

STATE OF NORTH CAROLINA
COUNTY OF MADISON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15-CVS-163

CARL FLAMM, TRINA FLAMM,)
GARY LACLAIR, LINDA LACLAIR,)
JOSEPH JENKS, and MARY JENKS,)
Plaintiffs)
v.)
CINDIE HARMAN and RYAN HARMAN)
Defendants.)

)

CONSENT ORDER

THIS CAUSE came before the Honorable Alan Thornburg, Superior Court Judge, on the 6th day of September, 2016, having been informed that the parties have reached a settlement of all claims through mediation on April 27, 2016, which was memorialized in the Memorandum of Settlement, and an additional agreement on or about July 22, 2016, and after review of the matter herein, and with the consent of the parties, who have waived their signatures and the necessity of further findings of fact and conclusions of law, except as set forth herein, the Court hereby makes the following findings of facts and conclusions of law in support of this CONSENT ORDER by and between Carl Flamm, Trina Flamm, Gary LaClair, Linda LaClair, Joseph Jenks, and Mary Jenks (collectively, the "Plaintiffs"), and Cindie Harman and Ryan Harman (collectively, the "Defendants"). All parties to this Order may be referred to collectively as the "Parties" and individually as "Party."

FINDINGS OF FACT:

1. The parties reached an agreement as to all claims in mediation on April 27, 2016, conducted by Gary S. Cash of the law firm of Fisher Stark Cash, P.A. in Asheville, North Carolina, which was memorialized in the Memorandum of

Settlement, paragraph 5 of which required that a Consent Order be entered “that contains the agreements of the parties” stated in said Memorandum of Settlement, attached hereto as Exhibit A and incorporated herein by reference;

2. There was a pending criminal case in District Court in Madison County (# 16-CR-50238), in which Plaintiff, Carl Flamm, was the Defendant therein, and Defendant herein, Cindie Harman, was the alleged victim;
3. The parties have knowingly and voluntarily consented to the entry of the instant Consent Order, and waived their signatures, as evidenced by their verified signatures on the Memorandum of Settlement and the signatures of their attorneys hereinbelow, having had the benefit of the advice of their respective attorneys and having reviewed the draft of the instant Consent Order, and the parties are satisfied with the services of their respective attorneys. The parties agree that the instant Consent Order may be entered by the Court outside of their presence, out of session, and out of county;
4. The Parties own neighboring tracts of land located in Madison County, North Carolina;
5. The Plaintiffs, on the date of mediation, owned the following tracts of real property in Madison County, North Carolina:

- (a) Joseph and Mary Jenks, owned real property in Madison County, specifically, a cabin and land on Lot 1 on the Plat recorded in Plat Book 5, at Page 210, in the Madison County Register of Deeds, and being the same property described in Deed Book 272, at Page 758, and Deed Book 342, at Page 11, in the aforesaid Public Registry, and as described in paragraph 14 of the Plaintiffs’ Complaint (“Jenks cabin”). The street address is 37 Stones

Throw Lane, Hot Springs, North Carolina.

- (b) Gary and Linda LaClair, owned real property in Madison County, specifically, a cabin and land on Lot 2 on the Plat recorded in Plat Book 5, at Page 210, in the Madison County Register of Deeds, and being the same property described in Deed Book 411, at Page 396, in the aforesaid Public Registry, and as described in paragraph 13 of the Plaintiffs' Complaint ("LaClair cabin"). The street address is 77 Stones Throw Lane, Hot Springs, North Carolina.
- (c) Carl and Trina Flamm, owned and had a marital interest in, respectively, real property in Madison County, specifically, the cabin and land on Lot 3 on the Plat recorded in Plat Book 5, at Page 210, in the Madison County Register of Deeds, and being the same property described in Deed Book 538, at Page 376, in the aforesaid Public Registry, and as described in paragraphs 10 and 11 of the Plaintiffs' Complaint ("Flamm cabin"). The street address is 106 Stones Throw Lane, Hot Springs, North Carolina.

