

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

Amended Return to Motion to Dismiss

Tucker S. Player
Player Law Firm, LLC
P.O. Box 21005
Columbia, SC 29221
803-772-8008
Attorney for Appellants

Other Counsel of Record:
Henrietta Golding
McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

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 Designation 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), SCRC. 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 anyway, 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. The Notice of Appeal was transmitted to the presiding Judge in the case on April 10, 2016. **EXHIBIT 3**. Rule 5(e), SCRCP is identical to the language of the same Federal Rule. Rule 5(e) provides that a judge may permit pleadings and other papers to be filed initially with him prior to their transmission to the clerk's office. Under this procedure, filing is complete when the judge has custody of the papers. The judge's failure to forward the papers forthwith or to enter a necessary date does not prejudice the party attempting to comply with the filing requirement. 4 Wright & Miller, *Federal Practice and Procedure: Civil* § 1153 (1969). Judge Culbertson did not object to the transmittal and actually acted upon the Notice of Appeal by issuing an Order on March 17, 2016 (within the 10 day requirement for filing) indicating that it did not have jurisdiction over the matter *because* it was on appeal.

EXHIBIT 4. The clerk's notation in the file indicates that the matter is on appeal. **EXHIBIT 5**. There was no indication to Appellant that the transmission of the Notice of Appeal to the lower court was invalid or did not actually reach the clerk's file.

Appellee's assertion is curious because Henrietta Golding informed counsel for Appellant, the Horry County Clerk of Court, and Judge Clifton Newman that counsel for Appellee would be "bringing" a stamped copy of the notice of appeal to a roster meeting via

email dated April 18, 2016. **EXHIBIT 2**. Ms. Golding's email was in direct response to a request by the Horry County Clerk of Court that a copy of the notice of appeal be provided by Appellant. The request from the Horry County Clerk of Court arose from a letter transmitted from Ms. Golding that case number 2014-CP-26-05740 was one of the cases involved in this appeal, **EXHIBIT 6**, and should be removed from a trial roster. Once again, we run into the issue of what cases were settled via the Mediation Settlement Agreement, and what cases are involved in this appeal. Clearly, Appellee asserted that case 2014-CP-26-05740 is on appeal via the Notice of Appeal filed in this matter under 2014-CP-26-07862 in **EXHIBIT 6**. Appellant does not dispute that the issues on appeal in this matter will affect 2014-CP-26-05740, thereby preventing its trial in April. But, as stated in the Initial Brief and above, Appellant does not believe the Mediation Settlement Agreement or the Order on appeal in this case properly disposed of any cases, much less those asserted by Appellee and the lower court. Regardless, the assertion by Ms. Golding, in direct response to a request by the Clerk of Court for a copy of the Notice of Appeal, that Mr. Jeffries would "bring" a copy to the roster meeting, left Counsel for Appellant with the impression that it would be filed with the clerk. Counsel is at a loss as to why a copy was being brought to the roster meeting and why, if she never intended for the Notice of Appeal to be filed, Ms. Golding would not make that clear in her response to a direct request for the document to be filed.

There can be no dispute that the Horry County Clerk of Court was aware that the Order on appeal in this matter was on appeal. There can be no dispute that the presiding Judge received a copy of the Notice of Appeal and issued an Order in the case clearly stating that the matter was on appeal within the 10 days required under the Rules. If the actual Notice of Appeal did not get to the Clerk of 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), SCRCF and the presentation of evidence supporting the claim of duress. As to Rule 43(k), SCRCF, 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:

4 with -- I also come to you with the Supreme Court Rule. I
5 also come to you with the Supreme Court Rule Number -- Rule,
6 Rule 43, conduct of trial, if you'll notice 14, and I have law
7 document for you to look at.
8 THE COURT: Right. That's agreements of counsel. That's
9 what they're trying to enforce. They say they've got a
10 written agreement between the parties that should be enforced
11 because it was reduced to writing.

12 MS. MITCHELL: But if you'll, if you'll read the, the
13 case law on it, the, the second part, Farnsworth v. Davis.
14 THE COURT: Yeah. That's just whether or not the parties
15 adequately –
16 MS. MITCHELL: I advised –
17 THE COURT: -- placed an agreement on the record or
18 reduced it to writing.
19 MS. MITCHELL: It was not put on the record until I told
20 Rachel I didn't want -- I was –
21 THE COURT: It doesn't have to be. If it's reduced to
22 writing, it's either or. You can either put it on the record
23 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

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.



Tucker S. Player
Player Law Firm, LLC
1415 Broad River Rd.
Columbia, SC 29210
803-315-6300
tucker@playerlawfirm.com
Attorney for Appellants

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

DEFENDANT'S
EXHIBIT

1

tabbles

1 (There were no exhibits marked during the hearing.)

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1 (On the record, January 20, 2016.)

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

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

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

13 THE COURT: All right. And you are --

14 MS. MITCHELL: I'm Karon Mitchell.

15 THE COURT: All right. And you are?

16 MR. MITCHELL: Kyle Mitchell.

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

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

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

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

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

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

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

7 MR. JEFFERIES: If I may approach?

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

10 MR. JEFFERIES: Thank you, Your Honor.

11 THE COURT: Thank you.

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

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

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

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

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

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

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

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

21 MR. JEFFERIES: Your Honor --

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

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

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

7 MS. MITCHELL: It has not. I object.

8 THE COURT: Overruled. Go ahead.

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

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

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

1 Honor, I'd need recite, unless Your Honor wishes, 126 pages
2 more of the same. During that 30-day period, the Defendants
3 went to Washington, D.C., to meet Senator Graham to enlist his
4 aid in refinancing. They met with high level officials at the
5 United States Department of Agriculture. They had conferences
6 with banks. They pursued what they were trying to accomplish
7 under this plan A right up for 30 days. Only when it became
8 apparent that they couldn't get the bank to agree to the
9 financing, thus they couldn't get plan A to be triggered, and
10 when I informed them that plan B had therefore been triggered
11 did the Mitchells suddenly invoke this duress argument and
12 back away. So when it suited their purpose, they honored the
13 agreement. That's correct, Your Honor, toward the end of the
14 30-day period Rachel Dane, the Defendants' attorney, asked if
15 we would extend that 30-day period. She asked several times,
16 and each time I said, yes. We would consent to that if the
17 Mitchells would please show some good faith that they were
18 performing. The Mitchells were supposed to put documents into
19 escrow during that 30-day period so that when plan B was
20 triggered we wouldn't end up here in this courtroom debating
21 this issue. The documents could simply be handed over. The
22 Defendants never did that. So consequently there was never an
23 extension granted because the Defendants would never show any
24 good faith that they were actually doing what they were
25 supposed to do.

