

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
  
Debra O'Conner, as Personal )  
Representative of the Estate of )  
Sandy Lynn Shook, )  
Plaintiff, )  
  
vs. )  
Aaron Collier, )  
Defendant )

IN THE COURT OF COMMON PLEAS  
C.A. NO.: 2018-CP-04-02003

**ORDER GRANTING DEFENDANT'S  
MOTION TO ENFORCE SETTLEMENT**

**RECEIVED**  
MAY 20 2019  
SC Court of Appeals

This matter came before the Court on motion of the defendant, being represented by Michael T. Coulter, requesting that the Court enforce a settlement between the plaintiff and the defendant. After considering the arguments by the plaintiff's attorney and Mr. Coulter, Affidavits, and the submitted memorandums, the Court grants the defendant's Motion to Enforce Settlement pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure, finding that the settlement was enforceable and was not a rejection and counteroffer of the arbitrary conditions placed in the plaintiff's "Offer to Compromise", and was instead an inadvertent mistake by an agent of the defendant's insurance carrier in regards to arbitrary deadlines set for by the plaintiff's attorney.

**FINDING OF FACTS**

1. On July 22, 2017, Sandy Lynn Shook and the defendant were involved in a single vehicle motorcycle accident in Greenville County.
2. Sandy Lynn Shook died from her injuries suffered in this single vehicle accident.
3. The defendant had been issued a motorcycle policy of insurance by Progressive Northern Insurance Company, ("Progressive"), (policy #: 28452697-0), that was in effect on July 22, 2017.

4. On July 28, 2017, the Anastopoulos Law Firm, LLC, ("Anastopoulos"), sent a letter of representation to Progressive stating that the firm was representing Ms. Shook's Estate.

5. On April 28, 2018, Progressive offered to settle with Ms. Shook's Estate via letter for its \$25,000.00 per person bodily injury limit and requested a response.

6. On May 25, 2018, via email, the Anastopoulos firm acknowledged receipt of the April 18, 2018 settlement letter and advised that the firm would be sending an "Offer of Compromise".

7. On September 27, 2018, the Anastopoulos firm faxed a lengthy letter to Progressive demanding that Progressive, on behalf of the defendant, pay "policy limits of all applicable policies" to its client by "5:00 p.m. EDT on October 12, 2018." The demand included the following nonexclusive list of conditions: "acceptance of this offer specifically requires you to prove [sic] a proposed Covenant that complied with this offer by the above deadline", a sworn notarized statement that there was no other insurance coverage available, that the settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows" Debra O'Conner [sic] as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC, and the checks must be received in the Anastopoulos Law office not later than 5:00 pm EDT on October 12, 2018.

8. An Affidavit of no other coverage was obtained from the defendant.

9. On October 10, 2018, two checks each for \$25,000.00, for bodily injury liability limit and property damage liability limit, were issued.

10. In order to meet the arbitrary deadline imposed by the demand, on October 11, 2018, a Progressive claims representative hand delivered to the Anastopoulos Law Firm the requested

documents including an affidavit from the defendant, a Covenant Not to Execute, and one check for \$25,000.00.

11. The Progressive claims representative inadvertently left the second check for \$25,000.00 out of the packet of materials that were hand delivered to Anastopoulo Law Firm.

12. On October 16, 2018, Anastopoulo Law Firm sent a letter to Progressive that they were rejecting Progressive's acceptance of their offer because they only received one check. It was at this time that Progressive learned that, inadvertently, both checks had not been delivered.

13. On October 17, 2018, Progressive delivered the second check for \$25,000.00 to the Anastopoulo Law Firm. The second check was dated October 10, 2018, the same date as the first check. The Anastopoulo Law Firm then sent the checks for \$25,000.00 a piece back to Progressive.

14. This lawsuit was filed on October 17, 2018, at 3:29 pm.

#### STANDARD FOR REVIEW

In South Carolina the trial judge has, by reason of the common law, thirteenth-juror authority, to see that justice is done in every case. Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). 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. (*Id.*)

#### ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The settlement agreement between the plaintiff and Progressive is enforceable as there was a meeting of the minds between both parties.

2. The failure to deliver to the second check to the Anastopoulo Law Firm by the arbitrary deadline set forth in the "Offer to Compromise" was an inadvertent mistake that was a product solely of human error and not a counter offer to the plaintiff's demand.

3. The failure to deliver the second check to the Anastopoulo Law Firm office location specified in the footnotes of the "Offer to Compromise" was an inadvertent mistake that was a product solely of human error and was not a counter offer to the plaintiff's demand.

4. The plaintiff endured no prejudice by Progressive's agent's inadvertent error.

5. Progressive, nor any of its agents, acted in bad faith in regards to the settlement of this case.

6. The plaintiff's attorneys filed this lawsuit solely as an attempt to hold Progressive in bad faith.

AND IT IS SO ORDERED.

By: \_\_\_\_\_  
The Honorable R. Lawton McIntosh  
P O Box 8002  
Anderson, SC 29622.  
Office: 864-260-4059  
Fax: 864-224-6320

\_\_\_\_\_, South Carolina  
\_\_\_\_\_, of April, 2019



Anderson Common Pleas

**Case Caption:** Debra O'Conner PRS , plaintiff, et al VS Aaron Collier  
**Case Number:** 2018CP0402003  
**Type:** Order/Other

S/R. LAWTON McINTOSH

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