6. The following provisions (in the following paragraphs) of the Memorandum of Settlement were completed on July 27, 2016, except as otherwise set forth hereinbelow:

- (a). Paragraph 1 on page 1: The Defendants shall pay to the Plaintiffs, through their attorney of record, the sum of one hundred thirty thousand dollars (\$130,000) within ninety (90) days after the date of the Memorandum of Settlement (on or before July 26, 2016). In exchange, the Plaintiffs shall convey to the Defendants by proper North Carolina deed all of the Plaintiffs' respective interests in the Flamm cabin, the LaClair cabin, and the Jenks cabin (collectively, "Properties");

- (b) Paragraph 2 on page 1: The Plaintiffs shall pay all encumbrances related to the Plaintiffs' respective Properties so as to convey clear title;
- (c) Paragraph 3 on page 1: The Defendants shall choose the closing attorney (who was David Payne) and shall pay any and all closing costs, including surveys if required;
- (d) Paragraph 4 on page 1: The Plaintiffs' respective Properties shall be conveyed in "as is" condition. The attorneys for the parties shall schedule a mutually convenient time to walk through, inspect and photograph the interiors of each of the Properties so as to ascertain the current condition of the Properties. [This provision was completed on May 17, 2016];
- (e) Paragraph 5 on page 1: The Plaintiffs shall maintain sole possession of all of the contents (personal property) in and on each of their respective Properties conveyed to the Defendants;
- (f) The last paragraph on page 1: The Defendants' attorney shall notify Plaintiffs' attorney when he has the Defendants' one hundred thirty thousand (\$130,000) closing funds in his trust account, and a closing date shall be set on a date two weeks after said notice being given. [Said notice was given on June 8, 2016].
Plaintiffs shall vacate said Properties by the time of said closing, but the Plaintiffs shall not be required to vacate the Properties any sooner than two weeks following said notice. [The Plaintiffs vacated said Properties within two weeks following said notice];
- (g) Paragraph 4 on page 2: Immediately upon the closing of the sale of the Properties, each party then shall execute a general release of all claims in favor

of the opposing parties in a form acceptable to the parties' attorneys, and such release shall be drafted by the Defendants' attorney;

(h) Paragraph 4 on page 2 (as the parties struck through the provision for voluntary dismissals to be filed): The parties shall NOT execute or file a voluntary dismissal, with or without prejudice, upon receipt of the settlement proceeds;

(i) Paragraph 5 on page 2: The Defendants' attorney shall prepare a consent order which contains the agreements of the parties stated in the Memorandum of Settlement to be signed by the parties. The parties waive any requirement that they sign said order. [Said consent order is the instant Consent Order now being entered];

(j) Paragraph 6 on page 2: Each of the parties shall bear his or her own attorney's fees, costs, and a pro rata share of the costs of the Mediated Settlement Conference. [The parties paid their pro rata costs of mediation on April 27, 2016];

(k) Second Paragraph 5 on page 2: The parties and their respective attorneys agree and consent that the Court may enter an Order consistent with the Memorandum of Settlement and enforce said Consent Order;

(l) Paragraph 1 on page 4 (in Attachment A): Within thirty (30) days, each party shall take all comments, videos, pictures, and other postings off all social media websites regarding any opposing party, regardless of which screenname or user name was used to post it;

(l) Third to the last handwritten Paragraph on page 4 (in Attachment A): The litigation is stayed, and the trial and all hearings on all pending motions shall be postponed for ninety (90) days;

- (m) Second to the last handwritten Paragraph on page 4 (in Attachment A): The Defendants (particularly Cindie Harman who is the alleged victim therein) shall recommend dismissal of the criminal charges against Carl Flamm (the Defendant therein) in Madison County Criminal case # 16-CR-50238;
- (n) Last handwritten Paragraph on page 4 (in Attachment A): If the Defendants cannot close on the Properties within ninety (90) days, they must provide proof that they were denied a loan from at least four (4) lenders, and the Plaintiffs shall have the option to proceed to trial on their Complaint;

7. The following provisions (in the following paragraphs) of the Memorandum of Settlement's Attachment A (on page 4) constitute permanent injunctive relief:

- (a) Paragraph 1: No party shall post, nor cause to be posted, any comments, videos, pictures, and other postings on any website regarding any opposing party, regardless of which screenname or user name was used to post it;
- (b) Paragraph 1: No party shall make any negative comment to any third party about any opposing party;
- (c) Paragraph 6: No party shall interfere with or communicate with any third party with whom any opposing party has a professional, business or personal relationship;
- (d) Paragraph 7: No party shall interfere with, have physical contact with, or communicate with any opposing party except in the case of any emergency and only then in writing;
- (e) Paragraph 9: No party shall file any lawsuit against, nor take out any warrant on, nor cause any warrant to be taken out on, any opposing party or any family member of any opposing party;

(f) Paragraph 10: If any party ever prevails in any contempt motion hearing against any opposing party, the non-prevailing party shall be liable for all costs, including reasonable attorney's fees, for having to bring or to defend said contempt motion;

8. Various interpretive differences arose between the parties related to some terms and conditions of the Memorandum of Settlement, in particular with respect to the closing on the three properties, regarding the legal meaning of the terms "as is," "personal property," and "fixture." The parties negotiated said differences of interpretation and, on July 22, 2016, agreed to an additional agreement, which was as follows (the paragraph letters below correspond to the paragraph letters in the additional agreement settled via attorney emails):

(a) The Plaintiffs shall provide a five thousand dollar (\$5,000) credit to the Defendants at closing, in the amount of one thousand six hundred sixty-six dollars and sixty-seven cents (\$1,666.67) per cabin, which is to be put on the HUD form for each cabin. No alleged personal property or alleged fixtures shall be returned to any of the cabins by the Plaintiffs. [This provision was completed on July 27, 2016];

(b) The Defendants shall have an additional walk through the cabins prior to closing with their attorney, David R. Payne, present. The Defendants shall not speak to the Plaintiffs' attorney, Ms. Rockey, or her assistant, and neither Ms. Rockey nor her assistant shall speak to the Defendants. [This provision was completed on July 26, 2016];

(c) With reference to paragraph 1 of Attachment A to the Memorandum of Settlement (attached hereto as Exhibit A), there shall be no money provided by

Plaintiff, Carl Flamm, for any internet comments about the Defendants that Carl Flamm posted originally prior to July 27, 2016 or that were re-posted by any third party. Specifically, the Plaintiffs reject the request to have \$2,500 held in escrow to compensate the Defendants for the cost of removing any such comments, and the Defendants concede that if any of Carl Flamm's original comments were re-posted by a third party, Carl Flamm does not have the power to remove said comments, even though he requested that they be removed.

[This provision was completed on July 27, 2016];

- (d) The Flamm cabin outbuilding / shed shall remain with the Flamm cabin to be sold to the Defendants. [This provision was completed on July 27, 2016];
- (e) All three Blossman propane gas tanks, that were leased by the Plaintiffs, shall remain on the respective Properties, along with the propane gas in the LaClairs' tank and the Jenks' tank. [The provision in the foregoing sentence was completed on July 27, 2016]. The Plaintiffs shall not have any further responsibility for the propane tanks or the contents in any of the propane tanks on the respective Properties. The Plaintiffs shall not have any further responsibility for any additional Blossman bills generated after the time of closing. The Defendants shall have no duty to assume any contracts between the Plaintiffs and Blossman Propane Gas company;
- (f) Except as modified in the July 22, 2016 agreement, all other terms of the Memorandum of Settlement remain in full force and effect. Paragraph 5 on page 2 of the Memorandum of Settlement is modified as follows: Arlaine Rockey shall write the Consent Order, which contains the agreements of the parties stated in the Memorandum of Settlement, and she will send it to David

