THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

Case No. 2014-CP-26-07862

RABON & RABON, INC.,

Respondent,

v.

KARON MITCHELL AND KYLE MITCHELL,

Appellants.

Return to Motion to Dismiss

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I. **Counsel for Appellee failed to comply with Rule 240, SCACR and the motion should be dismissed.**

Rule 240, SCACR requires that a motion to dismiss be accompanied by affidavits or other supporting documentation if the Record on Appeal is not on file with the Court. The Record on Appeal is not created in this appeal as of the time of this Return and no affidavits or other supporting documents were filed by Appellee with the motion to dismiss. By operation of Rule 240, SCACR, the motion must be deemed abandoned and should be dismissed.

II. **Appellee makes numerous arguments barred by the doctrine of res judicata**

Appellee argues that the prior rulings of this Court "prejudiced" the Appellee and are grounds for dismissal. Among these claims are based on the following:

a) This Court's Order granting Appellants' motion to order the transcript out of time;

b) This Court's Order granting Appellants' timely motion for an extension of time to file their initial brief;

c) This Court's Order allowing Appellants 10 days to supply the certificate of counsel;

Appellee claims that these Orders of this Court are grounds for dismissal of the appeal. No documents, citations to authority, or other support were provided. In fact, no objection to any of these Orders of this Court were made at the time they were issued by the Court. The Orders of this Court are the law of the case, remain unchallenged under any proper procedure recognized under the Rules of Appellate Practice, and cannot support a motion to dismiss.

III. **The Motion to Dismiss is not the proper procedure for any alleged violation of Rule 209 or for any alleged failure to preserve a matter for appellate review.**

Appellee claims the appeal should be dismissed because no issues were preserved for appellate review and certain evidence relevant to the appeal should not have been included in the

Designation of Matters to be Included in the Record on Appeal. Neither of these arguments are valid grounds for dismissal. The preservation of issues for appellate review can only be determined after the Record on Appeal is created and submitted to the Court for examination. As already argued above, Appellee provided no documents outside of its motion to support its claim that either the issues were not preserved or that certain documents were not entered into evidence. Appellants informed their counsel that the documents listed in the Desingation of Matter and cited in the Initial Brief were presented at the hearing and there is a specific reference to documents being handed to the presiding judge in the transcript of the hearing. **EXHIBIT 1,** Pages 14-16. Appellants already submitted a sworn Certificate of Counsel that asserts the items listed in the Designation of Matters to be Included in the Record on Appeal were not irrelevant to this appeal. Appellee presented nothing and the motion should be deemed abandoned.

IV. Appellant complied with Rule 208(b)(1)(C), SCACR regarding the Statement of the Case

Appellee argues that Appellant failed to comply with Rule 208(b)(1)(C), SCACR by not providing the date of commencement, the nature of the action, the nature of defense, and the date of service of the notice of appeal in the Statement of the Case. Appellee can make no argument of prejudice with regard to these alleged omissions and Appellant submits that the Initial Brief fully complies with the Rule.

Rule 208(b)(1)(C), SCACR states that "The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters." The only history relevant to this appeal was included in Appellant's initial brief. The only "commencement" relevant to the appeal was the mediation that occurred on October 30, 2015. The primary problem with providing the dates of commencement for all of the matters purported to be settled by the meditation settlement agreement is that the exact cases

relating to that settlement agreement are contested by the parties and, by prohibition of the Rule itself, should not be included in the Statement of the Case. The mediation settlement agreement itself is unclear and ambiguous as to what matters are supposed to be disposed by its operation. The designation of "Mitchells vs. Jack Rabon" provides no case number, no pending court, and no other method of identification. The designation of "All existing probate matters" is even more vague and impossible to ascertain. Appellants maintain now, as they did before the lower court, that the Mediation Settlement Agreement is unenforceable in ANY of the purported cases it allegedly disposes of because (1) there is no way to determine what cases they are and (2) the actual parties to those cases never signed the document as required by Rule 43(k), SCRCP. It is a contested matter in this appeal and was properly excluded from the Statement of the Case in the initial brief. More importantly, counsel for Appellant only became involved in this matter as appellate counsel and had no involvement with any of the lower court actions. Counsel for Appellee, however, remained counsel for Appellee and Jack Rabon throughout the lower proceedings and was the actual author of the Mediation Settlement Agreement. The argument that the absence of information in the Statement of the Case somehow prejudices Appellee or his counsel is absurd.

However, if this Court determines that this information, which is and has been possessed by Appellee and its counsel for far longer than counsel for Appellants, should have been presented in the Statement of the Case, Appellants will supplement the irrelevant information in their initial brief immediately.

V. Miscellaneous Technicalities

Appellee argues two additional hyper-technicalities as grounds for dismissal. The first is the absence of the Form 4 Order denying Appellants' motion for reconsideration from the Notice

of Appeal. Any reading of Appellants' Initial Brief reveals that, not only is the motion for reconsideration not cited or referred to in any way, there is no argument that the lower court erred in denying that motion to reconsider. While it seems obvious that Appellants have abandoned any appeal of that Form 4 Order, Appellants now formally confirm such abandonment. Once again, if Appellee needs Appellants to confirm the obvious through an amended notice of appeal, we will oblige.

