

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM HORRY COUNTY
Court of Common Pleas
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

Case No. 2014-CP-26-07862

RABON & RABON, INC.,

Respondent,

vs.

KARON MITCHELL AND KYLE MITCHELL,

Appellants.

RECEIVED

JUN 14 2017

SC Court of Appeals

RECORD ON APPEAL

Tucker S. Player
Player Law Firm, LLC
1415 Broad River Road
Columbia, SC 29210
803-315-6300
Tucker@playerlawfirm.com
Attorney for Appellants

Lane D. Jefferies, Esq.
The Law Office of Natasha M. Hanna, P.C.
4712 Jenn Drive, Ste. A
Myrtle Beach, SC 29577
843-839-8002
Attorney for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2607862

Rabon & Rabon Inc

Karon Mitchell

Kyle Mitchell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **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

Plaintiff Rabon & Rabon Motion for Temporary Injunction and Order Compelling Settlement-GRANTED
Defendant Karon Mitchell Motion for Dismissal of Mediation Settlement Agreement-DENIED

Attorney Lane Jeffries is to prepare a formal order.

This order ☒ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

RECORD PAGE 1

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.**

Benjamin Culbertson
Circuit Court Judge Benjamin Culbertson

2148
Judge Code

1/20/2016
Date

For Clerk of Court Office Use Only

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

Henrietta U. Golding PO Box 336 Myrtle Beach, SC 29578

Karon Mitchell 4506 camellia dr Myrtle Beach, SC 29577
Kyle Mitchell 4506 camellia dr Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins-Ward
Melanie Huggins-Ward - Clerk of Court

Court Reporter: Grace Hurley

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.

RECORD PAGE 2

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-07862

Rabon & Rabon, Inc.
PLAINTIFF(S)

Karon Mitchell and Kyle Mitchell
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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

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:

Defendants' Motion for Reconsideration filed 2/16/2016 is DENIED.

(This motion is decided without oral arguments.)

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)
N/A	N/A	S N/A

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers **RECORD PAGE 3** must submit an order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Feb. 4, 2016
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 this _____ day of _____, 20____, to attorneys of record or to parties (when appearing pro se) as follows:

Lane D. Jefferies

Karon Mitchell, *pro se*

Kyle Mitchell, pro se

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

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.

RECORD PAGE 4

FILED
HORRY COUNTY

STATE OF SOUTH CAROLINA - 8 AM 9:01
COUNTY OF HORRY MELANIE HUGGINS-WARD
CLERK OF COURT
Rabon & Rabon, Inc.,
Plaintiff,
vs.
Karon Mitchell and Kyle Mitchell,
Defendants.

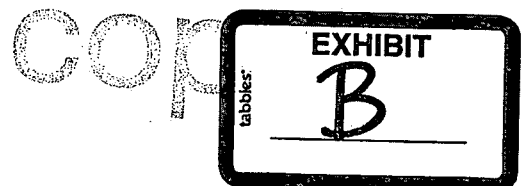
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-26-07862
**ORDER DENYING DEFENDANTS'
MOTION, GRANTING PLAINTIFF'S
MOTION, ORDERING DEFENDANTS
TO PERFORM PURSUANT TO
MEDIATION SETTLEMENT
AGREEMENT, AND ENJOINING
DEFENDANTS FROM TAKING
ACTIONS INCONSISTENT WITH
MEDIATION SETTLEMENT
AGREEMENT**

This matter came before the Court on January 20, 2016 on Plaintiff Rabon & Rabon, Inc.'s Motion for Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement ("Motion to Compel Settlement") and Defendants Karon Mitchell and Kyle Mitchell's Motion for Dismissal of the Mediation Settlement Agreement on the Grounds of Coercion and Mental Duress ("Motion to Dismiss"). For the reasons set forth below, Plaintiff's Motion to Compel Settlement is granted, and Defendants' Motion to Dismiss is denied.

FACTUAL BACKGROUND

1. This case is one of pending civil actions in which Karon Mitchell and Kyle Mitchell ("Defendants") are adverse to Karon Mitchell's brother, Jack I. Rabon, Jr., individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon (Karon Mitchell and Jack Rabon's deceased mother), and/or Rabon & Rabon, Inc. (collectively "Rabon"). ~~A fifth civil action (No. 2015-CP-26-01628) was recently dismissed without prejudice by Defendants after their previous attorney filed a motion to be relieved as counsel.~~ *MHC*

2. On October 30, 2015, a mediation was held to resolve the disputes which underlie this civil action, as well as the other civil actions between Defendants and Rabon.



3. Defendants were represented in the mediation by Rachael Dain of the law firm Attorney Dain, LLC. Rabon was represented by Lane Jefferies of the McNair Law Firm. The mediator was Dalton Floyd, of the Floyd Law Firm.

4. The mediation resulted in the Defendants and Rabon signing a Mediation Settlement Agreement ("Agreement"). The Agreement is in writing, signed by the Parties and their respective counsel. Subsequently it was filed with the Horry County Clerk of Court.

5. The Agreement provides for both a "Plan A" and a "Plan B," which are mutually exclusive. Plan A would be triggered upon Defendants' achieving certain goals before November 30, 2015. If the Defendants' failed to achieve said goals before November 30, 2015, then Plan B would be triggered instead of Plan A. Additionally, the Agreement requires, among other things, that the Defendants execute and place into escrow certain documents prior to November 30, 2015, regardless of which plan is triggered. Defendants did not execute or place into escrow any of the required documents.

6. On December 1, 2015, Rabon informed Defendants that since Plan A had not been triggered due to their failure to meet the agreed upon goals, and that therefore, pursuant to the terms of the Agreement, Plan B was triggered and in effect.

7. Defendants did not perform under Plan B, and on December 10, 2015, Rabon filed the Motion to Compel Settlement.

8. On December 15, 2015, Defendants filed their Motion to Dismiss, which set forth, as Defendants' sole ground, the allegation that Defendants signed the Agreement under duress.

CONCLUSIONS OF LAW & FINDINGS

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution." C-Scupltures, LLC v. Brown, 403 S.C. 53, 56 (2013). Defendants and Rabon entered into the Agreement as a result of a mediation pursuant to this strong public policy.

This Court has inherent jurisdiction to enforce the Agreement. Kumar v. Third Generation, Inc., 324 S.C. 284, 289-90 (Ct. App. 1995). Enforcement of the Agreement is not barred by Rule 43(k), South Carolina Rules of Civil Procedure, ("SCRCP"). Rule 43(k), SCRCP; Ashfort Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 495 (1995); Pee Dee Stores, 381 S.C. 234, 241-42 (Ct. App. 2009); Reed v. Associated Invs. of Edisto Island, Inc., 339 S.C. 148, 152 (Ct. App. 2000).

I find that Defendants' Motion to Dismiss does not allege (1) the use of physical force, or threats of physical force, or the improper use of economic power, (2) the Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) Rabon substituted his will for the Defendants' will such that Agreement was not of Defendants' volition.

I find that Defendants failed to meet their burden of pleading the elements of their sole defense of duress. Gainey v. Gainey, 382 S.C. 414, 428 (2009); In re Nightingale's Estate, 182 S.C. 527 (1937); Strode v. Barnes, 124 S.C. 403, 412 (1923); Willms Trucking Co. V. Jw Constr. Co., 314 S.C. 170, 179 (Ct. App. 1994).

I find that Defendants did not offer evidence (1) of the use of physical force, or threats of physical force, or the improper use of economic power, (2) that Defendants were in such fear that they were bereft of the quality of mind essential to the making of a contract or unable to exercise their own free will, or (3) that Rabon substituted his will for the Defendants' will such that Agreement was not of Defendants' volition. I further find that Defendants had a reasonable

alternative to entering the Agreement and did not take advantage of it. Holler v. Holler, 364 S.C. 256, 257 (Ct. App. 2005); Bleiski v. Bleiski, 325 S.C. 491, 500 (Ct. App. 1997).

An important factor is that the Defendants did not challenge the enforceability of the Agreement prior to November 30, 2015. Instead, prior to November 30, 2015, Defendants, through their attorney, represented that (a) Defendants agreed that the Agreement was enforceable, and (b) were undertaking steps to obtain funding as contemplated in Plan A. I find that Defendants' position is without merit. Therefore, Defendants' Motion to Dismiss Agreement must be and is denied.

As to the triggering of Plan B instead of Plan A, I find that the Agreement unambiguously sets forth (a) a thirty (30) day window during which Plan A could be triggered, and (b) the events which must occur in order to trigger Plan A. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242 (Ct. App. 2008). During the January 20, 2016 hearing on these motions, Defendants conceded that the events necessary to trigger Plan A had not occurred prior to November 30, 2015 nor had they occurred between November 30, 2015 and the January 20, 2016 hearing. Therefore, Plan A was not triggered within the thirty (30) day period, resulting in Plan B being triggered in accordance with the plain and unambiguous terms of the Agreement.

The Defendants have not presented any meritorious defense to inhibit the enforcement of the Agreement. Accordingly, Plaintiff's Motion to Compel Settlement must be granted. The Agreement must be enforced according to its terms which include performance of Plan B rather than Plan A. S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, 379 S.C. 645, 655 (Ct. App. 2008).

IT IS THEREFORE ORDERED that:

A. Defendants' Motion to Dismiss is DENIED;

B. Plaintiff's Motion to Compel Settlement is GRANTED;

C. Within fifteen days of the date of this Order, Defendants shall fully perform pursuant to the Mediation Settlement Agreement dated October 30, 2015, except with respect to those provisions contained exclusively in Plan A (the provisions of which shall not be performed). Defendants' performance pursuant to the Agreement shall include, but not be limited to, execution and delivery to Rabon's attorney all the documents necessary or advisable to effectuate the transactions described therein;

D. Defendants shall do all things required of them under the Agreement, and shall forever refrain from doing those things prohibited to them under the Agreement;

E. Defendants shall not do, or knowingly permit to be done, any act inconsistent with the terms or spirit of the Agreement and this Order, and specifically Defendants shall not commit or permit any waste with respect to any real or personal property described in the Agreement; and

F. Failure of Defendants to timely and fully comply with this Order shall subject Defendants to the contempt powers of the Court, ~~including, without limitation, the power of~~ *MAC* ~~incarceration.~~

IT IS SO ORDERED.

Georgetown,
Conway, South Carolina
Dated: Feb. 4, 2016

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2014-CP-26-7862

Rabon & Rabon, Inc.,)

Plaintiff,)

vs.)

Karon Mitchell and Kyle Mitchell,)

Defendants.)

Transcript of Record

January 20, 2016

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Lane D. Jefferies, Esquire
Henrietta U. Golding, Esquire
Attorneys for Plaintiff

Defendants Appearing Pro Se

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 (On the record, January 20, 2016.)

2 THE COURT: All right. This is 2014-CP-26-7862. This is
3 the case of Rabon & Rabon, Inc., versus Karon Mitchell and
4 Kyle Mitchell. According to my roster I have a motion for a
5 temporary injunction and order compelling settlement and a
6 motion for dismissal of mediation settlement agreement.

7 Please give the court reporter your name and who you
8 represent.

9 MR. JEFFERIES: Good morning, Your Honor. My name's Lane
10 Jefferies. I'm here with Henrietta Golding, both of the
11 McNair Law Firm, and we represent the Plaintiff, Rabon &
12 Rabon, Inc., in this matter.

13 THE COURT: All right. And you are --

14 MS. MITCHELL: I'm Karon Mitchell.

15 THE COURT: All right. And you are?

16 MR. MITCHELL: Kyle Mitchell.

17 THE COURT: All right. I guess we can kind of argue
18 these simultaneously I guess since there's -- as I -- and
19 correct me if I'm wrong, just kind of reviewing the file, it
20 seems like that the Plaintiffs are seeking to enforce a
21 settlement and the Defendants are seeking to set aside a
22 settlement; is that correct?

23 MR. JEFFERIES: That's correct, Your Honor.

24 MS. MITCHELL: Yes, Your Honor. That's correct.

25 THE COURT: Okay. All right. Mr. Jefferies or Ms.

1 Golding, since you filed your motion first let me hear from
2 you.

3 MR. JEFFERIES: Thank you, Your Honor. Your Honor
4 requested that we hand up a hard copy of --

5 THE COURT: Yeah. This is where I got the 200 and
6 something page --

7 MR. JEFFERIES: If I may approach?

8 THE COURT: -- attached exhibits. I didn't have enough
9 paper.

10 MR. JEFFERIES: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. JEFFERIES: Your Honor, we're here on, as Your Honor
13 said, Plaintiff's motion to compel settlement pursuant to a
14 settlement agreement, mediation settlement agreement that was
15 entered into on October 30th of 2015, also on the Defendants'
16 motion to dismiss that same settlement agreement on the single
17 ground of duress. So the issue before the Court today, Your
18 Honor, is, is very narrow. It evolves around the defense of
19 duress.

20 The settlement agreement disposes of this case, as well
21 as five other related cases, all of which arose out of a
22 business dispute between my clients, Jack Rabon, his now
23 deceased mother, Ms. Peggy Jo Rabon, Rabon & Rabon, Inc., on
24 one side and Mr. Rabon's sister, Karon Mitchell, and her
25 husband, Kyle Mitchell, on, on the other side, and those

1 disputes concern two family businesses. So, Your Honor, the,
2 the Plaintiff's motions set forth a number of reasons why the
3 mediation settlement agreement should be enforced. The
4 Defendants' countervailing motion did not take issue with any
5 of those reasons. It was solely based on the issue of duress.
6 So the Defendants did not allege that they didn't sign the
7 agreement or that it was unconscionable or that it was
8 ambiguous or against public policy, none of that. The sole
9 issue is duress, and that's the issue before the Court right
10 now.

11 THE COURT: All right. Now, this settlement was reached
12 at mediation with a mediator?

13 MR. JEFFERIES: Yes, Your Honor. It was reached on
14 October 30th, 2015. The court-appointed mediator was Dalton
15 Floyd of the Floyd Law Group. The Plaintiff, Rabon & Rabon,
16 Inc., was represented by myself, the McNair Law Firm. The
17 Defendants were represented by Rachel Dane of Attorney Dane
18 LLC Law Firm. The agreement was reached after a full day of
19 mediation. The parties signed it, not once, but multiple
20 times as they initialed handwritten changes. It was signed by
21 all counsel and it was signed by the attorney of record and
22 then it was filed with the court subsequent to that. So Your
23 Honor, the result of this is if the -- because the only ground
24 alleged to -- by the Defendants to avoid the enforcement of
25 the agreement is duress, if that defense of duress fails, then

1 the agreement must be enforced according to its terms, and
2 Plaintiffs can set forth why the defense has to fail in this
3 case, but perhaps the, the Defendants would like to give their
4 argument as to why it succeeds first.

5 In general, Your Honor, the, the Plaintiff -- pardon me,
6 the Defendants' motion does not set forth the elements of
7 duress. It doesn't allege the elements. So it fails as a
8 matter of law, and in addition, there are no admissible facts
9 that the Defendants could bring in to prove those elements
10 even had they alleged them, and therefore, Your Honor, we
11 would ask for an order of this Court compelling the Defendants
12 to perform pursuant to the mediation settlement agreement,
13 subjecting them to the contempt powers of the Court, including
14 incarceration if they don't perform within a, a -- by a date
15 certain, suggest ten days, and enjoining the Defendants from
16 taking any action contrary to the agreement, including
17 transferring property or causing waste or any other action
18 contrary to the agreement during that ten-day period.

19 THE COURT: Okay. Just so I'll know basically what we're
20 talking about, what was the settlement?

21 MR. JEFFERIES: Your Honor --

22 THE COURT: Or I mean, you don't have to go through every
23 term, but what was the general gist?

24 MR. JEFFERIES: A brief overview of the settlement is
25 this, Your Honor, and the main thrust of it was that these --

1 all these parties are subject to personal guarantees on
2 roughly \$4 million in bank loans that are in default. The
3 underlying property is subject to foreclosure. That is
4 proceeding -- it's almost at a -- almost at a conclusion. The
5 sale has been ordered for, for this spring of those
6 properties. So --

7 MS. MITCHELL: It has not. I object.

8 THE COURT: Overruled. Go ahead.

9 MR. JEFFERIES: Thank you, Your Honor. There were two
10 differing theories as to how to address this issue. The
11 Defendants' theory was that, that the loan should be
12 refinanced. The Plaintiff's theory was that assets should be
13 sold to eliminate the loans. The settlement agreement
14 represents a compromise. It contains a plan A and a plan B as
15 alternatives. Plan A, advocated by the Defendants, embodies
16 their refinancing theory, and under that agreement, the
17 Plaintiff -- pardon me, the Defendants got to try their theory
18 first. They had a 30-day window in which could -- they could
19 obtain certain commitments from banks to refinance, and if
20 they did that within that 30 days that would trigger plan A
21 under which essentially all of Rabon's ownership be
22 transferred to the Defendants, and Rabon would be relieved of
23 the personal guarantees. Now, if that didn't occur, then plan
24 B was triggered, in which case it's kind of the polar
25 opposite, the Defendants would transfer their ownership

1 control of the entities to Rabon. Rabon would then sell the
2 assets and eliminate the personal guarantees that way. So
3 this was the plan that the parties agreed on. It gave the
4 Defendants first crack at trying their refinancing theory.
5 They had 30 days to do it, and then the plan switched over to
6 the Plaintiff's theory.

7 What happened, Your Honor, after the, after the parties
8 entered into this agreement, during the 30-day period, the
9 Defendants continually reassured the Plaintiffs that they --
10 in fact, their attorney recognized, Your Honor, and this is
11 included as Exhibit C in what I handed up, it's 126 pages of
12 e-mails here from the Defendants' attorney in -- Rachel Dane,
13 in which the attorney repeatedly reassures the Plaintiffs that
14 the Defendants are performing under the agreement. The
15 attorney -- and Your Honor, I, I would quote November 17th,
16 2015, e-mail, quote, [as read], "To reassure you, my
17 understanding is, and I have advised the Mitchells, the
18 mediation agreement is enforceable, even if not approved by
19 the Court." On November 30th, the day the timeframe for the
20 Mitchells to trigger plan A ran out, again, from Rachel Dane,
21 quote, [as read], "The parties are in good faith negotiations
22 to refinance the property." On November 16th, Your Honor,
23 again, from Rachel Dane, the Mitchells', the Defendants'
24 attorney, quote, [as read], "The mediation agreement is
25 binding regardless of when it is put on the record." Your

1 Honor, I'd need recite, unless Your Honor wishes, 126 pages
2 more of the same. During that 30-day period, the Defendants
3 went to Washington, D.C., to meet Senator Graham to enlist his
4 aid in refinancing. They met with high level officials at the
5 United States Department of Agriculture. They had conferences
6 with banks. They pursued what they were trying to accomplish
7 under this plan A right up for 30 days. Only when it became
8 apparent that they couldn't get the bank to agree to the
9 financing, thus they couldn't get plan A to be triggered, and
10 when I informed them that plan B had therefore been triggered
11 did the Mitchells suddenly invoke this duress argument and
12 back away. So when it suited their purpose, they honored the
13 agreement. That's correct, Your Honor, toward the end of the
14 30-day period Rachel Dane, the Defendants' attorney, asked if
15 we would extend that 30-day period. She asked several times,
16 and each time I said, yes. We would consent to that if the
17 Mitchells would please show some good faith that they were
18 performing. The Mitchells were supposed to put documents into
19 escrow during that 30-day period so that when plan B was
20 triggered we wouldn't end up here in this courtroom debating
21 this issue. The documents could simply be handed over. The
22 Defendants never did that. So consequently there was never an
23 extension granted because the Defendants would never show any
24 good faith that they were actually doing what they were
25 supposed to do.

1 So that was the mediation agreement, Your Honor. Right
2 around December 1st, actually on December 1st, the day after
3 the deadline ended I communicated by e-mail and regular mail
4 with the Defendants and with their attorney Rachel Dane, said
5 plan B has been triggered, time to start performing under plan
6 B. At that stage, Attorney Dane informed me that the
7 Mitchells might try to avoid the agreement and that she
8 couldn't -- was reluctant to represent them in that and that I
9 was kind of on my own in dealing with the Mitchells. So I
10 filed a motion to compel settlement on December 11th. The
11 Mitchells, the Defendants here then filed their motion to
12 dismiss the settlement agreement on December 15th, didn't serve
13 it on us until mid-January, January 11th, not literally on the
14 eve of this hearing, but only eight -- after hours on the 11th,
15 only eight days before. So this motion has been out there
16 during the 36-day time period that the Plaintiffs should have
17 had to prepare for it. We, in fact, only had eight. The
18 motion was never served.

19 So Your Honor, I could go through the substantive reasons
20 why duress doesn't apply here. The motion from the Defendants
21 isn't clear. It, it says the word duress, and it says
22 coercion. They haven't really offered anything in there. So
23 perhaps they should offer that argument before I explain why,
24 why it doesn't apply.

25 THE COURT: Okay. Well, let me ask you this, as a

1 practical matter, if and I don't -- I've got, I've got to hear
2 their arguments first, but you're asking for their compliance
3 within ten days. As a practical matter, how long would it
4 take to implement the Defendants for them to do what they're
5 supposed to do under plan B?

6 MR. JEFFERIES: Your Honor, all that's required of the
7 Defendants under plan B is signing over their interest in some
8 personal property and signing over control, voting control of
9 the certain entities so the assets may be sold. Those
10 documents have already been drafted. They've already been
11 sent to the Defendants' attorney, Rachel Dane, have come back
12 with comments and have been revised and we've negotiated those
13 into documents that are ready to go. They're, they're -- in
14 fact, I sent those to the Mitchells on November 30th by e-mail
15 and indicated, "Here are the documents. Plan B has gone into
16 effect. This is what you need to sign," and received nothing
17 back. So literally, Your Honor, the moment I hand them the
18 documents this could be wrapped up at this stage, and all six
19 pieces of litigation which resulted from this dispute, three
20 in the circuit court and three in the probate court would go
21 away at once.

22 THE COURT: Okay. All right. I understand.

23 MR. JEFFERIES: Thank you, Your Honor.

24 THE COURT: All right. Which one wants to go first?

25 MS. MITCHELL: Me.

1 THE COURT: All right.

2 MS. MITCHELL: I'm sorry for interrupting a minute ago.
3 I didn't understand, but that is not -- we are not -- we have
4 been -- we are working with the bank. The bank, Dan Stacy in
5 Litchfield is West Town Bank attorney. We had a meeting. We
6 had a meeting that Lane Jefferies was there and then was asked
7 to leave, and we had a meeting with the USDA out of Columbia,
8 Washington. We had a meeting with the bank, the bank's
9 attorney, Mr. Buddy Lindsey, our tax attorney, the gentleman
10 that's been helping us. We have been working on it. This is
11 our livelihood. This is what they're trying to take from us,
12 and we have been, we have been getting the documents to the
13 bank, and we are -- Senator Graham got us with the USDA to get
14 them to, to work out because this is a government loan. We
15 have a, we have a wonderful piece of property, and it is our
16 livelihood. I don't have any money to hire an attorney
17 because my brother left me destitute. My mother died, and
18 right before he [sic] died he took \$70,000 out of the, out of
19 the account and went to, I'm assuming to hire McNair Law Firm.
20 I have run the business for the last -- all -- for -- my mom
21 and dad have had it for 40 years. This is the police reports,
22 and the fear that we've lived with every day with him.
23 There's an order right now on the judge, probate, just the
24 reason they want this dropped is because he just got shot
25 because he just beat a man and, and that's on TV and it's,

1 it's on record and, and there's an order on the probate
2 judge's desk right now that Jack should be put in-patient,
3 that he has a chemical dependency, and they have, they have --
4 they don't want it to go forward because they know what will
5 happen. He has disposed of my mother's estate. I have not
6 ever done anything wrong but worked my life, worked my life
7 there, and as I show you these e-mails, can I approach?

8 THE COURT: Well, if it deals with why the settlement
9 should be set aside.

10 MS. MITCHELL: Yes, sir.

11 THE COURT: As I understand your argument, you admit
12 there's a settlement in place, you're trying to comply with
13 it, but it sounds almost like you're admitting what they're
14 saying, is that your time to comply with it has passed, and
15 that therefore --

16 MS. MITCHELL: That's why I should have never --

17 THE COURT: -- there's an alternative settlement that
18 should kick into place.

19 MS. MITCHELL: No, sir. I should have never signed that.
20 I, I didn't read it, and they -- and Rachel knows I didn't
21 read it. I couldn't read it because of what was said to me.
22 Whenever, whenever Rachel Dane walked into the mediation
23 agreement in the, in the 11th hour, she walked in and she
24 looked at me and she said to me, she said, "Karen, how much
25 money does Lee Anna's granddaddy have," and Lee Anna is my

1 daughter-in-law, and I said, "I don't know, Rachel. What does
2 that have anything to do with it? He has nothing to do with
3 my family." I said, "This has nothing to do with him."
4 "Well, here's what they're going to do. This is what Lane has
5 said to relay to you. They're going to sue your son, Chase,
6 personally. They're going to sue your son, Chad, personally,
7 and they're going to sue Lee Anna personally, and they know
8 Lee Anna's already lost two babies and that she's pregnant
9 with the third," and said that, "They're going to put --
10 they're going to threaten to put her on the stand and drill,
11 drill her, and she could potentially lose the third baby
12 and/or her granddaddy will pay them off not to make her
13 testify." Now that is exactly what is said, and this is
14 proven in the, in the e-mails here.

15 THE COURT: Okay. Show me the e-mail where that's said.

16 MS. MITCHELL: It's not -- you'll, you'll have to --

17 THE COURT: No. Show me -- you say the e-mails state
18 that. Tell me.

19 MS. MITCHELL: Can I, can I, can I read it to you?

20 THE COURT: No. Just show me where it is. I can read
21 it.

22 MS. MITCHELL: "As I advised you yesterday" --

23 THE COURT: Show me where it says and I'll read it.

24 MS. MITCHELL: Okay.

25 It doesn't say it word for word, but if

1 you'll read right there.

2 THE COURT: All right. She says that -- all right.

3 MS. MITCHELL: If you would this is from, this is --

4 THE COURT: Well, this just says that he was putting
5 pressure on you, that she did not agree with his tactics and
6 that --

7 MS. MITCHELL: This is Rachel Dane talking to the USDA,
8 and if you'll read that, it doesn't say that my brother wants
9 to sell it. It says Lane Jefferies wants to sell it. This is
10 my livelihood.

11 THE COURT: And I understand that.

12 MS. MITCHELL: I eat -- that's how I eat.

13 THE COURT: And I understand that. The question is, is
14 were you --

15 MS. MITCHELL: I would have never signed this had he not
16 made that statement and threatened me with my daughter-in-law.

17 THE COURT: All right. Let me ask you this, if you went
18 ahead and got the financing, would you be seeking to enforce
19 the A plan under the settlement agreement where he agreed to
20 transfer his interest to you if you refinanced?

21 MS. MITCHELL: I, I'm sorry. Say that again now.

22 THE COURT: I mean, it sounds to me as though you're
23 trying to enforce part of the mediation agreement by obtaining
24 refinancing.

25 MS. MITCHELL: I want -- sir, before this mediation ever

1 came into effect, before my mother died, I want him out of my
2 life. I want nothing to do with him.

3 THE COURT: And I understand that.

4 MS. MITCHELL: And that is what I am trying to obtain.
5 So before this mediation ever -- I promise there's a document
6 that was signed before my mother died that said I'd give him
7 my interest and he would give me his interest just to leave me
8 the hell alone, and it's been unmerciful.

9 THE COURT: Okay.

10 MS. MITCHELL: And this is the only way I have to eat,
11 and also in the -- and also whenever he was shot the other
12 week, he's done some illegal because on the tapes that the
13 police have he's screaming at the man for his money from our
14 buildings. So this is not just cut and dry. This is not just
15 cut and dry.

16 THE COURT: I understand. All right, sir. Now, if the
17 mediation agreement is set aside, what is the lawsuit
18 involved? What does it -- the Plaintiff is seeking in the
19 lawsuit?

20 MR. JEFFERIES: Your Honor, the -- all the litigation
21 revolves around the same disputes. The, the Plaintiff has
22 alleged that the Defendants mismanaged the business, converted
23 its assets to its own use, essentially looted the business.

24 THE COURT: Okay. That's all I needed to know. All
25 right. Now, you understand that if I deny their motion, I

1 grant your motion --

2 MS. MITCHELL: Yes, sir.

3 THE COURT: -- then you go to trial on that, that issue.

4 MS. MITCHELL: Yes, sir. Yes, sir. I also come to you

5 with -- I also come to you with the Supreme Court Rule. I

6 also come to you with the Supreme Court Rule Number -- Rule,

7 Rule 43, conduct of trial, if you'll notice 14, and I have law

8 document for you to look at.

9 THE COURT: Right. That's agreements of counsel. That's
10 what they're trying to enforce. They say they've got a
11 written agreement between the parties that should be enforced
12 because it was reduced to writing.

13 MS. MITCHELL: But if you'll, if you'll read the, the
14 case law on it, the, the second part, Farnsworth v. Davis.

15 THE COURT: Yeah. That's just whether or not the parties
16 adequately --

17 MS. MITCHELL: I advised --

18 THE COURT: -- placed an agreement on the record or
19 reduced it to writing.

20 MS. MITCHELL: It was not put on the record until I told
21 Rachel I didn't want -- I was --

22 THE COURT: It doesn't have to be. If it's reduced to
23 writing, it's either or. You can either put it on the record
24 or you can reduce it to writing. It doesn't have to do both.

25 MS. MITCHELL: This is my livelihood.

1 THE COURT: And I understand that, but the question is
2 and what it sounds to me as though you're trying to enforce
3 part of the settlement agreement by refinancing the debt and
4 getting him to transfer his interest to you, but you're not
5 willing to enforce the first, the other part of the settlement
6 agreement that says if you don't do it by a certain date then
7 you have to transfer your interest and he sells the assets.
8 It's like you're trying, according to the Plaintiff's counsel
9 --

10 MS. MITCHELL: Thirty days was not -- 30 days was not
11 enough to redo a USDA loan, a government loan.

12 THE COURT: But the question is is whether or not you
13 have a settlement or you don't have a settlement. If you
14 don't have a settlement then the lawsuit goes forward with the
15 mismanagement and things of that nature.

16 MS. MITCHELL: I'm fine.

17 THE COURT: All right, sir. Let me hear from you.

18 MR. MITCHELL: Sir, Your Honor, I -- the same thing.
19 It's just -- it was a -- it was -- we were not represented the
20 way we should have been done. We were under a lot of stress.
21 We were advised the wrong way.

22 THE COURT: Well, you have a lawsuit against your
23 attorney then.

24 MS. MITCHELL: We've already been to the -- we've been on
25 Lane and her to the, to the conduct. We've met with Mr.

1 Turner.

2 THE COURT: Okay.

3 MR. MITCHELL: Yes, sir.

4 THE COURT: All right. Anything in reply?

5 MR. JEFFERIES: Your Honor, as an initial matter, and as
6 to the allegation, I haven't seen the e-mails that --

7 THE COURT: Basically the e-mails was from their attorney
8 that said she thought you were trying to put undue pressure on
9 them during the negotiations and to attack them emotionally.

10 MR. JEFFERIES: Understood. Your Honor, I don't know
11 what Rachel Dane might have said to her clients. I do know
12 that I never said to Rachel Dane or to anybody else any sort
13 of threat against, against the Defendants' daughter or their
14 unborn granddaughter. I was never in the same room, neither
15 were my clients, during mediation with these Defendants. The
16 only people who ever went in the room, who even saw the
17 Defendants during mediation were the Defendants' own attorney,
18 Rachel Dane, and the mediator, the court-appointed mediator,
19 Dalton Floyd. So what the Defendants would ask this Court to
20 believe is that not only did I make this highly improper
21 threat to this child's life, but that I did it in the presence
22 of Dalton Floyd, who's practiced before this Court for 40
23 years, and I did it in the presence of the Defendants' own
24 attorney and that those two attorneys, far from doing anything
25 in response like calling my boss or calling ODC or taking any

1 action, instead, they took the threat into the mediation room
2 and communicated it to the Defendants in such a strong way
3 that it overcame the Defendants' will. It's -- the allegation
4 is incredible. In the original meaning of that word, it's
5 simply not a credible allegation, did not occur. Moreover,
6 even if it had, all that evidence is, is subject to Rule 408,
7 the hearsay rules. It's subject to the confidentiality of
8 mediation. So even if this wild thing had happened, it
9 couldn't come in as admissible evidence anyway, but it didn't.
10 Your Honor, it simply didn't happen.

11 As to the merits of, of the rest of the Defendants'
12 argument, the Defendant reiterates that these properties are
13 in foreclosure. They're in foreclosure because the Defendants
14 didn't make the mortgage payments on them, and Your Honor is
15 exactly correct. What the Defendants are attempting to do is
16 to enforce plan A without agreeing to enforce plan B. Now,
17 the Defendants have conceded in court that they signed the
18 agreement. They said, "I shouldn't have signed it." Well,
19 they did sign it. The Defendants say they were not
20 represented properly and they were advised wrongly. Perhaps
21 that's the case. Their cause of action there, as Your Honor
22 indicated, might be against their own attorney. Defendant
23 Karon Mitchell said she didn't read the agreement. Well, Your
24 Honor, and I don't need to tell this Court, but as our Supreme
25 Court has said in Burwell v. South Carolina National Bank,

1 which is 340 S.E.2d 786, [as read], "As early," and I'm
 2 quoting here, "As early as 1924 this Court recognized that
 3 every contracting party owes a duty to the other party to the
 4 contract and to the public to learn the contents of a document
 5 before he signs it. One cannot complaint of fraud,
 6 misrepresentation in the contents of a document if the truth
 7 could have been ascertained by reading it." So the fact that
 8 the Mitchells might not have read the document, does not save
 9 them, does not save them in any way. Moreover, Your Honor,
 10 the Mitchells, the Defendants here, indicated that the 30-day
 11 window, to which they agreed in the mediation settlement
 12 agreement, was not enough. I don't know whether it was enough
 13 for them. They certainly claim it wasn't, but that's not the
 14 issue. They agreed to the 30-day settlement, 30-day window,
 15 and 30 days is very -- Your Honor, the agreement is Exhibit B,
 16 and if you were to turn to Exhibit B, the second page,
 17 paragraph five, and I'm quoting here, [as read], "Plan A, as
 18 set forth in Exhibit A, will be effective provided Karon
 19 Mitchell obtain a written agreement within 30-days (30) days
 20 from the date of this agreement," and then it describes what
 21 that agreement needs to be. So 30 days is unambiguously laid
 22 out in the mediation settlement agreement, and as our Supreme
 23 Court said in Lee versus University of South Carolina, 757
 24 S.E.2d 394, quote, [as read], "A Court must enforce an
 25 unambiguous contract according to its terms regardless of its

1 wisdom or folly, apparent unreasonableness or the parties'
 2 failure to guard their rights carefully." So whether or not
 3 30 days was enough, it's what the Mitchells agreed to. There
 4 are no defects in this agreement, and indeed, until we walked
 5 into court here today the Mitchells, the Defendants here did
 6 not allege any defects in the agreement. As Your Honor noted,
 7 the agreement is not defective under Rule 43, subsection K,
 8 confusion there on the Defendants' part might be that that
 9 ruled changed in 2009 to provide for signatures by all the
 10 party and their counsel. In any case, this agreement would
 11 have been effective under the old Rule 43(K) because it was
 12 also entered of record. So there are no defenses other than
 13 the duress defense, and these, these Defendants have not
 14 established, nor can they, the elements of duress.

15 THE COURT: All right. Ms. Mitchell, anything further
 16 from you?

17 MS. MITCHELL: Yes, sir. Whenever I said I didn't read
 18 it, I was not capable of reading it. I did not read it, and I
 19 was not capable of reading it because I was so hysterical over
 20 the comment that they had made about my daughter-in-law. I
 21 could not focus, and I told Rachel that over and over, and
 22 Rachel said, "Here let me try to read it to you," and I told
 23 her over and over, "I'm not signing it." She said, "You have
 24 to sign it, Karen. You have to sign it. Lane's going to come
 25 after you," and then she even signed it -- can I approach?

1 THE COURT: What is that?

2 MS. MITCHELL: She didn't even know -- she signed it
3 without knowing that she had to pay for our mediation, and she
4 tells Dalton Floyd that. So undoubtedly she didn't read it
5 very well either, and then I went to Dalton Floyd's office,
6 and I asked him how he could have let that happen, and do you
7 know what -- do you know Mr. Floyd was not -- he came in our,
8 our room one time in the beginning, but he never came back.
9 Rachel and -- Rachel just kept leaving our room going over to
10 Lane. Dalton came in one time in the beginning.