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

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

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

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

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

22 THE COURT: Okay. All right. I understand.

23 MR. JEFFERIES: Thank you, Your Honor.

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

25 MS. MITCHELL: Me.

1 THE COURT: All right.

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

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

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

10 MS. MITCHELL: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

24 MS. MITCHELL: Okay.

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

1 you'll read right there.

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

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

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

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

11 THE COURT: And I understand that.

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

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

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

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

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

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

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

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

3 THE COURT: And I understand that.

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

9 THE COURT: Okay.

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

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

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

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

1 grant your motion --

2 MS. MITCHELL: Yes, sir.

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

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

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

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

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

17 MS. MITCHELL: I advised --

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

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

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

25 MS. MITCHELL: This is my livelihood.

1 THE COURT: And I understand that, but the question is
2 and what it sounds to me as though you're trying to enforce
3 part of the settlement agreement by refinancing the debt and
4 getting him to transfer his interest to you, but you're not
5 willing to enforce the first, the other part of the settlement
6 agreement that says if you don't do it by a certain date then
7 you have to transfer your interest and he sells the assets.
8 It's like you're trying, according to the Plaintiff's counsel
9 --

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

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

16 MS. MITCHELL: I'm fine.

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

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

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

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

1 Turner.

2 THE COURT: Okay.

3 MR. MITCHELL: Yes, sir.

4 THE COURT: All right. Anything in reply?

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

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

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

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

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

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

1 wisdom or folly, apparent unreasonableness or the parties'
2 failure to guard their rights carefully." So whether or not
3 30 days was enough, it's what the Mitchells agreed to. There
4 are no defects in this agreement, and indeed, until we walked
5 into court here today the Mitchells, the Defendants here did
6 not allege any defects in the agreement. As Your Honor noted,
7 the agreement is not defective under Rule 43, subsection K,
8 confusion there on the Defendants' part might be that that
9 ruled changed in 2009 to provide for signatures by all the
10 party and their counsel. In any case, this agreement would
11 have been effective under the old Rule 43(K) because it was
12 also entered of record. So there are no defenses other than
13 the duress defense, and these, these Defendants have not
14 established, nor can they, the elements of duress.

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

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

1 THE COURT: What is that?

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

11 THE COURT: All right.

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

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

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

19 THE COURT: Anything further?

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

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

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

7 MS. MITCHELL: Would you --

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

14 MS. MITCHELL: We are --

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

18 MS. MITCHELL: I did.

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

22 MR. JEFFERIES: Thank you, Your Honor.

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

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

1 order?

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

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

4 Thank you.

5 THE COURT: All right.

6 (Adjourned.)

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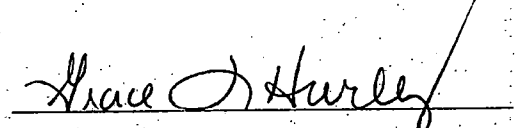
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C E R T I F I C A T E

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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.

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.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach,
SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Website

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PLAYER
PLAYER LAW FIRM, LLC

Tucker S. Player
Attorney at Law

Licensed in Georgia & South Carolina

March 10, 2016

The Honorable Benjamin H. Culbertson
P.O. Box 479
401 Cleland St
Georgetown, SC 29442

RE: *Rabon & Rabon, Inc. vs. Karon Mitchell and Kyle Mitchell*
C/A #: 2014-CP-26-7862

Dear Judge Culbertson:

I was retained by Karon and Kyle Mitchell to represent them regarding the above-referenced matter. Please find attached the Notice of Appeal filed today by Karon and Kyle Mitchell regarding the orders entered on February 8, 2016 and February 10, 2016. Pursuant to SCACR Rules 205 and 241, the Court of Appeals now has exclusive jurisdiction over any and all matters relating to the Orders being appealed. It is my understanding that two hearings are scheduled on Monday before your Honor in Conway. As the jurisdiction over these matters now lies exclusively with the Court of Appeals, I request that the hearings be cancelled.

If your Honor somehow believes that SCACR Rules 205 and 241 do not apply, I request that the hearings be moved to a later time as I am currently the number one case for trial in Edgefield County on March 14, 2016. Please advise me immediately via email or telephone if the Court intends to move forward with the hearings. My cell phone is 803-315-6300.

Sincerely,

Tucker S. Player

Cc: Henrietta Golding (w/attachment)

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

Mailing Address:
Post Office Box 21005
Columbia, South Carolina 29221

P 803.772.8008
F 803.772.8037
E Tucker@PlayerLawFirm.com

HONESTY, COMMITMENT AND PERSONAL SERVICE



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.

RECEIVED

MAR 10 2016

SC Court of Appeals

NOTICE OF APPEAL

Karon Mitchell and Kyle Mitchell appeal two orders of the Honorable Benjamin H. Culbertson. The first Order, attached hereto, was signed February 4, 2016 and entered February 8, 2016. Appellant received written notice of entry of the February 4, 2016 Order on February 10, 2016. The second order is believed to deny Plaintiffs' motion to reconsider the February 8, 2016 Order and was entered on February 10, 2016. Appellant has not received any copy of the order entered on February 10, 2016, but the Horry County website indicates that an order was entered denying their motion to reconsider the February 8, 2016 Order on February 10, 2016. Therefore, a copy of the February 8, 2016 Order is attached and a copy of the February 10, 2016 Order will be provided upon receipt.

