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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maité D. Murphy, Circuit Court Judge

Case No. 2015-002024

Innovative Waste Management Inc., Crest Energy Partners,
LP, Edward Girardeau, Plaintiffs, Of Whom,

Innovative Waste Management, Inc. is the Appellant,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP,
LLC, Henry Wuertz, Innovative Waste Management, Inc.,
Crest Energy Partners LP, Dunhill Products LP, Edward H.
Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP,
Dunhill Products, LP, Henry Wuertz, and Edward H.
Girardeau are the Respondents.

RECORD ON APPEAL

Wm. M. Gruenloh, SCBAR # 12418
Patrick Aulton Chisum, SCBAR #100571
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INDEX

Form 4 Judgment of April 20, 2015	1
Form 4 Judgment of July 22, 2015	4
Form 4 Judgment of August 18, 2015.....	7
Hearing Transcript of June 24, 2015	10
Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket and Set for Trial	20
Plaintiff's Motion to Reconsider	24
Appellant's Exhibits	
Exhibit A - Settlement Agreement	35
Exhibit C - Proof of ADR or Exemption	38
Exhibit B - April 14, 2015 David Marvel Email	41
Exhibit G - Affidavit of Angus Lawton, Esq.	43
Exhibit H - Affidavit of C. Russ Lloyd	46
Certificate of Counsel	49

Form 4 Judgment of April 20, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP1801227

FILED - RECORDED

Innovative Waste Management Inc Crest Energy Partners LP	Edward H Girardeau	2015 APR 20 11:17 AM CHERYL DORCHESTER COUNTY CLERK	Crest Energy Partners Gp, LLC Dunhill Products GP, LLC Henry Wertz Innovative Waste Management Inc	Crest Energy Partners LP Dunhill Products LP Edward H Girardeau C. Russ Lloyd
---	--------------------	--	---	--

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for: Plaintiff Defendant 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCP; 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 (List amount(s) below)

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.

Cheryl Graham
Clerk of Court

Cheryl Graham

2099

Judge Code

4/20/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-
2579
Patrick Aulton Chisum 192 East Bay Street, Suite 202
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - 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.

Form 4 Judgment of July 22, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CPI1801227

Innovative Waste Management Inc Crest Energy Partners LP	Edward H Girardeau Crest Energy Partners Gp, LLC Dunhill Products GP, LLC Henry Wuertz Innovative Waste Management Inc	Crest Energy Partners LP Dunhill Products LP Edward H Girardeau C. Russ Lloyd
---	--	--

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for: Plaintiff Defendant 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(n), 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: _____

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. After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion to vacate settlement, restore to active docket and set for trial heard on Wednesday, June 24th, 2015 in Dorchester County is hereby denied.

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 (List amount(s) below)

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.

	2166	7/22/2015
Maité Murphy, Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only


This judgment was entered on 7/22/2015, and a copy mailed first class or placed in the appropriate attorney's box on 7/22/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh/Patric Aulton Chisum 192 East Bay Street, Suite 202 Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter: Ruth Mott

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

Form 4 Judgment of August 18, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP1801227

CERTIFIED COPY

Innovative Waste Management Inc
 Crest Energy Partners LP

Edward H Girardeau

2013 AUG 20 AM 11:02

Henry Wertz
 CLERK OF COURT
 DORCHESTER COUNTY

Crest Energy Partners Gp, LLC
 Dunhill Products GP, LLC
 Henry Wertz
 Innovative Waste Management Inc

Crest Energy Partners LP
 Dunhill Products LP
 Edward H Girardeau
 C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; 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: Pursuant to this Court's authority under Rule 59 SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

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 (List amount(s) below)

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.**

	2166	8/18/2015 8/10/2015
Maité Murphy, Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 8/20/2015, and a copy mailed first class or placed in the appropriate attorney's box on 8/20/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202
Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-2579

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

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.

Hearing Transcript of June 24, 2015

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
2012-CP-18-01227

INNOVATIVE WASTE)
MANAGEMENT, INC.)

TRANSCRIPT OF RECORD

VS.