11 THE COURT: All right.

12 MS. MITCHELL: She, she signed something that she didn't
13 even know. This is the only way -- I am 56 years old, and I
14 have -- this is the only way I have to eat, and the bank is
15 willing to --

16 THE COURT: I understand, I understand that, but we're
17 talking -- you're getting outside --

18 MS. MITCHELL: The bank is willing to work with us.

19 THE COURT: Anything further?

20 MR. MITCHELL: Well, Your Honor, it just kind of proves
21 that she, she, she didn't represent us as well -- I'm sorry.
22 She didn't represent us as well, she's not here. We asked her
23 to come and she would not come.

24 THE COURT: Okay. All right. I, I think the major
25 dispute is going to be between you and your attorney. I don't

1 see anything -- it seems to me as though that you do have a
2 settlement agreement, that it is enforceable. You're trying
3 to enforce the plan A under the settlement agreement, which
4 you have the right to do so, but the time has passed. So now
5 you have the plan B. So it's almost as though you're wanting
6 to continue or me grant an extension under the plan A.

7 MS. MITCHELL: Would you --

8 THE COURT: All I can do is enforce the settlement
9 agreement as written. I don't see where there's any duress.
10 By your own arguments you say that there is an enforceable
11 settlement agreement due to the fact that you went out, you
12 tried to get financing. You tried to obtain everything in --
13 to comply --

14 MS. MITCHELL: We are --

15 THE COURT: -- with the settlement agreement pursuant to
16 plan A. The fact that you did not raise any of these issues
17 until your time to act under the plan had expired. You did --

18 MS. MITCHELL: I did.

19 THE COURT: No, ma'am. All right. So I'm going to grant
20 the motion to enforce the settlement agreement. I'm denying
21 the motion to set aside the settlement agreement.

22 MR. JEFFERIES: Thank you, Your Honor.

23 THE COURT: The Defense has 15 days to comply with plan B
24 of the settlement agreement. Okay.

25 MR. JEFFERIES: Your Honor, shall I submit a proposed

1 order?

2 THE COURT: Yes. If you don't mind.

3 MR. JEFFERIES: I'll get it to you this week, Your Honor.

4 Thank you.

5 THE COURT: All right.

6 (Adjourned.)

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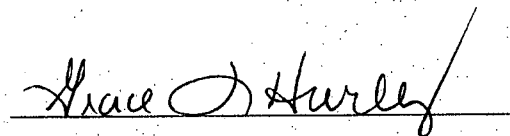
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C E R T I F I C A T E

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Rabon & Rabon, Inc. versus Karon Mitchell and Kyle Mitchell, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 20, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M
Official Reporter

April 11, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

RA & RABON, INC.,
☒ Plaintiff

v.

KARON MITCHELL AND KYLE MITCHELL
☐ Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-07862

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Henrietta U. Golding, SC Bar #2173
Lane D. Jefferies, SC Bar #101764
Address: P.O. Box 336
Myrtle Beach, SC 29578
telephone: (843) 444-1107 fax: (843) 443-9137
e-mail: hgolding@mcnair.net; ljefferies@mcnair.net

Defendants' Attorney:

Rachael Ashley Dain, SC Bar #
Address: Attorney Dain, LLC
P.O. Box 212654
Columbia, SC 29221-2654
Telephone: (803) 256-6661 x 3
Email: rachael@attorneydain.com

2015 DEC 10 PM 2:21

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **MOTION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION, AND ORDER COMPELLING SETTLEMENT**

Estimated Time Needed: 30

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

12/10/15
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT 25.00

- ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Order submitted at request of the court;
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE
CODE: _____

Date: _____

Collected by: *Galb*

CLERK'S VERIFICATION

Date Filed: 12/10/15

☐ MOTION FEE COLLECTED: *25*

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11/03)
MYRTLEBEACH 218705v1

Defendants.

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND
ORDER COMPELLING SETTLEMENT**

Page 1 of 10

partial summary). In fact, this Court held the Mitchells in contempt in Civil Action # 2014-CP-26-05740 as recently as August 18, 2015, (Exhibit N, Page 71). And, although not yet before the Court, the Mitchells (1) failed to respond to Discovery in this case, and (2) failed to comply with this Court's Order of October 27, 2015 in Civil Action # 2014-CP-26-05740 by not retaining counsel for a corporate defendant.

The Mitchells are in breach of the Mediation Settlement Agreement which, had they honored it, would have disposed of all four civil actions currently pending between the Mitchells and Rabon, as well as disposing of future actions that are all but certain to be filed. As of the date of this Motion, the Mitchells have accepted benefits under the Agreement for forty days and counting. However, when the time came for the Mitchells to perform, they did not. Despite numerous requests to the Mitchells that they begin performance, the Mitchells continue to accept the benefits of the Agreement without performing as the Agreement requires. The salient facts are as follows:

1. On October 30, 2015, a mediation was held to resolve the disputes which underlie the four causes of action between them.
2. The Mitchells were represented during mediation by Rachael Dain of the law firm Attorney Dain, LLC.
3. Rabon was represented by Lane D. Jefferies of the McNair Law Firm.
4. The Mediator was Dalton Floyd, of the Floyd Law Firm.
5. Mediation lasted well over ten hours, and concluded successfully when the Mitchells and Rabon entered into a Mediation Settlement Agreement ("Agreement") (Exhibit A).
6. The Agreement is in writing, is signed by the parties and their counsel, and is dated October 30, 2015.
7. Among other things, the Agreement disposed of:
 - a. Civil action no. 2014-CP-26-05740
 - b. Civil action no. 2015-AD-26-00004
 - c. Civil action no. 2015-CP-26-01628²
 - d. Civil action no. 2014-ES-26-01933
 - e. An *ex parte* Affidavit and Application for Involuntary Emergency Admission for Chemical Dependency filed on June 23, 2015 of unknown Civil Action Number.

² Recently dismissed *without* prejudice.

8. The Agreement required, among other things, that the Mitchells execute and place into escrow certain documents prior to November 30, 2015.
9. In order to provide the Mitchells with sufficient time to attempt to refinance the LLC's loan with West Town Bank, while still providing Rabon with sufficient time to sell the LLC's and Corporation's real estate holdings if refinancing could not be arranged, the Agreement provides for both a "Plan A" and a "Plan B," which are mutually exclusive.
10. Plan A requires Rabon to convey their interest in the LLC and the Corporation to the Mitchells and the Mitchell's to secure Rabon's release from several personal guarantees to West Town Bank.
11. Plan B requires the Mitchells to convey their voting rights in the LLC and the Corporation, as well as certain personal property, to Rabon and for both the Mitchells and Rabon to remain personal guarantors.
12. The major assets of both the LLC and the Corporation – indeed, arguably their *only* assets – are parcels of real estate in Myrtle Beach. Each and every parcel is being foreclosed upon in Civil Action # 2015-CP-26-2779, the final hearing in which action is scheduled for December 16, 2015.
13. The Agreement provides a thirty day period (which ended at midnight on November 30, 2015) for the Mitchells to attempt to obtain a particular written agreement from West Town Bank ("Release Agreement").
14. Under the Agreement, whether Plan A is put into effect or Plan B is put into effect, is determined by whether the Mitchells obtained the Release Agreement within the thirty day window.
15. Regardless of which plan goes into effect, the Agreement requires the Mitchells to execute certain documents, and place them in escrow, during the thirty day period.
16. The Agreement provides that, if the Mitchells had succeeded in obtaining the Release Agreement by the November 30, 2015 deadline, the documents held in escrow would be returned the Mitchells, and Plan A would become effective.
17. The Agreement provides that, if the Mitchells did not obtain the Release Agreement by the November 30, 2015 deadline, the documents held in escrow are to be released to Rabon, and Plan B is effective.
18. The November 30, 2015 deadline for triggering either Plan A or Plan B was designed to (1) give the Mitchells adequate time to attempt to reach a refinancing agreement with

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West Town Bank and obtain the Release Agreement, and (2) give Rabon sufficient time, in the event Plan B was triggered, to sell the real estate before the December 16, 2015 foreclosure hearing (if Plan A were triggered the foreclosure action would be dismissed).

19. As of November 24, 2015, the Mitchells had not executed or placed into escrow any of the required documents.
20. On November 24, 2015, Rabon reminded the Mitchells of their deadline for obtaining the Release Agreement and executing the required documents. (Exhibit B).
21. On November 25, 2015, Rabon advised the Mitchells that Rabon would consider extending the deadline if the Mitchells provided evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit C).
22. The Mitchells did not provide evidence of good faith attempts to perform.
23. On November 30, 2015, Rabon repeated the reminder concerning the midnight deadline. In addition, Rabon repeated the offer to extend the deadline if the Mitchells provided evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit D).
24. Once again, the Mitchells did not provide evidence of good faith attempts to perform.
25. The Mitchells did not execute and place into escrow the required documents prior to November 30, 2015.
26. The Mitchells did not obtain the Release Agreement by midnight on Monday, November 30, 2015.
27. On December 1, 2015, Rabon again requested that the Mitchells provide evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit E). The Mitchells did not provide evidence of good faith attempts to perform.
28. On December 3, 2015, Rabon again requested that the Mitchells provide evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit F). The Mitchells did not provide evidence of good faith attempts to perform.
29. On December 4, 2015, at 2:08 p.m. Rabon again requested that the Mitchells provide evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit G). The Mitchells did not provide evidence of good faith attempts to perform.

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30. Beginning on November 1, 2015, the Mitchells repeatedly represented that they could not perform under the Agreement because they were out of town.
31. On December 4, 2015, at 3:33 p.m. the Mitchells (through their attorney) stated that "they cannot do any of the things requested this week as they are in Washington." (Exhibit H).
32. On December 4, 2015, at 5:27 p.m. Rabon requested that "If the roadblock to the Mitchell's performance – roughly a week overdue now – is simply their absence from Myrtle Beach as suggested below then will they please confirm that they will begin performing immediately upon their return?" (Exhibit I). The Mitchells did not confirm their intent to perform.
33. On December 5, 2015, Rabon requested that the Mitchell's provide an "indication of when they will return from Washington." (Exhibit J). The Mitchells did not respond.
34. On December 7, 2015, at 8:10 a.m. Rabon requested that the Mitchells "Please let me know when you anticipate that the Mitchells will return from Washington so that they may begin performance under Plan B." (Exhibit K). The Mitchells did not respond.
35. On December 7, 2015, at approximately 2:00 p.m. Mitchells' counsel stated during a phone call with Rabon's counsel that the Mitchells had in fact returned from Washington, D.C. on Thursday, December 3, 2015. Mitchells' counsel now recants that statement.
36. On December 7, 2015, Rabon learned from eyewitnesses that the Mitchells were in Myrtle Beach on Thursday, December 3, 2015, as Mitchell's counsel had stated before recanting. (Exhibit L).

LEGAL ANALYSIS

I. The Court Should Order the Mitchells to Perform Under the Agreement.

The Court should Order the Mitchells to perform pursuant to the Agreement for two reasons, each of which is independently sufficient. First, the Agreement is a binding contract. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law); Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 497 (Ct. App. 2007) (a release agreement is a contract and contract principles of law should be used to determine what the parties intended); Mattox v. Cassady, 289 S.C. 57, 61 (Ct. App. 1986) (applying the general rules of contract construction to a settlement agreement)). In addition, Rule 43(k) of the South Carolina Rules of Civil Procedure

RECORD PAGE 41

("SCRCP"), does not hinder enforcement of the Agreement because the Agreement is in writing and signed by the parties and their counsel. Inglese v. Beal, 403 S.C. 290, 304 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part).

Moreover, the Mitchells have not alleged, nor could they, that the Agreement is defective in any way. Instead, they simply have not performed. The Agreement resulted from a day-long mediation. Both prior to and during the mediation, the Mitchells were represented by counsel. Prior to the execution of the Agreement, the Mitchells were fully informed by their legal counsel of the specific terms of the Agreement and the effect of executing such Agreement, specifically that such Agreement would be enforceable against them in law and in equity. The mediator was Dalton Floyd, a well-respected attorney who has practiced in South Carolina for over forty years. In the forty days since they entered into the Agreement, the Mitchells have not repudiated it or moved to set it aside on the basis of fraud, duress, unconscionability, impossibility, impracticability, or any other contract defense. For the Mitchells to appear now – after Plan A was not triggered as they hoped it would be – and argue that the Agreement is defective simply because it is no longer to their liking, is a too coincidental to be credible.

Second, the Mitchells are required to perform by the doctrine of promissory estoppel. The elements of promissory estoppel are "(1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance." N. Am. Rescue Prods. v. Richardson, 411 S.C. 371, 379-380 (2015).

Here, each of the elements of promissory estoppel is satisfied:

1. **Unambiguous Promise:** The Mitchells promises in the Agreement are reasonably susceptible of only a single interpretation, and therefore are unambiguous. S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623 (2001).
2. **Reasonable Reliance:** It is reasonable for Rabon to rely on the Mitchells' promises when those promises were made after over ten hours of consultation between the Mitchells and their attorney, and were embodied in a Mediation Settlement Agreement signed by the parties and their counsel.
3. **Foreseeable Reliance:** Because the Mitchells' promises were made in a contract, they were necessarily made in exchange for Rabon's promises. Sauner v. Public Serv. Auth., 354 S.C. 397, 405 (2003) (stating "A bilateral contract . . . exists when both parties exchange mutual promises). The reason for making promises within a contract is that the promisor expects the promisee to rely on the promises and make his own promises in

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return. Id. As a result, if Rabon's reliance on the Mitchells' contractual promises were not expected and foreseeable, then it is difficult to imagine what would be.

4. **Resulting Injury:** As described in detail in Exhibit N, the Mitchells control the LLC and have failed to make the LLC's loan payments to West Town Bank, despite having wrongfully siphoned money for the Corporation purportedly for that purpose. As a result, all the real estate owned by the LLC and the Corporation is now being foreclosed upon by West Town Bank. The final hearing in the foreclosure action is scheduled for December 16, 2015 – just six days from the date of this Motion. Nonetheless, the Mitchells continue to delay and fail to perform. If the real estate is lost to foreclosure, Rabon will lose their entire investment in the LLC and Corporation – as well as becoming personally liable under the personal guarantees – as the direct and foreseeable result of Rabon's reasonable reliance on the Mitchells' promises.

If this Court does not enforce the Agreement under contract law, this Court should nonetheless compel the Mitchells to perform by applying the doctrine of promissory estoppel, because "refusal to apply it would be virtually to sanction the perpetration of a fraud or would result in other injustice." N. Am. Rescue Prods. v. Richardson, 411 S.C. 371, 379 (2015) (internal quotations omitted).

II. This Court Should Issue a Temporary Restraining Order Restraining the Mitchells From Selling Real Estate Owned by the LLC or the Corporation, and From Refinancing the LLC's Loan From West Town Bank.

This Court may issue a temporary restraining order with or without providing notice to the Mitchells because, as described below and in the attached affidavit (Exhibit M), immediate and irreparable loss and/or damage will result to Rabon before notice can be served and a hearing had. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601 (2001).

Upon information and belief, the Mitchells intend to sell to an out of state buyer from Pennsylvania the personal property which they are required by the Agreement to convey to Rabon. The Mitchells have not placed the Certificates of Title to this property in escrow as they agreed to do over a month ago. Moreover, this property, consisting of two motorcycles and the trailer in which they are stored, is highly mobile. Once removed from South Carolina, it would be extremely difficult to recover. Upon information and belief, the intended buyer for the personal property is currently in Myrtle Beach with a vehicle suitable for towing the property away. Therefore, it is appropriate for this Court to Temporarily Restrain the Mitchells from conveying the property until a hearing can be held on the merits.

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Upon information and belief, the Mitchells intend to breach the Agreement by refinancing the LLC's loan from West Town Bank in a manner contradictory to the Agreement, or by selling the underlying real estate collateral for less than the amount owed, thus invoking the personal guarantees signed by Rabon. Once sold or refinanced via transactions involving innocent third parties, it will be difficult if not impossible for Rabon to be put into the position they should be in had the Mitchells not breached the Agreement. Therefore, it is appropriate for this Court to Temporarily Restrain the Mitchells from refinancing the LLC's loan from West Town Bank or selling the underlying collateral until a hearing can be had on the merits.

III. This Court Should Issue a Temporary Injunction Enjoining the Mitchells From Selling Real Estate Owned by the LLC or the Corporation, and From Refinancing the LLC's Loan From West Town Bank.

This Court may issue a temporary injunction to preserve the status quo ante because Rabon is likely to succeed on the merits, and without injunctive relief Rabon will suffer irreparable harm for which there is no adequate remedy at law. Poynter Invs. v. Century Builders of Piedmont, 387 S.C. 583, 587 (2010). As described above, Rabon is likely to succeed on the merits based on the doctrine of promissory estoppel and/or the Mitchells breach of the Agreement.

Because real estate is unique, injuries to real estate interests are unlikely to be adequately remedied by money damages. See HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 639-640 (Ct. App. 2010) (stating that "because denial of the requested services would severely restrict Appellants' use of their property, it is unlikely that money damages would provide an adequate remedy. See K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 915 (1st Cir. 1989), cited in CVM Holdings, LLC v. Gamma Enters., Inc., No. 5:10-CV-103-BO, 2010 U.S. Dist. LEXIS 62161, 2010 WL 2541093, at *2 (E.D.N.C. June 22, 2010) ("Real estate has long been thought unique, and thus, injuries to real estate interests frequently come within the ken of the chancellor.")). Once the real estate is sold to innocent third parties, it will be difficult if not impossible for Rabon to regain title to it, thus making the injury irreparable. Once the real estate is gone, it will be gone for good.

Finally, the real estate that will be lost if the Mitchells are not enjoined includes not only the commercial property owned by the LLC and the Corporation, but also family farm property

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owned by the Rabon personal guarantors. These are located in rural Horry County northwest of Conway, and are known as The Berry Farm, The Maple Farm, and The Cool Springs Farm. These three farms have been in Rabon's family since before the American Revolution. Money damages are clearly inadequate to compensate Rabon for the loss of such a long-held family farms. Moreover, the Mitchells have stated on numerous occasions that they are nearly destitute. As a result, even if money damages were adequate in theory, as a practical matter the Mitchells themselves assert that they do not have any money with which to satisfy a judgment.

As a result of the above, it is appropriate for this Court to issue a temporary injunction enjoining the Mitchells from refinancing the LLC's loan from West Town Bank or selling the underlying collateral.

The undersigned, as counsel for Rabon, hereby affirms that consultation was made with opposing counsel to no avail.

WHEREFORE, for the reasons set forth above, Plaintiff Rabon & Rabon, Inc. prays for the following:

(1) A Temporary Restraining Order restraining Karon and Kyle Mitchell from (a) disposing of the real and/or personal property described in the Agreement, and (b) refinancing or otherwise modifying the LLC's loan with West Town Bank in a manner inconsistent with the Agreement;

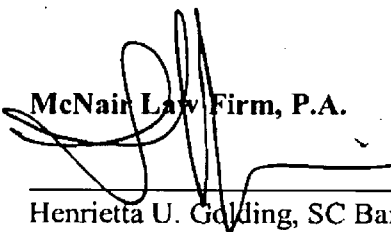
(2) A Temporary Injunction enjoining the Mitchells from (a) disposing of the real and/or personal property described in the Agreement, and (b) refinancing or otherwise modifying the LLC's loan with West Town Bank in a manner inconsistent with the Agreement; and

(3) An Order of the Court directing the Mitchells to immediately perform as required by the Agreement which is attached hereto as Exhibit A and incorporated by reference.

Respectfully submitted,

SIGNATURE ON FOLLOWING PAGE

RECORD PAGE 45



McNair Law Firm, P.A.

Henrietta U. Golding, SC Bar #2173

Lane D. Jefferies, SC Bar #101764

McNair Law Firm, P.A.

Founders Centre

2411 Oak Street, Suite 206

Myrtle Beach, South Carolina 29577

Tel: (843) 444-1107

Fax: (843) 443-9137

Email: hgolding@mcnair.net

ljefferies@mcnair.net

Myrtle Beach, South Carolina

December 10, 2015

Attorneys for the Plaintiff

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CERTIFICATE OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify the foregoing document was served via United States Mail, postage prepaid, and/or by Electronic Mail, to the Counsel of Record, and/or Pro Se Parties, on this the 10th day of Dec, 2015, as follows:

- Plaintiff's Motion for Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement with Exhibits A-M;
- Motion and Order Information Form and Cover Sheet; and
- Certificate of Service.

Addressee(s):

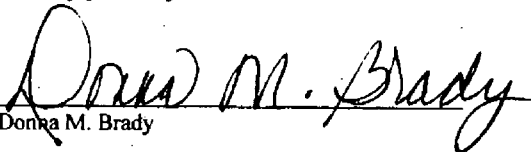
Karon Mitchell
Kyle Mitchell
4506 Camellia Drive
Myrtle Beach, SC 29577

Email: beachbummb4@msn.com

Rachael Ashley Dain, Esq.
Attorney Dain, LLC
P.O. Box 212654
Columbia, SC 29221-2654
Email: rachael@attorneydain.com

Purported Attorney for Defendants

Pro Se Defendants


Donna M. Brady

2015 DEC 10 PM 2:21

RECORD PAGE 47

PAID

STATE OF SOUTH CAROLINA) FILED
HORRY COUNTY) IN THE COURT OF COMMON PLEAS
2015 DEC 15 PM 4:02

MELANIE HUGGINS-WARD
CLERK OF COURT

2014 CP 26 7862

COUNTY OF HORRY)

Kyle
~~Rabon & Rabon, Inc.~~)

Plaintiff)

Vs.)

Rabon
~~Karon Mitchell and Kyle Mitchell~~)

Defendants)

DEFENDENTS MOTION FOR DISMISSAL
OF THE MEDIATION SETTLEMENT
AGREEMENT ON THE GROUNDS OF
COERCION AND MENTAL DURESS

This Mediation agreement is completely COERCION and DURESS:

- McNair Law Firm is representing the estate of Peggy Jo Rabon of which Kyle and Karon Mitchell are beneficiaries.
- * Jack Rabon is personal representative for the estate and a beneficiary.
- * McNair Law Firm is representing Jack Rabon, Jr. personally.

(EXHIBIT A)

The fiduciary duty of the Personal Representative: The fiduciary duty of the representative is a person to whom property or power is entrusted for the benefit of another.

- Jack Rabon, Jr. has not protected Kyle and Karon Mitchell as beneficiaries. IT HAS BEEN HIS PERSONAL GAIN!!!!!!

copy

RECORDED

The fiduciary duty of McNair Law firm in Representing the Estate of Peggy Jo Rabon is entrusted with making sure all beneficiaries of the estate are equally protected. NOT JUST ONE!!!!

- McNair Law Firm representing the Estate of Peggy Jo Rabon and Jack Rabon, Jr. personally has COMMITTED COERCION.
- McNair Law Firm is to protect the assets of all beneficiaries.
- McNair Law Firm has enabled the finical gain of just one beneficiary Jack Rabon, Jr.

This is coercion at its BEST!!!!

There is an evaluation on the Probate Judge's desk as we speak and has been there since July 28, 2015. Henrietta and lane have been successful in coercing the Probate Judge to not make the order for commitment.

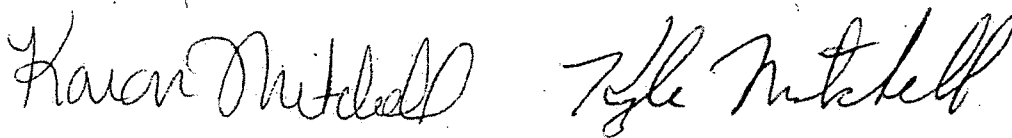
Lane Jefferies has become Jack's Power of Attorney is this not a conflict.

Jack does not have the mental capacity to conduct business. Henrietta Golding and Lane Jefferies know that my brother is not capable or competent to make decisions. Henrietta Golding and Lane Jefferies are taking advantage of this situation for monetary gain. Lane Jefferies Has stated "there is nothing left in the estate" my, mothers estate would be estimated around 4 million and there is nothing left.

Kyle and Karon have had nothing but greed and intimidation from McNair Law Firm.

There are many more situations that have happened, but I have tried to explain the most important!

Thank – you,

The block contains two handwritten signatures in black ink. The signature on the left is 'Karon Mitchell' and the signature on the right is 'Kyle Mitchell'. Both are written in a cursive, flowing style.

Karon Mitchell and Kyle Mitchell

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Jack Isaiah Rabon, Jr., individually and as)
Personal Representative of the Estate of)
Peggy Jo Hardee Rabon,)

Plaintiff,)

vs.)

Karon Mitchell, Kyle Mitchell, and MB)
Boardwalk Entertainment, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2014-CP-26-5740

AMENDED SUMMONS

14 SEP 30 PM 1:34
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Verified Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Verified Complaint on the Plaintiff's attorney, McNair Law Firm, P.A., P.O. Box 336, Myrtle Beach, South Carolina 29578, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Verified Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Verified Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Verified Complaint. Your Answer must be in writing and signed by you or by your attorney and you must state your address or address of your attorney, if signed by your attorney.

SIGNATURE BLOCK - NEXT PAGE

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Isaiah Rabon, Jr., individually and as
Personal Representative of the Estate of
Peggy Jo Hardee Rabon,

Plaintiff,

vs.

Karon Mitchell, Kyle Mitchell, and MB
Boardwalk Entertainment, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2014-CP-26-5740

AMENDED
VERIFIED COMPLAINT
(JURY TRIAL DEMANDED)

11 SEP 30 PM 1:34

The Plaintiff, Jack Isaiah Rabon, Jr., individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon, would respectfully show and allege unto this Honorable Court as follows:

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty, S.C. Code Ann. § 33-44-409)

1. Plaintiff Jack Isaiah Rabon, Jr. resides in Horry County, South Carolina and was appointed as Personal Representative for the Estate of Peggy Jo Hardee Rabon, in the County of Horry Probate Court, Case No.: 2014ES2601933 on September 15, 2014.
2. Defendant Karon Mitchell and Defendant Kyle Mitchell ("the Mitchell Defendants") reside in Horry County, South Carolina.
3. Defendant MB Boardwalk Entertainment, LLC ("LLC") is a South Carolina Limited Liability Company which owns property and has its principal place of business in Horry County, South Carolina.

Exhibit B



July 21, 2015

Attn: Honorable Kathy G. Ward
Horry County Judge of Probate
1301 Second Avenue
Conway, South Carolina 29526

PROBATE COURT
HORRY COUNTY, SC
2015 JUL 28 PM 4:35
PROBATE JUDGE

RE: Mr. Jack I. Rabon Jr.

To The Honorable Judge Kathy Ward,

As to the findings and recommendations of a completed assessment for Mr. Jack I. Rabon Jr., dated 4/16/15, the results are as follows. According to DSM-IV-TR, Mr. Rabon met criteria for "Iatrogenic" Dependence of Sedative Hypnotics, "Iatrogenic" Dependence of Opioids. There was also a diagnosis of Generalized Anxiety Disorder (Rule Out) -VS- Sedative Hypnotic-Induced Anxiety (Rule Out).

Mr. Rabon's reported conditions being treated with medications as anxiety, depression, and sleep disturbances. Mr. Rabon subsequently reported being treated for pain. Given his current stressors (lawsuit, recent loss of mother, disturbed work environment, financial implications, etc.) it presents that these would be "normal" treatable conditions with sedative-hypnotics in acuity. His report of surgical interventions reveals that there were conditions for treatment of opioids in acuity.

Concerns exits in his Prescription Monitoring Program Report (PMP) showing prescribed dose and length of use of sedatives and opioids pre-date current reported stressors and overlap his report of surgical interventions. Reported pre-existing conditions of anxiety, sleep disturbances and depression are also known direct effects of long term use of sedative-hypnotics. A known symptom from withdrawal from opioids is pain. It is difficult to conclude "true conditions" given his current medication regimen and presented stressors.

Given Mr. Rabon's past treatment at Willingway Hospital in the year 2000 (for a dependency on Sedative Hypnotics and Opioids) and the length of his current medication regimen of Sedatives and Opioids, Mr. Rabon could benefit from a medical detoxification and medication monitoring from an Addictions

Page 1 of 2

"So if the Son sets you free, you will be free indeed." (John 8:36)

Executive Director
William P. Mobley

J.O. Baldwin, Jr.
Ronald W. Dendy
James E. Graham, Jr. M.D.

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Jon C. Howell
Neil W. Trask, III M.D.
Bret H. Davis

B. Ed Shelley, Jr. M.D.
Deane G. Morris
John Cassidy

Medical Director
James E. Graham, Jr. M.D.

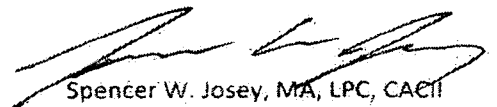
Medicine Specialist MD or Psychiatrist Certified in Addictions Medicine. Alternative non-addictive medication interventions in adjunct with counseling therapy could concurrently address external stressors, unresolved grief/loss, sleep disturbances, and any neuropathic pain.

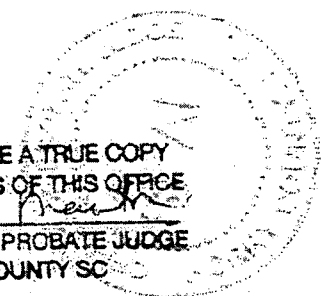
At the time of the assessment, Mr. Rabon was presented with and resistant to any recommended changes/adjustments to current regimen. He views his present legal and potential "life altering" financial situation as taking precedence in his immediate future. His resistance, current "survival mode" mind-set, acute stressors, and an ongoing inability to grieve his mother present that treatment without significant support and structure could be a potential failure.

On the basis of Mr. Rabon's presented conditions and findings of this office, the most appropriate plan of care resulting the highest efficacy would be inclusive of an inpatient setting to include detoxification, medication management, and counseling therapy for duration of no less than 6 weeks. The benefits of inpatient treatment would include removal from his current stressors, deny access to current medications and other/multiple prescribers, provide a context for ongoing monitoring of acuity of needs with medical stabilization, and make available an accessible non distractive supportive environment for therapy and emotional processing. He could also benefit from medication monitoring post treatment by a local Addictions Medicine Specialist MD or Psychiatrist Certified in Addictions Medicine.

Appropriate facilities to accommodate inpatient detoxification and treatment would include: Talbott Recovery in Atlanta GA, Pavillon in Mill Spring NC, or Cornerstone of Recovery in Louisville TN.

Sincerely,


Spencer W. Josey, MA, LPC, CACII
Licensed Professional Counselor
Certified Addictions Counselor Level II
Coastal Recovery Center
(843)-449-6261


CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE

KATHY G. WARD, PROBATE JUDGE
HORRY COUNTY SC

Date: November 4, 2014

Branch Banking and Trust

Page 4 of 4

Reference: 10000505906899:10000505907899:10000486051904

000743000 REV. 12/09/03

RABON & RABON INC
DEW SEA PALMS MOTEL
303 7TH AVE N
MYRTLE BEACH, SC, 29577-3767

Date August 21, 2014

PAY CASH \$ 42,010.00

to the order of

FORTY-TWO THOUSAND TEN & 00/100

BB&T

PLEASE ENTER YOUR ACCOUNT NUMBER BELOW

0005226152697

USE FOR DEPOSIT ACCOUNT NUMBER

Signature: [Signature]

44

1:053101121:

66-112
531

00.010.26

42,010.00

OVERLINE

8043811 052008 053 00142 13:10 08/21/14

#000000005226152697

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

ENDORSE HERE

FEDERAL RESERVE BANK REGULATION CC

Date 20140821
Amount 4201000
Serial Number 0000000000

Account Number 0000005226152697
CR-DR D
Transaction Link 010543230525820121

RECORD PAGE 57

Date: November 4, 2014

Branch Banking and Trust

Page 1 of 1

Reference: 10000505906970:10000505907970:10000486051974

KABON & KABON INC
DBA SEA PALMS MOTEL
308 7TH AVE N
MYRTLE BEACH, SC, 29577-3767

PAY CASH \$27,000.00
to the order of
TWENTY-SEVEN THOUSAND & 00/100

BB&T

Name _____
Signature *Peggy J Kabon*

PLEASE ENTER YOUR ACCOUNT NUMBER BELOW
0005226152697
FOR USE FOR 10 DIGIT ACCOUNT NUMBERS

⑆053101121⑆

66-112
531

Date June 30, 2014

F007430001 REV. 12/08/03

[illegible]

Date 20140630
Amount 2700000
Serial Number 0000000000

Account Number 0000005226152697
CR-DR D
Transaction Link 010362230222917430

Exhibit C

02-050558 (Person Reporting)	<u>NOISE ORDINANCE</u> <u>07/24/2002</u> Noisy Oyster Loud party-noise/outside speakers blaring (probably call for service only)
02-070682 (Victim)	<u>ANIMAL RUNNING AT LARGE</u> <u>10/15/2002</u> 201 Oak St (probably call for service only)
04-020265 (Suspect)	<u>SIMPLE ASSAULT</u> <u>03/27/2004</u> Diplomat Motel (Sec guard used mace; subjects refused to leave; advised of war proc)
04-024036 (Comp)	<u>TRESPASS REAL PROPERTY</u> <u>04/19/2004</u> Chesterfield Inn Suspect urinating in empty pool. (probably call for service only)
04-097109 (Comp)	<u>LARCENY/ALL OTHER</u> <u>12/28/2004</u> Chesterfield Inn
05-053403 (Person Reporting)	<u>SIMPLE ASSAULT</u> <u>07/05/2005</u> Chesterfield Inn
08-000684 (Victim)	<u>LARCENY/THEFT FROM COIN OPER MACHINE</u> <u>01/03/2008</u> Diplomat Motel 608 N Ocean Blvd
09-029457 (Comp)	<u>STRONG ARM ROB.</u> <u>04/10/2009</u> Greyhound Bus Station
10-095132 (Witness)	<u>CDV</u> <u>09/27/2010</u> Oak St/2 nd Ave N

Luci Mauro

Subject:

FW: Jack Rabon

From: Luci Mauro

Sent: Tuesday, December 02, 2014 1:52 PM

To: Doug Furlong

Cc: Cathie Rhodes

Subject: Jack Rabon

Lt.,

Here's the list of "possible" reports for Jack Rabon listed in the old AS400.

Please keep in mind that some of these came over in the incident module but they were probably just calls for service that we can no longer access.

Under the report number I've listed in what capacity Jack Rabon was listed in the report (victim/suspect/witness/comp/person reporting)

System showing:

Arrest: 07/07/1988 THREATENING PUBLIC OFFICIAL (no report number indicated)

2nd count of "Threatening Public Official" but showing arrest date of 3/18/2000 with release date of 7/7/1988 ???

In INCIDENT module of old system:

98-047040 (Victim)	<u>SUICIDE</u>	<u>07/04/1998</u>
	Sea Palms Motel	
99-026791 (Victim)	<u>VERBAL ASSAULTS</u>	<u>05/15/1999</u>
	Magnolia Court Motel 611 N Ocean Blvd	
99-056621 (Suspect)	<u>SIMPLE ASSAULT</u>	<u>09/10/1999</u>
	1 st Ave/Oak St	
99-071365 (Suspect)	<u>DISTURBANCE</u>	<u>12/06/1999</u>
	201 Oak St Breach of trust on purchase of veh -- in ref to civil dispute	
00-012066 (Suspect)	<u>CDV</u>	<u>03/16/2000</u>
	Sea Palms Motel	
00-012335 (Suspect)	<u>DISCHARGING FIREARM in DWELLING</u>	<u>03/17/2000</u>
	Sea Palms Motel (Indicates 'cleared by arrest')	
01-053580 (Person Reporting)	<u>DISORDERLY CONDUCT</u>	<u>08/04/2001</u>
	2 nd Ave S/S Ocean Disturbance/3 or 4 year old child on bike in street (probably call for service only)	

STATE OF SOUTH CAROLINA

COUNTY OF _____

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

CASE NO.: 2014-CP-26-07862

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Rabon & Rabon, Inc.
Plaintiff,

vs.

Karon Mitchell
Kyle Mitchell
Defendant.

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Karon Mitchell
4506 Camellia Dr
Myrtle Beach, SC
29577

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

Reconsideration of Mediation SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Karon Mitchell
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

2/1/2016
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: Jalt

Date Filed: 2/2

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

RECORD PAGE 62

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT COURT

NO. 2014 CP 26-07862

COUNTY OF HORRY

RABON & RABON, INC.,

Plaintiff,

v.