March 10, 2016

Tucker S. Player
Player Law Firm, LLC
P.O. Box 21005
Columbia, SC 29221
803-772-8008
Attorney for Appellant

Other Counsel of Record:
Henrietta Golding
McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

RECEIVED

MAR 10 2016

SC Court of Appeals



FILED
HURRY COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF HURRY
MELANIE HUGGINS-WARD
CLERK OF COURT

Rabon & Rabon, Inc.,
Plaintiff,
vs.
Karon Mitchell and Kyle Mitchell,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-26-07862

ORDER DENYING DEFENDANTS'
MOTION, GRANTING PLAINTIFF'S
MOTION, ORDERING DEFENDANTS
TO PERFORM PURSUANT TO
MEDIATION SETTLEMENT
AGREEMENT, AND ENJOINING
DEFENDANTS FROM TAKING
ACTIONS INCONSISTENT WITH
MEDIATION SETTLEMENT
AGREEMENT

This matter came before the Court on January 20, 2016 on Plaintiff Rabon & Rabon, Inc.'s Motion for Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement ("Motion to Compel Settlement") and Defendants Karon Mitchell and Kyle Mitchell's Motion for Dismissal of the Mediation Settlement Agreement on the Grounds of Coercion and Mental Duress ("Motion to Dismiss"). For the reasons set forth below, Plaintiff's Motion to Compel Settlement is granted, and Defendants' Motion to Dismiss is denied.

FACTUAL BACKGROUND

1. This case is one of pending civil actions in which Karon Mitchell and Kyle Mitchell ("Defendants") are adverse to Karon Mitchell's brother, Jack I. Rabon, Jr., individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon (Karon Mitchell and Jack Rabon's deceased mother), and/or Rabon & Rabon, Inc. (collectively "Rabon"). A fifth civil action (No. 2015-CP-26-01628) was recently dismissed without prejudice by Defendants after their previous attorney filed a motion to be relieved as counsel.

2. On October 30, 2015, a mediation was held to resolve the disputes which underlie this civil action, as well as the other civil actions between Defendants and Rabon.

copy

3. Defendants were represented in the mediation by Rachael Dain of the law firm Attorney Dain, LLC. Rabon was represented by Lane Jefferies of the McNair Law Firm. The mediator was Dalton Floyd, of the Floyd Law Firm.

4. The mediation resulted in the Defendants and Rabon signing a Mediation Settlement Agreement ("Agreement"). The Agreement is in writing, signed by the Parties and their respective counsel. Subsequently it was filed with the Horry County Clerk of Court.

5. The Agreement provides for both a "Plan A" and a "Plan B," which are mutually exclusive. Plan A would be triggered upon Defendants' achieving certain goals before November 30, 2015. If the Defendants' failed to achieve said goals before November 30, 2015, then Plan B would be triggered instead of Plan A. Additionally, the Agreement requires, among other things, that the Defendants execute and place into escrow certain documents prior to November 30, 2015, regardless of which plan is triggered. Defendants did not execute or place into escrow any of the required documents.

6. On December 1, 2015, Rabon informed Defendants that since Plan A had not been triggered due to their failure to meet the agreed upon goals, and that therefore, pursuant to the terms of the Agreement, Plan B was triggered and in effect.

7. Defendants did not perform under Plan B, and on December 10, 2015, Rabon filed the Motion to Compel Settlement.

8. On December 15, 2015, Defendants filed their Motion to Dismiss, which set forth, as Defendants' sole ground, the allegation that Defendants signed the Agreement under duress.

CONCLUSIONS OF LAW & FINDINGS

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution." C-Sculptures, LLC v. Brown, 403 S.C. 53, 56 (2013). Defendants and Rabon entered into the Agreement as a result of a mediation pursuant to this strong public policy.

This Court has inherent jurisdiction to enforce the Agreement. Kumar v. Third Generation, Inc., 324 S.C. 284, 289-90 (Ct. App. 1995). Enforcement of the Agreement is not barred by Rule 43(k), South Carolina Rules of Civil Procedure, ("SCRCP"). Rule 43(k), SCRCP; Ashfort Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 495 (1995); Pee Dee Stores, 381 S.C. 234, 241-42 (Ct. App. 2009); Reed v. Associated Invs. of Edisto Island, Inc., 339 S.C. 148, 152 (Ct. App. 2000).

I find that Defendants' Motion to Dismiss does not allege (1) the use of physical force, or threats of physical force, or the improper use of economic power, (2) the Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) Rabon substituted his will for the Defendants' will such that Agreement was not of Defendants' volition.

I find that Defendants failed to meet their burden of pleading the elements of their sole defense of duress. Gainey v. Gainey, 382 S.C. 414, 428 (2009); In re Nightingale's Estate, 182 S.C. 527 (1937); Strode v. Barnes, 124 S.C. 403, 412 (1923); Willms Trucking Co. V. Jw Constr. Co., 314 S.C. 170, 179 (Ct. App. 1994).

I find that Defendants did not offer evidence (1) of the use of physical force, or threats of physical force, or the improper use of economic power, (2) that Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) that Rabon substituted his will for the Defendants' will such that Agreement was not of Defendants' volition. I further find that Defendants had a reasonable

alternative to entering the Agreement and did not take advantage of it. Holler v. Holler, 364 S.C. 256, 257 (Ct. App. 2005); Blejski v. Blejski, 325 S.C. 491, 500 (Ct. App. 1997).

An important factor is that the Defendants did not challenge the enforceability of the Agreement prior to November 30, 2015. Instead, prior to November 30, 2015, Defendants, through their attorney, represented that (a) Defendants agreed that the Agreement was enforceable, and (b) were undertaking steps to obtain funding as contemplated in Plan A. I find that Defendants' position is without merit. Therefore, Defendants' Motion to Dismiss Agreement must be and is denied.

