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Order on Plaintiff Thomas's Motion to Enforce Settlement Agreement (ALAN B. THOMAS, JR.)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ALAN B. THOMAS, JR. (directly and derivatively in his capacity as a shareholder of LecStar Corporation), **HEATHER McFARLAND** (directly and derivatively in her capacity as a shareholder of LecStar Corporation), **S. Laird Ellis, III,** (derivatively in his capacity as a shareholder of LecStar Corp.)and **Francoise Ellis**, (derivatively in her capacity as a shareholder of LecStar Corp.)	)(	
Plaintiffs,	)(	
v.	)(	
JOHN C. CANOUSE, STEPHEN M. HICKS, SOUTHRIDGE CAPITAL MANAGEMENT LLC, W. DALE SMITH, CACHE CAPITAL (USA), L.P., ATLANTIS CAPITAL FUND, LTD., and McCORMACK AVENUE, LTD.,	)(	**CIVIL ACTION NO. 2004-CV-88793**
Defendants,	)(	
v.	)(	
LECSTAR CORPORATION,	)(	
as a Nominal Defendant.	)(	

FILED IN OFFICE
MAR 05 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

Order on Plaintiff Thomas's Motion to Enforce Settlement Agreement

This case is before the Court on Plaintiff Thomas's Motion to Enforce Settlement Agreement. After reviewing the briefs submitted on the motion and the record in the case, the Court finds as follows.

At a conference on September 2, 2009, counsel for Plaintiffs Alan B. Thomas, Jr. and Heather B. McFarland and counsel for Defendants Southridge Capital Management, LLC,

Stephen Hicks, and McCormack Avenue Ltd. ("Southridge Defendants" and together with Plaintiffs Thomas and McFarland "Settling Parties") filed their Joint Motion for Approval of Settlement and Dismissal. A decision on that motion was delayed until the Court could rule on Plaintiffs' motion to add plaintiffs, S. Laird Ellis, III and Francoise Ellis, in order to carry on the derivative claims of LecStar Corporation. Subsequently, the escrow agent anticipated by the Settling Parties has left the firm identified in the settlement agreement and formed his own firm. As a result, Southridge Defendants argue that this situation makes the escrow agreement they drafted pursuant to the settlement agreement non-operative. Southridge Defendants argue that, therefore, they are "incapable of delivering the promised performance" and "could not have breached the settlement agreement." The Southridge Defendants maintain that "they will make every effort to close the settlement with Thomas at the appropriate time."

The Court hereby ORDERS the Settling Parties to: (1) select a new mutually-agreeable escrow agent, (2) finalize and execute an escrow agreement, (3) abide by the remaining terms of their settlement agreement and (4) file dismissals of all claims resolved by their settlement agreement no later than April 15, 2010.

SO ORDERED this 5th day of March, 2010.

for ALICE D. BONNER, SENIOR JUDGE per her request
Superior Court of Fulton County
Atlanta Judicial Circuit

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