THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
S. Jackson Kimball, III, Circuit Court Judge

Case No. 2013-CP-46-00438; 2013-CP-46-00440
Appellate Case No: 2016-001272

Robert Clay Sparrow and Mickey Crowe,

Respondents,

v.

Fort Mill Holdings, LLC, David Baucom,
and Maurer Holdings, LLC,

Appellants.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court Err in Enforcing the Settlement Agreement when It Complied with Rule 43(k), was not the Product of Fraud or Mutual Mistake, and Appellants' Mistake of Law was not Grounds for Rescission?

II. Did the Trial Court Err in Finding that Appellants would not Suffer Substantial Injustice if the Settlement Agreement was Enforced?

III. Did the Trail Court Err by Enforcing the Settlement Agreement despite the Existence of North Carolina's Anti-Deficiency Statute and Public Policy Considerations Regarding the Same?[1]

IV. Did the Trial Court Err by Enforcing the Settlement Agreement when the Appellants Refused to Execute Documents Contemplated by the Settlement?

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[1] Appellants' brief sets forth five "Issues on Appeal." *Id.* at 1. However, its table of contents and argument section address four issues. Respondent is uncertain whether an issue was unintentionally omitted by Appellants or if Appellants combined two of their issues together to arrive at four, rather than five issues. As such and for purposes of clarity, Respondents' discussion of Issue Number III in its brief addresses issue numbers 3 and 4 as set forth in Appellants' Brief under "Issues on Appeal."

STATEMENT OF THE CASE

On December 1, 2011, Respondents sold separate parcels of land to the above-named Appellants. Appellant Fort Mill Holdings, LLC executed a promissory note to Respondents in the sum of $907,300.00 in exchange for certain property secured by the purchase money mortgage recorded December 30, 2011, in Record Book 12360, Page 239, RMC Office for York County, South Carolina (hereinafter "Note 1"). (R. p. 15-16, ¶¶ 8-10; R. p. 494-500). Appellant Maurer Holdings, LLC executed a promissory note to Respondents in the sum of $284,500.00 in exchange for certain property secured by the purchase money mortgage recorded December 30, 2011, in Record Book 12360, Page 230, RMC Office for York County, South Carolina (hereinafter "Note 2"). (R. p. 51-52, ¶¶ 8-10; R. p. 501-507). Appellant David Baucom executed Note 1 and Note 2 (hereinafter the "Notes") as guarantor. *See* (R. p. 22-28; 58-64). The sum of the Notes bore an interest rate of 7% per annum until paid or until default. Id. In the event of default, the Notes accrued interest at a rate of 15% per annum until paid. Id.

Appellants made timely payments to Respondents on the Notes through May 1, 2012. *See* (R. p. 16-17; 52-53, ¶ 13). Appellants made partial payments of one-half the monthly amount due for the installments due the first day of June, July, and August 2012 and were therefore in default on the Notes. *Id.* Respondents thereafter notified Appellants Fort Mill Holdings, LLC and Maurer Holdings, LLC (hereinafter the "Corporate Appellants") of Respondents' election to demand immediate payment of the principal amount remaining on the Notes as of August 1, 2012, with applicable interest. *Id.* Respondents also demanded the same from Appellant Baucom as personal guarantor for the Notes. (R. p. 18, ¶ 22). As a result of Appellants' failure to pay Respondents' demands on the Notes, Respondents filed the above-captioned actions on February 8, 2013, seeking judgment against the Appellants and foreclosure in the amounts due and owing to

Respondents under the Notes, together with taxes and insurance premiums, and costs and attorneys' fees. (R. p. 17, ¶¶ 14-16; R. p. 54-55, ¶¶ 23-24).

