

RECEIVED

Jun 21 2022

SC Court of Appeals

FORM 9
LETTER TO CLERK OF LOWER COURT
FILING NOTICE OF APPEAL

June 21, 2022

The Honorable Julie J. Armstrong,
Clerk of Court for Charleston County
100 Broad Street
Charleston, South Carolina 29401-2258

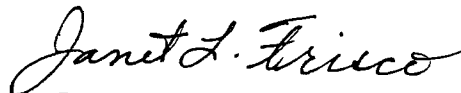
RE: Pet Helpers, Inc., Respondent, v. Janet L. Frisco, Appellant v. Melissa
Susko, Third-Party Defendant Case No. 2022-000775
Pet Helpers, Inc. v. Janet Frisco, Case No. 2021-CP-10-2682

Dear Ms. Armstrong:

Enclosed for filing is a Notice of Appeal (Form 1) dated 6/3/22 and the following additional documents that have been received and date stamped by the South Carolina Court of Appeals:

- ❖ Letter to the Appellate Court Clerk (Form 8) dated 6/3/22
- ❖ Proof of Service of Notice of Appeal (Form 7) dated 6/3/22
- ❖ Proof of Service of Letter to Clerk of Lower Court Filing Notice of Appeal dated 6/21/22
- ❖ Motion to Proceed in Forma Pauperis dated 6/3/22
- ❖ Reply to the Return to Proceed in Forma Pauperis dated 6/7/22
- ❖ Motion to Stay the Imposition of Sanctions Pending Appeal dated 6/17/22
- ❖ Order of May 5, 2022 that is being appealed

Sincerely,



Janet L. Frisco,
Appellant Pro Se

RECEIVED

Jun 03 2022

SC Court of Appeals

**FORM 1
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas

Bentley P. Price, Circuit Court Judge

Case No. 2021-CP-10-2682

Pet Helpers, Inc. &
Melissa Susko, Third Party

Respondent,

V.

Janet L. Frisco

Appellant.

NOTICE OF APPEAL

Janet L. Frisco appeals the orders of the Honorable Bentley P. Price dated May 5, 2022. I received written notice via email attachment from the Plaintiff's attorney on May 6, 2022.

Janet L. Frisco

Janet L. Frisco
Dated: June 3, 2022

Cc: Stephan V. Futeral,
Attorney for Respondent
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, South Carolina 29464
(843)284-5500

2022 JUN 21 AM 8:39
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

RECEIVED
Jun 03 2022
SC Court of Appeals

June 3, 2022

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

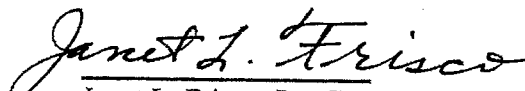
RE: Janet L. Frisco, Appellant vs. Pet Helpers, Respondents.
Case #2021-CP-10-2682 Pet Helpers, Inc. vs Janet Frisco

Dear Ms. Kitchings:

Enclosed for filing is a **Notice of Appeal** in the above case. Also enclosed are the following:

- (1) **Proof of service** of the notice of appeal on the respondents
- (2) **A Motion and Affidavit to Proceed in Forma Pauperis**
- (3) **A copy of the orders and judgements** which are to be challenged on appeal that were originally filed on May 5, 2022 in the Charleston County Court of Common Pleas

Sincerely,


Janet L. Frisco, Pro Se

cc: Stephan V. Futeral,
Attorney for Respondent
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, SC 29464
843-284-5500

RECEIVED

Jun 03 2022

SC Court of Appeals

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Bentley P. Price

Case No. 2021-CP-10-2682

Pet Helpers Inc. & Melissa Susko,
Third Party

Respondent,

v.

Janet L. Frisco,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Pet Helpers, Inc. by depositing a copy of it in the United States Mail, postage prepaid addressed to their attorney of record, Stephan V. Futeral, at 1004 Anna Knapp Blvd., Suite 3 Mt. Pleasant, South Carolina 29464 and also emailed to the same at sfuteral@charleston.net.org. on June 3, 2022

Sincerely,

Janet L. Frisco

Janet L. Frisco,
203 Cardinal Drive,
Summerville, SC 29485
843-804-0875

JULIE J. ARHSTROM
CLERK OF COURT

2022 JUN 21 AM 8:39

FILED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas, 9th Circuit Court
The Honorable Bentley D. Price

Court of Appeals Case No. 2022-000775
Circuit Court Case No. 2021-CP-10-2682

JULIE J. ARMSTRONG
CLERK OF COURT
2022 JUN 21 AM 8:39

FILED

Pet Helpers, Inc..... Respondent

V.

