STATE OF SOUTH CAROLINA	)	**THE COURT OF COMMON PLEAS**
	)	
COUNTY OF GREENVILLE	)	**C.A. No. 2020-CP-2301213**
James Earl Tegeler,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, and Northgate Baptist Church,	)	
	)	
Defendants.	)	
	)	

ORDER GRANTING DEFENDANT NORTHGATE BAPTIST CHURCH'S MOTION TO DISMISS

This matter came before the Court on August 18, 2020, at 10:30 a.m., in Greenville County, South Carolina, Thirteenth Judicial Circuit upon each defendants' respective dispositive motions,[1] including Defendant Northgate Baptist Church's (hereinafter "Northgate") Motion to Dismiss ("Motion") pursuant to South Carolina R. Civ. P. 12(b)(6). Northgate filed its Motion on March 25, 2020. Northgate filed its Memorandum in Support of its Motion ("Northgate's Memo") on August 13, 2020. Thereafter, Plaintiff filed his response to Northgate's Memo ("Response") on August 17, 2020. Attorney S. Michael Nail of Ogletree Deakins Nash Smoak & Stewart, P.C. was present representing the interests of Northgate. Attorney Amy M. Snyder was present representing the interests of defendant, Charlotte Collier. Attorney Daniel R. Hughes was present representing the interests of defendants, Hannah Collier and Linda Smith. Attorney Deborah D. Davis was present representing the Plaintiff.

[1] The procedural history and merits of the other defendants' motions are addressed in separate orders.

Having reviewed all of the papers submitted by the parties in connection with the Motion and all arguments made therein, all of the record evidence presented therein, and all of the arguments made by counsel at the hearing, this Court finds that Plaintiff released his claims against Northgate that he attempted to bring against Northgate in this matter and hereby orders, for the reasons stated herein, that Northgate's Motion is GRANTED WITH PREJUDICE.

I. FACTUAL BACKGROUND[2]

Plaintiff's Complaint asserts claims against Northgate for: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. However, before Plaintiff's separation from Northgate, he voluntarily entered into a valid and enforceable severance agreement ("Agreement")[3] with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate:

> In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company.
>
> *See* **Exhibit A**, at ¶ 3(A).

[2] The Court notes that Northgate's Motion is styled as a motion to dismiss. However, the Court also recognizes that Northgate attached the severance agreement referenced in the Complaint (but not attached) in its Motion. To the extent that the Court considers the Agreement, it may treat a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown v. Leverette*, 291 SC 364, 353 S.E.2d 697 (1987). Plaintiff raised no objection to considering the Agreement and has based his arguments on the Agreement. Indeed, under either standard, Plaintiff's claims against Northgate are dismissed with prejudice.

[3] The Agreement was attached as **Exhibit A** to Northgate's Memo.

Solidifying the validity of Plaintiff's release of claims against Northgate, it is undisputed that Plaintiff negotiated the terms of the Agreement, including an increase to the original severance amount which is evident from the face of the Agreement.[4] Therefore, Plaintiff has released his claims against Northgate by entering into a contract supported by valid consideration through active negotiation.

II. APPLICABLE STANDARDS

A. Motion to Dismiss

A motion to dismiss under Rule 12(b)(6), SCRCP is the usual and proper method of testing the legal sufficiency of the Complaint and is directed to the factual and legal sufficiency of the Complaint. *See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 567 S.E.2d. 251 (S.C. Ct. App. 2002); *Woodell v. Marion Sch. Dist. ONE*, 414 S.E.2d 794 (S.C. 1992). "[A] motion under Rule 12(b)(6) . . . admits the well pleaded facts in the Complaint, but it does not admit the inferences drawn by the Plaintiff from such facts, nor does it admit conclusions of law." *Carolina Winds Owners' Ass'n, Inc. v. Joe Harden Builder, Inc.*, 374 S.E.2d 897, 899 (S.C. Ct. App. 1988); *Carrington v. City of Spartanburg*, 322 S.E.2d 28 (S.C. Ct. App. 1984), overruled on other grounds, *McCall v. Batson*, 329 S.E.2d 741 (S.C. 1985).

South Carolina courts apply a "fact pleading" standard, which is more rigorous than the lenient "notice pleading" standard established in federal court. Rule 8(a)(2), SCRCP; *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 541 S.E.2d 269, 271 (S.C. Ct. App. 2000) (distinguishing relevant standard under the SCRCP from "more lenient" standard under federal rules), aff'd as modified, 581 S.E.2d 169 (S.C. 2003). The non-moving party may not simply make conclusory assertions

[4] *See* **Exhibit A**, at ¶ 1(A) wherein the proposed consideration is doubled from $2,600.00 to $5,200.00.

of liability, but must set forth assertions of fact that give rise to relief. *See, e.g., Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 559 S.E.2d 362, 364-65 (S.C. Ct. App. 2001).