KARON MITCHELL AND KYLE
MITCHELL,

Defendants

IN SUPPORT OF DEFENDANTS'
MOTION FOR
RECONSIDERATION OF THE
PURPORTED MEDIATED
SETTLEMENT AGREEMENT

LEGAL AUTHORITY

Defendants have located legal authority from the following cases which are attached hereto in support of their request that the Court reconsider the validity of the subject Mediated Settlement Agreement purportedly entered into in this matter. They are:

Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14 (2007)

Smith v. D.R. Horton, Inc., 403 S.C. 10 (2013)

York v. Dodgeland of Columbia, Inc., 406 S.C. 67 (2013)

Murray v. Murray, 2011 WL 1167177 (2011)

Lucey v. Meyer, 401 S.C. 122 (2012)

Chapter 11, Alternative Dispute Resolution, 1 Litigating Tort Cases § 11:32, Enforcing the Settlement Agreement

In re Blessen H., 392 Md. 684 (2006)

2016 FEB -2 AM 10:57

Parker v. Foster, 2006 WL 2085152 (U.S.D.C., E.D. California)

Stewart v. Preston Pipeline, Inc., et al. 134 Cal. App. 4th 1565 (2005)

PROCEDURAL BACKGROUND

In October 2015, the parties allegedly agreed to a settlement of this matter. In December 2015, the Defendants requested that the purported Mediated Settlement Agreement be vacated and declared null and void. The matter is currently before the Court on Defendant's Motion for Reconsideration of the purported Mediated Settlement Agreement.

ARGUMENT

I. DEFENDANTS HAVE GIVEN NOTICE OF THEIR REQUEST FOR RESCISSION OF THE MEDIATED SETTLEMENT AGREEMENT

Cal. Civ. Code § 1691 provides the procedure to rescind a contract:

Subject to Section 1693, to effect a rescission a party to the contract must, promptly upon discovering the facts which entitled him to rescind if he is free from duress, menace, undue influence or disability and is aware of his right to rescind:

- (a) Give notice of rescission to the party as to whom he rescinds; and
- (b) Restore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so.

When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both.

Huens v. Tatum, 52 Cal. App. 4th 259, 264 (1997):

Because settlements are contracts, a plaintiff must present contractual grounds for rescission, such as fraud, mutual mistake, or coercion, to set aside a settlement agreement.

California Civil Code § 1689 provides the conditions under which a contract can be rescinded:

- (a) A contract may be rescinded if all the parties thereto consent.
- (b) A party to a contract may rescind the contract in the following cases:

- 1) If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

II. THE PURPORTED MEDIATED SETTLEMENT AGREEMENT IS CONDITIONED UPON COURT APPROVAL

In re Blessen H., 392 Md. 684 (2006):

We have also stated that a consent agreement, or settlement agreement, is a contract between two parties which is conditioned upon the court's acceptance of its terms. This is consistent with the understanding of the parties to this case, for, as previously noted, the mediation agreement was prefaced, in part, with the statement: "we understand our Mediation Agreement is subject to review by the court and to the extent that the court has jurisdiction, the provisions of our agreement may be made Orders of the court."

III. THIS COURT HAS THE AUTHORITY TO SET ASIDE THE MEDIATED SETTLEMENT AGREEMENT

Litigating Tort Cases § 11:32:

Mediation agreements are enforceable under general contract law. Therefore, the defenses to enforcement of contracts – fraud, duress, lack of capacity, lack of consideration, lack of authority, unconscionability, mutual mistake – can apply to the enforcement of mediation agreements.

Dorsey v. Wroten, 35 Md. App. 359, 370 A.2d 577 (1977):

The parties agreed to mediate their dispute. Having reached a successful resolution, they communicated that fact to the trial court who asked counsel to prepare a consent decree and present it to the court for signature. Several hours later, prior to the presentment of the decree, Dorsey informed his attorney that he no longer assented to the settlement agreement, and his attorney met with the trial judge and advised him accordingly. "The trial judge stated that he considered the matter settled and that he would sign the 'consent' decree when it was presented," and, in fact, did so. The Court of Special Appeals held that, although Dorsey had orally agreed to a settlement, "it is obvious that he withdrew that consent before the final meeting with the trial judge. It is also apparent that both the trial judge and the appellees had full knowledge that the appellant was not consenting to the decree two days after it was signed. Accordingly, the

judgment was reversed. The court also noted that "by its nature . . . a consent decree cannot be entered unless both parties agree to the order which is presented to the clerk."

IV. DEFENDANTS LACKED UNDERSTANDING OF THE MEDIATED SETTLEMENT AGREEMENT

In re Blessen H., 392 Md. 684 (2006):

It is clear from Ms. H.'s comments that, at the very least, she either did not fully understand either the consequences, or the extent, of the agreement to which she had assented and which the court had outlined during the hearing, or that she may no longer have been satisfied with it.

"I can't deal with this. It's so many lies on this place. It's just ridiculous It really is. You know. I'm trying to be the best parent I can be. I have already been slandered by DHS. Sheldon don't like some of this. And I have swallowed my pride to try to get this court hearing done. Okay. I don't deserve this. I've been the best mother I can be."

Because Ms. H. made the aforementioned, at best ambiguous, statements prior to the entry of judgment, albeit after the consent had been tendered and the court had indicated its intent to accept it, the Court had an obligation to question her further as to their meaning. More specifically, given the circumstances and the seriousness of the issue, it should have ascertained whether, in view of their ambiguity, the statements were an expression of her intent to withdraw her consent to the CINA finding.

These cases, together with Rule 2.601, indicate that if the statements of Ms. H made in open court were sufficient to indicate an intention to withdraw her consent to the mediation agreement and, in fact, she did so, the withdrawal would have occurred prior to judgment being issued in the case.

Ms. H's statements in open court clearly demonstrate a lack of understanding of the proceedings, of the mediation agreement, or of both, and, possibly, a desire to withdraw her consent to the CINA finding. Accordingly, and consistent with the nature of a consent judgment, in which consent must be present at the very moment the judgment is entered, the trial court had a duty to question her further as to the meaning of her statements and her intention, and to determine whether she still continued to consent to the CINA finding.

Dissenting Opinion by Bell, C.J.

The question posed by Ms. H., the petitioner, in her petition for writ of certiorari is "[w]hether in a CINA proceeding the right to a contested adjudicatory hearing may be waived only by the parent's personal, knowing, intelligent and voluntary waiver." The majority addresses, and

resolves, that issue. In the process, however, it ignores a threshold issue, whose importance and need to be addressed are made strikingly obvious by a colloquy that occurred shortly after the parties, with Ms. H. present, placed on the record the agreement resolving the CINA case. That issue is whether Ms. H., having signed the mediation agreement negotiated between her attorney and Montgomery County ("Department"), continued to agree to it, or, as seems likely, withdrew her agreement after its entry on the record. The meaning of Ms. H's statements, and the trial court's obligation to investigate that meaning, ought to be the true focus of our review.

Commercial Carrier Corp. v. Guevara, 541 So. 2d 774 (Fla. App. 1989):

The appellee had filed a 6-point counterclaim in response to appellant's original complaint, Count III of which alleged a statutory violation that, if proven, would have allowed the appellee to collect attorney's fees. The appellant "made an offer of judgment to appellee," pursuant to which judgment on the counterclaim, not to include attorney's fees, would be entered against the appellant. The offer was accepted by the appellee, who, when giving notice of acceptance, stated that it did not include Count III of the counterclaim. Subsequently, the appellant filed a written objection to the entry of any judgment on the offer and acceptance "on the grounds that no additional entitlement by way of attorney fees was contemplated by the parties." The trial court entered judgment over the appellant's objection. On appeal, the District Court of Appeal of Florida, Third Circuit, reversed. It held: "it was an abuse of discretion by the trial judge to fail to disapprove the offer and acceptance when confronted by a clear and certain expression of the parties' lack of understanding as to what was intended by the offer."

V. DEFENDANTS DID NOT CONSENT TO THE MATERIAL TERMS OF THE MEDIATED SETTLEMENT AGREEMENT

Lee v. Rhodes, 227 N.C. 240, 41 S.E.2d 747; *Jacobs v. Steinbrink*, 242 App. Div. 197, 273 N.Y.S. 498 (1934):

"Consent of the parties must still subsist at the time the court is called upon to exercise its jurisdiction and sign the consent judgment." Consent may be withdrawn at any time prior to entry of judgment."

Burnaman v. Heaton, 150 Tex. 333, 240 S.W.2d 288 (1951):

The parties announced in court that they had settled their case. Later that same day, the trial judge made a notation on the docket reflecting the fact of settlement, not the amount, but only after the plaintiff's attorney had obtained "confirmation of the notation from the attorney for the defendants." The trial judge having been advised by a clerk that the plaintiff was "trying to back out on the settlement," the attorneys for both parties appeared in court and again announced their settlement. This was entered on the docket; however, judgment was not entered at that time. One week later, the trial judge received a letter from the plaintiff, in which she stated that she did

not authorize the settlement. Following a hearing to consider whether judgment should be entered, the plaintiff having been required to show cause why not and the defendant having filed a motion to enter judgment, the trial judge entered judgment as the defendant had requested and over the plaintiff's objection. On appeal, the Texas Supreme Court determined that the trial court should not have accepted the settlement because "the announcement of settlement and docket entry were made after the court had received information that the plaintiff was dissatisfied . . . the record reveals that she was opposed to the settlement and is still insisting upon her right to be heard upon the merits of her claim. As the judgment entered was a consent judgment, consent was required at the "very moment" the court made the agreement the judgment of the court. It further stated:

"When a trial court has knowledge that one of the parties to a suit does not consent to a judgment agreed to by his attorney, the trial court should refuse to give the agreement the sanction of the court so as to make it the judgment of the court. Any judgment rendered on the agreement under such circumstances will be set aside. The same reasons which impel the setting aside of a consent judgment rendered by the court with knowledge that a party does not consent thereto will, in the interest of justice, also impel the setting aside of a consent judgment rendered when the court is in possession of information which is reasonably calculated to prompt the court to make further inquiry into the party's consent thereto, which inquiry, if reasonably pursued, would disclose the want of consent"

"We think the information in the possession of the court was clearly sufficient and of such a nature as to put the court on notice that plaintiff's consent to the judgment rendered on March 23rd might be wanting and to require the court to make further inquiry before rendering judgment." *Chernick v. Chernick*, 327 Md. 470, 479, 610 A.2d 770, 774 (1992)

Larian v. Larian, 123 Cal. App. 4th 751, 761 (2004); *Ford v. Shearson Lehman American Express, Inc.*, 280 Cal. App. 3d 1011, 1028 (1986):

Based on the evidence before the court, there is no evidence that Plaintiff did not consent to the Agreement's terms. It appears that plaintiff may be attempting to allege that he did not understand the Agreement's terms when he signed the Agreement. Fraud in the inception of a contract occurs when the promisor is deceived as to the nature of his act, so that he does not know what he is signing or does not intend to enter into a contract at all. In such a case, consent is lacking and the contract is void.

VI. THE TERMS OF THE PURPORTED MEDIATED SETTLEMENT AGREEMENT ARE UNCONSCIONABLE AND THEREFORE UNLAWFUL

S.C. Code Ann. § 36-2-302(2) (2003):

When it is claimed or appears to the court that the contract or any clause thereto may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

S.C. Code Ann. § 15-48-10(a):

... [A] party may seek revocation of the contract under "such grounds as exist at law or in equity," including fraud, duress, and unconscionability.

Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d at 663 (2007):

In South Carolina, unconscionability is "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Thus, unconscionability is "due to both an absence of meaningful choice and oppressive, one-sided terms."

In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. (*See Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999). Our supreme court has adopted the Fourth Circuit's view, and "[i]t is under this general rubric that [this court determines] whether a contract provision is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms."

"Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *See Carlson v. General Motors Corp.*, 883 F.2d 287, 295-96 (4th Cir. 1989). "In determine whether a contract was 'tainted by an absence of meaningful choice,' courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. (*Quoting Carlson*, 883 F.2d at 293, 295; *see also Holler v. Holler*, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct. App. 2005).

Stockton Morris, etc. Co. v. Calif. etc. Corp., 112 Cal. App. 2d 684, 690 (1952):

If the effect of a contract is to accomplish an unlawful purpose, it will be deemed illegal regardless of the parties' intent.

Cal. Civ. Code § 1670.5; Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83, 114 (2000); *Perdue v. Crocker National Bank*, 38 Cal. 3d 913, 925 (1985):

Even if a contract has all essential elements, a court can still refuse to enforce a contract if it is unconscionable.

A&M Produce Co. v. FMC Corp. 135 Cal. App. 3d 473, 186 (1982):

“Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.”

Morris v. Redwood Empire Bancorp. 128 Cal. App. 4th 1305, 1317 (2005); *A&M Produce Co. v. FMC Corp.* 135 Cal. App. 3d at 186:

Unconscionability has both “procedural” and “substantive” elements.

A&M Produce Co. v. FMC Corp. 135 Cal. App. 3d 473, 186 (1982):

Procedural unconscionability concerns the manner in which the contract was negotiated and the circumstances of the parties at that time.

California Grocers Assn. v. Bank of America, 22 Cal. App. 4th 205, 214 (1994):

The procedural element of unconscionability focuses on two factors: oppression and surprise. The oppression component arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party.

Morris v. Redwood Empire Bancorp. 128 Cal. App. 4th 1305, 1317 (2005); *Jones v. Wells Fargo Bank*, 112 Cal. App. 4th 1527, 1539 (2003):

The substantive element of unconscionability concerns whether a contractual provision reallocates risks in an objectively unreasonable or unexpected manner.

Morris v. Redwood Empire Bancorp. 128 Cal. App. 4th at 1322 (quoting *24 Hour Fitness, Inc. v. Superior Court*, 66 Cal. App. 4th 1199, 1213 (1998)):

“A provision is substantively unconscionable if it ‘involves contract terms that are so one-sided as to shock the conscience, or that impose harsh or oppressive terms.’”

West’s Ann. Cal. Civ. Code § 1577; Restatement (Second) of Contracts §§ 153(a), 157:

Where the plaintiff has no reason to know of and does not cause the defendant's unilateral mistake of fact, the defendant must establish the following facts to obtain rescission of the contract: (1) that defendant made a mistake regarding a basic assumption upon which the defendant made the contract, (2) that the mistake has a material effect upon the agreed exchange of performances that is adverse to the defendant, (3) that the defendant does not bear the risk of the mistake, and (4) the effect of the mistake is such that enforcement of the contract would be unconscionable.

Smith v. D.R. Horton, Inc., 403 S.C. 10 (2013):

The court concluded the relevant arbitration provision was "wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-side provisions."

VII. DEFENDANT KARON MITCHELL WAS UNDER A DOCTOR'S CARE¹ AT THE TIME OF THE MEDIATED SETTLEMENT CONFERENCE DUE TO THE EVENTS INVOLVING THE PLAINTIFF LEADING UP TO THE MEDIATION AND, THEREFORE, THE PURPORTED MEDIATED SETTLEMENT AGREEMENT IS INVALID AND UNENFORCEABLE BASED ON COERCION, DURESS, AND UNDUE INFLUENCE

Cal. Civ. Code § 1556:

Under California law, all persons are capable of contracting with the exception of minors, persons of unsound mind, and persons deprived of civil rights.

Odorizzi v. Bloomfield School Dist., 246 Cal. App. 2d 123, 129 (1966); *In re Marriage of Bonds*, 24 Cal. App. 1, 28 n. 11 (2000):

In essence undue influence involves the use of excessive pressure to persuade one vulnerable to such pressure, pressure applied by a dominant subject to a servient object. "In combination, the elements of undue susceptibility in the servient person and excessive pressure by the dominating person make the latter's influence undue, for it results in the apparent will of the servient person being in fact the will of the dominant person. In determining if undue influence occurred, they should consider facts such as: the substantial weakness of the person influenced or the excessive strength of the other party, taking into account factors such as the transaction having occurred at an unusual or inappropriate time or place, an insistent demand that the business be concluded immediately without recourse to independent advisors and an extreme emphasis on the negative consequences of delay, the concurrence of several persons in influencing the weaker party, and the absence of an independent advisor for that person.

¹ See **Exhibit A** attached hereto.

Walther v. Walther, 102 Ohio App. 3d 378, 657 N.E.2d 332 (1995):

As long as a settlement agreement reached by the parties was not procured by fraud, duress, overreaching, or undue influence, the court has the discretion to accept it.

Blodgett v. Blodgett, 49 Ohio St. 3d 243, 551 N.E.2d 1249 (1990):

"To avoid a contract on the basis of duress, a party must prove coercion by the other party to the contract. It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party."

To demonstrate duress, the party must show: "(1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) that said circumstances were the result of coercive acts of the opposite party."

VIII. DEFENDANTS' COUNSEL WAS INEFFECTIVE AT THE PURPORTED MEDIATION CONFERENCE BY PERSUADING KARON MITCHELL TO SIGN THE PURPORTED MEDIATION SETTLEMENT AGREEMENT DESPITE DEFENDANTS' INDICATION THAT KARON MITCHELL DID NOT WISH TO SIGN THE DOCUMENT

Stewart v. Preston Pipeline, Inc., 134 Cal. App. 4th 1565 (2005):

Stipulations or actions taken in a lawsuit that must be viewed as impairing the client's substantial rights or the cause of action itself generally are valid only with the client's express authorization or agreement, and the attorney's agreement is not sufficient in these situations to bind the client.

Linsk v. Linsk, 70 Cal. 2d 272, 74 Cal. Rptr. 544, 449 P.2d 760 (1969); *Blanton v. Womancare, Inc.*, 38 Cal. 3d 396, 212 Cal. Rptr. 151, 696 P.2d 645 (1985):

By contrast, there are other stipulations or actions taken in a lawsuit that must be viewed as "impair[ing] the client's substantial rights or the cause of action itself. In those instances, there is no implicit authority conferred upon counsel simply by virtue of the attorney-client relationship and the attorney's agreement or action is valid only with his or her client's express authorization or agreement.

CONCLUSION

Based upon the authorities cited, the Defendants respectfully request that the Court reconsider its previous ruling regarding the Mediated Settlement Agreement.

This the 2 day of February, 2016.

Kyle Mitchell

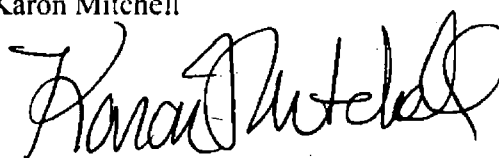


Karon Mitchell



I declare that on the day first written above, I have provided a copy of this in Support of Defendants' Motion to Reconsider the Purported Mediated Settlement Agreement upon Jack Rabon.

Karon Mitchell



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Rabon & Rabon, Inc.,

Plaintiff,

vs.

Karon Mitchell and Kyle Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-26-07862

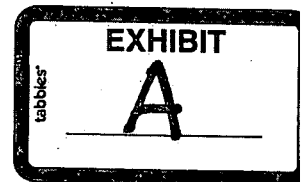
MEDIATION SETTLEMENT AGREEMENT

FILED
2015 DEC -2 PM 2:24
CLARE HUGGINS-WARD
CLERK OF COURT
Horry County

AS A RESULT OF MEDIATION, THE PARTIES HAVE AGREED AS FOLLOWS:

1. The parties agree to authorize their respective attorneys to dismiss the following cases with prejudice:

- (a) Rabon & Rabon, Inc. -vs- Mitchells (2014-CP-26-7862)
- (b) Rabon as Personal Representative -vs- Mitchells (2014-CP-26-5740)
- (c) Mitchells -vs- Jack Rabon
- (d) All existing probate cases



2. The parties agree to use their best efforts to have all pending criminal cases dismissed.
3. The parties agree not to commence, personally or through their ownership in any business entities any litigation against any of the parties to this action for any events or damages that occurred prior to this date, known or unknown; furthermore, Karon Mitchell and Kyle Mitchell and Jack Rabon

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copy

[Handwritten signatures and initials]

cannot sue Nichole Rabon, Chad Mitchell, Chase Mitchell or Leigh Anna Mitchell for any actions, events or damages, unless it is a Counterclaim to a suit brought by one of these individuals.

4. The parties agree not to, personally or through third parties or government agencies or entities, harass or interfere with each other or their spouses personally or attempt to interfere with or harm their employment or any other business interest or related activities. The parties agree that this clause is not intended to restrict any party's ability to keep and bear arms.

5. Plan A as set forth in Exhibit A will be effective provided Karon Mitchell obtain a written Agreement within thirty (30) days from the date of this Agreement to remove and/or release Jack Rabon and the Estate of Peggy Jo Hardy Rabon as a personal guarantor under the loan to MB Boardwalk Entertainment, LLC and accomplish this within ninety (90) days from the date the bank agrees to do this.

6. If Plan A is not activated as set forth above, the parties agree to proceed with Plan B which is set forth in Exhibit B.

7. Rachael Dain will be paid \$10,000.00 out of the Estate of Peggy Jo Hardy Rabon as legal fees for her services to Karon Mitchell and Kyle Mitchell which were limited to this mediation when this Settlement Agreement has been approved by the Court.

7. The parties will agree to execute Mutual General Releases.

8. This is the entire Agreement between the parties and the parties have no further obligations to each other in connection with this matter.

9. The parties agree not to take any action that would prejudice the party's rights under this Settlement Agreement or any related agreements.

10. This Settlement Agreement is enforceable in law and equity.

11. Except as to any property addressed herein, any other property will be distributed per the terms of the Will and the parties agree there will be no challenges to the Will.

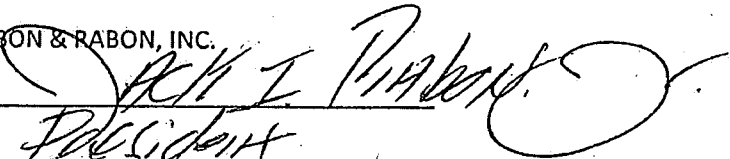
Handwritten signatures and initials in the bottom right corner, including a large signature that appears to be 'Karon' and several other initials and marks.

The parties authorize their respective attorneys to execute a dismissal without prejudice within the next thirty (30) days.

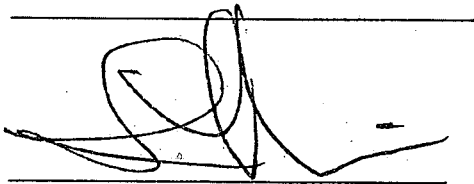
This Settlement Agreement is enforceable in law and equity.

PLAINTIFF:

RABON & RABON, INC.

By: 

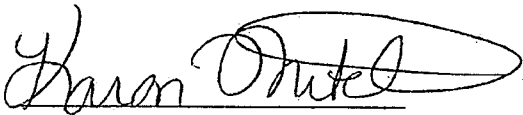
Its: President



Lane D. Jefferies, Attorney for Plaintiffs

Henrietta U. Golding, Attorney for Plaintiffs

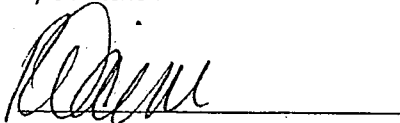
DEFENDANTS – PRO SE:



Karon Mitchell



Kyle Mitchell



Rachael Dain

DATED: OCTOBER 30, 2015

EXHIBIT "A"

Plan A

1. Jack Rabon, individually, and as Personal Representative of the Estate of Peggy Jo Hardy Rabon, agrees to transfer and assign all of their rights, title and interest in and to MB Boardwalk Entertainment, LLC to Karon Mitchell and Kyle Mitchell.

2. Rabon & Rabon, Inc. agrees to transfer all of its rights, title and interest in and to the property on which Building 4 occupies together subject to the Mortgage of West Town Bank to MB Boardwalk Entertainment, LLC.

3. Jack Rabon and the Estate of Peggy Jo Hardy Rabon are released from personal guarantees limited to West Town Bank loan (including any guarantee to USDA) as to any liabilities whatsoever.

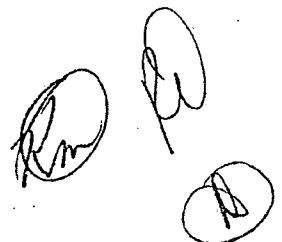
4. Karon Mitchell and Kyle Mitchell will use their best efforts to obtain a release of Jack Rabon and the Estate of Peggy Jo Hardy Rabon from the Lease for restaurant equipment held by Pawnee Lease, Marlin Leasing and Vendley Leasing and further agrees to indemnify and hold Jack Rabon and the Estate of Peggy Jo Hardy Rabon harmless from any liabilities pertaining to the Leases. Further, in the event Karon Mitchell and Kyle Mitchell bring an investor into MB Boardwalk Entertainment, LLC, then Karon Mitchell and Kyle Mitchell agree to release Jack Rabon and the Estate of Peggy Jo Hardy Rabon from the three (3) Leases and the Celtic Bank loan. An investor is not a bank or lending institution and this provision ends in 120 days.

5. At the request of Jack Rabon, Karon Mitchell and Kyle Mitchell will transfer all of their ownership interests in Rabon & Rabon, Inc. to Jack Rabon on or before March 1, 2016.

EXHIBIT "B"

Plan B

1. Karon Mitchell and Kyle Mitchell agree to give Jack Rabon their proxy authorizing him to assign the vote their shares to sell the assets of Rabon & Rabon, Inc. and MB Boardwalk Entertainment, LLC at a private buyer sale under terms and conditions as Jack Rabon determine in his sole discretion.
2. Karon Mitchell and Kyle Mitchell will transfer title to the two (2) Harleys and Trailer owned by them to Jack Rabon.
3. Karon Mitchell and Kyle Mitchell will sign the necessary paperwork to effectuate Plan B and said paperwork will be held by Rachael Dain unless and until Plan B is implemented and the paperwork will then be turned over to the attorneys for Rabon & Rabon, Inc.

Three handwritten signatures are located in the bottom right corner of the page. The first signature is a cursive 'RM' inside a circle. The second signature is a cursive 'K' inside a circle. The third signature is a cursive 'D' inside a circle.

Attack Mini Golf and Hammerhead Grill. A short time later I heard the sound of jack hammers coming from the building.

11. On Saturday, December 5, 2015, at 1:15 p.m. I saw Kyle Mitchell, Chad Mitchell, and several workers arrive at Shark Attack Mini Golf and Hammerhead Grill. A short time later I heard the sound of jack hammers coming from the building.
12. On Saturday, December 5, 2015, at 6:19 p.m. I saw Kyle Mitchell and Chad Mitchell leave Shark Attack Mini Golf and Hammerhead Grill.
13. On Sunday, December 6, 2015 at about 6:00 a.m. I saw Kyle Mitchell and Chad Mitchell leave Shark Attack Mini Golf and Hammerhead Grill (apparently they must have returned sometime during the night).

Susie Pearl Floyd
Susie "Pearl" Floyd

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF HORRY)

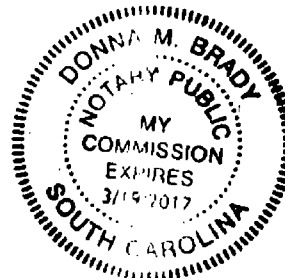
SWORN to and subscribed before me this 10th day of Dec, 2015,
_____ ☐ a person known to me, or ☒ who provided identification

(Printed Name of Affiant)

in the form of license, and who acknowledged executing the foregoing document.
(Type of Identification Presented)

Donna M. Brady
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-19-2017



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Rabon & Rabon, Inc.,

Plaintiff,

vs.

Karon Mitchell and Kyle Mitchell,

Defendants.

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

**AFFIDAVIT OF
JACK I. RABON, JR.**

2015 DEC 10 PM 2:22

1. My name is Jack I. Rabon, Jr.
2. I am President of Rabon & Rabon, Inc., and I am the Personal Representative of the Estate of Peggy Jo Hardee Rabon (my deceased mother).
3. CIVIL ACTION NO. 2014-CP-26-07862 is one of four pending Civil Actions in which Karon and Kyle Mitchell are adverse to me, either individually or as Personal Representative of the Estate of Peggy Jo Hardee Rabon, and/or Rabon & Rabon, Inc.
4. On October 30, 2015, a mediation was held to resolve the disputes which underlie the four causes of action.
5. Mediation lasted well over ten hours, and concluded successfully when the Mitchells and me (in my various capacities) entered into a Mediation Settlement Agreement ("Agreement").
6. Among other things, the Agreement disposed of:
 - a. Civil action no. 2014-CP-26-05740
 - b. Civil action no. 2015-AD-26-00004
 - c. Civil action no. 2015-CP-26-01628
 - d. Civil action no. 2014-ES-26-01933
 - e. An *ex parte* Affidavit and Application for Involuntary Emergency Admission for Chemical Dependency filed on June 23, 2015 of unknown Civil Action Number.
7. The Mitchells are now in breach of the Mediation Settlement Agreement.
8. Upon information and belief, the Mitchells intend to sell to an out of state buyer from Pennsylvania the personal property which they are required by the Agreement to convey to me.

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9. The Mitchells have not placed the Certificates of Title to this property in escrow as they agreed to do over a month ago.
10. The property is highly mobile as it consists of two motorcycles and the trailer in which they are stored.
11. Once removed from South Carolina, it would be extremely difficult to recover.
12. Upon information and belief, the intended buyer for the personal property is currently in Myrtle Beach with a vehicle suitable for towing the property away and intends to do so imminently.
13. Upon information and belief, the Mitchells intend to, and are in the process of, refinancing certain loans (on which I and my mother's estate are personal guarantors) in a manner contradictory to the Agreement.
14. Upon information and belief, the Mitchells are attempting to sell the real estate collateral securing the loans for less than the amount owed, thus invoking the personal guarantees.
15. The Estate of Peggy Jo Hardee Rabon owns several farms which have been in my family since before the American Revolution.
16. These farms are likely to be lost if the Estate and I are sued on the personal guarantees as a result of the Mitchells wrongful refinancing or sale of real estate collateral.
17. The farms are unique and irreplaceable. The Estate and I, as a beneficiary, would be irreparably harmed by the loss of our family farms.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Jack I. Rabon, Jr.
Jack I. Rabon, Jr.

ACKNOWLEDGMENT

SWORN to and subscribed before me this 10th day of Dec, 2015,

Jack Rabon ☒ a person known to me, or ☐ who provided identification
(Printed Name of Affiant)

in the form of _____, and who acknowledged executing the foregoing document.
(Type of Identification Presented)

Dorothy M. Brady
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-19-2017

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Kyle Mitchell <kandkmitchell22@gmail.com>

FW: RABON RE: Mitchell letter - TIME SENSITIVE

1 message

Rachael Dain <Rachael@attorneydain.com>

Mon, Nov 30, 2015 at 3:12 PM

Reply-To: Rachael@attorneydain.com

To: Jesse.Risher@sc.usda.gov

Cc: AttorneyDain.BackDoor@gmail.com, RachaelBackDoor@gmail.com

Bcc: KandKMitchell22@gmail.com

Dear Jesse:

Thank you so much for speaking with the Mitchells today.

Below please see the email I just received from Lane Jefferies, Opposing Counsel, in this case. He has personally told me he wants the opportunity for the Mitchells to renegotiate this loan to fail so he can attempt to short sale the property.

The entire purpose of this mediation agreement was to remove Jack Rabon from the Mitchells' lives. Jack's constant interfering actions certainly do seem to indicate his desire to make sure the Mitchells' business venture fails.

I hope you can secure a letter today that will satisfy the requirements of the mediation agreement, which are more fully described below.

While I realize terms may not be finalized today, I think it is possible if we put our heads together to draft such a letter which will allow the Mitchells, West Town Bank, & USDA time to resolve the current circumstances without having to take the property.

If USDA understood how the opposing party has tried to wreck the Mitchell's ability to make a success out of this business I think you would see with him out of the picture, which the mediation agreement terms will finally give them, they have a chance at success with this business venture.

PLEASE DO NOT HESITATE TO CALL ME IF I CAN HELP YOU GET THIS DONE **TODAY** AS THE LETTER MUST BE EMAILED TO LANE JEFFERIES BEFORE MIDNIGHT.

Thanking you in advance,

Rachael Dain

RECORD PAGE 83

RE: Rabon & Rabon, Inc. v. Karon Mitchell et al. (CA# 2014-CP-26-07862) HEARING JAN. 20, 2016

From: **kyle mitchell** (beachbummb4@msn.com)

Sent: Tue 1/19/16 10:20 PM

To: Culbertson, Benjamin H. (bculbertsonj@sccourts.org); Brady, Donna (dbrady@mcnair.net); Culbertson, Benjamin H. Law Clerk Randerson I. Stephens (bculbertsonlc@sccourts.org)

Cc: Henrietta Golding (hgolding@mcnair.net); Lane Jefferies (ljefferies@mcnair.net); Rachael@attorneydain.com (rachael@attorneydain.com)

Dear Judge Culbertson,

I am Karon Mitchell and I am writing in response to the mediation agreement, I am asking for the agreement to be dismissed. Rachael Dain the attorney that represented me in the mediation refuses to appear in court tomorrow. I ask that you demand, she come to court. Rachael Dain refuses to be in court, because she knows, she did not represent me with my best interest and has completely set me up for failure. I expressed to Ms. Dain over and over during , I was in no condition to sign anything.

Lane Jefferies with McNair Law Firm, has also crossed the line with the threats he made during mediation!! The statement Rachel Dain relayed to me, made by Lane Jefferies, I would consider a form of extortion.

After the mediation, I went back to Dalton Floyd's office and ask Mr. Floyd to explain to me how he could allow Lane Jefferies make threats in mediation. I also ask Mr. Dalton, how he could have allowed me to sign a legal agreement with good conscience after witnessing the emotional duress condition, I was experiencing.

I have been abused emotionally, mentally, physically and financially by Jack Rabon (my brother) for years. There is a report on the Probate Judges desk that Jack has chemical dependency and mental problems. Jack has shot my car, which i feel was intended for me. Jack Rabon has threaten to kill my husband (Kyle Mitchell) in police reports. The police reports are numerous. I have lived in fear for my life everyday!

As you can see on this e-mail, Rachael Dain is copied on all correspondence and is still involved with this case.

Thank-you,

Karon Mitchell

RE: Rabon & Rabon, Inc. v. Karon Mitchell et al. (CA# 2014-CP-26-07862) HEARING JAN. 20, 2016

From: **kyle mitchell** (beachbummb4@msn.com)

Sent: Tue 1/19/16 10:20 PM

To: Culbertson, Benjamin H. (bculbertsonj@sccourts.org); Brady, Donna (dbrady@mcnair.net);
Culbertson, Benjamin H. Law Clerk Randerson I. Stephens (bculbertsonlc@sccourts.org)

Cc: Henrietta Golding (hgolding@mcnair.net); Lane Jefferies (ljefferies@mcnair.net);
Rachael@attorneydain.com (rachael@attorneydain.com)

Dear Judge Culbertson,

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I have been abused emotionally, mentally, physically and financially by Jack Rabon (my brother) for years. There is a report on the Probate Judges desk that Jack has chemical dependency and mental problems. Jack has shot my car, which i feel was intended for me. Jack Rabon has threaten to kill my husband (Kyle Mitchell) in police reports. The police reports are numerous. I have lived in fear for my life everyday!

As you can see on this e-mail, Rachael Dain is copied on all correspondence and is still involved with this case.

Thank-you,

Karon Mitchell

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Rabon & Rabon, Inc.,

Plaintiff,

vs.

Karon Mitchell and Kyle Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2014-CP-26-07862

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS THE
MEDIATION SETTLEMENT
AGREEMENT**

Defendants' Motion appears to ask this Court to "Dismiss" the Mediation Settlement Agreement which Defendant's entered into with Plaintiff on October 30, 2015 ("Agreement"). For the reasons set forth below, this Court should deny Defendants' Motion.

This case is one of four pending Civil Actions in which Karon and Kyle Mitchell ("Mitchells" or "Defendants") are adverse to Karon's brother, Jack I. Rabon, Jr. individually and as Personal Representative of the Estate of Peggy Jo Hardee Rabon (Karon Mitchell and Jack Rabon's deceased mother), and/or Rabon & Rabon, Inc. (collectively "Rabon")¹. The facts of this case, as well as the Defendants' well-documented wrongful conduct of delay, abuse, *ex parte* activity, and refusal to honor agreements and court orders is set forth in detail in Plaintiff's Motion filed December 10, 2015 ("Motion to Compel Settlement"), which is attached hereto and incorporated by reference. (Exhibit A).

Facts With Respect to Mediation

1. On October 30, 2015, a mediation was held to resolve the disputes which underlie the four actions between Defendants and Rabon.

¹ A fifth civil action (No. 2015-CP-26-01628) was recently dismissed by the Mitchells after their previous attorney filed a motion to be relieved as counsel.

2. Defendants were represented during mediation by Rachael Dain of the law firm Attorney Dain, LLC. Rabon was represented by Lane D. Jefferies of the McNair Law Firm. The Mediator was Dalton Floyd, of the Floyd Law Firm.

3. Rabon and Lane Jefferies arrived first to mediation. The mediator later told Lane Jefferies that Defendants and their counsel had arrived. At no time during the mediation did Rabon or Lane Jefferies ever see or speak with Defendants.