As to the triggering of Plan B instead of Plan A, I find that the Agreement unambiguously sets forth (a) a thirty (30) day window during which Plan A could be triggered, and (b) the events which must occur in order to trigger Plan A. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242 (Ct. App. 2008). During the January 20, 2016 hearing on these motions, Defendants conceded that the events necessary to trigger Plan A had not occurred prior to November 30, 2015 nor had they occurred between November 30, 2015 and the January 20, 2016 hearing. Therefore, Plan A was not triggered within the thirty (30) day period, resulting in Plan B being triggered in accordance with the plain and unambiguous terms of the Agreement.

The Defendants have not presented any meritorious defense to inhibit the enforcement of the Agreement. Accordingly, Plaintiff's Motion to Compel Settlement must be granted. The Agreement must be enforced according to its terms which include performance of Plan B rather than Plan A. S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, 379 S.C. 645, 655 (Ct. App. 2008).

IT IS THEREFORE ORDERED that:

A. Defendants' Motion to Dismiss is DENIED;

B. Plaintiff's Motion to Compel Settlement is GRANTED;

C. Within fifteen days of the date of this Order, Defendants shall fully perform pursuant to the Mediation Settlement Agreement dated October 30, 2015, except with respect to those provisions contained exclusively in Plan A (the provisions of which shall not be performed). Defendants' performance pursuant to the Agreement shall include, but not be limited to, execution and delivery to Rabon's attorney all the documents necessary or advisable to effectuate the transactions described therein;

D. Defendants shall do all things required of them under the Agreement, and shall forever refrain from doing those things prohibited to them under the Agreement;

E. Defendants shall not do, or knowingly permit to be done, any act inconsistent with the terms or spirit of the Agreement and this Order, and specifically Defendants shall not commit or permit any waste with respect to any real or personal property described in the Agreement; and

F. Failure of Defendants to timely and fully comply with this Order shall subject Defendants to the contempt powers of the Court, including, ~~without limitation, the power of~~ *incarceration.* *MC*

IT IS SO ORDERED.

Georgetown,
Georgetown, South Carolina
Dated: Feb. 4, 2016

Benjamin H. Culbertson
The Honorable Benjamin H. Culbertson
Circuit Judge
Fifteenth Judicial Circuit

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,

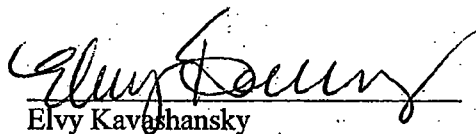
Appellants.

RECEIVED
MAR 10 2016
SC Court of Appeals

CERTIFICATE OF SERVICE

This is to certify that I, Elvy Kavashansky, Legal Secretary, served a copy of the Notice of Appeal 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

March 10, 2016
Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP2607862

Rabon & Rabon Inc	Karon Mitchell	Kyle Mitchell
-------------------	----------------	---------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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:

FILED
 CLERK OF COURT
 2016 MAR 17 AM 11:39
 MELANIE J. JURGINS
 CLERK OF COURT

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

~~Defendant Rule to Show Cause~~ - *therefore,* The case is on Appeal and the court does not have jurisdiction to hear ~~this matter.~~
the two Rules to show Cause date 2/23/2016.

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

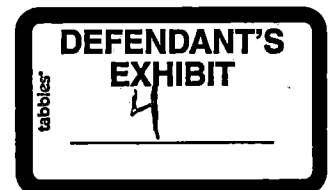
INFORMATION FOR THE JUDGMENT INDEX

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)
N/A	N/A	N/A

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.**



Miriam T. Culbertson

2148

3/14/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

Henrietta U. Golding PO Box 336 Myrtle Beach, SC 29578

Karon Mitchell 4506 camellia dr Myrtle Beach, SC 29577
Kyle Mitchell 4506 camellia dr Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

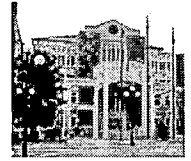
Melanie Huggins-Ward - Clerk of Court

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.



Horry County Fifteenth Judicial Circuit Public Index



Horry County Home Page [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Rabon & Rabon Inc VS Karon Mitchell , defendant, et al

Case Number:	2014CP2607862	Court Agency:	Common Pleas	Filed Date:	11/25/2014
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Mediator - Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 43(k)	Disposition Date:	11/06/2015	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Rabon & Rabon Inc	Certificate/COC Mailing Copies of Court Orders	Action		07/28/2016-10:12		
Rabon & Rabon Inc	Form 4 issued - Plt's Motions for RTSC are Continued to be	Filing		07/27/2016-14:16		
Mitchell, Karon	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:58		
Mitchell, Kyle	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:58		
Golding, Henrietta U.	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:58		
Player, Tucker S.	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:58		
Mitchell, Karon	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:55		
Golding, Henrietta U.	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:55		
Player, Tucker S.	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:55		
Mitchell, Kyle	7/25/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		07/01/2016-08:55		
Rabon & Rabon Inc	COC Mailing Copies of Order/Vacate Form 4 filed 6-29-16	Action		06/30/2016-11:50		
Rabon & Rabon	Order Vacating Form 4 Order entered March 17, 2016 & Order &	Order		06/29/2016-14:17		