CREST ENERGY PARTNERS GP,)
LLC)

JUNE 24, 2015
ST. GEORGE, SC

B E F O R E:

THE HONORABLE MAITRE MURPHY

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

WILLIAM MICHAEL GRUENLOH, ESQUIRE
Attorney for the Plaintiff

DAVID B. MARVEL, ESQUIRE
Attorney for the Defendant

Ruth L. Mott, RPR, CRR
Certified Court Reporter

1 THE CLERK: Judge, this is Innovative Waste versus Crest
2 Energy Partners, plaintiff's motion to vacate settlement
3 agreement/restore to active docket.

4 THE COURT: All right, counsel.

5 MR. GRUENLOH: Your Honor, Mike Gruenloh for the
6 plaintiff. I have a copy of our motion if you don't have one
7 handy.

8 THE COURT: If you have an extra, that would be perfect.

9 MR. GRUENLOH: Absolutely.

10 THE COURT: All right. You may proceed.

11 MR. GRUENLOH: Your Honor, this is our motion to vacate
12 the settlement agreement and set the matter immediately for
13 trial. Our argument will be very short. You may recall we
14 were before you earlier this year. We were ordered to
15 mediate the case. We mediated it with Angus Lawton.
16 Surprise of all surprises, we reached an agreement at the end
17 of the day. The agreement, in relevant part, was that the
18 defendants would pay \$450,000 within 30 days. At that time
19 and only at that time, when the settlement was consummated,
20 would we file our stipulations of dismissal and our releases.

21 Of course, the payment never came, otherwise we wouldn't
22 be here today. We extended the deadline a couple of times
23 when we were told that the money's coming, the money's
24 coming. The money's not here. It has become increasingly
25 clear to us, this case has been on file for three years, that

1 the only way these defendants are going to pay is when the
2 sheriff goes to their door. They are in breach of the
3 settlement agreement. We've informed them of that. We've
4 informed them of the fact that we intend to vacate the
5 settlement agreement and move forward towards trial. That's
6 what the instructions are that we've received from our
7 client, so that's what we're asking the Court to do today.

8 The case was apparently dismissed, despite the fact that
9 we didn't send in a stipulation of dismissal. I think that
10 that was done because the mediator sent in a statement saying
11 the case was fully settled, but it did not indicate that the
12 case had been dismissed. It indicated that Mr. Marvel would
13 be sending in a stipulation of dismissal, and that's also
14 what he informed the Court. The only communication that
15 either of us had with the Court was an email from Mr. Marvel
16 shortly after the mediation saying, we will send in a
17 stipulation of dismissal once the settlement has been
18 consummated.

19 Settlement has never been consummated, so we, again, are
20 here today asking the Court to put this back on the roster.
21 To the extent that a dismissal was entered in error or
22 otherwise, we'd ask that that be vacated, and we're here
23 asking for a trial date.

24 THE COURT: Let me ask you this: Was the agreement
25 signed by the parties and the attorneys?

1 MR. GRUENLOH: The agreement was signed by the parties
2 and the attorneys. It's a part of our motion that's been
3 attached, and there is, I believe it's No. 5 on the
4 agreement, and it says that the dismissal will only happen
5 upon the receipt of the funds.

6 THE COURT: All right, sir.

7 MR. MARVEL: Your Honor, I had hoped to be able to
8 respond to this motion by showing up here with a certified
9 check and moving to enforce the settlement. The fact of the
10 matter is that my client can't pay the settlement at this
11 time due to some factors outside of their control. During
12 the mediation I can represent to you, Your Honor, that I was
13 on a telephone call in which there was -- my client was
14 restructuring a deal that he had in place and had gotten
15 concessions from some third parties that was going to allow
16 him to be able to fund the settlement. That didn't happen.
17 The deal fell apart. He can't fund it. It would be our
18 position the settlement agreement is what it is. I do think
19 it's enforceable under Rule 43(k). I do think that that's
20 the plaintiff's remedy, and if he wants to turn it into a
21 judgment and enforce that in Texas, we would not contest
22 that; but, Your Honor, if I had a check, I would have a
23 better argument on that. If Your Honor wants to set it for
24 trial...

25 THE COURT: Anything further? Yes, sir, do you have

1 anything to add?