4. Mediation lasted well over ten hours, and concluded successfully when Defendants and Rabon entered into a Mediation Settlement Agreement ("Agreement") (**Exhibit B**).

5. The Agreement is in writing, signed by the parties and their counsel, dated October 30, 2015, and filed with this Court.

6. Among other things, the Agreement disposed of:

- i. Civil action no. 2014-CP-26-05740
- ii. Civil action no. 2015-AD-26-00004
- iii. Civil action no. 2015-CP-26-01628²
- iv. Civil action no. 2014-ES-26-01933
- v. An *ex parte* Affidavit and Application for Involuntary Emergency Admission for Chemical Dependency filed on June 23, 2015 of unknown Civil Action Number.

7. The Agreement required, among other things, that the Defendants execute and place into escrow certain documents prior to November 30, 2015.

8. The Agreement provided that if Defendants achieved certain goals before November 30, 2015, then "Plan A" – which Defendants designed and preferred – would be executed.

9. The Agreement further provided that if "Plan A" was not triggered, then "Plan B" would become effective.

10. Between the October 30, 2015 mediation and the November 30, 2015 deadline to trigger Plan A, Defendants repeatedly represented through emails from their attorney that Defendants accepted the Agreement as binding, and were performing under it. (**Exhibit C**).

11. On December 1, 2015, Rabon informed Defendants that Plan A had not been triggered because Defendants failed to meet the goals they agreed to, and that Plan B was therefore effective. Rabon further advised Defendants that Defendants had failed to place documents into Escrow as required.

² Recently dismissed *without* prejudice.

12. Defendants did not perform under Plan B; therefore on December 10, 2015, Rabon filed their Motion to Compel Settlement.

13. On December 15, 2015, Defendants filed the instant Motion to Dismiss Mediation Settlement Agreement ("Defendants' Motion"), but did not serve Defendants' Motion on Rabon.

14. On January 11, 2016, Defendant Kyle Mitchell emailed a copy of Defendant's Motion to Rabon's counsel.

Legal Analysis

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution." C-Scupltures, LLC v. Brown, 403 S.C. 53, 56 (2013). Consistent with this policy, Rabon and Defendants held mediation in which both parties were represented by counsel. Defendants and Rabon entered into the Agreement as a result of mediation. Defendants do not cite any authority, and Plaintiff is not aware of any, under which this Court could "dismiss" the Agreement – a private agreement between the parties reached pursuant to a strong public policy – simply on Defendants' Motion. Nonetheless, Plaintiff respectfully offers additional substantive and procedural reasons why this Court should deny Defendants' Motion.

I. Substantive Reasons Why This Court Should Deny Defendants' Motion.

The sole basis of Defendants' Motion appears to be that one of the Defendants was under duress at the time he or she signed the Agreement. Defendants' Motion states in pertinent part "The mediation should not be enforced. I was completely under duress."³ Duress is an affirmative defense, and the burden to plead and prove it lies on Defendants. Strode v. Barnes, 124 S.C. 403, 412 (1923).

³ Because the Motion is signed by both Defendants, it is not clear which one was allegedly under duress, and Defendants do not explain why the Agreement should be dismissed as to both Defendants, when they allege that just one of them was under duress.

Duress fails as a defense here, because Defendants have not alleged (nor can they prove) the elements of duress. "Three factors must be proved in order to establish that a contract was procured through duress: (1) that the person was coerced to enter into the contract; (2) that the person was put in such fear that he was bereft of the quality of mind essential to the making of a contract, and (3) that the contract was thereby obtained as a result of this state of mind." Gainey v. Gainey, 382 S.C. 414, 428 (2009) (citing In re Nightingale's Estate, 182 S.C. 527 (1937)).

As to the first element, coercion may be either (a) compulsion by physical force or threat of physical force, or (b) the improper use of economic power to compel another to submit. Black's Law Dictionary 124 (4th Pocket Ed. 2011). While Defendants' Motion recites the term "coercion" multiple times, Defendants do not allege the use of any physical force, or threats of physical force. Neither do Defendants allege that anyone improperly used their alleged economic power. As a result, Defendants fail to allege the first element of duress. This deficiency alone warrants dismissal of Defendants' Motion.

As to the second element, Defendants do not allege that they were in fear, let alone "such fear that [they were] bereft of the quality of mind essential to the making of a contract." Gainey at 428. In Nightingale's Estate, our Supreme Court described the requisite level of fear as the "fear which makes it impossible for a person to exercise his own free will." Nightingale's Estate at 547. In addition to not alleging that they were in fear, Defendants do not allege that it was impossible for them to exercise their own free will. As a result, Defendants fail as to the second element of duress as well. Accordingly, Defendants' Motion should be dismissed.

As to the third element, Defendants do not allege that the Agreement was obtained as a result of a fearful state of mind which made them unable to voluntarily form a contract. "Duress is a condition of mind produced by improper external pressure or influence that practically destroys

the free agency of a party and causes him to do an act or form a contract not of his own volition." Willms Trucking Co. V. Jw Constr. Co., 314 S.C. 170, 179 (Ct. App. 1994). The Nightingale's Estate Court described the state of mind as one where one party "substitute[s] his will for the will of the other party." Nightingale at 547.

Here, Defendants do not allege that their free agency was practically destroyed. Nor do Defendants allege that signing the Agreement was not of their own violation. At most, a single unidentified Defendant states that "I did not want to sign this." However, not *wanting* to sign a document is not the standard for duress – being *forced* to sign is the standard. Neither do Defendants allege that they signed the Agreement because Rabon "substituted his will" for theirs.⁴ As a result, Defendants fail to allege the third element of duress, and therefore Defendants' Motion must be dismissed.

Even if Defendants had alleged the above elements, duress does not occur if the purported victim "has a reasonable alternative to succumbing and fails to take advantage of it." Holler at 267. Here, going to trial instead of signing the Agreement was a reasonable alternative. See Blejski v. Blejski, 325 S.C. 491, 500 (Ct. App. 1997) (holding that although by not accepting a settlement, wife "potentially could have lost custody of her children[, the] wife had the reasonable alternative of taking her chances with a trial.") Defendants failed to take advantage of this reasonable alternative. As a result, even if Defendants had established all three elements of duress, they would still be unable to avail themselves of duress as a defense.

Although the above warrants dismissal of Defendants' Motion, two additional substantive matters bear mentioning. First, the timing of Defendants' Motion is highly suspect. Defendants signed the Agreement on October 30, 2015. The Agreement gave Defendants thirty days in which

⁴ Nor could they, as Rabon and the Defendants never saw one another during mediation, much less spoke to each other. Instead, only the mediator and Defendants' counsel ever saw or spoke with Defendants during mediation.

to achieve certain goals, which if achieved would trigger "Plan A" -- the plan designed and preferred by Defendants. If Defendants did not achieve these goals, then "Plan B" would be triggered. Defendants disliked Plan B.

Throughout November – while Defendants had the opportunity to trigger Plan A – Defendants never mentioned their purported duress or their allegedly fragile mental state. In fact, Defendants counsel informed Rabon that Defendants had traveled to Washington, D.C. to meet with and request the aid of several U.S. Senators in order to meet their refinancing goals. Defendants also engaged in lengthy negotiations with bankers and officials from the United States Department of Agriculture. Such high-level talks and negotiations do not suggest mental fragility or powerlessness.⁵

Only after it became apparent that Defendants could not meet their goals – and thus, Plan B would become effective – did Defendants suddenly become emotionally fragile "victims" of duress. Defendants' alleged duress is a subterfuge employed by Defendants in a last-minute attempt to avoid fulfilling their obligations under the Agreement, since the Agreement is no longer to Defendants' liking.

Second, the alleged threats by Lane Jefferies on which Defendants base much of their argument did not occur. Nor could they have, since at no time during mediation were Rabon or

⁵ Moreover, throughout the time during which Plan A could be triggered, Defendants continually represented that they recognized the validity of the Agreement and were performing under it. The statements were made through Defendants' attorney both by phone and via email (Exhibit C), and include the following: "as agreed, we need to finalize making the agreement an order of the court ASAP." (Email November 2, 2015); "the mediation agreement is binding regardless of when it is put on the record." (Email November 16, 2015); the Defendants "will have to turn over the motorcycles and trailers as required in the mediation agreement and they will do so. If either of our clients fail to abide by the agreement then the other party should file a RTSC." (Email November 16, 2015); "Again, to reassure you, my understanding is, and I have advised the Mitchells, the mediation agreement is enforceable even if not approved by the court." (Email November 17, 2015); "The parties are in good faith negotiations [with the bank and USDA] to refinance the property." (Email November 30, 2015).

attorney Jefferies ever in the same room with Defendants nor did they speak with Defendants.⁶ Moreover, even if Lane Jefferies had made the statements that Defendants attribute to him, the statements could not come into evidence as a result of Rules 408 and 801 through 805 of the South Carolina Rules of Evidence, as well as Rule 8(a) of the South Carolina Alternative Dispute Resolution Rules, and the mediation agreement signed by Defendants. **(Exhibit D)**.

Because Defendants do not allege any of the elements of Defendants' sole defense of duress, this Court should dismiss Defendants' Motion.

II. Procedural Reasons That This Court Should Deny Defendants' Motion.

In addition to the substantive reasons set forth above, this Court should deny Defendants Motion for three Procedural reasons. First, Defendants' Motion violates Rule 5, SCRPC. Defendants filed this Motion on December 15, 2015. However, Defendants did not serve the Motion on Rabon's counsel as required by Rule 5, SCRPC. As a result, Rabon did not learn of Defendants' Motion until Defendant Kyle Mitchell emailed a copy to Rabon's counsel on January 11, 2016. Had Defendants properly and timely served their Motion, Plaintiff would have had thirty days to draft this memorandum in opposition, and thirty-six days to prepare for the hearing. Because of Defendant's wrongful delay, Plaintiff actually had just eight days to do both. As a result, Defendants' failure to comply with Rule 5 severely prejudiced Plaintiff by depriving Plaintiff of the time to prepare to which Plaintiff is entitled.

Second, even if service by email were effective, Defendants would still be in violation of Rule 6(d), SCRPC. Rule 6(d) requires that motions (other than *ex parte*) "shall be served not later than ten days before the time specified for the hearing." Rule 6(d), SCRPC. Here, Defendants

⁶ Defendants would have this Court believe that Lane Jefferies threatened the life of an unborn baby *in the presence of attorneys Dalton Floyd and Rachael Dain*, and that in addition to not taking any action in response to such horrific conduct, attorneys Floyd and Dain instead communicated the threat to Defendants so strongly that it overcame Defendants' will.

motion was emailed (not served) after business hours on January 11, 2016 – just eight days before the hearing. As a result, Defendants’ failure to comply with Rule 6 severely prejudiced Plaintiff by depriving Plaintiff of sufficient notice. See S.C. Ambulatory Surgery Ctr. Ass’n v. S.C. Workers’ Comp. Comm’n, 389 S.C. 380, 391 (S.C. 2010) (stating that notice is a “fundamental requirement[] of due process . . .”).

Third, Defendants Motion violates the Order of the Supreme Court of South Carolina dated September 10, 2015 (“Order”) (**Exhibit E**). The purpose of the Order is to promote the timely disposition of pending cases through the expeditious resolution of motions. See generally Justice Kaye G. Hearn, What has the docket management task force done for you lately?, SC Lawyer, January 2016, at 20. To further its purpose, the Order requires that a "written motion shall be filed and served with a supporting memorandum of law" unless a memorandum would serve no useful purpose because "a full explanation of the motion is contained within the motion." (Order, ¶ 1). The Order's use of the term "shall" means that filing and serving a memorandum (or explaining the motion in full within) is mandatory. See Wigfall v. Tideland Utils., 354 S.C. 100, 111 (2003) (holding that “The term "shall" in a statute means that the action is mandatory.”); see also Smith v. Smith, 359 S.C. 393, 396 (Ct. App. 2004) (stating that an “Order [that] says the Court ‘shall’ review the financial condition of the parties . . . is mandatory.”).

It is axiomatic that a memorandum of law must contain at least some citation of legal authority. See State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms., 414 S.C. 33, 83 (2015) (“[S]hort, conclusory statements made without supporting authority [in the appellate brief] are deemed abandoned on appeal and therefore not preserved for our review.”). It follows, therefore, that to achieve the purpose of the Order, a "full explanation" of the motion must contain the same citation of authority as the memorandum of law which it replaces.

Despite the Order, Defendants did not file or serve any memorandum of law. Neither does Defendants' Motion contain any citation of legal authority. Thus the Motion does not contain a "full explanation" as required in lieu of a memorandum of law.⁷ Even after being informed of the Order and its requirements by Rabon's counsel on January 8, 2016, Defendants did not attempt to cure their failure to comply.

Plaintiff is mindful of the fact that Defendants are *pro se*. However, *pro se* parties are not immune to the Rules of Civil Procedure. Freeman v. J.L.H. Invs., LP, 2015 S.C. LEXIS 367, *16 (2015) (the Rules apply to "all suits of a civil nature") (quoting Rule 1, SCRCP). Moreover, court rules "are not mere technicalities." Henning v. Kaye, 415 S.E.2d 794, 794 (1992) (describing the South Carolina Appellate Court Rules as providing "an orderly mechanism through which to guide appeals in this State.") Similar to the Appellate Court Rules, the Rules of Civil Procedure are designed to "secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. By disregarding the Rules, Defendants have delayed justice, and needlessly increased costs.

Conclusion

Because (a) Defendants' sole defense to enforcement of the Agreement is without merit, (b) Defendants' Motion is procedurally defective, and (c) for the reasons set forth in Plaintiff's Motion to Compel Settlement, this Court should DENY Defendants' Motion, and ORDER Defendants to perform pursuant to the Agreement.

[SIGNATURE ON FOLLOWING PAGE]

⁷ In addition, were Defendants' Motion not arguably dispositive, Defendants' failure to comply with the Order would preclude holding this hearing, and the matter would be decided on the briefs alone. (Order, ¶ 1) (stating "*After the submission of all timely filed briefs*, the trial court may grant oral argument . . .") (emphasis added).

~~McNair Law Firm, P.A.~~

Henrietta U. Golding, SC Bar #2173
Lane D. Jefferies, SC Bar #101764
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina 29577
Tel: (843) 444-1107
Fax: (843) 443-9137
Email: hgolding@mcnair.net
ljefferies@mcnair.net

Myrtle Beach, South Carolina
January 19, 2016

Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify the foregoing document was served via United States Mail, postage prepaid, and/or by Electronic Mail, to the Counsel of Record, and/or Pro Se Parties, on this the 19th day of Jan, 2016, as follows:

- Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss the Mediation Settlement Agreement with Exhibit A through E; and
- Certificate of Service.

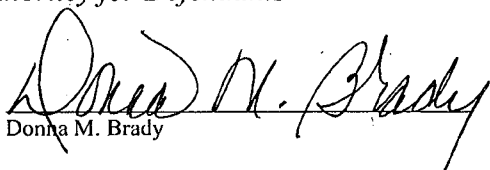
Addressee(s):

Karon Mitchell
Kyle Mitchell
4506 Camellia Drive
Myrtle Beach, SC 29577
Email: beachbummb4@msn.com

Rachael Ashley Dain, Esq.
Attorney Dain, LLC
P.O. Box 212654
Columbia, SC 29221-2654
Email: rachael@attorneydain.com

Purported Attorney for Defendants

Pro Se Defendants


Donna M. Brady

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Page 10 of 10

Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, October 13, 2015 2:19 PM
To: karon mitchell
Cc: Brady, Donna; Golding, Henrietta (HGolding@mcnair.net)
Subject: FW: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon and Kyle Mitchell Civil Action No. 2014-CP-26-0782
Attachments: 8-5-15 ltr Mitchell re ADR notice.pdf; 7-31-15 ltr Golding Mitchell from Dalton Floyd re mediation.pdf; 9-29-15 ltr Mitchell serving INT RFP.pdf; 1st INT to Karon Mitchell 9-29-15.pdf; 1st INT to Kyle Mitchell 9-29-15.pdf; 1st RFP to Mitchells 9-29-15.pdf; R&R MITCHELL 000001 -- 19 and 000022 -- 000047.pdf
Categories: DM, #215653 : 062992 : 00001 : LJEFFERI

Karon and Kyle –

I understand that Karon is undergoing surgery today – I hope that it goes well, and that recovery is quick. With that in mind, obviously you do not need to respond to this message today. Instead, I am writing just as a friendly reminder with respect to two things:

1. Mediation at Dalton Floyd's office is coming up on October 30, 2015. I have attached Mr. Floyd's letter of July 31, 2015 so that you will have his contact information easily available in the event you have questions.
2. On September 29, 2015, we served you with discovery requests in this matter. Your responses are due prior to mediation. I have attached my letter of September 29, 2015, as well as the discovery requests, for easy reference.

I look forward to seeing you on October 30, 2015 in Dalton Floyd's office.

Bets regards,
Lane

From: Jefferies, Lane
Sent: Thursday, August 27, 2015 5:24 PM
To: kyle mitchell <beachbummb4@msn.com>
Cc: Scott Hutto <swh@huttolaw.com>; sid connor <sconnor@classactlaw.net>; Ross Lindsay III <buddy@lindsayandlindsay.com>; Brady, Donna <DBrady@mcnair.net>
Subject: RE: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon and Kyle Mitchell Civil Action No. 2014-CP-26-0782

Karon –

I confirmed October 30, 2015 with Dalton Floyd. I'll be in touch regarding details in the next several weeks.

Am I correct in presuming that you will remain pro se during mediation, or should I direct my communications to a particular lawyer?

Best regards,
Lane

From: Jefferies, Lane
Sent: Thursday, August 27, 2015 5:17 PM
To: 'kyle mitchell' <beachbummb4@msn.com>
Cc: Scott Hutto <swh@huttolaw.com>; sid connor <sconnor@classactlaw.net>; Ross Lindsay III

RECORD PAGE 96

<buddy@lindsayandlindsay.com>

Subject: RE: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon and Kyle Mitchell Civil Action No. 2014-CP-26-0782

Karon --

I am sympathetic to your medical situation. I hope your surgery goes well. October 30 is within the time frame required by the Court (though just barely), so that will work. I will reconfirm Dalton Floyd's availability and let you know shortly.

Best regards,
Lane

From: kyle mitchell [mailto:beachbummb4@msn.com]

Sent: Thursday, August 27, 2015 5:12 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Cc: Scott Hutto <sw@huttolaw.com>; sid connor <sconnor@classactlaw.net>; Ross Lindsay III

<buddy@lindsayandlindsay.com>

Subject: RE: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon and Kyle Mitchell Civil Action No. 2014-CP-26-0782

Lane,

I am sorry for the delay with info on the dates for mediation.

I have been having problems and just delayed surgery for sometime. The surgery has been scheduled for Oct.13.

I cannot move the date. This is the reason I requested the previous dates.

I would like to request Oct 30, I should be able to get out of bed by then. Please let me know if this is possible or if, I need to contact the court.

Karon Mitchell

Subject: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon and Kyle Mitchell Civil Action No. 2014-CP-26-0782

From: LJefferies@mcnair.net

To: beachbummb4@msn.com

CC: DBrady@mcnair.net

Date: Tue, 18 Aug 2015 18:54:27 +0000

Dear Karon and Kyle Mitchell (pro se Defendants):

Plaintiffs agree to use Dalton Floyd as well. Unfortunately, of the six dates you suggested below, none are also available for both Plaintiffs' Counsel and Dalton Floyd.

Therefore, please let me know your availability on October 21, 23, 26, 29, and 30.

I have attached my letter of August 5, 2015 (which contains the ADR Notice from the Court) for your easy reference. I am also placing a hard copy of this email in the U.S. Mail to the address stated on the attached. **As a reminder, ADR is not optional. You are required to participate in good faith, and you may be sanctioned if you do not.** If mediation is not held by the October 30, 2015 deadline, you will have to explain to the Court why your availability was allegedly so limited. Please keep this in mind as you review your calendar for October 21, 23, 26, 29, and 30. If you have

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any questions about your rights or duties (or the penalties you may incur) with respect to ADR, you should consult an attorney.

Please let me know by 5:00pm this Thursday, August 20, 2015 which of the above dates you are available for mediation.

Best regards,

Lane

From: kyle mitchell [<mailto:beachbummb4@msn.com>]

Sent: Wednesday, August 12, 2015 7:34 PM

To: Jefferies, Lane

Cc: sid connor; Buddy Lindsay; Scott Hutto; dean welch

Subject: Kyle and Karon Mitchell

The dates we are available

September 22, 23

September 29, 30

October 6, 7

The times we are available from 8:00am - 2:00pm on these dates.

We have to work and these are the dates and times, we do not have something scheduled.

We prefer to use Dalton B. Floyd as mediator.

Karon Mitchell

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Jefferies, Lane

From: Rachael Dain <Rachael@attorneydain.com>
Sent: Monday, October 26, 2015 6:07 PM
To: Jefferies, Lane
Subject: RE: Rabon/Mitchell SETTLEMENT OFFER

THIS IS A CONTINGENT SETTLEMENT OFFER

Lane:

Despite whatever has happened in the past, this is what I am working on with the Mitchell's blessing:

1. Get West Bank to remove Jack from any personal liability associated with MB Entertainment loan and Building 4
2. The Mitchell get full ownership of MB Entertainment and Sea Palms Building 4 which is pledged to the bank
3. The Mitchells get full ownership of the farm in Maple which Peggy ultimately wanted to go to Chad
4. Both parties release each other from any type of liability whatsoever that accrued before the date of the settlement or arose from the probate of the estate or other lawsuits
5. All lawsuits pending be dismissed with prejudice
6. The estate pay to Rachael Dain \$10k for my fees (this is now a contingency case for me so I am invested in making this work).

All of this is also contingent on getting West Bank to release Jack personally. I hope to have something to tell you on that by Thursday but ultimately that depends on the bank's schedule. The bank will know about this option tomorrow so this should be over quickly one way or another.

If we can come together on this and the bank cooperates, I propose we get the probate court to schedule a hearing IMMEDIATELY to approve the agreement in probate court and get this over with so everyone can move on.

Sincerely,
Rachael Dain

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Monday, October 26, 2015 4:59 PM
To: Rachael@attorneydain.com
Subject: RE: Rabon/Mitchell

Will do. What's the best number?



Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

RECORD PAGE 99

843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Web site

Please be advised that you will not receive a hard copy of the contents of this email unless requested.

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, October 26, 2015 4:58 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: Rabon/Mitchell

Can you please call me in 15 minutes?
I need to be sure we are on the same track
I am confused by your last email.

Sincerely,
Rachael Dain

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Monday, October 26, 2015 4:54 PM
To: Rachael@attorneydain.com
Subject: Rabon/Mitchell

Rachael:

"Proof" would be too much to ask for -- I'm merely looking for "some evidence." We have negotiated in good faith multiple times only to learn that the Mitchells were not acting in good faith. The sort of things that would suggest seriousness and good faith to me would include the Mitchells:

1. Paying you a substantial retainer,
2. Dropping the frivolous Probate Court action,
3. Asking the MB police to drop Municipal Court action,
4. Publicly recanting the numerous false and defamatory comments Karon Mitchell made at the televised City Council meeting.

To be clear, I am NOT suggesting a *quid pro quo* exchange of the above in return for settlement negotiations. Instead, you asked what would suggest seriousness to me, and the above is my non-exhaustive answer -- in short, something other than the same old story.

There's one other thing that would show good faith. Today, I received an oral offer to purchase all the remaining real estate of MB Boardwalk Entertainment, LLC and Rabon & Rabon, Inc., for \$2.6 Million. This may be enough to free all the personal guarantors -- including the Mitchells -- from their guarantees. If not, it's certainly close, and we may be able to get the buyer to come up. The Mitchells could show their good faith by (1) authorizing Jack Rabon to negotiate with the potential buyer, and (2) agreeing to sell the property if we can get the buyer to a high-enough number that West Town Bank will release the personal guarantors.

If the past, the Mitchells have refused multiple times to agree to 1 and 2 above -- which is highly illogical and not in their best interests. If the Mitchells would now agree, and put their agreement in writing, then that would go a long way to demonstrating that they have become serious. Please let me know if they are willing to do so.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]

Sent: Monday, October 26, 2015 9:07 AM **RECORD PAGE 100**

To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: Voice Message from DAY MAIN MENU

Lane:

The only thing which an ultimately constitute proof they are serious would be signed agreements of a deal we still need to iron out.

Not sure what I can provide that would be proof of good faith on the front end.
Give me some idea what you think is appropriate.

Sincerely,
Rachael Dain

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From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Monday, October 26, 2015 9:00 AM
To: rachael@attorneydain.com
Cc: Golding, Henrietta; Brady, Donna
Subject: FW: Voice Message from DAY MAIN MENU

Rachael –

Thanks for your message. As we discussed last week, I have been down this path a number of times with the Mitchells, only to learn that they were never serious to begin with.

I am always glad to discuss a settlement *if there is good faith on both sides*. In this instance, because of the the Mitchell's track record, I need to see some tangible evidence of their good faith before starting down this path yet again.

Please let me know how the Mitchells' propose to show that they are serious this time.

Best regards,
Lane



Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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From: AVSTService
Sent: Thursday, October 22, 2015 5:51 PM

RECORD PAGE 101

To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Voice Message from DAY MAIN MENU

Sender's comments are located in WAV file at end of message.

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Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, November 03, 2015 6:48 AM
To: <Rachael@attorneydain.com>
Cc: Brady, Donna; Jefferies, Lane
Subject: Re: Rabon v. Mitchells

Categories: DM, #216566 : 062992 : 00001 : LJEFFERI

Rachel --

Four things:

1) I'll look at availability of Judges later today. However, this Friday won't work -- I'm speaking at a lunch in charleston, and in any case it may take past Friday to get all the paperwork together. I'll get back to you on this.

2) As to the dismissals, I'm preparing consent orders of dismissal in all the cases when my clients are defendants. You should prepare the same orders in the two cases where your clients are defendants -- i.e. 7862 and 5740. If you need copies of the complaints let me know and I'll send.

With respect to the criminal complaint, the city prosecutor for MB will call Karon to ask if she consents to his dropping the action against Jack. If Karon does what she agreed to do under the settlement agreement, the the action will be dropped. Please make sure she does it.

3) I'm preparing the paperwork for plan b. To do so, I will need copies of the titles for the motorcycles and the trailer, and by the time we go to court I will need the originals. Please send copies asap. I also need to know where the bikes are now, and how they are being safekept.

4) I agree with you about putting testimony on the record.

Best regards,
Lane

Sent from my iPad

On Nov 2, 2015, at 11:00 AM, Rachael Dain <Rachael@attorneydain.com> wrote:

Lane:

As agreed, we need to finalize making the agreement an order of the court ASAP.

SCHEDULING A HEARING

You said you believed the judge would get us in quickly. I assume you are talking about probate court although I see the agreement was recorded on the circuit court case and not the probate case. I would think any judge would expedite us in given that this disposes of 5 cases. If we do this in circuit court can we resolve everything by consent order w/o having our client's appear assuming they all sign the order? In Richland County, our family or probate court would most likely require the parties to appear. I don't think our circuit courts would. Let me know what you think can be done in Horry

RECORD PAGE 103

County. Nonetheless, it would prefer for a judge to swear the parties in and have them testify to their consent.

I can come to Myrtle Beach before 2pm on Friday to approve this agreement if a judge can schedule us in. I need to know if that is possible so I can see if the Mitchell's are available.

ORDER

I know we discussed you preparing the order but I can draft one tomorrow. Also, as discussed, I will need you to prepare the orders of dismissal in the other cases and the documents for me to hold in trust pertaining to the parties transferring their shares.

I would like to get these final details resolved so please let me know something ASAP.

Thanks,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Brady, Donna [mailto:DBrady@mcnair.net]
Sent: Monday, November 02, 2015 10:37 AM
To: rachael@attorneydain.com
Cc: Jefferies, Lane
Subject: Rabon v. Mitchells

Ms. Dain:

As a follow-up to our conversation earlier this morning, please be advised that the best way to reach Mr. Jefferies is via email. If you will copy me on the email communications I will be able to respond if he is not available and when appropriate.

Best regards,
Donna

M C N A I R
ATTORNEYS

Donna M. Brady
Secretary
dbrady@mcnair.net | 843 443 3061 Direct

RECORD PAGE 104

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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Jefferies, Lane

From: Jefferies, Lane
Sent: Wednesday, November 04, 2015 2:30 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna
Subject: RE: Rabon v. Mitchells
Attachments: 4321_001.pdf

Categories: DM, #216949 : 062992 : 00001 : LJEFFERI

Rachel –

In the interest of time, I am sending documents for your review as I get them rather than waiting until all are complete. Attached is a DRAFT Bill of Sale with respect to the motorcycles and trailer. Please let me know if you have any objection to it. Naturally, your clients will need to sign the Bill of Sale as well as the Titles themselves for you to hold in trust.

I'll send the remaining paperwork as it is completed.

Best regards,
Lane

MCNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Tuesday, November 03, 2015 12:44 PM
To: Jefferies, Lane <ljefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>
Subject: RE: Rabon v. Mitchells

Lane:

By copy of your email below to my clients I have requested they send me copies of the motorcycle and trailer titles. As agreed, I will be holding those titles in trust and they will give me the originals when we appear to make this agreement a court order.

I know of no reason to believe the Mitchell's are not keeping the bikes safe and, if Plan B should take place, I suspect there will be no problem securing that property.

RECORD PAGE 106

Karon knows what she agreed to regarding the criminal case. If the prosecutor contacts her I am sure she will respond accordingly.

I assume you are scheduling this in circuit court given the caption on the mediation agreement. Please do not schedule a hearing without making sure I am available and agree to the date.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Tuesday, November 03, 2015 6:48 AM
To: <Rachael@attorneydain.com>
Cc: Brady, Donna; Jefferies, Lane
Subject: Re: Rabon v. Mitchells

Rachel --

Four things:

1) I'll look at availability of Judges later today. However, this Friday won't work -- I'm speaking at a lunch in charleston, and in any case it may take past Friday to get all the paperwork together. I'll get back to you on this.

2) As to the dismissals, I'm preparing consent orders of dismissal in all the cases when my clients are defendants. You should prepare the same orders in the two cases where your clients are defendants -- i.e. 7862 and 5740. If you need copies of the complaints let me know and I'll send.

With respect to the criminal complaint, the city prosecutor for MB will call Karon to ask if she consents to his dropping the action against Jack. If Karon does what she agreed to do under the settlement agreement, the the action will be dropped. Please make sure she does it.

3) I'm preparing the paperwork for plan b. To do so, I will need copies of the titles for the motorcycles and the trailer, and by the time we go to court I will need the originals. Please send copies asap. I also need to know where the bikes are now, and how they are being safekept.

4) I agree with you about putting testimony on the record.

Best regards,
Lane

RECORD PAGE 107

Sent from my iPad

On Nov 2, 2015, at 11:00 AM, Rachael Dain <Rachael@attorneydain.com> wrote:

Lane:

As agreed, we need to finalize making the agreement an order of the court ASAP.

SCHEDULING A HEARING

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I can come to Myrtle Beach before 2pm on Friday to approve this agreement if a judge can schedule us in. I need to know if that is possible so I can see if the Mitchell's are available.

ORDER

I know we discussed you preparing the order but I can draft one tomorrow. Also, as discussed, I will need you to prepare the orders of dismissal in the other cases and the documents for me to hold in trust pertaining to the parties transferring their shares.

I would like to get these final details resolved so please let me know something ASAP.

Thanks,
Rachael Dain

Rachael A. Dain, J.D.
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Post Office Box 212654
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Sent: Monday, November 02, 2015 10:37 AM
To: rachael@attorneydain.com
Cc: Jefferies, Lane
Subject: Rabon v. Mitchells

Ms. Dain:

RECORD PAGE 108

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Best regards,
Donna

M McNAIR
ATTORNEYS

Donna M. Brady
Secretary
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McNair Law Firm, P.A.

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Jefferies, Lane

From: Jefferies, Lane
Sent: Thursday, November 05, 2015 3:34 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna
Subject: RE: Rabon v. Mitchells

Categories: DM, #216948 : 062992 : 00001 : LJEFFERI

Rachel –

I understand your desire to get this wrapped up quickly. Toward that end, I have sent (1) Bill of Sale, (2) R&R Proxy for Karon, and (3) R&R Proxy for Kyle, for your review. I have drafted (4) Escrow Agreement, (5) LLC Proxy for Karon, and (6) LLC Proxy for Kyle which I anticipate sending to you tonight or in the morning.

However, I have not received any paperwork from your side to review. And I have not received copies of the titles to the motorcycles and trailer. Naturally, we cannot go before a Judge to put this on the record until we have the paperwork complete. Any idea when you expect to have the titles and drafts of your documents? Please let me know so I can plan accordingly.

Best regards,
Lane

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Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
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RECORD PAGE 110

Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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RECORD PAGE III

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Thanks,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Brady, Donna [mailto:DBrady@mcnair.net]
Sent: Monday, November 02, 2015 10:37 AM
To: rachael@attorneydain.com
Cc: Jefferies, Lane
Subject: Rabon v. Mitchells

Ms. Dain:

As a follow-up to our conversation earlier this morning, please be advised that the best way to reach Mr. Jefferies is via email. If you will copy me on the email communications I will be able to respond if he is not available and when appropriate.

Best regards,
Donna

M McNAIR
ATTORNEYS

Donna M. Brady
Secretary
dbrady@mcnair.net | 843 443 3061 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Web site

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 09, 2015 9:17 AM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; Jefferies, Lane
Subject: RABON/Mitchell Settlement
Attachments: harley titles.pdf

Rachel –

I hope you had a nice weekend. Several things:

1. Thank you for sending the Harley titles. If the Mitchells cannot produce the trailer title, then the trailer itself will need to be held in escrow. Therefore, I suggest that they visit the DMV and obtain a new title (or a replacement title).
2. Please confirm that there are no debts, liens, or encumbrances with respect to the Harleys or the trailer. This would include ensuring that property tax has been paid through the anticipated date of transfer.
3. What is the status of the paperwork you are drafting pursuant to the settlement agreement? I understand that you have a sense of urgency to get this all in front of a Judge, so please let me know what progress you are making.
4. As you know, the first trigger which would cause a switch from Plan A to Plan B under the Settlement Agreement is the Mitchells' failure to obtain a satisfactory release letter from West Town Bank and USDA by November 30, 2015. Have you made any progress in this regard?

I look forward to hearing back from you.

Best regards,
Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Friday, November 06, 2015 7:50 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Mtchell re: Harley Titles

RECORD PAGE 114

Lane:

Here are copies of the Harley titles.

Sincerely,
Rachael Dain

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 09, 2015 10:14 AM
To: 'Rachael@attorneydain.com'
Subject: RE: RABON/Mitchell Settlement

Rachael –

Getting back to you with respect to the Trailer, Kyle is misinformed – under S.C. Code Ann. §§ 56-3-20 and 56-19-10, a trailer is most definitely a vehicle, and therefore able to be titled. See also <http://www.scdmvonline.com/dmvnew/default.aspx?n=titleandreg> (containing schedule of fees for titling trailers).

Though trailers are not *required* to be titled in every case, they are *able* to be titled, and that is what Kyle needs to do – unless you would prefer that I hold the trailer itself in escrow (which I am glad to do). Please send a copy of the trailer title once Kyle obtains it.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 09, 2015 9:43 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: RABON/Mitchell Settlement

Lane:

Kyle tells me the trailer does not have a title as it is not an automobile of any kind. I am waiting to hear from Kyle on debts that may encumber the Harley but I thought he said they were paid for.

I have not drafted anything nor looked at your paperwork yet. I apologize but after the day I advised I could have drafted the consent order I had a major accounting software nightmare and have been trying to get back online with that. I lost almost a year of data. I am also unable to put any time toward this case until Wednesday and will get to it then.

There are several things to be done and I will let you know when the Mitchells have the later and understand it must be by November 30th.

As far as a hearing date now, I am available on November 19th after 2pm and also on November 20th before 2pm. We should be able to have the paperwork by those dates. Please let me know if those dates will work for you. As stated before, I assume we can get in to see a judge since we are looking to move 5 cases and putting the agreement on the record should be quick.

Thanks,
Rachael

From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Monday, November 09, 2015 9:17 AM
To: Rachael@attorneydain.com

RECORD PAGE 116

Cc: Brady, Donna <DBrady@mcnair.net>; Jefferies, Lane <LJefferies@mcnair.net>
Subject: RABON/Mitchell Settlement

Rachel –

I hope you had a nice weekend. Several things:

1. Thank you for sending the Harley titles. If the Mitchells cannot produce the trailer title, then the trailer itself will need to be held in escrow. Therefore, I suggest that they visit the DMV and obtain a new title (or a replacement title).
2. Please confirm that there are no debts, liens, or encumbrances with respect to the Harleys or the trailer. This would include ensuring that property tax has been paid through the anticipated date of transfer.
3. What is the status of the paperwork you are drafting pursuant to the settlement agreement? I understand that you have a sense of urgency to get this all in front of a Judge, so please let me know what progress you are making.
4. As you know, the first trigger which would cause a switch from Plan A to Plan B under the Settlement Agreement is the Mitchells' failure to obtain a satisfactory release letter from West Town Bank and USDA by November 30, 2015. Have you made any progress in this regard?

