



The South Carolina Court of Appeals

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March 22, 2019

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: Mildred Ann Kinghorn v. George Sakakini
Lower Court Case No. 2015CP0700597
Appellate Case No. 2016-001278

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Melvin Richardson Hyman, Jr., Esquire
C. Scott Graber, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mildred Ann Kinghorn, as Trustee for the Mildred Ann Kinghorn Trust, dated 28 April 2004, Respondent,

v.

George Sakakini, Appellant.

Appellate Case No. 2016-001278

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5632
Heard November 6, 2018 – Filed March 6, 2019

AFFIRMED

Melvin Richardson Hyman, Jr., of Law Firm of M. Richardson Hyman, Jr., of Charleston, for Appellant.

C. Scott Graber, of Graber Law Firm, of Beaufort, for Respondent.

LOCKEMY, C.J.: George Sakakini appeals the circuit court's order granting Mildred Kinghorn's motion to enforce the parties' settlement agreement. We affirm.

FACTS/PROCEDURAL BACKGROUND

Sakakini and Kinghorn are neighbors in the Pickett Fences subdivision in Beaufort County. Following a dispute over the boundary between their properties, the

parties entered into mediation and reached a settlement agreement on February 5, 2016. The settlement agreement provided (1) Kinghorn would convey a one-foot-wide strip of land to Sakakini and build a fence along the new property line, and (2) Sakakini would extinguish his rights to any easements over Kinghorn's property. The agreement further provided it was "contingent and subject to approval by the governing boards of the Picket Fences POA or Board of Review or any other appropriate authority" that may be required to approve the terms of the settlement.

On February 17, 2016, Sakakini emailed the POA and stated he did not want the POA to approve the settlement agreement. Sakakini noted he had consulted with an attorney who told Sakakini he did not have the legal authority to enter into any agreement that waives or modifies the POA rules without the express consent of the POA. In addition, Sakakini stated he was told he did not have the legal authority to waive or modify any easements without the express consent of the lien holder, Bank of America. Sakakini again emailed the POA on February 23, 2016, asking the POA's lawyers to opine on the legality of the settlement agreement.

On February 22, 2016, Kinghorn filed a motion to enforce the settlement agreement. In his memorandum in opposition to Kinghorn's motion and at the motion hearing, Sakakini argued (1) there was no meeting of the minds on February 5, 2016, (2) Bank of America was a necessary party to the action, and (3) the matter was not ripe for adjudication due to various unresolved contingencies.

On March 18, 2016, the circuit court granted Kinghorn's motion in a Form 4 order. Sakakini subsequently filed a Rule 59(e), SCRCF, motion to reconsider, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

"In South Carolina jurisprudence, settlement agreements are viewed as contracts." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). "An action to construe a contract is an action at law." *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct. App. 2012). "In an action at law, on appeal of a case tried without a jury, the judge's findings will not be disturbed unless they are without evidentiary support." *Id.* "However, this court is free to decide questions of law with no particular deference to the trial court." *Id.*

LAW/ANALYSIS

I. Form 4 order

Sakakini argues the circuit court erred in issuing a Form 4 order which failed to include detailed findings of fact and conclusions of law and violated due process.¹ We disagree.

Pursuant to Rule 52(a), SCRCP,

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

Thus, pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal. Accordingly, we find the circuit court did not err in omitting findings of fact and conclusions of law from its order granting Kinghorn's motion to enforce the settlement agreement.

Sakakini also argues the circuit court's Form 4 order granting Kinghorn's motion to enforce the settlement agreement is vague and violates due process. Sakakini maintains that if the circuit court is compelling his performance, he is entitled to specific instructions as to what performance is expected. We disagree with Sakakini. We find the court did not violate due process by granting the motion to enforce without specific instructions to the parties. The motion sought to enforce the settlement agreement Sakakini signed after mediation. Sakakini never raised any concerns about ambiguity or vagueness in the agreement prior to this appeal.

Sakakini further asserts the Form 4 order is vague regarding attorney's fees and costs. Kinghorn's motion to enforce requested an award of attorney's fees and costs. While the circuit court granted the motion to enforce, it did not mention fees and costs in its order. Furthermore, it does not appear from the record that Kinghorn filed an affidavit outlining the specific fees requested, and there was no

¹ Due process requires that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3.

finding by the court as to the reasonableness of any fees. Accordingly, we find the circuit court did not award fees and costs to Kinghorn.

II. Settlement Agreement

Sakakini argues the circuit court erred in enforcing the settlement agreement because the agreement was not ripe for enforcement. Specifically, Sakakini contends (1) not all of the contingencies had been met in order for the agreement to be enforceable, and (2) Kinghorn failed to meet her burden of proof. We disagree.

"It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court." *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992).

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

Rule 43(k), SCRCP. Rule 43(k) applies to settlement agreements. *Ashfort Corp. v. Palmetto Constr. Grp., Inc.*, 318 S.C. 492, 494, 458 S.E.2d 533, 534 (1995). This rule "is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation" and "to relieve the court of the necessity of determining such disputes." *Id.* at 493-95, 458 S.E.2d at 534-35 (quoting 83 C.J.S. *Stipulations* § 4 (1953)).

We find the circuit court did not err in granting Kinghorn's motion to enforce the settlement agreement. The agreement complies with the requirements of Rule 43(k), SCRCP, because it was in writing and signed by the parties, their counsel, and the mediator; therefore, it was a valid settlement that could be enforced by the circuit court. We note the circuit court order does not remove any of the contingencies which must be met for the settlement to be completed.

CONCLUSION

The circuit court's order granting Kinghorn's motion to enforce the settlement agreement is

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.