DEFENDANT'S EXHIBIT

tabbles

5

Inc						
Rabon & Rabon Inc	Reply to def's memo in opposition to pl's rule 59(e) motion/	Filing		05/23/2016-15:04		
Rabon & Rabon Inc	Letter/Judge Seals	Filing		04/08/2016-12:04		
Rabon & Rabon Inc	Certificate/COC Mailing Copies Form 4 3/17	Action		04/04/2016-14:55		
Rabon & Rabon Inc	Motion/Alter and/or Amend (On appeal)	Motion		04/01/2016-13:12	04/29/2016-13:12	
Rabon & Rabon Inc	Certificate/COC Mailing Copies of Court Orders/Form 4	Action		03/17/2016-11:39		
Rabon & Rabon Inc	Form 4 issued/Court Doesn't have Jurisdiction to Hear	Filing		03/17/2016-11:39		
Rabon & Rabon Inc	Certificate/COC Mailing Copies O/R to show cause 2/23/16	Action		03/01/2016-09:31		
Rabon & Rabon Inc	COC Mailing Copies of Order/Rule to Show Cause filed 2-23-16	Action		02/25/2016-13:51		
Rabon & Rabon Inc	Order/Rule To Show Cause	Order		02/23/2016-10:42		
Rabon & Rabon Inc	Motion/Rule to Show Cause/order	Motion	CPNJ Motions - Honorable Larry B Hyman -07-25-16 -- 07-27-16/CR 3D	02/22/2016-11:34		
Rabon & Rabon Inc	Form 4 issued/Defendants Motion For Reconsideration	Filing		02/10/2016-12:52		
Rabon & Rabon Inc	COC Mailing Copies of Order/on Motions filed 2-8-16 mailed	Action		02/09/2016-14:50		
Rabon & Rabon Inc	Motion/Rule to Show Cause (ORDER)	Motion	CPNJ Motions - Honorable Larry B Hyman -07-25-16 -- 07-27-16/CR 3D	02/09/2016-14:37		
Rabon & Rabon Inc	Order denying defs motion, granting pl's motion, ordering	Order		02/08/2016-08:01		
Mitchell, Karon	Motion/Reconsider (Culbertson)	Motion		02/02/2016-10:05		
Rabon & Rabon Inc	Form 4 issued	Filing		01/21/2016-08:57		
Mitchell,	1/19/2016_MOTION_Roster/Notice	Action		12/17/2015-		

Kyle	of Motions Roster Publication			08:43		
Mitchell, Kyle	1/19/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		12/17/2015-08:43		
Golding, Henrietta U.	1/19/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		12/17/2015-08:43		
Golding, Henrietta U.	1/19/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		12/17/2015-08:43		
Mitchell, Karon	1/19/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		12/17/2015-08:43		
Mitchell, Karon	1/19/2016_MOTION_Roster/Notice of Motions Roster Publication	Action		12/17/2015-08:43		
Mitchell, Karon	Motion/Dismissal of mediation settlement agreement/Exhibits	Motion		12/15/2015-16:00	01/21/2016-16:00	
Rabon & Rabon Inc	Affidavit/Affidavit of Susie "Pearl" Floyd	Filing		12/10/2015-14:22		
Rabon & Rabon Inc	Affidavit/Affidavit of Jack I. Rabon, Jr.	Filing		12/10/2015-14:22		
Rabon & Rabon Inc	Motion/Temporary Injunction & order compelling settlement/	Motion		12/10/2015-14:20	01/21/2016-14:20	
Rabon & Rabon Inc	Mediation/Agreement	Filing		12/02/2015-14:24		
Rabon & Rabon Inc	ADR/Mediation Results Report/settled	Action		11/06/2015-14:49		
Rabon & Rabon Inc	ADR/Notice of ADR	Action		10/28/2015-13:43	11/06/2015-13:43	
Rabon & Rabon Inc	Archived Document	Filing		07/30/2015-00:00	11/06/2015-00:00	
Rabon & Rabon Inc	ADR/Alternative Dispute Resolution (Workflow)	Action		06/23/2015-14:28	10/28/2015-14:28	
Mitchell, Karon	Answer/Aff of Mailing	Filing		01/20/2015-16:48	11/06/2015-12:00	
Mitchell, Karon	Answer/Aff of Mailing	Filing		01/20/2015-16:48	11/06/2015-12:05	
Rabon & Rabon Inc	Service/Affidavit Of Service-2	Filing		01/12/2015-14:20	11/06/2015-09:40	
	Verification/Verified	Filing		11/26/2014-10:01	11/06/2015-10:01	
Rabon & Rabon Inc	Summons & Complaint/Verification	Filing		11/25/2014-14:28	11/06/2015-14:27	

MCNAIR
ATTORNEYS

April 13, 2016

Henrietta Golding

VIA EMAIL – cnewmanj@sccourts.org
cnewmansc@sccourts.org

hgolding@mcnair.net
T (843) 443-3003
F (843) 443-9137

CONFIRMATION VIA FIRST CLASS MAIL

Honorable Clifton Newman
Judge - Fifteenth Judicial Circuit
P.O. Box 516
Kingstree, SC 29556-0516

RE: *Jack Isiah Rabon, Jr., individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon v. Karon Mitchell, Kyle Mitchell, and MB Boardwalk Entertainment, LLC*
Civil Action No. 2014-CP-26-5740
Our File No.: 061889.00001

Dear Judge Newman:

The above-captioned action is one of several civil actions that were settled pursuant to a global Mediation Settlement Agreement dated October 30, 2015 (attached as Exhibit A), as well as by Order enforcing the settlement agreement dated February 4, 2016 (attached as Exhibit B). The February 4, 2016 Order is currently on appeal by Defendants.

As a result of the Mediation Settlement Agreement, as well as Defendants' appeal of the order enforcing the settlement agreement, trial in this action may not go forward as scheduled on the April 18, 2016 Jury Trial Roster (#8).

With kindest regards,

McNair Law Firm, P.A.


Henrietta Golding

HUG:dmb

Copy: Client

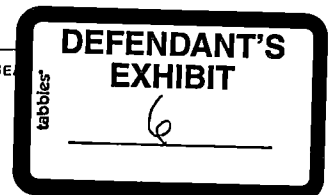
Tucker S. Player, Esq. (via email - tucker@playerlawfirm.com)

McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

BLUFFTON | CHARLESTON | CHARLOTTE | COLUMBIA | GREENVILLE | HILTON HEAD | MYRTLE BEACH



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO. 2014-CP-26-07862
)	
Rabon & Rabon, Inc.,)	
)	
Plaintiff,)	
)	MEDIATION SETTLEMENT AGREEMENT
vs.)	
)	
Karon Mitchell and Kyle Mitchell,)	
)	
Defendants.)	
_____)	

FILED
 HORRY COUNTY
 2015 DEC -2 PM 2:24
 CLERK OF COURT
 ATLANTIC BUSINESS WARD

AS A RESULT OF MEDIATION, THE PARTIES HAVE AGREED AS FOLLOWS:

1. The parties agree to authorize their respective attorneys to dismiss the following cases with prejudice:

- (a) Rabon & Rabon, Inc. –vs–Mitchells (2014-CP-26-7862)
- (b) Rabon as Personal Representative –vs- Mitchells (2014-CP-26-5740)
- (c) Mitchells –vs- Jack Rabon
- (d) All existing probate cases



- 2. The parties agree to use their best efforts to have all pending criminal cases dismissed.
- 3. The parties agree not to commence, personally or through their ownership in any business entities any litigation against any of the parties to this action for any events or damages that occurred prior to this date, known or unknown; furthermore, Karon Mitchell and Kyle Mitchell and Jack Rabon

copy

Several handwritten signatures in black ink are located at the bottom right of the page, overlapping the "copy" watermark.

cannot sue Nichole Rabon, Chad Mitchell, Chase Mitchell or Leigh Anna Mitchell for any actions, events or damages, unless it is a Counterclaim to a suit brought by one of these individuals.