I look forward to hearing back from you.

Best regards,
Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
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From: Rachael Dain [<mailto:Rachael@attorneydain.com>]
Sent: Friday, November 06, 2015 7:50 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Mtchell re: Harley Titles

Lane:

Here are copies of the Harley titles.

Sincerely,
Rachael Dain

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Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, November 10, 2015 3:03 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; Golding, Henrietta (HGolding@mcnair.net)
Subject: RABON/Mitchell/Dain Escrow Agreement
Attachments: 4463_001.pdf

Categories: DM, #217274 : 062992 : 00001 : LJEFFERI

Rachael –

Attached is a DRAFT Escrow Agreement for your review.

Best regards,
Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
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843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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From: MYRcopier@mcnair.net [mailto:MYRcopier@mcnair.net]
Sent: Tuesday, November 10, 2015 4:05 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Attached Image

Jefferies, Lane

From: Jefferies, Lane
Sent: Friday, November 13, 2015 12:13 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; Golding, Henrietta (HGolding@mcnair.net); Jefferies, Lane
Subject: RE: RABON/Mitchell Settlement

Categories: DM, #217915 : 062992 : 00001 : LJEFFERI

Rachael –

I'm a little concerned that I have not seen anything from you (other than the two motorcycle titles) in the two weeks since we reached an agreement at mediation. As you are aware, because of Thanksgiving, next week likely represents the last chance to get before a Judge prior to the first deadline for the Mitchells on Sunday, November 29, 2015.

Please update me today with respect to (1) your status with paperwork, trailer title, confirmation of tax payment, etc., and (2) what effort and progress the Mitchells have made toward obtaining releases from West Town Bank.

Best regards,
Lane

MCNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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From: Rachael Dain [mailto:Rachael@attorneydain.com]

Sent: Monday, November 09, 2015 9:43 AM

To: Jefferies, Lane <ljefferies@mcnair.net>

Subject: RE: RABON/Mitchell Settlement

Lane:

Kyle tells me the trailer does not have a title as it is not an automobile of any kind. I am waiting to hear from Kyle on debts that may encumber the Harley but I thought he said they were paid for.

I have not drafted anything nor looked at your paperwork yet. I apologize but after the day I advised I could have drafted the consent order I had a major accounting software nightmare and have been trying to get back online with

RECORD PAGE 120

that. I lost almost a year of data. I am also unable to put any time toward this case until Wednesday and will get to it then.

There are several things to be done and I will let you know when the Mitchells have the later and understand it must be by November 30th.

As far as a hearing date now, I am available on November 19th after 2pm and also on November 20th before 2pm. We should be able to have the paperwork by those dates. Please let me know if those dates will work for you. As stated before, I assume we can get in to see a judge since we are looking to move 5 cases and putting the agreement on the record should be quick.

Thanks,
Rachael

From: Jefferies, Lane [mailto:LJefferies@mcnair.net]

Sent: Monday, November 09, 2015 9:17 AM

To: Rachael@attorneydain.com

Cc: Brady, Donna <DBrady@mcnair.net>; Jefferies, Lane <LJefferies@mcnair.net>

Subject: RABON/Mitchell Settlement

Rachel –

I hope you had a nice weekend. Several things:

1. Thank you for sending the Harley titles. If the Mitchells cannot produce the trailer title, then the trailer itself will need to be held in escrow. Therefore, I suggest that they visit the DMV and obtain a new title (or a replacement title).
2. Please confirm that there are no debts, liens, or encumbrances with respect to the Harleys or the trailer. This would include ensuring that property tax has been paid through the anticipated date of transfer.
3. What is the status of the paperwork you are drafting pursuant to the settlement agreement? I understand that you have a sense of urgency to get this all in front of a Judge, so please let me know what progress you are making.
4. As you know, the first trigger which would cause a switch from Plan A to Plan B under the Settlement Agreement is the Mitchells' failure to obtain a satisfactory release letter from West Town Bank and USDA by November 30, 2015. Have you made any progress in this regard?

I look forward to hearing back from you.

Best regards,
Lane

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From: Rachael Dain [mailto:Rachael@attorneydain.com]

Sent: Friday, November 06, 2015 7:50 AM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Mtchell re: Harley Titles

Lane:

Here are copies of the Harley titles.

Sincerely,
Rachael Dain

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 16, 2015 11:24 AM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; Golding, Henrietta; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

Rachel –

I will review what you sent and get back to you.

We should have a phone conversation early this afternoon. I have a proposed order about 95% complete, so no need for you to start from scratch.

As to the hearing date, I'm glad to attempt to schedule time with a Judge, but I could not do that in good faith last week since I had nothing back from you. I need to have some confidence that the Mitchells will be ready before I attempt to encumber a Circuit Judge's Friday afternoon – especially the Friday before a holiday week. With that in mind, what is the status of title to the trailer, and payment of taxes on cycles/trailer?

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 16, 2015 11:13 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

Lane:

I will be trying to send all proposed revisions and the proposed order before the end of the day even if I am working late. Yesterday I was advised that FEMA is coming to my home today to inspect and assess the floor damage. Based on my conversation with the inspector, I believe I am going to have to gather additional paperwork for them today. I should have everything to you by noon tomorrow regardless.

When you did not respond to my offer to prepare the settlement agreement, I assumed you wanted to prepare that or I would have done it that same day when I had time; however, I do not have a problem preparing the order and will put it on my list.

I have not heard anything from you regarding a hearing date. We agreed you would schedule this since you are counsel of record and I cannot schedule a hearing. If we are unable to schedule this for the 19th or 20th, my understanding is the Mitchells will be out of state next week. Regardless, the Mediation Agreement is binding regardless of when it is put on the record.

Attached are my revisions to the Bill of Sale which reflect the terms to which we agreed.

Thanking you in advance,
Rachael Dain

RECORD PAGE 123

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Tuesday, November 10, 2015 3:03 PM
To: Rachael@attorneydain.com
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>
Subject: RABON/Mitchell/Dain Escrow Agreement

Rachael –

Attached is a DRAFT Escrow Agreement for your review.

Best regards,
Lane

MCNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

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From: MYRcopier@mcnair.net [<mailto:MYRcopier@mcnair.net>]
Sent: Tuesday, November 10, 2015 4:05 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Attached Image

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 16, 2015 12:07 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; Golding, Henrietta; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane
Subject: RE: RABON/Mitchell/Dain Escrow Agreement
Attachments: 4321_001.pdf; 15 11 16 - DRAFT Bill of Sale (Our Rev #1).pdf
Categories: DM, #217913 : 062992 : 00001 : LJEFFERI

Rachel –

Call me. The "Bill of Sale" you sent me concerns me greatly for many reasons, but two stand out especially:

1. I sent you a thorough and reasonable Bill of Sale almost two weeks ago, and invited your comments. Given how far behind schedule you acknowledge you are, I'm surprised that you spent the time to draft a completely new document instead of simply suggesting changes to the existing document – unless it was to accomplish #2 below.
2. The Bill of Sale I drafted contains language stating that the property is free of "all debts, liens, and encumbrances," – which is standard and reasonable. However, your document states that the property is free and clear only of "collateralized liens." Why such unusually narrow language? Perhaps this is the reason that you have yet to answer me about whether the Mitchells are current on property tax.

Let me ask you directly – do you know if the taxes are current on the two motorcycles and the trailer? Do you know when Kyle will obtain a title to the trailer?

For your convenience, I have attached another copy of the Bill of Sale that I sent to you on November 4, 2015 (4321_001.pdf). I look forward to your call.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 16, 2015 11:13 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

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Thanking you in advance,
Rachael Dain

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ATTORNEY DAIN, LLC
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Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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Subject: RABON/Mitchell/Dain Escrow Agreement

Rachael –

Attached is a DRAFT Escrow Agreement for your review.

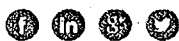
Best regards,
Lane

MCNAIR
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Associate
ljefferies@mcnair.net | 843 443 3059 Direct

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From: MYRcopier@mcnair.net [mailto:MYRcopier@mcnair.net]

Sent: Tuesday, November 10, 2015 4:05 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Attached Image

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 16, 2015 3:15 PM
To: 'Rachael@attorneydain.com'
Cc: Jefferies, Lane
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

Rachael –

I have acted professionally and in good faith throughout this process, and I will continue to do so. Further, far from “sabotaging any agreement,” I stated a number of times during mediation that I would work as late and as hard as necessary to reach an agreement – and we reached one.

I realize that – as the result of my frustration with not receiving answers to the tax question – I took a sharper tone in my email earlier today than I typically use. I apologize that this alarmed you.

Addressing the merits of the motorcycle/trailer issue:

1. After receiving your email below, I called Horry County, and I learned that no property tax has been paid on the 2001 motorcycle since 2009, and no property tax has been paid on the 2006 motorcycle since 2013. However, I do not know whether the Mitchells' tax debt encumbers the motorcycles at this time. How shall we address this?
2. During mediation, the Mitchells represented that the motorcycles – though having been stored for a period of time – were operational. Rabon relied on this representation in entering the settlement agreement. The “no guarantees as to their condition” language in the document you sent appears inconsistent with this representation. How shall we address this?
3. The Mitchells agreed to transfer title of the trailer to Rabon. How do we know that the Mitchells *have* title to the trailer if they do not produce a Certificate of Title?

The above are neither beyond the scope of our discussion nor contrary to our agreement. Instead, they are standard concerns in the good faith conveyance of a vehicle – Does it run? Is it encumbered by tax liens? Does it actually belong to the seller?

I'm sure that the Mitchells will want good title to the property that Rabon conveys to them if Plan A comes to fruition. Here, as during mediation, I am simply attempting in good faith to achieve the agreed-upon parity – good title for good title.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 16, 2015 1:30 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

Lane:

RECORD PAGE 129

I did have several hardware and software issues last week whose repairs occupied most of my time. I apologize for that delay but I do not have a staff to address these problems. Without automation I cannot advance any of my work so restoring my network had to be a priority.

Proposed Order

Please do forward the proposed order you already prepared. Given my FEMA obligations today, that will be helpful for me. Thank you.

Hearing Date

The Mitchells confirmed to me today they are available on the 20th. I have to leave Conway at 2:30 that day to meet another deadline so a hearing time which accommodates my schedule will be fine.

Motorcycles / Trailer

I did not draft a new Bill of Sale. I took your Bill of Sale, added the identifying information, and removed the terms to which we never agreed. The Mitchells agreed to escrow the titles they have. They do not have a title on the trailer. If Plan B is implemented then they will have to turn over the motorcycles and trailers as required in the Mediation Agreement and they will do so. If either of our clients fail to abide by the Agreement then the other party should file a RTSC.

As for taxes, the Mitchells assume they are paid for the year but don't specifically recall receiving a notice. Perhaps they are not yet due. Either way, their payment of any taxes due was not a negotiated term. The only particulars you requested, which were discussed, was whether or not these items were collateralized by any loans. They are not. If taxes are due, I believe they could be interpreted as being included under the language you proposed. If you want to use your preferred language and then expressly exempt taxes that would be agreeable to me. After I believe the language is correct, I will be able to get the Mitchells' approval. That should easily be done in the evening.

Future Communications

As I told you repeatedly during our mediation (which was the most disagreeable I ever experienced), I found your conduct alarming, indicative of bad faith, and intending to prevent an Agreement or sabotaging any Agreement reached. Because it was in my clients' best interest to reach an Agreement, I endured your conduct which I believe most lawyers would fairly consider outside the scope of professional behavior. Your Drafts include terms never discussed or which are contrary to what we discussed. This renews my concerns.

We now have an Agreement. My only obligation is to see that Agreement properly reduced to writing, have it approved by the court, and make sure the parties abide. I believe that can best be accomplished by limiting our future communications to writing.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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RECORD PAGE 130

From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Monday, November 16, 2015 12:07 PM
To: Rachael@attorneydain.com
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

Rachel –

Call me. The “Bill of Sale” you sent me concerns me greatly for many reasons, but two stand out especially:

1. I sent you a thorough and reasonable Bill of Sale almost two weeks ago, and invited your comments. Given how far behind schedule you acknowledge you are, I’m surprised that you spent the time to draft a completely new document instead of simply suggesting changes to the existing document – unless it was to accomplish #2 below.
2. The Bill of Sale I drafted contains language stating that the property is free of “all debts, liens, and encumbrances,” – which is standard and reasonable. However, your document states that the property is free and clear only of “collateralized liens.” Why such unusually narrow language? Perhaps this is the reason that you have yet to answer me about whether the Mitchells are current on property tax.

Let me ask you directly – do you know if the taxes are current on the two motorcycles and the trailer? Do you know when Kyle will obtain a title to the trailer?

For your convenience, I have attached another copy of the Bill of Sale that I sent to you on November 4, 2015 (4321_001.pdf). I look forward to your call.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 16, 2015 11:13 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON/Mitchell/Dain Escrow Agreement

Lane:

I will be trying to send all proposed revisions and the proposed order before the end of the day even if I am working late. Yesterday I was advised that FEMA is coming to my home today to inspect and assess the floor damage. Based on my conversation with the inspector, I believe I am going to have to gather additional paperwork for them today. I should have everything to you by noon tomorrow regardless.

When you did not respond to my offer to prepare the settlement agreement, I assumed you wanted to prepare that or I would have done it that same day when I had time; however, I do not have a problem preparing the order and will put it on my list.

I have not heard anything from you regarding a hearing date. We agreed you would schedule this since you are counsel of record and I cannot schedule a hearing. If we are unable to schedule this for the 19th or 20th, my understanding is the Mitchells will be out of state next week. Regardless, the Mediation Agreement is binding regardless of when it is put on the record.

RECORD PAGE 131

Attached are my revisions to the Bill of Sale which reflect the terms to which we agreed.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Tuesday, November 10, 2015 3:03 PM
To: Rachael@attorneydain.com
Cc: Brady, Donna <DBrady@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>
Subject: RABON/Mitchell/Dain Escrow Agreement

Rachael –

Attached is a DRAFT Escrow Agreement for your review.

Best regards,
Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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From: MYRcopier@mcnair.net [<mailto:MYRcopier@mcnair.net>]
Sent: Tuesday, November 10, 2015 4:05 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Attached Image

RECORD PAGE 132

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Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, November 17, 2015 2:34 PM
To: 'Rachael@attorneydain.com'
Cc: Golding, Henrietta (HGolding@mcnair.net); Brady, Donna; Jefferies, Lane
Subject: RE: RABON/Mitchell re: DRAFT ESCROW AGREEMENT (Requested Revisions - RAD)

Categories: DM, #218217 : 062992 : 00001 : LJEFFERI

Rachael –

Thanks for your comments. Are the issues you have indentified below the only issues you have with the Escrow Agreement? If so, then I do not see any significant roadblocks. My responses are below in green.

Thanks,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Tuesday, November 17, 2015 1:04 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: FW: RABON/Mitchell re: DRAFT ESCROW AGREEMENT (Requested Revisions - RAD)

Lane:

I did not do a markup which I think you prefer given your previous email.

These are the issues I see with the Escrow Agreement:

Page One

Add as a new 6th Paragraph – It would much easier to understand and reference within this document if the definition of the 1st and 2nd Triggering Events were defined in their own paragraph. Agreed. I will change accordingly.

Current 6th Paragraph – We agreed a letter from the Bank would be sufficient instead of a formal agreement. I disagree. Although my concern is more about the content and binding nature of the document rather than its format, the Settlement Agreement states in pertinent part that “Plan A as set forth in Exhibit A will be effective provided Karon Mitchell obtain a *written agreement* . . .” (Page 2, ¶ 5) (emphasis added). In keeping with the plain language of the settlement agreement, we need to stick with that term – “written agreement.” The Bank’s letter will include any terms under which they will release your clients. Based on our Agreement, those terms must be performed within an additional 90 days. That needs to be clear this is what is expected in the document due at that time. Also, it needs to be clear the letter required is not a promise to release as of the date of the letter but a promise to release upon a qualifying event which, pursuant to the Mediation Agreement, must occur within 90 days thereafter. Agreed as to the contents of the written agreement. To avoid the first trigger, the Mitchells do not need to have Rabon released by November 30. Instead, they need only obtain a written agreement to remove Rabon as personal guarantor upon the happening of specifically identified later events to occur within 90 days of the agreement. I think we are on the same page here.

We specifically discussed delivery by email or fax but the current language is for an “original” letter which can only be delivered by mail or personal delivery. I have no problem with language which requires placement of the original for immediate delivery after sent by fax or email. I have already requested any letter be sent to you directly from the Bank and hopefully they will agree. Perhaps not. Agreed. Email or fax with original mailed the same day is fine.

RECORD PAGE 134

Since the 29th falls on a Sunday, not allowing delivery of the letter on Monday actually shortens the Mitchells' time period by 2 days since the Bank is not open those two days to execute a letter and, depending on the timing of their decision, may need to write the letter on Monday. Your email of November 9th states delivery is "by Monday, November 30th" and indicates this was the understanding which is a standard to make a weekend deadline falls on the following Monday (unless that day is a holiday) for just these reasons. Agreed. Midnight, Monday November 30, 2015 is fine.

We discussed delivery by email or fax but the current language is for an "original" letter which can only be delivered by mail or personal delivery. I have no problem with language which requires placement of the original for immediate delivery after sent by fax or email. I have already requested any letter be sent to you directly from the Bank and hopefully they will agree. Perhaps not. Agreed. Email or fax with original mailed the same day is fine.

The only creditor is West Town Bank. It turns out the USDA did not loan money to any of the parties. They merely guaranteed the loan to West Town in case of a shortfall. It is impossible to get a release from them because no party has an obligation to them. If that's the case, and if there is nothing in West Town's agreement with USDA that calls for assigning any rights to USDA, then okay. We need to see some documents to substantiate this, or sufficient mention of it in West Town's "Agreement to release" letter.

I do not see Exhibit A but assume it only references the West Town Bank. Can we just name them to make it easier? Correct. Exhibit A is the West Town foreclosure lawsuit. Although we all know what loan(s) we are talking about, I wanted to avoid a lengthy description in the body of the agreement, and therefore opted to attach the foreclosure suit which describes the loan(s) in detail. I'll send a copy for your review if you like. Just let me know.

7th Paragraph – Paragraph #5 of the Mediation Agreement shows the 2nd Triggering Event (the closing) is due within 90 days after first triggering event which would be 120 days after the Mediation agreement. My date calculator shows that October 30, 2015 + 120 days is Monday, February 29th. I agree that the date is NOT January 28, 2016 as in my draft – my error. However, Paragraph 5 provides that the date is 90 days from the *date of the bank's agreement*. So, the latest that the date could be is February 29, but it could also be earlier if the bank agrees earlier. However, since we are now only 13 days from the first trigger, let's give the Mitchells a little extra time and just set the second trigger at February 29 as you suggest – regardless of how soon the bank signs the written agreement. If the closing attorney has the documents clocked by that date there is no reason to send them to you by any deadline but of course we will send them to you right away. This should also qualify as compliance. I agree that clocking by the deadline is sufficient, but only if Rabon has had the opportunity to review and approve the documents beforehand (which I imagine you would agree is reasonable). I would not want either of us to be in a position where documents that Rabon has never seen get clocked at the last second, and then a week goes by while the documents are in the mail, and then a dispute arises as to whether they are sufficient to comply with the settlement. That is, I don't want this settlement to sow the seeds of yet another lawsuit.

I realize the language you used for the release (forever, immediately, and irrevocably) is not in quotes, but I want to be sure we have an understanding that as long as there is a full release we are in compliance. I have no idea what kind of language the Bank might use. I agree that the language may vary. I think we are on the same page that the release cannot be conditional, or partial, or temporary in any way. As long as the effect is that the release is effective at closing and forevermore, then I'm fine whatever language is used to achieve it.

Page Two

1st Paragraph – There was no agreement that a denial letter from West Town Bank is a triggering event. West Town may decline to release your clients as part of a refinance option but the Mitchells are free to explore other opportunities which would satisfy the loan and automatically trigger a release from liability. As we discussed, the 2nd triggering event would be the completion of a closing or other event which would trigger a release. My thought was that there is little use to waiting for the trigger if we KNOW it will occur. But, given that the wait is only about 13 more days, I agree to remove this paragraph as long as we are both clear that the written agreement from West Town **cannot be redundant or make the first triggering event superfluous**. For instance, a written agreement that states "West Town will release Rabon if the loan is paid in full" does NOT satisfy the settlement agreement (since we already have that agreement with

West Town). I'm sure you understand why that's necessarily the case, but if you disagree please let me know and we can discuss.

Paragraph 4 - I will deliver the documents, or place them for overnight delivery with UPS, or make them available for pickup by you on the next standard business day, exempting holidays, and not within 24 hours. If I make them available for you for pickup, I may be out of Columbia. I just need to have these options in case I am in Greenville or some other place that day. I often have to leave for early hearings out of my county, too early to deposit with UPS. Either way, I assume your firm has an office in most SC cities and I can make them available to you. You won't have to worry about my non-compliance but I need to have some wiggle room in case I am not in Columbia that day. I agree as to next business day (i.e. the next day that is neither a Saturday, Sunday, or Federal Banking Holiday). Personal delivery to any McNair office is fine, as long you notify me beforehand which office you intend to deliver the documents to so that I may alert them. I would like to avoid UPS, FedEx, etc. Can we stick with personal delivery to any McNair office, or pick up from your office? Please let me know your thoughts. If we need to extend the time by a day to accomplish this I would okay with that as well.

Paragraph 5 - I don't think I needed to agree to deposit the funds with the Clerk of Court. I did not have my representation include having to be counsel of record in a possible interpleader. I can see why this is a contingency. How might we be able to handle this? Can I deposit the funds with the clerk timely after you file the interpleader? The Mitchells may want to have someone else represent them. I will look into this. If you filed the interpleader, you would not be doing so as counsel for the Mitchells; you would be doing it for yourself as escrow agent. The clause is really for your protection in case Rabon and Mitchells do not agree. It allows you to get rid of the documents and wash your hands of the issue. My understanding is that the party with the documents is the one that must file the interpleader, so I don't know that I can do it. However, the rule then says that having done so, the court may discharge you from liability as to the documents. I suppose the alternative is for you to continue to hold the documents, but then both Mitchells and Rabon would have to sue you - and that doesn't sound nearly as appetizing as depositing the documents with the court. Again, I'll look into it. I don't anticipate this being a sticking point for me as long as we agree on a plan in case of dispute.

Paragraph 6 - Not sure I understand this. Should this be part of Paragraph 5? If there is no Triggering Event such that Plan A is in effect then I need not delivery the documents to you. If that is the case, why would their need to be a final judgment to terminate the Escrow Agreement. Can we not agree when the 2nd Triggering Event is mute the Escrow Agreement terminates? I agree. I'll write some language that provides for the documents going back to the Mitchells upon the completion of Plan A.

Approving the Agreement vs Hearing Date

I realize time is short on these issues given the deadline of Nov 30th. If we can't get a hearing this Friday, I do want us to focus on getting everything ready for the Escrow so we can execute these documents and get everything in place while I am in town this week. Again, to reassure you, my understanding is, and I have advised the Mitchells, the Mediation Agreement is enforceable even if not approved by the Court. If we don't have a hearing date, I would agree we need to get the Escrow Agreement and escrows documents signed before the triggering date. I agree. I would like to have the documents and the escrow agreement signed before the November 30, regardless of whether we can put it on the record before then. As you stated, the agreement is enforceable as is. With that in mind, can we plan to sign documents late Friday morning? I'm glad to do it at the courthouse or my office as long as your clients are comfortable - we can keep them in separate rooms if we use my offices. I'm also open to other suggestions. Just let me know.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654

Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Rachael Dain [<mailto:Rachael@attorneydain.com>]
Sent: Monday, November 16, 2015 1:35 PM
To: Mitchell, Karen - EMAIL (KandKMitchell22@gmail.com) <KandKMitchell22@gmail.com>
Cc: 'AttorneyDain.BackDoor@gmail.com' <AttorneyDain.BackDoor@gmail.com>; 'RachaelBackDoor@gmail.com' <RachaelBackDoor@gmail.com>
Subject: FW: RABON/Mitchell Settlement (TRAILER TITLE)

From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Monday, November 09, 2015 10:15 AM
To: Rachael@attorneydain.com
Subject: RE: RABON/Mitchell Settlement

Rachael –

Getting back to you with respect to the Trailer, Kyle is misinformed – under S.C. Code Ann. §§ 56-3-20 and 56-19-10, a trailer is most definitely a vehicle, and therefore able to be titled. See also <http://www.scdmvonline.com/dmvnew/default.aspx?n=titleandreg> (containing schedule of fees for titling trailers).

Though trailers are not **required** to be titled in every case, they are **able** to be titled, and that is what Kyle needs to do – unless you would prefer that I hold the trailer itself in escrow (which I am glad to do). Please send a copy of the trailer title once Kyle obtains it.

Best regards,
Lane

From: Rachael Dain [<mailto:Rachael@attorneydain.com>]
Sent: Monday, November 09, 2015 9:43 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: RABON/Mitchell Settlement

Lane:

Kyle tells me the trailer does not have a title as it is not an automobile of any kind. I am waiting to hear from Kyle on debts that may encumber the Harley but I thought he said they were paid for.

I have not drafted anything nor looked at your paperwork yet. I apologize but after the day I advised I could have drafted the consent order I had a major accounting software nightmare and have been trying to get back online with that. I lost almost a year of data. I am also unable to put any time toward this case until Wednesday and will get to it then.

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There are several things to be done and I will let you know when the Mitchells have the later and understand it must be by November 30th.

As far as a hearing date now, I am available on November 19th after 2pm and also on November 20th before 2pm. We should be able to have the paperwork by those dates. Please let me know if those dates will work for you. As stated before, I assume we can get in to see a judge since we are looking to move 5 cases and putting the agreement on the record should be quick.

Thanks,
Rachael

From: Jefferies, Lane [mailto:LJefferies@mcnair.net]

Sent: Monday, November 09, 2015 9:17 AM

To: Rachael@attorneydain.com

Cc: Brady, Donna <DBrady@mcnair.net>; Jefferies, Lane <LJefferies@mcnair.net>

Subject: RABON/Mitchell Settlement

Rachel –

I hope you had a nice weekend. Several things:

1. Thank you for sending the Harley titles. If the Mitchells cannot produce the trailer title, then the trailer itself will need to be held in escrow. Therefore, I suggest that they visit the DMV and obtain a new title (or a replacement title).
2. Please confirm that there are no debts, liens, or encumbrances with respect to the Harleys or the trailer. This would include ensuring that property tax has been paid through the anticipated date of transfer.
3. What is the status of the paperwork you are drafting pursuant to the settlement agreement? I understand that you have a sense of urgency to get this all in front of a Judge, so please let me know what progress you are making.
4. As you know, the first trigger which would cause a switch from Plan A to Plan B under the Settlement Agreement is the Mitchells' failure to obtain a satisfactory release letter from West Town Bank and USDA by November 30, 2015. Have you made any progress in this regard?

I look forward to hearing back from you.

Best regards,
Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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From: Rachael Dain [mailto:Rachael@attorneydain.com]

Sent: Friday, November 06, 2015 7:50 AM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Mtchell re: Harley Titles

Lane:

Here are copies of the Harley titles.

Sincerely,
Rachael Dain

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Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, November 24, 2015 11:51 AM
To: 'Rachael@attorneydain.com'
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Brady, Donna; Jefferies, Lane
Subject: RE: Rabon v. Mitchell
Categories: DM, #217955 : 062992 : 00001 : LJEFFERI

Rachael –

Thanks for your quick response. Sorry to hear about the trouble with the bank. Following is what I will propose to my clients in terms of an extension: if (1) we can get the various documents that you and I have been working on finalized before 11/30, and (2) the bank can give us something to indicate that an extension is likely to produce the desired result, then a little more time would be reasonable. However, I cannot grant a blind extension, so I really need something to show that an extension is warranted and doesn't prejudice my clients. Please let me know your thoughts.

As to Jack, thank you for asking. Yes, he is improving. Shai David was apparently released on bond last week, but I have not heard of anyone seeing him in Myrtle Beach since. I don't really know any more about the police investigation that what I read in the papers. Like you, I will be interested to see what's on the body-cam – if the police eventually release it.

Please let me know what I can do to be helpful in terms of moving the execution of the Settlement ahead.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Tuesday, November 24, 2015 11:29 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: Rabon v. Mitchell

Yes, I am trying to contact them. We have every reason to believe the letter will be forthcoming but we have an unexpected wrinkle and hope your offer to provide some additional time still stands.

In addition to this being Thanksgiving week, our contact person, with whom a meeting was scheduled last Thursday, had a close family member die the night before and left the state to be with his family. We have not been able to reach him since then. I was just told by the bank he has not returned to work today and I am unsure what his schedule will be. He may be planning to stay with his family through the Thanksgiving holiday. I just don't know.

Is it possible to get a week extension? This is such an unanticipated thing.

On another note, how is Jack doing? I read where his wife went to the bond hearing and was concerned about Shai getting out on bond. I really feel for her in all this. Do you know if the cops received the body cam video prior to Shai being charged? Evidently it did not change their mind. I can't help but wonder if it made them decide to arrest him.

Thanking you in advance,
Rachael Dain

RECORD PAGE 140

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Tuesday, November 24, 2015 11:19 AM
To: Rachael@attorneydain.com
Cc: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Rabon v. Mitchell

Rachael –

Just curious if you had any update as to progress with West Town?

Thanks,
Lane

M C N A I R
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
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Jefferies, Lane

From: Jefferies, Lane
Sent: Wednesday, November 25, 2015 3:50 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; 'Dan Stacy'; Jefferies, Lane
Subject: RABON RE: Mitchell letter

Categories: DM, #218163 : 062992 : 00001 : LJEFFERI

Rachael –

Thanks for the update. I am favorably disposed to extending the deadline (though the decision remains with my client) if it looks like the Mitchells are getting close and need a few more days, AND if all the escrowed documents, etc. are signed beforehand.

We may already be clear on this, but just to be sure, the burden for avoiding the first trigger is higher than for getting an extension. Your proposed language in red below, while maybe enough to warrant an extension, is not enough to avoid the first trigger (on November 30, or whatever date we may extend to). Instead, to avoid the first trigger we need a "written **agreement**" from the Bank to release Rabon (emphasis added). In terms of form, it can be a letter from the bank, but whatever the form, it must satisfy the criteria of enforceable agreements. Among other things, an enforceable agreement cannot be vague or indefinite (so "other qualifying event" does not work). In addition, as I indicated in my email of November 17, because the written agreement functions as part of the consideration supporting the Settlement Agreement, it cannot be simply a reiteration of the agreement that *already exists* with West Town. As a result, any flavor of "West Town agrees to release Rabon if the loan is paid in full" is insufficient to avoid the first trigger. As I offered in my email of November 17, I'm glad to explain why this is so as a matter of law if you want me to.

I apologize if the above sounds like I'm belaboring the point. I just don't want there to be any confusion on November 30 (or whatever date we may extend to). I'm working on the remaining documents this afternoon, and hope to have them to you tonight for your review.

I hope you have a great Thanksgiving!

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Wednesday, November 25, 2015 1:13 PM
To: Jefferies, Lane <LJefferies@mcnair.net>; Brady, Donna <DBrady@mcnair.net>
Subject: FW: Mitchell letter

Lane:

Please see Dan Stacy's email below to update you on the status of the letter.

Have a Happy Thanksgiving,
Rachael

RECORD PAGE 142

From: Dan Stacy [mailto:DStacy@OxnerandStacy.com]
Sent: Wednesday, November 25, 2015 1:01 PM
To: Rachael@attorneydain.com
Subject: Re: Mitchell letter

The request is being reviewed by west town and usda and we will let you know. Please copy lane Jeffries as I am mobile and do not have his email address

Sent from my iPhone please excuse errors in typing or grammar. This may have been sent using Siri so please excuse misspelled words.

On Nov 24, 2015, at 12:56 PM, Rachael Dain <Rachael@attorneydain.com> wrote:

Dear Dan:

Thank you so much for our conversation.

The Mediation Agreement requires a letter to stop "PLAN B" from being implemented. For that reason I am requesting a letter by next Monday, at which time it must be transmitted by fax and email to Lane Jefferies before the end of the day. Then the original needs to be mailed to him as well. which shows our good faith intentions to otherwise resolve this and, if realized, that Jack Rabon and Peggy Rabon's Estate will be released.

The Mediation Agreement requires: "A written Agreement within thirty (30) days of this Agreement to remove and/or release Jack Rabon and the Estate of Peggy Rabon as personal guarantors under the loan to MB Boardwalk Entertainment, LLC and to accomplish this within ninety (90) days from the date the bank agrees to do this.

This is what Lane wrote me in response to fleshing out exactly what needs to be in the letter: To avoid the first trigger, the Mitchells do not need to have Rabon released by November 30. Instead, they need only obtain a written agreement to remove Rabon as personal guarantor upon the happening of specifically identified later events to occur within 90 days of the agreement. I think we are on the same page here. I also understand he wants it to be titled "Agreement."

Unless you can see something I cannot, I imagine something along of the lines of the following will work: Bank is currently in good faith negotiations with Karon and Kyle Mitchell to renegotiate loans with Myrtle Beach Boardwalk Entertainment, LLC, such that Bank will release the personal guarantees of Jack Rabon and the Estate of Peggy Rabon. Upon successful completion of these negotiations or any other qualifying event, and within 90 days of this date, we will agree to release the personal guarantees of Jack Rabon and the Estate of Peggy Rabon. You are certainly much better than I at drafting Banky-sounding letters so I will trust your judgment.

Please send me a reply email so I will know this was successfully received.

Sincerely,
Rachael Dain



Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654

RECORD PAGE 143

Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

"Never doubt that a small group of thoughtful committed citizens can change the world; indeed it's the only thing that ever has." - Margaret Mead

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 30, 2015 8:49 AM
To: 'Rachael@attorneydain.com'
Cc: Jefferies, Lane
Subject: RE: RABON/Mitchell documents

Thanks. Hope you had a nice Thanksgiving.

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 30, 2015 8:48 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: RABON/Mitchell documents

I will get back to you on these in a few hours.

Rachael

From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Wednesday, November 25, 2015 5:15 PM
To: Rachael@attorneydain.com; RachaelBackDoor@gmail.com
Cc: Brady, Donna <DBrady@mcnair.net>; Jefferies, Lane <LJefferies@mcnair.net>
Subject: RABON/Mitchell documents

Rachael –

Attached are DRAFTS of the General Release and the Proxies. They likely still contain a few typos and blanks for dates. I wanted to get them to you today so you could review their substance – I'll clean up the formatting Friday.

Also on Friday I will revise the Escrow Agreement based on our discussion, and send it to you to review. Likewise with the Bill of Sale.

I believe those are the main things that we need to get accomplished before Monday so that we will be in a position to extend the first trigger deadline if needed.

I hope you have a great Thanksgiving!

Best regards,
Lane



Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website

RECORD PAGE 145

Please be advised that you will not receive a hard copy of the contents of this email unless requested.



From: MYRcopier@mcnair.net [mailto:MYRcopier@mcnair.net]

Sent: Wednesday, November 25, 2015 6:17 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Attached Image

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 30, 2015 2:51 PM
To: 'Rachael@attorneydain.com'
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Brady, Donna; Jefferies, Lane
Subject: RE: RABON RE: Mitchell letter
Categories: DM, #218112 : 062992 : 00001 : LJEFFERI

Rachael –

My position remains unchanged and is identical to that in the Mediation Settlement Agreement, which is: to avoid the first trigger, there must be "a written agreement" from West Town to release Rabon. The written agreement must be received by midnight tonight (yes, of course we will accept a fax, email, etc. with the original to follow by mail).

I'm sure I do not need to tell you that an Agreement results from a meeting of the minds of the parties, and embodies a mutual intent to be bound. See Gaskins v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101 (1978); Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 433 (Ct. App. 1984). As a result, purported "agreements to agree" and "agreements" to continue to negotiate are, as a matter of black letter law, NOT Agreements. Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 579 (2014). In addition, an Agreement must not leave open material terms, or be too indefinite as to material terms. Id. at 579. Further, as I indicated in my emails of November 17 and 25, because the written agreement from West Town functions as part of the consideration supporting the Settlement Agreement, it cannot be simply a reiteration of the agreement that *already exists* with West Town. As a result, any flavor of "West Town agrees to release Rabon if the loan is paid in full" is insufficient to avoid the first trigger. As I offered in my emails of November 17 and 25, I'm glad to explain why this is so as a matter of law if you want me to.