2 MR. MARVEL: No, Your Honor. Thank you.

3 MR. GRUENLOH: Your Honor, I would just say, again, we
4 never communicated any intent to dismiss the case, and I'm
5 not -- I've never had this situation arise before, so I don't
6 know if it's something the mediator did wrong or that we did
7 incorrectly; but without any intent from us to dismiss the
8 case and, I mean, we had real concerns, when we left the
9 mediation, that the payment was going to be here in 30 days.
10 That's why we specifically set out in the settlement
11 agreement that no dismissals would happen, no releases would
12 be signed, until the money came in.

13 And the only other thing that I want to say is I know
14 that we've been a bit of a bother contacting you all about
15 this because it's been a very frustrating experience for
16 this, and I just wanted to thank your staff and everybody for
17 dealing with us on it.

18 THE COURT: Well, it's certainly no bother. That's what
19 we're here for. It's our job to try to facilitate efficient
20 process of these cases. What I will do is I will take a look
21 at the communications that were provided to the Court that
22 led to the dismissal of the case along with the stipulation
23 for the settlement agreement that was signed. I'll notify
24 you of my decision.

25 MR. GRUENLOH: Can I hand up one other -- let me give

1 this to Your Honor. This is the only -- this appears as a
2 note in the court system. This is the only communication
3 that I'm aware of that either party made to the Court
4 regarding the settlement (indicating). And you can see
5 that's Mr. Marvel's words, and he indicates that the
6 dismissal will be sent when the settlement is consummated,
7 and of course it never was.

8 MR. MARVEL: Your Honor, I'd be happy to -- I can make a
9 PDF copy of that email that shows who it was copied to and
10 everything and provide that to Your Honor this afternoon.

11 THE COURT: Thank you.

12 MR. GRUENLOH: One last thing, Your Honor. I know you
13 said that you were going to take this under advisement, but
14 of course we are here seeking a date certain. I don't want
15 to put the cart before the horse, but if Your Honor is able
16 to entertain us on that subject, the case has been filed for
17 three years. It's been a frustrating process.

18 THE COURT: I understand, and my recollection of the
19 case was that you needed a two-week term of court, which of
20 course is like having an act of congress to get a two-week
21 term of court.

22 MR. GRUENLOH: I understand.

23 THE COURT: So, frankly, I don't know what I'm going to
24 do right now without looking at the communications that were
25 provided to the Court. However, if we do need a two-week

1 term of court, we're just going to find what's available and
2 just let you know and you will have to be present. That's
3 all I can say. We'll try to obviously make sure it's
4 convenient for the parties, but it will not be continued for
5 any other reason if it is scheduled to be tried.

6 MR. GRUENLOH: Understood, and I'll talk to Mr. Marvel
7 and see if we can pare that down. Maybe we can do it in a
8 week.

9 THE COURT: That actually would be most helpful if you
10 could.

11 MR. MARVEL: My only request is if I could have 20 or 30
12 days from whenever your decision is made because I may need
13 to sever some issues based on the current status of my
14 client's situation, and I may need to engage other counsel to
15 represent some of the parties, that sort of thing, before the
16 trial.

17 THE COURT: Sure. I'm not going to tell you to show up
18 next week. I understand this is a complex case and you'll
19 need a little bit of time to prepare. I'll give you
20 sufficient notice, obviously, to be ready to proceed. But
21 let's cross that bridge when we get to it.

22 MR. GRUENLOH: And I won't pre-argue Mr. Marvel's motion
23 to withdraw, but when we've been laboring together for three
24 years, and on the eve of trial we would obviously object to
25 any motion to withdraw.

1 MR. MARVEL: Thank you, Your Honor.

2 THE COURT: You all have a good day.

3 MR. MARVEL: For the record, Your Honor, I did not make
4 that motion.

5 THE COURT: It's not before me. That is for sure.

6 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER


2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 24th of June, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 19, 2015

16 
17 Ruth L. Mott

18 Certified Court Reporter
19
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Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket and Set for Trial

FILE COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER) CASE NO. 2012-CP-18-1227

15 MAY 27 AM 11:29

INNOVATIVE WASTE MANAGEMENT,)
INC.,)
Plaintiff,)

v.)

CREST ENERGY PARTNERS GP, L.L.C.,)
CREST ENERGY PARTNERS L.P.,)
DUNHILL PRODUCTS L.P., HENRY)
WUERTZ, and EDWARD H. GIRARDEAU,)
Defendants.)

