IN THE CIRCUIT COURT OF THE l5TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018-CA-002317

WALTER E. SAHM and
PATRICIA SAHM,

Plaintiffs,

BERNSTEIN FAMILY REALTY, LLC and
ALL UNKNOWN TENANTS., et.al.

Defendants

DEFENDANTS' MEMORANDUM TO ENFORCE THE SETTLEMENT AS A MATTER OF LAW

COMES NOW, Defendant Bernstein and BFR, by and through the undersigned and files this memo of law and attached closing arguments as follows:

1. Judgment must be entered as a matter of law in favor of upholding the Settlement as the law is clear that all parties are presumed to have the right to contract unless these rights are taken away by an adjudication according to due process.
2. This memorandum supplements the arguments in the closing argument, attached as Exhibit 1.
3. This Court is reminded that the Guardianship Petition against Patricia A. Sahm was filed only after allegations of fraud had been raised in Bankruptcy Court and after she had hired a new counsel Morgan Weinstein, Esq. to replace Mr. Sweetapple and had revoked her POA with Joanna Sahm.

4. In fact, the Petition was filed by Joanna Sahm 4 days after the fraud allegations in Bankruptcy were raised where Joanna Sahm first acted to remove or push Patrica A. Sahm's new counsel Morgan Weinstein off the case on the same day as Bankruptcy.
5. The Guardianship was filed by Joanna Sahm the following Monday, yet Joanna Sahm is not a party in this foreclosure.
6. This is just one reason why Mr. Sweetapple's claim on collateral estoppel does not apply.
7. "The essential elements of the doctrine are that the parties and issues be identical, and that the particular matter be fully litigated and determined in a contest which results in a final decision of a court of competent jurisdiction." See *Smith v. Perry*, 635 So. 2d 1019 (Fla. Dist. Ct. App. 1994)
8. The parties here are not identical to the Guardianship case. BFR, LLC was not a party in the Guardian case nor was Joanna Sahm a party in this foreclosure.
9. Nor did Judge Burton issue any Order prior to the settlement much less a fully adjudicated determination of incapacity. To the contrary this was by Stipulation and Consent of attorney Amber Patwell.
10. Every District Court of Appeals in the State of Florida has upheld this principle which must be applied here.
11. This is true even where a Petition for Guardianship or ETG has been filed but no ETG or adjudication of incompetency has occurred the AIP still is presumed to be competent and maintains the right to contract.
12. It is without question that Patricia A. Sahm was not adjudicated incompetent by any Court of competent jurisdiction according to hearing and constitutional due process and did not

have her right to contract taken away by any such Court at the time the Settlement was entered into and thus as a matter of law the Settlement must now be upheld.

13. In *Harmon v. Williams*, the 2nd DCA found, "Although the parties debate the issue of Patsy's competency to contract, we do not address it because her incompetency was never established by due process of law, and she is thus presumed competent. § 90.601, Fla. Stat. (1989*); Zabrani v. Riveron*, 495 So.2d 1195 (Fla. 3d DCA 1986)." See, *Harmon v. William*s, 596 So. 2d 1139 (Fla. Dist. Ct. App. 1992)

14. It was the burden of the Guardian to prove Patricia A. Sahm was incompetent "at the time" the Settlement was issued, and it is without question there was no adjudication of incompetence at this time and thus the Settlement must be upheld.

15. The 3rd DCA has likewise held, "Because competency is presumed until the contrary is established, *Williams*, 2 Fla. at 68; see § 90.601, Fla. Stat. (1985), *Zabrani* has the burden of proving that Monroy was incompetent at the time the statement was given. *Hackmann v. Hyland,* 445 So.2d 1079, 1080 (Fla.3d DCA 1984); C. Ehrhardt, Florida Evidence § 603.1 (2d ed. 1984); see *Henderson v. United States*, 218 F.2d 14 (6th Cir.), cert. denied, 349 U.S. 920, 75 S.Ct. 660, 99 L.Ed. 1253 (1955)." See, *Zabrani v. Riveron*, 495 So. 2d 1195 (Fla. Dist. Ct. App. 1986).

16. The 2nd DCA makes this clear in *Holmes v Burchett* in the context of someone alleged to be incompetent where a Guardian Petition has been filed and still makes it clear that the right to contract is not lost until properly adjudicated incapacitated sufficient to take away the right to contract. See, Holmes *v. Burchett,* 766 So. 2d 387 (Fla. Dist. Ct. App. 2000).

17. Holmes is very similar as the alleged AIP filed their own written submissions of choices like Patricia A. Sahm had already done here by filing the Revocation of Powers of Attorney to Joanna Sahm and terminating Robert Sweetapple as her counsel.