In response, Appellants filed a Motion to Dismiss Appellant Baucom, Answer and Counterclaims in the above-captioned actions. *See* (R. p. 79-87; R. p. 88-96). Appellants sought dismissal of Respondents' claims against Appellant Baucom on the grounds his liability under the Notes was contingent and therefore, until Respondents pled an inability to obtain the recovery from the Corporate Appellants, a claim had not been made against him. (R. p. 79). The Corporate Appellants denied the allegations of Respondents' Complaints and asserted counterclaims against the Respondents for breach of contract, breach of contract accompanied by a fraudulent act, unclean hands and invalid note and mortgage, unfair trade practices and negligent misrepresentation. (R. p. 83-86 ¶¶ 3-26). Notably, Appellants asserted Respondents' breach a contract between the parties in which Respondents, in the event of default by Appellants, would accept return of the properties from Appellants as cancellation of the debts and forgo filing a deficiency judgment against Appellants. (R. p. 81-82, ¶¶ 2, 5, 7; R. p. 83-86 ¶¶ 1, 4-5). Additionally, Appellants' closing attorney was not licensed in South Carolina and therefore, Appellants asserted Respondents' North Carolina counsel engaged in the authorized practice of law as a result of the transaction. (R. p. 83-85 ¶¶ 2, 13-15). Based on these counterclaims, Appellants sought actual, punitive and treble damages from the Respondents, as well as cancellation of the Notes and mortgage, and costs and attorneys' fees. (R. p. 86).

Respondents answered the counterclaims denying ever having a written or oral contract with the Appellants and denying knowledge that the counsel chosen by Appellants to close on the properties and prepare the Notes was not licensed in South Carolina. *See* (R. p. 104-105; R. p. 109-110). Prior to the present actions reaching trial, the parties and counsel all participated in

mediation on October 7, 2014 and reached an agreement to settle all parties then pending claims ("Settlement Agreement"). (R. p. 485, ¶¶ 3-4). Pursuant to the terms of the Settlement Agreement, Respondents agreed to pay the outstanding real estate taxes on the property so that the property would not be sold at a tax sale and the Appellants agreed to execute a contingent confession of judgment in favor of the Respondents as follows: (1) Principle and Interest under the Notes for $1,356,752.10 (at 7% interest through October 7, 2014); (2) Real Property Taxes of $70,595.46; and (3) the combined amount of (1) & (2) bore interest at a rate of $273.74 per diem until Appellants paid Respondents in full. (R. p. 488-489). Respondents agreed not to file the confession of judgment by Appellants until the earlier of October 7, 2015 or until the sale of the properties by the Appellants resulted in a deficiency – in which case the confession of judgment would be reduced by the proceeds of the sales paid to Respondents. *Id.* If the sale of the properties resulted in excess proceeds over the judgment, the excess belonged to the Appellants. *Id.* Additionally, Respondents would release the mortgages on the two properties prior to closing of any bona fide sale of the property by the Appellants. *Id.* The Settlement Agreement was signed on October 7, 2014 by the parties, the parties' counsel, and the mediator.[2] *Id.*

In reliance on the Settlement Agreement, Respondent Sparrow paid the outstanding real estate taxes of $70,595.46. However, Appellants failed to sell the property and refused to execute a confession of judgment as required by the terms of the settlement agreement. Furthermore, the property was then sold by the York County tax auditor for subsequent unpaid property taxes that accrued after Sparrow paid the past due taxes pursuant to the Settlement Agreement. Accordingly,

[2] On October 1, 2014, for value received, Respondent Crowe assigned his interests in the Notes and mortgages securing the same to Respondent Sparrow; thus, Sparrow executed the Settlement Agreement on behalf of Respondent Crowe. *See* (R. p. 490-493).

Respondents filed a motion with the trial court seeking to compel Appellants' compliance with the settlement agreement. (R. p. 155-160; R. p. 286-396).

Following briefing by the parties and argument at a hearing on Respondents' motion to compel settlement, the trial Court found in favor of Respondents. *See* (R. p. 286-396; R. p. 177-285). By Order dated March 29, 2016, "judgment [was] entered in favor of the Respondents, Robert Clay Sparrow and Mickey Crow against Appellants Maurer Holdings, LLC, Fort Mill Holdings, LLC and David Baucom in the principal amount of $1,427,347.56, plus interest at the rate of $273.74 per diem from October 7, 2014, until the date of the entry of this Order of Judgment." (R. p. 5). Thereafter, on April 8, 2016, Appellants moved the trial court to alter or amend the judgment. (R. p. 161-168; R. p. 169-176). By order dated May 23, 2016, the trial court denied Appellants' motions, affirming its enforcement of the Settlement Agreement. (R. p. 8-9). Appellants thereafter appealed the trial court's March 2016 Order for Judgment to this Court. (R. p. 397-398).