To be clear, it's not an agreement to release "regardless" that is required – to release "regardless" would be more like a post-dated release. Instead, what's required is just like what's required in an agreement to purchase a house, for example – seller agrees to accept a specific amount of money and convey title to a specific house on a specific day, and in consideration thereof, buyer agrees to pay that specific amount of money and accept title to that specific house on that specific day. Likewise, the agreement here would be, at a bare minimum, something like "Mitchells agree to do [specific thing] on [specific date] and in consideration thereof, bank agrees to release Rabon on that specific date." Anything less is not an Agreement.

As I offered before, if you need an extension in order to obtain a written agreement, then we are glad to consider one provided that (1) the Mitchells show that they have made significant progress toward obtaining a written agreement (i.e. an extension is not a waste of time), and (2) the Mitchells execute the various settlement documents and put titles, and trailer into escrow. The first trigger is in about 11 hours. If you need an extension, then please let me know and provide items (1) and (2) above.

Please call me if we need to discuss further.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 30, 2015 2:07 PM
To: Jefferies, Lane <LJefferies@mcnair.net>

RECORD PAGE 147

Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON RE: Mitchell letter

Lane:

After reading your email below, it sounds as if you are requiring a commitment from the bank to release your clients on a certain date regardless. This seems to contradict your earlier email to me. The parties are in good faith negotiations to refinance the property.

I am just confused as to what you think is required since it seems, to me, to change. In your email below it sounds like the negotiations must be completed prior to the date the letter is drafted and they have no additional time to iron out final terms or contingencies.

Please advise.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Wednesday, November 25, 2015 3:50 PM
To: Rachael@attorneydain.com
Cc: Brady, Donna <DBrady@mcnair.net>; Dan Stacy <DStacy@OxnerandStacy.com>; Jefferies, Lane <LJefferies@mcnair.net>
Subject: RABON RE: Mitchell letter

Rachael –

Thanks for the update. I am favorably disposed to extending the deadline (though the decision remains with my client) if it looks like the Mitchells are getting close and need a few more days, AND if all the escrowed documents, etc. are signed beforehand.

We may already be clear on this, but just to be sure, the burden for avoiding the first trigger is higher than for getting an extension. Your proposed language in red below, while maybe enough to warrant an extension, is not enough to avoid the first trigger (on November 30, or whatever date we may extend to). Instead, to avoid the first trigger we need a "written **agreement**" from the Bank to release Rabon (emphasis added). In terms of form, it can be a letter from the bank, but whatever the form, it must satisfy the criteria of enforceable agreements. Among other things, an enforceable agreement cannot be vague or indefinite (so "other qualifying event" does not work). In addition, as I indicated in my email of November 17, because the written agreement functions as part of the consideration supporting the Settlement Agreement, it cannot be simply a reiteration of the agreement that *already exists* with West Town. As a result, any flavor

RECORD PAGE 148

of "West Town agrees to release Rabon if the loan is paid in full" is insufficient to avoid the first trigger. As I offered in my email of November 17, I'm glad to explain why this is so as a matter of law if you want me to.

I apologize if the above sounds like I'm belaboring the point. I just don't want there to be any confusion on November 30 (or whatever date we may extend to). I'm working on the remaining documents this afternoon, and hope to have them to you tonight for your review.

I hope you have a great Thanksgiving!

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Wednesday, November 25, 2015 1:13 PM
To: Jefferies, Lane <LJefferies@mcnair.net>; Brady, Donna <DBrady@mcnair.net>
Subject: FW: Mitchell letter

Lane:

Please see Dan Stacy's email below to update you on the status of the letter.

Have a Happy Thanksgiving,
Rachael

From: Dan Stacy [mailto:DStacy@OxnerandStacy.com]
Sent: Wednesday, November 25, 2015 1:01 PM
To: Rachael@attorneydain.com
Subject: Re: Mitchell letter

The request is being reviewed by west town and usda and we will let you know. Please copy lane Jeffries as I am mobile and do not have his email address

Sent from my iPhone please excuse errors in typing or grammar. This may have been sent using Siri so please excuse misspelled words.

On Nov 24, 2015, at 12:56 PM, Rachael Dain <Rachael@attorneydain.com> wrote:

Dear Dan:

Thank you so much for our conversation.

The Mediation Agreement requires a letter to stop "PLAN B" from being implemented. For that reason I am requesting a letter by next Monday, at which time it must be transmitted by fax and email to Lane Jefferies before the end of the day. Then the original needs to be mailed to him as well. which shows our good faith intentions to otherwise resolve this and, if realized, that Jack Rabon and Peggy Rabon's Estate will be released.

The Mediation Agreement requires: "A written Agreement within thirty (30) days of this Agreement to remove and/or release Jack Rabon and the Estate of Peggy Rabon as personal guarantors under the loan

RECORD PAGE 149

to MB Boardwalk Entertainment, LLC and to accomplish this within ninety (90) days from the date the bank agrees to do this.

This is what Lane wrote me in response to fleshing out exactly what needs to be in the letter: To avoid the first trigger, the Mitchells do not need to have Rabon released by November 30. Instead, they need only obtain a written agreement to remove Rabon as personal guarantor upon the happening of specifically identified later events to occur within 90 days of the agreement. I think we are on the same page here. I also understand he wants it to be titled "Agreement."

Unless you can see something I cannot, I imagine something along the lines of the following will work: Bank is currently in good faith negotiations with Karon and Kyle Mitchell to renegotiate loans with Myrtle Beach Boardwalk Entertainment, LLC, such that Bank will release the personal guarantees of Jack Rabon and the Estate of Peggy Rabon. Upon successful completion of these negotiations or any other qualifying event, and within 90 days of this date, we will agree to release the personal guarantees of Jack Rabon and the Estate of Peggy Rabon. You are certainly much better than I at drafting Banky-sounding letters so I will trust your judgment.

Please send me a reply email so I will know this was successfully received.

Sincerely,
Rachael Dain



Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, November 30, 2015 3:18 PM
To: 'Rachael@attorneydain.com'
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Brady, Donna; Jefferies, Lane
Subject: RE: RABON/Mitchell documents
Categories: DM, #218113 : 062992 : 00001 : LJEFFERI

Rachael –

Thanks for your comments. See my responses below in green – I'll revise accordingly.

Thanks,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 30, 2015 1:59 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: RABON/Mitchell documents

Lane:

I am still trying to get through the General Release.

I am unsure about the procedural history so will have to rely on you for that.

I see there is still a requirement that we obtain an original document rather than being able to transmit this by email or fax. This seems to be mentioned several times in the GR. I will revise. A fax or email by midnight on the date due is fine as long as the original is sent either that day, or the next day that the post office is open.

2a still requires the release by the USDA. My understanding from Dan Stacy is West Town requires their consent but the USDA is not a Creditor in this action. By getting West Town's consent the USDA is implied but not required as we can't get someone in such a large bureaucracy to sign the document. I think we went over this in a previous email. (I'll change it to "(including USDA to the extent that it may be a creditor, collectively "Creditors)"). So, if West Town will warrant in writing that USDA is not a creditor, then no signature will be needed. I just need something more here than the Mitchell's word that USDA isn't a creditor.

In that same paragraph, the language seems to require an actual agreement to release instead of a promise to release upon the fulfillment of the closing in 90 days. I think some of this was drafted before our emails. I see your point. I'll revise the last line on page two to say "... all such creditors agree, upon the timely occurrence of specific events identified therein, (1) to forever release ..." See my email of a few minutes ago – the agreement must satisfy all the contract-law requirements of a binding agreement.

2c requires the agreement and releases on the same date. We are only requesting the letter of agreement. I disagree. Section C sets forth what is to occur if the Mitchells succeed in not triggering Plan B – that is, they obtain BOTH (1) the agreements to release before midnight 11/30/15, AND (2) the releases prior to midnight 2/29/16. Two things they need to get; two dates by which they need to get them. All they need tonight is the agreements to release. Then they get 90 more days to do what the agreements to release require, and thus get the releases.

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2cv – the time period is 120 days from the mediation agreement and not 120 days from the transfer. Not sure what “all things necessary” means. I prefer the language we used in the mediation agreement. Doing “all things necessary” is how the Mitchells go about fulfilling their promise in the settlement agreement “to release Jack Rabon and the Estate of Peggy Jo Hardy [sic] Rabon,” since the Mitchells cannot actually sign the releases themselves on behalf of the lessors.

Still reading but I didn’t see the rest of the agreement to include a reference to the mediation agreement (Paragraphs 2-11) as an attachment. –

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Wednesday, November 25, 2015 5:15 PM
To: Rachael@attorneydain.com; RachaelBackDoor@gmail.com
Cc: Brady, Donna <DBrady@mcnair.net>; Jefferies, Lane <LJefferies@mcnair.net>
Subject: RABON/Mitchell documents

Rachael –

Attached are DRAFTS of the General Release and the Proxies. They likely still contain a few typos and blanks for dates. I wanted to get them to you today so you could review their substance – I’ll clean up the formatting Friday.

Also on Friday I will revise the Escrow Agreement based on our discussion, and send it to you to review. Likewise with the Bill of Sale.

I believe those are the main things that we need to get accomplished before Monday so that we will be in a position to extend the first trigger deadline if needed.

I hope you have a great Thanksgiving!

Best regards,
Lane

M C N A I R
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

RECORD PAGE 152

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

VCard | Bio URL | Website

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From: MYRcopier@mcnair.net [mailto:MYRcopier@mcnair.net]

Sent: Wednesday, November 25, 2015 6:17 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Attached Image

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Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, December 01, 2015 3:00 PM
To: 'Rachael@attorneydain.com'; karon mitchell
Cc: Brady, Donna; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.
Attachments: 2015.12.01 LTR TO Mitchells cc Rachael Dain re Plan B.pdf

All: Please see attached time-sensitive letter.

Rachael: I appreciate your efforts as well as your candid admission below that no written agreement with West Town was provided by the deadline. As a result, Plan B has now been triggered. Rabon has performed under the Mediation Settlement Agreement ("Agreement") by, among other things, waiting patiently during the thirty day window which the Mitchells had to negotiate with West Town. Rabon will continue to perform under the Agreement. ***It is now time for the Mitchells to perform.*** The attached letter (which includes a copy of the Agreement) sets forth the actions that the Mitchells need to take immediately.

Nonetheless, without waiving any rights and without impliedly granting an extension to the Mitchells, Jack Rabon will of course consider (in his sole discretion) any arrangement with West Town that the Mitchells might propose, ***but only if*** the Mitchells immediately begin performing under the Agreement as they are required to. The Mitchells can show a good faith effort at beginning performance by contacting my office by the end of the day tomorrow (Wednesday) to arrange for our courier to pick up the motorcycles and trailer as well as the Bill of Sale and Certificates of Title thereto.

Thanks for all your efforts.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 30, 2015 5:46 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: Mitchell re: USDA letter attached

Attached is the USDA Letter.

I, on a separate email, sent you correspondence from Dan Stacy. They are either going to meet Wednesday morning or Friday morning. I don't know which. I don't have anything else to give you except the USDA letter.

I hope you will continue to allow them to try to work this out. They seem to be close based on what Karon says the USDA said. I have to go to my meeting. As discussed, I am unavailable tomorrow. I can talk to you again on Wednesday. The Mitchells are driving to Washington to meet with Senator Graham over his assistance getting the loan expedited. As discussed I am happy to work on the documents Wednesday in hope of finalizing the terms. I just don't know what else to tell you. I believe I have done all I can to make this work and get a timely letter.

Sincerely,
Rachael Dain



Rachael A. Dain, J.D.

RECORD PAGE 154

ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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MCNAIR
ATTORNEYS

December 1, 2015

Lane D. Jefferies
Associate

ljefferies@mcnair.net
T 843.444.1107
F 843.444.3964

Via E-mail (beachbummb4@msn.com)

Karon Mitchell and Kyle Mitchell
4506 Camellia Drive
Myrtle Beach, SC 29577

Re: *Rabon & Rabon, Inc. v. Karon Mitchell and Kyle Mitchell*
Civil Action No. 2014-CP-26-07862
Our File No.: 062992.00001

Dear Karon and Kyle Mitchell:

I am writing to you directly because (1) there is no attorney of record in this matter, and (2) Rachael Dain's representation of you appears to have ended with the conclusion of mediation. However, if you are represented by counsel, then please stop reading this letter (including the enclosures) and forward it to your attorney immediately, as time is of the essence.

**"PLAN B" IS NOW IN EFFECT.
PLEASE TAKE IMMEDIATE ACTION ACCORDINGLY.**

On October 30, 2015 you entered into a Mediation Settlement Agreement with Rabon & Rabon, Inc., and Jack I. Rabon, Jr. individually, and as Personal Representative of the Estate of Peggy Jo Hardee Rabon ("Agreement"). The Agreement sets forth two alternative plans with respect to, among other things, the disposal of certain real and personal property. The alternative plans are known as "Plan A" and "Plan B," and they are described on pages four and five of the Agreement, a copy of which is enclosed for easy reference.

Under the Agreement, Plan A may take effect only upon the occurrence of *both* of two specific events. If either of those events fails to occur, then Plan B becomes effective immediately. The first event which needed to occur in order for Plan A to have become effective was Karon Mitchell's obtaining, by November 30, 2015, a written agreement from West Town bank to release Jack I. Rabon, Jr. and the Estate of Peggy Jo Hardee Rabon as personal guarantors on the West Town loan to MB Boardwalk Entertainment, LLC ("LLC").

Karon Mitchell did not obtain a written agreement from West Town bank by November 30, 2015. As a result, Plan B is now effective.

McNAIR LAW FIRM, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

MYRTLEBEACH 218165v1 062992-00001
12/01/2015 2:21 PM

BLUFFTON | CHARLESTON | CHARLOTTE | **RECORD PAGE 156** | MYRTLE BEACH | PAWLEYS ISLAND

As set forth in the Agreement, under Plan B, you must:

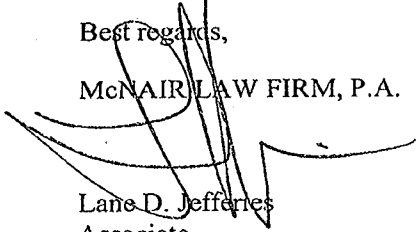
1. Give Jack I. Rabon, Jr. your proxy as to both the LLC and Rabon & Rabon, Inc. with respect to voting on the sale of company assets; and
2. Transfer title to Jack I. Rabon, Jr. of the two Harley-Davidson motorcycles and one Haulmark trailer for which you have provided copies of Certificates of Title and/or Vehicle Identification Numbers;
3. Sign such additional paperwork as is necessary to effectuate Plan B.

I have prepared a Bill of Sale as well as Proxy Statements which I sent to Rachael Dain last week for her review. The Agreement requires that you execute these documents without unreasonable delay. Given that the real property of the LLC is scheduled for judicial sale on December 7, 2015 and foreclosure on December 16, 2015, you must act expeditiously. Enclosed are copies of Bill of Sale as well as Proxy Statements for your review. If you have questions about them, you should consult an attorney. Otherwise, please sign and return the documents to my office no later than 4:00 p.m. tomorrow (Wednesday). You may deliver the documents in person, or via FedEx. Alternatively, I am glad to send a courier anywhere in Horry County to pick them up. Naturally, in addition to performing as required by the Agreement, you are welcome to present offers from West Town Bank and others. Without waiving any rights under the Agreement, Jack Rabon will consider whatever proposals you make, and will determine if they are acceptable in his sole discretion as provided by the Agreement.

If you fail to act as required, then you will be in breach of the Agreement. Accordingly, if I do not hear from you before 4:00 p.m. tomorrow (Wednesday), then we will conclude that you have intentionally breached the Agreement. I look forward to hearing from you before 4:00 p.m. tomorrow.

Best regards,

MCNAIR LAW FIRM, P.A.



Lane D. Jeffries
Associate

LDJ/ck

Enclosures: as stated

cc: Rachael Dain (via E-mail rachael@attorneydain.com)
Client

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	CIVIL ACTION NO. 2014-CP-26-07862
	)	
Rabon & Rabon, Inc.,	)	
	)	
Plaintiff,	)	
	)	MEDIATION SETTLEMENT AGREEMENT
vs.	)	
	)	
Karon Mitchell and Kyle Mitchell,	)	
	)	
Defendants.	)	
_____	)	

AS A RESULT OF MEDIATION, THE PARTIES HAVE AGREED AS FOLLOWS:

1. The parties agree to authorize their respective attorneys to dismiss the following cases with prejudice:

- (a) Rabon & Rabon, Inc. —vs— Mitchells (2014-CP-26-7862)
- (b) Rabon as Personal Representative —vs- Mitchells (2014-CP-26-5740)
- (c) Mitchells —vs- Jack Rabon
- (d) All existing probate cases

2. The parties agree to use their best efforts to have all pending criminal cases dismissed.

3. The parties agree not to commence, personally or through their ownership in any business entities any litigation against any of the parties to this action for any events or damages that occurred prior to this date, known or unknown; furthermore, Karon Mitchell and Kyle Mitchell and Jack Rabon

cannot sue Nichole Rabon, Chad Mitchell, Chase Mitchell or Leigh Anna Mitchell for any actions, events or damages, unless it is a Counterclaim to a suit brought by one of these individuals.

4. The parties agree not to, personally or through third parties or government agencies or entities, harass or interfere with each other or their spouses personally or attempt to interfere with or harm their employment or any other business interest or related activities. The parties agree that this clause is not intended to restrict any party's ability to keep and bear arms.

5. Plan A as set forth in Exhibit A will be effective provided Karon Mitchell obtain a written Agreement within thirty (30) days from the date of this Agreement to remove and/or release Jack Rabon and the Estate of Peggy Jo ^{Harder} ~~Hardy~~ Rabon as a personal guarantor under the loan to MB Boardwalk Entertainment, LLC and accomplish this within ninety (90) days from the date the bank agrees to do this.

6. If Plan A is not activated as set forth above, the parties agree to proceed with Plan B which is set forth in Exhibit B.

7. Rachael Dain will be paid \$10,000.00 out of the Estate of Peggy Jo ^{Harder} ~~Hardy~~ Rabon as legal fees for her services to Karon Mitchell and Kyle Mitchell which were limited to this mediation when this Settlement Agreement has been approved by the Court.

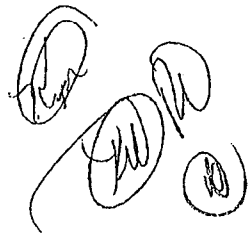
7. The parties will agree to execute Mutual General Releases.

8. This is the entire Agreement between the parties and the parties have no further obligations to each other in connection with this matter.

9. The parties agree not to take any action that would prejudice the party's rights under this Settlement Agreement or any related agreements.

10. This Settlement Agreement is enforceable in law and equity.

11. Except as to any property addressed herein, any other property will be distributed per the terms of the Will and the parties agree there will be no challenges to the Will.



The parties authorize their respective attorneys to execute a dismissal without prejudice within the next thirty (30) days.

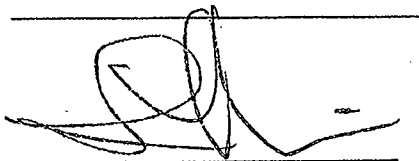
This Settlement Agreement is enforceable in law and equity.

PLAINTIFF:

RABON & RABON, INC.

By: 

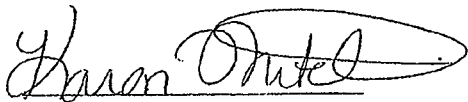
Its: President



Lane D. Jefferies, Attorney for Plaintiffs

Henrietta U. Golding, Attorney for Plaintiffs

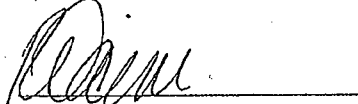
DEFENDANTS – PRO SE:



Karon Mitchell



Kyle Mitchell



Rachael Dain

DATED: OCTOBER 30, 2015

EXHIBIT "A"

Plan A

1. Jack Rabon, individually, and as Personal Representative of the Estate of Peggy Jo Hardy Rabon, agrees to transfer and assign all of their rights, title and interest in and to MB Boardwalk Entertainment, LLC to Karon Mitchell and Kyle Mitchell. *Hardy S.I.R., Jr.*

2. Rabon & Rabon, Inc. agrees to transfer all of its rights, title and interest in and to the property on which Building 4 occupies together subject to the Mortgage of West Town Bank to MB Boardwalk Entertainment, LLC. *S.I.R., Jr.*

3. Jack Rabon and the Estate of Peggy Jo Hardy Rabon are released from personal guarantees limited to West Town Bank loan (including any guarantee to USDA) as to any liabilities whatsoever. *Hardy S.I.R., Jr.*

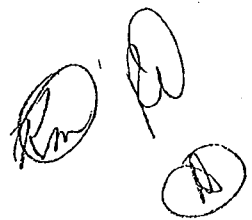
4. Karon Mitchell and Kyle Mitchell will use their best efforts to obtain a release of Jack Rabon and the Estate of Peggy Jo Hardy Rabon from the Lease for restaurant equipment held by Pawnee Lease, Marlin Leasing and Vendley Leasing and further agrees to indemnify and hold Jack Rabon and the Estate of Peggy Jo Hardy Rabon harmless from any liabilities pertaining to the Leases. Further, in the event Karon Mitchell and Kyle Mitchell bring an investor into MB Boardwalk Entertainment, LLC, then Karon Mitchell and Kyle Mitchell agree to release Jack Rabon and the Estate of Peggy Jo Hardy Rabon from the three (3) Leases and the Celtic Bank loan. An investor is not a bank or lending institution and this provision ends in 120 days. *Hardy S.I.R., Jr.*

5. At the request of Jack Rabon, Karon Mitchell and Kyle Mitchell will transfer all of their ownership interests in Rabon & Rabon, Inc. to Jack Rabon on or before March 1, 2016.

EXHIBIT "B"

Plan B

1. Karon Mitchell and Kyle Mitchell agree to give Jack Rabon their proxy authorizing him to assign the vote their shares to sell the assets of Rabon & Rabon, Inc. and MB Boardwalk Entertainment, LLC at a private buyer sale under terms and conditions as Jack Rabon determine in his sole discretion.
2. Karon Mitchell and Kyle Mitchell will transfer title to the two (2) Harleys and Trailer owned by them to Jack Rabon.
3. Karon Mitchell and Kyle Mitchell will sign the necessary paperwork to effectuate Plan B and said paperwork will be held by Rachael Dain unless and until Plan B is implemented and the paperwork will then be turned over to the attorneys for Rabon & Rabon, Inc.



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)
)
)

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that **Kyle Lynn Mitchell and/or Karon Marie Mitchell (collectively "Seller")** for and in consideration of the mutual promises contained in that certain Mediation Settlement Agreement signed by Seller on October 30, 2015, which is attached hereto and incorporated by reference, does hereby sell, convey, transfer and deliver unto **Jack I. Rabon, Jr. (hereinafter called "Purchaser")**, the property set forth below:

1. That certain 2001 Harley Davidson Heritage Softtail Classic motorcycle, bearing Vehicle ID Number 1HD1BJY101Y047676, and as more fully described on the attached Certificate of Title;
2. That certain 2006 Harley Davidson Ultra-Classic motorcycle, bearing Vehicle ID Number 1HD1PRE136Y956538, and as more fully described on the attached Certificate of Title;
3. That certain Tandem Axle Haulmark Trailer, Model # MT712LH, bearing Vehicle ID Number 4XSPB12282G038716;
4. All accessories and equipment related to the above vehicles and in the possession of the Mitchells as of October 30, 2015.

TO HAVE AND TO HOLD the Personal Property to Purchaser, its successors and assigns.

Seller covenants and warrants to Purchaser, its successors and assigns, that Seller is the sole and exclusive owner of the Personal Property and has the right to convey it to Purchaser and that the Personal Property is free and clear of all debts, liens, and encumbrances, specifically including but not limited to any property tax currently due or which may come due. Nothing herein shall be deemed as an assumption of any duties, obligations or liabilities of Seller by Purchaser.

Seller covenants on behalf of itself, its successors and assigns, to warrant and forever defend the title to the Personal Property against all persons whomsoever claiming, or to claim, the same or any part thereof. Seller indemnifies, defends, and holds harmless Purchaser against any and all claims arising out of or in connection with the Personal Property or the transfer thereof.

Seller warrants on behalf of itself, its successors and assigns, that the Personal Property herein described is in proper working order with no known defects as of the date of this Bill of Sale.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be signed and sealed this
__th day of _____, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1 signs here

By: Kyle Lynn Mitchell (LS)

Witness #2 signs here (can be notary)

Date

Witness #1 signs here

By: Karon Marie Mitchell (LS)

Witness #2 signs here (can be notary)

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Kyle Lynn Mitchell, personally
appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this __th day of _____, 2015.

Notary Public for South Carolina

My commission expires: _____

**MB Boardwalk Entertainment, LLC
Member and Manager's Irrevocable Proxy, Resignation as Officer,
Waiver of Notice, and Limited Power of Attorney**

Effective as of the date below, I, Kyle Lynn Mitchell, member of MB Boardwalk Entertainment, LLC ("Company") with a 25% membership interest in Company, on behalf of myself, my heirs, successors, and assigns, do hereby irrevocably constitute and appoint Jack I. Rabon, Jr., as attorney-in-fact and agent for me, and in my name, place and stead, to vote as my Proxy at any and all Member Meetings, and any and all Manager Meetings to the extent that I may be a Manager, of the Company in perpetuity, and in addition to do such acts and sign such documents on my behalf as may be necessary or advisable to carry out the intent of that certain Mediation Settlement Agreement signed by me on October 30, 2015, which is attached hereto and incorporated by reference.

I agree that if the Company has Managers, it has no Managers other Karon Mitchell and myself.

I hereby waive any and all rights to notice of all Member Meetings and Manager Meetings, whether annual, regular, or special.

I hereby resign as an Officer of the Company from any and all offices that I may hold. To the extent that I am an Employee of the Company, I hereby resign my employment and agree that I have been paid in full for whatever services I may have performed for the Company. I further agree that the Company is not indebted to me in any manner.

I hereby agree that no personal property in which I have any right, title, or interest remains on or within the real property owned by the Company. Enclosed herewith are all keys, combinations, passwords, passcodes, and the like which permit access to real or personal property of the Company. I further agree not enter, or attempt to enter, any building owned by the Company, nor to trespass upon any real property owned by the Company, for any purpose whatsoever.

I specifically acknowledge and agree that this Member and Manager's Irrevocable Proxy, Resignation as Officer, Waiver of Notice, and Limited Power of Attorney enables Jack I. Rabon, Jr. to vote upon any business of the Company that may come before the Members or Managers, including without limitation the sale, lease, exchange, or other disposition of all, or substantially all, of the Company's property, whether within or without the usual and regular course of business, and on such terms and conditions as Jack I. Rabon, Jr. sees fit in his sole and absolute discretion.

I acknowledge that any and all funds in Company bank accounts are the property of the Company, and I agree that I shall neither remove nor attempt to remove such funds from the accounts in which they are now located. Attached hereto is a list of all Company accounts, including the name of the institution and account number. I hereby instruct each institution listed in the attached to remove me as an authorized signer on each account listed. I hereby swear and affirm that the attached list is complete to the best of my knowledge and belief, and I acknowledge that my failure to include on said list any account in the Company's name, that I know of or should know of, shall be grounds for future litigation – as a newly committed wrongful act – which is not prohibited by the Mediation Settlement Agreement described above.

I agree that the title at the top of this document is for ease of reference only, and does not limit or otherwise affect the power and scope of this Member and Manager's Irrevocable Proxy, Resignation as Officer, Waiver of Notice, and Limited Power of Attorney.

This Member and Manager's Irrevocable Proxy, Resignation as Officer, Waiver of Notice, and Limited Power of Attorney revokes, supersedes, and replaces all prior Proxies, which shall be of no further force or effect.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1 signs here

By: Kyle Lynn Mitchell (LS)

Witness #2 signs here (can be notary)

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Kyle Lynn Mitchell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this ____th day of _____, 2015.

Notary Public for South Carolina

My commission expires: _____

**MB Boardwalk Entertainment, LLC
Member and Manager's Irrevocable Proxy, Resignation as Officer,
Waiver of Notice, and Limited Power of Attorney**

Effective as of the date below, I, Karon Marie Mitchell, member of MB Boardwalk Entertainment, LLC ("Company") with a 25% membership interest in Company, on behalf of myself, my heirs, successors, and assigns, do hereby irrevocably constitute and appoint Jack I. Rabon, Jr., as attorney-in-fact and agent for me, and in my name, place and stead, to vote as my Proxy at any and all Member Meetings, and any and all Manager Meetings to the extent that I may be a Manager, of the Company in perpetuity, and in addition to do such acts and sign such documents on my behalf as may be necessary or advisable to carry out the intent of that certain Mediation Settlement Agreement signed by me on October 30, 2015, which is attached hereto and incorporated by reference.

I agree that if the Company has Managers, it has no Managers other Kyle Mitchell and myself.

I hereby waive any and all rights to notice of all Member Meetings and Manager Meetings, whether annual, regular, or special.

I hereby resign as an Officer of the Company from any and all offices that I may hold. To the extent that I am an Employee of the Company, I hereby resign my employment and agree that I have been paid in full for whatever services I may have performed for the Company. I further agree that the Company is not indebted to me in any manner.

I hereby agree that no personal property in which I have any right, title, or interest remains on or within the real property owned by the Company. Enclosed herewith are all keys, combinations, passwords, passcodes, and the like which permit access to real or personal property of the Company. I further agree not enter, or attempt to enter, any building owned by the Company, nor to trespass upon any real property owned by the Company, for any purpose whatsoever.

I specifically acknowledge and agree that this Member and Manager's Irrevocable Proxy, Resignation as Officer, Waiver of Notice, and Limited Power of Attorney enables Jack I. Rabon, Jr. to vote upon any business of the Company that may come before the Members or Managers, including without limitation the sale, lease, exchange, or other disposition of all, or substantially all, of the Company's property, whether within or without the usual and regular course of business, and on such terms and conditions as Jack I. Rabon, Jr. sees fit in his sole and absolute discretion.

I acknowledge that any and all funds in Company bank accounts are the property of the Company, and I agree that I shall neither remove nor attempt to remove such funds from the accounts in which they are now located. Attached hereto is a list of all Company accounts, including the name of the institution and account number. I hereby instruct each institution listed in the attached to remove me as an authorized signer on each account listed. I hereby swear and affirm that the attached list is complete to the best of my knowledge and belief, and I acknowledge that my failure to include on said list any account in the Company's name, that I know of or should know of, shall be grounds for future litigation – as a newly committed wrongful act – which is not prohibited by the Mediation Settlement Agreement described above.

I agree that the title at the top of this document is for ease of reference only, and does not limit or otherwise affect the power and scope of this Member and Manager's Irrevocable Proxy, Resignation as Officer, Waiver of Notice, and Limited Power of Attorney.

This Member and Member and Manager's Irrevocable Proxy, Resignation as Officer, Waiver of Notice, and Limited Power of Attorney revokes, supersedes, and replaces all prior Proxies, which shall be of no further force or effect.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1 signs here

By: Karon Marie Mitchell (LS)

Witness #2 signs here (can be notary)

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Karon Marie Mitchell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this ____th day of _____, 2015.

Notary Public for South Carolina

My commission expires: _____

Rabon & Rabon, Inc.
Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney

Effective as of the date below, I, Kyle Lynn Mitchell, holder of 13 shares of Rabon & Rabon, Inc. ("Company") representing 13% of outstanding shares of the Company, on behalf of myself, my heirs, successors, and assigns, do hereby irrevocably constitute and appoint Jack I. Rabon, Jr., as attorney-in-fact and agent for me, and in my name, place and stead, to vote as my Proxy at any and all Shareholder Meetings of the Company in perpetuity, and in addition to do such acts and sign such documents on my behalf as may be necessary or advisable to carry out the intent of that certain Mediation Settlement Agreement signed by me on October 30, 2015, which is attached hereto and incorporated by reference.

I agree that Jack I. Rabon, Jr. satisfies one or more of the conditions for irrevocability set forth in S.C. Code Ann. § 33-7-220.

I hereby waive any and all rights to notice of all Shareholder's Meetings, whether annual, regular, or special.

I specifically acknowledge agree that this Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney enables Jack I. Rabon, Jr. to vote upon any business of the Company that may come before the Shareholders, including without limitation the sale, lease, exchange, or other disposition of all, or substantially all, of the Company's property, whether within or without the usual and regular course of business, and on such terms and conditions as Jack I. Rabon, Jr. sees fit in his sole and absolute discretion.

I agree that the title at the top of this document is for ease of reference only, and does not limit or otherwise affect the power and scope of this Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney.

This Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney revokes, supersedes, and replaces all prior Proxies, which shall be of no further force or effect.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:)

Witness #1 signs here

By: Kyle Lynn Mitchell (LS)

Witness #2 signs here (can be notary)

Date

ACKNOWLEDGMENT ON FOLLOWING PAGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Kyle Lynn Mitchell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this ____th day of _____, 2015.

Notary Public for South Carolina

My commission expires: _____

Rabon & Rabon, Inc.
Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney

Effective as of the date below, I, Karon Marie Mitchell, holder of 13 shares of Rabon & Rabon, Inc. ("Company") representing 13% of outstanding shares of the Company, on behalf of myself, my heirs, successors, and assigns, do hereby irrevocably constitute and appoint Jack I. Rabon, Jr., as attorney-in-fact and agent for me, and in my name, place and stead, to vote as my Proxy at any and all Shareholder Meetings of the Company in perpetuity, and in addition to do such acts and sign such documents on my behalf as may be necessary or advisable to carry out the intent of that certain Mediation Settlement Agreement signed by me on October 30, 2015, which is attached hereto and incorporated by reference.

I agree that Jack I. Rabon, Jr. satisfies one or more of the conditions for irrevocability set forth in S.C. Code Ann. § 33-7-220.

I hereby waive any and all rights to notice of all Shareholder's Meetings, whether annual, regular, or special.

I specifically acknowledge agree that this Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney enables Jack I. Rabon, Jr. to vote upon any business of the Company that may come before the Shareholders, including without limitation the sale, lease, exchange, or other disposition of all, or substantially all, of the Company's property, whether within or without the usual and regular course of business, and on such terms and conditions as Jack I. Rabon, Jr. sees fit in his sole and absolute discretion.

I agree that the title at the top of this document is for ease of reference only, and does not limit or otherwise affect the power and scope of this Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney.

This Shareholder's Irrevocable Proxy, Waiver of Notice, and Limited Power of Attorney revokes, supersedes, and replaces all prior Proxies, which shall be of no further force or effect.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1 signs here

By: Karon Marie Mitchell (LS)

Witness #2 signs here (can be notary)

Date

ACKNOWLEDGMENT ON FOLLOWING PAGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Karon Marie Mitchell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this ____th day of _____, 2015.

Notary Public for South Carolina

My commission expires: _____

Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, December 01, 2015 3:01 PM
To: 'Rachael@attorneydain.com'
Cc: Brady, Donna; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane
Subject: RE: Mitchell re: USDA letter attached
Attachments: 15.11.30 - USDA Letter.pdf

Rachael –

I read the USDA letter. Sadly, it is nothing more than a long version of “we’ll see.”

Best regards,
Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website
Please be advised that you will not receive a hard copy of the contents of this email unless requested.



From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, November 30, 2015 5:46 PM
To: Jefferies, Lane <ljefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: Mitchell re: USDA letter attached

Attached is the USDA Letter.

I, on a separate email, sent you correspondence from Dan Stacy. They are either going to meet Wednesday morning or Friday morning. I don't know which. I don't have anything else to give you except the USDA letter.

I hope you will continue to allow them to try to work this out. They seem to be close based on what Karon says the USDA said. I have to go to my meeting. As discussed, I am unavailable tomorrow. I can talk to you again on Wednesday. The Mitchells are driving to Washington to meet with Senator Graham over his assistance getting the loan expedited. As discussed I am happy to work on the documents Wednesday in hope of finalizing the terms. I just don't know what else to tell you. I believe I have done all I can to make this work and get a timely letter.

Sincerely,
Rachael Dain

RECORD PAGE 173



Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

"Never doubt that a small group of thoughtful committed citizens can change the world; indeed it's the only thing that ever has." - Margaret Mead

*This email may be protected by a legal privilege. If you are not the intended recipient, dissemination of this message or the information herein is **STRICTLY PROHIBITED**. If received in error, please notify me immediately by phone or email and delete the original message. Thank you for your kind cooperation.*

Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, December 01, 2015 3:22 PM
To: <Rachael@attorneydain.com>
Cc: Brady, Donna; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane; beachbummb4@msn.com
Subject: Re: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.
Categories: DM, #218192 : 062992 : 00001 : LJEFFERI

Rachael --

Thank you for your continuing efforts. Just to be clear, what's going on now is not an extension -- the Plan A ship sailed last night at midnight. Plan B is now in effect.