Curiously, Appellee argues that the appeal should be dismissed because the notice of appeal was not filed with the trial court. This is curious because Henrietta Golding informed counsel for Appellant, the Horry County Clerk of Court, Judge Benjamin Culbertson, and Judge Clifton Newman that counsel for Appellee would be filing the file-stamped copy of the notice of appeal with the lower court via email dated April 18, 2016. **EXHIBIT 2**. If this did not actually happen, counsel for Appellant was never informed. However, the attempt to use a misrepresentation to two sitting judges and the clerk of court in Horry County to manufacture a motion to dismiss an appeal seems to be a bit unfair and unjust. If the notice of appeal has not been filed with the lower court, Appellant will rectify the matter immediately.

VI. The Appeal should not be dismissed as the issues raised were preserved for appellate review.

In the event this Court finds that matters concerning preservation of matters for appellate review are proper grounds for a dismissal prior to the Record on Appeal being filed and without any supporting documentation from the moving party, Appellant submits the following response.

Appellee claims that Appellants did not identify where in the record the issues on appeal were raised. This is simply not true. **Exhibit 1** attached hereto is the transcript of the hearing. Any cursory reading of Appellants' Initial Brief and the transcript reveals exactly where the

issues were preserved for review. Appellee appears to believe that references to the record provided in the Statement of the Facts must be repeated within the Arguments Section of the Initial Brief to be valid. I honestly don't know how to respond to such an argument. In an abundance of caution, I will provide an example of how Appellee's "argument" is completely without merit.

Appellee argues that Appellants provide no citation to the record in two sections of the Brief. Specifically, Appellee cites to the argument concerning the requirements of Rule 43(k), SCRCP and the presentation of evidence supporting the claim of duress. As to Rule 43(k), SCRCP, Appellee's argument that this matter was not preserved for appeal is absurd. On page 17 of the transcript of the hearing, the following exchange took place between Karon Mitchell and Judge Culbertson:

> with -- I also come to you with the Supreme Court Rule. I
> also come to you with the Supreme Court Rule Number -- Rule,
> Rule 43, conduct of trial, if you'll notice 14, and I have law
> document for you to look at.
> THE COURT: Right. That's agreements of counsel. That's
> what they're trying to enforce. They say they've got a
> written agreement between the parties that should be enforced
> because it was reduced to writing.
> MS. MITCHELL: But if you'll, if you'll read the, the
> case law on it, the, the second part, Farnsworth v. Davis.
> THE COURT: Yeah. That's just whether or not the parties
> adequately –
> MS. MITCHELL: I advised –
> THE COURT: -- placed an agreement on the record or
> reduced it to writing.
> MS. MITCHELL: It was not put on the record until I told
> Rachel I didn't want -- I was –
> THE COURT: It doesn't have to be. If it's reduced to
> writing, it's either or. You can either put it on the record
> or you can reduce it to writing. It doesn't have to do both.

Appellee comes to this Court and argues that the issue of whether the Mediation Settlement Agreement complied with Rule 43, SCRCP is not preserved for appeal. This was the primary

issue before the lower court and was specifically addressed by the lower court in the hearing. If anything is frivolous, it is Appellee's motion to dismiss. While this specific exchange was not cited in the brief, it was the primary basis for Appellants' motion below and was raised and denied at the hearing and in the transcript. Counsel assumed this was obvious to anyone with even a modicum of information about the issues in this appeal, much less the attorney who argued on the exact issue at the hearing below.

Appellee also makes the argument that no reference to the record exists that Appellants presented evidence of coercion. Here is just a portion of the Statement of Facts in Appellant's Initial Brief:

> The mediation lasted more than 10 hours. During the mediation, the mediator only appeared at the opening statements and never actually caucused with Appellants. Tx, P.23. In the 11th hour of the mediation, Appellants attorney, Rachel Dain, told them that opposing counsel threatened to sue her pregnant daughter-in-law in order to put her under enough stress to miscarry her child. Tx, p.13-14. Appellants' daughter-in-law had already miscarried two previous children. Id. Appellants took this threat very seriously and were in substantial fear for the life of their unborn grandchild as there was a long history of violence and threats of violence from Jack Rabon. Tx, p. 12. Appellant Karon Mitchell was so emotionally distraught and hysterical because of the threat made against her grandchild that she was physically unable to read or understand the settlement agreement. Id. Yet, Rachel Dain continued to pressure her and told Ms. Mitchell that she had to sign the settlement agreement or opposing counsel was "going to come after [her]." Tx, p.22. Fearing for the life of her unborn grandchild, and being told by her own lawyer that she had no choice in the matter, Appellants signed the settlement agreement. They would not have signed the settlement agreement but for the threat conveyed to them from Rachel Dain. Tx, p. 13.

In this single paragraph, there are seven specific references to the transcript of the hearing that allege Appellant Karon Mitchell was in fear for the life of her unborn grandchild when she felt she was forced to sign the mediation agreement. Counsel for Appellants makes a concerted effort to keep appellate briefs concise and brief (pun unintended) to allow the Court to efficiently

understand the issues on appeal without having to revisit repetitive regurgitations of fact in every section of the brief (alliteration intended). If I must cut and paste the Statement of Fact in every Section of Argument to avoid being dismissed, I can do so in the future.

