THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace G. Knie, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2019-002122
Lower Court Case No. 2016-CP-42-0727

William A. Morgan.....Respondent,

v.

Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner, Defendants,

Of Which Paul Thomas Garner.....Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case was originally filed on February 17, 2016 alleging negligence, trespass, nuisance, and other causes of action related to stormwater runoff from Paul T. Garner's (Appellant) property onto William A. Morgan's (Respondent) property. (R. p. 17). Respondent alleged that Appellant removed storm water diversion devices, regraded his yard, and directed the flow of storm water into a channel directly onto Respondent's property causing substantial and continuing damages. The case was set for trial on October 1, 2018 and with the assistance of the Honorable R. Keith Kelly, the parties reached a settlement agreement. That agreement was put on the record in front of the Honorable R. Keith Kelly on October 1, 2018. (R. p. 49). After several months of noncompliance and no response from Appellant to comply with the terms of the settlement agreement put on the record, Respondent filed a Motion to Enforce Settlement on November 20, 2018. (R. p. 33). That Motion to Enforce Settlement was put off by Appellant numerous times and ultimately was not heard until August 16, 2019. During the hearing, evidence was presented that Appellant Paul Thomas Garner and counsel purposefully and intentionally delayed implementation of the most basic terms of the settlement agreement. (R. p. 104). Specifically, Appellant refused the hiring of a licensed, certified, and well-regarded engineering and contracting firm in Greenville. Thereafter, evidence was presented that Appellant refused to provide an alternative engineer or contractor to perform the work until the motion to enforce the settlement was filed and the hearing was scheduled. (R. p. 104). Thereafter Appellant suggested Clay Helms of Summit Engineering, who was immediately approved by Respondent. Respondent introduced evidence that he was refused access to Mr. Helms or to Appellant's property to discuss the repair with Mr. Helms. Instead, Mr. Helms, a licensed engineer, was directed to perform a repair arbitrarily created by Appellant in direct contravention

of the settlement agreement. Evidence was provided that Mr. Helms did not draft the repair proposal or do any surveying or engineering analysis to analyze the effectiveness of that repair, again in contravention of the settlement agreement.

The Honorable Grace Gilchrist Knie heard the Motion to Enforce Settlement on August 16, 2019 and ordered Appellant to comply on September 6, 2019. (R. p. 5). Appellant filed a Motion to Reconsider on September 15, 2019 which was denied on November 26, 2029. (R. pp. 14, 44). Appellant filed this appeal on June 25, 2020.

STATEMENT OF FACTS

This case arises out of significant surface water erosion issues allegedly caused by Appellant's removal of storm water diversion and capturing devices installed by the subdivision developer which caused water to channel directly onto Respondent's property in a single stream. The case was set for trial on October 1, 2018 and was settled, with the help of the Honorable R. Keith Kelly. (R. p. 2). The terms of the settlement were put on the record.

The terms of the settlement were that Appellant Thomas Garner was to pay $11,000.00 and Sterling Estates Homeowners Association was to pay $6,000.00. More importantly the parties agreed to jointly retain an engineer or contractor to install or move a storm water drain on Appellant's property to make it more effective. Specifically, the agreement on the record was as follows:

> Mr. Imhoff: As you are aware, we have settled this case, Your Honor.
>
> The terms of the settlement monetarily aren't necessarily that important, although it's 11,000 from Thomas Garner and 6,000 from the Sterling Estates Homeowners Association.
>
> What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. Morgan have to work together, because they've agreed to – – and I can show you a photograph, if you would like, but essentially there is an ineffective
>
> Mr. Garner, two- foot drain or three – –
>
> Mr. Garner: The drain itself is 3×3 covered by a 4×4 grate.
>
> Mr. Imhoff: Okay. So they are going to move that approximately ten feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record.

(R. p. 52, lines 9-25).

> Mr. Imhoff: … Mr. Garner and Mr. Morgan have to work together, because they have agreed to -- … They are going to move [a 3x3 drain covered by a 4x4 grate]… approximately 10 feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record. I think what we have agreed to do is set -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it and also obviously some culpability if things go wrong.

