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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2016-001010

Nell Barnwell Hay and Edward Barnwell, Respondents,

v.

Chauncey N. Brown-Barnwell, Janice Barnwell, Bank of New York, Trust Under Agreement Date 12/1/01 (EQCC Trust 2001-2) and all Persons claiming any right, title, estate interest in or lien upon the real estate described, and any known heirs or persons being as a class identified as John Doe, whose true names are unknown, and any unborn infants or persons under disability being a class designated as Richard Roe, whose true names are unknown, Defendants,

Of whom Chauncey N. Brown-Barnwell and Janice Barnwell are the Appellants.

RECORD ON APPEAL

Chauncey N. Brown-Barnwell
Janice Barnwell
98 Union Cemetery Rd.
Hilton Head, SC 29926

Drake Hunter Kaiser, Esq.
PO Box 212940
Columbia, SC 29221

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Of whom Chauncey N. Brown-Barnwell and Janice Barnwell are the Appellants.

RECORD ON APPEAL

Chauncey N. Brown-Barnwell
Janice Barnwell
98 Union Cemetery Rd.
Hilton Head, SC 29926

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FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP0702251

Nell Barnwell Hay

Edward Barnwell Jr

Chancey N Brown
 Barnwell
 Bank Of New York
 Richard Roe

Janice Barnwell
 John Doe

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(a), 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.

ORDER INFORMATION

Per ADR Report filed on 12-17-15, case settled. Case dismissed.

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.



2142

12-30-15

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

Drake Hunter Kaiser 1000-D St. Andrews Road Columbia, SC 29210

Chancey N Brown Barnwell 98 Union Cemetery Road Hilton Head, SC 29926
Janice Barnwell 98 Union Cemetery Road Hilton Head, SC 29926

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Marlene Kinard – Judicial Clerk

Court Reporter

Jerri Ann Roseneau – 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.

ZA.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013CP0702251

Nell Barnwell Hay et al.

Chancey N. Brown Barnwell et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. 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
 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

2016 APR 22 PM 1:05
COURT REPORTER
STATE OF SOUTH CAROLINA

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:

Plaintiff's motion to enforce the settlement, heard by this Court on March 30, 2016, is hereby granted.

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.

Circuit Court Judge

SCRPC Form 4C (03/2013)

2142
Judge Code

4-18-16
Date

Page 1

3

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Nell Barnwell Hay and Edward
Barnwell, Jr.)

Plaintiffs,)

v.)

Chauncey N. Brown-Barnwell,)

Janice Barnwell,)

Defendants.)

IN THE COURT OF COMMON PLEAS

File No.: 2013-CP-07-2251

**NOTICE OF MOTION AND
MOTION FOR SPECIFIC PERFORMANCE
AND ENFORCEMENT OF MEDIATION
AGREEMENT**

TO: CHAUNCEY N. BROWN-BARNWELL AND JANICE BARNWELL, DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff, by their undersigned attorney, will move before the Presiding Judge of the Beaufort County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order, pursuant to Rules 43(k) and 70 of the South Carolina Rules of Civil Procedure, based on the facts and circumstance disclosed below.

**MOTION FOR SPECIFIC PERFORMANCE AND
ENFORCEMENT OF MEDIATION AGREEMENT**

NOW comes the Plaintiffs, by and through their undersigned attorney, who would show this honorable Court as follows:

1. Plaintiffs filed Amended Summons and Complaint were filed on September 16, 2013. Defendants Chauncey N. Barnwell ("Chauncey") and Janice Barnwell ("Janice") filed Answer and Counterclaim on November 1, 2013. Plaintiffs filed Reply on December 2, 2013.
2. Parties attempted mediation on September 16, 2014, but Defendants refused to attend.
3. Mediator did not file Proof of ADR or Exemption until January 13, 2015. Said document indicated need for further mediation.
4. Plaintiffs filed Motion to Enforce Mediation on January 14, 2015.

5. The Court issued an Order to Enforce Mediation, filed May 19, 2015.
6. In compliance with said Order, a second mediation session was held August 7, 2015. All parties attended, and the session resulted in a mediated agreement ("Agreement"), which included a provision to reconvene mediation in the event Janice was unable to obtain financing. (See Exhibit A)
7. The mediation agreement reads in pertinent part:

The parties agree that any all prior Quit-Claim Deeds previously executed and filed of public record by and between the within Plaintiffs and the above-named Defendants will be promptly reversed by the proper execution and delivery of all necessary Quit-Claim Deeds by all appropriate parties hereto and by the prompt recording of all such executed Quit-Claim Deeds as required to do so within thirty (30) days dafter the date of their execution of the within Mediation Agreement. (Agreement, Page 3, ¶ 2)

8. The mediator prepared the mediation agreement and circulated to the parties, but Defendants did not execute the agreement until December 9, 2015.
9. Janice was unable to obtain financing, and the third mediation session was held on December 9, 2015. Chauncey did not attend physically, but did call into the mediation. Other parties attended, and executed the mediation agreement from the prior session. Chauncey, over the phone, authorized Janice to sign for on his behalf.
10. Pursuant to the terms of the mediation agreement, "[t]his agreement is modifiable with signatures of all parties upon such...addendum." (Agreement, Page 6)
11. The parties agreed in writing that "[t]his Mediation Agreement shall be supplemented by an Addendum containing additional terms and conditions as agreed upon by all parties hereto at the reconvened Mediation Conference...which Addendum shall be executed by all parties hereto." (Agreement, Page 6)
12. Plaintiff's attorney prepared the Addendum and circulated to all parties, but Defendants have not signed. (See Exhibit B)

13. The Addendum does not modify the requirement of the parties to execute Quit-claim Deeds.
14. Mediator filed Proof of ADR on December 21, 2015, indicating parties had fully settled the dispute.
(Exhibit C)
15. Chauncey has executed and filed two (2) of the three (3) Quit-Claim Deeds in compliance with the Agreement. (Exhibit D)
16. On information and belief, Chauncey has failed to execute the third quit-claim deed in compliance with the Agreement, and has not filed it with the Beaufort County Register of Deeds. (See Exhibit E; hereinafter "Union Cemetery QCD")

SPECIFIC PERFORMANCE

17. An Agreement among parties are binding when reduced to writing and signed by the parties and their counsel. Rule 43(k), SCRCP.
18. Where a binding agreement directs a party to execute a conveyance of land or to deliver deeds, and said party does not comply, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. Rule 70, SCRCP.
19. On information and belief, the Plaintiffs are entitled to an order from this Court requiring Chauncey to execute and/or deliver an original Union Cemetery QCD to Plaintiffs, or to require Chauncey to file an original Union Cemetery QCD with the Beaufort County Register of Deeds.
20. In the alternative, Plaintiffs are informed and believe that they are entitled to an order from this Court authorizing the Beaufort County clerk of court or some other person appointed by the court to execute the Union Cemetery QCD, and when so done to have like effect as if done by the Chauncey.

DAMAGES

21. As a direct result of Chauncey's refusal to sign and/or deliver or file the Union Cemetery QCD, Plaintiffs have incurred legal fees and costs associated with bringing this matter before the court.
22. Plaintiffs request an order of the court requiring Chauncey to pay reasonable legal fees and costs, as well as for the recording of the quit-claim deeds, pursuant to Rule 70, SCRCP.

CONTEMPT

23. The court in proper cases may adjudge a party in contempt for failure to deliver deeds. Rule 70, SCRCP.
24. Plaintiffs request that the court enquire into this matter, and if appropriate adjudge Chauncey in contempt of court for failure to provide the Union Cemetery QCD as contemplated by the Agreement.

RULE 11 CERTIFICATION

25. Plaintiff's attorney has communicated with Chauncey in writing on December 16, 28, and 31, 2015, and January 7, 12, and February 10, 2016 regarding execution and/or receipt of the quit-claim deeds.
26. Pursuant to Rule 11(a), SCRCP, Plaintiffs' attorney affirms that that he has attempted in good faith to resolve the matters necessitating this motion, and that further consultation would serve no useful propose.

[signature on next page]

Respectfully Submitted,

Kaiser Reddick, LLC



By: Drake H. Kaiser
1000-D St. Andrews Road
Columbia, SC 29210
T (803) 394-2107
F (855) 640-6088
drake@krlawsc.com
Attorney for Plaintiffs

Columbia, South Carolina

11 Feb, 2016

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Nell Barnwell Hay and Edward Barnwell, Jr.)
)
 Plaintiff (s),)
)
 vs.)
)
 Chauncey N. Brown-Barnwell, Janice)
 Barnwell)
 Defendants,)
)

IN THE COURT OF COMMON PLEAS
 FOR THE 14TH JUDICIAL CIRCUIT
 CIVIL CASE NO: 2013-CP-07-2251

MEDIATION AGREEMENT

THIS MEDIATION AGREEMENT resulted from the ADR mandated Mediation Conference held and conducted in the above-captioned case by S.C. Certified Mediator, E.W. Bennett, Jr., Esquire, on 8/7/2015 in Walterboro, S.C. and it is hereby made and concluded and entered into on this the 9th day of December, 2015, by and between the within Plaintiffs, Nell Barnwell Hay and Edward Barnwell, Jr., with the aid and assistance of their legal counsel herein, Drake H. Kaiser, Esquire of Kaiser Reddick, LLC in Columbia, S.C., and the Defendants, Chauncey N. Brown-Barnwell, Esquire and Janice Barnwell, who were represented at the outset of such mediation conference on 8/7/2015 by Attorney William Sloan, Esquire, of Summerville, S.C. Attorney D. Thomas Johnson, Esquire, of Hardeeville, S.C. formerly represented the above-named Defendants in this matter but he was relieved as legal counsel herein for such Defendants prior to the mediation conference that was held and conducted in this case on 8/7/2015.

