

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
RABON & RABON, INC.,)
)
)
Plaintiff,)
vs.)
)
)
KARON MITCHELL AND)
KYLE MITCHELL,)
)
)
Defendants.)
_____)

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

ORDER VACATING
ORDER OF FEBRUARY 8, 2016

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MAY 23 2018

SC Court of Appeals

The Order of this Court from February 8, 2016 is currently on appeal in the South Carolina Court of Appeals. Defendants Karon and Kyle Mitchell moved the Court of Appeals for Leave to File a Rule 60 Motion with this Court which was granted by the Court of Appeals on November 7, 2017. Defendants now move this Court pursuant to Rule 60, SCRPC, to vacate its order of February 8, 2016 on the ground that the Order was procured by extrinsic fraud.

A hearing was held on February 27, 2018 at which time all parties appeared via counsel and presented argument to this Court. No party presented testimony. After a thorough review of the written submissions of the parties, the arguments of counsel, and the applicable law, the motion is GRANTED and I hereby VACATE the Order of February 8, 2016 for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The February 8, 2016 Order at issue confirmed a mediation agreement which settled numerous lawsuits arising from the administration of the Estate of Peggy Jo Hardee Rabon¹ and

¹ The Estate of Peggy Jo Hardee Rabon was opened on September 15, 2014, file number 2014-ES-
1 | Page

the operation of several businesses involving the parties in Myrtle Beach, South Carolina. Plaintiff and Defendants entered into the Mediation Settlement Agreement at issue (“Mediation Agreement”) on October 31, 2015. If the Mediation Agreement had settled only *Rabon & Rabon, Inc. v. Karon Mitchell, et al.*, this Court would have denied Defendant’s Motion to Vacate. However, the Mediation Agreement not only requires dismissal of *Rabon & Rabon, Inc. v. Karon Mitchell, et al.*, but it also requires dismissal of other cases, including “Rabon as Personal Representative-vs-Mitchells (2014-CP-26-5740),” “Mitchells-vs-Jack Rabon,” and “all existing probate cases.” Because Defendants asserted that allegations of fraud by Jack Rabon may have played a part in securing the dismissal of those other actions, the Court grants Defendants’ Motion to Vacate the February 8, 2016 Order.

Rabon & Rabon, Inc. v. Karon Mitchell, et al., deals exclusively with the corporation’s allegations of breach of fiduciary duty, conversion, misappropriation, defrauding motel keeper, accounting, and trespass by Defendants. The parties settled this lawsuit under two possible scenarios. First, Defendants had the opportunity to own the subject properties and MB Boardwalk Entertainment, LLC exclusively, provided they obtained financing that released Jack Rabon and the Estate of Peggy Joe Hardy Rabon from any liability for the debt on the properties. If Defendants failed to obtain financing within thirty (30) days, the alternate plan permitted Jack Rabon to sell the subject properties and MB Boardwalk Entertainment, LLC to a private buyer. When Defendants failed to obtain the necessary financing and releases under the first plan, Plaintiff, through Jack Rabon, proceeded to implement the alternative plan. When that transpired,

26-01933. Defendant Karon Mitchell is an heir and beneficiary of the Estate of Peggy Jo Hardee Rabon [hereinafter the “Estate”]. Defendant Kyle Mitchell is a shareholder of Plaintiff Rabon & Rabon, Inc. Jack Rabon is currently the Personal Representative for the Estate and President and Vice President of Rabon & Rabon, Inc.

Defendants refused to comply with the settlement, arguing that it was obtained by coercion and that Defendants executed it under duress. The Court found Defendants' argument unpersuasive and granted Plaintiff's Motion to Compel Settlement and denied Defendants' Motion for Dismissal of the Mediation Settlement Agreement on the grounds of coercion and mental distress. This ruling resulted in the February 8, 2016 Order now at issue.

The Court reaffirms its finding that the settlement of *Rabon & Rabon, Inc. v. Karon Mitchell, et al.*, was not procured by fraud as now argued by Defendants. Had the Mediation Agreement settled only *Rabon & Rabon, Inc. v. Karon Mitchell, et al.*, this Court would deny the Defendants' Motion to Vacate because Defendants could have obtained exclusive ownership of the properties under the settlement by simply refinancing the debt. The alleged fraud did not occur until Defendants failed to exercise their right to obtain the properties and Plaintiff Jack Rabon sold the properties under the alternative plan contained in the Mediation Agreement. However, based on Defendants' argument and allegations, the Court is persuaded that fraud in concealing the true purchase price and/or value of the properties may have procured the settlement of some or all of the other actions dismissed under the Mediation Settlement Agreement. It is for this reason that the Court vacates the February 8, 2016 Order granting the plaintiff's Motion to Compel Settlement and denying the defendants' Motion for Dismissal of the Mediation Settlement Agreement. The Court's findings contained herein are for purposes of this Order only, and none of the Court's findings in this Order have any preclusive consequences in any other matters pending between the parties.

THEREFORE, this Court's Order of February 8, 2016, is hereby VACATED.

IT IS SO ORDERED.

This ____ Day of March, 2018

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



Horry Common Pleas

Case Caption: Rabon & Rabon Inc VS Karon Mitchell , defendant, et al

Case Number: 2014CP2607862

Type: Order/Vacate Judgment

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP2607862

ELECTRONICALLY FILED--2018 May 17 8:44 AM - HORRY - COMMON PLEAS - CASE#2014CP2607862

Rabon & Rabon Inc		Karon Mitchell	Kyle Mitchell
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk Of Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other: _____
- Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

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SC Court of Appeals

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

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

Defendant's Motion/Alter and/or Amend is WITHDRAWN.
Motion to Be Relieved by plaintiff's attorney is GRANTED by consent.

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2148	5/16/2018
	Judge Code	Date

For Clerk of Court Office Use Only

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

Lane Douglas Jefferies 32 Ann Street Charleston, SC 29403

Tucker S. Player 1415 Broad River Rd. Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter– Teresa Bautz

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

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Horry Common Pleas

Case Caption: Rabon & Rabon Inc VS Karon Mitchell , defendant, et al

Case Number: 2014CP2607862

Type: Order/Form 4

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2018-05-16 16:47:07 page 3 of 3



PLAYER
PLAYER LAW FIRM, LLC

May 22, 2018

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SC Court of Appeals

South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Rabon & Rabon, Inc. v. Karon Mitchell and Kyle Mitchell
Our File No.: CIV-676-01
Case No.: 2014-CP-26-07862

To whom it may concern:

Please be advised that Judge Culbertson granted Appellant's Motion to Vacate on March 19, 2018. Appellant made a motion to correct a scrivener's error in the Order which is scheduled for hearing on May 16, 2018. That motion was withdrawn on May 16, 2018 and Lane Jefferies was relieved as counsel at that time. This appeal is now moot as the Order it appealed has been vacated. I have attached a copy of both relevant orders for your reference. Thank you for your assistance with this matter.

Kind regards,

Tucker S. Player

Enclosure(s) as stated

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[Handwritten signature]

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