For purposes of this motion, "[t]he question for the [C]ourt is whether in the light most favorable to the plaintiff, and with every doubt resolved in [her] behalf, the allegations set forth on the face of the complaint state any valid claim for relief." *Sloan Constr. Co. v. Southco Grassing*, Inc., 659 S.E.2d 158, 161 (S.C. 2008) (citing *Plyler v. Burns*, 647 S.E.2d 188, 192 (S.C. 2007)). The Court "should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler*, 647 S.E.2d at 192 (citing *Stiles v. Onorato*, 457 S.E.2d 601, 602 (S.C. 1995)). A 12(b)(6) motion should be granted if the facts alleged and inferences reasonably deducible from the complaint would not "entitle the plaintiff to any relief on any theory of the case." *Id.*

B. Motion for Summary Judgment

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing to George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c).

The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The moving party may discharge this responsibility by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* It is not necessary for the moving party to "support its motion with affidavits or other similar materials

negating the opponent's claim." *Id.* (emphasis in original). "Once the moving party carries its initial burden, the opposing party must . . . do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with specific facts showing that there is a genuine issue for trial." *Id.* (citing *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986)) (emphasis in original) (internal quotations omitted).

III. ARGUMENTS PRESENTED

Northgate seeks a dismissal with prejudice of all of Plaintiff's claim against Northgate because Plaintiff has previously released all claims against Northgate in exchange for valid monetary consideration through the Agreement.

In response, Plaintiff asserts a variety of arguments, all of which the Court has considered. However, the Court only addresses the arguments that correlate directly to the dispositive issue presented by Northgate.

IV. ANALYSIS

A. The Release Contained in the Agreement is Valid and Plaintiff's Claims Against Northgate are Covered by the Release.

A release is a contract, and releases are governed by same principles of adequacy of consideration that apply to other contracts. *See Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 734, 741 (D.S.C. 2001); *see also Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947) (wrongful death settlement of $500 enforced) (quoting 53 C. J. Release § 21). No set form of words is necessary to constitute a release. *Gardner v. Columbia Police Dep't*, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950) (construing terms of release of tortfeasor "of any trouble whatsoever" in consideration of cash payment exonerated tortfeasor from all liability). Further,

words and expressions in releases are given their ordinary meaning unless the context of the instrument indicates that the words are being used in a different sense. *Id.*

In construing the terms of a contract, a court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When a contract unambiguously sets forth the contracting parties' intent, a court is bound by that clearly expressed intent without resort to extrinsic evidence. *Id.* "Extrinsic evidence giving the contract a different in meaning from that indicated by its plain terms in inadmissible." *Id.* at 377-78, 373 S.E.2d at 586.

It is well established that a broad and general release of all claims, which is voluntarily executed in exchange for valid consideration, acts as a bar to any claim covered by the time period of the release. *Virginia Impression Products Corp. v. SCM Corp.*, 448 F.2d 262, 265 (4th Cir. 1971) (a general release indicates that "the parties desire to settle all matters forever . . . not only enumerated specific differences, but claims of every kind or character, known and unknown") (internal citations omitted); *see also Hause v. AstraZeneca, LP,* 2015 WL 1524409 (D.S.C. 2015); *Scoggins v. Honeywell Int'l, Inc.,* 2012 WL 6102031 (D.S.C. 2012).

Here, the release in the Agreement meets the requirements of South Carolina law: it unambiguously represents a voluntary and bargained-for exchange whereby Plaintiff released Northgate and all of its employees and agents from any liability arising out of Plaintiff's employment. The plain terms of the Agreement unambiguously reveal Plaintiff's intent to release all claims against Northgate:

> In exchange for the Company's agreement to provide the above payment, Employee agrees <u>not</u> to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company. . .

See **Exhibit A**, at ¶ 3(A).

> Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee's employment or termination from employment with the Company. . .

Exhibit A, at ¶ 3(B).

> The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. . .

Exhibit A, at ¶ 3(D).