Counsel for Appellee claims he has no idea what the reference "Dx." represents in the initial brief. While this was admittedly an error in proofreading on my part and should have actually stated "Defendants' motion to set aside the settlement agreement on the grounds of duress" in every location where the Dx. designation existed, the argument that it was impossible for Appellee to understand what was being referenced is beyond ridiculous. Let us review. The portion of the brief where we find the Dx. designation is the argument section with the subtitle "The lower court erred in ruling that Appellants 'failed to plead' the elements of duress in a pro se motion before the court." Every reference to Dx. is a specific quote from the "Defendants' motion to set aside the settlement agreement on the grounds of duress." Now, some application of deductive reasoning may be required to ascertain what Dx. is actually referring to if the only clues we had were those cited above. But the initial reference to Dx. is immediately preceded by the following language: "***In their pro se motion***, Appellants alleged that the settlement agreement was procured under coercion and duress (Dx, p.1)." Yet, Appellee filed a motion with this Court and actually claimed that it suffered prejudice because Dx. was not "identified." However, if this Court deems this an error that requires immediate correction, I will be happy to oblige.

Finally, Exhibit C is a reference to Appellee's Exhibit C that is specifically discussed in the transcript of the hearing on page 8, line 10. According to counsel for Appellee, Exhibit C is as follows:

> 10 included as Exhibit C in what I handed up, it's 126 pages of
> 11 e-mails here from the Defendants' attorney in -- Rachel Dane,

> 12 in which the attorney repeatedly reassures the Plaintiffs that
> 13 the Defendants are performing under the agreement. The
> 14 attorney -- and Your Honor, I, I would quote November 17th,
> 15 2015, e-mail, quote, [as read], "To reassure you, my
> 16 understanding is, and I have advised the Mitchells, the
> 17 mediation agreement is enforceable, even if not approved by
> 18 the Court."

"And you may ask yourself"[1], what, pray tell, was the item referenced in the Initial Brief that used the citation to Exhibit C? It was an email between Counsel for Appellee and Attorney Rachel Dain, just as counsel described at the hearing below.[2] Once again, if the court deems it necessary to provide additional information on this issue to Appellee, we will do so immediately.

For all of the reasons cited above, the motion to dismiss is without merit and must be dismissed immediately.

August 1, 2016

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1 David Byrne, Brian Eno, Chris Frantz, Jerry Harrison, Tina Weymouth, "Once in a Lifetime", 1980.
2 Notice that the issue of compliance with rule 43, SCRCP was being discussed with counsel prior to any motions being filed for revocation or enforcement of the mediation settlement agreement.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2014-CP-26-7862

Rabon & Rabon, Inc.,

Plaintiff,

vs.

Karon Mitchell and Kyle Mitchell,

Defendants.

Transcript of Record

January 20, 2016

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Lane D. Jefferies, Esquire
Henrietta U. Golding, Esquire
Attorneys for Plaintiff

Defendants Appearing Pro Se

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

(There were no exhibits marked during the hearing.)

(On the record, January 20, 2016.)

THE COURT: All right. This is 2014-CP-26-7862. This is the case of Rabon & Rabon, Inc., versus Karon Mitchell and Kyle Mitchell. According to my roster I have a motion for a temporary injunction and order compelling settlement and a motion for dismissal of mediation settlement agreement.

Please give the court reporter your name and who you represent.

MR. JEFFERIES: Good morning, Your Honor. My name's Lane Jefferies. I'm here with Henrietta Golding, both of the McNair Law Firm, and we represent the Plaintiff, Rabon & Rabon, Inc., in this matter.

THE COURT: All right. And you are --

MS. MITCHELL: I'm Karon Mitchell.

THE COURT: All right. And you are?

MR. MITCHELL: Kyle Mitchell.

THE COURT: All right. I guess we can kind of argue these simultaneously I guess since there's -- as I -- and correct me if I'm wrong, just kind of reviewing the file, it seems like that the Plaintiffs are seeking to enforce a settlement and the Defendants are seeking to set aside a settlement; is that correct?

MR. JEFFERIES: That's correct, Your Honor.

MS. MITCHELL: Yes, Your Honor. That's correct.

THE COURT: Okay. All right. Mr. Jefferies or Ms.

Golding, since you filed your motion first let me hear from you.

MR. JEFFERIES: Thank you, Your Honor. Your Honor requested that we hand up a hard copy of --

THE COURT: Yeah. This is where I got the 200 and something page --

MR. JEFFERIES: If I may approach?

THE COURT: -- attached exhibits. I didn't have enough paper.

MR. JEFFERIES: Thank you, Your Honor.

THE COURT: Thank you.

MR. JEFFERIES: Your Honor, we're here on, as Your Honor said, Plaintiff's motion to compel settlement pursuant to a settlement agreement, mediation settlement agreement that was entered into on October 30th of 2015, also on the Defendants' motion to dismiss that same settlement agreement on the single ground of duress. So the issue before the Court today, Your Honor, is, is very narrow. It evolves around the defense of duress.

The settlement agreement disposes of this case, as well as five other related cases, all of which arose out of a business dispute between my clients, Jack Rabon, his now deceased mother, Ms. Peggy Jo Rabon, Rabon & Rabon, Inc., on one side and Mr. Rabon's sister, Karon Mitchell, and her husband, Kyle Mitchell, on, on the other side, and those

disputes concern two family businesses. So, Your Honor, the, the Plaintiff's motions set forth a number of reasons why the mediation settlement agreement should be enforced. The Defendants' countervailing motion did not take issue with any of those reasons. It was solely based on the issue of duress. So the Defendants did not allege that they didn't sign the agreement or that it was unconscionable or that it was ambiguous or against public policy, none of that. The sole issue is duress, and that's the issue before the Court right now.