18. In *Holmes* the 2nd DCA noted, "In *Harmon v. Williams*, 596 So.2d 1139, 1142 (Fla. 2d DCA 1992), approved, 615 So.2d 681 (Fla. 1993), this court held that a person is presumed competent to contract unless incompetency is established by due process of law. Cf. *In re Guardianship of Bockmulle*r, 602 So.2d 608, 609 (Fla. 2d DCA 1992) (holding right to contract was removed by order determining ward's incapacity). Here, **by failing to conduct an adjudicatory hearing before finding that Holmes did not have the capacity to contract and retain counsel of her choice, the trial court failed to establish Holmes' incapacity by due process of law.** Cf. In re Fey, 624 So.2d 770, 772 (Fla. 4th DCA 1993) (**holding compliance with requirements of section 744.331 to be mandatory and failure to adhere to those requirements constituted error of fundamental proportions)**." See *Holmes v. Burchett*, 766 So. 2d 387 (Fla. Dist. Ct. App. 2000).

19. The First DCA likewise makes it clear again finding ""**a person is presumed competent to contract unless incompetency is established by due process of law."** *Holmes v. Burchett*, 766 So.2d 387, 388 (Fla. 2d DCA 2000) (citing *Harmon v. Williams*, 596 So.2d 1139, 1142 (Fla. 2d DCA 1992), approved, 615 So.2d 681 (Fla.1993)). Holmes lays out the specifics of an adjudicatory hearing on a motion for substitution and the factual findings necessary to show that an individual is "incapacitated with respect to the exercise of her right to contract and engage counsel," See *Campbell v. Campbell*, 219 So. 3d 938 (Fla. Dist. Ct. App. 2017).

20. The **Plaintiff Guardian can not only not show Patricia A. Sahm had been in fact "adjudicated" incompetent *at the time the Settlement was entered but*** cannot possibly show any such finding by due process of law.

21. The Settlement was entered on May 22, 2023.

22. No adjudicatory hearing occurred with Patricia A. Sahm when Judge Burton had the case and any finding and Order against Patricia A. Sahm was done by stipulation by counsel Amber Patwell who understood the Settlement would go forward.

23. This occurred after, in June 2023.

24. **All of this occurred after the Settlement and thus Patricia A. Sahm was presumed competent by law at the time of Settlement and the Settlement must be upheld.**

25. The Florida Supreme Court has consistently upheld the policy of favoring Settlements amongst parties.

26. "Generally, Florida courts enforce general releases to further the policy of encouraging settlements. Numerous Florida cases have upheld general releases, even when the releasing party was unaware of the defect at the time the agreement was executed." See, *Mazzoni Farms, Inc. v. E.I. DuPont de Nemours & Co*., 761 So. 2d 306 (Fla. 2000).

27. The Settlement should now be Ordered as upheld.

28. Defendants reserve all rights to apply for costs and fees and attorney fees as allowed by law.

WHEREFORE, it is respectfully prayed for an Order upholding the Settlement of this foreclosure action as executed and for such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all parties requiring service were served electronically via the Florida E-Court filing portal on this 13th day of February 2025.

Respectfully submitted,

/s/Inger Garcia, Esq.
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CLOSING ARGUMENTS OF DEFENDANTS

Your Honor, we stand here asking this court to finally end this case based on a valid settlement by the parties.

This settlement was done between the parties and reviewed and approved by counsel for Patricia Sahm and the Bernstein Defendants and BFR – the debtor. Counsel for Sahm at the time of the settlement was Amber Patwell, Esq. who was approved by the Guardianship courts to be her lawyer, who appeared for her in that case, the mental health case, and in this instant foreclosure. Mr. Sweetapple stands before this court claiming that the settlement is invalid based on fraud and undue influence. Although he has proved neither, he still stands here and expects this court to set aside a legitimate settlement. In fact, his witness Joanna Sahm and Sweetapple himself admitted to not having any information about the actual settlement actions taken by the parties or Patwell at the time, so the only evidence presented to this court was through the cross examination of the then committee member, cross of Joanna Sahm and the testimony of Ms. Garcia, Esq., counsel for the Defendants in this matter.

Plaintiff, the substituted Guardian Charles Revard did not testify and he was not at the second hearing, so he was not able to be cross examined to even discover his motives and proof in filing this motion to set aside the settlement over a year after the settlement was entered into.

The contract is clear, and it clearly references the fact that the funds have been sitting in this court's registry for years and have been ordered to be released for the settlement payment of $225,000.00. The contract also references the cooperation of these Plaintiffs and all parties and attorneys to not interfere with the settlement and to implement it with any necessary court orders.

Mr. Sweetapple makes arguments of collateral estoppel and is trying to prevail over this trial issue by referring to court documents only, with absolutely no proof of wrongdoing by anyone in relation to this settlement.

The evidence shows the following:

1. That Settlement Agreement was executed by all relevant parties on May 22, 2023.
2. At the time the Settlement Agreement was entered into, former Plaintiff Patricia Sahm, was represented by her court approved attorney, Amber Patwell, Esq., who

formally appeared in the mental health case, the guardianship case, and in this instant foreclosure case.