RECITALS

That the Plaintiff filed its Amended Summons and Amended Complaint in this Action on 9/16/2013.

That a timely Answer and Counterclaim was filed on 11/1/2013 by the above-named Defendants, Janice Barnwell and Chauncey N. Barnwell, Esquire, as Pro-Se Defendants, to the Plaintiff's Amended Complaint.

That a timely Reply to Defendants' Counterclaim was filed herein on 12/2/2013 by the Plaintiff.

That a Voluntary Dismissal was filed with the Court herein on 1/8/2014, and thereafter on 5/13/2014 an Order was issued and entered striking the Voluntary Dismissal.

All of the parties hereto by and through their legal counsel herein at the time previously voluntarily agreed to participate in alternative dispute resolution as required and mandated by the S.C. Rules of Civil Procedure with respect to all contested issues in this non-exempt case pursuant to a written Agreement Regarding Mediation Procedures dated 9/16/2014 whereby it was agreed and stipulated by the consent of all such parties hereto and/or their respective legal counsel herein that Everett W. Bennett, Jr., Esquire, a S.C. Certified Mediator from Walterboro, S.C., would act and serve as the Mediator in this case.

As required and mandated by ADR pursuant to the S.C. Rules of Civil Procedure, all of the parties hereto along with their respective legal counsel herein attended and participated in the mediation conference held and conducted by S.C. Certified Mediator, Everett W. Bennett, Jr., Esquire, on Friday, August 7, 2015, at the McLeod Conference Center located at 111-A East Washington Street, Walterboro, SC 29488. All parties were actively involved as participants in the mediation and did not appear to be under duress or the influence of any alcohol or drugs that would make them unable to understand the terms of this written mediation agreement. All of the parties hereto with and upon the aid and assistance and advice of their respective competent legal counsel herein now consider it to be in their respective best interests to fully settle and resolve all of the contested issues present and existing between themselves in the above-captioned matter.

All of the parties hereto with the aid and assistance and advice of their respective legal counsel herein now wish to reduce and render their mediated agreement into a fully binding and enforceable written settlement agreement and all such parties hereto and their respective legal counsel herein now hereby desire that this written mediation agreement shall constitute the total and complete settlement agreement by and between them with respect to all matters relating to this matter. Each party has retained and is represented by legal counsel in connection with the negotiations for and the signing of this agreement. Drake H. Kaiser, Esquire, of Columbia, South Carolina, represents the Plaintiffs, Nell Barnwell Hay and Edward Barnwell, Jr. The Defendants, Chauncey N. Brown-Barnwell, Esquire, and Janice Barnwell are now representing themselves as Pro-Se Defendants in this case at the present time.

NOW THEREFORE, for and in consideration of the mutual and several binding promises, covenants and undertakings herein contained, which each party hereby acknowledge, the parties do hereby freely and voluntarily covenant and agree as follows:

1. The parties herein have agreed to enter into a Contract for Sale to prepared by Attorney Drake Kaiser for the purchase price of \$122,500.00, wherein Nell Barnwell Hay and Edward Barnwell, Jr., as Sellers hereby agree to sell the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 to Janice Barnwell, as the Purchase/Buyer, and the closing must take place within 90 days from the date of this agreement. Loan Financing is contingent and if loan financing is denied then the parties will then reconvene mediation after 90 days. The Purchaser/Buyer will pay all closing cost and the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 will be sold "As Is" with no warranties. The Purchaser/Buyer will receive Deed to 98 Union Cemetery Road, Hilton Head Island, SC 29926 upon Sellers' receipt of the full payment of the agreed upon purchase price. The Purchaser/Buyer, Janice Barnwell, will execute and record a twenty (20) year Right of First Refusal in favor of the Sellers, Nell Barnwell Hay and Edward Barnwell, Jr., if Janice Barnwell ever decides to sell 98 Union Cemetery Road, Hilton Head Island, SC 29926 at the purchase price to be determined by the then current appraisal fair market value.
2. The parties agree that any all prior Quit-Claim Deeds previously executed and filed of public record by and between the within Plaintiffs and the above-named Defendants will be promptly reversed by the proper execution and delivery of all necessary Quit-Claim Deeds by all appropriate parties hereto and by the prompt recording of all such executed Quit-Claim Deeds as required to do so within thirty (30) days after the date of their execution of the within Mediation Agreement.
3. All of the parties hereto hereby agree that no further lawsuits will be filed by them in regard to any of the issues addressed in and by the various pleadings and motions and orders and decrees previously filed in this pending civil case; and all pending eviction actions in Magistrate Court and all pending Motions and Foreclosure Case before the Beaufort County Master In equity will continue and be held in abeyance for 90 days; upon consummation of sale of 98 Union Cemetery Road, Hilton Head

Island, SC 29926 to Janice Barnwell, then at such time, all pending Motions shall be withdrawn and all pending eviction actions will be dismissed.

4. All of the parties agree to continue to maintain the status quo of and continue to hold the Gum Tree Property in three (3) equal shares as tenants-in-common and all of the parties hereto also agree to work diligently and promptly and reasonably in a good-faith attempt to effect a partition-in-kind of the Gum Tree property.
5. All of the parties hereto hereby agree that the within Plaintiffs will promptly dismiss with prejudice the Constructive Fraud Claim and Cause of Action previously filed against the Defendant, Chauncey Barnwell; and that the above-named Defendants will promptly dismiss with prejudice the Breach of Fiduciary Duty Claim and Cause of Action previously filed against the Plaintiff, Edward Barnwell, Jr.
6. All of the parties hereto hereby agree that the above-named Defendants will promptly dismiss all of their Adverse Possession Claims and Causes of Action previously filed against any or all of the above-named Plaintiffs.
7. The Plaintiffs, Nell Barnwell Hay and Edward Barnwell, Jr., and the Defendant, Janice Barnwell, now hereby all agree that they will each continue to jointly own together as tenants-in-common a 1/18th undivided interest each in the Wild Horse Road Property (6.15%) and a 1/24th undivided interest each in and to the Matthews Drive and Pauline Drive Properties and such aforesaid parties hereto also further agree that they will continue to work together in their good-faith and prompt and reasonable and diligent efforts to effect a partition-in-kind settlement of all such aforesaid real property owned together jointly as tenants-in-common.
8. All of the parties hereto hereby agree that the Union Cemetery Road Property contains a total of 3.36 acres per the current Plat and that they each should own a total of 1.12 acres on the Union Cemetery Road and that Janice Barnwell will pay for a Division Survey and Plat to be prepared to accomplish such division with the understanding that Nell Barnwell Hay and General S. Hay will retain their current 1.00 acre Lot and house and will receive additional 0.12 contiguous acres per new

Plat and Janice Barnwell once she pays purchase price of \$122,500.00 for 98 Union Cemetery Road, Hilton Head, SC 29926, she will retain her current 0.49 acre Lot with house and improvements per current Plat and Janice Barnwell will receive an additional 0.63 contiguous acre per new Plat and Edward Barnwell, Jr. will receive a separate Lot in his name only containing 1.12 acres to be Deeded to him; Janice Barnwell will pay for Deed Fees and Recording Fees; also if Janice Barnwell for any reason cannot obtain financing for \$122,500.00 to pay Nell Barnwell Hay and Edward Barnwell, Jr. for house at 98 Union Cemetery Road, Hilton Head, SC 29926, then this part of agreement will be rendered null and void.

9. All parties hereto hereby agree that they will promptly execute an appropriate First Right of Refusal to Purchase for a fixed term of Twenty (20) years on each of the three (3) properties which contain 1.12 acres, more or less, each at current Fair Market Value per a current appraisal by a licensed Real Estate Appraiser as the agreed upon purchase price.
10. All parties hereto hereby agree that the within Plaintiffs will be responsible for the prompt payment of one-half (½) of the Mediation Fees due and owing to E.W. Bennett, Jr., Esquire, as the Mediator herein; and that the above-named Defendants will be responsible for the prompt payment of one-half (½) of the Mediation Fees due and owing to E. W. Bennett, Jr., Esquire, as the Mediator herein.
11. All of the parties hereto hereby agree that each party hereto will be solely liable and responsible for the payment of their own Attorney Fees and Costs incurred in this case without the right of contribution from any other party hereto.
12. All of the parties hereto hereby agree that they will get together every quarter, at least four (4) times a year, to discuss family property and partition-in-kind and etc. and each party hereto hereby solemnly agrees to seek and support the Court's approval of this agreement in any pending or future action or proceedings in any court of competent jurisdiction and to do nothing in derogation of the agreement or in any way attempt to discourage such approval by the Court.

Each party hereby acknowledges and agrees that this settlement addresses all

current issues raised herein.

The parties represent and further agree that he or she fully understands his or her legal rights and obligations and that each has entered into and executed this agreement freely and voluntarily, intending to be bound forever by it and intending that it shall be enforceable by the other party in any Court of competent jurisdiction. This agreement expresses the entire agreement between the parties and supersedes any prior understandings or agreements between them, and there are no representations or warranties other than those specifically set forth herein. This agreement is modifiable with signatures of all parties upon such an addendum.

This Mediation Agreement shall be supplemented by an Addendum containing additional terms and conditions as agreed upon by all parties hereto at the reconvened Mediation Conference held and conducted on 12/9/2015 which Addendum shall be executed by all parties hereto and attached hereto and made part and parcel hereof and incorporated hereunder by reference.

DMMK 12/9/15

6

16

JMB 12/9/15


NBH 12/9/15

SPH 12-9-15

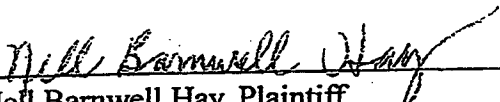
CABB 12/9/15

Dated this 9th day of December, 2015, and signed by all participants.


