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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

SC Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Carmen T. Mullen, Circuit Court Judge

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Appellate Case No. 2016-001010

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Nell Barnwell Hay and Edward Barnwell, Respondents,

v.

Chauncey N. Brown-Barnwell, Janice Barnwell, Bank of New York, Trust Under Agreement Date 12/1/01 (EQCC Trust 2001-2) and all Persons claiming any right, title, estate interest in or lien upon the real estate described, and any known heirs or persons being as a class identified as John Doe, whose true names are unknown, and any unborn infants or persons under disability being a class designated as Richard Roe, whose true names are unknown, Defendants,

Of whom Chauncey N. Brown-Barnwell and Janice Barnwell are the Appellants.

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APPELLANTS' FINAL BRIEF

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## **STATEMENT OF THE ISSUES ON APPEAL**

1. Whether the trial court's December 30, 2015 order dismissing the underlying action is enforceable notwithstanding the absence of the terms of the settlement agreement within the order?
2. Whether the trial court's order compelling the settlement agreement is enforceable although the parties to the agreement contest the terms?

## STATEMENT OF THE CASE

This appeal arises from an order enforcing an alleged settlement agreement. By way of background, respondents filed their amended complaint against the appellants on September 16, 2013. The nature of respondents underlying action involved a dispute over undivided interests in heirs' property. The respondents alleged that title to certain parcels of heirs' property became clouded upon the filing of quit claim deeds used to subdivide the parties undivided interests in those properties. Further, respondents alleged fraud on the part of appellants in the execution of those deeds. Appellants countered alleging Breach of Fiduciary Duty by the respondents and prayed for the trial court to Partition the real property which was in dispute. The trial court ordered mediation.

The parties engaged in the Court ordered mediation session on August 7, 2015. The parties reconvened that initial mediation session on December 9, 2015, but all parties involved in the underlying civil action were not physically present at the December 9, 2015 mediation.

The appellant which did not physically attend briefly telephoned into the mediation. The absent appellant gave the other attending appellant limited authority to sign on his behalf for three specific issues that he agreed upon at the August 7, 2015 mediation: 1) sales price for a house in question;

2) who would pay for the survey and 3) re-conveying certain real property to one of the respondents. Index, pg. 39-40. The appellant that did not attend the December 9, 2015 mediation did not give his co-appellant full authority to agree to any and everything on his behalf. Index, pg. 39.

The mediation agreement is suspect. A last minute hand-written provision was added expressing that an Addendum containing additional unknown terms and conditions would be required to be executed by all the parties. Index, pg. 16. Appellants contend the terms of the proposed mediation agreement were not bargained for and as a result, there was no meeting of the minds. Index, pg. 42, 44. Appellants continuously refuted the notion of a settlement and requested that the case be placed on a trial docket. Transcript p. 41, 43, 45.

Unbeknownst to appellants, the trial court entered an order on December 30, 2015 dismissing the action. Index, pg. 2-2A. The court indicated in the Form 4 that the action was dismissed per ADR Report filed on 12-17-15. Id. That order of the Court did not set forth the terms of the settlement. Id.

Respondents filed a motion to enforce settlement agreement on February 16, 2016 and appellants responded on March 17, 2016. Index, pg. 5-31. The trial court heard argument from both parties on March 30, 2016.

Index, pg. 32-55. The trial court granted the respondents' motion to enforce settlement agreement on April 18, 2016. Index 3-4. This appeal followed.

### ARGUMENT

**I. The trial court erred by enforcing the alleged settlement agreement because the December 30, 2015 order did not set forth the terms of the settlement as required by Rule 43(k).**

Rule 43(k), provides in relevant part, no agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

This application presents the familiar standard on review that Courts in this State will not enforce an order pursuant to Rule 43(k) unless the terms of the settlement are set forth within the order. Ashfort Corporation v. Palmetto Construction, 318 S.C. 492, 495 (1995). "A stipulation that simply states that a settlement has been reached, but does not set for the terms of the settlement does not serve the purpose of the rule." Id. The Court's role is to promote fair play and substantial justice, not to speculate as to the terms and conditions of settlement disputes. Id.