(R. p. 42, lines 14-25; p. 53, lines 1-7)

…

> Mr. Imhoff: … there is a place called Site Design with Andy Sherard in Greenville that's not only engineers, but they also do the work.

(R. p. 53, lines 8-10)

> Mr. Imhoff: The only thing that I would add, which might – – which Mr. Timmons tells me may be in a little bit of dispute is I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, whether it needs a little bit of sloping around it to make more – – to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or the contractor that does it to make it as effective as possible, Your Honor.

(R. p. 53, lines 15-23).

Mr. Timmons, attorney for Appellant Garner, put on the record that:

> Mr. Garner does not want them to come in and do his yard.… We understand they may have to drop down a little bit in order for the water to go in it, but he does not want -- just so long as that can be part of it, is that they are not going to re-grade his whole yard. We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going have to be moved, and so we would like it to stay as flat as possible right there.

(R. p. 53, line 25; p. 54, lines 1-10)

> Mr. Garner: I don't want my yard elevated five feet, no.
>
> Mr. Imhoff: No, no, no. No, we are not going to elevate the yard. No, I'm talking about just sloping the yard into the drain when it's moved, within – –

(R. p. 54, lines 14-18).

The Honorable R Keith Kelly stated, "I think only engineering can tell you that. I'm not an engineer." (R. p. 54, lines 19-20).

> Mr. Imhoff: But it's not our intention to re-grade his yard at all. As a matter fact, we want to do it as cheaply and quickly as possible.

(R. p. 54, lines 21-23).

> Mr. Timmons: One last thing. I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, <u>because we have all agreed to move it to this point</u>.…

(R. p. 55, lines 8-12) (Emphasis added).

Based upon the terms of the agreement, Appellant and Respondent were to jointly hire a contractor or engineer to determine the scope and manner in which the work was to be performed so that it effectively controlled the stormwater. Appellant did not object to jointly hiring a contractor or engineer. Instead, both he and Respondent stated that the case was settled and Mr. Timmons specifically stated, "We have all agreed to move [the drain] to this point." (R. p. 55, lines 11-12). There can be no dispute that an agreement was reached to hire a contractor or engineer, have that contractor or engineer determine how to perform the work, move the drain to a location where it was effective, and use the funds from the settlement to pay for that work. Appellant failed at each and every single item of the settlement and now denies that there was a settlement at all or that he agreed to move the drain despite the clear language of the settlement agreement put on the record. (R. pp. 49-58).

Thereafter, Respondent immediately attempted to retain Site Design to begin the process of engineering and repair. The following timeline filed with the Court, with exhibits, highlights

Appellant's refusal to participate in that process, refusal to let Respondent or any contractors or engineers on his property, and delay and obstruction of the process:

- October 4, 2019: Stephanie Gates of Site Design requests information. Forwarded to Alex Timmons. (Respondent's Brief in Support of Motion to Enforce - Exhibit C, August 15, 2019).
- October 23, 2018: Request for access to Mr. Garner property. (Respondent's Brief in Support of Motion to Enforce - Exhibit D, August 15, 2019).
- October 24, 2018: Request for access on October 25, 2018. (Respondent's Brief in Support of Motion to Enforce - Exhibit E, August 15, 2019).
- October 24, 2018: Mr. Garner is out of the country and refused permission for anyone to go on his property without him. (Respondent's Brief in Support of Motion to Enforce - Exhibit E, August 15, 2019).
- October 24, 2018: Requested dates that work for Mr. Garner. Confirming its investigative. No decisions to be made. (Respondent's Brief in Support of Motion to Enforce - Exhibit E, August 15, 2019).
- October 30, 2018: Email Mr. Timmons re: necessity of Site Design to look over Mr. Garner's fence. Explanation of investigative work. (Respondent's Brief in Support of Motion to Enforce - Exhibit F, August 15, 2019).
- November 14, 2018: Email from Clay Jones of Site Design asking for a site visit to survey the property so that the civil engineers can design the new layout. Request is made to Alex Timmons for access to the property. (Respondent's Brief in Support of Motion to Enforce - Exhibit G, August 15, 2019).
- November 16, 2018: Email to Mr. Timmons as well as a voicemail and contact with the legal assistant re: waiting for dates or approval for Mr. Garner to simply shoot elevations in his yard. No decisions are to be made just information gathering. Mr. Garner is welcome to speak to Mr. Jones or Site Design. (Respondent's Brief in Support of Motion to Enforce - Exhibit G, August 15, 2019).
- November 19, 2018: Request to let Site Design in Mr. Garner's yard to shoot elevations. (Respondent's Brief in Support of Motion to Enforce - Exhibit G, August 15, 2019).
- November 21, 2018: Plaintiff filed Motion to Enforce Settlement. (Respondent's Brief in Support of Motion to Enforce - Exhibit H, August 15, 2019).
- December 6, 2018: Mr. Garner refuses to work with Site Design. (Respondent's Brief in Support of Motion to Enforce - Exhibit I, August 15, 2019).
- December 14, 2018: Requesting Mr. Garner identify an engineer of his own choosing. (Respondent's Brief in Support of Motion to Enforce - Exhibit I, August 15, 2019).

