

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
K. A. Diehl and Associates, Inc.,)
)
Plaintiff,)
)
vs.)
)
James Perkins, Colleen Franke a/k/a)
Colleen Franke Perkins, Mark Dos)
Santos, Nancy Moore, William Moore)
Steven Dame and Errol Dos Santos,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-05573

**ORDER GRANTING
PLAINTIFF'S MOTION TO
ENFORCE THE SETTLEMENT
AGREEMENT**

RECEIVED

NOV 13 2018

SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT upon the Motion of the Plaintiff, K.A. Diehl and Associates, Inc., to enforce the settlement agreement dated May 1, 2017 in the above captioned action ("Settlement Agreement" attached as **Exhibit A**). The only Defendant that opposes the Motion is Mark dos Santos ("dos Santos").

The Court has reviewed the Settlement Agreement, held a hearing on the Motion, considered dos Santos' opposition to the Motion, and is familiar with the facts, legal issues, and procedural history of this action.

At the hearing, and in his legal memorandum, dos Santos asserted that the Settlement Agreement is unenforceable under SCRCF, Rule 43(k), because he was not present at the mediation and did not read the Settlement Agreement before his attorney signed on his behalf. The Settlement Agreement was signed with dos Santos's name with the statement that it was signed on his behalf with permission. Each of the three attorneys representing dos Santos also signed the Settlement Agreement. No evidence was presented that his permission was lacking or withdrawn. Furthermore, all Parties to this action, with the exception of dos Santos, personally signed the

Settlement Agreement and the corresponding release contemplated by the Settlement Agreement and drafted by dos Santos' attorney ("Release" attached as **Exhibit B**). Furthermore, a significant portion of the settlement terms have been performed.

First, the Court concludes that SCRCP Rule 43(k) is inapplicable to the Settlement Agreement, as the Settlement Agreement did not involve an agreement between counsel. Moreover, even if Rule 43(k) did apply, the Court finds that the Settlement Agreement complies with 43(k) in that all Parties signed the Settlement Agreement (personally or through a designated agent), as did the attorneys for dos Santos.

The Court further finds that the Settlement Agreement is the result of extensive negotiations following a lengthy period of contested litigation between the Parties. The Court finds that all Parties and their counsel attended and participated in the mediation conference resulting in the Settlement (in person or via telephone, by agreement of the Parties), which concluded with all Parties signing the Settlement Agreement (personally or through their designated agents).

Based on these findings, and for good cause shown,

IT IS ORDERED that the Plaintiff's Motion to enforce the Settlement Agreement is **GRANTED**.

IT IS SO ORDERED on this _____ of _____, 2017.

The Honorable William H. Seals, Jr.



Horry Common Pleas

Case Caption: KA Diehl and Associates Inc , plaintiff, et al VS Jim Perkins ,
defendant, et al
Case Number: 2015CP2605573
Type: Order/Approval Of Settlement

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CIRCUIT COURT

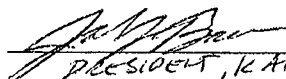
K. A. DIEHL AND ASSOCIATES, INC. V. JAMES PERKINS, ET AL.

Docket No. 2015-CP-26-05573

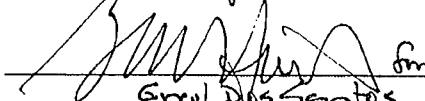
MEDIATED SETTLEMENT AGREEMENT

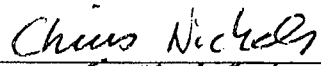
As a result of mediation, the parties have agreed as follows:


1. Defendants' insurers shall pay to Plaintiff the total sum of \$100,000.00 as soon as practicable, but no later than 20 days.
2. Ocean Front Spa ("OFS") shall pay Plaintiff \$5,000.00 for property management services through June 1, 2017 after which its property management services shall cease. OFS shall pay an additional \$10,000.00 to Plaintiff by June 10, 2017.
3. The existing maintenance personnel will be paid by OFS through Plaintiff through May 5, 2017, after which the existing maintenance personnel will no longer provide services to OFS.
4. Plaintiff shall transfer financial records and other documentation and assets to OFS by June 1, 2017, as required by South Carolina law and generally accepted property management standards
5. The parties will execute a mutual release releasing the other and the other's employees, agents, directors, members, officers, attorneys, insurers and related parties (but specifically excluding Allegiant as a "related party") from all claims and damages
6. The parties acknowledge that a more comprehensive mutual release will be executed incorporating the terms of this Agreement. The parties intend for this Agreement to be enforceable by the Court, and if any material term is omitted, the Court shall determine what is reasonable rather than voiding this Agreement.
7. All parties authorize their respective attorneys to execute a dismissal with prejudice.
8. The parties shall equally divide the costs of the mediation seven ways.


PRESIDENT, KADIEHL & ASSOCIATES, INC.

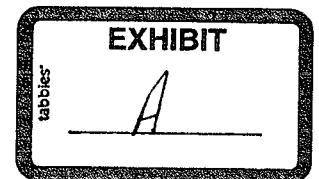

for William Moud (hub)


Errol Das Santos


For Moud Santos


FOR ALL DEFENDANTS / TO Party 715

8
/



Nancy Moore

Callum Franke

Just Perkins

Bernadette Santos

Mark Salton w/pen

Christa Skigman w/pen

William Moore

~~William Moore~~

Jeff Melrod w/pen

May 1, 2017

MA17-126

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pertaining between them which were raised or could have been raised in the Litigation, whether known or unknown or hereinafter discovered.

NOW THEREFORE, in consideration of:

- (a) One Hundred Thousand and 00/100 (\$100,000.00), the amount paid by Defendants' insurers to Plaintiff in settlement of Plaintiff's claims against Defendants in this Litigation;
- (b) Five Thousand and 00/100 (\$5,000.00), the amount paid by Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. ("OFS") to Plaintiff for property management services through June 1, 2017, after which Plaintiff's property management services shall cease;
- (c) Ten Thousand and 00/100 (\$10,000.00), the additional amount paid by OFS to Plaintiff by June 10, 2017;
- (d) Transfer of financial records and other documentation and assets by Plaintiff to OFS by June 15, 2017, as required by South Carolina law and generally accepted property management standards;
- (e) the dismissal, with prejudice, of all claims and counterclaims that were brought or that could have been brought in the Litigation by and between the Parties;
- (f) the mutual covenants and releases set forth below; and
- (g) other good and valuable consideration as set forth herein, the receipt and sufficiency of which the Parties to this Release hereby acknowledge,

The Parties agree as follows:

1. The Parties, and any and all of their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors, for and in consideration of the

covenants and promises set forth above, the receipt and sufficiency of which is hereby acknowledged, hereby remise, release, acquit, hold harmless, and forever discharge one another (including their subsidiaries and affiliates, directors, officers, members, attorneys, successors, and predecessors) and their insurers (including their third party claims administrators), of and from any and all past, present, and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental, special, consequential, statutory, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any kind whatsoever now existing or which may hereafter accrue relating this Litigation, whether known or unknown, discovered or undiscovered, and any losses or damages resulting from, or which may in any way be alleged to have resulted from the work or services provided by the Parties. It is the expressed intent of the Parties to fully, completely, and forever release each other from any and all claims now existing, having anything to do, in any way, with the allegations in this Litigation or any allegations of any losses or damages resulting from services provided by Plaintiff and from Defendants' actions, which resulted in this Litigation.

2. Each of the Parties hereby represents and warrants that they have not assigned or transferred or purported to assign or transfer to any person or entity not a signatory to this Release any claim or matter herein released, disclaimed, discharged, or terminated. In the event of any assignment or transfer of any claims for relief or other matters herein released, discharged, terminated, or disclaimed, the assigning or transferring party agrees to indemnify and hold harmless each other party, as well as any parent, affiliate, or subsidiary, from and against any liability or loss and for any cost or expense, including

attorneys' fees, or judgment or settlement arising out of or occasioned by any such assignment or transfer.