Janet L. Frisco.....Appellate

V.

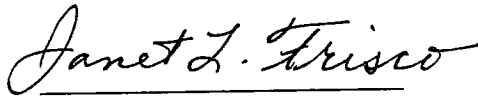
Melissa Susko.....Third Party Defendant

PROOF OF SERVICE

I certify that I have served the Appellant **LETTER TO CLERK OF LOWER COURT FILING NOTICE OF APPEAL** by delivering the same via email and United States mail, postage prepaid, on June 21, 2022 addressed to the Respondent's and Third-Party Defendant's legal representative as follows:

Stephan V. Futeral,
Attorney for the Respondent &
Third-Party Defendant
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, South Carolina 29464
sfuteral@charlestonlaw.net

Respectfully,



Janet L. Frisco, Pro Se

DATED: June 21, 2021

RECEIVED

IN THE S.C. APPELLATE COURT

Jun 03 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
9TH Circuit Court)

Pet Helpers, Inc.)
Plaintiff)

vs.)

Janet L. Frisco)

Defendant) FILE NO. 2021-CP-10-2682

**MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS**

I, Janet L. Frisco, being duly sworn, state that I am the Defendant and that I do not have the funds available to pay the cost of filing and service in the present matter. I hereby request that the appeal be filed without cost.

Sworn to and Subscribed before me)
this 3RD day of June, 2022)

Janet L. Frisco

Signature of Defendant

Jennifer N. Cornejo
Notary Public for South Carolina)

JENNIFER N. CORNEJO
Notary Public, State of South Carolina
My Commission Expires 7/31/2029

My commission expires 07/31/2022)

ORDER

 Leave is granted to proceed in forma pauperis without payment of the filing fee.

 Leave is granted to proceed in forma pauperis without payment of the service cost.

 Leave is denied to proceed in forma pauperis.

Dated: _____

JUDGE/ CLERK OF COURT, S.C. Appellate Court

NOTICE TO DEFENDANT: The court may assess costs against either party at hearing.

RECEIVED

Jun 07 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas, 9th Circuit Court

The Honorable Bentley D. Price

Court of Appeals Case No. 2022-000775

Circuit Court Case No. 2021-CP-10-2682

Pet Helpers, Inc..... Respondent

Janet L. Frisco.....Appellant

REPLY TO THE RETURN TO MOTION TO APPEAR IN FORMA PAUPERIS

The Plaintiff's attorney's intention in filing this return is to force me into financial insolvency and by doing so, to prevent me from defending myself against his client's fraudulent lawsuit, which is the same reason he has filed other motions for sanctions in the lower court where to date I have been forced to pay a total of \$7,208.56 or be incarcerated. The Plaintiff was recently granted another \$9,638.48 in sanctions by the order of Judge Bentley Price on May 5, 2022 that I am presently appealing in this court among other orders within it. I am currently employed because I have to work to supplement my Social Security widow's benefits of \$1084.00 and a \$289.00 annuity from my deceased husband's retirement. I work over fifty (50) hours a week in the elements to pay my obligations, but may never be able to retire due to Pet Helpers' criminal lawsuit against me. My home still has a mortgage, a monthly payment of \$504.00 and a large balance is still owed on the property **(EXHIBIT A)**.

In my email the Plaintiff's attorney, Stephan V. Futeral quoted, was threatening to file a Rule to Show Cause if I didn't immediately pay \$1774.24 and to request more sanctions when I sardonically said, "At this point money is no object." because he had already extorted me of \$5,434.32 in earlier sanctions **(EXHIBIT B)**. I'm still in a state of unbelief he was able to take that money from me in the course of this illicit litigation and then he speaks as if I don't have to pay it back because "I paid it on my credit card". I had to request a cash advance on two of my credit cards at a high rate of interest and currently have a balance of \$3800.00 since I have been making large payments on the credit cards to avoid finance charges and having a payment that is so high I'm unable to pay it which is Mr.Futeral's intention. I have a credit score in the 800's and had no credit balances on my credit cards before the sanctions were imposed. I was using a portion of my income to pay off the mortgage on my home in the hopes of retiring after it was paid off, but now I'm being forced to use those funds to pay the Plaintiff's legal costs

for the lawsuit they implemented to conceal criminal fraud. I am 68 years-old with age related issues and it is difficult to work the required nine and half hours per day during the week and six hours most Saturdays at my age. I can't afford to take vacations and the only time I take a day off is to go to court hearings. Now I am working partly to pay the unjust sanctions that were requested by the Plaintiff's attorney and granted by the lower court.

