

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

SUMMIT RESOURCES, INC.)
a West Virginia corporation,)
)
Plaintiff,)
) Civil Action No.: 14-C-60
v.)
)
CLASSIC OIL & GAS SERVICES,) Honorable Paul T. Farrell
INC., a foreign corporation and)
CLASSIC PIPELINE, INC., a)
West Virginia corporation,)
)
Defendants.)

ORDER GRANTING MOTION TO ENFORCE SETTLEMENT

On June 13, 2017 came Plaintiff Summit Resources, Inc. and Defendants Classic Oil & Gas Services, Inc. and Classic Pipeline, Inc., by their respective counsel, for the hearing on Plaintiff's Motion to Enforce Settlement. Also present was Ms. Lezlie Kelly, Mr. Michael Kelly, and Mr. Alvin Kirk, individually. After hearing argument from Counsel and after giving Mr. Kirk the opportunity to explain his objection to the settlement agreement, the Court hereby finds as follows:

FINDINGS OF FACT

1. Summit agreed to settlement terms with Mrs. Kelly, Classic Pipeline, Inc. and Classic Oil & Gas Services, Inc. on April 17, 2017.
2. Upon settlement of this matter, Summit advised the Court that the matter had been settled and that there was no need to proceed to trial. In response, the Court ordered the parties to submit a dismissal order to the Court by May 19, 2017.
3. During the process of drafting the settlement documents, Summit contacted defense counsel to determine who provided settlement authority on behalf of Classic Pipeline,

Inc. and to determine who would be signing the settlement documents on behalf of Classic Pipeline, Inc.

4. Defense counsel advised that it had been advised by Mrs. Kelly that her son, Michael Kelly, was the President of Classic Pipeline, Inc. Defense counsel further advised that upon inquiry, Michael Kelly confirmed that he was the President of Classic Pipeline, Inc. Defense counsel also advised that he had confirmed that Michael Kelly was the President of Classic Pipeline, Inc. with the West Virginia Secretary of State. Finally, defense counsel advised that Michael Kelly approved the settlement on behalf of Classic Pipeline, Inc.

5. Out of an abundance of caution, counsel for Summit confirmed with the Secretary of State that Michael Kelly was the President of Classic Pipeline, Inc.

6. Summit then drafted the settlement documents and proposed Agreed Dismissal Order for review by defense counsel. Defense counsel approved the settlement documents and the proposed Agreed Dismissal Order and gave Summit permission to sign counsel's name on the Order.

7. On May 19, 2017 defense counsel advised that there was difficulty contacting Classic Pipeline, Inc. for purposes of signing the settlement documents, but that the fully executed settlement documents would be provided by May 22, 2017.

8. Instead of seeking an extension, the parties agreed to submit the Agreed Dismissal Order with the request that the Order be held for several days to allow Classic Pipeline, Inc. to execute the settlement documents. The Agreed Dismissal Order was entered by the Court on May 22, 2017.

9. On May 23, 2017 Summit was advised that there was an issue prohibiting Classic Pipeline, Inc. from executing the settlement documents. Summit was advised that Mr. Alvin

Kirk claimed that he was the President of Classic Pipeline, Inc. not Michael Kelly. Mr. Kirk also advised defense counsel that he would not sign the settlement documents on behalf of Classic Pipeline, Inc.

LEGAL ANALYSIS

The West Virginia Supreme Court addressed the concept of apparent authority in General Electric Credit Corp. v. Fields, 148 W.Va. 176, 133 S.E.2d 780 (1963), observing that authority to do a particular act may be inferred. More specifically, the Court held that:

One who by his acts or conduct has permitted another to act apparently or ostensibly as his agent to the injury of a third party who has dealt with the apparent or ostensible agent in good faith and in the exercise of reasonable prudence, is estopped to deny the agency relationship.

Id. at Syl. Pt. 1, 133 S.E.2d 780. Evidence supporting the existence of apparent authority includes “statements, conduct, lack of ordinary care, or other manifestations of the principal’s consent.” Clint Hurt & Assoc. v. Rare Earth Energy, 198 W.Va. 320, 480 S.E.2d 529, 536 (1996).