3. In evidence is a copy of the retainer agreements for both Morgan Weinstein, Esq. and Amber Patwell, Esq. signed by Patricia Sahm showing that Ms. Patricia Sahm hired these lawyers independent of Defense counsel Inger Garcia, Esq. specifically to settle this case. Morgan Weinstein, Esq. Retainer pre-dates the mental health case and he was hired prior to the guardianship and mental health cases even being known or filed. The guardianship and mental health cases were not filed until after it was disclosed by Ms. Garcia to the bankruptcy court and Brad Schreiber, Esq, the purported lawyer for the Estate of Walter Sahm and Patricia Sahm, individually, and to Joanna Sahm; that Ms. Sahm hired another lawyer and was working on a settlement of this foreclosure case. There is no proof it was done outside of Sahm's own free will and choice.
4. As a result of that disclosure, Joanna Sahm rushed to the mental health and guardianship court to file a guardianship against her mother. The Defendants' position is that case has simply been a tactical filing to isolate Ms. Patricia Sahm from her other daughter Patricia Sahm, Jr. and mainly for the purposes of setting aside this agreement.
5. Ms. Patwell was brought up early in the mental health case and the guardianship case, and her retainer is in evidence. Patwell substituted for Laura Borne Berkhalter, Esq. and the court entered the stipulation for substitution of counsel, without objection by petitioner Joanna Sahm. That is also in evidence.
6. Patwell was accepted as the sole attorney for Ms. Patricia Sahm at that time. The retainer includes language that Patwell is Patricia Sahm's attorney for the mental health case, as well as this case- to defend Ms. Sahm and settle this matter, if they determined it was reasonable.
7. Similarly, Mr. Sweetapple informed this court that the guardianship and mental health cases were filed – thereby effectively telling this court his hands were tied, and he could do nothing unless reappointed by the GA court at a future date. Mr. Sweetapple was never re-hired by Patricia Sahm, and he was not appointed to be an attorney for the new substituted Plaintiff, the Guardian Charles Revard until after this case was already resolved by Patricia Sahm and her lawyer Patwell.
8. Numerous hearings took place in front of Judge Burton where this agreement was discussed and Patwell turned over her retainer, invoice, and attorney notes. Judge Burton read into the record in that case some of the notes and accepted Ms. Patwell. (In the transcripts in evidence). In the end, Judge Burton returned this case to this Court to make whatever determination it chose as to the settlement. If Judge Burton

had any concerns, he had numerous hearings he could have set aside the settlement or addressed concerns, and nothing was ordered to that effect.

9. Note that Ms. Patwell, at the time of representing Ms. Patrica Sahm, had the ability to settle or not settle this case solely as she and her client chose. The fact that Sweetapple and the guardian, in hindsight, do not like the agreement is irrelevant. Patrica Sahm entered into this agreement knowingly, there was a history of settlement negotiations, Ms. Sahm was represented by competent counsel, as there is no proof of Patwell not providing competent and proper legal services to her client.
10. At the time the settlement was entered into, Patricia Sahm was not declared incompetent, and the subsequent order of limited guardianship does not contain a date of competency or that the court even held a hearing on the issue. Also Ms. Patwell had access to the three committee reports, two of them in evidence. Dr Cheshire in her committee member report stated that Patricia Sahm could enter into contracts with the advice of her lawyer – which in fact, is exactly what took place.
11. The testimony of Stanley Bloom was not credible. On direct, Bloom was led by Sweetapple to state Sahm had dementia and significant cognitive impairment. On the cross examination it was uncovered that he is not a Florida doctor, that his findings were not consistent with the MOCA test standards for anything more than mild cognitive impairment, that he misrepresented testifying at the incapacity hearing (which did not take place), and he attempted to justify his testimony by improperly reading into the record a hearsay Dr. letter dated over a year after the settlement. Bloom's testimony was not convincing and in fact perjured testimony. Bloom stated he never applied to Florida to be a licensed Doctor on Cross after counsel informed him of the 119 requests to the state wherein he did apply and has been denied since 1984. The third report of the committee member who did the MOCA test as a purported social worker, was also brought up on cross and Bloom did not know that she had in fact allowed her social worker license to lapse. There was also presented that the guardian sought to expand his powers of control a year after the initial filings and that these same committee member's reports were stricken and not used as they violated Patricia Sahm's right to the constitutional protect ions and to the presumption of capacity.
12. That leads us to the legal issue here: Patricia Sahm is presumed to be competent until a finding by the court, after hearing, that she is not. That court hearing never took place at the time of the settlement and after the settlement was completed, for whatever reason they chose to agree, Patricia Sahm and her lawyer Amber Patwell agreed to a very limited guardianship by Patricia Sahm's nephew so as to prevent Joanna Sahm from continuing to control Patrica Sahm. Garcia testified she did not

agree with that agreement and as usual by these parties, orders are submitted to the court's that are not consistent with the court's oral rulings.

