

**IN THE CIRCUIT COURT FOR THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA**

| | | |
|-----------------------------|---|-------------------------|
| PHILIP J. VON KAHLE, et al, |) | CASE NO. 12-034123 (07) |
| Plaintiffs, |) | COMPLEX LITIGATION UNIT |
| v. |) | |
| |) | |
| MICHAEL D. SULLIVAN, |) | |
| Defendant. |) | |
| _____ | / | |

DEFENDANT’S MOTION TO ENFORCE SETTLEMENT

COMES NOW, the Defendant, MICHAEL SULLIVAN (hereinafter “Defendant”), by and through its undersigned attorney, and hereby files this Motion to Dismiss/Enforce the Settlement and states as follows:

1. On June 25, 2014, the Plaintiff and Defendant executed a Confidential Settlement Agreement.
2. Defendant has fulfilled and stands ready, willing and able to perform any and all obligations imposed on Defendant pursuant to the Settlement Agreement.
3. On July 28, 2014, counsel for Plaintiff and Defendant announced the settlement to this Court and the Court approved said settlement.
4. On December 30, 2014 Plaintiff either intentionally or negligently allowed the Final Judgment to be recorded in the Broward County Official Records and that such recording is contrary to the Settlement Agreement and violates the Settlement Agreement terms and conditions causing Defendant damages and incursion of attorney’s fees to bring this motion. (See Attached).
5. Notwithstanding the above and multiple telephone calls and emails to Plaintiff’s counsel to remove the Final Judgment from the official records, Plaintiff’s

counsel has refused to do so. It is clear that Plaintiff's actions were a spiteful retaliation to Defendant's prior Motion to Enforce.

6. Defendant's counsel has operated under the oral representation of Plaintiff's counsel almost from the inception of these proceedings that Defendant would be released and the execution of the Settlement Agreement was to be the fulfillment of that representation. In fact, Defendant has given a sworn statement and delivered documents to Plaintiff's counsel in accordance with the terms of the settlement and that discovery and trial preparation was terminated based on the settlement of the parties.

7. Defendant is entitled to entry of a court order enforcing the Settlement Agreement and an award of attorneys' fees and costs for the execution of this motion.

MEMORANDUM OF LAW

As a general matter, "[s]ettlement agreements are highly favored" and policy favors "enforce[ing] such agreement whenever possible. Where the parties have agreed to the essential terms of a settlement, it will be enforced." [State Farm Mut. Auto. Inc. Co. v. InterAmerican Car Rental, Inc., 781 So.2d 500, 502 \(Fla. 3d DCA 2001\)](#) (citations omitted). In that regard, a party may move to enforce a settlement agreement that has not been complied with by another party to the agreement. See e.g. [Spiegel v. H. Allen Holmes, Inc., 834 So.2d 295, 298 \(Fla. 4th DCA 2002\)](#). In ruling on such a motion, the court may consider evidence provided at the hearing and award attorneys' fees to the movant. Id. (Holding that "[a]s the defendant was forced to file a motion... and participate in an evidentiary hearing to enforce the settlement agreement, it is entitled to attorney's fees."). Where the evidence reflects that there was a meeting of the minds to form an agreement,

such as in this matter, the court will enforce the agreement. [Id. at 297](#); [State Farm, 781 So.2d at 502](#) (citation omitted).

In this matter, the parties have executed the Settlement Agreement; however, the Plaintiff has failed to comply therewith. As such, the Defendant has been forced to file this motion to enforce the Settlement Agreement and/or continue the pending trial.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant its Motion to Dismiss/Enforce Settlement and award attorneys' fees and costs for the execution of this motion.

By: /s/ Harry Winderman
HARRY WINDERMAN, ESQ.
Florida Bar No.: 0209562
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**** FILED: BROWARD COUNTY, FL Howard C. Forman, CLERK 12/19/2014 2:38:32 PM.****

From:

12/18/2014 16:58

#963 P.002/005

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

Case No. 12-034123 (07)
Complex Litigation Unit

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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FINAL JUDGMENT BY CONSENT AGAINST MICHAEL D. SULLIVAN

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships" and with the Conservator, the "Plaintiffs") and Michael D. Sullivan ("Sullivan" or "Defendant") have agreed to a resolution of the above-styled lawsuit, solely between the Plaintiffs and Sullivan, on the terms set forth below. The Court has considered the record, noting the voluntary agreement of the parties, and determined that good cause exists to enter this Final Judgment in the manner set forth below. All parties consenting hereto,

IT IS ORDERED AND ADJUDGED as follows:

- A. Final judgment is entered in favor of the Plaintiffs and solely against the Defendant, Michael D. Sullivan, 2590 NE 41st St Fort Lauderdale, FL 3330 in the total amount of \$50,000.00, for which let execution issue.
- B. The amounts awarded in this judgment shall bear interest at the statutory rate of 4.75% per year, for which let execution issue.
- C. For all sums awarded herein, let execution issue forthwith.

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#963 P.003/005

D. Each party is to bear its own attorneys' fees and costs.

E. Nothing in this Order is intended to or shall be construed to reflect any admission or determination of the truth of any factual or legal allegation asserted by the Plaintiffs in this

lawsuit through the Complaint or otherwise, which allegations the Defendant specifically deny.
F. By consenting to the entry of this Order, the Defendant irrevocably waives any right to challenge the relief granted by this Order through appeal or otherwise.
G. Entry of this Final Judgment does not impact the rights or defenses of any other defendant in this action. Nor does entry of this Final Judgment act as a dismissal or release of

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any defendant in this action.

H. Entry of this Final Judgment does not impact the rights of the parties or alter the terms of that certain settlement agreement entered into between the Conservator and Sullivan dated June 26, 2014 and approved by the Court on July 28, 2014.

DONE AND ORDERED this 19th day of December, 2014, at Broward County, Florida.

HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Consented to by:

Michael D. Sullivan
Date: December 18, 2014

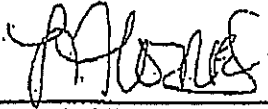
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing signature was acknowledged before me this 18 day of December, 2014, by Michael D. Sullivan who produced his driver's license or _____ as identification.

From:

12/10/2014 16:59

#963 P.004/005



Notary Public



[SIGNATURES CONTINUED ON THIRD PAGE]

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From:

12/18/2014 16:59

#963 P.005/005

Consented to by:

HARRY WINDERMAN, ESQ.

Counsel for Sullivan

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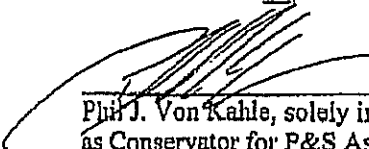
By: 

Harry Winderman, Esq.

Fla. Bar No. 0209562

Counsel for Defendant

Date: December 18, 2014



Phil J. Von Kahle, solely in his capacity as
as Conservator for P&S Associates, General
Partnership ("P&S") and S&P Associates,
General Partnership ("S&P")
Date: December __, 2014

MESSANA, P.A.

Counsel for the Plaintiffs

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By: 

Thomas M. Messana, Esq.

Florida Bar No. 991422

Date: December 15, 2014

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