3. Notwithstanding any other provision, the Parties agree and acknowledge that this Release is a compromise of disputed claims and neither the existence of the Release, nor any recitals, terms, conditions, or other statements contained in it, nor the payment of the settlement amount to Plaintiff shall be construed as an admission of liability by or on the part of the Parties for any allegation or claim. The respective Parties do not admit, but instead expressly deny all liability for the claims asserted against them and the Parties enter into this settlement solely to avoid the expense, uncertainties, and risks of further litigation. Consequently, this Release shall not be admissible in the Litigation or in any other action, suit, or legal proceeding as evidence of any liability, culpability, or fault of or on the part of the Parties.
4. The undersigned Parties declare and represent that they have read this Release and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that the instrument contains the entire agreement between the Parties hereto and that the terms of this instrument are contractual and not mere recitals, and further, that if any paragraph or part of this Release is found void or unenforceable, the remainder of this Release shall not be affected.
5. This instrument shall be binding on all the undersigned Parties' successors in interests, heirs, purchasers, and assignees.
6. This Release shall be construed in accordance with the laws of the State of South Carolina.

7. The Parties agree to cooperate so as to effectuate the dismissal of this Litigation and all such claims as may have been alleged in the Litigation amongst or between them, including but not limited to the filing of a stipulation of dismissal with prejudice of the same.
8. This Release represents the entire agreement between the Parties with respect to the subject matters contained herein. Neither this Release nor any provision hereof may be changed, waived, discharged, or terminated orally. This Release may be modified or amended only by a written agreement executed by the Parties.
9. Each signatory acknowledges that he or she is authorized to execute this Release on behalf of the respective party, that the party has fully read this Release, that the party understands all the terms and conditions set forth herein, and that the party is entering into this Release voluntarily and without promise or benefit other than as set forth herein.
10. The Parties represent and declare that in executing this Release they relied solely upon their own judgment, belief, and knowledge, and that they have had ample opportunity to consult with legal counsel of their choice concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other Party or by any person representing any of such other Party.

Additionally, as it relates to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. and K.A. Diehl and Associates, Inc.:

1. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. is not a party to the subject litigation; nevertheless Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. the sum of Five Thousand and 00/100 (\$5,000.00) for property management services through June 1, 2017;
2. Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. agrees to pay to K.A. Diehl and Associates, Inc. an additional sum of Ten Thousand and 00/100 (\$10,000.00) by June 10, 2017;
3. In consideration for the above payments, K.A. Diehl and Associates, Inc. will cease its property management services and maintenance services at Ocean Front Spa on June 1, 2017. Additionally, K.A. Diehl and Associates, Inc. shall transfer all financial records and other documentation and assets in its possession to Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. by June 15, 2017, as required by South Carolina law and generally accepted property management standards.
4. The agreements articulated above in the preceding paragraphs are extent of the agreements between Myrtle Beach Resort, Ocean Front Spa Property Regime, Inc. and K.A. Diehl and Associates, Inc. as it pertains to the instant case.

IN WITNESS WHEREOF, the undersigned have executed this document on the respective dates noted.

YOU ARE MAKING A FINAL SETTLEMENT

READ BEFORE SIGNING

The Undersigned state they have carefully read the foregoing Release, know the contents thereof, accept these terms, agree to abide by them, and sign the same as their own free act.

[Signature Pages to Follow]

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WE HAVE READ THE FOREGOING RELEASE AND THE FOREGOING LIMITED AGREEMENT WITH MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.