4. The parties agree not to, personally or through third parties or government agencies or entities, harass or interfere with each other or their spouses personally or attempt to interfere with or harm their employment or any other business interest or related activities. The parties agree that this clause is not intended to restrict any party's ability to keep and bear arms.

5. Plan A as set forth in Exhibit A will be effective provided Karon Mitchell obtain a written Agreement within thirty (30) days from the date of this Agreement to remove and/or release Jack Rabon and the Estate of Peggy Jo ~~Hardy~~ ^{Hardee} Rabon as a personal guarantor under the loan to MB Boardwalk Entertainment, LLC and accomplish this within ninety (90) days from the date the bank agrees to do this.

6. If Plan A is not activated as set forth above, the parties agree to proceed with Plan B which is set forth in Exhibit B.

7. Rachael Dain will be paid \$10,000.00 out of the Estate of Peggy Jo ~~Hardy~~ ^{Hardee} Rabon as legal fees for her services to Karon Mitchell and Kyle Mitchell which were limited to this mediation when this Settlement Agreement has been approved by the Court.


7. The parties will agree to execute Mutual General Releases.

8. This is the entire Agreement between the parties and the parties have no further obligations to each other in connection with this matter.

9. The parties agree not to take any action that would prejudice the party's rights under this Settlement Agreement or any related agreements.

10. This Settlement Agreement is enforceable in law and equity.

11. Except as to any property addressed herein, any other property will be distributed per the terms of the Will and the parties agree there will be no challenges to the Will.

Handwritten signatures and initials at the bottom right of the page, including a large signature and several smaller initials.

The parties authorize their respective attorneys to execute a dismissal without prejudice within the next thirty (30) days.

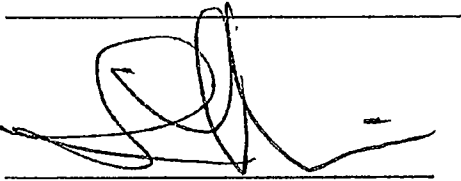
This Settlement Agreement is enforceable in law and equity.

PLAINTIFF:

RABON & RABON, INC.

By: 

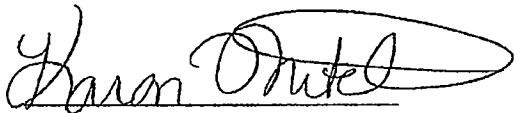
Its: President



Lane D. Jefferies, Attorney for Plaintiffs

Henrietta U. Golding, Attorney for Plaintiffs

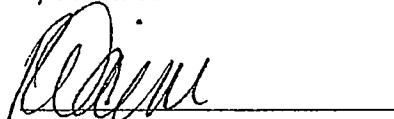
DEFENDANTS – PRO SE:



Karon Mitchell



Kyle Mitchell






Rachael Dain

DATED: OCTOBER 30, 2015



EXHIBIT "A"

Plan A

1. Jack Rabon, individually, and as Personal Representative of the Estate of Peggy Jo Hardy Rabon, agrees to transfer and assign all of their rights, title and interest in and to MB Boardwalk Entertainment, LLC to Karon Mitchell and Kyle Mitchell. Hardy  S.I.R., Jr.

2. Rabon & Rabon, Inc. agrees to transfer all of its rights, title and interest in and to the property on which Building 4 occupies together subject to the Mortgage of West Town Bank to MB Boardwalk Entertainment, LLC. S.I.R., Jr.  Hardy 

3. Jack Rabon and the Estate of Peggy Jo Hardy Rabon are released from personal guarantees limited to West Town Bank loan (including any guarantee to USDA) as to any liabilities whatsoever.

4. Karon Mitchell and Kyle Mitchell will use their best efforts to obtain a release of Jack Rabon and the Estate of Peggy Jo Hardy Rabon from the Lease for restaurant equipment held by Pawnee Lease, Marlin Leasing and Vendley Leasing and further agrees to indemnify and hold Jack Rabon and the Estate of Peggy Jo Hardy Rabon harmless from any liabilities pertaining to the Leases. Further, in the event Karon Mitchell and Kyle Mitchell bring an investor into MB Boardwalk Entertainment, LLC, then Karon Mitchell and Kyle Mitchell agree to release Jack Rabon and the Estate of Peggy Jo Hardy Rabon from the three (3) Leases and the Celtic Bank loan. An investor is not a bank or lending institution and this provision ends in 120 days. S.I.R., Jr.  Hardy 

5. At the request of Jack Rabon, Karon Mitchell and Kyle Mitchell will transfer all of their ownership interests in Rabon & Rabon, Inc. to Jack Rabon on or before March 1, 2016.





  


EXHIBIT "B"

Plan B

1. Karon Mitchell and Kyle Mitchell agree to give Jack Rabon their proxy authorizing him to assign the vote their shares to sell the assets of Rabon & Rabon, Inc. and MB Boardwalk Entertainment, LLC at a private buyer sale under terms and conditions as Jack Rabon determine in his sole discretion.
2. Karon Mitchell and Kyle Mitchell will transfer title to the two (2) Harleys and Trailer owned by them to Jack Rabon.
3. Karon Mitchell and Kyle Mitchell will sign the necessary paperwork to effectuate Plan B and said paperwork will be held by Rachael Dain unless and until Plan B is implemented and the paperwork will then be turned over to the attorneys for Rabon & Rabon, Inc.