Payne for comments, prior to sending it to Judge Gavenus, on or before 5pm on July 21, 2016. [The provision in the foregoing sentence was completed prior to 5pm on July 21, 2016]. David Payne shall respond to her on or before 5pm on July 25, 2016. [The provision in the foregoing sentence was completed prior to 5pm on July 25, 2016]. If the parties' attorneys cannot agree as to the form of the order, Mr. Payne shall send a letter and/or his proposed Consent Order to Ms. Rockey, and she shall send that along with her proposed Consent Order and a copy of the Memorandum of Settlement to Judge Gavenus. [Mr. Payne sent his proposed Consent Order to Ms. Rockey and directly to the Trial Court Coordinator for the Court on August 2, 2016 and filed a Motion in the Cause and a Motion to Dismiss, attaching his proposed Consent Order, and filed a Notice of Hearing on August 3, 2016 regarding in part said Consent Order, and scheduled a hearing on September 6, 2016. Thus, Ms. Rockey did not forward her proposed Consent Order to Judge Gavenus but attached it to the Plaintiffs' Reply and Amended Reply];

- (g) The closings on the Plaintiffs' respective Properties shall occur on the first possible date that both the Plaintiffs' real estate attorney, George ("Greg") F. Goosmann, IV, and the Defendants' real estate attorney, David Payne, can arrange, but it shall be on or before Wednesday, July 27, 2016 (the 91st day after the entry of the Memorandum of Settlement). [The provision was completed on July 27, 2016];
- (h) With regard to the second to the last handwritten paragraph in Attachment A to the Memorandum of Settlement (attached hereto as Exhibit A), on the same day of the closings, Mr. Payne shall cause to be hand-delivered a letter from Mr.

Payne, on behalf of Cindie Harman, (the alleged victim), to Assistant District Attorney John B. Honeycutt, requesting that the criminal charges against Carl Flamm in District Court in Madison County (# 16-CR-50238), be dismissed by the District Attorney's office without leave to re-file, and Mr. Payne shall provide a copy of said letter to Ms. Rockey. [The provision was completed on July 27, 2016];

Based upon the foregoing Findings of Fact and with the consent of the parties, the Court makes the following:

CONCLUSION OF LAW:

1. The Court has jurisdiction over the parties and the subject matter.

Based upon the foregoing Findings of Fact and Conclusion of Law and with the consent of the parties, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Court has jurisdiction over the parties and the subject matter;
2. The Plaintiffs shall not have any further responsibility for the propane tanks or the contents in any of the propane tanks on the respective Properties. The Plaintiffs shall not have any further responsibility for any additional Blossman bills generated after the time of closing. The Defendants shall have no duty to assume any contracts between the Plaintiffs and Blossman Propane Gas company;
3. No party shall post, nor cause to be posted, any comments, videos, pictures, and other postings on any website regarding any opposing party, regardless of which screenname or user name was used to post it;
4. No party shall make any negative comment to any third party about any opposing party;

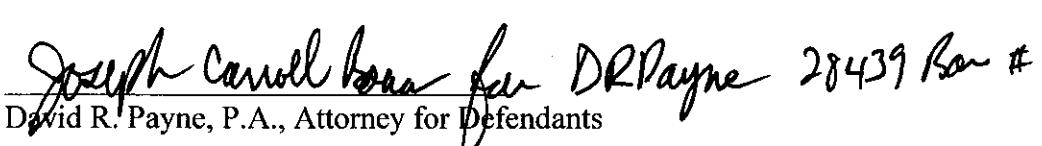
5. No party shall interfere with or communicate with any third party with whom any opposing party has a professional, business or personal relationship;
6. No party shall interfere with, have physical contact with, or communicate with any opposing party except in the case of any emergency and only then in writing;
7. No party shall file any lawsuit against, nor take out any warrant on, nor cause any warrant to be taken out on, any opposing party or any family member of any opposing party;
8. In the event a motion for contempt of this order is filed, the non-prevailing party to said motion shall bear the costs and shall pay reasonable attorney's fees associated with the prosecution and or defense of the same;
9. This Order shall be effective as of the date of filing.

SO ORDERED, this the 8th day of September, 2016.