In this case, Michael Kelly had apparent authority to accept the settlement terms on behalf of Classic Pipeline, Inc. because all three elements of the apparent authority doctrine have been met. First, Classic Pipeline, Inc. held Michael Kelly out to the public as its President. Mr. Kelly is listed as the Company’s President with the Secretary of State. The only way that he would be so listed is by the submission of a formal corporate filing with the Secretary of State. In other words, Classic Pipeline, Inc. took affirmative action to have Mr. Kelly listed as its President with the Secretary of State. Even if the filing with the Secretary of State was made without Classic Pipeline, Inc.’s permission, it has not corrected the filing and has allowed the

Secretary of State to represent that Mr. Kelly is the Company's President. As such, Classic Pipeline, Inc. has permitted Michael Kelly to act apparently or ostensibly as its agent.

Second, Summit dealt with Michael Kelly to its detriment. By relying on Mr. Kelly's acceptance of the settlement terms on behalf of Classic Pipeline, Inc., Summit submitted a dismissal order that represented that its claims against Classic Pipeline, Inc. were settled. As a result, Summit's claims against Classic Pipeline, Inc. have been dismissed and Classic Pipeline, Inc. has backed out of the settlement.

Finally, Summit acted in good faith and in the exercise of reasonable prudence. Summit specifically inquired of defense counsel regarding Mr. Kelly's authority to act on behalf of Classic Pipeline, Inc. It would have been reasonable for Summit to rely upon the representation of defense counsel that Mr. Kelly was the President of Classic Pipeline, Inc. Instead of simply relying upon defense counsel's representation, Summit took the additional step of confirming Mr. Kelly's position with the Secretary of State. Therefore, because all three elements of the apparent authority doctrine apply, Michael Kelly had authority to act on behalf of Classic Pipeline, Inc. and to bind it to the settlement terms.

In addition, defense counsel itself had apparent authority to bind Classic Pipeline, Inc. This is because "when an attorney-client relationship exists, apparent authority of the attorney to represent his client is presumed." Sly. Pt. 1, Mironosky v. Parson, 152 W.Va. 241, 161 S.E.2d 665 (1968). The West Virginia Supreme Court addressed the significance of this presumption of apparent authority with regard to settlement agreements in Sanson v. Brandywine Homes, Inc., 215 W.Va. 307, 599 S.E.2d 730 (2004). The Sanson plaintiffs alleged that their attorney had reached the settlement with the corporate defendant without their authorization. Although

accepting the position of the plaintiffs, the decision to enforce the settlement agreement was upheld based upon the presumption that counsel had authority to represent the client.

The West Virginia Supreme Court addressed an almost identical situation as in this case in Messer v. Huntington Anesthesia Group, Inc., 222 W.Va. 410 (2008). In Messer, counsel represented a medical group that was owned by multiple partners. Counsel believed that all of the partners had accepted the settlement and therefore, he advised the plaintiff that the case was settled. Plaintiff's counsel provided draft settlement documents that were edited and finally approved by counsel for the medical group. Once it was time for the parties to sign the settlement documents, one of the partners refused to do so, claiming that he never agreed to the settlement terms. Counsel for the medical group advised Plaintiff's counsel that the settlement was off, at which point the Plaintiff filed a motion to enforce the settlement. The motion was denied by the circuit court. On appeal, the West Virginia Supreme Court reversed the circuit court's decision. In doing so, the Supreme Court held:

These facts simply do not establish the clear showing necessary to overcome the presumption of Mr. Dellinger's apparent authority to bind his clients to the settlement agreement. Appellant acted in good faith and exercised reasonable prudence in relying on the apparent authority of Mr. Dellinger, and by so doing is entitled to enforcement of the settlement agreement. . . . Accordingly, it was error for the lower Court to deny Appellant's motion to enforce the settlement agreement, and that ruling cannot stand.