13. For example, Sweetapple wants this court to rely on collateral estoppel on a 60-day temporary injunction for findings the court never made. That injunction is fraud on the court. By looking at the language he read into the record about the power of attorney, not this settlement, he wants this court to believe there was a finding against Patricia Sahm, Jr. In fact, the transcript from the hearing on August 14, 2023, in evidence a Defendants' exhibit. Pages the court specifically noted clearly that it did not make any finding of wrongdoing as the hearing was not concluded. It is clear as day in the court's ruling that no final injunction was being entered, that by agreement with no findings the parties agreed to extend the temporary exparte injunction for 60 days reset. It is also clear from the transcript that Garcia, who began representing Patricia Sahm, jr. that day, did not complete her cross examination of Joanna Sahm and did not redirect [redacted]. due to lack of time. It is also important to note the court clearly stated THERE ARE NO FINDINGS OF FACT. However, knowing that that Final Injunction they presented to the court is in fact a fraud on the court and not the true ruling of the court, they are attempting to collaterally estop this court from making its own findings. It is also important to note that it was only an agreed 60-day extension with no findings and the guardian never reset the evidentiary hearing, nor sought an extension of the injunction. Exhibit I to that petition for temporary injunction is a sworn statement of Joanna Sahm setting forth false facts as to Patrica Sahm attempting to access her mother's retirement account. The court should find this injunction is not credible evidence of any wrongdoing by the Defendants in this matter who are the Bernsteins and BFR, not Patricia Sahm, Jr. Further, the injunction was not in place at the time the settlement was negotiated and entered into. The court should find the injunction irrelevant to the issue at hand today.
14. At the time this agreement was entered into Amber Patwell and Patricia Sahm had their own communications that no one presented evidence to the contrary.
15. There was no evidence presented that Patwell and Patrica Sahm did anything improper.
16. There was no evidence presented as to an undue influence or fraud committed by Garcia or the Defendants as to this settlement agreement.
17. The evidence presented by Sweetapple to poison the court into believing where there is smoke, there is fire was: an order from a bankruptcy case of BFR's involuntary bankruptcy filing from the summer before the settlement, almost a year prior that has nothing to do with this settlement. Then Sweetapple presented a false finding of using a suggestion of bankruptcy improperly, which is in evidence in this case is the actual suggestion of bankruptcy used to cancel the sale that was filed pro se by Defendant

Eliot Bernstein and that caused the sale to be properly canceled, again, not relevant to this settlement. The courtesy suggestion filed by Garcia after Bernstein filed and hand delivered there was not utilized in this case and is a nullity. Then additionally Sweetapple presented an expired false injunction attempting to use facts improperly included to finding concerning a power of attorney revocation that has nothing to do with this actual settlement.

18. Mr. Sweetapple is asking this court to preemptively and prospectively take away Ms. Patricia Sahm's right to contract with advice of her own chosen attorney. This goes against the current law, is a constitutional violation of Patricia Sahm's rights, and will open the floodgates of setting aside legitimate contracts by filing a guardianship after being informed a settlement was imminent, as they were in this case. The evidence showed that it was after Joanna Sahm realized her power of attorney was set aside and that Patria Sahm, Sr. hired her own independent lawyer, that Joanna Sahm chose to file the guardianship by tricking her mother into going to the estate attorney's office.
19. There was evidence entered into this case about prior settlement negotiations with the attorneys for the P.R of the estate of Walter Sahm, and all 3 attorneys for Joanna Sahm as the P.R. of the estate of Walter Sahm, as the trustee and power of attorney, of Patricia Sahm's trust, and as the pre-need guardian of her mother Patricia Sahm, Sr., which the emails in evidence show that Sweetapple was included in numerous of the negotiations so he was fully aware of it ongoing in March 2023.
20. It must be noted that this case was initially filed by Walter Sahm and his wife Patricia Sahm, while Walter Sahm was alive. Walter Sahm died in 2021 and Sweetapple never notified the court of his death and continued to file pleadings in his name for years after his death. Interestingly enough, when BFR filed bankruptcy in 2022, the Estate of Walter Sahm filed a claim as if it has rights. However, in this case Sweetapple argues the estate never had any rights, thereby admitting fraud in both bankruptcy cases of filing false and fraudulent claims. Also, in the first bankruptcy filing Brad Schreiber filed on behalf of Walter Sahm as if he were alive first until the bankruptcy court brought it up then he foiled an appearance for the estate as if it has rights which we now know it never did. He also represented Joanna Sahm through a power of attorney and pre-need guardianship without Patricia Sahm's knowledge, not once but twice, once in the summer of 2022 and then in May of 2023.
21. Sweetapple attempts to show that those negotiations in March 2023 were somehow nefarious. However, at that time per the evidence, via emails and Garcia's testimony, Garcia was reaching out to every lawyer possible to find out who now actually is the correct party to settle with given the death, lack of substitution, purported pre-need guardianship, the power of attorney and the continued filing by a dead man for years. As a result of those communications, Garcia prepared a settlement agreement per

the request of John Raymond the estate and trust attorney and whose partner, Eileen O'Mally, also represented Joanna Sahm who was making all the decisions for her mother Patricia Sahm through a purported power of attorney.

