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Widewater Square Associates v. Opening Break of America, Inc.
S.C.,1995.

Supreme Court of South Carolina.
WIDEWATER SQUARE ASSOCIATES, 84 Limited Partnership, A South Carolina Limited Partnership, Respondent,
v.
OPENING BREAK OF AMERICA, INC., Petitioner,
v.
Joe EDENS, Edens & Avant, Inc. and Robert P. Kapp, Jr., Respondents.
No. 24287.

Heard May 16, 1995.
Decided July 24, 1995.
Rehearing Denied Aug. 24, 1995.

After administrative judge entered form order which indicated that case had been settled, plaintiffs retained new counsel who moved to file and serve amended complaint. On hearing on motion defendant maintained that case had been dismissed by earlier order, and that jurisdiction was lacking over plaintiffs' motion. The Circuit Court, Richland County, Ellis B. Drew, Jr., Special Judge, granted motion, and defendant appealed. The Court of Appeals, 314 S.C. 149, 442 S.E.2d 185, affirmed. Defendant petitioned for certiorari. The Supreme Court held that even if form order reflected a settlement, settlement was not enforceable since it was neither admitted by plaintiffs nor executed.

Affirmed as modified.

West Headnotes

[1] Compromise and Settlement 89 5(1)

89 Compromise and Settlement
89I In General
89k1 Nature and Requisites

89k5 Making and Form of Agreement

89k5(1) k. In General. **Most Cited Cases**
Settlement order is unenforceable where it fails to set forth terms of settlement as required by civil procedure rule. **Rules Civ.Proc., Rule 43(k).**

[2] Compromise and Settlement 89 5(1)

89 Compromise and Settlement

89I In General

89k1 Nature and Requisites

89k5 Making and Form of Agreement

89k5(1) k. In General. **Most Cited Cases**
Even if form order concerning status of action reflected a settlement, settlement was not enforceable where it was neither admitted by plaintiffs nor executed. **Rules Civ.Proc., Rule 43(k).**

****396 *244 Daryl G. Hawkins** and Pete Kulmala, both of Lewis, Babcock & Hawkins, Columbia, for petitioner.

Hoover C. Blanton and **Thomas E. McCutchen**, both of McCutchen, Blanton, Rhodes & Johnson, Columbia, for respondents.

PER CURIAM:

We granted certiorari to review the Court of Appeals' decision in *Widewater Square Associates v. Opening Break of America, Inc.*, 314 S.C. 149, 442 S.E.2d 185 (Ct.App.1994). We affirm as modified.

This appeal involves a dispute over the meaning and effect of a form order. Following a roster meeting, the administrative judge, using a **Form 4, SCRCP**, form order, checked the block marked "Settled", failed to check the block marked "Action Dismissed", and provided in the space reserved for "Statement of Judgment by Court" this phrase: "Noted at Roster Sounding." After entry of this form order, respondents retained new counsel who filed a motion to be allowed to file and serve an amended complaint. At a hearing on this motion,

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petitioner's counsel maintained the case had been dismissed by the earlier order, and therefore the circuit court lacked jurisdiction over respondents' motion. The circuit court judge *245 concluded the Form 4 order was simply an **397 administrative order and granted respondents' motion. Petitioner appealed.

The Court of Appeals affirmed the circuit court ruling, holding the Form 4 order was ambiguous and that it was properly construed as an administrative order reflecting the status of the action that was neither a dismissal nor a final judgment. We granted certiorari and now affirm as modified.

[1][2] We recently held that a settlement order is unenforceable where it fails to set forth the terms of the settlement as required by Rule 43(k), SCRPC. *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995). Even if we were to find that the form order at issue here reflected a settlement, such settlement would not be enforceable since it is neither admitted by respondents nor has it been executed. *Ashfort, supra*. Accordingly, the opinion of the Court of Appeals affirming the circuit court's decision to allow this litigation to proceed is

AFFIRMED AS MODIFIED.

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