THE COURT: All right. Now, this settlement was reached at mediation with a mediator?

MR. JEFFERIES: Yes, Your Honor. It was reached on October 30th, 2015. The court-appointed mediator was Dalton Floyd of the Floyd Law Group. The Plaintiff, Rabon & Rabon, Inc., was represented by myself, the McNair Law Firm. The Defendants were represented by Rachel Dane of Attorney Dane LLC Law Firm. The agreement was reached after a full day of mediation. The parties signed it, not once, but multiple times as they initialed handwritten changes. It was signed by all counsel and it was signed by the attorney of record and then it was filed with the court subsequent to that. So Your Honor, the result of this is if the -- because the only ground alleged to -- by the Defendants to avoid the enforcement of the agreement is duress, if that defense of duress fails, then

the agreement must be enforced according to its terms, and Plaintiffs can set forth why the defense has to fail in this case, but perhaps the, the Defendants would like to give their argument as to why it succeeds first.

In general, Your Honor, the, the Plaintiff -- pardon me, the Defendants' motion does not set forth the elements of duress. It doesn't allege the elements. So it fails as a matter of law, and in addition, there are no admissible facts that the Defendants could bring in to prove those elements even had they alleged them, and therefore, Your Honor, we would ask for an order of this Court compelling the Defendants to perform pursuant to the mediation settlement agreement, subjecting them to the contempt powers of the Court, including incarceration if they don't perform within a, a -- by a date certain, suggest ten days, and enjoining the Defendants from taking any action contrary to the agreement, including transferring property or causing waste or any other action contrary to the agreement during that ten-day period.

THE COURT: Okay. Just so I'll know basically what we're talking about, what was the settlement?

MR. JEFFERIES: Your Honor --

THE COURT: Or I mean, you don't have to go through every term, but what was the general gist?

MR. JEFFERIES: A brief overview of the settlement is this, Your Honor, and the main thrust of it was that these --

all these parties are subject to personal guarantees on roughly $4 million in bank loans that are in default. The underlying property is subject to foreclosure. That is proceeding -- it's almost at a -- almost at a conclusion. The sale has been ordered for, for this spring of those properties. So --

MS. MITCHELL: It has not. I object.

THE COURT: Overruled. Go ahead.

MR. JEFFERIES: Thank you, Your Honor. There were two differing theories as to how to address this issue. The Defendants' theory was that, that the loan should be refinanced. The Plaintiff's theory was that assets should be sold to eliminate the loans. The settlement agreement represents a compromise. It contains a plan A and a plan B as alternatives. Plan A, advocated by the Defendants, embodies their refinancing theory, and under that agreement, the Plaintiff -- pardon me, the Defendants got to try their theory first. They had a 30-day window in which could -- they could obtain certain commitments from banks to refinance, and if they did that within that 30 days that would trigger plan A under which essentially all of Rabon's ownership be transferred to the Defendants, and Rabon would be relieved of the personal guarantees. Now, if that didn't occur, then plan B was triggered, in which case it's kind of the polar opposite, the Defendants would transfer their ownership

control of the entities to Rabon. Rabon would then sell the assets and eliminate the personal guarantees that way. So this was the plan that the parties agreed on. It gave the Defendants first crack at trying their refinancing theory. They had 30 days to do it, and then the plan switched over to the Plaintiff's theory.

What happened, Your Honor, after the, after the parties entered into this agreement, during the 30-day period, the Defendants continually reassured the Plaintiffs that they -- in fact, their attorney recognized, Your Honor, and this is included as Exhibit C in what I handed up, it's 126 pages of e-mails here from the Defendants' attorney in -- Rachel Dane, in which the attorney repeatedly reassures the Plaintiffs that the Defendants are performing under the agreement. The attorney -- and Your Honor, I, I would quote November 17th, 2015, e-mail, quote, [as read], "To reassure you, my understanding is, and I have advised the Mitchells, the mediation agreement is enforceable, even if not approved by the Court." On November 30th, the day the timeframe for the Mitchells to trigger plan A ran out, again, from Rachel Dane, quote, [as read], "The parties are in good faith negotiations to refinance the property." On November 16th, Your Honor, again, from Rachel Dane, the Mitchells', the Defendants' attorney, quote, [as read], "The mediation agreement is binding regardless of when it is put on the record." Your

Honor, I'd need recite, unless Your Honor wishes, 126 pages more of the same. During that 30-day period, the Defendants went to Washington, D.C., to meet Senator Graham to enlist his aid in refinancing. They met with high level officials at the United States Department of Agriculture. They had conferences with banks. They pursued what they were trying to accomplish under this plan A right up for 30 days. Only when it became apparent that they couldn't get the bank to agree to the financing, thus they couldn't get plan A to be triggered, and when I informed them that plan B had therefore been triggered did the Mitchells suddenly invoke this duress argument and back away. So when it suited their purpose, they honored the agreement. That's correct, Your Honor, toward the end of the 30-day period Rachel Dane, the Defendants' attorney, asked if we would extend that 30-day period. She asked several times, and each time I said, yes. We would consent to that if the Mitchells would please show some good faith that they were performing. The Mitchells were supposed to put documents into escrow during that 30-day period so that when plan B was triggered we wouldn't end up here in this courtroom debating this issue. The documents could simply be handed over. The Defendants never did that. So consequently there was never an extension granted because the Defendants would never show any good faith that they were actually doing what they were supposed to do.