WITNESSES:

K.A. DIEHL AND ASSOCIATES, INC.:

Madison A Cragg
John S. Boselli

By: John S. Boselli
Its: PRESIDENT

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared K.A. DIEHL AND ASSOCIATES, INC., By: John S. Boselli, Its: President, who being duly sworn, deposed and said that K.A. DIEHL AND ASSOCIATES, INC. is Plaintiff in the foregoing matter, is a signator to the foregoing matter as it pertains to its limited agreement with MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC., that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument on behalf of K.A. DIEHL AND ASSOCIATES, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
10 day of June, 2017

Madison A Cragg
Notary Public for ~~South Carolina~~ Delaware
My Commission expires: 06/01/2020

MADISON A. CRAGG
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 1, 2020

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Angela C Gonzalez
Jerry Cook

Colleen Franke
COLLEEN FRANKE,
A/K/A COLLEEN FRANKE PERKINS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared COLLEEN FRANKE, A/K/A COLLEEN FRANKE PERKINS, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
23 day of October, 2017

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026

LESLEY MOULAISON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/25/2026

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

MARK DOS SANTOS

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MARK DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Amy D. Neuschaefer
Angel C. Bonzale

Nancy Moore
NANCY MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared NANCY MOORE, who being duly sworn, deposed and said that she is the Defendant and Counterclaimant in the foregoing matter, that she has read the foregoing instrument and is familiar with the contents thereof, that she executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
24th day of October, 2017

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026

LESLEY MOULAISSON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/25/2026

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Amy Z. Neuschaefer
Angela C. Smegalz

William A. Moore
WILLIAM MOORE

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared WILLIAM MOORE, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
24th day of October, 2017

Lesley Moulaison
Notary Public for South Carolina
My Commission expires: 8/25/2026

LESLEY MOULAISSON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 8/25/2026

I HAVE READ THE FOREGOING RELEASE.

WITNESSES:

Julian Kelley
[Signature]

[Signature]
STEVEN DAME

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared STEVEN DAME, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

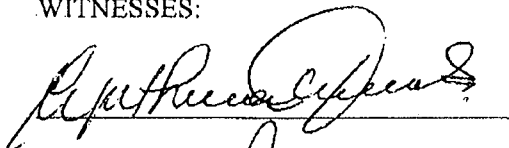
SWORN TO before me this
14th day of June, 2017


Samantha Breda
Notary Public for South Carolina
My Commission expires: 9/16/2026



I HAVE READ THE FOREGOING RELEASE.

WITNESSES:







ERROL DOS SANTOS

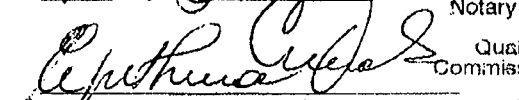
ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared ERROL DOS SANTOS, who being duly sworn, deposed and said that he is the Defendant and Counterclaimant in the foregoing matter, that he has read the foregoing instrument and is familiar with the contents thereof, that he executed the foregoing instrument for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this

11th day of July, 2017

CYNTHIA R. PHILLPOTTS
Notary Public State of New York
No. 01PH6148723
Qualified in Suffolk County
Commission Expires June 28, 2018



Notary Public for South Carolina
My Commission expires: 6/26/2018

WE HAVE READ THE FOREGOING LIMITED AGREEMENT WITH K.A. DIEHL & ASSOCIATES, INC.

WITNESSES: MYRTLE BEACH RESORT,
OCEAN FRONT SPA PROPERTY REGIME, INC.

_____ By: _____

_____ Its: _____

ACKNOWLEDGMENT

BEFORE ME, the undersigned Notary Public, on this day personally appeared MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC.,
By: _____, Its: _____, who being duly sworn, deposed and said that MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC. is a signator to the foregoing matter as it pertains to its limited agreement with K.A. Diehl & Associates, Inc., that (s)he has read the foregoing instrument and is familiar with the contents thereof, that (s)he executed the foregoing instrument on behalf of MYRTLE BEACH RESORT, OCEAN FRONT SPA PROPERTY REGIME, INC. for the purposes and consideration therein expressed, and that the recitations and representations contained in said instrument are true and correct.

SWORN TO before me this
_____ day of _____, 2017

Notary Public for South Carolina
My Commission expires: _____