FILED
HORRY COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Rabon & Rabon, Inc.,
Plaintiff,
vs.
Karon Mitchell and Kyle Mitchell,
Defendants.

2016 FEB -8 AM 9:01
MELANIE HUGGINS-WARD
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-26-07862

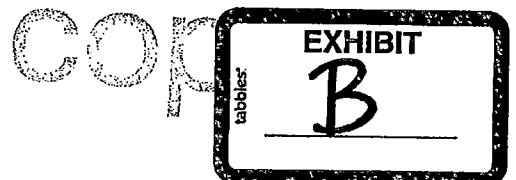
**ORDER DENYING DEFENDANTS'
MOTION, GRANTING PLAINTIFF'S
MOTION, ORDERING DEFENDANTS
TO PERFORM PURSUANT TO
MEDIATION SETTLEMENT
AGREEMENT, AND ENJOINING
DEFENDANTS FROM TAKING
ACTIONS INCONSISTENT WITH
MEDIATION SETTLEMENT
AGREEMENT**

This matter came before the Court on January 20, 2016 on Plaintiff Rabon & Rabon, Inc.'s Motion for Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement ("Motion to Compel Settlement") and Defendants Karon Mitchell and Kyle Mitchell's Motion for Dismissal of the Mediation Settlement Agreement on the Grounds of Coercion and Mental Duress ("Motion to Dismiss"). For the reasons set forth below, Plaintiff's Motion to Compel Settlement is granted, and Defendants' Motion to Dismiss is denied.

FACTUAL BACKGROUND

1. This case is one of pending civil actions in which Karon Mitchell and Kyle Mitchell ("Defendants") are adverse to Karon Mitchell's brother, Jack I. Rabon, Jr., individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon (Karon Mitchell and Jack Rabon's deceased mother), and/or Rabon & Rabon, Inc. (collectively "Rabon"). ~~A fifth civil action (No. 2015-CP-26-01628) was recently dismissed without prejudice by Defendants after their previous attorney filed a motion to be relieved as counsel.~~ MKC

2. On October 30, 2015, a mediation was held to resolve the disputes which underlie this civil action, as well as the other civil actions between Defendants and Rabon.



3. Defendants were represented in the mediation by Rachael Dain of the law firm Attorney Dain, LLC. Rabon was represented by Lane Jefferies of the McNair Law Firm. The mediator was Dalton Floyd, of the Floyd Law Firm.

4. The mediation resulted in the Defendants and Rabon signing a Mediation Settlement Agreement ("Agreement"). The Agreement is in writing, signed by the Parties and their respective counsel. Subsequently it was filed with the Horry County Clerk of Court.

5. The Agreement provides for both a "Plan A" and a "Plan B," which are mutually exclusive. Plan A would be triggered upon Defendants' achieving certain goals before November 30, 2015. If the Defendants' failed to achieve said goals before November 30, 2015, then Plan B would be triggered instead of Plan A. Additionally, the Agreement requires, among other things, that the Defendants execute and place into escrow certain documents prior to November 30, 2015, regardless of which plan is triggered. Defendants did not execute or place into escrow any of the required documents.

6. On December 1, 2015, Rabon informed Defendants that since Plan A had not been triggered due to their failure to meet the agreed upon goals, and that therefore, pursuant to the terms of the Agreement, Plan B was triggered and in effect.

7. Defendants did not perform under Plan B, and on December 10, 2015, Rabon filed the Motion to Compel Settlement.

8. On December 15, 2015, Defendants filed their Motion to Dismiss, which set forth, as Defendants' sole ground, the allegation that Defendants signed the Agreement under duress.

CONCLUSIONS OF LAW & FINDINGS

“South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution.” C-Sculptures, LLC v. Brown, 403 S.C. 53, 56 (2013). Defendants and Rabon entered into the Agreement as a result of a mediation pursuant to this strong public policy.

This Court has inherent jurisdiction to enforce the Agreement. Kumar v. Third Generation, Inc., 324 S.C. 284, 289-90 (Ct. App. 1995). Enforcement of the Agreement is not barred by Rule 43(k), South Carolina Rules of Civil Procedure, (“SCRCP”). Rule 43(k), SCRCP; Ashfort Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 495 (1995); Pee Dee Stores, 381 S.C. 234, 241-42 (Ct. App. 2009); Reed v. Associated Invs. of Edisto Island, Inc., 339 S.C. 148, 152 (Ct. App. 2000).

I find that Defendants’ Motion to Dismiss does not allege (1) the use of physical force, or threats of physical force, or the improper use of economic power, (2) the Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) Rabon substituted his will for the Defendants’ will such that Agreement was not of Defendants’ volition.

I find that Defendants failed to meet their burden of pleading the elements of their sole defense of duress. Gainey v. Gainey, 382 S.C. 414, 428 (2009); In re Nightingale's Estate, 182 S.C. 527 (1937); Strode v. Barnes, 124 S.C. 403, 412 (1923); Willms Trucking Co. V. Jw Constr. Co., 314 S.C. 170, 179 (Ct. App. 1994).

I find that Defendants did not offer evidence (1) of the use of physical force, or threats of physical force, or the improper use of economic power, (2) that Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) that Rabon substituted his will for the Defendants’ will such that Agreement was not of Defendants’ volition. I further find that Defendants had a reasonable

alternative to entering the Agreement and did not take advantage of it. Holler v. Holler, 364 S.C. 256, 257 (Ct. App. 2005); Blejski v. Blejski, 325 S.C. 491, 500 (Ct. App. 1997).

An important factor is that the Defendants did not challenge the enforceability of the Agreement prior to November 30, 2015. Instead, prior to November 30, 2015, Defendants, through their attorney, represented that (a) Defendants agreed that the Agreement was enforceable, and (b) were undertaking steps to obtain funding as contemplated in Plan A. I find that Defendants' position is without merit. Therefore, Defendants' Motion to Dismiss Agreement must be and is denied.