**MOTION TO VACATE
SETTLEMENT AGREEMENT,
RESTORE TO ACTIVE DOCKET,
AND SET FOR TRIAL**

The Plaintiff, Innovative Waste Management, Inc., by and through their undersigned counsel hereby moves this Honorable Court to vacate the settlement agreement entered into between Plaintiff and Defendants Crest Energy Partners, GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau (hereinafter "Defendants") pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. In support of this motion, Plaintiff states as follows:

1. On April 8, 2015, Plaintiff and Defendants conducted mandatory mediation regarding this action and were able to reach a settlement agreement.
2. On April 8, 2015, Plaintiff and Defendants entered into a binding Settlement Agreement (attached as "Exhibit A") stipulating Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement.
3. On April 20, 2015 and pursuant to the aforementioned mediation and Settlement Agreement, this action was removed from the docket. The parties did not file a stipulation of dismissal, and dismissal was conditioned upon the Defendants payment under the Settlement Agreement.

4. On May 8, 2015, thirty (days) elapsed from the execution of the binding Settlement Agreement with no payment tendered by Defendants.
5. Plaintiff allowed Defendants a short extension until the end of business on May 19, 2015, but as of the date of this motion no payment has been received.
6. As Defendants have breached the Settlement Agreement, there is good cause to vacate such agreement and proceed immediately to trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant an order vacating the April 8, 2015 Settlement Agreement, restoring this action to the active docket, and immediately setting this action for trial.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.,
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

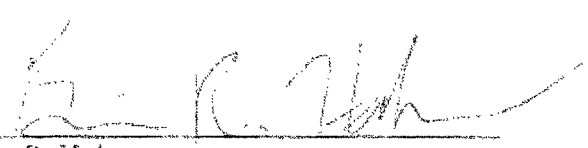
Date: May 21, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO VACATE SETTLEMENT AGREEMENT, RESTORE TO ACTIVE DOCKET, AND SET FOR TRIAL** in the above matter were served on the below named parties and/or their respective counsel and /or agents by sending accurate copies via U.S. Mail and accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

By:



Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: May 21, 2015
Charleston, South Carolina

Plaintiff's Motion to Reconsider

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

v.

CREST ENERGY PARTNERS GP, L.L.C.,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ, and EDWARD H. GIRARDEAU,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

MOTION TO RECONSIDER

The Plaintiff, Innovative Waste Management, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and respectfully requests that the Court vacate its April 20, 2015 Judgment and immediately set this matter for trial. In support of this motion, Plaintiff states that (1) the case was errantly dismissed by the Clerk of Court based upon the Proof of ADR or Exemption filed by the mediator and no stipulation of dismissal or any other motion or order complying with Rule 41 of the South Carolina Rules of Civil Procedure has ever been filed in this action, (2) the Settlement Agreement and other communications to the Court clearly indicate that the case was not to be dismissed until the settlement was consummated, and (3) Defendants have breached the Settlement Agreement and Plaintiff therefore has a right to rescind that agreement.

FACTUAL AND PROCEDURAL HISTORY

This case was filed on May 11, 2012. On April 8, 2015, Plaintiff and Defendants conducted court-ordered mediation regarding this action and were able to reach a settlement agreement. The Settlement Agreement entered into by the parties stipulated that Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement, and that dismissal of the action was conditioned upon Defendants' payment under the agreement. (See Settlement Agreement at Paragraph 5, attached as "Exhibit A"). The amount agreed upon in order to settle the case was significantly less than the actual value of the claim and Plaintiff only accepted this greatly reduced amount based upon Defendants' and their counsel's representation that payment would be made within the thirty (30) day time period. (See Affidavit of C. Russ Lloyd, attached as "Exhibit B"). The timing of the payments was a material term to the settlement. (See "Exhibit B" at Paragraph 6).