ARGUMENT

In South Carolina, settlement agreements are viewed as contracts, and thus, enforcement of the terms of a settlement agreement is a matter of contract law. *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 621 (Ct. App. 2012) (citing *Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001)). " 'In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law.' " *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010) (quoting *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004)). "The trial judge's findings of fact

will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Id.* at 271, 705 S.E.2d at 76.

I. The Trial Court did not Err in Enforcing the Settlement Agreement because the Settlement Agreement Complied with Rule 43(k), was not the Product of Fraud or Mutual Mistake, and Appellants' mistake of law was not grounds for rescission.

South Carolina Rule of Civil Procedure 43(k) applies to all settlement agreements signed by counsel. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006). A settlement agreement governed by Rule 43(k) is binding where it is "reduced to writing and signed by the parties and their counsel." Rule 43(k), SCRCP. Additionally, Rule 43(k) settlement agreements are viewed as contracts and are construed under general contract principles. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802-03 (Ct. App. 2009); *see* 6 S.C. Jur. *Compromise & Settlement* §19. " 'Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the settlement.' " *Shelton v. Bressant*, 312 S.C. 183, 184-85, 439 S.E.2d 833, 834 (S.C. 1993) (quoting *Arnold v. Yarborough*, 281 S.C. 570, 316 S.E.2d 416, 417 (Ct. App. 1984)). Nor can a party set aside a settlement agreement voluntarily executed based on the erroneous advice of the party's counsel. *Kirkland v. Moseley*, 109 S.C. 477, 96 S.E. 608 (1918); *see also* 27 *Williston on Contracts* § 70:125 (4th ed.) ("To cancel or reform a contract on the ground of mistake of law, the mistake must be mutual or arise from a misrepresentation of the law by one party of which the other was aware but did not rectify.").

The trial court's enforcement of the Settlement Agreement should be affirmed because the Settlement Agreement meets the requirements of Rule 43(k) and is not the product of fraud or mutual mistake of the law, and thus, is enforceable. There is no evidence in the Record that

Respondents engaged in fraud or provided material misrepresentations to Appellants to induce Appellants to execute the settlement agreement. Nor is there any evidence in the Record that the terms of the Settlement Agreement are a product of mutual mistake of the law at the time the Settlement Agreement was executed. *See* 27 *Williston on Contracts* § 70:125 (4th ed.). Rather, the record clearly illustrates the parties attended mediation, were each represented by counsel of their choosing, and entered into the Settlement Agreement voluntarily. Additionally, the Settlement Agreement is signed by counsel and the parties and clearly sets forth all of the material terms of the settlement. (R. p. 2-3). Thus, enforcement of the Settlement Agreement was proper.

Appellants urge this Court to set aside the trial court's order enforcing the Settlement Agreement based on their alleged mistake of the law. (Final Br. of Appellant 9-11).[3] However, this argument is contrary to the law of this State. Erroneous legal advice or a misunderstanding of one's rights based on the advice of the party's counsel will not serve as grounds to set aside a settlement agreement. *Crowley*, 237 S.C. at 70, 488 S.E.2d at 335 (citing *Shelton*, 312 S.C. at 184-85, 439 S.E.2d at 834); *see also Kirkland v. Moseley*, 109 S.C. 477, 96 S.E. 608 (1918) (holding a party cannot set aside settlement agreement signed pursuant to attorney's erroneous advice). Thus, the trial court did not err by enforcing the Settlement Agreement despite Appellants' argument that but for their misunderstanding of the law and incorrect legal advice from their counsel, they would not have entered into the Settlement Agreement.

Moreover, Appellants' citation to *Rock Smith Chevrolet v. Smith*, 309 S.C. 91, 92-93, 419 S.E.2d 841, 842 (Ct. App. 1992), in support of their argument that a unilateral mistake of law is

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[3] Appellants' contention that enforcing the Settlement Agreement would be contrary to the purpose of Rule 43(k), and thus substantially unfair to Appellants, is without merit. South Carolina courts have expressly recognized a party's redress in such situation is in an action between the party and its counsel. *See Crowley v. Harvey & Battey, P.A.*, 327 S.C. 68, 70, 488 S.E.2d 334, 335 (1997).

grounds to void the Settlement Agreement is misplaced. (Final Br. of Appellant 10). In *Rock Smith Chevrolet*, a trial court vacated a settlement agreement where the evidence before the court was that the defendant misunderstood his attorney's advice when entering into the settlement agreement. *Id.* at 92-93, 419 S.E.2d at 842. However, unlike the defendant in *Rock Smith Chevrolet*, who possessed a sixth-grade level of education, there is no evidence in this case that Appellants lacked the capacity to understand the advice given to them by their attorney or the terms of the Settlement Agreement. Instead, Appellants are sophisticated parties, possessing business acumen who were represented by counsel throughout the duration of this matter.