Signatures on following page



Drake H. Kaiser, Esquire
Attorney for the Plaintiffs
1000-D St. Andrews Road
Columbia, SC 29210
(803) 724-1266 Telephone
(803) 640-6088 Facsimile
E-mail Address: drake@krlawsc.com



Neil Barnwell Hay, Plaintiff



Edward Barnwell, Jr., Plaintiff

Not Required (EWB)

William H. Sloan, Esquire
Attorney for the Defendants
P. O. Box 85
Summerville, SC 29484
(843) 873-7531 Telephone
(843) 873-7527 Facsimile
E-mail Address: whs@sloanlawfirm.net

Chauncey N. Brown-Barnwell by Janice
Chauncey N. Brown-Barnwell, Defendant w/ his consent

Janice Barnwell
Janice Barnwell, Defendant

12/9/2015

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Nell Barnwell Hay and Edward)
 Barnwell, Jr.)
 Plaintiffs,)
)
 v.)
)
 Chauncey N. Brown-Barnwell,)
 Janice Barnwell)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2013-CP-07-2251

**ADDENDUM TO
 MEDIATION AGREEMENT**

THIS ADDENDUM attaches to the Mediation Agreement that resulted from the ADR mandated Mediation Conference held and conducted in the above-captioned case by S.C. Certified Mediator, E.W. Bennett, Jr., Esquire, on August 7, 2015 in Walterboro, South Carolina. On December 9, 2015, pursuant to said Agreement, the parties reconvened the mediation conference with Mediator Bennett in Walterboro, South Carolina. Present were Plaintiffs Nell Barnwell Hay and Edward Barnwell, Jr., along with their legal counsel, Drake H. Kaiser of Kaiser Reddick, LLC, in Columbia, South Carolina. Also present was Defendant Janice Barnwell. During the mediation conference, Defendant Chauncey N. Brown-Barnwell, Esq., contacted Mediator Bennett and the parties by phone, and authorized Defendant Janice Barnwell to act on his behalf. Defendants moved forward *pro se*.

During the mediation conference, all parties agreed to the modification of certain terms and amendment of additional terms to the Mediation Agreement, as set forth herein. Except as expressly modified or supplemented herein, the terms of the Mediation Agreement remain unchanged. The terms, modifications, and supplements to of this Addendum are attached and incorporated into said Mediation Agreement.

NOW THEREFORE, for and in consideration of the mutual and several binding promises, covenants, and undertakings herein contained, which each party hereby acknowledge, the parties do hereby freely and voluntarily covenant and agree as follows:

Modifications to Mediation Agreement

A. Paragraph 1 (page 3) of the Mediation Agreement is hereby modified, supplemented, and changed to:

The parties herein have agreed that Nell Barnwell Hay, Edward Barnwell, Jr., and Janice Barnwell will enter into a Contract for Sale, to be prepared by Attorney Drake Kaiser, for the purchase price of \$122,500.00, wherein Nell Barnwell Hay and Edward Barnwell, Jr., as Sellers, agree to sell the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 to Janice Barnwell, as the Purchaser/Buyer, and the closing must take place on or before April 1, 2016. Janice Barnwell shall pay a \$3,000 down-payment, as set forth in the Addendum to Mediation Agreement. The agreement to sell the real estate shall be contingent on Janice Barnwell's ability to secure Loan Financing. The Purchaser/Buyer will pay all closing costs and the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 will be sold "As Is." The Purchaser/Buyer will received the Deed to 98 Union Cemetery Road, Hilton Head Island, SC 29926 upon Seller's receipt of the full payment of the agreed upon purchase price. The Purchaser/Buyer, Janice Barnwell, will execute and record a twenty (20) year Right of First Refusal in favor of the Sellers, Nell Barnwell Hay and Edward Barnwell, Jr., if Janice Barnwell ever decides to sell 98 Union Cemetery Road, Hilton Head Island, SC 29926 at the purchase price to be determined by the then current appraisal fair market value.

Additional Terms for Mediation Agreement

B. This Addendum to Mediation Agreement shall be executed by all parties, and signatures exchanged electronically, on or before December 31, 2015. Defendants shall also mail the signature page

containing their original signatures to Plaintiff's attorney, Drake H. Kaiser, on or before December 31, 2015. Attorney Kaiser will mail a copy of the completed Mediation Agreement to Defendants as soon as all signatures are collected.

- C. The Quit-claim Deeds referenced in Paragraph 2 (Page 3) of the Mediation Agreement shall be executed by Defendant Chauncey Barnwell, and properly witnessed and notarized, on or before December 31, 2015. Defendant Chauncey Barnwell shall promptly delivery the original documents bearing his witnessed signature to Plaintiff's attorney, Drake H. Kaiser, once executed.
- D. The above-mentioned agreement to sell the real estate shall be executed by all necessary parties, and the signatures exchanged electronically, on or before December 31, 2015. Plaintiffs shall also mail or otherwise deliver the signature page containing their original signatures to Janice Barnwell, on or before December 31, 2015. Janice Barnwell will mail a copy of the completed agreement to sell the real estate to Plaintiff's attorney as soon as all signatures are collected.
- E. Janice Barnwell shall make down-payments on the above-mentioned agreement to sell the real estate in the amount of \$3,000, with \$1,000 due on or before January 1, 2016; \$1,000 due on or before February 1, 2016; and \$1,000 due on or before March 1, 2016. Failure to make said payments by the 15th day of the month in which it is due shall be construed as a breach of the Mediation Agreement. Janice Barnwell shall make said payments directly to Nell Barnwell Hay.
- F. Janice Barnwell shall pay and/or reimburse Plaintiffs Nell Barnwell Hay and Edward Barnwell, Jr., in the amount of \$236.00, for the premium due for the hazard insurance for 98 Union Cemetery Road, Hilton Head Island, SC 29926, for the months of January, February, and March, 2016, said payments being due on or before the first day of the respective months. Failure to make said payments by the

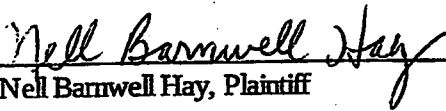
15th day of the respective month shall be construed as a breach of the Mediation Agreement. Janice Barnwell shall make said payments directly to Nell Barnwell Hay.

- G. The dismissals with prejudice referenced in Paragraphs 5 and 6 (Page 4) of the Mediation Agreement shall be executed by the necessary parties on or before December 31, 2015. Defendants shall promptly delivery the original documents bearing their signature to Plaintiff's attorney, Drake H. Kaiser, once executed, who shall then promptly file Defendants' and Plaintiffs' dismissals.
- H. Should Janice Barnwell be unable to obtain loan financing as contemplated in the above-mentioned agreement to sell the real estate, or otherwise be unable to meet the agreed purchase price for 98 Union Cemetery Road, Hilton Head Island, SC 29926, then Janice Barnwell and Chauncey Barnwell agree to voluntarily leave, quit, remove themselves and their belongings, and move out of 98 Union Cemetery Road, Hilton Head Island, SC 29926 on or before April 1, 2016.
- I. Janice Barnwell and/or Chauncey Barnwell agree that, in the event Nell Barnwell Hay and Edward Barnwell, Jr., must incur legal fees and costs, including reasonable attorney fees, to remove, evict, or otherwise enforce the terms of the Mediation Agreement, including the Addendum thereto, then Janice Barnwell and/or Chauncey Barnwell shall pay any and all of said legal fees and costs, including reasonable attorney fees, to Nell Barnwell Hay and Edward Barnwell, Jr., or their Attorney.
- J. Janice Barnwell authorizes Attorney Drake Kaiser to contact the preparer of the Plat she has commissioned to discuss the necessity of a 25 foot easement of ingress/egress onto the property belonging to Nell Barnwell Hay and Edward Barnwell, Jr.
- K. Plaintiffs and Defendants shall pay their respective shares of the Mediation Fees due and owing to E.W. Bennett, Jr., Esq., as the Mediator herein, on or before December 31, 2015, unless other payments are made with Mediator Bennett in writing.

Dated this 31st of December, 2015, and signed by all participants.



Drake H. Kaiser, Esq.
Attorney for Plaintiffs
1000-D St. Andrews Road
Columbia, SC 29210
T (803) 394-2107
F (855) 640-6088
E drake@krlawsc.com



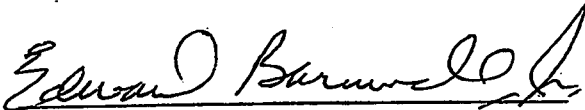
Nell Barnwell Hay, Plaintiff

Edward Barnwell, Jr., Plaintiff

Dated this 31st of December, 2015, and signed by all participants.

Drake H. Kaiser, Esq.
Attorney for Plaintiffs
1000-D St. Andrews Road
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Nell Barnwell Hay, Plaintiff



Edward Barnwell, Jr., Plaintiff

Addendum to Mediated Agreement
Hay v. Barnwell
Case No. 2013-CP-07-2251

Chauncey N. Brown-Barnwell, Defendant

Janice Barnwell, Defendant

EXHIBIT C

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIALCIRCUIT

COUNTY OF BEAUFORT

)
) Case No.: 2013-CP-07-2251

Nell Barnwell Hay and Edward
Barnwell, Jr.

)
) RESPONSE TO PLAINTIFFS
) MOTION FOR SPECIFIC
) PERFORMANCE AND
) ENFORCEMENT OF MEDIATION
) AGREEMENT

Plaintiffs,

v.

Chauncey N. Brown-Barnwell,
Janice Barnwell,

)
)
)
)
)
)

Defendants.