As to the triggering of Plan B instead of Plan A, I find that the Agreement unambiguously sets forth (a) a thirty (30) day window during which Plan A could be triggered, and (b) the events which must occur in order to trigger Plan A. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242 (Ct. App. 2008). During the January 20, 2016 hearing on these motions, Defendants conceded that the events necessary to trigger Plan A had not occurred prior to November 30, 2015 nor had they occurred between November 30, 2015 and the January 20, 2016 hearing. Therefore, Plan A was not triggered within the thirty (30) day period, resulting in Plan B being triggered in accordance with the plain and unambiguous terms of the Agreement.

The Defendants have not presented any meritorious defense to inhibit the enforcement of the Agreement. Accordingly, Plaintiff's Motion to Compel Settlement must be granted. The Agreement must be enforced according to its terms which include performance of Plan B rather than Plan A. S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, 379 S.C. 645, 655 (Ct. App. 2008).

IT IS THEREFORE ORDERED that:

A. Defendants' Motion to Dismiss is DENIED;

B. Plaintiff's Motion to Compel Settlement is GRANTED;

C. Within fifteen days of the date of this Order, Defendants shall fully perform pursuant to the Mediation Settlement Agreement dated October 30, 2015, except with respect to those provisions contained exclusively in Plan A (the provisions of which shall not be performed). Defendants' performance pursuant to the Agreement shall include, but not be limited to, execution and delivery to Rabon's attorney all the documents necessary or advisable to effectuate the transactions described therein;

D. Defendants shall do all things required of them under the Agreement, and shall forever refrain from doing those things prohibited to them under the Agreement;

E. Defendants shall not do, or knowingly permit to be done, any act inconsistent with the terms or spirit of the Agreement and this Order, and specifically Defendants shall not commit or permit any waste with respect to any real or personal property described in the Agreement; and

F. Failure of Defendants to timely and fully comply with this Order shall subject Defendants to the contempt powers of the Court, ~~including, without limitation, the power of~~ *MAC* ~~incarceration.~~

IT IS SO ORDERED.

Georgetown,
Conway, South Carolina
Dated: Feb. 4, 2016

Benjamin H. Culbertson
The Honorable Benjamin H. Culbertson
Circuit Judge
Fifteenth Judicial Circuit

CERTIFICATE OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify the foregoing document was served via United States Mail, postage prepaid, and/or by Electronic Mail, to the Counsel of Record, and/or Pro Se Parties, on this the 21st day of July, 2016, as follows:

- Order Denying Defendants' Motion, Granting Plaintiff's Motion, Ordering Defendants to Perform Pursuant to Mediation Settlement Agreement, and Enjoining Defendants from Taking Actions Inconsistent with Mediation Settlement Agreement; and
- Certificate of Service.

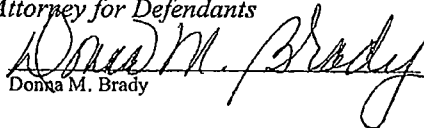
Addressec(s):

Karon Mitchell
Kyle Mitchell
4506 Camellia Drive
Myrtle Beach, SC 29577
Email: beachbummb4@msn.com

Rachael Ashley Dain, Esq.
Attorney Dain, LLC
P.O. Box 212654
Columbia, SC 29221-2654
Email: rachael@attorneydain.com

Pro Se Defendants

Purported Attorney for Defendants


Donna M. Brady

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

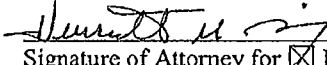
RABON & RABON, INC.,
 Plaintiff

v.

KARON MITCHELL AND KYLE MITCHELL
 Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-07862

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Henrietta U. Golding, SC Bar #2173 Lane D. Jefferies, SC Bar #101764 Address: P.O. Box 336 Myrtle Beach, SC 29578 telephone: (843) 444-1107 fax: (843) 443-9137 e-mail: hgolding@mcnair.net ; ljefferies@mcnair.net	Pro Se Defendants Karon Mitchell Kyle Mitchell 4506 Camellia Drive Myrtle Beach, SC 29577 Email: beachbummb4@msn.com Purported Mediation Attorney: Rachael Ashley Dain, SC Bar # Address: Attorney Dain, LLC P.O. Box 212654 Columbia, SC 29221-2654 Telephone: (803) 256-6661 x 3 Email: rachael@attorneydain.com
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: ORDER DENYING DEFENDANTS' MOTION, GRANTING PLAINTIFF'S MOTION, ORDER DEFENDANTS TO PERFORM PURSUANT TO MEDIATION AGREEMENT Estimated Time Needed: 30 Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted: <u>1/21/16</u>	
SECTION III: Motion Fee <input type="checkbox"/> PAID - AMOUNT 25.00 <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input checked="" type="checkbox"/> Order submitted at request of Judge Culbertson at the January 20, 2016 hearing on this matter Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____ Date Filed: _____	

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In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

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AUG 11 2016

SC Court of Appeals

Case No. 2014-CP-26-07862

RABON & RABON, INC.,

Respondent,

v.

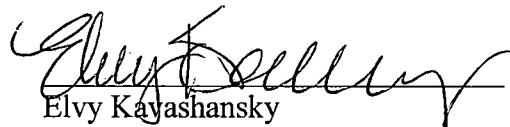
KARON MITCHELL AND KYLE
MITCHELL,

Appellants.

CERTIFICATE OF SERVICE

This is to certify that I, Elvy Kavashansky, Legal Secretary, served a copy of the AMENDED 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 10, 2016
Columbia, South Carolina



PLAYER
PLAYER LAW FIRM, LLC

August 10, 2016

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AUG 11 2016

SC Court of Appeals

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 Amended Return to Motion to Dismiss to be filed in regard to the above referenced matter. This Amended Return is being submitted at the request of Appellee due to a dispute over certain averments made in the original. The only portion that was amended is in Section V entitled "Miscellaneous Technicalities". 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 Kayashansky
Legal Secretary

Enclosure(s) as stated

Cc: Henrietta Golding (w/enclosure)

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

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Columbia, South Carolina 29221

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