

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4000042

Conyers Early Learning Center Inc

Formeicko C Smith

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. No.); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code 2127

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of March, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of March, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Johnny Elliot Watson Sr.

Benjamin Davis McCoy
Jeffrey Ian Silverberg

Trevor Penrose Eddy

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

RECEIVED

APR 06 2017

SC Court of Appeals

At the time the Contract was executed, Plaintiff and Donna Conyers each had a judgment entered against them, pursuant to an Order for Damages issued by this Court, in the amount of \$15,000, arising from a tort action filed against the daycare in 2009. Following this judgment, the case was referred to the Master-in-Equity, who issued a Rule to Show Cause Order on June 13, 2013 against the defendants in the tort action, which ordered that:

“...until further order of this Court to the contrary, you are hereby enjoined and restrained from making any transfers or other disposition of your property, real or personal, tangible or intangible, not exempt by law from execution, and from any interference therewith.”

(June 13, 2013, Rule to Show Cause Order, C/A 2009-CP-40-6947)

Plaintiff and Donna Conyers admit that at the time the Rule to Show Cause Order was issued it enjoined and restrained them from making any transfers or other dispositions of their property. The Rule to Show Cause Order was never superseded by a subsequent Order and remained in effect until March 2014 when the judgment lien was finally satisfied.

On January 5, 2015, Plaintiff filed a Complaint against Defendant for Breach of Contract and Replevin. Defendant asserted a number of counterclaims in its Answer, including fraud, fraud in the inducement, negligence/gross negligence, breach of contract, breach of contract accompanied by a fraudulent act, money/assets had and received, and a cause of action for an accounting. Defendant filed a Motion for Summary Judgment on December 12, 2016, based on the ground that the Contract upon which Plaintiff's causes of action are based is void.

STANDARD OF LAW

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRC 56(c). When a party makes a motion for summary judgment that is supported by

evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

DISCUSSION

Defendant is entitled to summary judgment as to Plaintiff's causes of action for Breach of Contract and Replevin because at the time the Contract was executed by Ms. Conyers on behalf of Plaintiff, Plaintiff and Ms. Conyers were judicially ordered not to sell any of their assets. Therefore, the Contract violates public policy, is void *ab initio* and is unenforceable.

"The general rule, undoubtedly, is, that a contract to do an act which is prohibited by statute, or which is contrary to public policy, is void, and cannot be enforced in a court of justice." *Grant v. Butt*, 198 S.C. 298, 17 S.E.2d 689, 693 (1941) (quoting *McConnell v. Kitchens*, 20 S.C. 430, 437-38 (1884)). "[C]ontracts having for their object anything that is . . . repugnant to justice and morality, are void; and . . . the Courts of this State will not lend aid to the enforcement of contracts that are in violation of law or opposed to sound public policy." *Id.* "A contract which contravenes public policy is void, and an action cannot be maintained for . . . its breach . . ." *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277-78, 437 S.E.2d 168, 171 (Ct. App. 1993); *see also Ward v. W. Oil Co.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519 (2010) ("this Court will not 'lend its assistance' to carry out the terms of a contract that violates statutory law or public policy.") (internal citation omitted); *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d

342, 345 (2004) (“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”).

In the case at hand, Plaintiff and Donna Conyers admit that at the time the Rule to Show Cause Order was issued it enjoined and restrained them from making any transfers or other dispositions of their property. Plaintiff has failed to present any evidence to establish a genuine issue of fact disputing that the Rule to Show Cause Order was in effect on August 14, 2013. The court records in the underlying tort action show no evidence that the Rule to Show Cause Order was not in effect on August 14, 2013. Moreover, according to an affidavit of the attorney who represented the Plaintiffs in the underlying tort action, the Rule to Show Cause Order was in effect on August 14, 2013 and the case was not resolved until March 2014—seven months after the Contract was executed. This Court finds that the Rule to Show Cause Order was in effect on August 14, 2013 when the contract was executed.

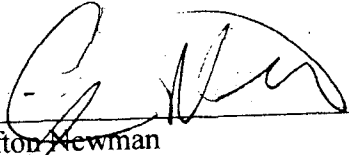
The Court holds that the fact that Plaintiff entered a contract to “do an act”—i.e. sell assets and property—in violation of the Master-In-Equity’s order is a violation of public policy and/or “repugnant to justice and morality.” See *Grant*, 198 S.C. 298, 17 S.E.2d at, 693. To allow a party to enforce a contract that it was judicially forbidden from entering would contravene public policy by undermining the integrity of our judicial system and the authority and enforceability of a Judge’s order. Therefore, the Contract is void *ab initio* and unenforceable. See *Ward v. W. Oil Co.*, 387 S.C. 268, 279, 692 S.E.2d 516, 522 (2010) (finding that the parties’ contract “void *ab initio* and unenforceable as it violates statutory law and public policy.”).

As an additional basis for finding the Contract at hand is void, the Court further holds that the contract violates S.C. Code Ann. § 63-13-440, which forbids the transfer of a daycare license without the written consent of the South Carolina Department of Social Services. *Id.* Neither Ms. Conyers nor Plaintiff sought or obtained approval from DSS prior to executing the Contract, which purported to transfer Plaintiff's license to operate a daycare to Defendant. Thus, the Contract also violated S.C. Code Ann. § 63-13-450 and is therefore unenforceable. See *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.").

For the foregoing reasons, the Court grants Defendant's Motion for Summary Judgment as to Defendant's causes of action for Breach of Contract and Replevin, which are based upon a contract that violates public policy and statutory law, and therefore, is void *ab initio*.

IT IS ORDERED that Defendant's Motion for Summary Judgment shall be GRANTED.

AND IT IS SO ORDERED.


Clifton Newman
Presiding Judge

March 8, 2017
Columbia, South Carolina.