TO: DRAKE H. KAISER

**MOTION IN OPPOSITION OF SPECIFIC PERFORMANCE AND
ENFORCEMENT OF MEDIATION AGREEMENT**

NOW COMES, Chauncey N. Barnwell and Janice Barnwell, and respectfully requests that this Court deny Plaintiffs Motion for Specific Performance and Enforcement of Mediation Agreement and shows the Court the following.

1. All parties to this action meet for Mediation on August 7, 2015.
2. The parties agreed to a sales price on the property identified as 98 Union Cemetery Rd., Hilton Head, SC 29926.
3. The parties agreed that Chauncey Barnwell would re-convey property back to Nell Barnwell Hay in order to effectuate a proper subdivision of the properties identified as Gum Tree Road and Wild Horse Road.
4. Further, the parties agreed upon Chauncey Barnwell re-conveying Gum Tree Road and Wild Horse Road to Nell Barnwell Hay, she would in turn dismiss her allegations of Fraud delineated in Plaintiffs complaint.

5. The parties agreed that Janice and Chauncey Barnwell would pay to have 98 Union Cemetery Road surveyed.
6. The parties **did not** agree that Chauncey Barnwell would re-convey his interest in 98 Union Cemetery Rd. to Janice Barnwell as the Plaintiffs would lead this Court to believe.
7. Also, Chauncey Barnwell **did not** express any interest in dismissing his claims of Adverse Possession and Breach of Fiduciary Duties until Gum Tree Road was properly subdivided.
8. Chauncey Barnwell was unable to attend the December 9, 2015 mediation since no other attorney in his practice was able to cover a Jury Trial set in the State Court of Chatham County on the same date.
9. Chauncey Barnwell gave Janice Barnwell express permission to sign his name at the December 9, 2015 mediation for the sole purpose of memorializing the sales price for the property known as 98 Union Cemetery Rd. and to reduce his promise in writing in regards to re-convey Wild Horse Road and Gum Tree Road back to Nell Barnwell Hay for her promise to dismiss her Fraud claim and nothing else.
10. Chauncey Barnwell expresses to this Court that any other stipulation purported by the Plaintiffs is false.

SPECIFIC PERFORMANCE

11. Defendants request for specific performance should be denied based upon SC Code § 32-3-10.

DAMAGES

12. Plaintiffs request for attorneys fees should be denied whereas the very same Mediation agreement that Plaintiff seeks this Court to enforce explicitly states in Recital 11 that "all of the parties hereto hereby agree that each party hereto will be solely liable and responsible for the payment of their own Attorney Fees and Costs incurred in this case without the right of contribution from any other party hereto.

CONTEMPT

13. Chauncey Barnwell requests that Plaintiffs request for Contempt be denied whereas this Court has not entered a judgment nor order directing any party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act. SCRPC Rule 70

Respectfully submitted,

This 17th day of March, 2016.

s/Janice M. Barnwell
Janice M. Barnwell

s/Chauncey N. Barnwell
Chauncey N. Barnwell

98 Union Cemetery Rd.
Hilton Head Island, SC 29926
T: (800) 834-1898
F: (866) 468-9898
cnbarnwell@gmail.com

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIALCIRCUIT

COUNTY OF BEAUFORT

)

Nell Barnwell Hay and Edward
Barnwell, Jr.

) Case No.: 2013-CP-07-2251

)

Plaintiffs,

) RESPONSE TO PLAINTIFFS
) MOTION FOR SPECIFIC
) PERFORMANCE AND
) ENFORCEMENT OF MEDIATION
) AGREEMENT

v.

)

Chauncey N. Brown-Barnwell,
Janice Barnwell,

)

)

)

Defendants.

)

CERTIFICATE OF SERVICE

Janice and Chauncey Barnwell, hereby certify that they have faxed and emailed
opposing counsel with their Motion in Opposition of Specific Performance and
Enforcement of Mediation Agreement:

Drake Kaiser
Fax: (855) 640-6088
Email: drake@krlawsc.com

This 17th day of March, 2016.

s/Janice M. Barnwell
Janice M. Barnwell

s/Chauncey N. Barnwell
Chauncey N. Barnwell

98 Union Cemetery Rd.
Hilton Head Island, SC 29926
T: (800) 834-1898
F: (866) 468-9898
cnbarnwell@gmail.com

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2013-CP-07-02251

NELL BARNWELL HAY, ET AL

PLAINTIFFS

VERSUS

ORIGINAL

MARCH 30, 2016

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

CHAUNCEY N. BROWN-BARNWELL, ET AL

DEFENDANTS

B E F O R E:

CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-CM
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFFS
NELL BARNWELL HAY, ET AL:

HON. DRAKE H. KAISER
KAISER REDDICK, LLC
1000-D STREET
ANDREWS ROAD
POST OFFICE BOX 212940
COLUMBIA, SOUTH CAROLINA 29210-2940
803-724-1266
drakekrlawsc.com

ON BEHALF OF DEFENDANTS
CHAUNCEY N. BROWN-BARNWELL, ET AL:

HON. CHAUNCEY N. BARNWELL
BROWN BARNWELL, P.C.
98 UNION CEMETERY ROAD
HILTON HEAD ISLAND, SOUTH CAROLINA 29926
800-834-1898
brownbarnwelllaw@gmail.com

MS. JANICE BARNWELL WAS PRESENT.

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 12:44 P.M.

2 BY THE COURT:

3 THE COURT: All right. We're back again on Nell
4 Barnwell Hay, plaintiff, versus Chauncey H. Barnwell.
5 Okay.

6 MR. KAISER: Thank you, your Honor.

7 THE COURT: Yes.

8 MR. KAISER: This is our motion to enforce a
9 provision of an agreement that was reached at settlement
10 in August of 2015. I have briefed the Court on the
11 background of the case. Just to summarize, this case is
12 a child of a very long foreclosure action that began in
13 2005, and only resolved in finality of August 2015.

14 In January of 2013, Defendant Chauncey Brown, who
15 is an attorney, although not licensed in the State of
16 South Carolina, induced my client, his aunt, and his
17 mother to file certain documents styled quitclaim deeds
18 within the Beaufort County records. We maintain that
19 these quitclaim deeds were invalid because they did not
20 comply with South Carolina statutory law. For instance,
21 they were completely lacking in legal descriptions.

22 When they refused to withdraw the quitclaim deeds,
23 we brought this action to remove the quitclaim deeds to
24 remove the title. We tried to first mediate the case
25 pursuant to the orders in September of 2014. The

1 defendants refused to come. The mediator filed the
2 report in January of 2015. I filed a motion to compel,
3 which was heard before your Honor on March 15, 2015. We
4 finally mediated in August of 2015, and we produced a
5 settlement agreement that the defendant subsequently
6 refused to sign.

7 Part of our agreement was, if certain conditions
8 were not met, we would agree to re-meet to reconvene the
9 mediation one more time to see if there was anything we
10 could do to work it out. We reconvened in December. At
11 that time, although Ms. Janice Barnwell appeared, Mr.
12 Barnwell did not appear, although he did call in to the
13 mediation and authorized his mother to sign his name on
14 the prior agreement as provided.

15 The prior agreement specified that the four
16 quitclaim deeds would be reversed, removed. One was
17 from my client, which was done. Three were from Mr.
18 Barnwell. Mr. Barnwell complied with two of them, but
19 he has declined to bring the next -- to file the last of
20 the quitclaim deeds for me to resolve the title issues.

21 The mediated agreement is found attached to the
22 motion.

23 THE COURT: I see that.

24 MR. KAISER: This Court has jurisdiction over
25 enforcing a mediation agreement, Rule 43(k). And

1 because it involves the covenant of title, Rule 70 also
2 applies, where the Court can compel the transfer of
3 title, or, in the alternative, where the Court can sign
4 on his behalf.

5 I would point out further that, in the prior
6 hearing from March 15, 2015, Mr. Barnwell himself
7 stipulated on record at the time they had no problems
8 withdrawing these quitclaim deeds, and yet, we are now
9 three/fourths of the way there. We want to go through
10 the last one.

11 THE COURT: Okay. What's the problem with the
12 third one?

13 MR. BARNWELL: Your Honor, respectfully, I disagree
14 with his assertions as of today. Looking at the
15 agreement that was dictated and expressed by counsel
16 previously, those are not the terms that we agreed to at
17 the mediation session. So, that's the reason that I --

18 THE COURT: I guess I need to look at the mediation
19 agreement. Is this in the addendum, or is it in the
20 first mediation agreement?

21 MR. KAISER: The first mediation agreement, the one
22 that was signed by all parties.

23 MR. BARNWELL: Well, I would refute that assertion,
24 as well, your Honor, because --

25 THE COURT: Okay. Well, let me read it.

1 MR. BARNWELL: Yes, ma'am. Absolutely.

2 THE COURT IS READING.

3 THE COURT: Okay. Well, I'm reading Paragraph 2,
4 your original mediation agreement, and tell me where
5 there wasn't compliance with certain portions of this
6 that made it not be put into effect. I mean, this
7 paragraph says that all parties agree that all prior
8 quitclaim deeds previously executed and filed of public
9 record between the within plaintiffs and the above-named
10 defendants will be promptly reversed.

11 MR. BARNWELL: Can I respond, your Honor.

12 THE COURT: I'm asking you. Yes.

13 MR. BARNWELL: Oh, yes. So, what happened was, we
14 met on August the 7th. That was the first -- when you
15 ordered us to go, that was the initial time where we
16 met. We mediated for about ten hours, but for some
17 reason, the language was so convoluted, what Mr. -- he
18 actually just wrote out the agreement. So, that's why
19 we agreed to reconvene.