- January 4, 2019: Request for Mr. Garner to get engineering proposal. (Respondent's Brief in Support of Motion to Enforce - Exhibit J, August 15, 2019).
- January 23, 2019: Mr. Garner suggests three engineering groups. (Respondent's Brief in Support of Motion to Enforce - Exhibit K, August 15, 2019).
- January 24, 2019: Plaintiff approved Summit Engineering and sends Summit Engineering investigative work done by Plaintiff's counsel and Site Design. (Respondent's Brief in Support of Motion to Enforce - Exhibit L, August 15, 2019).
- January 30, 2019: Mr. Garner promises to contact Summit Engineering and get them started on the work. (Respondent's Brief in Support of Motion to Enforce - Exhibit M, August 15, 2019).
- February 1, 2019: Motion to enforce the settlement hearing continued based on Mr. Garner's promise.
- February 1, 2019: Summit Engineering goes to Mr. Garner's house to start work. Mr. Garner refuses Respondent Sandy Morgan access to the property or talk to Summit Engineering. (Respondent's Brief in Support of Motion to Enforce - Exhibit N, August 15, 2019).
- February 26, 2019: Clay Helms informs Plaintiff's counsel that he was not allowed to prepare a scope of repair but rather directed to prepare Mr. Garner's scope of repair. Mr. Helms and Summit Engineering quit the project. (Respondent's Brief in Support of Motion to Enforce - Exhibit O, August 15, 2019).
- March 20, 2019: Hearing on motion to enforce settlement set for March 20, 2019 continued due to Mr. Timmins' family issues.

(R. pp. 104-170).

As can be seen from the timeline, the settlement agreement was delayed and obstructed by the efforts of Appellant. Appellant refused to provide access to any engineers or contractors even for fact-finding for approximately four months. After refusing to allow the engineers or contractors onto his property to begin fact-finding and investigation, Appellant determined he would not allow Site Design to serve as the engineering company for the project. Thereafter, he refused to produce a list of acceptable engineers for the project until January 23, 2019, a week before the enforcement hearing when he suggested Summit engineering. (R. p. 149). Upon receipt of that suggestion, Respondent contacted Clay Helms of Summit Engineering on January

24, 2019, approved the use of Clay Helms with Summit Engineering, and forwarded investigation that had been done by Respondent's counsel and Site Design to Mr. Helms and Summit Engineering. (R. pp. 152-159). Thereafter, Appellant refused to allow Respondent onto his property to discuss the repair with Summit Engineering. (R. pp. 162-163). In the meantime, the Motion to Enforce Settlement had been scheduled but continued due to Appellant's last-minute promises.

