

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

KIRBY RAMBO COLLECTIONS, INC.

Plaintiff,

CASE NO: 2:18-cv-00180-JES-UAM

v.

LEE COUNTY,

Defendant.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this "Agreement") is effective as of the date of the last signature below (the "Effective Date") by and between Plaintiff, Kirby Rambo Collections, Inc. ("Rambo"), and Defendant, Lee County, Florida (the "County"). Rambo and the County may be hereinafter referred to individually as a "Party" and collectively as "the Parties".

RECITALS

WHEREAS, Rambo alleges that it is the owner of a federally-registered copyright in its "Shell Love Bug" artwork, U.S. Reg. No. VA 2-077-806 ("Rambo's Asserted Copyright"); and

WHEREAS, the County is the title owner of a certain shell-covered 2005 Volkswagen Beetle (the "Vehicle") that embodies the original artwork claimed in Rambo's Asserted Copyright; and

WHEREAS, Rambo filed the above-styled case for copyright infringement under the Copyright Laws of the United States, particularly under 17 U.S.C. §501 *et seq.*, against the County based upon the alleged copyright infringement of Rambo's Asserted Copyright and related causes of action (the "Case"); and

WHEREAS, the County denies liability to Rambo in the Case and has asserted various affirmative defenses, including invalidity of Rambo's Asserted Copyright; and

WHEREAS, Rambo and the County desire to settle and resolve all disputes between them, including the Case.

NOW, THEREFORE, in consideration of the covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Rambo's Purchase of the Vehicle.** Within five (5) business days from the execution of this Agreement by the last party to sign it, Rambo shall purchase the Vehicle from the County on the following terms:

- a. **Purchase Price:** Rambo shall pay to the County the sum of Four Thousand Nine Hundred United States Dollars (US \$4,900.00) in one lump sum payment (the "Purchase Price") by a cashier's check made payable to "Lee County Board of County Commissioners".
- b. **Rambo's right of Inspection:** Rambo shall have the right, but not the obligation, to inspect the Vehicle at the County's parking facility located at 2120 Dr. Martin Luther King Blvd., Fort Myers, FL 33901, prior to tendering the Purchase Price to the County.
- c. **Delivery of Vehicle, Bill of Sale, and Title:** In exchange for and within five (5) business days of Rambo tendering the Purchase Price and confirmation by the Lee County Clerk's Office that the funds described above in subparagraph (a) are available in the County's account, the County shall deliver the Vehicle to Rambo at the County's parking facility located at 2120 Dr. Martin Luther King Blvd., Fort Myers, FL 33901, together with a bill of sale and the title to the Vehicle.
- d. **Sale "As Is" with No Warranties:** Rambo acknowledges that the County's sale of the Vehicle to Rambo is "as is" with no warranties of any kind and Rambo expressly waives all claims against the County relating to the condition of the Vehicle.

2. **County's Return and Non-Use of Materials:** The County shall, within thirty (30) days from the date that Rambo tenders the Purchase Price, make a diligent effort to identify and locate any and all materials, both digital and physical, edited and unedited, which reference or promote iLoveShelling.com, Pamela Kirby Rambo, Kirby Rambo Collections, Inc., or the "Shell Love Bug" (collectively, the "Materials") and provide all originals of the Materials the County is able to identify and locate to Rambo and remove and destroy all copies of such Materials. The County's actions under this paragraph shall include, but are not limited to, removing the Materials from the County's websites, blogs, and social media sites (including, but not limited to Facebook, Twitter, and Instagram). Following the County's return of any and all original Materials to Rambo, the County shall not use, distribute, or republish any of the Materials without the express written permission of Pamela Kirby Rambo. Notwithstanding any provision in this paragraph to the contrary, the County shall not be obligated to take any action in violation of its obligations under Chapter 119, Florida Statutes.

3. **Dismissal of the Case with Prejudice.** Within five (5) business days of the date that the acts set forth in paragraphs 1 through 2 above are all completed, the Parties shall jointly prepare and submit to the Court an agreed stipulated motion to dismiss the Case with prejudice, with each Party to bear its own attorneys' fees, costs, and expenses.

4. **No Contest of Rambo's Asserted Copyright.** Following the dismissal of the Case with prejudice, the County agrees not to contest or challenge the validity of Rambo's Asserted Copyright.

5. **No Admission of Liability.** Nothing in this Agreement shall be interpreted as an admission by either Party as to the validity of the claims or defenses asserted in the Case.

6. **General Provisions.**

a. *Recitals.* The Recitals and introductory paragraph to this Agreement are hereby incorporated into, and made a part of, this Agreement by reference.

b. *Severability.* If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and the Parties shall substitute a mutually agreeable valid provision with the same intent and economic effect.

c. *Non-Agency.* Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties. Except as otherwise expressly provided herein, neither party shall incur any debts or make any commitments for the other.

d. *Governing Law and Consent to Jurisdiction.* This Agreement shall be governed by and construed under applicable federal law and the laws of the State of Florida, excluding any conflict of law provisions. The Parties submit to personal jurisdiction in and expressly agree that the United States District Court for the Middle District of Florida shall have jurisdiction over this Agreement and any disputes arising thereunder.

e. *Acknowledgement.* Each of the Parties hereby acknowledge and represent that they have been fully advised by their respective legal counsel of their rights and responsibilities in connection with this Agreement, that they have read and know and understand completely the contents thereof, and that they have voluntarily entered into this Agreement.

f. *Entire Agreement.* Upon execution by the Parties, this Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Rambo and the County by their respective duly authorized representatives.

g. *Expenses, Costs, and Attorneys' Fees.* Each Party shall bear its own expenses, costs, and attorneys' fees incurred prior to and throughout the Case, including any acts necessary to fulfill and complete its responsibilities under this Agreement.

h. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument. A signed PDF, facsimile copy, or other copy will be acceptable as an original.

i. *Construction.* This Agreement has been negotiated by the Parties and their respective counsel. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. The existence or absence of any terms or conditions of this Agreement shall not be used in the construction or interpretation of any other Agreement between the Parties.

j. *Authority to Execute.* Any individual executing this Agreement on behalf of a Party represents and warrants that he or she has full authority to do so.

IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to execute this Agreement, on the dates below indicated.

KIRBY RAMBO COLLECTIONS, INC. BY: <u>Pamela K. Rambo</u> SIGNATURE: <u>Pamela K. Rambo</u> TITLE: <u>President</u> DATE: <u>May 29</u> , 2019	LEE COUNTY, FLORIDA, by its Board of County Commissioners BY: <u>Brian Hamman</u> Brian Hamman, Vice-Chair Approved as to Form for the Reliance of Lee County Only: BY: <u>[Signature]</u> Lee County Attorney's Office DATE: <u>5-31</u> , 2019
CLERK OF COURT Attest: Linda Doggett By: <u>Melissa Butler</u> Deputy Clerk DATE: <u>5-31</u> - , 2019	