What's going on now is simply that Jack Rabon is considering all offers, including any offers that the Mitchell's might make provided they begin performing in good faith under Plan B.

Again, thanks for all your hard work on this.

Best regards,
Lane

Sent from my iPhone... so please excuse any misspelled words or bizarre Autocorrect changes.

On Dec 1, 2015, at 3:12 PM, "Rachael Dain" <Rachael@attorneydain.com> wrote:

Dear Lane:

I have forwarded your email below to the Mitchells who are in Washington DC today trying to expedite this process with assistance from Senator Graham.

After my call to Dan Stacy last night I tried to call you back but you had started your other appointment. Sorry about that. I was trying to get a commitment from West Town on the date they were meeting with the Mitchells this week.

I did talk to the Mitchells last night late to verify if they had gone to Washington and they advised me they were almost there. I have been in court today as I previously told you so I've been out of pocket to everyone.

I will be back in touch with you as soon as I reach the Mitchells and let you know when they will be back. I appreciate Jack considering granting them an extension. They are really running around trying to address everything at once to get this things finalized in as little time as possible. By that I mean everything from a letter you guys will approve and schedule as close in time as possible.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.

RECORD PAGE 175

ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

This email may be protected by a legal privilege. If you are not the intended recipient, dissemination of this message or the information herein is STRICTLY PROHIBITED. If received in error, please notify me immediately by phone or email and delete the original message. Thank you for your kind cooperation.

From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Tuesday, December 01, 2015 3:00 PM
To: Rachael@attorneydain.com; karon mitchell <beachbummb4@msn.com>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com;
RachaelBackDoor@gmail.com
Subject: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.

All: Please see attached time-sensitive letter.

Rachael: I appreciate your efforts as well as your candid admission below that no written agreement with West Town was provided by the deadline. As a result, Plan B has now been triggered. Rabon has performed under the Mediation Settlement Agreement ("Agreement") by, among other things, waiting patiently during the thirty day window which the Mitchells had to negotiate with West Town. Rabon will continue to perform under the Agreement. *It is now time for the Mitchells to perform.* The attached letter (which includes a copy of the Agreement) sets forth the actions that the Mitchells need to take immediately.

Nonetheless, without waiving any rights and without impliedly granting an extension to the Mitchells, Jack Rabon will of course consider (in his sole discretion) any arrangement with West Town that the Mitchells might propose, *but only if* the Mitchells immediately begin performing under the Agreement as they are required to. The Mitchells can show a good faith effort at beginning performance by contacting my office by the end of the day tomorrow (Wednesday) to arrange for our courier to pick up the motorcycles and trailer as well as the Bill of Sale and Certificates of Title thereto.

Thanks for all your efforts.

Best regards,
Lane

From: Rachael Dain [<mailto:Rachael@attorneydain.com>]
Sent: Monday, November 30, 2015 5:46 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com;
RachaelBackDoor@gmail.com
Subject: Mitchell re: USDA letter attached

Attached is the USDA Letter.

I, on a separate email, sent you correspondence from Dan Stacy. They are either going to meet Wednesday morning or Friday morning. I don't know which. I don't have anything else to give you except the USDA letter.

RECORD PAGE 176

I hope you will continue to allow them to try to work this out. They seem to be close based on what Karon says the USDA said. I have to go to my meeting. As discussed, I am unavailable tomorrow. I can talk to you again on Wednesday. The Mitchells are driving to Washington to meet with Senator Graham over his assistance getting the loan expedited. As discussed I am happy to work on the documents Wednesday in hope of finalizing the terms. I just don't know what else to tell you. I believe I have done all I can to make this work and get a timely letter.

Sincerely,

Rachael Dain

<image001.jpg>

Rachael A. Dain, J.D.

ATTORNEY DAIN, LLC

Post Office Box 212654

Columbia, SC 29221

Voice: 803.256.6661

Fax: 866.803.6642

Rachael@AttorneyDain.com

"Never doubt that a small group of thoughtful committed citizens can change the world; indeed it's the only thing that ever has." - Margaret Mead

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Jefferies, Lane

From: Jefferies, Lane
Sent: Tuesday, December 01, 2015 7:39 PM
To: 'Rachael@attorneydain.com'
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane
Subject: RE: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.

Thanks Rachael. I look forward to seeing affirmative action from the Mitchells tomorrow. Have a good night. Best, Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Tuesday, December 01, 2015 3:22 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: RE: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.

I understand.

I hope we get this resolved to his satisfaction so we can go back to Plan A.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Tuesday, December 01, 2015 3:22 PM
To: <Rachael@attorneydain.com> <Rachael@attorneydain.com>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane <LJefferies@mcnair.net>; beachbummb4@msn.com
Subject: Re: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.

Rachael --

Thank you for your continuing efforts. Just to be clear, what's going on now is not an extension -- the Plan A ship sailed last night at midnight. Plan B is now in effect.

What's going on now is simply that Jack Rabon is considering all offers, including any offers that the Mitchell's might make provided they begin performing in good faith under Plan B.

Again, thanks for all your hard work on this. **RECORD PAGE 178**

Best regards,
Lane

Sent from my iPhone... so please excuse any misspelled words or bizarre Autocorrect changes.

On Dec 1, 2015, at 3:12 PM, "Rachael Dain" <Rachael@attorneydain.com> wrote:

Dear Lane:

I have forwarded your email below to the Mitchells who are in Washington DC today trying to expedite this process with assistance from Senator Graham.

After my call to Dan Stacy last night I tried to call you back but you had started your other appointment. Sorry about that. I was trying to get a commitment from West Town on the date they were meeting with the Mitchells this week.

I did talk to the Mitchells last night late to verify if they had gone to Washington and they advised me they were almost there. I have been in court today as I previously told you so I've been out of pocket to everyone.

I will be back in touch with you as soon as I reach the Mitchells and let you know when they will be back. I appreciate Jack considering granting them an extension. They are really running around trying to address everything at once to get this things finalized in as little time as possible. By that I mean everything from a letter you guys will approve and schedule as close in time as possible.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [<mailto:LJefferies@mcnair.net>]
Sent: Tuesday, December 01, 2015 3:00 PM
To: Rachael@attorneydain.com; karon mitchell <beachbummb4@msn.com>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: Plan B of the RABON/Mitchell Mediation Settlement Agreement is now in effect.

All: Please see attached time-sensitive letter.

Rachael: I appreciate your efforts as well as your candid admission below that no written agreement with West Town was provided by the RABON. As a result, Plan B has now been triggered. Rabon has

RECORD PAGE 179

performed under the Mediation Settlement Agreement ("Agreement") by, among other things, waiting patiently during the thirty day window which the Mitchells had to negotiate with West Town. Rabon will continue to perform under the Agreement. ***It is now time for the Mitchells to perform.*** The attached letter (which includes a copy of the Agreement) sets forth the actions that the Mitchells need to take immediately.

Nonetheless, without waiving any rights and without impliedly granting an extension to the Mitchells, Jack Rabon will of course consider (in his sole discretion) any arrangement with West Town that the Mitchells might propose, ***but only if*** the Mitchells immediately begin performing under the Agreement as they are required to. The Mitchells can show a good faith effort at beginning performance by contacting my office by the end of the day tomorrow (Wednesday) to arrange for our courier to pick up the motorcycles and trailer as well as the Bill of Sale and Certificates of Title thereto.

Thanks for all your efforts.

Best regards,
Lane

From: Rachael Dain [<mailto:Rachael@attorneydain.com>]
Sent: Monday, November 30, 2015 5:46 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Cc: Brady, Donna <DBrady@mcnair.net>; AttorneyDain.BackDoor@gmail.com;
RachaelBackDoor@gmail.com
Subject: Mitchell re: USDA letter attached

Attached is the USDA Letter.

I, on a separate email, sent you correspondence from Dan Stacy. They are either going to meet Wednesday morning or Friday morning. I don't know which. I don't have anything else to give you except the USDA letter.

I hope you will continue to allow them to try to work this out. They seem to be close based on what Karon says the USDA said. I have to go to my meeting. As discussed, I am unavailable tomorrow. I can talk to you again on Wednesday. The Mitchells are driving to Washington to meet with Senator Graham over his assistance getting the loan expedited. As discussed I am happy to work on the documents Wednesday in hope of finalizing the terms. I just don't know what else to tell you. I believe I have done all I can to make this work and get a timely letter.

Sincerely,
Rachael Dain
<[image001.jpg](#)>
Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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Jefferies, Lane

From: Jefferies, Lane
Sent: Friday, December 04, 2015 2:08 PM
To: 'Rachael@AttorneyDain.com'; RachaelBackDoor@gmail.com
Cc: karon mitchell; Jefferies, Lane
Subject: RE: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

Rachael –

We are now more than 72 hours past the deadline for the Mitchells to either (1) obtain the letter from West Town, or (2) begin performance under Plan B.

The Mitchells have done neither. In addition, I've seen nothing to indicate that they have performed *at all* under the Mediation Settlement Agreement – they signed no documents, put nothing into escrow, have not delivered the trailer, etc. In good faith, Rabon gave the Mitchells the thirty days provided for in the Agreement. Now it's time for the Mitchells to begin performing in good faith.

I have written to the Mitchells each day since Monday advising them of their obligation to perform and suggesting ways in which they could show that they are at least *attempting* to perform in good faith. The Mitchells have done nothing in return.

Therefore, I am currently drafting a Motion to Compel Specific Performance Under the Mediation Settlement Agreement, which I plan to file on Monday unless we see affirmative evidence that the Mitchells are not intentionally breaching the Agreement. Naturally, if the Mitchells breach the Agreement, then Rabon will be free to move ahead with the existing lawsuits (one of which is set for trial in 30 days), as well as to bring the additional actions we discussed for defamation, etc. Such an outcome is not in anyone's interest, and only the Mitchells hold the key to avoiding it.

The Mitchells are back in Myrtle Beach.
The Mitchells have the documents they need to sign.
The Mitchells say they have the Titles they need to deliver.

As I draft the Motion, I am searching for some rational explanation for the Mitchell's inaction other than their intentional breach of the Agreement. If the letter that the Mitchells hope to obtain from USDA/West Town is going to have any effect, the Mitchells need to respond *IMMEDIATELY* to my requests for evidence of their good faith attempts at performance. Otherwise, I will be forced to conclude that the Mitchells are in intentional breach of the Agreement and all their work in trying to get the letter will be for naught.

I know you are doing all you can. Please advise the Mitchells of the consequences to them – as well as to their co-tortfeasors yet to be named as defendants – if they breach the Mediation Settlement Agreement which they entered on October 30, 2015.

Best regards,
Lane

From: Rachael Dain [mailto:rachael@attorneydain.com]
Sent: Friday, December 04, 2015 1:47 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Re: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

Still in my cle. Called USda at lunch. Calling director back Monday at 7am before I go to dentist. Calling for update and to see if letter is possible. . I am told the problem is the bank who had never requested to release jack and the estate but, depending on what bank says, USda might be willing to do that. They need to converse with bank first. The USda SC directir is talking to Washington office to see what they can do ASAP.

On Dec 4, 2015 1:23 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

Rachael –

Just left you a voicemail. Hoping to learn what is going on with the Mitchells. They seem to have gone dark after midnight Monday. Can you shed some light?

Thanks so much,

Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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Jefferies, Lane

From: Jefferies, Lane
Sent: Friday, December 04, 2015 5:27 PM
To: 'Rachael@AttorneyDain.com'; RachaelBackDoor@gmail.com; karon mitchell
Cc: Jefferies, Lane
Subject: RE: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Clarification

Rachael –

Thank you for your efforts to convince the Mitchells to do the right thing. I appreciate it. Just to clarify a few points:

1. The “things” that the Mitchells have not done are not “things *requested*” (emphasis added). Instead, they are actions *required* by the Agreement the Mitchells entered into.
2. What do you mean by “if the court recognizes the meditation [sic] agreement.”? Do you suspect that, after accepting benefits under the Agreement for over thirty days, the Mitchells would then ask a Court to set the Agreement aside?
3. If the roadblock to the Mitchell’s performance – roughly a week overdue now – is simply their absence from Myrtle Beach as suggested below, then will they please confirm that they will begin performing immediately upon their return?

If you would let me know regarding items #2 and #3 above I would appreciate it. Thanks. I hope you have a nice weekend.

Best regards,
Lane

From: Rachael Dain [mailto:rachael@attorneydain.com]
Sent: Friday, December 04, 2015 3:33 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

I have relayed All your concerns and statements to the Mitchells including your email below. I have no reason to believe they have been trying to do anything but perform at this point.

I have told them to expect you to seek to compel them to perform the mediation AGREEMENT. This means Plan B, which will force either a foreclosure or short sale, to be implemented if the court recognizes the meditation agreement. But they cannot do any of the things requested this week as they are in Washington.

I don't know what else I can do but call you after I speak to them again and the USDA director on Monday morning.

Have a good weekend,
Rachael Dain

On Dec 4, 2015 2:08 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

Rachael –

RECORD PAGE 184

We are now more than 72 hours past the deadline for the Mitchells to either (1) obtain the letter from West Town, or (2) begin performance under Plan B.

The Mitchells have done neither. In addition, I've seen nothing to indicate that they have performed *at all* under the Mediation Settlement Agreement – they signed no documents, put nothing into escrow, have not delivered the trailer, etc. In good faith, Rabon gave the Mitchells the thirty days provided for in the Agreement. Now it's time for the Mitchells to begin performing in good faith.

I have written to the Mitchells each day since Monday advising them of their obligation to perform and suggesting ways in which they could show that they are at least *attempting* to perform in good faith. The Mitchells have done nothing in return.

Therefore, I am currently drafting a Motion to Compel Specific Performance Under the Mediation Settlement Agreement, which I plan to file on Monday unless we see affirmative evidence that the Mitchells are not intentionally breaching the Agreement. Naturally, if the Mitchells breach the Agreement, then Rabon will be free to move ahead with the existing lawsuits (one of which is set for trial in 30 days), as well as to bring the additional actions we discussed for defamation, etc. Such an outcome is not in anyone's interest, and only the Mitchells hold the key to avoiding it.

The Mitchells are back in Myrtle Beach.

The Mitchells have the documents they need to sign.

The Mitchells say they have the Titles they need to deliver.

As I draft the Motion, I am searching for some rational explanation for the Mitchell's inaction other than their intentional breach of the Agreement. If the letter that the Mitchells hope to obtain from USDA/West Town is going to have any effect, the Mitchells need to respond *IMMEDIATELY* to my requests for evidence of their good faith attempts at performance. Otherwise, I will be forced to conclude that the Mitchells are in intentional breach of the Agreement and all their work in trying to get the letter will be for naught.

I know you are doing all you can. Please advise the Mitchells of the consequences to them – as well as to their co-defendants yet to be named as defendants – if they breach the Mediation Settlement Agreement which they entered on October 30, 2015.

Best regards,

Lanc

RECORD PAGE 185

From: Rachael Dain [mailto:rachael@attorneydain.com]

Sent: Friday, December 04, 2015 1:47 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Re: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

Still in my cle. Called USda at lunch. Calling director back Monday at 7am before I go to dentist. Calling for update and to see if letter is possible. . I am told the problem is the bank who had never requested to release jack and the estate but, depending on what bank says, USda might be willing to do that. They need to converse with bank first. The USda SC directir is talking to Washington office to see what they can do ASAP.

On Dec 4, 2015 1:23 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

Rachael –

Just left you a voicemail. Hoping to learn what is going on with the Mitchells. They seem to have gone dark after midnight Monday. Can you shed some light?

Thanks so much,

Lane

M McNAIR
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Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

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Jefferies, Lane

From: Jefferies, Lane
Sent: Saturday, December 05, 2015 7:27 AM
To: Rachael@AttorneyDain.com; RachaelBackDoor@gmail.com
Cc: beachbummb4@msn.com; Jefferies, Lane
Subject: Re: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

Rachael --

Thank you. Did the Mitchell's give you any indication of when they will return from Washington?

Best,
Lane

Sent from my iPad

On Dec 4, 2015, at 3:32 PM, Rachael Dain <rachael@attorneydain.com> wrote:

I have relayed All your concerns and statements to the Mitchells including your email below. I have no reason to believe they have been trying to do anything but perform at this point.

I have told them to expect you to seek to compel them to perform the mediation AGREEMENT. This means Plan B, which will force either a foreclosure or short sale, to be implemented if the court recognizes the meditation agreement. But they cannot do any of the things requested this week as they are in Washington.

I don't know what else I can do but call you after I speak to them again and the USDA director on Monday morning.

Have a good weekend,
Rachael Dain

On Dec 4, 2015 2:08 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

Rachael --

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RECORD PAGE 188

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Best regards,

Lane

From: Rachael Dain [mailto:rachael@attorneydain.com]

Sent: Friday, December 04, 2015 1:47 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Re: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

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RECORD PAGE 189

who had never requested to release jack and the estate but, depending on what bank says, USda might be willing to do that. They need to converse with bank first. The USda SC directir is talking to Washington office to see what they can do ASAP.

On Dec 4, 2015 1:23 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

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Thanks so much,

Lane

M McNAIR
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Lane D. Jefferies
Associate
ljefferies@mcnair.net | [843.443.3059](tel:843.443.3059) Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

[843.444.1107](tel:843.444.1107) Main | [843.444.3964](tel:843.444.3964) Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, December 07, 2015 8:10 AM
To: <Rachael@attorneydain.com>
Cc: Jefferies, Lane
Subject: Re: Mitchells re:

Rachael --

Thanks for your message. I am glad to speak with USDA and West town as well as the other players.

However, before I do, the Mitchell's need to acknowledge that Plan A is more than in jeopardy -- Plan A is dead as of one week ago. That does not mean that we will not do a refinancing deal that is appealing to the Mitchell's. It simply means that as of a week ago, the decision as to whether to do that deal rests solely with Jack Rabon.

Please let me know when you anticipate that the Mitchells Will return from Washington so that they may begin performance under Plan B. Once they begin performance I will be glad to negotiate with West Town and USDA. What I will not do, is negotiate with West town pursuant to a settlement agreement that the Mitchell's are currently in breach of. The Mitchell's must cure their breach before we can move ahead.

Please let me know what the Mitchells plan to do.

Best regards,
Lane

Sent from my iPhone... so please excuse any misspelled words or bizarre Autocorrect changes.

On Dec 7, 2015, at 7:59 AM, "Rachael Dain" <Rachael@attorneydain.com> wrote:

Lane:

Mr. Risher just called me back.

The USDA is contacting West Town so they can arrange a meeting with all concerns ASAP. It will be between the Bank, the Mitchells, and you since you represent Jack and the Estate and you are borrowers. They know Plan A is in jeopardy due to the time frame. They want to have a discussion with everyone to discuss where this project is going to go. I understand the options include allowing the Mitchells time to refinance the property or, if that is not something Jack will consider, how they will proceed with foreclosure.

Sincerely,
Rachael Dain
<image001.jpg>
Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642

RECORD PAGE 191

Rachael@AttorneyDain.com

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Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, December 07, 2015 11:55 AM
To: 'Rachael@AttorneyDain.com'; RachaelBackDoor@gmail.com
Cc: Jefferies, Lane
Subject: FW: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Mediation Settlement Agreement
Attachments: Mediation Settlement Agreement fully executed clocked 12-2-15.pdf

Rachael –

Attached is a clocked copy of the Mediation Settlement Agreement for your records. Have you heard anything from the Mitchells? Do you know if they plan to remain in Washington indefinitely?

Best regards,

Lane

From: Rachael Dain [mailto:rachael@attorneydain.com]
Sent: Friday, December 04, 2015 6:30 PM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: RE: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Clarification

You and I both know, from Dalton, what Karon said about her belief she was coerced into signing the agreement. I already knew she felt that way but she intended to perform to meet Plan A at the time. I know she was so distressed by the mediation that it took several days for her to recover from it and I was deeply concerned for her.

I am telling you I have every reason to believe they are trying to implement Plan A in the hopes Jack will let them perform.

Given your plan to file a motion to compel, I have no idea what will happen as I have not talked to them since receiving your email and sending it to them. Do I think the possibility exists if they lose Plan A they might contest the agreement? Yes. But I have no reason to think that is what they have been trying to do.

I told them, and told you, if they want to try to invalidate the mediation agreement it is a conflict of interest for me and I can't help them do that. But I do think they are trying to preform under plan a if jack will allow it.

I will know something on Monday after I talk to the USda and hopefully the Mitchells. I just don't have any other info right now.

Rachael –

• Thank you for your efforts to convince the Mitchells to do the right thing. I appreciate it. Just to clarify a few points:

1. The "things" that the Mitchells have not done are not "things *requested*" (emphasis added). Instead, they are actions *required* by the Agreement the Mitchells entered into.

2. What do you mean by "if the court recognizes the meditation [*sic*] agreement."? Do you suspect that, after accepting benefits under the Agreement for over thirty days, the Mitchells would then ask a Court to set the Agreement aside?

3. If the roadblock to the Mitchell's performance – roughly a week overdue now – is simply their absence from Myrtle Beach as suggested below, then will they please confirm that they will begin performing immediately upon their return?

If you would let me know regarding items #2 and #3 above I would appreciate it. Thanks. I hope you have a nice weekend.

Best regards,

Lane

From: Rachael Dain [mailto:rachael@attorneydain.com]

Sent: Friday, December 04, 2015 3:33 PM

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: RE: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

I have relayed All your concerns and statements to the Mitchells including your email below. I have no reason to believe they have been trying to do anything but perform at this point.

I have told them to expect you to seek to compel them to perform the mediation AGREEMENT. This means Plan B, which will force either a foreclosure or short sale, to be implemented if the court recognizes the meditation agreement. But they cannot do any of the things requested this week as they are in Washington.

I don't know what else I can do but call you after I speak to them again and the USDA director on Monday morning.

Have a good weekend,
Rachael Dain

On Dec 4, 2015 2:08 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

Rachael –

We are now more than 72 hours past the deadline for the Mitchells to either (1) obtain the letter from West Town, or (2) begin performance under Plan B.

The Mitchells have done neither. In addition, I've seen nothing to indicate that they have performed *at all* under the Mediation Settlement Agreement – they signed no documents, put nothing into escrow, have not delivered the trailer, etc. In good faith, Rabon gave the Mitchells the thirty days provided for in the Agreement. Now it's time for the Mitchells to begin performing in good faith.

I have written to the Mitchells each day since Monday advising them of their obligation to perform and suggesting ways in which they could show that they are at least *attempting* to perform in good faith. The Mitchells have done nothing in return.

Therefore, I am currently drafting a Motion to Compel Specific Performance Under the Mediation Settlement Agreement, which I plan to file on Monday unless we see affirmative evidence that the Mitchells are not intentionally breaching the Agreement. Naturally, if the Mitchells breach the Agreement, then Rabon will be free to move ahead with the existing lawsuits (one of which is set for trial in 30 days), as well as to bring the additional actions we discussed for defamation, etc. Such an outcome is not in anyone's interest, and only the Mitchells hold the key to avoiding it.

The Mitchells are back in Myrtle Beach.

The Mitchells have the documents they need to sign.

The Mitchells say they have the Titles they need to deliver.

As I draft the Motion, I am searching for some rational explanation for the Mitchell's inaction other than their intentional breach of the Agreement. If the letter that the Mitchells hope to obtain from USDA/West Town is going to have any effect, the Mitchells need to respond *IMMEDIATELY* to my requests for evidence of their good faith attempts at performance. Otherwise, I will be forced to conclude that the Mitchells are in intentional breach of the Agreement and all their work in trying to get the letter will be for naught.

I know you are doing all you can. Please advise the Mitchells of the consequences to them – as well as to their co-tortfeasors yet to be named as defendants – if they breach the Mediation Settlement Agreement which they entered on October 30, 2015.

Best regards,

Lane

From: Rachael Dain [mailto:rachael@attorneydain.com]

Sent: Friday, December 04, 2015 1:47 PM **RECORD PAGE 195**

To: Jefferies, Lane <LJefferies@mcnair.net>

Subject: Re: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Follow up to phone message

Still in my cle. Called USda at lunch. Calling director back Monday at 7am before I go to dentist. Calling for update and to see if letter is possible. I am told the problem is the bank who had never requested to release jack and the estate but, depending on what bank says, USda might be willing to do that. They need to converse with bank first. The USda SC directir is talking to Washington office to see what they can do ASAP.

On Dec 4, 2015 1:23 PM, "Jefferies, Lane" <LJefferies@mcnair.net> wrote:

Rachael –

Just left you a voicemail. Hoping to learn what is going on with the Mitchells. They seem to have gone dark after midnight Monday. Can you shed some light?

Thanks so much,

Lane

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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Jefferies, Lane

From: Jefferies, Lane
Sent: Wednesday, December 09, 2015 5:19 AM
To: Dan Stacy
Cc: Rachael@attorneydain.com; Dunkelberg, Doug - RD, Columbia, SC; Risher, Jesse - RD, Columbia, SC; Lynne Martin; Riddick Skinner; Sonya Papanikolaou; AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: Re: MB Boardwalk and Rabon matters

Rachael --

I am sympathetic to your situation. However, the bank is in the catbird seat here. Therefore, I respectfully suggest that we meet wherever and whenever West Town suggests. Given the looming foreclosure hearing and the delay that the Mitchell's have already introduced, holding the meeting as soon as possible is critical -- hence my offer to come to Columbia if necessary. I hope that the Mitchells would be equally flexible under the circumstances.

I will be at Dan's office at one tomorrow on behalf of the Rabon parties. If you cannot make it in person, please attend by phone. Either way, I look forward to speaking with you tomorrow.

Best,
Lane

Sent from my iPad

On Dec 8, 2015, at 8:17 PM, Dan Stacy <DStacy@OxnerandStacy.com> wrote:

There is no way for me to meet on Columbia this week. Would you like to attend by phone?

Sent from my iPhone please excuse errors in typing or grammar. This may have been sent using Siri so please excuse misspelled words.

On Dec 8, 2015, at 7:13 PM, Rachael Dain <Rachael@attorneydain.com> wrote:

Dear Dan:

Yes, this is short notice for the meeting and a difficult time of the year to schedule meetings as well.

As you know, the Mitchells have gone to great lengths to make this happen. I talked with Lane yesterday to advise this meeting was going to be scheduled soon. I told him then that due to my heavy schedule this week and next, I would only be able to attend any meeting this week if it is held in Columbia. To facilitate this happening, Lane graciously offered to attend a meeting in Columbia.

Both the Mitchells and I feel they will be at a disadvantage without the personal attendance of their attorney for many reasons. Lane has already offered to attend the meeting in Columbia. If the attending USDA representatives are located in Columbia then it would seem having the meeting in Columbia would be easier for them too. The Mitchells are happy to travel to Columbia for this meeting given the circumstances.

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Would the West Town representatives agree to meet in Columbia? This would allow the Mitchells to have the representation they desire and resolve their concerns. They do want to attend this meeting and feel they can look forward to a positive outcome. Please let me know if this is possible.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Dan Stacy [mailto:DStacy@OxnerandStacy.com]
Sent: Tuesday, December 08, 2015 1:31 PM
To: Jefferies, Lane <LJefferies@mcnair.net>; Rachael@attorneydain.com
Cc: Dunkelberg, Doug - RD, Columbia, SC <Doug.Dunkelberg@sc.usda.gov>; Risher, Jesse - RD, Columbia, SC <Jesse.Risher@sc.usda.gov>; Lynne Martin <lmartin@westtownbank.com>; Riddick Skinner <riddick@westtownbank.com>; Sonya Papanikolaou <Sonya@OxnerandStacy.com>
Subject: MB Boardwalk and Rabon matters

To all, this is a bit of a late notice, but after some conversations between Mrs. Mitchell and representatives of USDA, we have scheduled a meeting for Thursday at 1:00 pm here at my office (address below) with a rep. from West Town and reps from USDA to discuss with the borrowers/guarantors the proposals on the table for loan workout, or modification. Please advise if you will attend, please notify your clients of the date and time, and if you need to participate by phone we can provide a call in number. Thank you.

Daniel W. Stacy, Jr.
Oxner & Stacy, P.A.
90 Wall Street, Unit B
Pawleys Island, SC 29585
843-235-6747 phone
843-235-6650 fax

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RECORD PAGE 199

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Circular 230 Disclosure: to ensure compliance with requirements imposed by the IRS, we inform you that any US Federal Tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the internal revenue code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than to the taxpayer to whom it has been sent) without our express written consent

PLEASE NOTE MY EMAIL ADDRESS HAS CHANGED AND IS NOW
DSTACY@OXNERANDSTACY.COM

Jefferies, Lane

From: Jefferies, Lane
Sent: Wednesday, December 09, 2015 5:53 AM
To: <Rachael@attorneydain.com>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane; Golding, Henrietta
Subject: Re: Rabon5 -- 061889.00002 -- Mediation Settlement Agreement -- Order and Extension

Rachael --

Thanks. We can work out the dates -- just let me know what you propose. The important part is that the Mitchells make (and keep) a commitment to get an agreement into a court order that includes the extension of time they requested. To be clear, it's not a "counteroffer to the mediation agreement" that we're looking for, since the mediation agreement is a done deal -- i.e. it's a contract that we will enforce unless and until the parties consent to an order with different terms.

Please let me know whether the Mitchells want the extension we discussed. Otherwise please consider this email chain to be my Rule 11 communication attempting to resolve the matter of the Mitchells' breach before filing our motion to compel their performance. I would rather enter a consent order than file the motion, but that's up to the Mitchells.

Best regards,
Lane

Sent from my iPad

On Dec 8, 2015, at 12:58 PM, Rachael Dain <Rachael@attorneydain.com> wrote:

Dear Lane:

While I think some of the information in your email below is incorrect, most of that is probably due to a miscommunication between us on which week we were talking about. I don't see how these documents can be finalized and agreed to before this weekend. I understood we could renegotiate the terms and finalize the language by Monday which the Mitchells could sign with Buddy Lindsay in Myrtle Beach and then your firm could pick them up. At that hearing next Friday, I would make a limited appearance as counsel of record, both parties would consent to the agreement on the record which is required, the cases would all be dismissed, and I would be relieved as counsel.

While this would conclude all those matters, I also advised if the Mitchells wanted me to then I would attend the meeting the USDA has requested with all parties and the bank AS LONG AS it is held in Columbia.

We spoke at around 6:15 pm last night after you sent the email below. I would like to confirm that, based on our conversation, I thereafter talked to the Mitchells and advised we need to make a counteroffer to the Mediation Agreement. I talked to them a few minutes ago and they advised me they are still in Columbia attending meetings and will return to the Beach tonight. They will then review the Mediation Agreement and draft a counter offer which I can relay to you tomorrow. I apologize for the delay and thought we could address this today but that is not possible.

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As for when the Mitchells returned to Myrtle Beach from Washington, I advised you last night I was not sure when I last spoke to them in Washington and have no knowledge when they actually returned to Myrtle Beach.

Thanking you in advance,
Rachael Dain

Rachael A. Dain, J.D.
ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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From: Jefferies, Lane [mailto:LJefferies@mcnair.net]
Sent: Monday, December 07, 2015 5:39 PM
To: Rachael@AttorneyDain.com; RachaelBackDoor@gmail.com
Cc: Jefferies, Lane <LJefferies@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; Brady, Donna <DBrady@mcnair.net>
Subject: Rabon5 -- 061889.00002 -- Mediation Settlement Agreement -- Order and Extension

Rachael –

Thank you for calling me today. As you requested, I'm writing to confirm our discussion as to how we might move ahead.

The Mediation Settlement Agreement ("Agreement") requires that the Mitchells execute certain documents to be held in escrow, regardless of whether Plan A or Plan B is in effect. This was to be complete a week ago. We both agree that the Mitchells have not done it. As a result, the Mitchells are in breach of the Agreement, and therefore I am filing a motion to compel their performance.

The Mitchells represented that they could not perform last week because they were in Washington, D.C.. They made this representation multiple times, including as late as Friday afternoon (email at 3:32pm). I now understand from you and others that, in fact, the Mitchells returned to Myrtle Beach sometime on Thursday (at the latest). I appreciate your candor in sharing this information. Despite having returned on Thursday at the latest, the Mitchells did not perform on Friday, or Saturday, or Sunday, or today. Of course, the Mitchells also did not perform during all of November.

You indicated that the Mitchells would like more time to pursue Plan A. We are agreeable to an extension in concept. However, given the Mitchells' apparently intentional non-performance so far, I am seriously concerned that the Mitchells intend to honor the Agreement *only* if they are able to trigger Plan A, and intend to challenge it otherwise – thus severely prejudicing my clients. To ensure that the Mitchells do not game the system in this way, we are willing to grant an extension only under the following circumstances:

RECORD PAGE 202

1. By Wednesday (12/9) the Mitchells agree (a) to entry of an Order embodying the Agreement, (b) that they will appear in Court when the Order is read into the record, and (3) they will testify in favor of the Order if so requested. It's just their agreement that we need by Wednesday, not the actual Order or the court appearance;
2. By Tuesday (12/15) the Mitchells agree (in writing) to the language of the Order (including all the exhibits);
3. By Friday (12/18) – or as soon thereafter as we can get before a Judge – the Mitchells appear in Court and testify in favor of the Order if requested to do so. Rachael, what I'm thinking of here is a boilerplate colloquy in which the Mitchells reaffirm under oath that they (a) understand the Order, (b) are competent, (c) are not under duress, etc. The Order will be read into the record and signed by the Judge.

If they Mitchells are indeed acting in good faith, then the above should present no problem for them, and they may have their extension.

Please let me know what the Mitchells decide to do. Once again, thanks for all your hard working in keeping this settlement together.

Best regards,
Lane

MCNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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From: Jefferies, Lane

Sent: Monday, December 07, 2015 11:55 AM

To: Rachael@AttorneyDain.com; RachaelBackDoor@gmail.com

Cc: Jefferies, Lane <LJefferies@mcnair.net>

Subject: FW: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Mediation Settlement Agreement

Rachael –

Attached is a clocked copy of the Mediation Settlement Agreement for your records. Have you heard anything from the Mitchells? Do you know if they plan to remain in Washington indefinitely?

Best regards,
Lane

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Jefferies, Lane

From: Jefferies, Lane
Sent: Wednesday, December 09, 2015 6:02 AM
To: <Rachael@attorneydain.com>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; Jefferies, Lane
Subject: Re: Rabon5 -- 061889.00002 -- Mediation Settlement Agreement -- Our phone conversation.

Rachael --

I apologize that you're in an awkward spot with respect to the Mitchells' return to Myrtle Beach. Nonetheless, when I asked you on the phone Monday when the Mitchells had returned, you very clearly said that you understood from the Mitchells that they returned Thursday. I know I surprised you with the question, and that upon reflection you might rather have declined to answer (which would have been fine), or given a different answer. However, you did say Thursday. For several minutes thereafter we discussed how this agreed with eyewitness observations -- "Thursday" was not merely said in passing and capable of being misunderstood.

I understand that you didn't actually see the Mitchells return to MB with your own eyes, but your answer is consistent with what eyewitnesses said, so I believe you are correct.

I don't want to put you in a hard place with your clients, so this message is just between us. In addition, unless you want to dispute this issue, I will leave it out of my motion. I'll simply refer to the witnesses' statements and not yours.

Best regards,
Lane

Sent from my iPad

On Dec 8, 2015, at 12:58 PM, Rachael Dain <Rachael@attorneydain.com> wrote:

Dear Lane:

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RECORD PAGE 205

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Thanking you in advance,
Rachael Dain

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ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

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Cc: Jefferies, Lane <LJefferies@mcnair.net>; Golding, Henrietta <HGolding@mcnair.net>; Brady, Donna <DBrady@mcnair.net>
Subject: Rabon5 -- 061889.00002 -- Mediation Settlement Agreement -- Order and Extension

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You indicated that the Mitchells would like more time to pursue Plan A. We are agreeable to an extension in concept. However, given the Mitchells' apparently intentional non-performance so far, I am seriously concerned that the Mitchells intend to honor the Agreement **only** if they are able to trigger Plan A, and intend to challenge it otherwise – thus severely prejudicing my clients. To ensure that the Mitchells do not game the system in this way, we are willing to grant an extension only under the following circumstances:

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Best regards,
Lane

MENAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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From: Jefferies, Lane

Sent: Monday, December 07, 2015 11:55 AM

To: Rachael@AttorneyDain.com; RachaelBackDoor@gmail.com

Cc: Jefferies, Lane <LJefferies@mcnair.net>

Subject: FW: Rabon Settlement -- Rabon5 -- Probate 061889.00002 -- Mediation Settlement Agreement

Rachael --

RECORD PAGE 207

Attached is a clocked copy of the Mediation Settlement Agreement for your records. Have you heard anything from the Mitchells? Do you know if they plan to remain in Washington indefinitely?