The trial court's order sub judice is unenforceable because it does not comply with well settled South Carolina law.

**II. The trial court erred by enforcing to compel the alleged settlement agreement because the parties disagree as to the terms.**

This Court unwaveringly renounces the enforcement of settlement agreements when civil litigants disagree as to the terms of the alleged settlement. Young v. Cooler, 347 S.C. 362, 366 (Ct.App.2001). See also Reed v. Associated Investments of Edisto Island, Inc., 339 S.C. 148, 154 (Ct.App.2000). The principles subscribed to in Reed make it abundantly clear that this Court will not imply terms into an agreement if they are not explicitly stated. Id. at 154.

The required Addendum in this case is detrimental to the fundamental principle to freely contract without coercion. Index, pg. 16. The holding in Cooler has set precedent that where further paperwork is needed to finalize the agreement, there is no binding agreement. Id. at 366. This Court's unwillingness to manipulate parties into settling disputes outside of court is uncompromising. The purported settlement agreement in the case is unenforceable because the Addendum, which was required to be agreed to and signed by all parties, was not finalized like the terms in Reed. Id. at 154.

In all fairness, there are cases in which this Court has affirmed the trial court's decision to enforce a purported settlement agreement. Kumar v. Third Generation, Inc., 324 S.C. 284, 284 (Ct.App.1995). The case under

review is clearly distinguishable from Kumar whereas the parties to this action have yet to announce a resolution to the trial court either orally or in writing. Id. at 286. The trial court granted the respondent's request to vacate the settlement agreement because Kumar clearly intended not to be bound by the agreement. Id. at 288. We request that this Court follow the trial court's rationale in Kumar and hold the settlement in this case has been repudiated just like in Kumar for failing to sign all settlement documents, i.e. Addendum. Id.

This Court has a trended of holding parties accountable when they express that a settlement has been reached. Patricia Grand Hotel, LLC v. MacGuire Enterprises, Inc., 643 S.E.2d 692, 693 (Ct.App.2007). Unlike the parties in Patricia, the parties under review have never reached an agreement in open court. Id. at 693.

This case presents an undeniable argument about the terms of the settlement. Galloway v. Regis Corp., 325 S.C. 541, 546 (Ct.App.1996). An agreement is destroyed if additional terms are needed to finalize an agreement, but those additional terms are never reached. Id. at 546. The Addendum in this case was a component of the overall settlement agreement, but the terms were never agreed upon. Index, 64-70. The Galloway holding directs this Court to reverse the trial court's order in this

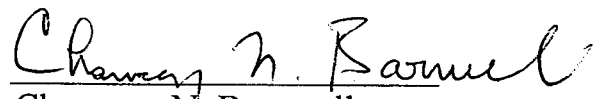
case because a material aspect of the settlement agreement in this case remains unresolved. Id. This Court refuses to enforce partial settlement agreements and that's what the enforcement of the settlement agreement in this case would accomplish. Reed, 339 S.C. 154.

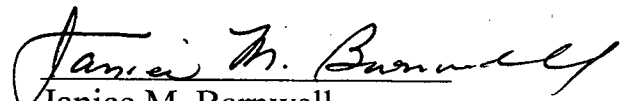
### CONCLUSION

For the foregoing reasons, appellants' request that this Court finds that the December 30, 2015 order as dictated by the trial court unenforceable.

Further, we respectfully move this Court to hold that the purported settlement agreement in the case is fatal because the parties do not agree as to the terms and the Addendum was never finalized. The appellant respectfully requests Oral Argument on these matters.

Respectfully submitted, this 8<sup>th</sup> day of September, 2016.

  
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