

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
Norman Goering and Donna)
Goering,)
)
)
)
Plaintiffs,)
)
v.)
)
Earl E. Kelley d/b/a Kelley)
General Contractors,)
)
)
Defendant,)
)
)
)
_____)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2020-CP-30-0814

RECEIVED

JUN 10 2022

ORDER SC Court of Appeals

This matter came before me for a hearing on the Motion for Sanctions filed by Plaintiffs Norman Goering and Donna Goering, (the “Plaintiffs”) on August 23, 2021 against Defendant Earl E. Kelley d/b/a Kelley General Contractors, (the “Defendant”). The hearing on the subject Motion took place on November 17, 2021. In attendance at the hearing was M. Stokely Holder, Esq., on behalf of the Plaintiffs, and the Defendant appeared *pro se*.

From a review of the record and based on the submittals and arguments of the parties, I find as follows:

Plaintiffs served Interrogatories and Requests for Production on Defendant on January 8, 2021. Rules 33(a) and 34(b) of the South Carolina Rules of Civil Procedure provide that parties have thirty (30) days from the date they are served discovery requests to provide answers and responses to Interrogatories and Requests for Production. Plaintiffs granted Defendant an extension until February 26, 2021 to provide discovery responses.

In response to the Plaintiff's Interrogatories and Requests for Production, the Defendant responded by acknowledging the responses were incomplete and would be supplemented.

Following receipt of Defendant's discovery responses, counsel for the Plaintiffs corresponded with counsel for Defendant in an effort to obtain the proper and complete discovery responses, to no avail. Plaintiffs then filed a Motion to Compel on March 2, 2021. Thereafter, counsel for Defendant moved to be relieved as counsel, which motion was granted by Order dated April 22, 2021.

A hearing regarding Plaintiff's Motion to Compel was then held on May 18, 2021, at which time Defendant appeared *pro se* claiming additional time was needed to respond to the discovery requests due to purported issues with covid and the absence of legal counsel. The Plaintiff's Motion to Compel was granted by Order dated June 7, 2021 by the Honorable Judge Brian M. Gibbons, and Defendant was given until July 1, 2021 to serve proper and complete responses to Plaintiff's discovery requests. Judge Gibbons' Order specifically stated: "Should the Defendant fail to properly and completely respond to the outstanding discovery requests, then the Defendant will be subject to sanctions that may include, without limitation, payment of Plaintiff's attorney's fees and costs associated with the filing, arguing and prosecution of Plaintiffs' Motion to Compel, **as well as the striking of Defendant's responsive pleadings.**" (emphasis added).

Despite additional efforts by Plaintiffs to obtain the outstanding discovery, Defendant has failed to properly and completely respond to the outstanding discovery requests. The Defendant has been provided ample opportunity to produce the outstanding discovery. Counsel for the Plaintiffs, as an officer of the Court, informed the Court that Plaintiffs' counsel had a number of discussions with the Defendant after Judge Gibbons' Order. During at least one discussion regarding the status of the outstanding discovery responses, Defendant stated to Plaintiffs' counsel

that the Defendant was of the opinion that the court would continue to provide him latitude in responding to discovery because the Defendant was *pro se*. The Defendant did not dispute this when Plaintiffs' counsel informed the Court.

Contrary to the representations of Defendant, the Rules of Civil Procedure apply equally to all parties, whether a party has chosen legal counsel to represent them or not. There is nothing in the record of this case evidencing an exception to the applicable rules being granted to Defendant merely because of his *pro se* status.

Despite the very clear terms of Judge Gibbons' Order, to include, *inter alia*, the threat of striking the Defendant's responsive pleadings, the Defendant has not offered any justifiable excuse for not properly responding to initial discovery requests that were served almost one (1) year ago. Due to this ongoing and unreasonable failure of Defendant, the Plaintiffs' ability to litigate this case in a reasonable, efficient, and timely manner has been prejudiced. By way of one example, the ADR deadline has now passed in this case through no fault of the Plaintiffs.

Accordingly, the Court deems it proper to follow-through with the terms of Judge Gibbons' prior Order and, in accordance with Rule 37, SCRCP, strike the Defendant's responsive pleadings.

THEREFORE, the Defendant's responsive pleadings associated with this action are hereby stricken from the record and all parties are to complete mediation within the sixty (60) days from the filing of this Order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Laurens Common Pleas

Case Caption: Norman Goering , plaintiff, et al VS Earl E. Kelley , defendant, et al
Case Number: 2020CP3000814
Type: Order/Sanctions

So Ordered

s/Frank R. Addy, Jr., 2159

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

C. A. No. 2020-CP-30-0814

Norman Goering and Donna Goering,)

Plaintiffs,)

vs.)

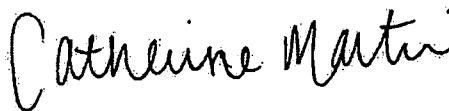
CERTIFICATE OF SERVICE

Earl E. Kelley d/b/a Kelley General)
Contractors,)

Defendant.)

This is to certify that I have served Plaintiffs' Proposed Order, and this Certificate of Service for same on this 2nd day of December, 2021 by U.S. regular mail and email to:

Earl E. Kelley
Kelley General Contractors
318 Scotch Cross Road East
Greenwood, SC 29646
kelleygoing@aol.com
Defendant



Catherine Martin, Paralegal
HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC

Greenville, SC