So that was the mediation agreement, Your Honor. Right around December 1st, actually on December 1st, the day after the deadline ended I communicated by e-mail and regular mail with the Defendants and with their attorney Rachel Dane, said plan B has been triggered, time to start performing under plan B. At that stage, Attorney Dane informed me that the Mitchells might try to avoid the agreement and that she couldn't -- was reluctant to represent them in that and that I was kind of on my own in dealing with the Mitchells. So I filed a motion to compel settlement on December 11th. The Mitchells, the Defendants here then filed their motion to dismiss the settlement agreement on December 15th, didn't serve it on us until mid-January, January 11th, not literally on the eve of this hearing, but only eight -- after hours on the 11th, only eight days before. So this motion has been out there during the 36-day time period that the Plaintiffs should have had to prepare for it. We, in fact, only had eight. The motion was never served.

So Your Honor, I could go through the substantive reasons why duress doesn't apply here. The motion from the Defendants isn't clear. It, it says the word duress, and it says coercion. They haven't really offered anything in there. So perhaps they should offer that argument before I explain why, why it doesn't apply.

THE COURT: Okay. Well, let me ask you this, as a

practical matter, if and I don't -- I've got, I've got to hear their arguments first, but you're asking for their compliance within ten days. As a practical matter, how long would it take to implement the Defendants for them to do what they're supposed to do under plan B?

MR. JEFFERIES: Your Honor, all that's required of the Defendants under plan B is signing over their interest in some personal property and signing over control, voting control of the certain entities so the assets may be sold. Those documents have already been drafted. They've already been sent to the Defendants' attorney, Rachel Dane, have come back with comments and have been revised and we've negotiated those into documents that are ready to go. They're, they're -- in fact, I sent those to the Mitchells on November 30th by e-mail and indicated, "Here are the documents. Plan B has gone into effect. This is what you need to sign," and received nothing back. So literally, Your Honor, the moment I hand them the documents this could be wrapped up at this stage, and all six pieces of litigation which resulted from this dispute, three in the circuit court and three in the probate court would go away at once.

THE COURT: Okay. All right. I understand.

MR. JEFFERIES: Thank you, Your Honor.

THE COURT: All right. Which one wants to go first?

MS. MITCHELL: Me.

THE COURT: All right.

MS. MITCHELL: I'm sorry for interrupting a minute ago. I didn't understand, but that is not -- we are not -- we have been -- we are working with the bank. The bank, Dan Stacy in Litchfield is West Town Bank attorney. We had a meeting. We had a meeting that Lane Jefferies was there and then was asked to leave, and we had a meeting with the USDA out of Columbia, Washington. We had a meeting with the bank, the bank's attorney, Mr. Buddy Lindsey, our tax attorney, the gentleman that's been helping us. We have been working on it. This is our livelihood. This is what they're trying to take from us, and we have been, we have been getting the documents to the bank, and we are -- Senator Graham got us with the USDA to get them to, to work out because this is a government loan. We have a, we have a wonderful piece of property, and it is our livelihood. I don't have any money to hire an attorney because my brother left me destitute. My mother died, and right before he [sic] died he took $70,000 out of the, out of the account and went to, I'm assuming to hire McNair Law Firm. I have run the business for the last -- all -- for -- my mom and dad have had it for 40 years. This is the police reports, and the fear that we've lived with every day with him. There's an order right now on the judge, probate, just the reason they want this dropped is because he just got shot because he just beat a man and, and that's on TV and it's,

it's on record and, and there's an order on the probate judge's desk right now that Jack should be put in-patient, that he has a chemical dependency, and they have, they have -- they don't want it to go forward because they know what will happen. He has disposed of my mother's estate. I have not ever done anything wrong but worked my life, worked my life there, and as I show you these e-mails, can I approach?

THE COURT: Well, if it deals with why the settlement should be set aside.

MS. MITCHELL: Yes, sir.

THE COURT: As I understand your argument, you admit there's a settlement in place, you're trying to comply with it, but it sounds almost like you're admitting what they're saying, is that your time to comply with it has passed, and that therefore --

MS. MITCHELL: That's why I should have never --

THE COURT: -- there's an alternative settlement that should kick into place.

MS. MITCHELL: No, sir. I should have never signed that. I, I didn't read it, and they -- and Rachel knows I didn't read it. I couldn't read it because of what was said to me. Whenever, whenever Rachel Dane walked into the mediation agreement in the, in the 11th hour, she walked in and she looked at me and she said to me, she said, "Karen, how much money does Lee Anna's granddaddy have," and Lee Anna is my

daughter-in-law, and I said, "I don't know, Rachel. What does that have anything to do with it? He has nothing to do with my family." I said, "This has nothing to do with him." "Well, here's what they're going to do. This is what Lane has said to relay to you. They're going to sue your son, Chase, personally. They're going to sue your son, Chad, personally, and they're going to sue Lee Anna personally, and they know Lee Anna's already lost two babies and that she's pregnant with the third," and said that, "They're going to put -- they're going to threaten to put her on the stand and drill, drill her, and she could potentially lose the third baby and/or her granddaddy will pay them off not to make her testify." Now that is exactly what is said, and this is proven in the, in the e-mails here.