Additionally, unlike the facts in *Rock Smith Chevrolet*, the Respondents in this case will suffer prejudice if the settlement is vacated. As evidenced in the record and included in the trial court's findings, Respondent Sparrow paid the outstanding York County real estate taxes owing on the properties in reliance on the terms of the settlement agreement. Prior to entering into the Settlement Agreement, Appellants were responsible for paying these taxes. Thus, the trial court correctly found it would be substantially unfair to Respondents if the Settlement Agreement was not enforced. (R. p. 4). Given the trial court's enforcement of the Settlement Agreement is supported by evidence in the record, this Court should affirm its order enforcing the Settlement Agreement.

II. The Trial Court did not Err in Finding that Appellants would not Suffer Substantial Injustice if the Settlement Agreement was Enforced.

Appellants argue their ignorance of North Carolina's "anti-deficiency" statute at the time they executed the Settlement Agreement results in substantial injustice to Appellant Baucom if the Settlement Agreement is enforced. (Final Br. of Appellant at 11-14). This Court has recognized that it is not the province of the trial court to rule on the fairness of a settlement agreement entered into "between adults represented by counsel." *Rock Smith Chevrolet*, 309 S.C. at 93, 419 S.E.2d

at 842; *see also W. v. Gladney*, 341 S.C. 127, 136, 533 S.E.2d 334, 338 (Ct. App. 2000) ("It is not for us to determine whether the parties' agreement was reasonable or wise, or whether they carefully guarded their rights."). Thus, in the absence of fraud or undue influence, a unilateral mistake of law is not grounds to grant a party relief from a contract. *Smothers v. U.S. Fid. & Guar. Co.*, 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct. App. 1996). This is true even where "the complaining party took measures to secure knowledge as to the state of the law and, being misinformed, placed himself in the prejudicial situation of which he later complains." *Id.* at 210, 470 S.E.2d at 860.

The Record is clear that the parties were each represented by counsel at mediation. They negotiated new terms with regard to each party's obligations concerning the properties. Both sides agreed to these new terms and executed the Settlement Agreement. There was no fraud or undue influence. Moreover, Appellants received the benefit of their bargain because Respondent Sparrow paid the outstanding taxes on the property and Appellants were given the opportunity to sell the property. Now, after failing to sell the property, Appellants regret agreeing to the terms of the Settlement Agreement. This obviously is not a sufficient ground to set aside the Settlement Agreement. *See Blassingame v. City of Laurens*, 80 S.C. 38, 61 S.E. 96, 99 (1908) ("[A] man of understanding will not be allowed to say he did not know, and his mind did not meet the mind of the other party in the writing, which clearly expressed the proposed contract, when in assenting to it he had the writing before him, and there was nothing done by the other party to prevent his full and intelligent consideration of it."). Moreover, as recognized by South Carolina courts, any injustice Appellants allegedly will suffer from relying on the advice of their counsel in entering into the Settlement Agreement is properly addressed in an action between Appellants and their counsel. *See Crowley*, 327 S.C. at 70, 488 S.E.2d at 335 ("We have further held that where a client

alleges his former attorney was negligent in advising him to accept a settlement, that alleged negligence is not a ground for attacking the settlement itself but rather is a matter left for a malpractice suit between the client and his attorney."); *see also Shelton,* 312 S.C. 183, 439 S.E.2d 833 (1993); *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988).