Only two communications were made to the Court regarding the Settlement Agreement prior to Plaintiff bringing its Motion to Vacate. The first was an e-mail from David Marvel, Counsel for Defendants, advising the Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See Marvel E-mail, attached as "Exhibit C"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton. On April 20, 2015, Mr. Lawton filed a Proof of ADR or Exemption with the Court indicating that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See Proof of ADR or Exemption, attached as "Exhibit D"). On that same date, a Form 4 Judgment was issued dismissing this case (See April 20, 2015 Judgment, attached as "Exhibit E"). The Judgment was signed by Dorchester County Clerk of Court Cheryl Graham and directs the reader to "[s]ee attached order; (formal

order to follow)" and states "[t]his order [X] ends . . . the case." The ADR statement was not intended to dismiss the case and, in fact, cannot dismiss the case pursuant to Rule 41. (See Affidavit of Angus Lawton, Esq. at Paragraph 7, attached as "Exhibit F"). There is no order dismissing the case attached to the Judgment, and in fact the only supporting documentation accompanying the Judgment is a copy of the Proof of ADR or Exemption. The parties have never executed or filed a voluntary dismissal, as the settlement was never consummated.

On May 8, 2015, thirty (30) days elapsed from the execution of the Settlement Agreement with no payment received. Despite Defendants' counsel's initial assurances of payment, Defendants have yet to make any payment pursuant to the Settlement Agreement and have advised Plaintiff that payment is not forthcoming. After Defendants' failure to consummate the Settlement Agreement, Plaintiff contacted the Court and sought to have the action set for trial. On May 20, 2015 Plaintiff was, for the first time, notified that on April 20, 2015 a Judgment signed by the Clerk of Court and attaching the ADR statement of the mediator and that "[t]he case was closed out" (See Court E-mail Correspondence, attached as "Exhibit G"). Upon learning this information, Plaintiff wrote to the Court advising the Court of what appeared to be an errant dismissal and requesting a conference to discuss correcting the error and placing the case back on the docket. Plaintiff was unable to secure an informal conference with the court regarding this issue and immediately filed its Motion to Vacate on May 27, 2015.

On June 24, 2015, the Court heard arguments from counsel requesting that the April 20, 2015 Judgment and the Settlement Agreement be vacated. The Defendants filed no opposition to this motion. On July 22, 2015, the Court entered a form order denying Plaintiff's May 27, 2015 motion. Plaintiff now respectfully requests that this Court reconsider its July 22, 2015 ruling.

1. Plaintiff's counsel has no record of having received a copy of the April 20, 2015 Judgment with the attached Proof of ADR or Exemption at any point prior to this date.

STANDARD OF REVIEW

“ . . . Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal.” Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it “ . . . believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). A trial court has inherent jurisdiction to enforce settlement agreements entered before it and this jurisdiction extends to motions to vacate settlement agreements. Kumar v. Third Generation, Inc., 320 S.C. 430, 472 S.E.2d 637 (Ct. App. 1996).

ARGUMENT

The April 20, 2015 Judgment was entered incorrectly and dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. No Rule 41 dismissal has ever been entered in this case. Likewise, the Clerk of Court’s dismissal of this case is contrary to the written terms of the Settlement Agreement and the intent of all interested parties and is therefore improper. Finally, Defendants’ have breached the Settlement Agreement and South Carolina law is clear that Plaintiff may rescind the agreement due to Defendants’ non-performance. For these reasons, the Court’s earlier July 22, 2015 Order was incorrect and should be overturned.

I. Dismissal of this case is improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which the courts may dismiss a lawsuit. Rule 41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed “. . . by filing a stipulation of dismissal signed by all parties who have appeared in the action” Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff’s failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff’s failure to show a right to relief. Notably absent from this rule, however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal filed by either the Plaintiff or the Defendants. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made under the Settlement Agreement. In the Settlement Agreement, the parties set forth that “[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.” (See “Exhibit A” at Paragraph 5) (emphasis added). Mr. Lawton’s Proof of ADR or Exemption sets forth that there would be a “Voluntary Dismissal to be filed by Atty. Marvel.” (See “Exhibit D”). Finally, Mr. Marvel’s e-mail correspondence with the Court regarding the settlement states that “. . . we will file a stipulation of dismissal once the settlement is consummated.” (See “Exhibit C”). To date, no dismissal complying with

SCRCP 41 has ever been executed or filed with the Court. The lone document attached to the April 20, 2015 Judgment is Mr. Lawton's Proof of ADR or Exemption, which may not properly be used to dismiss a case under Rule 41 of the South Carolina Rules of Civil Procedure. (See "Exhibit E"). As such, this case was improperly dismissed and it should be returned immediately to the active trial docket.