By: 
The Hon. Alan Thornburg,
Superior Court Judge presiding

WE CONSENT:


Arlaine Rockey, Attorney for Plaintiffs

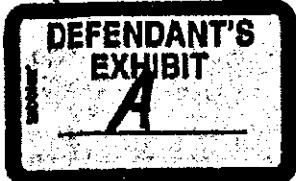

David R. Payne, P.A., Attorney for Defendants

STATE OF NORTH CAROLINA
COUNTY OF MADISON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 15 CVS 143

CARL FLAMM et al.)
Plaintiff,)
v.)
INDIE HARMAN et al.)
Defendant.)

MEMORANDUM OF SETTLEMENT
(MEDIATION)



The Parties hereto stipulate and agree that a Mediated Settlement Conference was conducted on the 27th day of Ap., 2016, and that during the course of said Mediated Settlement Conference an agreement to settle was reached. The terms of this agreement are as follows:

1. The Defendants will pay to the Plaintiff's through their attorney of record herein the sum of \$130,000.00 within 90 days of the date of this memorandum; in exchange, Plaintiff's will convey to Defendants by proper N.C. deed all of Plaintiff's interests in the three parcels of real property owned by Plaintiff in Madison County, N.C. as said property appears in Plaintiff's complaint filed herein.
2. Plaintiff's shall pay all expenses related to said property so as to convey clear title.
3. Defendants shall ~~hold~~ closing early, incl. surveys.
4. The properties shall be conveyed in "as is" condition; the attorneys for the parties shall schedule a mutually convenient time to walk through, inspect and photograph the interiors of each building on each property so as to ascertain current condition.
5. Plaintiff's shall maintain sole possession of all of the contents (personal property) in and on said properties conveyed.

2. Other terms of settlement: See attachment "A"; and
Defendant's counsel shall notify Plaintiff's
counsel when he has the \$130,000 closing funds

in his trust account, and a closing date shall be set on a date two weeks after said notice being given. Plaintiffs shall vacate said real properties ~~by~~ the time of said closing but are not required to vacate the properties any sooner than two weeks following said notice.

3. Issues not settled by this Agreement are as follows:

None.

Immediately, upon the closing of the sale of the real property herein

4. Each party then shall execute a general release of all claims in favor of the opposing parties in a form acceptable to counsel for the parties, such release to be drafted by counsel for the defendants.

~~Plaintiffs~~ shall execute and file a voluntary dismissal with prejudice upon receipt of the settlement proceeds. Other provisions to be contained in the release or settlement agreement, if any, are: / / / /

5. Formal closing documents (Consent Judgment/Order, Release of Claims, etc.) will be signed and/or filed by July 2016 (date).

attorney or party will be responsible for the filing of any closure documents with the Court. Defendant's counsel shall prepare a consent order which contains the agreements of the parties stated herein to be signed by the attorneys for the parties. The parties waive any requirement that they sign said order.

/ / / /

5. The parties and their respective attorneys agree and consent that the Court may enter an Order consistent with this Settlement Agreement and enforce said Order.

This the 27th day of April, 2016.

Plaintiff(s):

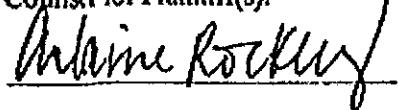


Defendant(s)

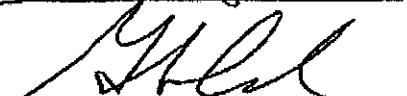
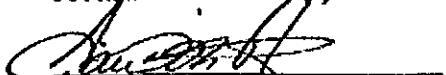


Insurance Carrier Representative

Counsel for Plaintiff(s):

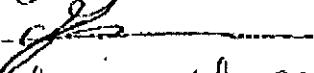
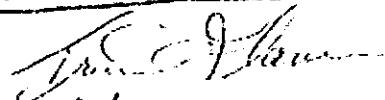


Counsel for Defendant(s)



Gary S. Cash, Mediator

Additional Plaintiffs:



Linda Ha Clark

Mary Jenkins

Joseph B. Jenkins

Defendants



ATTACHMENT A

~~Within 30 days,~~
Each party will, nor make any comment negative
1. Take all comments, videos, pictures, and other postings off all social media websites, to any other person about regarding any Plaintiff/ regardless of what screenname or user name it was posted in, and nor net post or cause to be posted any new comment, video, pictures or other posting about any Party any of the Plaintiff's Party.

