

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-4537

Alan Sheppard

William O Higgins, Ronald C. Owens,  
Russell Bennett, Charles P. Darby, Lynn  
McCants, and Kiawah Resort Associates, L.P.

PLAINTIFF(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41, 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 \_\_\_\_\_

FILED  
 2013 JAN 25 PM 12:00  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

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: The Court hereby GRANTS Defendants' Motion for Judgment on the Pleadings.

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	\$ 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 should refer to the official court order for judgment details.

*Thomas P. McDonald*  
 \_\_\_\_\_  
 Circuit Court Judge

2163  
 Judge Code

01/18/13  
 Date

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
)  
) NINTH JUDICIAL CIRCUIT

ALAN SHEPPARD,  
Plaintiff,

) C.A. No.: 2011-CP-10-4537  
)  
)

vs.

) **ORDER GRANTING DEFENDANTS'**  
) **MOTION FOR JUDGMENT**  
) **ON THE PLEADINGS**

WILLIAM O. HIGGINS, RUSSELL BENNETT,  
RONALD OWENS, CHARLES P. DARBY,  
LYNN MCCANTS, AND KIAWAH RESORT  
ASSOCIATES, L.P.

) Defendants.  
)  
)

FILED  
2013 JAN 25 PM 12:04  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

THIS MATTER COMES BEFORE THE COURT on a Motion for Judgment on the Pleadings filed by Defendants Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby") and Kiawah Resort Associates, L.P. ("KRA") (collectively, the "Defendants"), relating to the Complaint filed in this action by Plaintiff Alan Sheppard. A hearing took place before the undersigned on April 25, 2012. After a careful review of the submissions and arguments of the parties, I find that no viable cause of action exists against these Defendants and judgment on the pleadings is warranted. Thus, Defendants' Motion is **GRANTED**.

**LEGAL STANDARD**

After the pleadings are closed, but within such time as not to delay the trial, any party may move for a judgment on the pleadings. Rule 12(c), SCRPC. The motion will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 297 S.E.2d 638 (1982). All properly pleaded factual allegations are deemed admitted for

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purposes of considering the motion for judgment on the pleadings. *Baker Hosp. v. Firemans Fund Ins. Co.*, 314 S.C. 98, 441 S.E.2d 822 (1994).

### FINDINGS OF FACT


1. On February 4, 2008, Defendants KRA and Bennett filed an action against Plaintiff to enforce a contract relating to the Wando River Property (the "Prior Action").<sup>1</sup>

2. Plaintiff asserted counterclaims for (1) interference with contractual relationship, (2) breach of fiduciary duty, (3) interference with contract and (4) breach of the implied covenant of good faith and fair dealing, which included factual allegations relating to alleged interference [by the current Defendants] with Plaintiff's relationship with his attorney and retention of earnest money (the "Counterclaims").

3. Plaintiff, KRA and Bennett settled the Prior Action and memorialized the terms of their settlement in a Settlement and Release Agreement, which allowed for an entity controlled by Plaintiff (Wando River, LLC) to sell the Wando River Property to a third party (Wando E, LLC).

4. Plaintiff signed the Settlement and Release Agreement both in his individual capacity and as managing member of Wando River, LLC, as Plaintiff was a named party in the Prior Action. The Settlement Agreement included a broadly-worded, unrestricted mutual release of claims ("Mutual Release"), as follows:

Mutual Release of Claims. In consideration for the mutual promises and obligations hereunder, KRA, Bennett, Wando River, Sheppard, [and] Simmons, on behalf of themselves and their

  
<sup>1</sup>The documents relevant to the prior action, including the Complaint, Amended Answer and Counterclaims, Stipulation of Dismissal with Prejudice, and the Settlement and Release Agreement, were all attached as exhibits to Defendants' Amended Answer in this case, and are therefore considered part of the pleadings for purposes of Defendants' Motion for Judgment on the Pleadings.

subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns each hereby release and discharge each other and their respective subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns from any and all claims or causes of action of any kind as they may have against one another including but not limited to all claims and counterclaims raised in this Action.

See Settlement and Release Agreement, Exhibit C, at Section 6.

5. KRA and Bennett were parties to the Settlement and Release Agreement. Darby signed the document on behalf of KRA as its authorized officer. As alleged in the Complaint, Defendant Owens is an agent of KRA. As agreed, the Mutual Release included not only the parties to the Settlement Agreement, but also their “subsidiaries, affiliate entities, principals, shareholders, directors, **officers, employees**, representatives, members, managers, **agents**, heirs, successors, and assigns.” *Id. (emphasis added)*.

6. Consistent with the terms of the Settlement Agreement, the parties concluded the Prior Action by filing a Stipulation of Dismissal with Prejudice with the Berkeley County Court of Common Pleas on July 15, 2008.