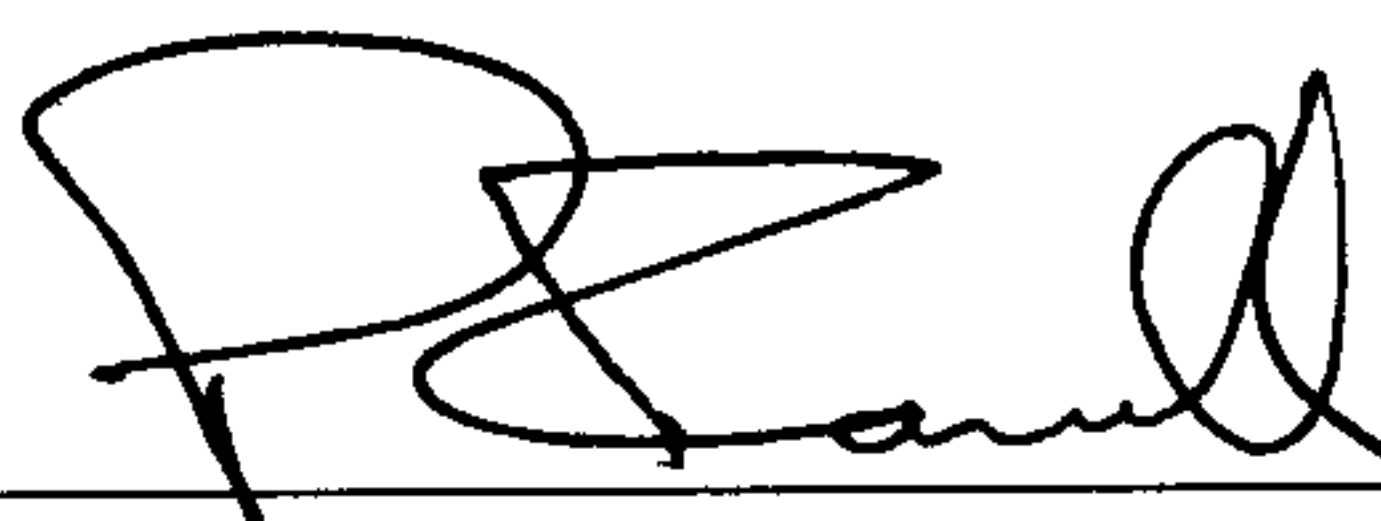
In this case, defense counsel undeniably represented Classic Pipeline, Inc. Counsel filed pleadings on behalf of Classic Pipeline, Inc. and represented Classic Pipeline, Inc. in court. Clearly, defense counsel had authority to bind Classic Pipeline, Inc. Defense counsel advised Summit that Classic Pipeline, Inc. accepted the settlement terms. Defense counsel even reviewed the settlement documents and made edits to them on behalf of Classic Pipeline, Inc.

Finally, defense counsel represented to the Court that a settlement had been reached. While Summit represented that defense counsel did not act improperly in any way, Summit reasonably relied to its detriment upon defense counsel's representations that the case was settled. Just as in Messer, it was not until time to sign the settlement agreement that it was learned that there was an issue. Since the West Virginia Supreme Court has provided clear instruction that, in instances such as these, there is a binding settlement agreement; Summit's motion shall be granted.

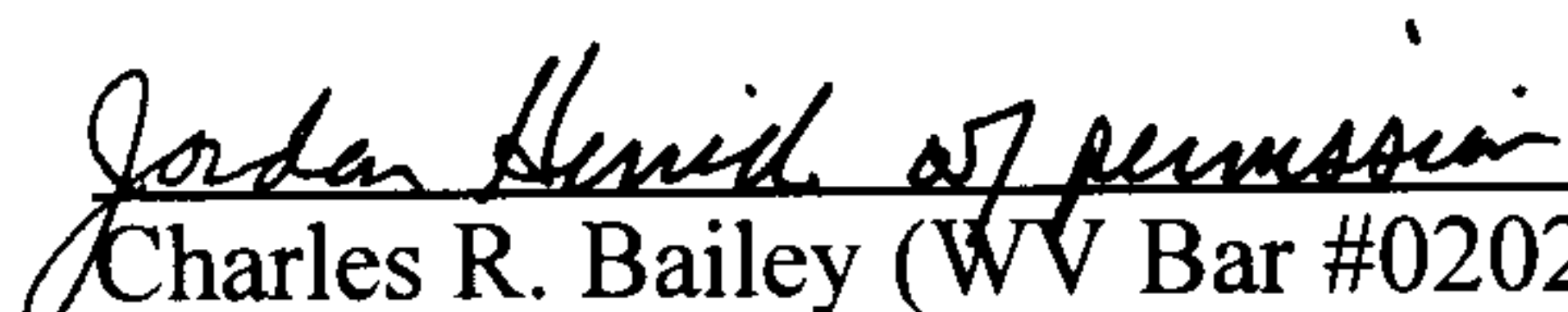
Therefore, it is the **ORDER** and **JUDGMENT** of this Court that Plaintiff's Motion to Enforce Settlement is hereby **GRANTED**, and accordingly, this action shall be, and hereby is, **DISMISSED** with prejudice and **STRICKEN** from the docket of this Court with each party bearing its own attorneys' fees and costs.

It is further **ORDERED** that the Clerk of this Court mail a certified copy of this Order to counsel of record.

ENTERED this 7 day of June, 2017.


HONORABLE PAUL T. FARRELL

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