court. Still, if the order is deemed somehow not to be final, the order is an interlocutory injunction. As such, it is immediately appealable under §14-3-330(4).

Rightly or wrongly, the trial judge took it upon herself to adjudicate a motion and ended up compelling Appellant to do a certain thing and then terminated the case. If he is ever to have

his right to review it is here before this court and at this time. For the reasons stated herein, the case is ripe for appeal.

July 26, 2016



M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, South Carolina 29402
(843) 416-1047
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0700597

Mildred Anne Kinghorn

George C. Sakakini

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 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:

Plaintiff's motion to enforce the settlement, heard by this Court on March 30, 2016, is hereby granted.

ORDER INFORMATION

This 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) |
|--|--|--|
| | | \$ |
| | | \$ |
| | | \$ |

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.

Circuit Court Judge

SCRCP Form 4C (03/2013)

2142
Judge Code

4-18-16
Date

Page 1

Ech.t. 1

2016 APR 22 PM 1:05
CLERK OF COURT
BEAUFORT COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0700597

Mildred Anne Kinghorn

George C. Sakakini

2016 MAY 25 AM 10:57

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 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.
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- 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: Defendant's Motion for Reconsideration is hereby denied without a hearing. Defendant's Motion for Limited Discovery is therefore rendered moot.

ORDER INFORMATION

This 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.

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| | | \$ |
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Circuit Court Judge

2142
Judge Code

5/24/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 25 day of May, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

C. Scott Graber 605 Carteret Street Beaufort, SC 29902

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Mylene Howard
Judicial Clerk

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.

GRABER LAW FIRM
605 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29902

Enclosure

C. SCOTT GRABER
ATTORNEY AT LAW

TELEPHONE (843) 524-8204
FAX (843) 524-2354
EMAIL cscottgraber@gmail.com

April 28, 2016

Honorable Carmen Mullen
Beaufort County Resident Judge
Post Office Box 1228
Beaufort, SC 29901-1228

RE: Kinghorn vs. Sakakini;
2015-CP-07-00597;
Motion to be Heard on May 24, 2016

2016 MAY -4 PM 4:00
COURT REPORTERS & S.C.
CLERK OF COURT

Dear Judge Mullen:

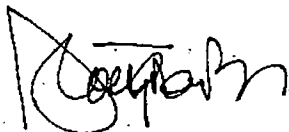
We have been electronically notified that Richardson Hyman's Motion for Limited Discovery in the matter of Kinghorn v. Sakakini (2015-CP-07-597) has been scheduled for a hearing on May 24, 2016.

The Court ruled in favor of the Plaintiff on April 18, 2016 and this ruling (to enforce the Settlement Agreement) effectively renders the discovery motion moot.

Nonetheless, I'm asking this item be removed from the May 24, 2016 Motions Roster.

With kindest regards, I am

Very Truly Yours,



C. Scott Graber
CSG/scr

Enclosure

cc: Greg Galvin, Esquire
M. Richardson Hyman, Jr., Esquire

| | |
|---|---|
| STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT | IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2015-CP-07-00597 |
| Mildred Anne Kinghorn as Trustee for the Mildren Anne Kinghorn Trust, Dates April 28, 2004, Plaintiff, vs. George C. Sakakini, Defendant. | <p style="text-align: center;">SETTLEMENT AGREEMENT</p> <p style="text-align: right;">FILED 19 APR 11 29 CLERK OF COURT BEAUFORT COUNTY SOUTH CAROLINA</p> |

The Plaintiff does hereby agree to settle her claims against the Defendant, and the Defendant agrees to settle his counter claims against the Plaintiff and both parties will dismiss those claims with prejudice. The terms of the settlement are that

1. The Plaintiff will convey a one (1') foot wide strip of land running from the southwest corner of lot 44 to the point where the boundary line intersects the western boundary of the asphalt path that runs north and south through Lot 44; Said one (1') foot strip shall be contiguous with the southern boundary of lot 44. Reference can be made to the Gasque and Associates Plat signed January 10, 2013. Costs of the said plat showing the strip and the deed conveying the said strip shall be borne by the Defendant. David Gasque shall prepare the plat showing among other things, the distance between the Sakakini dwelling and the new property line.

2. The Plaintiff will build a fence along the new property line in accordance with the covenants and restrictions of Picket Fences.
3. The Defendants shall extinguish all rights to any easements that may exist to the north of the new property line. The Defendant shall execute a deed conveying any & all rights to the property north of the new property line. The Plaintiff shall bear the costs of the deed preparation.
4. The entire agreement is contingent and subject to approval by the governing boards of the Picket Fences POA or Board of Review or any other appropriate authority that may be required to approve the above items 1, 2 & 3.
5. Upon approval of the appropriate authority, the Defendant shall have 30 days to remove any and all encroachments on the Plaintiff's property.
6. The Defendant shall also remove the three trees on the southeastern portion of the Plaintiff's property and one small sapling which has a plant cage over it. If the Defendant does not remove these trees within 30 days of the approval listed in Item 4 above then the Plaintiff may have them removed if she desires.
7. Defendant shall also remove all other plants and pavers that are located to the north of the new property line within 30 days of the approval listed in Item 4 above.