7. On June 27, 2011, Plaintiff filed the current lawsuit (“Complaint”) in which Plaintiff asserted the same claims against Defendants that he set forth in his Counterclaims in the Prior Action. These claims relate to the purchase and sale of the Berkeley County Wando River property (“Wando River Property”).

8. The Prior Action, including the Counterclaims, was based on the same facts and alleged injuries as set forth in the current Complaint.

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## CONCLUSIONS OF LAW

9. The Court finds that this matter is barred by *res judicata*. The Complaint is based on the same claims and subject matter as the Counterclaims in the Berkeley County lawsuit. The Counterclaims were dismissed with prejudice. Under South Carolina law, a dismissal with prejudice constitutes an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. See *Nunnery v. Brantley Constr. Co., Inc.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986); see also *Nelson v. QHG of S.C., Inc.*, 354 S.C. 290, 311 580 S.E.2d 171, 182 (Ct. App. 2003) (affirming grant of motion to dismiss on basis of *res judicata* for parties who were omitted from the initial action but were related to the parties included), *aff'd in part and rev'd in part on other grounds*, 362 S.C. 421, 608 S.E.2d 855 (2005). Based on the pleadings, *res judicata* applies to these facts and precludes Plaintiff from pursuing his Complaint.

10. To establish *res judicata* and obtain dismissal of the Complaint, Defendants proved the following three elements: (1) identity of the parties, (2) identity of the subject matter and (3) adjudication of the issue in the former suit. See e.g., *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

11. The first element is satisfied, as the parties in the two actions are the same. Plaintiff, KRA, and Bennett were named parties in the Prior Action, while Darby and Owens are officers or agents of KRA and are therefore considered "parties" for purposes of *res judicata*.

12. The second element is also satisfied, as there is identity of subject matter between the two actions. Both the Prior Action and Plaintiff's Complaint relate specifically to the Wando River Property, allegations of interference with the attempt to sell the Wando River Property, and

allegations that Defendants should not have received the earnest money for the Wando River Property.

13. The third element is also satisfied as the entry of a Stipulation of Dismissal with Prejudice is specifically considered a prior "adjudication" of the issues under South Carolina law. *See, e.g., Nunnery*, 289 S.C. at 209 345 S.E.2d at 743.


14. The Court further finds that the Complaint is barred by the Mutual Release in the Settlement and Release Agreement. The Settlement and Release Agreement included a broadly-worded Mutual Release, which was a component of the consideration for the Settlement and Release Agreement. As indicated by its terms, the Mutual Release was intended specifically to apply to each of the Defendants, who are named parties or officers or employees of named parties, as indicated in the record. Because the Complaint attempts to assert claims that were released under the Mutual Release against parties that were included in the Mutual Release, the Complaint is barred and should be dismissed. Under South Carolina law, a release is recognized to constitute a contract. *See Hyman v. Ford Motor Co.*, 142 F.Supp.2d 735 (D.S.C. 2001). In construing the terms of a contract, this 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).

15. By looking at the language of the Mutual Release, it is clear that it was intended as a voluntary and mutual waiver of all claims relating not only to the Wando River Property, but also to any claim relating to any subject that was asserted or could have been asserted in the Prior Action. Through the Complaint, Plaintiff is attempting to re-assert claims relating to the Wando River Property, which are squarely within the scope of the binding Mutual Release.

16. The Court further finds that the Complaint is barred by the applicable statutes of limitations. The Complaint was filed nearly five years after the events relating to the earnest money occurred and more than three years after Plaintiff asserted the same claims in the Prior Lawsuit. Plaintiff did not commence this action until more than three years after the alleged claims accrued. Pursuant to S.C. Code Ann. §15-3-530, the applicable statute of limitations for each of the claims asserted or alluded to in the Complaint (conversion, conspiracy, fraud and negligence) is three years. Claims relating to the earnest money arose in September 2006, when Plaintiff authorized the money to be disbursed. Any other claims asserted in the Complaint arose before April 4, 2008, the date when the same claims were asserted in the Prior Action. Additionally, these claims existed prior to June 26, 2008, which is the date on which Plaintiff previously released these same claims by entering into the Settlement and Release Agreement. Plaintiff has not made any allegation relating to causes of action arising on or after June 27, 2008, and therefore his Complaint is barred under the applicable statutes of limitations.

WHEREFORE, the Court grants Defendants' Motion for Judgment on the Pleadings on the separate and independent grounds that the claims in the Complaint are barred by (1) *res judicata*, (2) prior release and (3) the applicable statutes of limitation.

AND IT IS SO ORDERED.

  
Stephanie P. McDonald  
Presiding Judge  
Charleston County Court of Common Pleas

January 18, 2013  
Charleston, South Carolina