22. That negotiation ended in a stalemate with an admission that Ms. Patricia Sahm did not need a guardianship, and that the estate had no rights.
23. That negotiation resulted in a proposed executed settlement by the Defendants; however, it is irrelevant to this actual settlement agreement entered into by the parties with the full advice of their counsel. Sweetapple is attempting to create some sort of improper negotiation and is attempting to use that settlement to dishonor the fully executed settlement that was then entered into by the parties with full advice of counsel in May 2023.
24. The amount of the current settlement is less than the original rejected settlement; however, that is also irrelevant as the current settlement is reasonable. The current settlement is for $225,000, which is over 100% of the principal amount owed. It contains the full principal plus $100,000 for interest, escrows, fees, and a full waiver of any further litigation in this matter. It was executed by the now known to be only party in interest Patricia Sahm, Sr., and the Defendants. Currently there is an active and pending 1.540 and 1.530, as well as potential to set aside the entire final judgment for fraud due to filing for a dead man and without proper affidavits and service among other defenses. It is significant that Defendants are not pursuing these obvious issues as a result of the settlement.
25. This court allowed Sweetapple to access the attorney-client privilege documents and communications by the lawyer for Patricia Sahm, Sr., Amber Patwell, Esq., and Defense counsel Garcia alleging some sort of criminal fraud and undue influence and solely using the crime fraud exception to the hearsay and privilege rules to go fishing in the middle of trial, although the settlement had been concluded over a year prior. This court also gave Sweetapple the opportunity to review all the documents and take the depositions of Eliot Bernstein and Patwell and Garcia, as well as sit for his own deposition. Sweetapple's deposition was never taken as the trial was reset prior to the deposition. Sweetapple did take hours of depositions of Bernstein and Garcia. Bernstein's entire transcript is in evidence. Sweetapple claims to have no knowledge of the events that took place for this settlement as well as the specific events and timing of this settlement – and without any proof, he filed and he is alleging those actions taken by the attorneys and clients were somehow fraudulent and undue influence occurred, without any proof whatsoever of any wrongdoing. Sweetapple only tangentially testified while questioning the witnesses and otherwise as reflected in the transcript.

26. Sweetapple focused on the fact he was the attorney of record and was left out of the negotiations as his key defense as well as collateral estoppel. Neither is applicable in the facts of this case. While arguing he was the attorney of record, Sweetapple also admits that Patwell was Patricia Sahm's attorney. Sweetapple may have been Patwell's technical co-counsel for a brief time frame, however he was informed by two lawyers he was terminated and had no authority to act further. Sweetapple also knew of the MH and GA cases and knew that was where the decisions were being made.
27. If Sweetapple even had any authority to act without Patwell and after being notified he was terminated – which the Defense argues Sweetapple lost any ability to negotiate, argue or participate in this case once Patwell was appointed by the MH and GA court; it was still completely proper and allowed to negotiate with Patwell as the sole attorney with authority. The laws and bar rules prevented Sweetapple from participating in anything in this case until reappointed a year or so later as the new attorney for the substituted guardian Charles Revard. Sweetapple had no authority to act for Patricia Sahm, Sr. Sweetapple certainly did not have authority to continue to file and represent the dead man former plaintiff [redacted], or his estate or the trust or under a terminated power of attorney. Sweetapple never informed this court he was solely representing Patricia Sahm since Walter Sahm's death under a power of attorney to Joanna Sahm. That was never filed nor presented to this court.
28. Further due to the fact a bankruptcy was pending, Sweetapple had no authority during the relevant time frame as Patwell had been retained as the attorney for Patricia Sahm per her retainer and communications between counsel.
29. It is appropriate to negotiate a case with one counsel when the party has numerous counsels. It is their responsibility- not the defense – to ensure they communicate amongst themselves. Patwell did notify Sweetapple of his termination, he was aware of the bankruptcy and the MH and GA cases, as well as the settlement as it was argued numerous times in the other relevant cases.
30. It is interesting to note that although Garcia sat for her deposition, Mr. Sweetapple did not use that deposition or recall Garcia as a witness based on his representations to the court that the trial needed to be continued for him to prove there was some type of criminal fraud by Garcia, Patwell and the clients. No such proof was presented in this case. The exception of criminal fraud does not apply.
31. That counsel Patwell for the Plaintiff Patricia Sahm and counsel for Defendants Garcia, had communications, text messaging, and phone calls in relation to the negotiation and finality of this settlement is in evidence. There are retainer agreements, emails back and forth, text messages and direct testimony by Garcia of the facts known to her. Garcia testified she did not know either of Patricia Sahm

attorneys prior to this case and was not involved in the hiring of either lawyer. Garcia has the right to rely on the representations of all of the numerous lawyers of Patricia Sahm as to whom to speak to.

Key points of contention:

1. There is no fraud or undue influence by the Defendants or their counsel as to this settlement. Testimony reflected that Ms. Garcia did not know Ms. Patwell or Morgan Weinstein prior to this case. There is absolutely no manipulation of the then plaintiff or her two other lawyers in relation to this agreement. Ms. Patwell was the attorney of record for Ms. Patricia Sahm, had the contract to review in the Month of May 2023, approved the Defendants securing the signature on the agreement, all after having had conversations with her client and Ms. Garcia about the terms, conditions and payment to Ms. Patwell's trust account per the agreement. Mr. Sweetapple may have been an attorney of record in this foreclosure case, butat or around the time of the settlement, he ignored the attempts of both Morgan Weinstein, Esq. and Amber Patwell, Esq. to execute the stipulations for substitution of counsel. So, Ms. Patwell did file an appearance in this foreclosure case to ensure the court knew her authority in this case in additions to being Ms. Patricia Sahm's attorney in both the mental health case and the guardianship cases.
2. Ms. Patria Sahm entered into this contract prior to her same lawyer, Ms. Patwell and herself, entering into an agreed limited guardianship and prior to any determination of incapacity whatsoever. The mental health court declined to allow Joanna Sahm to be the guardian.
3. Attempts to settle had been ongoing for years as the evidence shows in Defendant's Exhibits.
4. Ms. Garcia testified to the facts and circumstances that led to this agreement being entered into in detail, along with a timeline of events, responding to the court's direct inquiries, and being cross-examined by Mr. Sweetapple for hours, as well as attending her own deposition which this court allowed due to Mr. Sweetapple alleging criminal fraud exception to the attorney-client privilege. Mr. Sweetapple was given many opportunities to present that evidence and failed to produce any evidence of fraud in relation to this settlement being entered into. Mr. Sweetapple did try to distract this court with orders and injunctions and finding of incapacity over a year after this contract was executed.

A SUMMARY OF THE RELEVANT WITNESS TESTIMONY AND SPECIFIC EVIDENCE REFERENCES IS BEING FILED UNDER SEPARATE COVER as a SUMMARY FOR QUICK REFERENCE

THE DETAILED MEMORANDUM OF LAW IS BEING SUBMITTED SEPARATE FROM THIS CLOSING ARGUMENT.

The Memorandum of law being filed will show this court that this agreement is presumed to be valid unless Sweetapple proves fraud and undue influence. A brief summary of the legal arguments is below.

In Florida, the validity of a contract entered into by an individual after the examining committee reports but before a court's formal determination of incapacity hinges on the presumption of capacity. Until a court adjudicates an individual as incapacitated, they are legally presumed to have the capacity to contract. Therefore, a settlement agreement executed during this interim period is generally considered valid.

In Florida, a settlement agreement entered into by a ward **after** the examining committee reports but **before** the court's formal determination of incapacity presents a complex legal issue. The key considerations are:

1. **Presumption of Capacity Until Court Order** – Until a court officially adjudicates incapacity, the individual is presumed to have capacity. This means the settlement agreement is generally considered valid **unless** it can be proven that the ward lacked capacity at the time of signing. There has been no clear proof of incapacity at the time of the settlement especially given the four reports in evidence with two in favor of the AIP Patrica Sahm. The Dr. Sugar report was relied on by Patwell to support her thoughts that Patricia Sahm was able to contract and understood fully the agreement. Dr. Cheshire opined Sahm could enter into legal agreements with help of counsel – which is exactly what took place. The testimony of Bloom was not reliable. The other committee member was not called. Further, in the attempt a year later to expand powers, all three of the original committee members' reports were excluded and not used and a new committee was appointed. This court may opine on its own that this contract is valid, and Patricia Sahm was not legally incapacitated at the time of the settlement agreement and worked with counsel at all relevant times. The same lawyer who was comfortable with this agreement for Patricia Sahm is the attorney who also agreed to a limited incapacity after the fact. Patwell's representation of Sahm was not challenged at that time and she was fully accepted by the courts in all matters. To try and reverse contracts entered into by an AIP (allegedly incapacitated

person) after the fact because you simply do not like the outcome is not appropriate and against the constitutional rights to contract and caselaw. A ruling as requested by Plaintiff in favor of Sweetapple would open the floodgate of any attorney in the middle of a trial to then allege wrongdoing to seek the attorney-client privileged information from opposing counsel and to set aside any agreement – after the fact- will create havoc in the legal system and cause other litigants and attorneys to attempt to place their own clients or opposing parties of a contract into a guardianship case solely to reverse a legitimate contract.

2. **Examining Committee Reports as Evidence** – While the committee reports may suggest incapacity, they are not legally binding until the court issues an incapacity order. However, they can be used as evidence if someone later challenges the settlement. The reports overall do not rise to the level of incapacity. The subsequent agreement by the same lawyer to the limited guardianship to remove Joanna Sahm as the control person was done in good faith by Patwell. Whilst the undersigned testified she would never have agreed to that action of allowing this GA and MH case to appoint a limited guardian after the fact without proper evidentiary hearing; that is irrelevant to this case. The contract was entered into by a legally capacitated individual with the advice of not one but two independent counsels.

3. **Attorney's Approval** – If the ward's attorney approved the settlement, which could support its validity, as attorneys have an ethical duty to protect their client's best interests. However, if the attorney were aware of serious capacity concerns and failed to act accordingly, the agreement could still be challenged. Neither Patwell nor Garcia believed that Patricia Sahm had serious capacity issues at the time of the settlement. Garcia and Patwell did their ethical duties and spoke to their respective clients completely independent of each other, not having ever met, never having had any litigations with or against each other; and both determined in good faith and ethically that all the parties could settle this matter reasonably as they did. Patwell apparently relied on communications with her client, her review of the reports, and her hiring an independent Florida Licensed Doctor Sugar to prepare his own report prior to any incapacity hearing. The incapacity hearing never took place and the parties for convenience and whatever reasons are unknown to Garcia entered into this limited guardianship later. That subsequent agreement by the parties in the GA and MH case does not affect this agreement, nor is this court's ability to rule as he sees fit according to the evidence presented in his case.