[SIGNATURES ON FOLLOWING PAGE]

Mildred Anne Kinghorn as Trustee for the Mildren Anne Kinghorn Trust, Dates
April 28, 2004 v. George C. Sakakini
Civil Action No. 2015-CP-07-00597

SETTLEMENT AGREEMENT

Graber Law Firm

By:



C. Scott Graber

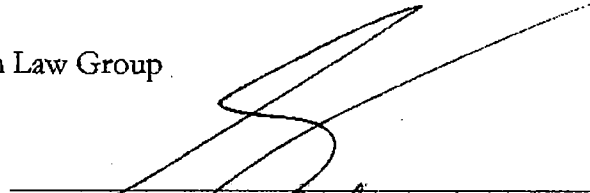
Attorneys for Plaintiff

Mildred Anne Kinghorn, Trustee

Mildred Anne Kinghorn as Trustee for the Mildren Anne Kinghorn Trust, Dates April 28,
2004

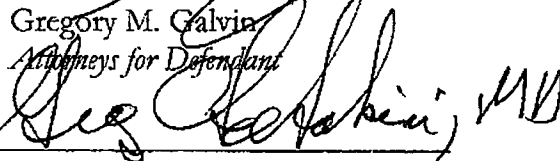
Galvin Law Group

By:



Gregory M. Galvin

Attorneys for Defendant



George C. Sakakini

| | |
|---|--|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| COUNTY OF BEAUFORT | CIVIL ACTION NO. 2015-CP-07-00597 |
| Mildred Anne Kinghorn as Trustee for the Mildred Anne Kinghorn Trust, Dated April 28, 2004, Plaintiff, vs. George C. Sakakini, Defendant. | <p style="text-align: center;">SETTLEMENT AGREEMENT</p> <p style="text-align: right;">FILED FEB 19 AM 11:29 CLERK OF COURT CIVIL DIVISION</p> |

The Plaintiff does hereby agree to settle her claims against the Defendant, and the Defendant agrees to settle his counter claims against the Plaintiff and both parties will dismiss those claims with prejudice. The terms of the settlement are that

1. The Plaintiff will convey a one (1') foot wide strip of land running from the southwest corner of lot 44 to the point where the boundary line intersects the western boundary of the asphalt path that runs north and south through Lot 44; Said one (1') foot strip shall be contiguous with the southern boundary of lot 44. Reference can be made to the Gasque and Associates Plat signed January 10, 2013. Costs of the said plat showing the strip and the deed conveying the said strip shall be borne by the Defendant. David Gasque shall prepare the plat showing among other things, the distance between the Sakakini dwelling and the new property line.

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3. The Defendants shall extinguish all rights to any easements that may exist to the north of the new property line. The Defendant shall execute a deed conveying any & all rights to the property north of the new property line. The Plaintiff shall bear the costs of the deed preparation.
4. The entire agreement is contingent and subject to approval by the governing boards of the Picket Fences POA or Board of Review or any other appropriate authority that may be required to approve the above items 1, 2 & 3.
5. Upon approval of the appropriate authority, the Defendant shall have 30 days to remove any and all encroachments on the Plaintiff's property.
6. The Defendant shall also remove the three trees on the southeastern portion of the Plaintiff's property and one small sapling which has a plant cage over it. If the Defendant does not remove these trees within 30 days of the approval listed in Item 4 above then the Plaintiff may have them removed if she desires.
7. Defendant shall also remove all other plants and pavers that are located to the north of the new property line within 30 days of the approval listed in Item 4 above.

[SIGNATURES ON FOLLOWING PAGE]

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

JUL 29 2016
SC Court of Appeals

Carmen T. Mullin, Circuit Court Judge

Case No. 2016-001278

Mildred Ann Kinghorn as
Trustee for the Mildred Ann
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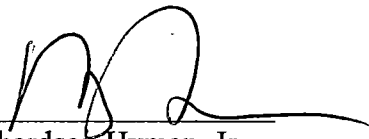
George Sakakini,

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Memorandum on Appealability on Mildred Ann Kinghorn, Trustee as specified above, by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2016, addressed to her attorney of record, C. Scott Graber, 605 Carteret Street, Beaufort, South Carolina 29902.

July 27, 2016


M. Richardson Hyman, Jr.
Post Office Box 127
Charleston, South Carolina 29402
(843) 416-1047
Attorney for Appellant



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SC Court of Appeals

July 27, 2016

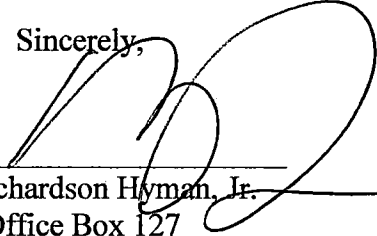
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Mildred Ann Kinghorn as Trustee for the Mildred Ann Kinghorn Trust, dated 28 April 2004, Respondent, v. George Sakakini, Appellant
2016-001278

Dear Ms. Kitchings:

In request to the Court's letter of 18 July 2016 requesting a Memorandum of Law on the question of appealability I am enclosing the same herein along with a copy of proof of service of the same on the Respondent.

Sincerely,



M. Richardson Hyman, Jr.
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Charleston, South Carolina 29402
(843) 416-1047
Attorney for Appellant

cc: C. Scott Graber, Esquire
605 Carteret Street
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Client

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