My home was built in the late 1960's and I purchased it "as is" in 1997. It currently needs renovations such as a new heating/air conditioning unit. I have no central heat for the past two years and major plumbing problems because of copper pipes that need to be replaced, but instead of using my hard-earned money to purchase a climate control system or upgrade the copper plumbing, Mr. Futeral and The Court of Common Pleas are forcing me to pay Pet Helpers legal costs. In one of his legal cost affidavits, Mr. Futeral requested a \$550.00 round trip charge for travel from his Mount Pleasant office for a hearing scheduled at the courthouse in downtown Charleston when he had made a Motion for a Partial Summary Judgement that same day and had to be there, but now objects to me filing a Motion to Proceed in Forma Pauperis and saving \$250.00 (EXHIBIT C). If the Motion to Proceed in Forma Pauperis is granted, that will prevent me from becoming indigent, as well as preserve my right to a jury trial. I work very hard to keep myself financially solvent, and this court should not allow the Plaintiff's attorney to undermine that using his client's malicious and criminal lawsuit. The ultimate irony in his Return is that the Plaintiff is directly responsible for my imminent financial crisis and yet is objecting to me seeking a small relief.

I do not have the funds available to pay the \$9,638.48 that was ordered on May 5, 2022 or that amount available on my credit cards for a cash advance so I would have to try and borrow it or be incarcerated. Even if I did have that amount available for cash advances, I wouldn't be able to make the required payment for that large of an amount (EXHIBIT D). When I was incarcerated on November 5-9, 2021, I was released after four days because Judge Bentley D. Price had ordered thirty (30) days or the payment of the \$5,434.32 as a condition of my early release, but at the hearing and on his Motion to Show Cause, Mr. Futeral had requested that I be incarcerated for one month and then an additional month until I paid the sanction. Mr. Futeral is well aware that his clients committed fraud, that his lawsuit is an abuse of civil process, and that I can take legal action against him, his law firm and his clients for my false imprisonment and other injuries I have incurred as a result of this lawsuit and he wants to avoid that even if he has to jeopardize my life by confining me in jail. He has threatened to take more of my money and even mentioned the forced sale of my house in an attempt to make me settle prior to a trial because he knows I will prevail before an impartial jury. He has had the support of the judges in the Court of Common Pleas throughout the litigation granting all his requests and motions from the restraining orders, consolidation of my complaint, imposition of sanctions, dismissal of my counter claims, permanent injunctions, partial summary Judgement and other default judgments have been granted along with almost \$10,000 in additional sanctions. The lower court has abused the standard of discretion in blocking me from defending myself or presenting evidence that Pet Helpers committed fraud by staging my dog Toby's adoption and then collecting donations and subsidies based on a misrepresentation of finding him a home. They have essentially assisted criminals in covering up a crime as they did in a previous case, Janet Frisco vs. Debra Walker Case #2005-CP-10-1003681 in the Court of Common Pleas. Everything I said in my protest was true except Pet Helpers didn't kill Toby after the fake adoption because I staged the public protest and that drew too much attention to them. Mr. Futeral falsely claimed I committed slander and the Court of Common Pleas totally supported him in that complaint from beginning to end without letting me present my case. The entire lawsuit and all the actions contained it are nothing more than a judicial cover-up of Pet Helpers' crime.

My appeal does involve a fundamental constitutional right and that is a right to a public trial with an impartial jury guaranteed by the Sixth Amendment and due process guaranteed by the Ninth Amendment both of which Mr. Futeral is trying to prevent by destroying my budget with his court costs

to make it impossible for me to bring the case to trial and finally prove my innocence. I have been denied the right to due process because I was not able to present my defense or evidence of Pet Helper's guilt in this litigation. On his return, Mr. Futeral claims that the underlying issue involves civil claims for defamation, permanent injunction and malicious prosecution which are the core of his cover-up of Pet Helpers' criminal fraud. I plan to appeal those issues as well. All the past and present sanctions were implemented to prevent me from being able to defend myself against the lawsuit as a whole. Without the reversal of the \$11,412.72 sanctions included in Judge Bentley Price's orders of May 5, 2022, it may be impossible to continue to defend myself from the other false accusations of defamation and malicious persecution because I will be financially insolvent and could face destitution. Judge Price included the \$1,774.24 past sanction in his order so even though I've already paid it, because Mr. Futeral was threatening he would file a Motion to Show Cause (incarcerate me) if I didn't. It is a subject of this appeal and will be included with the order in its' entirety that I plan to challenge.