Finally, it is Respondents – not Appellants – that would suffer substantial injustice if the settlement agreement was not enforced. It is undisputed that prior to entering into the Settlement Agreement, the tax obligations for the properties rested with Appellants. Per the terms of the Settlement Agreement, Respondents agreed to and did pay $70,595.46 in property taxes owed by Appellants on the subject properties in exchange for Appellants' agreement to execute a confession of judgment in favor of Respondents as to each property. (R. p. 3). Respondents would suffer a substantial injustice if after complying with the Settlement Agreement in good faith, Appellants are permitted to avoid enforcement of their obligations under the Settlement Agreement. *L-J, Inc. v. S.C. State Highway Dept.*, 270 S.C. 413, 429, 242 S.E.2d 656, 663 (1978). Accordingly, the trial court's order should be enforced.

III. The Trial Court did not Err by Enforcing the Settlement Agreement Despite the Existence of North Carolina's Anti-Deficiency Statute and Public Policy Considerations Regarding the Same.

Appellants argue the Settlement Agreement is void as against North Carolina public policy and that enforcement of the Settlement Agreement would constitute an impermissible waiver under North Carolina's anti-deficiency statute. (Final Br. of Appellant 12-18). However, as correctly held by the trial court, neither argument is grounds to set aside the Settlement Agreement. In considering Appellants' argument that North Carolina's anti-deficiency statute invalidates the Settlement, the trial judge correctly observed, "[t]he present case pertains only to enforcement of a voluntary settlement agreement made in accordance with applicable South Carolina rules and

case law." (R. p. 3). The Settlement Agreement was created and executed by the parties in South Carolina and does not contain a choice of law provision. Thus, the trial court correctly found that South Carolina law, the *lex loci contractu*, not North Carolina law governs the Settlement Agreement. (R. p. 3); *see Russell Corp. v. Gregg*, No. 2005-UP-556, 2005 WL 7084813, at *3 (S.C. Ct. App. Oct. 17, 2005) (citing *Livingston v. Atl. Coast Line R.R.,* 176 S.C. 385, 180 S.E. 343 (1935)). Because the Settlement Agreement complied with Rule 43(k) and was not the product of fraud or misrepresentation, the trial court enforced the Settlement Agreement and judgment was entered against Appellants in accordance with South Carolina law.

Moreover, South Carolina, has a legitimate interest in ensuring that parties that voluntarily enter into a valid settlement agreement are held to its terms. *See Wolf v. Colonial Life and Acc. Ins. Co.*, 309 S.C. 100, 108, 420 S.E.2d 217, 221 (Ct. App. 1992) (holding sound public policy requires enforcement of contracts freely entered into by parties). This interest is compounded by the State's strong public policy favoring the settlement of actions before its courts. *See e.g. Chester v. S.C. Dept. of Public Safety*, 388 S.C. 343, 346, 698 S.E.2d 559, 560 (2010); *see also* (R. p. 8). (citing *Poston by Poston v. Barnes*, 294 S.C. 261, 363 S.E.2d 888 (1987); and, *Darden v. Witham*, 258 S.C. 380, 188 S.E.2d 776 (1972)). The trial court's enforcement of the Settlement Agreement furthers these public policies, and is thus proper, notwithstanding the waiver and policy considerations stemming from North Carolina's anti-deficiency statute. *See* (R. p. 8).

IV. It was not Error for the Trial Court to Enforce the Settlement Agreement when Appellants Refused to Execute Documents Contemplated by the Settlement Agreement.

The unambiguous language of Rule 43(k) requires enforcement of the Settlement Agreement because the terms of the agreement were reduced to writing and signed by the parties and their counsel. *See Ashfort Corp. v. Palmetto Const. Group, Inc.*, 318 S.C. 492, 458 S.E.2d

533 (1995) (recognizing purpose of Rule 43(k) is to prevent disputes as to existence and terms of agreements regarding pending litigation). The terms of the Settlement Agreement in this instance are clearly set forth in the Settlement Agreement. The parties agreed that Appellants would execute a confession of judgment in favor of Respondents in a specified amount, accruing a specified rate of interest until the debts were repaid. *See* (R. p. 486-490). Respondents agreed the confession of judgment would remain unfiled for one year, until October 7, 2015. *Id.* If during the year, Appellants were able to sell the properties and repay Respondents the amount owed, Respondents would forgo filing the judgment. *Id.* However, if the Appellants were unable to repay Respondents $1,427,347.56, with interest, prior to October 7, 2015, then Respondents were entitled to file the confession of judgment. *Id.* The parties and their counsel agreed to these terms as reflected in their signatures on the Settlement Agreement. Given the clarity of the terms of the Settlement Agreement, and its compliance with Rule 43(k), the Court properly enforced the Settlement Agreement.