20 THE COURT: Okay.

21 MR. BARNWELL: So, after -- when we reconvened in
22 December, or December 9, I had a trial, and I told them
23 that beforehand that, you know, can we set this for
24 another date; you know, my client's out of town; and
25 this was first docket; there's no continuance on this

1 particular matter. So, they said, you know, -- I called
2 in. I told my mother that she's able to sign for me on
3 three certain things, because we agreed with the price
4 of the sale of the property, --

5 THE COURT: The problem I have with this is, is
6 that I'm looking at what was put down in the agreement
7 that you mother stated, which is Exhibit B. It said:

8 *During the mediation conference,*
9 *Defendant Chauncey N. Brown-Barnwell,*
10 *Esquire, contacted Mediator Bennett and*
11 *the parties by phone, and authorized Defendant*
12 *Janice Barnwell to act on his behalf.*

13 That doesn't say on three issues; it doesn't say on
14 anything specific; it says that, according to your
15 mediator, she could act on your behalf. It didn't give
16 any limitations. So, what do I do with that? I mean,
17 that's what the mediator, who is, you know, again, a
18 neutral, that's what he's telling me.

19 MR. BARNWELL: Yes, ma'am. I completely
20 understand, but as I stand here today, that wasn't my
21 intend, giving her full authorization to sign for any
22 and everything that was purported to have been put forth
23 at the particular mediation. I gave her authority to
24 sign for the amount of the sale that we would go ahead
25 and pay for the survey, and that I would forward back my

1 interest to which, you know, my aunt is saying I
2 defrauded her on. That was what we agreed to at the
3 mediation. And that's what I was giving her authority
4 to sign for.

5 THE COURT: I got to tell you what the problem I
6 have with all this is. All parties are required to be
7 at mediation.

8 MR. BARNWELL: Yes, ma'am.

9 THE COURT: And the only reason why that mediation
10 went forward was because you gave her full authority to
11 settle on your behalf. I can tell you, that's where the
12 problem lies. You shouldn't have been allowed not to be
13 at the mediation. I understand you're saying you had a
14 trial or something else going on, --

15 MR. BARNWELL: Yes, ma'am.

16 THE COURT: -- and that should have been brought --
17 if that was an issue and a problem, you should have come
18 to the Court and said, listen, I've got a conflict in
19 another court in another state or whatever you had.

20 MR. BARNWELL: Yes, ma'am.

21 THE COURT: So, again, I mean, I wouldn't have
22 excused you from the mediation if you were going to be
23 bound by it. So, all I can do is go on what the
24 mediator is saying, and he's saying that you gave her
25 authority, which is the only reason why I'm going to

1 presume Mr. Bennett went forward on the case.

2 MR. BARNWELL: Yes, ma'am.

3 THE COURT: But. Okay.

4 MR. BARNWELL: Well, I would just argue that,
5 looking at the case law that was cited, *Young and*
6 *Cooler*. It appears that, you know, if someone's
7 disputing this particular agreement; it wasn't in open
8 court; there's no written stipulation that was entered
9 into the record; and there was no consent order that was
10 signed by me. I don't really -- I think that gives you
11 a situation where you can rule that this mediation
12 agreement's unenforceable and put it down on the trial
13 roster. And that's what were seeking here today, your
14 Honor.

15 THE COURT: Do you want to respond, Mr. Kaiser?

16 MR. KAISER: Your Honor, Mr. Barnwell was copied on
17 all correspondence. He had ample opportunity to seek
18 modification of the orders prior to their signature.
19 Certainly, the addendum was circulated to them. He just
20 decided to ignore it.

21 Also, your Honor, he did comply. We see from his
22 pattern of behavior that he has released the interest in
23 two of the three pieces of property back to where it
24 should be. We assume that is because he's complying
25 with his own agreement and his own representation to the

1 Court that he has no problem with restoring the title to
2 the land back where it needs to go. But now, three, you
3 know, four months later he's saying, well, I didn't
4 really mean that. I don't believe that dragging us into
5 court to say that was at all appropriate. And if he has
6 grievances, he has other remedies with the Court rather
7 than ignoring a settlement agreement.

8 MR. BARNWELL: Well, I would disagree, because I'm
9 not the one that filed the motion. I told Mr. Kaiser
10 before that that's not what I agreed to. It's clear
11 that this addendum that was required to being signed,
12 that was the finalization on the agreement. So, it's
13 almost as if the mediation --

14 THE COURT: It's got your signature on it.

15 MR. BARNWELL: No.

16 THE COURT: You're saying it's not your signature.
17 Again, again, mediator's telling me that you authorized,
18 by phone, your co-defendant to sign for you, which we're
19 all lawyers, you know we can do that. You all are some
20 relation, obviously. Your mother? Your?

21 MR. BARNWELL: Sister. My mom. Yeah, that's my
22 mom. But honestly, your Honor, --

23 MR. KAISER: This is a family.

24 THE COURT: Clearly, with all the names, that's
25 obvious.

1 MR. BARNWELL: Right.

2 THE COURT: Okay.

3 MR. BARNWELL: But all we're asking, your Honor, is
4 that there's case law that gives you authority to say
5 that this is unenforceable, and even the cases say that.
6 We don't need to come into court and argue over
7 controversies like this. If one party doesn't agree to
8 the agreement, we'll rescind it and the next option is
9 putting it on the trial roster. And that's what you
10 essentially said. You were surprised that, after three
11 years, that why is this not on the trial roster. And
12 that's what we're asking the courts.

13 We're going to hire -- I'm not going to be a
14 witness and a lawyer in this particular case, but we're
15 looking to hire counsel and then, try the issues that
16 are presented because of civil liberties and civil
17 justice that we're looking to seek, your Honor. So, it
18 will put us almost in a miscarriage of justice if you
19 were going to enforce this agreement where property's
20 involved, and I'm alleging that I did not sign. And I
21 will stand before the Court, an officer in another
22 court, and stand here and say that I did not intend for
23 that agreement to be signed on my behalf.

24 THE COURT: The problem I have with that is, Mr.
25 Bennett is a frequent lawyer that appears in my court.

1 he serves on so many cases for orders of reference. I
2 send him dozens of cases. I don't doubt in my mind that
3 you said that.

4 What's the problem now? I mean, at the point where
5 you all were ready to do this and it was all over with,
6 I mean, is it just you've changed your mind and this is
7 our defense, or?

8 MR. BARNWELL: No. That's just not what we agreed
9 to. I'm not going to stand before you and say something
10 that's not true. So, I'm --

11 THE COURT: Did you sit through the entire
12 mediation and listen to it by phone? Or did you just
13 call in, give the authority, and go do your work?

14 MR. BARNWELL: That -- I was in the middle of a
15 trial. I said, Mom, you have the authority to sign on
16 the -- on the price that we completed a survey and that
17 I'll forward my claim -- my property back to my Aunt
18 Nell, because, you know, that's -- the point of this was
19 that I was never intending to take anything from
20 anybody. There's plenty of property here. We just
21 wanted to make sure that everybody got their particular
22 portion that was -- that was given to them from my
23 grandmother.

24 So, the allegations in our complaint is that my
25 uncle dropped the ball. He was put in as the executor.

1 Twenty years later that the property's still not
2 properly subdivided. That's -- that's what we're here
3 for, your Honor. Not to argue and belabor the Court's
4 time.

5 THE COURT: The question is, you guys can't agree,
6 and this case is a 2013 case. You still can't agree.

7 MR. BARNWELL: And that's why we have to put twelve
8 people in the jury box and let them decide.

9 THE COURT: Mr. Kaiser.

10 MR. KAISER: Just to clarify, --

11 MS. JANICE BARNWELL: Your Honor, may I speak?

12 THE COURT: No, ma'am, not yet.

13 MR. KAISER: -- there is -- he did counterclaim
14 originally for breach of fiduciary duty against my
15 client, Mr. Edward Barnwell, who was the personal
16 representative of his mother's estate. He transferred
17 the property according to the provisions of the will.
18 The estate has been -- the estate has been closed for
19 well over ten years. This isn't a triable issue, and I
20 noted that in my reply.

21 THE COURT: All right. Well, let me do this. Let
22 me go through and look at it. And I will let you all
23 know something. And I'll either do a Form 4, or I'll
24 ask someone for a proposed order.

25 Yes, ma'am. What did you want to say?

1 MS. JANICE BARNWELL: Thank you, your Honor. I
2 would just like to say that several attempts have been
3 made to resolve this issue among ourselves. And I
4 reached out to my oldest sibling, Edward Barnwell, who
5 was named as administrator. My mother's will, twenty
6 years ago, she's was deceased in 1996. It was for my
7 brother, too.

8 We have about, I would say, eleven to twelve acres.
9 Was to subdivide the property among three children,
10 which was, even you would think, simple arithmetic.
11 That was never done. I never tried to really force it
12 or pursue it, because I was busy being a single mom and
13 educating myself and working. And twenty years later,
14 of course, the probate has been closed. And the
15 property still has not been subdivided. And this is how
16 anything just started.

17 I have been asking and requesting that we subdivide
18 the property. I was already in the house. And the
19 answer was always no, but at the time, I didn't think it
20 would have escalated to this point, then, you know, the
21 Court would have to be involved.

22 THE COURT: Do you all even speak?

23 MS. JANICE BARNWELL: I try -- I made attempt.
24 Professionally, I'm a licensed, professional counselor.
25 I help other people solve problems. I'm helpless

1 because we have a lot of problem, a lot of underlying
2 family situations and issues, and it's about power and
3 control. I reached out -- I have an email. I sent an
4 email, well, that's my sister, because we live -- we're
5 a stone's throw away. And we had a wonderful
6 relationship. And this has just created such a
7 dissension among our families. It's affecting our
8 children, from a close-knit family to a family now that
9 -- we don't even communicate. We don't even speak.