THE COURT: Okay. Show me the e-mail where that's said.

MS. MITCHELL: It's not -- you'll, you'll have to --

THE COURT: No. Show me -- you say the e-mails state that. Tell me.

MS. MITCHELL: Can I, can I, can I read it to you?

THE COURT: No. Just show me where it is. I can read it.

MS. MITCHELL: "As I advised you yesterday" --

THE COURT: Show me where it says and I'll read it.

MS. MITCHELL: Okay.

It doesn't say it word for word, but if

you'll read right there.

THE COURT: All right. She says that -- all right.

MS. MITCHELL: If you would this is from, this is --

THE COURT: Well, this just says that he was putting pressure on you, that she did not agree with his tactics and that --

MS. MITCHELL: This is Rachel Dane talking to the USDA, and if you'll read that, it doesn't say that my brother wants to sell it. It says Lane Jefferies wants to sell it. This is my livelihood.

THE COURT: And I understand that.

MS. MITCHELL: I eat -- that's how I eat.

THE COURT: And I understand that. The question is, is were you --

MS. MITCHELL: I would have never signed this had he not made that statement and threatened me with my daughter-in-law.

THE COURT: All right. Let me ask you this, if you went ahead and got the financing, would you be seeking to enforce the A plan under the settlement agreement where he agreed to transfer his interest to you if you refinanced?

MS. MITCHELL: I, I'm sorry. Say that again now.

THE COURT: I mean, it sounds to me as though you're trying to enforce part of the mediation agreement by obtaining refinancing.

MS. MITCHELL: I want -- sir, before this mediation ever

came into effect, before my mother died, I want him out of my life. I want nothing to do with him.

THE COURT: And I understand that.

MS. MITCHELL: And that is what I am trying to obtain. So before this mediation ever -- I promise there's a document that was signed before my mother died that said I'd give him my interest and he would give me his interest just to leave me the hell alone, and it's been unmerciful.

THE COURT: Okay.

MS. MITCHELL: And this is the only way I have to eat, and also in the -- and also whenever he was shot the other week, he's done some illegal because on the tapes that the police have he's screaming at the man for his money from our buildings. So this is not just cut and dry. This is not just cut and dry.

THE COURT: I understand. All right, sir. Now, if the mediation agreement is set aside, what is the lawsuit involved? What does it -- the Plaintiff is seeking in the lawsuit?

MR. JEFFERIES: Your Honor, the -- all the litigation revolves around the same disputes. The, the Plaintiff has alleged that the Defendants mismanaged the business, converted its assets to its own use, essentially looted the business.

THE COURT: Okay. That's all I needed to know. All right. Now, you understand that if I deny their motion, I

grant your motion --

MS. MITCHELL: Yes, sir.

THE COURT: -- then you go to trial on that, that issue.

MS. MITCHELL: Yes, sir. Yes, sir. I also come to you with -- I also come to you with the Supreme Court Rule. I also come to you with the Supreme Court Rule Number -- Rule, Rule 43, conduct of trial, if you'll notice 14, and I have law document for you to look at.

THE COURT: Right. That's agreements of counsel. That's what they're trying to enforce. They say they've got a written agreement between the parties that should be enforced because it was reduced to writing.

MS. MITCHELL: But if you'll, if you'll read the, the case law on it, the, the second part, Farnsworth v. Davis.

THE COURT: Yeah. That's just whether or not the parties adequately --

MS. MITCHELL: I advised --

THE COURT: -- placed an agreement on the record or reduced it to writing.

MS. MITCHELL: It was not put on the record until I told Rachel I didn't want -- I was --

THE COURT: It doesn't have to be. If it's reduced to writing, it's either or. You can either put it on the record or you can reduce it to writing. It doesn't have to do both.

MS. MITCHELL: This is my livelihood.

THE COURT: And I understand that, but the question is and what it sounds to me as though you're trying to enforce part of the settlement agreement by refinancing the debt and getting him to transfer his interest to you, but you're not willing to enforce the first, the other part of the settlement agreement that says if you don't do it by a certain date then you have to transfer your interest and he sells the assets. It's like you're trying, according to the Plaintiff's counsel --

MS. MITCHELL: Thirty days was not -- 30 days was not enough to redo a USDA loan, a government loan.

THE COURT: But the question is is whether or not you have a settlement or you don't have a settlement. If you don't have a settlement then the lawsuit goes forward with the mismanagement and things of that nature.

MS. MITCHELL: I'm fine.

THE COURT: All right, sir. Let me hear from you.

MR. MITCHELL: Sir, Your Honor, I -- the same thing. It's just -- it was a -- it was -- we were not represented the way we should have been done. We were under a lot of stress. We were advised the wrong way.

THE COURT: Well, you have a lawsuit against your attorney then.

MS. MITCHELL: We've already been to the -- we've been on Lane and her to the, to the conduct. We've met with Mr.

Turner.

THE COURT: Okay.

MR. MITCHELL: Yes, sir.

THE COURT: All right. Anything in reply?

MR. JEFFERIES: Your Honor, as an initial matter, and as to the allegation, I haven't seen the e-mails that --

THE COURT: Basically the e-mails was from their attorney that said she thought you were trying to put undue pressure on them during the negotiations and to attack them emotionally.