II. Dismissal of this case is contrary to the intent of all interested parties.

Should the Court disagree with Plaintiff's stance as set forth above, Plaintiff would contend that dismissal of this case is improper as it is contrary to the intent of all interested parties. In South Carolina jurisprudence, settlement agreements are viewed as contracts. See Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the Settlement Agreement is clear and unambiguous and expressly sets forth the parties' intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the Settlement Agreement states that "[t]he Parties hereby

authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). It cannot be more clear from this document that the parties did not intend for the case to be dismissed.

As noted above, there are numerous other examples within the record that reaffirm the parties' intent as set out in the Settlement Agreement. Mr. Marvel's e-mail correspondence with the Court and Mr. Lawton's ADR are all clear evidence that the parties intended for the case to be dismissed by an executed stipulation of dismissal if and only if the Defendants paid the Plaintiff \$450,000.00. Mr. Marvel informed the Court that a stipulation of dismissal would be submitted when the settlement was consummated. (See "Exhibit C"). Likewise and as noted in his affidavit, Mr. Lawton did not intend for his Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under SCR 41. (See "Exhibit F" at Paragraph 7). As such, Plaintiff humbly requests that the Court respect the intent of the parties and return this matter to the active docket.

III. Defendants have breached the Settlement Agreement and Plaintiff may rescind the agreement due to non-performance.

As set forth above, Settlement Agreements are viewed as contracts under South Carolina law. (Supra Argument Section II). In situations where a breach of a contract is ". . . so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission ". . . is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract

constitutes a substantial breach of contract. Silver v. Abstract Pools & Spas, Inc., 658 S.E.2d 539, 543 (Ct. App. 2008).

In this case, Plaintiff agreed to settle its multi-million dollar claim for \$450,000.00 based solely upon the promises of the Defendants and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (See "Exhibit B" at Paragraph 6). Absent this promise, Plaintiff would not have executed the Settlement Agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the Settlement Agreement and the Defendants failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but has entirely defeated Plaintiff's purpose for executing the Settlement Agreement. (See "Exhibit B" at Paragraph 6).

The Defendants have yet to pay any money and are clearly in breach of the agreement. Moreover, contrary to his initial assertions to the Court, Mr. Marvel recently indicated that he had no information that any payment would be forthcoming at any time in the near future. As such, it is only equitable and proper for the Court to exercise its authority to vacate the Settlement Agreement and return this case to the active docket, especially in light of the fact that the dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

CONCLUSION

WHEREFORE, Plaintiff requests that the Court reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate, thereby vacating the April 8, 2015 Settlement Agreement and April 20, 2015 Judgment and restoring this action to the active docket.

Respectfully Submitted
GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton-Chisum SCBAR #100571
Brian R. Holmes SCBAR # 102052
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)


Date: July 31, 2015.
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **MOTION TO RECONSIDER** in the above matter were served on the below named parties and/or their respective counsel and/or agents by sending accurate copies via U.S. Mail and/or accurate electronic copies of the same via e-mail.

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29403
Attorney for Defendants

FILED
CLERK OF COURT
SOUTH CAROLINA
JUL 31 2015
CHARLESTON

By: 
Brian R. Holmes
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: July 31, 2015
Charleston, South Carolina

Exhibit A - Settlement Agreement

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT,
INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC.
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU.

Defendants.

IN THE COURT OF COMMON PLEAS


CASE NO.: 2012-CP-18-1227


SETTLEMENT AGREEMENT

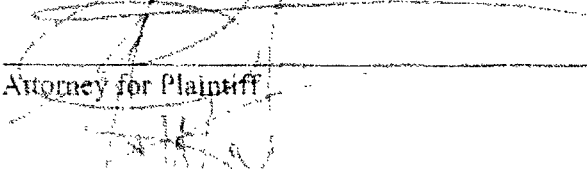
APR 27 2015
COURT OF COMMON PLEAS
DORCHESTER COUNTY
SOUTH CAROLINA

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

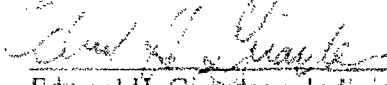
Date: April 8, 2015


Russ Lloyd for Plaintiff


Attorney for Plaintiff


Attorney for Plaintiff

Henry Wuertz, Individually, and on behalf of Crest
Energy Partners Gp, Llc,
Crest Energy Partners, L.P., Dunhill Products L.P.,
Henry Wuertz And Edward H. Girardeau