✓ 6. ~~No party will~~ Harmans never to interfere with or communicate with any third party with whom any Plaintiff has a professional, business or personal relationship; Party

✓ 7. ~~No Party will~~ ~~have physical contact with~~ Harmans never to interfere with or communicate with any Plaintiff except, and only then in writing, in the case of an emergency, or if they need to request that a professional repair or utility person have permission to go on one of the Plaintiff's properties;

9. ~~No party will~~ Harmans never allowed to file any lawsuit against or take out any warrant on any of the Plaintiff's or any of their family members or guests of any of the Plaintiff's without first obtaining a court order from a Madison County Superior Court Judge granting the Plaintiff permission to do so, after all the Plaintiff's have been given notice and an opportunity to be heard. ~~drop claim to see if possible~~

10. If any of the Plaintiff's ever prevail in any contempt motion against the Harmans, the Harmans shall be liable for all of said Plaintiff(s) costs, including reasonable attorneys' fees, for having to bring said contempt motion.

2

~~Settlement~~

~~Settlement~~

Litigation stayed; trial, motions, hearings, 90 days.
criminal process vs. Carl F. : A recommended dismissal
(letter to DA / copy to A. Rockey : pursuing global
settlement / delay for 90 days / if resolve ...)

If Harmans cannot close within 90 days, they must provide proof of denial from at least 4 lenders, and then the Plaintiff's may have the option to proceed to trial.

ACKNOWLEDGEMENT:

State of North Carolina

Buncombe County

I hereby certify that Carl Flamer personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing agreement for the purpose stated herein and in the capacity indicated.

Date: 4.27.16



Signature of Notary Public

Gary S. Cash, Notary Public

My Commission Expires: 12/7/20

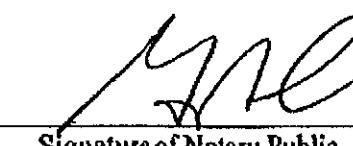


State of North Carolina

Buncombe County

I hereby certify that Trina Flamer personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing agreement for the purpose stated herein and in the capacity indicated.

Date: 4.27.16



Signature of Notary Public

Gary S. Cash, Notary Public

My Commission Expires: 12/7/20



ACKNOWLEDGEMENT:

State of North Carolina

Buncombe County

I hereby certify that Gary LaClair personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing agreement for the purpose stated herein and in the capacity indicated.

Date: 4.27.16


Signature of Notary Public

Gary S. Cash, Notary Public

My Commission Expires: 12/7/20

GARY S. CASH
(Official Seal)
NOTARY
PUBLIC
ACKNOWLEDGEMENT:
BUNCOMBE COUNTY, NC
State of North Carolina

Buncombe County

I hereby certify that Linda LaClair personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing agreement for the purpose stated herein and in the capacity indicated.

Date: 4.27.16


Signature of Notary Public

Gary S. Cash, Notary Public

My Commission Expires: 12/7/20

GARY S. CASH
(Official Seal)
NOTARY
PUBLIC
BUNCOMBE COUNTY, NC

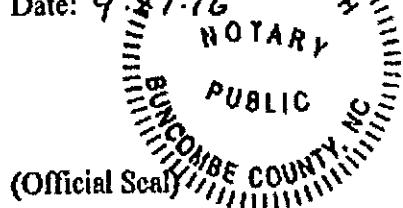
ACKNOWLEDGEMENT:

State of North Carolina

Buncombe County

I hereby certify that Cindie Harnay personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing agreement for the purpose stated herein and in the capacity indicated.

Date: 4.27.16



A handwritten signature of Gary S. Cash.

Signature of Notary Public

Gary S. Cash, Notary Public

My Commission Expires: 12/7/20

ACKNOWLEDGEMENT:

State of North Carolina

Buncombe County

I hereby certify that Ryan Harnay personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing agreement for the purpose stated herein and in the capacity indicated.

Date: 4.27.16



A handwritten signature of Gary S. Cash.

Signature of Notary Public

Gary S. Cash, Notary Public

My Commission Expires: 12/7/20