Appellants' argument that the Settlement Agreement cannot be enforced because the parties did not "execute formal documents," (Final Br. of Appellant 18), is without merit because execution of formal documents was not a condition precedent to the Settlement Agreement. A condition precedent is "any fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate performance arises." *Ballenger Corp. v. City of Columbia,* 286 S.C. 1, 5, 331 S.E.2d 365, 368 (Ct. App. 1985). Whether a provision in a settlement agreement "'constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ.'" *Byrd*, 398 S.C. at 244, 727 S.E.2d at 623 (quoting *Brewer v. Stokes Kia, Isuzu, Subaru, Inc.,* 364 S.C. 444, 449, 613 S.E.2d 802, 805 (Ct. App. 2005)). A settlement agreement "'should be construed so as to give them effect and carry

out the intention of the parties.'" *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007) (citing *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958)).

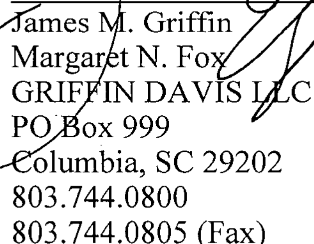
Examination of the terms of the Settlement Agreement illustrates that the parties executed the Settlement Agreement with the intention that the underlying litigation would be settled. There is nothing in the Settlement Agreement that illustrates an intention of the parties that the Settlement Agreement not be binding until the execution of formal documents contemplated as part of the parties' agreement. Settlement agreements reached during mediation routinely contemplate the terms of the agreement will be set forth in a subsequent, more formal recitation. However, whether this in fact happens does not excuse the duty each party has to perform under the terms of the settlement reached at mediation. To find otherwise would contravene Rule 43(k)'s purposes of "prevent[ing] disputes as to the existence and terms of agreements and [] reliev[ing] the court of the necessity of determining such disputes" which unnecessarily consume the court's time and resources. *Ashfort Corp.*, 318 S.C. at 495, 458 S.E.2d at 535 (citing 83 C.J.S. *Stipulations* § 4 (1953)).

Moreover, Appellant can point to no evidence that the parties ever intended that the execution of formal documents was a condition precedent to consummation of the Settlement Agreement. Instead, the evidence is that Appellants agreed they would execute a confession of judgment in favor of the Respondents for a specific amount following Respondents' payment of outstanding taxes on the Property. *See* (R. p. 486-490). In reliance on the terms of the Settlement Agreement, Respondents paid the outstanding property taxes of $70,595.46. Subsequently, counsel prepared a contingent confession of judgment; however, Appellants refused to execute the document. Without the confession of judgment, Respondents could not file the stipulation of

dismissal contemplated in the Settlement Agreement. It is clear that the only reason the formal documents contemplated by the Settlement Agreement were not executed is because of Appellants' refusal to abide by the terms of the Settlement Agreement. Accordingly, the trial court properly compelled specific performance of the Settlement Agreement because (1) there was clear evidence of a valid agreement; (2) Respondents had partially performed by paying the taxes and Appellants refused to carry out their obligations under the Settlement Agreement; and (3) Respondents remained ready, able, and willing to perform their part of the Settlement Agreement. (R. p. 7 (citing *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000)).

CONCLUSION

Based on the foregoing, the Court should affirm the trial court's order enforcing the Settlement Agreement and entering judgment in favor of Respondents.



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Columbia, SC
January 30, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
S. Jackson Kimball, III, Circuit Court Judge

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Case No. 2013-CP-46-00438; 2013-CP-46-00440
Appellate Case No: 2016-001272

Robert Clay Sparrow and Mickey Crowe,

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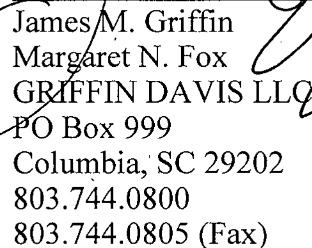
and Maurer Holdings, LLC,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b) SCACR and with the August 13, 2007 Order of the South Carolina Supreme Court.



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