MR. JEFFERIES: Understood. Your Honor, I don't know what Rachel Dane might have said to her clients. I do know that I never said to Rachel Dane or to anybody else any sort of threat against, against the Defendants' daughter or their unborn granddaughter. I was never in the same room, neither were my clients, during mediation with these Defendants. The only people who ever went in the room, who even saw the Defendants during mediation were the Defendants' own attorney, Rachel Dane, and the mediator, the court-appointed mediator, Dalton Floyd. So what the Defendants would ask this Court to believe is that not only did I make this highly improper threat to this child's life, but that I did it in the presence of Dalton Floyd, who's practiced before this Court for 40 years, and I did it in the presence of the Defendants' own attorney and that those two attorneys, far from doing anything in response like calling my boss or calling ODC or taking any

action, instead, they took the threat into the mediation room and communicated it to the Defendants in such a strong way that it overcame the Defendants' will. It's -- the allegation is incredible. In the original meaning of that word, it's simply not a credible allegation, did not occur. Moreover, even if it had, all that evidence is, is subject to Rule 408, the hearsay rules. It's subject to the confidentiality of mediation. So even if this wild thing had happened, it couldn't come in as admissible evidence anyway, but it didn't. Your Honor, it simply didn't happen.

As to the merits of, of the rest of the Defendants' argument, the Defendant reiterates that these properties are in foreclosure. They're in foreclosure because the Defendants didn't make the mortgage payments on them, and Your Honor is exactly correct. What the Defendants are attempting to do is to enforce plan A without agreeing to enforce plan B. Now, the Defendants have conceded in court that they signed the agreement. They said, "I shouldn't have signed it." Well, they did sign it. The Defendants say they were not represented properly and they were advised wrongly. Perhaps that's the case. Their cause of action there, as Your Honor indicated, might be against their own attorney. Defendant Karon Mitchell said she didn't read the agreement. Well, Your Honor, and I don't need to tell this Court, but as our Supreme Court has said in Burwell v. South Carolina National Bank,

which is 340 S.E.2d 786, [as read], "As early," and I'm quoting here, "As early as 1924 this Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complaint of fraud, misrepresentation in the contents of a document if the truth could have been ascertained by reading it." So the fact that the Mitchells might not have read the document, does not save them, does not save them in any way. Moreover, Your Honor, the Mitchells, the Defendants here, indicated that the 30-day window, to which they agreed in the mediation settlement agreement, was not enough. I don't know whether it was enough for them. They certainly claim it wasn't, but that's not the issue. They agreed to the 30-day settlement, 30-day window, and 30 days is very -- Your Honor, the agreement is Exhibit B, and if you were to turn to Exhibit B, the second page, paragraph five, and I'm quoting here, [as read], "Plan A, as set forth in Exhibit A, will be effective provided Karon Mitchell obtain a written agreement within 30-days (30) days from the date of this agreement," and then it describes what that agreement needs to be. So 30 days is unambiguously laid out in the mediation settlement agreement, and as our Supreme Court said in Lee versus University of South Carolina, 757 S.E.2d 394, quote, [as read], "A Court must enforce an unambiguous contract according to its terms regardless of its

wisdom or folly, apparent unreasonableness or the parties' failure to guard their rights carefully." So whether or not 30 days was enough, it's what the Mitchells agreed to. There are no defects in this agreement, and indeed, until we walked into court here today the Mitchells, the Defendants here did not allege any defects in the agreement. As Your Honor noted, the agreement is not defective under Rule 43, subsection K, confusion there on the Defendants' part might be that that ruled changed in 2009 to provide for signatures by all the party and their counsel. In any case, this agreement would have been effective under the old Rule 43(K) because it was also entered of record. So there are no defenses other than the duress defense, and these, these Defendants have not established, nor can they, the elements of duress.

THE COURT: All right. Ms. Mitchell, anything further from you?

MS. MITCHELL: Yes, sir. Whenever I said I didn't read it, I was not capable of reading it. I did not read it, and I was not capable of reading it because I was so hysterical over the comment that they had made about my daughter-in-law. I could not focus, and I told Rachel that over and over, and Rachel said, "Here let me try to read it to you," and I told her over and over, "I'm not signing it." She said, "You have to sign it, Karen. You have to sign it. Lane's going to come after you," and then she even signed it -- can I approach?

THE COURT: What is that?

MS. MITCHELL: She didn't even know -- she signed it without knowing that she had to pay for our mediation, and she tells Dalton Floyd that. So undoubtedly she didn't read it very well either, and then I went to Dalton Floyd's office, and I asked him how he could have let that happen, and do you know what -- do you know Mr. Floyd was not -- he came in our, our room one time in the beginning, but he never came back. Rachel and -- Rachel just kept leaving our room going over to Lane. Dalton came in one time in the beginning.

THE COURT: All right.

MS. MITCHELL: She, she signed something that she didn't even know. This is the only way -- I am 56 years old, and I have -- this is the only way I have to eat, and the bank is willing to --

THE COURT: I understand, I understand that, but we're talking -- you're getting outside --

MS. MITCHELL: The bank is willing to work with us.

THE COURT: Anything further?

MR. MITCHELL: Well, Your Honor, it just kind of proves that she, she, she didn't represent us as well -- I'm sorry. She didn't represent us as well, she's not here. We asked her to come and she would not come.