10 I reached out to my siblings. I'm the youngest of
11 three. My brother says that he can't discuss it. You
12 know, if we -- we have an interest. This is family
13 property we inherited, you know, and to deny me my
14 right, my birthright in what I inherited, it's too --
15 and three things, I can't do anything without their
16 signature and consent.

17 It was a hardship for me raising Chauncey as a
18 single parent, when I had resources I inherited. In
19 spite of the struggles, he still managed to be a
20 productive citizen and became an attorney. And I just
21 wish that I had the knowledge now that I had then, and I
22 would have forced subdivision of property. And I was --
23 I was deceived into subdividing, because I did, in 1998
24 or 2000, I applied for a loan and used the house as
25 mortgage. I asked several times, can we subdivide the

1 property; I'm in the house; I need a home equity loan; I
2 need to have this funds to help me. My income was 35,
3 40 thousand, and that's not a lot of money to be a
4 single parent to take care of expenses. The answer
5 always was no. My brother refused to subdivide the
6 property, so it's always been immediately two against
7 one. And I just feel that it's unfortunate, but the
8 people that's still in three of our names, it should be
9 subdivided. And if they really just want the house, I'm
10 willing -- I don't want to fight anymore. They can have
11 the house, but I just need to have the property that I
12 inherited. And I can make arrangements to re-establish
13 and build a home. Thank you very much.

14 MR. KAISER: Your Honor, under Rule 70, you are
15 allowed to consider damages. I have here a
16 certification of my fees for today. If I have
17 permission to approach.

18 THE COURT: You may.

19 MR. BARNWELL: Your Honor, I would just require
20 that -- there's been no order of judgment --

21 THE COURT: He's just doing it if in case, and I,
22 you know, if I intend to, but. You can go look at my
23 history. I mean, rarely do I ever do that, and
24 particularly, this is just a sad -- just as an off
25 comment on this. I don't understand how families get to

1 this point, because I have three siblings, and I can't
2 ever imagine anything that they could ever do that would
3 make me be estranged from them. But quite frankly, this
4 is not uncommon. And apparently, when people have money
5 and property, and they are fighting over it, I can't
6 imagine. I can't imagine, not speaking to one of my
7 siblings what is twelve acres that -- who knows, I guess
8 it could be multi-million-dollar property, but I'm
9 taking a wild guess it's not, considering you all are
10 living on it and you're stones' throws from each other.

11 So, anyway, with that said, I'm going to take this
12 under advisement. Let me look at it, and I will let you
13 know. And I'll just make a ruling from there. Okay.

14 MR. BARNWELL: Thank you, Judge. May we be
15 excused.

16 THE COURT: You may.

17 MR. BARNWELL: Thank you.

18 MR. KAISER: Thank you, your Honor.

END PROCEEDING 1:04 P.M.

CERTIFICATE OF REPORTER

MARCH 30, 2016 TRANSCRIPT OF HEARING


STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing March 30, 2016 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Nell Barnwell Hay, et al, versus Chauncey N. Brown-Barnwell, et al, Beaufort County, Court of Common Pleas, Case Number 2013-CP-07-02251; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINS MY ORIGINAL SIGNATURE AND IS ATTACHED TO THE ORIGINAL OF THIS TRANSCRIPT REQUESTED BY HON. CHAUNCEY N. BARNWELL. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING/EMAILING IS PROHIBITED.

Witness my signature June 5, 2016.


Wanda H. Rowe, C.R.-CM
Official Court Reporter

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<p>0</p> <p>02251- 19:12</p> <hr/> <p>1</p> <p>1000D- 2:12 12:44- 4:1 14TH- 1:3 15- 5:3 6:6 1996- 15:6 1998- 16:23 1:04- 18:19</p> <hr/> <p>2</p> <p>2- 7:3 2000- 16:24 2005- 4:13 2013- 4:14 14:6 2013CP07- 19:11 2013CP0702251- 1:6 2014- 4:25 2015- 4:10,13 5:2,3,4 6:6 2016- 1:20 19:2,7,20 212940- 2:14 292102940- 2:15 29926- 2:27</p> <hr/> <p>3</p> <p>30- 1:20 19:2,7 35- 17:2</p> <hr/> <p>4</p> <p>4- 14:23 40- 17:3 43K- 5:25</p> <hr/> <p>5</p> <p>5- 19:20</p> <hr/> <p>6</p> <p>607- 19:17</p> <hr/> <p>7</p> <p>70- 6:1 17:14 7TH- 7:14</p> <hr/> <p>8</p> <p>8008341898- 2:28 8037241266- 2:16</p> <hr/> <p>9</p> <p>9- 7:22 98- 2:26</p>	<p>A</p> <p>ABLE- 8:2 ABOVENAMED- 7:9 ACCORDING- 8:14 14:17 ACCURATE- 19:8 ACRES- 15:8 18:7 ACT- 8:12,15 ACTION- 4:12,23 ADDENDUM- 6:19 10:19 11:11 ADMINISTRATOR- 15:5 ADMITTED- 3:30 19:12 ADVISEMENT- 18:12 AFFECTING- 16:7 AGAINST- 14:14 17:6 AGREE- 5:8 7:7 12:7 14:5,6 AGREED- 6:16 7:19 8:3 9:2 11:10 13:8 AGREEMENT- 4:9 5:5,7,14,15,21,25 6:15,19,20,21 7:4,18 8:6 10:7,25 11:7,12 12:8,19,23 AGREEMENT'S- 10:12 AHEAD- 8:24 AL- 1:11,29 2:8,22 19:10 ALLEGATIONS- 13:24 ALLEGING- 12:20 ALLOWED- 9:12 17:15 ALTERNATIVE- 6:3 AMONG- 15:3,9 16:7 AMOUNT- 8:24 AMPLE- 10:17 ANDREWS- 2:13 ANYMORE- 17:10 ANYWAY- 18:11 APPARENTLY- 18:4 APPEAR- 5:12 APPEARANCES- 2:3 APPEARANCES2- 3:10 APPEARED- 5:11 APPEARS- 10:6</p>	<p>12:25 APPLIED- 16:24 APPLIES- 6:2 APPROACH- 17:17 APPROPRIATE- 11:5 ARGUE- 10:4 12:6 14:3 ARITHMETIC- 15:10 ARRANGEMENTS- 17:12 ASSERTION- 6:23 ASSERTIONS- 6:14 ATTACHED- 5:21 19:15 ATTACHMENTS- 3:18 ATTEMPT- 15:23 ATTEMPTS- 15:2 ATTORNEY- 4:15 16:20 AUGUST- 4:10,13 5:4 7:14 AUNT- 4:16 9:1 13:17 AUTHORITY- 8:23 9:3,10,25 12:4 13:13,15 AUTHORIZATION- 8:21 AUTHORIZED- 5:13 8:11 11:17</p> <hr/> <p>B</p> <p>BACK- 4:3 8:25 10:23 11:2 13:17 BACKGROUND- 4:11 BALL- 13:25 BARNWELL- 1:11 2:8,24,25,31 4:4 5:11,12,18 6:6,13,23 7:1,11,13,21 8:12,19 9:8,15,20 10:2,4,16 11:8,15,21 12:1,3 13:8,14 14:7,11,15 15:1,4,23 17:19 18:14,17 19:9,16 BEAUFORT- 1:4,24 4:18 19:4,10 BECAME- 16:20 BEFOREHAND- 7:23 BEGAN- 4:12 BEHAVIOR- 10:22 BELABOR- 14:3 BENNETT- 8:10</p>	<p>10:1 12:25 BIRTHRIGHT- 16:14 BOUND- 9:23 BOX- 2:14 14:8 BREACH- 14:14 BRIEFED- 4:10 BROTHER- 15:7 16:11 17:5 BROUGHT- 4:23 9:16 BROWN- 2:25 4:14 BROWNBARNWELL- 1:29 2:22 8:9 19:10 BROWNBARNWELLLAW@</p> <hr/> <p>G</p> <p>GMAILCOM- 2:29</p> <hr/> <p>B</p> <p>BUILD- 17:13 BUSY- 15:12</p> <hr/> <p>C</p> <p>CALL- 5:12 13:13 CALLED- 8:1 CAN- 6:2,3 7:11,23 9:11,23 10:11 11:19 16:25 17:10,12,22 CAN'T- 14:5,6 16:11,15 18:1,5,6 CAPTIONI- 3:8 CARE- 17:4 CARMEN- 1:42 CAROLINA- 1:2,24 2:15,27 4:16,20 19:3,6 CASE- 1:6 4:11,24 10:1,5 12:4,14 14:6 17:21 19:9,11 CASES- 12:5 13:1,2 CEMETERY- 2:26 CERTAIN- 4:17 5:7 7:5 8:3 CERTAINLY- 10:19 CERTIFICATE- 3:21 19:1,14 CERTIFICATION- 17:16 CERTIFY- 19:6 CHANGED- 13:6 CHAUNCEY- 1:29</p>
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Nell Barnwell Hay and Edward Barnwell, Jr.)
)
 Plaintiff (s),)
)
 vs.)
)
 Chauncey N. Brown-Barnwell, Janice)
 Barnwell)
 Defendants,)
)

IN THE COURT OF COMMON PLEAS
 FOR THE 14TH JUDICIAL CIRCUIT
 CIVIL CASE NO: 2013-CP-07-2251

MEDIATION AGREEMENT

THIS MEDIATION AGREEMENT resulted from the ADR mandated Mediation Conference held and conducted in the above-captioned case by S.C. Certified Mediator, E.W. Bennett, Jr., Esquire, on 8/7/2015 in Walterboro, S.C. and it is hereby made and concluded and entered into on this the 9th day of December, 2015, by and between the within Plaintiffs, Nell Barnwell Hay and Edward Barnwell, Jr., with the aid and assistance of their legal counsel herein, Drake H. Kaiser, Esquire of Kaiser Reddick, LLC in Columbia, S.C., and the Defendants, Chauncey N. Brown-Barnwell, Esquire and Janice Barnwell, who were represented at the outset of such mediation conference on 8/7/2015 by Attorney William Sloan, Esquire, of Summerville, S.C. Attorney D. Thomas Johnson, Esquire, of Hardeeville, S.C. formerly represented the above-named Defendants in this matter but he was relieved as legal counsel herein for such Defendants prior to the mediation conference that was held and conducted in this case on 8/7/2015.