Edward H. Girardeau, Individually

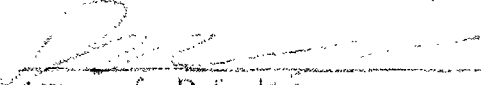

Attorney for Defendant

Exhibit C - Proof of ADR or Exemption

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

PROOF OF ADR OR EXEMPTION

INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff,

vs.

CREST ENERGY PARTNERS GP, LLC,
CREST ENERGY PARTNERS L.P.,
DUNHILL PRODUCTS L.P., HENRY
WUERTZ and EDWARD H. GIRARDEAU,

Defendants.

CASE NO. 2013-CP-18-1897
JUL 18 2013
CLERK OF COURT
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

Plaintiff: Attorney for Plaintiff

Defendant: Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date:

B. 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- Fully Settled.
 - by Consent Judgment, to be file by _____
 - or Voluntary Dismissal to be filed by Atty. Marvel
 - Partially Settled.
 - At an impasse.
 - In need of further ADR I [] and [] am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff was present [] was not present
Defendant was present [] was not present

6. Other parties were:

- X Lawyer for Defendant D. Marvel
- X Lawyer for Plaintiff M. Gruenloh, F. Jekel
- ____ Representative for Insurance Carrier _____
- ____ Guardian *ad Litem* _____
- ____ Experts _____
- ____ Others _____

7. Choice of the neutral was by:

- X Stipulation
- ____ Court Order

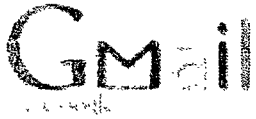
8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: April 10, 2015

Exhibit B - April 14, 2015 David Marvel Email



Wm. Michael Gruenloh <mike@gruenlohlaw.com>

IWM v. Crest et al 2012-CP-08-1227

David B. Marvel <dave@prennermarvel.com>

Tue, Apr 14, 2015 at 11:01 AM

To: "Murphy, Maite Law Clerk (William Crantford)" <mmurphy@sccourts.org>

Cc: "bstevens@dorchestercounty.net" <bstevens@dorchestercounty.net>, Fritz Jekel <fritz@j-dlaw.com>, "Mike Gruenloh (mike@gruenlohlaw.com)" <mike@gruenlohlaw.com>

Hi William, I hope all is well. We just received notice that this case is on the May 4, 2015 roster. Amazingly, we were able to reach a settlement during mediation last Wednesday. I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated. Please let me know if you need anything further from me.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

Exhibit G - Affidavit of Angus Lawton, Esq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) AFFIDAVIT OF
) ANGUS LAWTON, ESQ.

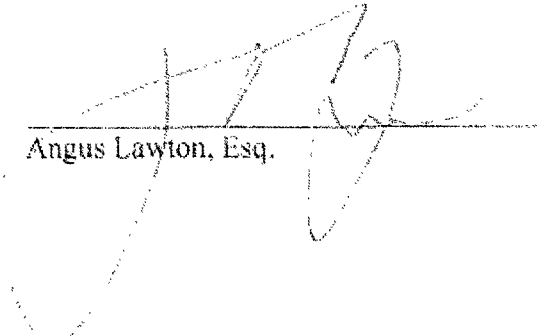
Personally appeared before me, Angus Lawton, Esq. who, being duly sworn deposes and states as follows:

1. My name is Angus Lawton, and I am a member in good standing of the South Carolina Bar. I have been practicing law in South Carolina since November of 1988.
2. I have been a Civil Court mediator certified by the South Carolina Bar since 2005.
3. On April 8, 2015 I conducted the mediation in the matter of: IWM v. Crest Energy Partners, G.P., Henry Wuertz, et al, 2012-CP-18-1227, a case pending in Dorchester County.
4. After the mediation, I submitted a Proof of ADR or Exemption form (hereinafter "ADR form") to the Dorchester County Clerk of Court. A copy of that form is attached to this affidavit as Exhibit A. I submitted this ADR form to the Clerk of Court within ten (10) days of the mediation as required by the mediation rules in Circuit Court in South Carolina.
5. The ADR form indicated that the case was settled, and that Attorney Marvel (counsel for Defendant) would file a Voluntary Dismissal.
6. I recently received a copy of a Form 4 which was signed by a representative of the Dorchester County Clerk of Court. A copy of that Form 4 is attached as Exhibit B. The Form 4 indicates that the Order ends the case, and it states "See attached order; (formal order to follow.)" Attached to the Form 4 is the ADR form that I had previously submitted to the Clerk of Court. It appears that the basis for the Form 4 dismissal is the ADR form that had been submitted to the Clerk of Court.

7. The ADR form that I submitted to the Clerk of Court is not an order, and it was not my intent for the ADR Form to be used as such. As a mediator, I lack the authority to move for a case to be dismissed, and as indicated in the ADR Form, the attorneys are to file a voluntary dismissal for a dismissal to take place.

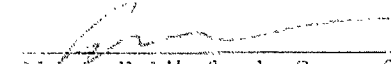
8. I do not know if the attorneys in this case have filed a voluntary dismissal with the Clerk of Court.

Further Affiant say not.



Angus Lawton, Esq.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina
My Commission Expires 9-4-2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF
C. RUSS LLOYD

3/27/15 (1:30pm)

Personally appeared before me, C. Russ Lloyd, who, being duly sworn deposes and states as follows:

C. RUSS LLOYD
DOOR NUMBER 1234567

1. I am Russ Lloyd, the Owner/President of Innovative Waste Management, Inc.
2. Innovative Waste Management, Inc. is the named Plaintiff in IWM v. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Case Number 2012-CP-18-1227, which is currently pending in Dorchester County.
3. I am intimately familiar with the allegations and claims asserted by the Plaintiff in the aforementioned case.
4. On April 8, 2015, I participated as Plaintiff's representative in the court ordered mediation of the aforementioned case. I had sole settlement authority for Plaintiff at this mediation.
5. A settlement was tentatively reached at the mediation that required the Defendants to make a payment of Four Hundred Fifty Thousand Dollars (\$450,000.00) to be paid by no later than May 8, 2015, or thirty (30) days after the conclusion of the mediation.
6. The payment term of thirty (30) days was critical and material to my acceptance of the settlement amount agreed upon by the parties and I accepted a much reduced settlement amount as compared to my total claim based upon Defendants and their counsel's representation that the payment would be made in thirty (30) days.

7. The settlement agreement made dismissal of this action contingent upon the receipt of payment by no later than May 8, 2015, and it was understood that if payment was not made then the case would not be dismissed and would proceed to a jury trial.
8. To date, Plaintiff has yet to receive any payment from Defendants.
9. Due to the Defendants failure to pay as agreed, I never executed a dismissal in this case, nor did I authorize my counsel to execute a dismissal of this case on my behalf.
10. To my knowledge, no dismissal of this case has ever been executed by Plaintiff.
11. I respectfully request for this Court to rescind the settlement agreement and restore this case to the active trial docket.

Further Affiant say not.



C. Russ Lloyd, Owner/President
Innovative Waste Management, Inc.

SWORN to and subscribed before me this
30 day of July, 2015



Notary Public for the State of South Carolina

My Commission Expires ~~My Commission Expires~~ January 23, 2017

RECEIVED

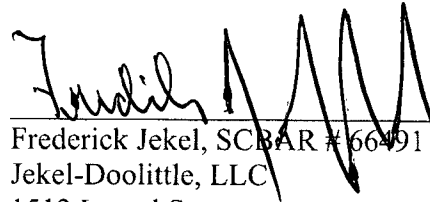
JUN 13 2016

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 13, 2016



Frederick Jekel, SCBAR # 66491
Jekel-Doolittle, LLC
1512 Laurel Street
Columbia, SC 29201
(803) 888-7130
(888) 567-1129 (facsimile)

And

Wm. M. Gruenloh, SCBAR # 12418
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Attorneys for Appellants