On February 26, 2019 it became clear that without Respondent's involvement in the project Clay Helms and Summit Engineering were told how to perform the work by Appellant. Mr. Helms stated that he did not prepare a scope of work to fix the issue, rather he simply followed Appellant's directions. Without Respondent's participation, Mr. Helms would not certify that Appellant's directions would fix the issue and, in fact, quit working for Appellant on February 26, 2019. (R. pp. 165-166). Since that time, Appellant has not identified another engineer or taken any other step to comply with the settlement agreement. In fact, instead of complying with the settlement agreement and fixing the water issue, which is continuing to significantly damage Respondent's property, Appellant built an attached covered porch with approval of the Homeowners Association which puts more water onto Respondent's property. (R. pp. 167-170). The water issue remains unresolved and no attempts to fix it or comply with any terms of the settlement agreement have been made.

Based upon the above and the obvious delay and obstruction by Appellant, Respondent requested the following from the Circuit Court:

1. Appellant be ordered to allow an engineer of Respondent's choosing, Site Design, access to the property to do investigation, inspection, and present a proposed scope of repair;

2. Appellant be ordered to comply with the scope of repair drafted by Site Design and give any contractor access to his property to implement the scope of repair;

3. Appellant be ordered to pay attorney's fees, costs, and sanctions for intentionally and willfully obstructing implementation of the settlement agreement; and

4. That the terms of the settlement agreement be enforced.

STANDARD OF REVIEW

Like any other agreement, when the language of a settlement agreement is susceptible of more than one interpretation, it is the duty of the Court to ascertain the intentions of the parties. *Marshall v. Marshall,* 282 S.C. 336, 318 S.E.2d 133 (S.C.App.). The intentions of the parties to a settlement agreement must be determined as far as possible from the terms of the contract and once determined, they must be given effect by the court. *Kane v. Kane,* 280 S.C. 479, 481, 313 S.E.2d 327, 329 (S.C.App.). It is the general rule that parol evidence is admissible to show the true meaning of an ambiguous written contract. *Klutts Resort Realty, Inc. v. Down'round Development Corp.,* 268 S.C. 80, 232 S.E.2d 20 (1982). The purpose of all rules of contract construction is to determine the parties' intentions. The courts in attempting to ascertain this intention, will endeavor to determine the situation of the parties, as well as their purposes at the time the contract was entered. *Bruce v. Blalock,* 241 S.C. 155, 161, 127 S.E.2d 439 (1962). *Mattox v. Cassady*, 289 S.C. 57, 60–61, 344 S.E.2d 620, 622 (Ct. App. 1986).

"[I]t has long been the policy of the court [in South Carolina] to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements." *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. at 93, 419 S.E.2d at 842. "Sound public policy generally requires the enforcement of contracts freely entered into by the parties." *Wolf v. Colonial Life & Acc. Ins. Co.*, 309 S.C. 100, 108, 420 S.E.2d 217, 221 (Ct. App. 1992). *Sparrow v. Fort Mill Holdings, LLC*, No. 2016-001272, 2018 WL 3387240, at 2 (S.C. Ct. App. July 11, 2018).

The trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court. In South Carolina the trial judge has, by reason of the common law, thirteenth-juror authority to see that justice is done in every case. It is an authority well recognized but seldom used in South Carolina courts and is within the trial court's

discretion. *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). The Circuit Court's inherent discretion to enforce or refuse to enforce settlement agreements is based on the Circuit Court's opportunity to hear and observe the witnesses. *Id.* at 93, 419 S.E.2d at 842. *Sparrow v. Fort Mill Holdings, LLC*, No. 2016-001272, 2018 WL 3387240, at 2 (S.C. Ct. App. July 11, 2018). The trial court possesses full discretion in determining the sanction it deems appropriate. *Ex parte Bland*, 380 S.C. 1, 14, 667 S.E.2d 540, 546–47 (2008). A decision regarding enforcement, sanctions, and contempt should be reversed only if it is without evidentiary support or the trial court has abused its discretion. *Means v. Means,* 277 S.C. 428, 288 S.E.2d 811 (1982). Contempt results from a willful disobedience of a court order. *Henderson v. Henderson,* 298 S.C. 190, 379 S.E.2d 125 (1989). A compensatory contempt award may include attorney fees. *Curlee v. Howle,* 277 S.C. 377, 287 S.E.2d 915 (1982).