4. **Challenge and Court Review** – If a guardian (or another interested party) believes the ward lacked capacity when signing, they may petition the court to rescind or void the settlement. The court will assess:
    - Whether the ward understood the terms and consequences of the agreement.
    - Whether the settlement was fair or if undue influence or exploitation was involved.

The Guardian did not prove any of the exceptions to the general rule of a legitimate settlement. They Guardian was not even appointed at the time of the agreement, Joanna Sahm, and the estate of Walter Sahm's law firm were involved in the filing of the MH and GA cases. There is no proof in the record that Patricia Sahm did not understand the settlement. In fact, there is evidence that there were at least three prior communications involving settlement, negotiated language for this settlement with numerous attorneys, and then the independent advice of counsel as to the settlement.

There is also evidence that the settlement was fair as it is over $100,000.00 over the principal amount and there was active litigation risks involved moving forward. There was a litigation risk of the entire final judgment being set aside for the fraudulent filing for a dead man, for the summary judgment being entered into without any proper affidavits or notice, lack of proper service, misrepresenting an agreement among counsel, and done without the knowledge of either of the then plaintiffs.

There is no proof of undue influence or exploitation in the record. The evidence shows the parties were long-term friends and former business partners. There were many writings by both plaintiffs to resolve the matter, Garcia had no prior relationship with Patrica Sahm's chosen lawyers and waited for them to review the agreements and advise of a settlement or no settlement.

5. **Best Interest of the Ward** – Even if the agreement is technically valid, once a guardian is appointed, they may seek court approval to modify or void the agreement if it is not in the ward's best interest.

    The agreement is in everyone's best interests, including the ward Patricia Sahm, as it ends this long and tortuous litigation. The Ward's best interest was served as she is being paid $225,000.00 on a $110,000 note although the Defense have many legitimate arguments and can continue to appeal and file bankruptcy and fight this for years to come. It is a waste of Patrica Sahm's assets to continue this battle as the only one benefitting at all from this continued litigation is Joanna Sahm, the rejected guardian and daughter and trustee, who has been improperly paying lawyers for years with no accountability to the MH and GA Judge. The guardian and their lawyers, not

Patricia Sahm or her daughter Patricia Sahm, Jr. are the ones perpetrating this ongoing litigation for reasons unknown. It appears there is an outside reason for misinforming Garcia of who the parties in interest are, bouncing her all around between lawyers, courts, forcing litigation against at least 6 lawyers and 4 law firms for years without a scintilla of wrongdoing proof.

Additionally, Florida Statutes, § 744.331 outlines the procedures for determining incapacity, including the appointment of an examining committee and the filing of their reports. However, the statute does not mandate an immediate adjudicatory hearing upon the filing of these reports, nor does it automatically strip the individual of legal capacity during this period. Thus, until the court issues an order declaring incapacity, the individual is presumed competent.

The contract is **still binding** if the ward voluntarily agrees to an incapacity determination **after** signing the settlement agreement. Here is why:

1. **Capacity at the Time of Contract Execution** – The key legal question is whether the ward had capacity **at the time of signing** the contract. Since the court had not yet declared the ward incapacitated at that point, they were still presumed to have capacity.

2. **Incapacity Determination is Prospective, Not Retroactive** – A later voluntary agreement to incapacity does not automatically invalidate past contracts unless it can be proven that the ward lacked capacity **at the moment of signing.** Courts generally do not retroactively void contracts based on later incapacity determination.

3. **Burden of Proof on Challenging Party** – If someone wishes to challenge the settlement, they will need to present evidence that the ward **lacked mental capacity at the time of signing**, such as medical records, expert testimony, or indications of undue influence. None of this was proved with clear and convincing evidence.

4. **Case Law Support** – Florida courts have upheld contracts entered into before a formal incapacity ruling, unless there was clear evidence of **mental incompetence or undue influence** at the time of execution. Courts have ruled that incapacity must be proven **at the time of contract formation**, not based on later events. This is being further analyzed in the memo of law.

In this case, Patricia Sahm, the subsequent agreed ward's attorney Amber Patwell assisted in the execution of the contract, so that further **strengthens the defense argument** that the contract is valid and binding. In this specific case:

1. **Presumption of Capacity** – Until a court formally determines incapacity, the ward is presumed competent. If their attorney advised them and helped facilitate the contract, it suggests that the ward had the necessary understanding to enter into the agreement. Herein it is clear Patwell was the attorney for Patricia Sahm prior to, at the time, and subsequent to this settlement in this case and the MH and GA cases.

2. **Attorney's Ethical and Professional Duty** – A lawyer has a duty to ensure that their client comprehends the contract and is making an informed decision. Since both Patwell and Garcia the attorneys on this settlement reviewed and approved the contract, it demonstrates that as legal professionals as both believed the ward had sufficient capacity at the time. There was no conflicting evidence presented that both lawyers acted appropriately and ethically in this case.