RECITALS

That the Plaintiff filed its Amended Summons and Amended Complaint in this Action on 9/16/2013.

That a timely Answer and Counterclaim was filed on 11/1/2013 by the above-named Defendants, Janice Barnwell and Chauncey N. Barnwell, Esquire, as Pro-Se Defendants, to the Plaintiff's Amended Complaint.

That a timely Reply to Defendants' Counterclaim was filed herein on 12/2/2013 by the Plaintiff.

That a Voluntary Dismissal was filed with the Court herein on 1/8/2014, and thereafter on 5/13/2014 an Order was issued and entered striking the Voluntary Dismissal.

All of the parties hereto by and through their legal counsel herein at the time previously voluntarily agreed to participate in alternative dispute resolution as required and mandated by the S.C. Rules of Civil Procedure with respect to all contested issues in this non-exempt case pursuant to a written Agreement Regarding Mediation Procedures dated 9/16/2014 whereby it was agreed and stipulated by the consent of all such parties hereto and/or their respective legal counsel herein that Everett W. Bennett, Jr., Esquire, a S.C. Certified Mediator from Walterboro, S.C., would act and serve as the Mediator in this case.

As required and mandated by ADR pursuant to the S.C. Rules of Civil Procedure, all of the parties hereto along with their respective legal counsel herein attended and participated in the mediation conference held and conducted by S.C. Certified Mediator, Everett W. Bennett, Jr., Esquire, on Friday, August 7, 2015, at the McLeod Conference Center located at 111-A East Washington Street, Walterboro, SC 29488. All parties were actively involved as participants in the mediation and did not appear to be under duress or the influence of any alcohol or drugs that would make them unable to understand the terms of this written mediation agreement. All of the parties hereto with and upon the aid and assistance and advice of their respective competent legal counsel herein now consider it to be in their respective best interests to fully settle and resolve all of the contested issues present and existing between themselves in the above-captioned matter.

All of the parties hereto with the aid and assistance and advice of their respective legal counsel herein now wish to reduce and render their mediated agreement into a fully binding and enforceable written settlement agreement and all such parties hereto and their respective legal counsel herein now hereby desire that this written mediation agreement shall constitute the total and complete settlement agreement by and between them with respect to all matters relating to this matter. Each party has retained and is represented by legal counsel in connection with the negotiations for and the signing of this agreement. Drake H. Kaiser, Esquire, of Columbia, South Carolina, represents the Plaintiffs, Nell Barnwell Hay and Edward Barnwell, Jr. The Defendants, Chauncey N. Brown-Barnwell, Esquire, and Janice Barnwell are now representing themselves as Pro-Se Defendants in this case at the present time.

NOW THEREFORE, for and in consideration of the mutual and several binding promises, covenants and undertakings herein contained, which each party hereby acknowledge, the parties do hereby freely and voluntarily covenant and agree as follows:

1. The parties herein have agreed to enter into a Contract for Sale to prepared by Attorney Drake Kaiser for the purchase price of \$122,500.00, wherein Nell Barnwell Hay and Edward Barnwell, Jr., as Sellers hereby agree to sell the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 to Janice Barnwell, as the Purchase/Buyer, and the closing must take place within 90 days from the date of this agreement. Loan Financing is contingent and if loan financing is denied then the parties will then reconvene mediation after 90 days. The Purchaser/Buyer will pay all closing cost and the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 will be sold "As Is" with no warranties. The Purchaser/Buyer will receive Deed to 98 Union Cemetery Road, Hilton Head Island, SC 29926 upon Sellers' receipt of the full payment of the agreed upon purchase price. The Purchaser/Buyer, Janice Barnwell, will execute and record a twenty (20) year Right of First Refusal in favor of the Sellers, Nell Barnwell Hay and Edward Barnwell, Jr., if Janice Barnwell ever decides to sell 98 Union Cemetery Road, Hilton Head Island, SC 29926 at the purchase price to be determined by the then current appraisal fair market value.
2. The parties agree that any all prior Quit-Claim Deeds previously executed and filed of public record by and between the within Plaintiffs and the above-named Defendants will be promptly reversed by the proper execution and delivery of all necessary Quit-Claim Deeds by all appropriate parties hereto and by the prompt recording of all such executed Quit-Claim Deeds as required to do so within thirty (30) days after the date of their execution of the within Mediation Agreement.
3. All of the parties hereto hereby agree that no further lawsuits will be filed by them in regard to any of the issues addressed in and by the various pleadings and motions and orders and decrees previously filed in this pending civil case; and all pending eviction actions in Magistrate Court and all pending Motions and Foreclosure Case before the Beaufort County Master In equity will continue and be held in abeyance for 90 days; upon consummation of sale of 98 Union Cemetery Road, Hilton Head

Island, SC 29926 to Janice Barnwell, then at such time, all pending Motions shall be withdrawn and all pending eviction actions will be dismissed.

4. All of the parties agree to continue to maintain the status quo of and continue to hold the Gum Tree Property in three (3) equal shares as tenants-in-common and all of the parties hereto also agree to work diligently and promptly and reasonably in a good-faith attempt to effect a partition-in-kind of the Gum Tree property.
5. All of the parties hereto hereby agree that the within Plaintiffs will promptly dismiss with prejudice the Constructive Fraud Claim and Cause of Action previously filed against the Defendant, Chauncey Barnwell; and that the above-named Defendants will promptly dismiss with prejudice the Breach of Fiduciary Duty Claim and Cause of Action previously filed against the Plaintiff, Edward Barnwell, Jr.
6. All of the parties hereto hereby agree that the above-named Defendants will promptly dismiss all of their Adverse Possession Claims and Causes of Action previously filed against any or all of the above-named Plaintiffs.
7. The Plaintiffs, Nell Barnwell Hay and Edward Barnwell, Jr., and the Defendant, Janice Barnwell, now hereby all agree that they will each continue to jointly own together as tenants-in-common a 1/18th undivided interest each in the Wild Horse Road Property (6.15%) and a 1/24th undivided interest each in and to the Matthews Drive and Pauline Drive Properties and such aforesaid parties hereto also further agree that they will continue to work together in their good-faith and prompt and reasonable and diligent efforts to effect a partition-in-kind settlement of all such aforesaid real property owned together jointly as tenants-in-common.
8. All of the parties hereto hereby agree that the Union Cemetery Road Property contains a total of 3.36 acres per the current Plat and that they each should own a total of 1.12 acres on the Union Cemetery Road and that Janice Barnwell will pay for a Division Survey and Plat to be prepared to accomplish such division with the understanding that Nell Barnwell Hay and General S. Hay will retain their current 1.00 acre Lot and house and will receive additional 0.12 contiguous acres per new

Plat and Janice Barnwell once she pays purchase price of \$122,500.00 for 98 Union Cemetery Road, Hilton Head, SC 29926, she will retain her current 0.49 acre Lot with house and improvements per current Plat and Janice Barnwell will receive an additional 0.63 contiguous acre per new Plat and Edward Barnwell, Jr. will receive a separate Lot in his name only containing 1.12 acres to be Deeded to him; Janice Barnwell will pay for Deed Fees and Recording Fees; also if Janice Barnwell for any reason cannot obtain financing for \$122,500.00 to pay Nell Barnwell Hay and Edward Barnwell, Jr. for house at 98 Union Cemetery Road, Hilton Head, SC 29926, then this part of agreement will be rendered null and void.

9. All parties hereto hereby agree that they will promptly execute an appropriate First Right of Refusal to Purchase for a fixed term of Twenty (20) years on each of the three (3) properties which contain 1.12 acres, more or less, each at current Fair Market Value per a current appraisal by a licensed Real Estate Appraiser as the agreed upon purchase price.
10. All parties hereto hereby agree that the within Plaintiffs will be responsible for the prompt payment of one-half (½) of the Mediation Fees due and owing to E. W. Bennett, Jr., Esquire, as the Mediator herein; and that the above-named Defendants will be responsible for the prompt payment of one-half (½) of the Mediation Fees due and owing to E. W. Bennett, Jr., Esquire, as the Mediator herein.
11. All of the parties hereto hereby agree that each party hereto will be solely liable and responsible for the payment of their own Attorney Fees and Costs incurred in this case without the right of contribution from any other party hereto.
12. All of the parties hereto hereby agree that they will get together every quarter, at least four (4) times a year, to discuss family property and partition-in-kind and etc. and each party hereto hereby solemnly agrees to seek and support the Court's approval of this agreement in any pending or future action or proceedings in any court of competent jurisdiction and to do nothing in derogation of the agreement or in any way attempt to discourage such approval by the Court.

Each party hereby acknowledges and agrees that this settlement addresses all

current issues raised herein.

The parties represent and further agree that he or she fully understands his or her legal rights and obligations and that each has entered into and executed this agreement freely and voluntarily, intending to be bound forever by it and intending that it shall be enforceable by the other party in any Court of competent jurisdiction. This agreement expresses the entire agreement between the parties and supersedes any prior understandings or agreements between them, and there are no representations or warranties other than those specifically set forth herein. This agreement is modifiable with signatures of all parties upon such an addendum.