ARGUMENT

I. THE SETTLEMENT AGREEMENT IS AN ENFORCEABLE CONTRACT

Appellant's argument that the settlement agreement lacked mutual understanding or meeting of the minds is false on its face.

The settlement agreement put on the record was clear in its terms as follows:

> 1. Appellant and Respondent were to work together to obtain an engineer or contractor.
>
> 2. Both parties agreed to allow the engineer or contractor to provide a scope of repair and "rely on the engineer or contractor that does it to make it as effective as possible…"

(R. p. 53).

> 3. Both parties and Judge Kelly envisioned using the engineer's or contractor's report to conduct the repair.

(R. pp. 52-54).

The evidence is clear that Appellant not only refused a licensed, certified, and well-regarded engineer – but also refused to provide an alternative for an unreasonable amount of time until a motion was filed and a hearing scheduled. Thereafter, the evidence is clear that Appellant would not allow Respondent access to that engineer or allow him onto his property to discuss the scope of that engineer's work in compliance with the settlement agreement.

Appellant has not allowed any engineer or contractor to produce an engineering analysis and scope of repair based upon the water issue. Although Appellant ultimately retained Clay Helms, it is clear from Clay Helms' emails that Appellant directed the repair, not the licensed engineer.

Additionally, Appellant's counsel put on the record that:

> 5. "Mr. Garner does not want them to come in and do his yard. As you can see, it's sort of flat right there. We understand that it may have to drop down a little bit more for the water to go in it, but he does not want – – just so long as that can be part of it, is that they are not going to regrade his whole yard. We understand there may be some right around the great that has to be done, but we don't – – right now, it's – – as you can see, it's relatively flat in the area where it's going to have to be moved, and so we would like it to stay as flat as possible right there.

(R. p. 53, line 25; p. 54, lines 1-10) (Emphasis added).

In response to Appellant's counsel's statement, Honorable R Keith Kelly stated, "I think only engineering can tell you that. I'm not an engineer." (R. p. 54, lines 19-20). Neither Appellant, nor his counsel, objected to Judge Kelly's statement that an engineer would need to determine what needed to be done. In fact, Appellant's counsel admitted that there may be some grading and other work that needed to be done to make the drain effective. Appellant's counsel stated to the Court, "I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point…" (R. p. 55, lines 11-12). (Emphasis added).

In that statement, defense counsel admitted that there was an agreement and the only impediment to consummating the settlement agreement would be "some catastrophic coming in and doing something crazy in the yard." (R. p. 55, lines 9-10). There is no evidence that an engineer has been allowed to provide a scope of repair which would minimally affect Appellant's property, and certainly no evidence that anything "catastrophic" or "crazy" would have been done or suggested by an engineer.[1]

The Court was correct that Appellant and Respondent should "jointly hire a contractor and engineer to determine the scope and manner in which the work was to be performed so that it

[1] Appellant repeatedly makes reference to "berms." There is no evidence of the need for or intention to install berms and it could not be found in any evidence in this case.

effectively controlled most, if not all water." (R. p. 8). Respondent and Appellant were to hire an engineer or contractor jointly and that expert was to determine the scope or the manner in which the work was to be performed. There is no failure of meeting of the minds understanding that simple agreement.

Clearly in this case there was a meeting of the minds and both parties intended to be mutually bound by the agreement. Appellant has not pointed out any circumstance or fact supporting an argument that the parties did not agree to jointly hire an engineer or contractor and implement that expert's scope of repair outside of it being "catastrophic" or "crazy." In fact, Appellant has not complied with even the first part of that agreement which is to allow an expert to provide a "proposed" scope of repair. Appellant's arguments are clearly intended to avoid the mutually agreed settlement agreement and not based on the actual facts of implementing that agreement.