THE COURT: Okay. All right. I, I think the major dispute is going to be between you and your attorney. I don't

see anything -- it seems to me as though that you do have a settlement agreement, that it is enforceable. You're trying to enforce the plan A under the settlement agreement, which you have the right to do so, but the time has passed. So now you have the plan B. So it's almost as though you're wanting to continue or me grant an extension under the plan A.

MS. MITCHELL: Would you --

THE COURT: All I can do is enforce the settlement agreement as written. I don't see where there's any duress. By your own arguments you say that there is an enforceable settlement agreement due to the fact that you went out, you tried to get financing. You tried to obtain everything in -- to comply --

MS. MITCHELL: We are --

THE COURT: -- with the settlement agreement pursuant to plan A. The fact that you did not raise any of these issues until your time to act under the plan had expired. You did --

MS. MITCHELL: I did.

THE COURT: No, ma'am. All right. So I'm going to grant the motion to enforce the settlement agreement. I'm denying the motion to set aside the settlement agreement.

MR. JEFFERIES: Thank you, Your Honor.

THE COURT: The Defense has 15 days to comply with plan B of the settlement agreement. Okay.

MR. JEFFERIES: Your Honor, shall I submit a proposed

order?

THE COURT: Yes. If you don't mind.

MR. JEFFERIES: I'll get it to you this week, Your Honor. Thank you.

THE COURT: All right.

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Rabon & Rabon, Inc. versus Karon Mitchell and Kyle Mitchell, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 20, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM-M
Official Reporter

April 11, 2016.

PLAYER

Tucker Player <tucker@playerlawfirm.com>

RE: Rabon v. Mitchell (CA#2014-CP-26-05740) - trial roster April 18, 2016

1 message

Golding, Henrietta <HGolding@mcnair.net> Mon, Apr 18, 2016 at 8:53 AM
To: "Lilly, Rhonda" <LillyRh@horrycounty.org>, "Brady, Donna" <DBrady@mcnair.net>, "cnewmanj@sccourts.org" <cnewmanj@sccourts.org>, "cnewmansc@sccourts.org" <cnewmansc@sccourts.org>
Cc: "Jefferies, Lane" <LJefferies@mcnair.net>, "tucker@playerlawfirm.com" <tucker@playerlawfirm.com>

Hello Rhonda –

Lane will be attending the Roster meeting and bring with him the Settlement Agreement, Order Confirming the Settlement, and a copy of the Notice of Appeal stamped by the Supreme Court. Thank you Henri

From: Lilly, Rhonda [mailto:LillyRh@HorryCounty.org]
Sent: Monday, April 18, 2016 8:51 AM
To: Brady, Donna <DBrady@mcnair.net>; cnewmanj@sccourts.org; cnewmansc@sccourts.org
Cc: Golding, Henrietta <HGolding@mcnair.net>; Jefferies, Lane <LJefferies@mcnair.net>; tucker@playerlawfirm.com
Subject: Re: Rabon v. Mitchell (CA#2014-CP-26-05740) - trial roster April 18, 2016

FYI- The Horry County Clerk of Court has not received Notice of Appeal in this case. If it has been appealed please ask Plaintiff's attorney to send the notice asap.

Thank you.

RHONDA LILLY

Common Pleas Jury Trial Coordinator

Horry County Clerk of Court

Fifteenth Judicial Circuit

(843) 915-5075

lillyrh@horrycounty.org

From: Brady, Donna <DBrady@mcnair.net>
Sent: Friday, April 15, 2016 11:14 AM
To: cnewmanj@sccourts.org; cnewmansc@sccourts.org

Cc: Lilly, Rhonda; Golding, Henrietta; Jefferies, Lane; tucker@playerlawfirm.com
Subject: Rabon v. Mitchell (CA#2014-CP-26-05740) - trial roster April 18, 2016

Attached please find a letter from Henrietta Golding in the above matter.

Best regards,

Donna Brady

MCNAIR
ATTORNEYS

Donna M. Brady

Secretary

dbrady@mcnair.net | 843 443 3061 Direct

McNair Law Firm, P.A.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

Case No. 2014-CP-26-07862

RABON & RABON, INC.,

Respondent,

v.

KARON MITCHELL AND KYLE MITCHELL,

Appellants.

CERTIFICATE OF SERVICE

This is to certify that I, Elvy Kavashansky, Legal Secretary, served a copy of the RETURN TO MOTION TO DISMISS upon the following parties by depositing said copy in the US Mail with adequate postage affixed, at the following address:

Henrietta Golding, Esq.
McNair Law Firm
2411 Oak Street, Ste. 206
Myrtle Beach, SC 29577

Elvy Kavashansky

August 1, 2016
Columbia, South Carolina

PLAYER
PLAYER LAW FIRM, LLC

RECEIVED
AUG 02 2016
SC Court of Appeals

August 1, 2016

South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Rabon and Rabon vs. Karon and Kyle Mitchell
Case No.: 2014-CP-26-07862

To whom it may concern:

Please find enclosed an original and seven copies of the Return to Motion to Dismiss to be filed in regard to the above referenced matter. Please return a clocked copy to me in the envelope I have enclosed. If you need anything else, please let me know. Thank you for your assistance with this matter.

By copy of this letter, I am serving opposing counsel with a copy of the same.

Kind regards,

Elvy Kavashansky
Legal Secretary

Enclosure(s) as stated

Cc: Henrietta Golding (w/enclosure)

Columbia Office:
1415 Broad River Road
Columbia, South Carolina 29210

Mailing Address:
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