Best regards,
Lane

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Jefferies, Lane

From: Jefferies, Lane
Sent: Friday, December 11, 2015 10:25 AM
To: Brady, Donna
Cc: RachaelBackDoor@gmail.com; Rachael@attorneydain.com; Jefferies, Lane
Subject: RE: Rachael Dain - Motion

Donna – Your plan is good. As a legal matter, our listing Rachael as Counsel of Record does not MAKE her such. However, in the interest of avoiding confusion, I would like to clear it up with Linda. Please let me know what Linda says.

Rachael – I apologize for the confusion. I agree that you represent the Mitchells only as to mediation and that you are NOT Counsel of Record in the lawsuit from my perspective.

Thanks,
Lane

From: Brady, Donna
Sent: Friday, December 11, 2015 10:17 AM
To: Jefferies, Lane <LJefferies@mcnair.net>
Subject: Rachael Dain - Motion
Importance: High

Lane :

When you get a moment can you give me a call? I just had a call from Rachael Dain about us listing her on Motion filed yesterday. I explained that if she looked at the Certificate of Service we listed the Mitchells as *Pro Se Defendants* and her as *Purported Counsel*. However, she made a good point and you didn't catch it yesterday before signing and quite frankly I didn't think about it. On the motion cover sheet I should have kept the Mitchell's as *Pro Se Defendants* but I inserted Rachael's information. I'm going to pull up the public index and see if they have added her as counsel of record first then I think I need to call Linda Johnson and explain that she should NOT be listed as counsel of record.

M McNAIR
ATTORNEYS

Donna M. Brady
Secretary
dbrady@mcnair.net | 843 443 3061 Direct

McNair Law Firm, P.A.

Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 946 5969 Fax

Mailing Post Office Box 336 | Myrtle Beach, SC 29578

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RECORD PAGE 209

Jefferies, Lane

From: Jefferies, Lane
Sent: Friday, December 11, 2015 2:42 PM
To: karon mitchell
Cc: Jefferies, Lane; RachaelBackDoor@gmail.com; Rachael@attorneydain.com; Brady, Donna
Subject: RABON -- Offers to Purchase Real Estate
Attachments: Sea Palm Offer - Alinea \$200k SIGNED.pdf; Putt Putt & Sea Palms Escrow Checks.pdf; Scan 886.pdf; Motion TRO with Exh A-M 12-10-15.pdf

Karon & Kyle Mitchell:

Please see attached offers to purchase real estate assets of MB Boardwalk Entertainment, LLC ("LLC") and Rabon & Rabon, Inc. ("Corporation"). Pursuant to the terms of the Mediation Settlement Agreement you entered on October 30, 2015, you were to have already delivered your executed Proxies to Jack Rabon. Your failure to timely do so is likely to result in the LLC and the Corporation losing the opportunity to sell these properties, thus harming both of the companies, as well as the personal guarantors on the loans which the properties secure.

The Proxies, as well as the other documents which you are required to execute, are attached as exhibits to the Motion we filed and served on you yesterday. I have attached a copy hereto for easy reference.

Please immediately execute the Proxies and other documents as required by the Mediation Settlement Agreement, and return them to me without delay, so that the LLC and the Corporation may respond to the attached offers. Time is of the essence.

Best regards,
Lane

Jefferies, Lane

From: Jefferies, Lane
Sent: Monday, December 14, 2015 11:17 AM
To: 'Rachael@attorneydain.com'; Brady, Donna
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com; karon mitchell; Jefferies, Lane
Subject: RABON SETTLEMENT -- the Mitchells remain in breach of the Mediation Settlement Agreement

Rachael --

Thank you. I will.

To be clear, the Mitchells remain in breach of the Mediation Settlement Agreement. They have not performed under Plan B. They have not performed under Plan A. They have not performed under the sections of the Agreement which apply no matter which plan is effective. One would think that the Mitchells would at the very least begin performing pursuant to the plan *that they themselves say they are pursuing*.

The Mitchells purported "excuse" for their breach -- that they were in Washington, D.C. -- if it ever had any validity or legal effect (which is highly doubtful), certainly does not now, since half a dozen people saw the Mitchells at Dan Stacey's office last week. Moreover, during the meeting at Dan Stacey's office, *the Mitchells admitted that they are in breach*. Which admission, of course, we may use when our Motion to Compel the Mitchell's performance is heard.

As a result of the Mitchells' breach, Rabon has no obligation whatsoever to provide any information to West Town/USDA. Therefore, if Rabon provides information to West Town/USDA, it will be by choice, not obligation.

I'll let you know if I receive a message from Lynn Martin.

Best regards,
Lane

From: Rachael Dain [mailto:Rachael@attorneydain.com]
Sent: Monday, December 14, 2015 10:23 AM
To: Jefferies, Lane <LJefferies@mcnair.net>; Brady, Donna <DBrady@mcnair.net>
Cc: AttorneyDain.BackDoor@gmail.com; RachaelBackDoor@gmail.com
Subject: Mitchell re: email from Lynn Martin

Dear Lane:

This is to confirm I have not received the email from Lynn Martin yet which was to set out the details of what both parties needed to provide West Town with information required to address the loan default and possible removal of Jack and the Estate as guarantors of the Estate. If you receive something from her, since I asked her to include you in the email, please let me know in case mine goes to junk mail without my knowledge.

Sincerely,
Rachael Dain



Rachael A. Dain, J.D.

ATTORNEY DAIN, LLC
Post Office Box 212654
Columbia, SC 29221
Voice: 803.256.6661
Fax: 866.803.6642
Rachael@AttorneyDain.com

"Never doubt that a small group of thoughtful committed citizens can change the world; indeed it's the only thing that ever has." - Margaret Mead

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Jefferies, Lane

From: Jefferies, Lane
Sent: Thursday, December 17, 2015 12:07 PM
To: 'karon mitchell'
Cc: 'RachaelBackDoor@gmail.com'; 'Rachael@attorneydain.com'; Brady, Donna; Jefferies, Lane; Golding, Henrietta (HGolding@mcnair.net)
Subject: Potential Continuance in Civil Action No. 2014-CP-26-5740 (Rabon v. Mitchells)
Attachments: 0466_001.pdf

Dear Karon and Kyle Mitchell –

I am writing to offer you our agreement to a continuance in Civil Action No. 2014-CP-26-5740 ("5740").

Civil Action No. 5740 is currently set for trial the week of January 4, 2016. You and the LLC are the defendants. As you will recall, on October 27, 2015, the Court relieved Buddy Lindsay as your counsel in this case. In addition to relieving Buddy, the Court's Order gave you 15 days to retain substitute counsel. However, it appears that despite the Court's Order, you have *not* retained counsel. If this case is not continued, then Plaintiffs will prosecute it zealously – potentially beginning with a motion to hold you in contempt for not retaining counsel, and continuing with trial the week of January 4, 2016. A trial in which you would be *pro se* defendants.

On the other hand, Plaintiffs' are willing to agree to a continuance. If the case is continued, you would avoid going to trial in just 18 days. As you know, 5740 is one of the cases to be dismissed under the Mediation Settlement Agreement ("Agreement") in Civil Action No. 2014-CP-26-07862 ("7862"). However, because you are in breach of the Agreement, 5740 has not yet been dismissed. Today, I learned that a hearing will be held in 7862 on January 20, 2016 (see attached). The purpose of the hearing is to determine whether the Court will enforce the Agreement, and if so whether Plan A or Plan B is to be enforced. Plaintiffs are willing to continue the trial in 5740 until after the January 20, 2016 hearing, *since the action against you in 5740 may be dismissed as a result of the hearing*. However, if you would prefer that we try 5740 against you on January 4, 2016, *despite the likelihood that you could have 5740 dismissed on January 20, 2016*, that is certainly your decision. Please just let me know either way.

A reply to this email simply stating "We Agree" or "We do not agree" to continue Civil Action No. 2014-CP-26-5740 until after January 20, 2016 will be sufficient for now, and I will draft (or not draft) a Consent Order accordingly. Please let me hear from you right away.

Best regards,
Lane

PLEASE NOTE: Attorney Rachael Dain is copied on this message as a courtesy.

M McNAIR
ATTORNEYS

Lane D. Jefferies
Associate
ljefferies@mcnair.net | 843 443 3059 Direct

McNair Law Firm, P.A.
Myrtle Beach Office Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577
843 444 1107 Main | 843 444 3964 Fax
Mailing Post Office Box 336 | Myrtle Beach, SC 29578
VCard | Bio URL | Website

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RECORD PAGE 214



Jefferies, Lane

From: Golding, Henrietta
Sent: Thursday, December 17, 2015 10:41 AM
To: Brady, Donna; Jefferies, Lane
Subject: FW: Motion "MDISMS-Motion/Dismissal of mediation settlement agreement/Exhibits" for Case "2014CP2607862- Rabon & Rabon Inc VS Karon Mitchell , defendant, et al" was added to a Motions Roster for 1/20/2016 at 9:30 AM

-----Original Message-----

From: Courtmail26_DoNotReply@sccourts.org [mailto:Courtmail26_DoNotReply@sccourts.org]
Sent: Thursday, December 17, 2015 8:51 AM
To: Golding, Henrietta <HGolding@mcnair.net>
Subject: Motion "MDISMS-Motion/Dismissal of mediation settlement agreement/Exhibits" for Case "2014CP2607862- Rabon & Rabon Inc VS Karon Mitchell , defendant, et al" was added to a Motions Roster for 1/20/2016 at 9:30 AM

The Non Jury Motion Roster for January 19, 2016 thru January 20, 2016 with the Honorable Benjamin Culbertson, presiding will be heard in Courtroom 3-E has been posted on the Horry County Clerk of Court website.

If your motion(s) has been resolved or does not not to be heard, please e-mail Linda Johnson at Johnson@horrycounty.org. If you have any questions concerning this roster, please contact Ms. Johnson @ 843-915-6803.

REMEMBER: All continuances should be addressed to the Chief Administrative Judge William H. Seals no later than Wednesday, January 13, 2016 by 12:00 PM prior to commencement of court.

All MEMOS and briefs are to be

mailed to the judge of the week (10) days prior to the date of hearing.

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## Jefferies, Lane

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**From:** kyle mitchell <beachbummb4@msn.com>  
**Sent:** Monday, December 28, 2015 9:31 AM  
**To:** Jefferies, Lane  
**Cc:** RachaelBackDoor@gmail.com; Rachael@attorneydain.com; Brady, Donna; Golding, Henrietta  
**Subject:** RE: Potential Continuance in Civil Action No. 2014-CP-26-5740 (Rabon v. Mitchells)

We agree, please dont schedule a date until we can confirm dates for upcoming medical procedures. Sorry so long in responding limited internet access.

---

**Subject:** Potential Continuance in Civil Action No. 2014-CP-26-5740 (Rabon v. Mitchells)  
**From:** LJefferies@mcnair.net  
**To:** beachbummb4@msn.com  
**CC:** RachaelBackDoor@gmail.com; Rachael@attorneydain.com; DBrady@mcnair.net; LJefferies@mcnair.net; HGolding@mcnair.net  
**Date:** Thu, 17 Dec 2015 17:06:39 +0000

Dear Karon and Kyle Mitchell –

I am writing to offer you our agreement to a continuance in Civil Action No. 2014-CP-26-5740 ("5740").

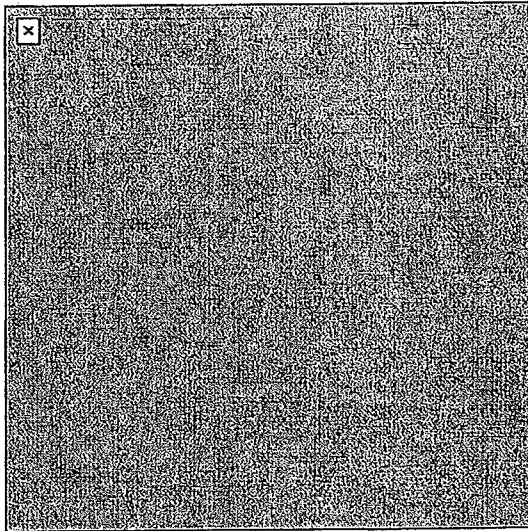
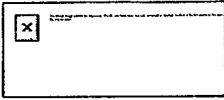
Civil Action No. 5740 is currently set for trial the week of January 4, 2015. You and the LLC are the defendants. As you will recall, on October 27, 2015, the Court relieved Buddy Lindsay as your counsel in this case. In addition to relieving Buddy, the Court's Order gave you 15 days to retain substitute counsel. However, it appears that despite the Court's Order, you have *not* retained counsel. If this case is not continued, then Plaintiffs will prosecute it zealously – potentially beginning with a motion to hold you in contempt for not retaining counsel, and continuing with trial the week of January 4, 2016. A trial in which you would be *pro se* defendants.

On the other hand, Plaintiffs' are willing to agree to a continuance. If the case is continued, you would avoid going to trial in just 18 days . As you know, 5740 is one of the cases to be dismissed under the Mediation Settlement Agreement ("Agreement") in Civil Action No. 2014-CP-26-07862 ("7862"). However, because you are in breach of the Agreement, 5740 has not yet been dismissed. Today, I learned that a hearing will be held in 7862 on January 20, 2016 (see attached) . The purpose of the hearing is to determine whether the Court will enforce the Agreement, and if so whether Plan A or Plan B is to be enforced. Plaintiffs are willing to continue the trial in 5740 until after the January 20, 2016 hearing, *since the action against you in 5740 may be dismissed as a result of the hearing*. However, if you would prefer that we try 5740 against you on January 4, 2016, *despite the likelihood that you could have 5740 dismissed on January 20, 2016*, that is certainly your decision. Please just let me know either way.

A reply to this email simply stating "We Agree" or "We do not agree" to continue Civil Action No. 2014-CP-26-5740 until after January 20, 2016 will be sufficient for now, and I will draft (or not draft) a Consent Order accordingly. Please let me hear from you right away.

Best regards,  
Lane

PLEASE NOTE: Attorney Rachael Dain is copied on this message as a courtesy.



**Lane D. Jefferies**  
Associate  
ljefferies@mcnair.net | 843 443 3059 Direct

**McNair Law Firm, P.A.**  
**Myrtle Beach Office Founders Centre, 2411 Oak**  
**Street | Suite 206 | Myrtle Beach, SC 29577**  
**843 444 1107 Main | 843 444 3964 Fax**  
**Mailing Post Office Box 336 | Myrtle Beach, SC 29578**  
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**Jefferies, Lane**

---

**From:** LJefferies@mcnair.net  
**Sent:** Friday, January 08, 2016 2:12 PM  
**To:** beachbummb4@msn.com  
**Cc:** RachaelBackDoor@gmail.com; Rachael@attorneydain.com; LJefferies@mcnair.net; DBrady@mcnair.net; HGolding@mcnair.net  
**Subject:** Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon Mitchell and Kyle Mitchell (2014-CP-26-0782) Hearing on January 20, 2016.  
**Attachments:** 0251\_001.pdf; 0466\_001.pdf; 0976\_001.pdf; 3bclean-control.bin

Dear Karon and Kyle Mitchell:

I am writing to you directly because I understand that you are pro se defendants in this matter. I have copied attorney Rachael Dain as a courtesy.

As you know, a hearing on Plaintiff's Motion For Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement ("Motion" attached as "0251\_001.pdf") is scheduled for 9:30am on Wednesday, January 20, 2016 before Judge Culbertson in Courtroom 3E of the Horry County Government and Justice Center in Conway (see "0466\_001.pdf" attached).

In addition, pursuant to the South Carolina Supreme Court's Order dated September 10, 2015, a copy of which is attached hereto ("0976\_001.pdf"), your Memorandum in Opposition to Plaintiff's Motion must be filed and served not later than Monday, January 11, 2016.

If you have any questions, please consult an attorney.

Best regards,  
Lane Jefferies

**MCNAIR**  
ATTORNEYS

Lane D. Jefferies  
Associate  
ljefferies@mcnair.net | 843 443 3059 Direct

**McNair Law Firm, P.A.**

**Myrtle Beach Office** Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

**Mailing Post Office Box 336 | Myrtle Beach, SC 29578**

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**Jefferies, Lane**

---

**From:** kyle mitchell <beachbummb4@msn.com>  
**Sent:** Monday, January 11, 2016 6:31 PM  
**To:** Jefferies, Lane  
**Cc:** RachaelBackDoor@gmail.com; Rachael@attorneydain.com; Brady, Donna; Golding, Henrietta  
**Subject:** RE: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon Mitchell and Kyle Mitchell (2014-CP-26-0782) Hearing on January 20, 2016.  
**Attachments:** motion for dismissal of the mediation agreement.pdf

Lane,  
sorry just getting this to you ,got tied up all morning and afternoon , my apologies.

thanks  
kyle

---

Subject: Rabon1 -- 062992.00001 -- Rabon & Rabon, Inc. v. Karon Mitchell and Kyle Mitchell (2014-CP-26-0782) Hearing on January 20, 2016.  
Date: Fri, 8 Jan 2016 14:12:21 -0500  
From: ljefferies@mcnair.net  
To: beachbummb4@msn.com  
CC: RachaelBackDoor@gmail.com; Rachael@attorneydain.com; Ljefferies@mcnair.net; DBrady@mcnair.net; HGolding@mcnair.net

Dear Karon and Kyle Mitchell:

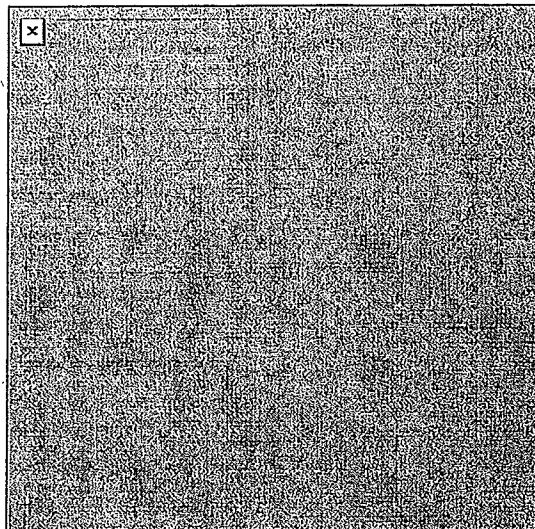
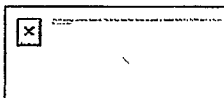
I am writing to you directly because I understand that you are pro se defendants in this matter. I have copied attorney Rachael Dain as a courtesy.

As you know, a hearing on Plaintiff's Motion For Temporary Restraining Order, Temporary Injunction, and Order Compelling Settlement ("Motion" attached as "0251\_001.pdf") is scheduled for 9:30am on Wednesday, January 20, 2016 before Judge Culbertson in Courtroom 3E of the Horry County Government and Justice Center in Conway (see "0466\_001.pdf" attached).

In addition, pursuant to the South Carolina Supreme Court's Order dated September 10, 2015, a copy of which is attached hereto ("0976\_001.pdf"), your Memorandum in Opposition to Plaintiff's Motion must be filed and served not later than Monday, January 11, 2016.

If you have any questions, please consult an attorney.

Best regards,  
Lane Jefferies



**Lane D. Jefferies**

Associate

[ljefferies@mcnair.net](mailto:ljefferies@mcnair.net) | 843 443 3059 Direct

**McNair Law Firm, P.A.**

**Myrtle Beach Office** Founders Centre, 2411 Oak  
Street | Suite 206 | Myrtle Beach, SC 29577

843 444 1107 Main | 843 444 3964 Fax

**Mailing** Post Office Box 336 | Myrtle Beach, SC 29578

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**Defendants.**

**PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION, AND  
ORDER COMPELLING SETTLEMENT**

copy

partial summary). In fact, this Court held the Mitchells in contempt in Civil Action # 2014-CP-26-05740 as recently as August 18, 2015, (Exhibit N, Page 71). And, although not yet before the Court, the Mitchells (1) failed to respond to Discovery in this case, and (2) failed to comply with this Court's Order of October 27, 2015 in Civil Action # 2014-CP-26-05740 by not retaining counsel for a corporate defendant.

The Mitchells are in breach of the Mediation Settlement Agreement which, had they honored it, would have disposed of all four civil actions currently pending between the Mitchells and Rabon, as well as disposing of future actions that are all but certain to be filed. As of the date of this Motion, the Mitchells have accepted benefits under the Agreement for forty days and counting. However, when the time came for the Mitchells to perform, they did not. Despite numerous requests to the Mitchells that they begin performance, the Mitchells continue to accept the benefits of the Agreement without performing as the Agreement requires. The salient facts are as follows:

1. On October 30, 2015, a mediation was held to resolve the disputes which underlie the four causes of action between them.
2. The Mitchells were represented during mediation by Rachael Dain of the law firm Attorney Dain, LLC.
3. Rabon was represented by Lane D. Jefferies of the McNair Law Firm.
4. The Mediator was Dalton Floyd, of the Floyd Law Firm.
5. Mediation lasted well over ten hours, and concluded successfully when the Mitchells and Rabon entered into a Mediation Settlement Agreement ("Agreement") (Exhibit A).
6. The Agreement is in writing, is signed by the parties and their counsel, and is dated October 30, 2015.
7. Among other things, the Agreement disposed of:
  - a. Civil action no. 2014-CP-26-05740
  - b. Civil action no. 2015-AD-26-00004
  - c. Civil action no. 2015-CP-26-01628<sup>2</sup>
  - d. Civil action no. 2014-ES-26-01933
  - e. An *ex parte* Affidavit and Application for Involuntary Emergency Admission for Chemical Dependency filed on June 23, 2015 of unknown Civil Action Number.

---

<sup>2</sup> Recently dismissed *without* prejudice.

8. The Agreement required, among other things, that the Mitchells execute and place into escrow certain documents prior to November 30, 2015.
9. In order to provide the Mitchells with sufficient time to attempt to refinance the LLC's loan with West Town Bank, while still providing Rabon with sufficient time to sell the LLC's and Corporation's real estate holdings if refinancing could not be arranged, the Agreement provides for both a "Plan A" and a "Plan B," which are mutually exclusive.
10. Plan A requires Rabon to convey their interest in the LLC and the Corporation to the Mitchells and the Mitchell's to secure Rabon's release from several personal guarantees to West Town Bank.
11. Plan B requires the Mitchells to convey their voting rights in the LLC and the Corporation, as well as certain personal property, to Rabon and for both the Mitchells and Rabon to remain personal guarantors.
12. The major assets of both the LLC and the Corporation – indeed, arguably their *only* assets – are parcels of real estate in Myrtle Beach. Each and every parcel is being foreclosed upon in Civil Action # 2015-CP-26-2779, the final hearing in which action is scheduled for December 16, 2015.
13. The Agreement provides a thirty day period (which ended at midnight on November 30, 2015) for the Mitchells to attempt to obtain a particular written agreement from West Town Bank ("Release Agreement").
14. Under the Agreement, whether Plan A is put into effect or Plan B is put into effect, is determined by whether the Mitchells obtained the Release Agreement within the thirty day window.
15. Regardless of which plan goes into effect, the Agreement requires the Mitchells to execute certain documents, and place them in escrow, during the thirty day period.
16. The Agreement provides that, if the Mitchells had succeeded in obtaining the Release Agreement by the November 30, 2015 deadline, the documents held in escrow would be returned the Mitchells, and Plan A would become effective.
17. The Agreement provides that, if the Mitchells did not obtain the Release Agreement by the November 30, 2015 deadline, the documents held in escrow are to be released to Rabon, and Plan B is effective.
18. The November 30, 2015 deadline for triggering either Plan A or Plan B was designed to (1) give the Mitchells adequate time to attempt to reach a refinancing agreement with

West Town Bank and obtain the Release Agreement, and (2) give Rabon sufficient time, in the event Plan B was triggered, to sell the real estate before the December 16, 2015 foreclosure hearing (if Plan A were triggered the foreclosure action would be dismissed).

19. As of November 24, 2015, the Mitchells had not executed or placed into escrow any of the required documents.
20. On November 24, 2015, Rabon reminded the Mitchells of their deadline for obtaining the Release Agreement and executing the required documents. (Exhibit B).
21. On November 25, 2015, Rabon advised the Mitchells that Rabon would consider extending the deadline if the Mitchells provided evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit C).
22. The Mitchells did not provide evidence of good faith attempts to perform.
23. On November 30, 2015, Rabon repeated the reminder concerning the midnight deadline. In addition, Rabon repeated the offer to extend the deadline if the Mitchells provided evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit D).
24. Once again, the Mitchells did not provide evidence of good faith attempts to perform.
25. The Mitchells did not execute and place into escrow the required documents prior to November 30, 2015.
26. The Mitchells did not obtain the Release Agreement by midnight on Monday, November 30, 2015.
27. On December 1, 2015, Rabon again requested that the Mitchells provide evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit E). The Mitchells did not provide evidence of good faith attempts to perform.
28. On December 3, 2015, Rabon again requested that the Mitchells provide evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit F). The Mitchells did not provide evidence of good faith attempts to perform.
29. On December 4, 2015, at 2:08 p.m. Rabon again requested that the Mitchells provide evidence that they were performing or attempting to perform in good faith pursuant to the Agreement. (Exhibit G). The Mitchells did not provide evidence of good faith attempts to perform.

30. Beginning on November 1, 2015, the Mitchells repeatedly represented that they could not perform under the Agreement because they were out of town.
31. On December 4, 2015, at 3:33 p.m. the Mitchells (through their attorney) stated that "they cannot do any of the things requested this week as they are in Washington." (Exhibit H).
32. On December 4, 2015, at 5:27 p.m. Rabon requested that "If the roadblock to the Mitchell's performance – roughly a week overdue now – is simply their absence from Myrtle Beach as suggested below then will they please confirm that they will begin performing immediately upon their return?" (Exhibit I). The Mitchells did not confirm their intent to perform.
33. On December 5, 2015, Rabon requested that the Mitchell's provide an "indication of when they will return from Washington." (Exhibit J). The Mitchells did not respond.
34. On December 7, 2015, at 8:10 a.m. Rabon requested that the Mitchells "Please let me know when you anticipate that the Mitchells will return from Washington so that they may begin performance under Plan B." (Exhibit K). The Mitchells did not respond.
35. On December 7, 2015, at approximately 2:00 p.m. Mitchells' counsel stated during a phone call with Rabon's counsel that the Mitchells had in fact returned from Washington, D.C. on Thursday, December 3, 2015. Mitchells' counsel now recants that statement.
36. On December 7, 2015, Rabon learned from eyewitnesses that the Mitchells were in Myrtle Beach on Thursday, December 3, 2015, as Mitchell's counsel had stated before recanting. (Exhibit L).

## LEGAL ANALYSIS

### I. The Court Should Order the Mitchells to Perform Under the Agreement.

The Court should Order the Mitchells to perform pursuant to the Agreement for two reasons, each of which is independently sufficient. First, the Agreement is a binding contract. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law); Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 497 (Ct. App. 2007) (a release agreement is a contract and contract principles of law should be used to determine what the parties intended); Mattox v. Cassady, 289 S.C. 57, 61 (Ct. App. 1986) (applying the general rules of contract construction to a settlement agreement)). In addition, Rule 43(k) of the South Carolina Rules of Civil Procedure

("SCRCP"), does not hinder enforcement of the Agreement because the Agreement is in writing and signed by the parties and their counsel. Inglese v. Beal, 403 S.C. 290, 304 (Ct. App. 2013) (Pieper, J., concurring in part and dissenting in part).

Moreover, the Mitchells have not alleged, nor could they, that the Agreement is defective in any way. Instead, they simply have not performed. The Agreement resulted from a day-long mediation. Both prior to and during the mediation, the Mitchells were represented by counsel. Prior to the execution of the Agreement, the Mitchells were fully informed by their legal counsel of the specific terms of the Agreement and the effect of executing such Agreement, specifically that such Agreement would be enforceable against them in law and in equity. The mediator was Dalton Floyd, a well-respected attorney who has practiced in South Carolina for over forty years. In the forty days since they entered into the Agreement, the Mitchells have not repudiated it or moved to set it aside on the basis of fraud, duress, unconscionability, impossibility, impracticability, or any other contract defense. For the Mitchells to appear now – after Plan A was not triggered as they hoped it would be – and argue that the Agreement is defective simply because it is no longer to their liking, is a too coincidental to be credible.

Second, the Mitchells are required to perform by the doctrine of promissory estoppel. The elements of promissory estoppel are "(1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance." N. Am. Rescue Prods. v. Richardson, 411 S.C. 371, 379-380 (2015).

Here, each of the elements of promissory estoppel is satisfied:

1. **Unambiguous Promise:** The Mitchells promises in the Agreement are reasonably susceptible of only a single interpretation, and therefore are unambiguous. S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623 (2001).
2. **Reasonable Reliance:** It is reasonable for Rabon to rely on the Mitchells' promises when those promises were made after over ten hours of consultation between the Mitchells and their attorney, and were embodied in a Mediation Settlement Agreement signed by the parties and their counsel.
3. **Foreseeable Reliance:** Because the Mitchells' promises were made in a contract, they were necessarily made in exchange for Rabon's promises. Sauner v. Public Serv. Auth., 354 S.C. 397, 405 (2003) (stating "A bilateral contract . . . exists when both parties exchange mutual promises). The reason for making promises within a contract is that the promisor expects the promisee to rely on the promises and make his own promises in

return. Id. As a result, if Rabon's reliance on the Mitchells' contractual promises were not expected and foreseeable, then it is difficult to imagine what would be.

4. **Resulting Injury:** As described in detail in Exhibit N, the Mitchells control the LLC and have failed to make the LLC's loan payments to West Town Bank, despite having wrongfully siphoned money for the Corporation purportedly for that purpose. As a result, all the real estate owned by the LLC and the Corporation is now being foreclosed upon by West Town Bank. The final hearing in the foreclosure action is scheduled for December 16, 2015 – just six days from the date of this Motion. Nonetheless, the Mitchells continue to delay and fail to perform. If the real estate is lost to foreclosure, Rabon will lose their entire investment in the LLC and Corporation – as well as becoming personally liable under the personal guarantees – as the direct and foreseeable result of Rabon's reasonable reliance on the Mitchells' promises.

If this Court does not enforce the Agreement under contract law, this Court should nonetheless compel the Mitchells to perform by applying the doctrine of promissory estoppel, because “refusal to apply it would be virtually to sanction the perpetration of a fraud or would result in other injustice.” N. Am. Rescue Prods. v. Richardson, 411 S.C. 371, 379 (2015) (internal quotations omitted).

## **II. This Court Should Issue a Temporary Restraining Order Restraining the Mitchells From Selling Real Estate Owned by the LLC or the Corporation, and From Refinancing the LLC's Loan From West Town Bank.**

This Court may issue a temporary restraining order with or without providing notice to the Mitchells because, as described below and in the attached affidavit (Exhibit M), immediate and irreparable loss and/or damage will result to Rabon before notice can be served and a hearing had. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601 (2001).

Upon information and belief, the Mitchells intend to sell to an out of state buyer from Pennsylvania the personal property which they are required by the Agreement to convey to Rabon. The Mitchells have not placed the Certificates of Title to this property in escrow as they agreed to do over a month ago. Moreover, this property, consisting of two motorcycles and the trailer in which they are stored, is highly mobile. Once removed from South Carolina, it would be extremely difficult to recover. Upon information and belief, the intended buyer for the personal property is currently in Myrtle Beach with a vehicle suitable for towing the property away. Therefore, it is appropriate for this Court to Temporarily Restrain the Mitchells from conveying the property until a hearing can be had on the merits.

Upon information and belief, the Mitchells intend to breach the Agreement by refinancing the LLC's loan from West Town Bank in a manner contradictory to the Agreement, or by selling the underlying real estate collateral for less than the amount owed, thus invoking the personal guarantees signed by Rabon. Once sold or refinanced via transactions involving innocent third parties, it will be difficult if not impossible for Rabon to be put into the position they should be in had the Mitchells not breached the Agreement. Therefore, it is appropriate for this Court to Temporarily Restrain the Mitchells from refinancing the LLC's loan from West Town Bank or selling the underlying collateral until a hearing can be had on the merits.

**III. This Court Should Issue a Temporary Injunction Enjoining the Mitchells From Selling Real Estate Owned by the LLC or the Corporation, and From Refinancing the LLC's Loan From West Town Bank.**

This Court may issue a temporary injunction to preserve the status quo ante because Rabon is likely to succeed on the merits, and without injunctive relief Rabon will suffer irreparable harm for which there is no adequate remedy at law. Poynter Invs. v. Century Builders of Piedmont, 387 S.C. 583, 587 (2010). As described above, Rabon is likely to succeed on the merits based on the doctrine of promissory estoppel and/or the Mitchells breach of the Agreement.

Because real estate is unique, injuries to real estate interests are unlikely to be adequately remedied by money damages. See HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 639-640 (Ct. App. 2010) (stating that "because denial of the requested services would severely restrict Appellants' use of their property, it is unlikely that money damages would provide an adequate remedy. See K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 915 (1st Cir. 1989), cited in CVM Holdings, LLC v. Gamma Enters., Inc., No. 5:10-CV-103-BO, 2010 U.S. Dist. LEXIS 62161, 2010 WL 2541093, at \*2 (E.D.N.C. June 22, 2010) ("Real estate has long been thought unique, and thus, injuries to real estate interests frequently come within the ken of the chancellor.")). Once the real estate is sold to innocent third parties, it will be difficult if not impossible for Rabon to regain title to it, thus making the injury irreparable. Once the real estate is gone, it will be gone for good.

Finally, the real estate that will be lost if the Mitchells are not enjoined includes not only the commercial property owned by the LLC and the Corporation, but also family farm property

owned by the Rabon personal guarantors. These are located in rural Horry County northwest of Conway, and are known as The Berry Farm, The Maple Farm, and The Cool Springs Farm. These three farms have been in Rabon's family since before the American Revolution. Money damages are clearly inadequate to compensate Rabon for the loss of such a long-held family farms. Moreover, the Mitchells have stated on numerous occasions that they are nearly destitute. As a result, even if money damages were adequate in theory, as a practical matter the Mitchells themselves assert that they do not have any money with which to satisfy a judgment.

As a result of the above, it is appropriate for this Court to issue a temporary injunction enjoining the Mitchells from refinancing the LLC's loan from West Town Bank or selling the underlying collateral.

The undersigned, as counsel for Rabon, hereby affirms that consultation was made with opposing counsel to no avail.

WHEREFORE, for the reasons set forth above, Plaintiff Rabon & Rabon, Inc. prays for the following:

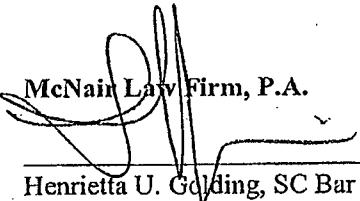
(1) A Temporary Restraining Order restraining Karon and Kyle Mitchell from (a) disposing of the real and/or personal property described in the Agreement, and (b) refinancing or otherwise modifying the LLC's loan with West Town Bank in a manner inconsistent with the Agreement;

(2) A Temporary Injunction enjoining the Mitchells from (a) disposing of the real and/or personal property described in the Agreement, and (b) refinancing or otherwise modifying the LLC's loan with West Town Bank in a manner inconsistent with the Agreement; and

(3) An Order of the Court directing the Mitchells to immediately perform as required by the Agreement which is attached hereto as Exhibit A and incorporated by reference.

Respectfully submitted,

**SIGNATURE ON FOLLOWING PAGE**

  
McNair Law Firm, P.A.

Henrietta U. Golding, SC Bar #2173

Lane D. Jefferies, SC Bar #101764

McNair Law Firm, P.A.

Founders Centre

2411 Oak Street, Suite 206

Myrtle Beach, South Carolina 29577

Tel: (843) 444-1107

Fax: (843) 443-9137

Email: [hgolding@mcnair.net](mailto:hgolding@mcnair.net)

[ljefferies@mcnair.net](mailto:ljefferies@mcnair.net)

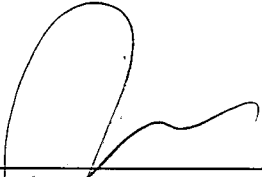
Myrtle Beach, South Carolina  
December 10, 2015

Attorneys for the Plaintiff

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I HEREBY CERTIFY THAT THE RECORD ON APPEAL CONTAINS ALL MATERIAL  
PROPOSED TO BE INCLUDED BY ANY PARTY AND NOT ANY OTHER MATERIAL.

This 12th day of JUNE, 2017.



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Tucker S. Player (S.C. Bar No. 16217)  
PLAYER LAW FIRM  
1415 Broad River Rd.  
Columbia, SC 29210  
(803) 772-8008

Attorney for Appellants

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JUN 14 2017  
SC Court of Appeals