This Mediation Agreement shall be supplemented by an Addendum containing additional terms and conditions as agreed upon by all parties hereto at the reconvened Mediation conference held and conducted on 12/9/2015 which Addendum shall be executed by all parties hereto and attached hereto and made part and parcel hereof and incorporated hereunder by reference.

DMMK 12/9/15

JMB 12/9/15

NBJ 12/9/15

SPJ. 12-9-15

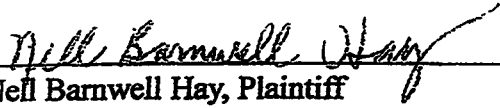
CABB 12/9/15

Dated this 9th day of December, 2015, and signed by all participants.

Signatures on following page



Drake H. Kaiser, Esquire
Attorney for the Plaintiffs
1000-D St. Andrews Road
Columbia, SC 29210
(803) 724-1266 Telephone
(803) 640-6088 Facsimile
E-mail Address: drake@krlawsc.com



Nell Barnwell Hay, Plaintiff



Edward Barnwell, Jr., Plaintiff

Not Required (EWB)

William H. Sloan, Esquire
Attorney for the Defendants
P. O. Box 85
Summerville, SC 29484
(843) 873-7531 Telephone
(843) 873-7527 Facsimile
E-mail Address: whs@sloanlawfirm.net

Chauncey N. Brown-Barnwell by Janice
Chauncey N. Brown-Barnwell, Defendant w/ his consent

Janice Barnwell
Janice Barnwell, Defendant 12/9/2015

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Nell Barnwell Hay and Edward
Barnwell, Jr.)

Plaintiffs,)

v.)

Chauncey N. Brown-Barnwell,
Janice Barnwell)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2013-CP-07-2251

**ADDENDUM TO
MEDIATION AGREEMENT**

THIS ADDENDUM attaches to the Mediation Agreement that resulted from the ADR mandated Mediation Conference held and conducted in the above-captioned case by S.C. Certified Mediator, E.W. Bennett, Jr., Esquire, on August 7, 2015 in Walterboro, South Carolina. On December 9, 2015, pursuant to said Agreement, the parties reconvened the mediation conference with Mediator Bennett in Walterboro, South Carolina. Present were Plaintiffs Nell Barnwell Hay and Edward Barnwell, Jr., along with their legal counsel, Drake H. Kaiser of Kaiser Reddick, LLC, in Columbia, South Carolina. Also present was Defendant Janice Barnwell. During the mediation conference, Defendant Chauncey N. Brown-Barnwell, Esq., contacted Mediator Bennett and the parties by phone, and authorized Defendant Janice Barnwell to act on his behalf. Defendants moved forward *pro se*.

During the mediation conference, all parties agreed to the modification of certain terms and amendment of additional terms to the Mediation Agreement, as set forth herein. Except as expressly modified or supplemented herein, the terms of the Mediation Agreement remain unchanged. The terms, modifications, and supplements to of this Addendum are attached and incorporated into said Mediation Agreement.

NOW THEREFORE, for and in consideration of the mutual and several binding promises, covenants, and undertakings herein contained, which each party hereby acknowledge, the parties do hereby freely and voluntarily covenant and agree as follows:

Modifications to Mediation Agreement

A. Paragraph 1 (page 3) of the Mediation Agreement is hereby modified, supplemented, and changed to:

The parties herein have agreed that Nell Barnwell Hay, Edward Barnwell, Jr., and Janice Barnwell will enter into a Contract for Sale, to be prepared by Attorney Drake Kaiser, for the purchase price of \$122,500.00, wherein Nell Barnwell Hay and Edward Barnwell, Jr., as Sellers, agree to sell the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 to Janice Barnwell, as the Purchaser/Buyer, and the closing must take place on or before April 1, 2016. Janice Barnwell shall pay a \$3,000 down-payment, as set forth in the Addendum to Mediation Agreement. The agreement to sell the real estate shall be contingent on Janice Barnwell's ability to secure Loan Financing. The Purchaser/Buyer will pay all closing costs and the real estate located at 98 Union Cemetery Road, Hilton Head Island, SC 29926 will be sold "As Is." The Purchaser/Buyer will received the Deed to 98 Union Cemetery Road, Hilton Head Island, SC 29926 upon Seller's receipt of the full payment of the agreed upon purchase price. The Purchaser/Buyer, Janice Barnwell, will execute and record a twenty (20) year Right of First Refusal in favor of the Sellers, Nell Barnwell Hay and Edward Barnwell, Jr., if Janice Barnwell ever decides to sell 98 Union Cemetery Road, Hilton Head Island, SC 29926 at the purchase price to be determined by the then current appraisal fair market value.

Additional Terms for Mediation Agreement

B. This Addendum to Mediation Agreement shall be executed by all parties, and signatures exchanged electronically, on or before December 31, 2015. Defendants shall also mail the signature page

containing their original signatures to Plaintiff's attorney, Drake H. Kaiser, on or before December 31, 2015. Attorney Kaiser will mail a copy of the completed Mediation Agreement to Defendants as soon as all signatures are collected.

- C. The Quit-claim Deeds referenced in Paragraph 2 (Page 3) of the Mediation Agreement shall be executed by Defendant Chauncey Barnwell, and properly witnessed and notarized, on or before December 31, 2015. Defendant Chauncey Barnwell shall promptly delivery the original documents bearing his witnessed signature to Plaintiff's attorney, Drake H. Kaiser, once executed.
- D. The above-mentioned agreement to sell the real estate shall be executed by all necessary parties, and the signatures exchanged electronically, on or before December 31, 2015. Plaintiffs shall also mail or otherwise deliver the signature page containing their original signatures to Janice Barnwell, on or before December 31, 2015. Janice Barnwell will mail a copy of the completed agreement to sell the real estate to Plaintiff's attorney as soon as all signatures are collected.
- E. Janice Barnwell shall make down-payments on the above-mentioned agreement to sell the real estate in the amount of \$3,000, with \$1,000 due on or before January 1, 2016; \$1,000 due on or before February 1, 2016; and \$1,000 due on or before March 1, 2016. Failure to make said payments by the 15th day of the month in which it is due shall be construed as a breach of the Mediation Agreement. Janice Barnwell shall make said payments directly to Nell Barnwell Hay.
- F. Janice Barnwell shall pay and/or reimburse Plaintiffs Nell Barnwell Hay and Edward Barnwell, Jr., in the amount of \$236.00, for the premium due for the hazard insurance for 98 Union Cemetery Road, Hilton Head Island, SC 29926, for the months of January, February, and March, 2016, said payments being due on or before the first day of the respective months. Failure to make said payments by the

15th day of the respective month shall be construed as a breach of the Mediation Agreement. Janice Barnwell shall make said payments directly to Nell Barnwell Hay.

- G. The dismissals with prejudice referenced in Paragraphs 5 and 6 (Page 4) of the Mediation Agreement shall be executed by the necessary parties on or before December 31, 2015. Defendants shall promptly delivery the original documents bearing their signature to Plaintiff's attorney, Drake H. Kaiser, once executed, who shall then promptly file Defendants' and Plaintiffs' dismissals.
- H. Should Janice Barnwell be unable to obtain loan financing as contemplated in the above-mentioned agreement to sell the real estate, or otherwise be unable to meet the agreed purchase price for 98 Union Cemetery Road, Hilton Head Island, SC 29926, then Janice Barnwell and Chauncey Barnwell agree to voluntarily leave, quit, remove themselves and their belongings, and move out of 98 Union Cemetery Road, Hilton Head Island, SC 29926 on or before April 1, 2016.
- I. Janice Barnwell and/or Chauncey Barnwell agree that, in the event Nell Barnwell Hay and Edward Barnwell, Jr., must incur legal fees and costs, including reasonable attorney fees, to remove, evict, or otherwise enforce the terms of the Mediation Agreement, including the Addendum thereto, then Janice Barnwell and/or Chauncey Barnwell shall pay any and all of said legal fees and costs, including reasonable attorney fees, to Nell Barnwell Hay and Edward Barnwell, Jr., or their Attorney.
- J. Janice Barnwell authorizes Attorney Drake Kaiser to contact the preparer of the Plat she has commissioned to discuss the necessity of a 25 foot easement of ingress/egress onto the property belonging to Nell Barnwell Hay and Edward Barnwell, Jr.
- K. Plaintiffs and Defendants shall pay their respective shares of the Mediation Fees due and owing to E.W. Bennett, Jr., Esq., as the Mediator herein, on or before December 31, 2015, unless other payments are made with Mediator Bennett in writing.

Dated this 31st of December, 2015, and signed by all participants.



Drake H. Kaiser, Esq.
Attorney for Plaintiffs
1000-D St. Andrews Road
Columbia, SC 29210
T (803) 394-2107
F (855) 640-6088
E drake@krlawsc.com



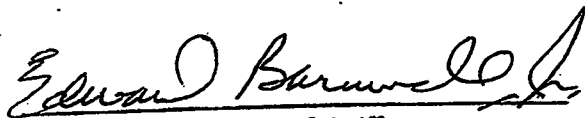
Nell Barnwell Hay, Plaintiff

Edward Barnwell, Jr., Plaintiff

Dated this 31st of December, 2015, and signed by all participants.

Drake H. Kaiser, Esq.
Attorney for Plaintiffs
1000-D St. Andrews Road
Columbia, SC 29210
T (803) 394-2107
F (855) 640-6088
E drake@krlawsc.com

Nell Barnwell Hay, Plaintiff


Edward Barnwell, Jr., Plaintiff

**Addendum to Mediated Agreement
Hay v. Barnwell
Case No. 2013-CP-07-2251**

Chauncey N. Brown-Barnwell, Defendant

Janice Barnwell, Defendant