3. **Potential for Ratification** – Since this contract was later challenged herein, the attorney's involvement could be seen as a **form of ratification**—meaning that even if there were any doubts about capacity, the ward had competent legal counsel guiding them, reinforcing the contract's validity. Both counsels believed it was appropriate to enter into this agreement.

4. **Burden of Proof on Challenger** – Since the guardian seeks to void the contract, they must provide **compelling evidence** that the ward lacked capacity **despite** having legal representation. This is a high bar, especially since Patwell, the attorney for Patricia Sahm, documented discussions and advised the ward accordingly. Those notes by Patwell were read into the record by Judge Burton on the transcript in evidence at his hearings. Further in evidence is the text messages with Garcia and Patwell discussing the settlement, the conversations with clients, and the agreement to settle as well as how it would be executed.

A response to Sweetapple's memo of law is also being prepared and will be filed. His collateral estoppel arguments are not applicable herein. Further, his attempts to prove the wrongdoing by the attorneys Patwell and Garcia failed as no clear and convincing evidence was presented to prove such allegations.

As to the collateral estoppel argument it fails as the required elements were not alleged or proven:

In Florida generally, **collateral estoppel** prevents the re-litigation of an issue that has been previously determined in a prior lawsuit. The essential elements of collateral estoppel in Florida are:

1. **Identical Issue** – The issue in question must be the same as the one litigated and determined in the prior proceeding. This issue of the validity of the settlement agreement and the actions of the lawyers and parties was never litigated.

2. **Final Judgment on the Merits** – The issue must have been fully litigated and decided in a previous case that resulted in a final judgment on the merits. The issue of capacity at the time of the settlement was never litigated previously and no final judgment was entered buy the MH or GA courts that Sahm was incapacitated retroactively to the date of the settlement negotiations and the settlement. In fact, Garcia was informed that Patricia Sahm did not need a guardian by John Raymond, Esq. in March 2024, and then Garcia negotiated with the personal attorney for Patricia Sahm in May 2024, with full knowledge of the MH and GA courts.

3. **Same Parties or Privity** – The party against whom collateral estoppel is asserted must have been a party (or in privity with a party) in the prior litigation. The Defendants in this case were not parties to the MH and GA cases. Some of the defendants, but not all, did file shortly as interested parties solely to inform the courts of the settlement and be there to assist or defend as needed.

4. **Actually Litigated** – The issue must have been actually litigated and not just mentioned or assumed. This issue was never litigated prior to this trial. The subsequent limited guardian agreed order was never litigated and was done by the agreement of Patwell and Joanna Sahm's personal lawyer, who is also the trust lawyer. Neither the Defendants or Garcia was involved in that agreement, and in fact believe it never should have happened as Patrica Sahm was against a guardianship and appeared fine in all communications between the parties outside of the courts.

5. **Essential to the Judgment** – The determination of the issue must have been necessary to support the final judgment in the previous case. The validity of this settlement was not necessary for a subsequent agreement of limited guardianship. That agreed limited guardianship was done after the fact by the same lawyer who represented Patricia Sahm. It should have no effect on this agreement as the evidence has proven.

Florida courts apply collateral estoppel to promote judicial efficiency and prevent inconsistent rulings, but there are some exceptions, such as when the party did not have a full and fair opportunity to litigate the issue previously. In this case, there was never the opportunity to defend this settlement agreement, as the filing to set it aside was not filed for a long-time frame after it was finalized. There were murmurs of setting it aside and Judge Burton was actively holding hearings based on the allegation; however, Judge Burton did not

find the settlement was abusive or should be set aside, he simply allowed discovery to determine if the guardian wanted to pursue it or not. Even in the face of the evidence by Patwell given to the court and guardian early on, the guardian chose this path later and did not prove his allegations as they are simply not true.

The filings in this case were not done near the event and the proof at this trial did not support the arguments made by the guardian.

REQUEST FOR RELIEF

The Defendants, BFR and the Defendant Bernstein's, request this Honorable Court to uphold this valid settlement Agreement and enter an Order that the Court in the Shirly Bernstein Trust case can now release the $225,000 to whomever the Court directs is the proper person to receive these settlement funds, as full and final settlement of this matter. Note that the same judge on the trust case is the current Judge in the guardianship and mental health cases of Patricia Sahm. There is a previous order holding these funds in the court registry for the sole purpose of paying off this mortgage and these funds were available for settlement prior to the actual execution of the settlement as the funds have been in the court registry for years.

The Settlement Agreement has a provision for attorneys' fees and costs for the enforcement of the agreement. Since the Defendants have been forced to incur over a year of attorneys' fees and costs and they are the prevailing party; Defendants are requesting the Defendants' Fees and costs be born by the Guardian, Charles Revard, not Plaintiff Patricia Sahm personally, and the guardian's attorneys who have filed this Motion to Set Aside, and reserve on the amount of attorneys' fees and costs pending a finding of the reasonableness.

The Memo of Law and a Proposed Order will be submitted to this court as we were ordered to provide "Closing Arguments" by todays date, not a proposed final judgment.

The undersigned thanks this court for its time, patience, and attention to this matter and respectfully request the motion filed by Plaintiff be denied in full,