Indeed, all of the allegations against Northgate contained in Plaintiff's Complaint contain allegations relating to his employment with Northgate and/or circumstances surrounding his termination therefrom. Accordingly, all claims related to his employment are covered by the release in the Agreement. As such, these claims were released by Plaintiff when he signed the Agreement and cannot now be the basis of a lawsuit. Northgate is therefore entitled to dismissal of all of Plaintiff's claims against it, with prejudice.

B. Plaintiff was not Under Duress (nor has he met the conditions precedent for asserting the defense) because he Executed the Release Through his own Free Will, and Further Ratified the Agreement by Retaining the Severance Payment.

Nearly two years after he executed the Agreement, Plaintiff's Complaint is riddled with the notion that Northgate forced him to execute the Agreement. However, Plaintiff voluntarily executed the Agreement (even actively increasing the amount of consideration he received from Northgate for his release of claims against Northgate) and retained the monetary benefit thereof without raising the issue of duress until he filed the Complaint. As such, his duress argument fails.

Under South Carolina law, duress has been defined as coercion that puts a person in such fear that he is "bereft" of the quality of mind essential to the making of a contract and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527,

189 S.E. 890, 897 (1937); *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939) (duress is defined as "a condition of the mind produced by improper external pressure of 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"). As noted in *Nightingale's Estate*, the fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. *Id.* at 898. Whether duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced. *See Gainey v. Gainey*, 382 S.C. 414, 428–29, 675 S.E.2d 792, 799 (Ct. App. 2009). However, there is no question of fact of duress in this case as Plaintiff clearly negotiated the terms of the severance amount and kept the severance amount and did not challenge the validity of the release for over two years.

As stated *supra*, Plaintiff cannot demonstrate that he had no other alternative but to sign the Agreement. Indeed, his suggestion that he was under duress is deflated by his active negotiation for an increased severance payment in exchange for his release of all claims against Northgate. Additionally, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration received by him for the release. *Hyman*, 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff's

failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 399 S.E.2d 22, 23 (1990) ("it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof").

In *Hyman*, a former automobile dealer insisted upon retaining the benefits which he received under the contract releasing manufacturer from liability, and, at the same time, insisted upon escaping the obligations imposed by the release. *Hyman*, 142 F. Supp. 2d at 748 (D.S.C. 2001). Thus, the court noted that the condition precedent to avoiding the release (the return or tender of consideration for the release), had not been complied with. *Id.* The court took issue with the fact that the dealer knew of the alleged "duress" at the time he signed the release but did not raise the issue for over three years. *Id.* Thus, the court held that the dealer "clearly waived his right to avoid the release on claims of duress and has affirmed the release." *Id.*

Importantly, the *Hyman* court also recognized that a release which is procured by duress is not void, but merely voidable and is capable of being ratified. *Id.* The person claiming duress must act promptly to repudiate the contract or release, or he will be deemed to have waived his right to do so. *Id.* It is a well-established proposition that a voidable contract may be ratified by a party's failure to act promptly to repudiate the contract. *Id.* (citing *Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985) (plaintiff signed a release under threat of losing severance pay, then sued to rescind, claiming duress, and court held for defendant on ground that employee accepted and thereby ratified the contract). A party may ratify an agreement entered into under duress in a number of different ways: by intentionally accepting benefits under the contract; by remaining silent or acquiescing in the contract for a period of time after he has the

opportunity to avoid it; or by recognizing its validity by acting upon it, performing under it or affirmatively acknowledging it. *Id.* (internal citations omitted). Thus, one seeking to repudiate an agreement allegedly entered into under duress must promptly complain of the circumstances under which the document was signed. *Id.* The *Hyman* court concluded as follows: "The undisputed facts indicate that [the dealer] ratified the release by retaining the benefits of the release for over three years. [The dealer] seeks to have it both ways—to retain the benefits of the buy back privilege and to sue [the manufacturer] —and that is something which this court cannot allow." *Id.* at 749.

Here, it is undisputed that Plaintiff retained the monetary consideration he received from Northgate in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly two years later when he filed the Complaint, he then claimed that he was under "duress" when he signed the Agreement. Similar to *Hyman*, Plaintiff has not met the conditions precedent to asserting his new proposition of "duress" and it cannot be used to circumvent the valid and enforceable Agreement.

V. CONCLUSION

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Northgate's Motion is GRANTED and that Plaintiff's Complaint is DISMISSED WITH PREJUDICE, thereby ending this case.

This ____ day of September, 2020.

_____

The Honorable Alex Kinlaw, Jr.

Greenville Common Pleas

Case Caption: James Earl Tegeler vs. Northgate Baptist Church , defendant, et al

Case Number: 2020CP2301213

Type: Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763