Further, Appellant argues repeatedly that there is no settlement agreement, but fails to explain what settlement agreement was put on the record by all parties immediately prior to trial. In other words, there was clearly some settlement agreement put on the record with all parties present on the morning of trial, but Appellant has not argued different terms than those set forth by Respondent - only that an agreement did not exist. This is simply incorrect. Clearly, a settlement of some sort was agreed upon at trial, on the record, with the Judge's consent. Therefore, the Court was correct in enforcing the settlement agreement, as is the Court's discretion to do, and finding that there was a meeting of the minds, the settlement agreement was not ambiguous, and the settlement agreement should be enforced.

II. THE COURT DID NOT ABUSE ITS DISCRETION ENFORCING THE AGREEMENT

The Court did not abuse its discretion by enforcing the agreement put on the record on October 1, 2018. "The intentions of the parties to a settlement agreement must be determined as far as possible from the terms of the contract and once determined, they must be given effect by the court." *Id*, 289 S.C. 57 (1986). 344 S.E.2d 620. "The courts in attempting to ascertain this intention, will endeavor to determine the situation the parties, as well as their purposes at the time the contract was entered." *Mattox v. Cassidy*, 289 S.C. 57, 60–61, 344 S.E.2d 620, 622 (Ct. App. 1986). There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.… The trial judge has, by reason of the common law, 13th – jury authority to see that justice is done in every case." The judge's ruling is based upon the judge's observation of "the testimony and observed the witnesses and passed on their credibility." *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). The judge's observation of the testimony and witnesses, their credibility, and the circumstances of the settlement agreement involves an exercise of discretion, which the appellate court should not overturn unless there is no basis in the record for the ruling. *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). The circuit court has "inherent discretion to enforce or refuse to enforce settlement agreements" based upon the "circuit courts opportunity to hear and observe the witnesses." *Sparrow v. Fort Mill Holdings, LLC*, No. 2016-001272, 2018 WL 3387240, at *2 (S.C. Ct. App. July 11, 2018).

The Circuit Court found that there was "a meeting of the minds and the parties entered into a binding agreement." (R. p. 12). The Court further found that Plaintiff attempted to honor

the terms and conditions of the agreement in full. The Court further ordered Appellant "to make every effort to comply with the terms and conditions of the agreement by: allowing an engineer of Plaintiffs choosing to access the property to a do an investigation, and an inspection, and present a proposed scope of repair; and by complying with the scope of repair drafted by the engineer; and giving the contractor access to his property to implement the scope of repair…." (R. p. 12).

By finding that there was an agreement and meeting of the minds, the Court did not abuse its discretion, nor alter the terms of the parties. Instead, the Court simply exercised discretion and its power to enforce the terms of the settlement agreement, which Appellant had refused to do and continues to refuse to do. Respondent and the Court's only recourse to Appellant's refusal to comply with the terms of the agreement was to order Appellant's compliance with that agreement and remove Appellant's ability to stall, delay, or obfuscate the clear terms of the agreement by withholding his consent. If the Court had attempted to require Appellant's agreement to a particular contractor, engineer, scope of work, or timeline, Appellant could have continued to delay, block, and obfuscate the enforcement of the settlement agreement.

Appellant could, and most certainly would, claim that the Court, by compelling enforcement of the settlement agreement, removed Appellant's ability to object to every expert or proposed repair. Based upon Appellant's clear motivations and pattern of obstruction, the Court did not abuse its discretion by enforcing the terms of the settlement agreement while at the same time removing Appellant's ability to obstruct each phase of the work. Appellant's undeniable obstruction required a finding by the court that Appellant had waived his right to participate in the process. The Court had no choice but to end Appellant's ability to obstruct the agreement entered into by the parties and was required, in her discretion, to allow Respondent to proceed.

This is fully within the Court’s discretion and was the only reasonable and effective ruling. Further, based upon the Circuit Court's review of the settlement agreement and the arguments, briefs, and evidence presented to the Court that the motion to enforce the settlement and motion to reconsider, the Circuit Court was in the best position to evaluate the parties motives and to craft a way to effectuate the intent of the parties to complete the work.

CONCLUSION

For the foregoing reasons the Respondent respectfully requests this Court to Affirm the Order of the Circuit Court Order enforcing settlement of the case.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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