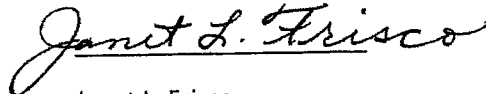
CONCLUSION

(1) This court should grant my Motion to Proceed in Forma Pauperis because Pet Helpers' lawsuit has caused the imminent financial crisis that could cause me to face complete impoverishment.

(2) The court should seek to allow any person who has not been found guilty by a jury and has been heavily and unjustly sanctioned, as I have, to proceed with appeals and motions in forma pauperis to guarantee their right to due process will not be impeded by lack of financial resources. **The right to a public trial and due process are constitution rights guaranteed by the sixth and ninth amendment** respectively and should be honored by this court and anyone associated with the justice system.

(3) Mr. Futeral planned to collect an additional \$9,638.48 in sanctions from me, and thereby prevent me from pursuing this action to trial where all the orders and sanctions will be reversed and he will be exposed for fraud upon the court and misuse of civil process.

Respectfully submitted,



Janet L. Frisco,
Pro Se
203 Cardinal Drive
Summerville, SC 29485
843-804-0875
janetfrisco@yahoo.com

Dated: June 7, 2022

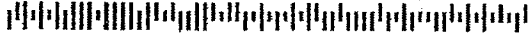


Member Service 1-888-842-6328
 www.navyfederal.org
 P.O. Box 3302 • Merrifield, VA 22119-3302

EXHIBIT A

MONTHLY FIRST MORTGAGE LOAN STATEMENT

1-796-20006-0000738-001-1-010-000-000-000



JANET FRISCO
 203 CARDINAL DR
 SUMMERVILLE SC 29485-7015

Loan Number	8025885461
Statement Date	05/27/2022
Payment Due Date	07/01/2022
Amount Due	\$504.30
<i>If payment is received after 07/16/22, a \$13.96 late fee will be charged.</i>	

Account Information

Borrower's Name:	JANET FRISCO
Property Address:	203 CARDINAL DR SUMMERVILLE SC 29485
Borrower Access Number	03062366
Principal Balance	30,728.60
Amount Deferred	0.00
Escrow Balance	881.60
Escrow Advance Balance	0.00
Suspense Balance	0.00
Interest Rate	3.000%
Contractual Maturity Date	August 2031

The balance shown does not include the payoff interest calculations. If you need a payoff figure, Member Service Representatives are available at 1-888-842-6328 during the following hours: Monday - Saturday: 7:00am-Midnight, Sunday: Noon-Midnight, Eastern Time.

Explanation of Amount Due

Principal	\$272.08
Interest	\$76.82
Escrow	\$155.40
Regular Payment	\$504.30
Other Amounts Owed	
Expenses Paid Balance	\$0.00
Late Charges	\$0.00
Other Fees	\$0.00
Total Amount Due	\$504.30

Past Payments Breakdown

Description	Paid Last Month	Paid Year to Date
First Principal	271.40	*1,470.20
Interest	77.50	*395.46
Deferred Principal	0.00	*0.00
Escrow (Taxes & Insurance)	155.40	*714.90
Life Insurance	0.00	*0.00
Fees / Expenses	0.00	*0.00
Expenses Paid	0.00	*0.00
Suspense	0.00	**
Total:	504.30	2,580.56

* Do not use these figures for reporting to the IRS. You will receive an annual year-end statement for tax purposes.

Transaction Activity (05/19/2022 - 05/27/2022)

Transaction Date	Effective Date	Description	Principal	Interest	Escrow / Rest Esc	Fees	Life/Misc	Suspense/Expense	Total
05/27	05/27	PAYMENT REC'D	271.40	77.50	155.40	0.00	0.00	0.00	504.30

Important Messages

If you are experiencing Financial Difficulty: Contact Navy Federal's Member Outreach Team to know your Loss Mitigation options to avoid Foreclosure at 888-503-7102. Housing Counselor Information: If you would like counseling or assistance, you can contact the following: U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800-569-4287.

EXHIBIT B

Re: Rule to Show Cause re: Court-Ordered Sanctions

From: Janet Frisco (janetfrisco@yahoo.com)
To: sfuteral@charlestonlaw.net
Cc: ssmith@charlestonlaw.net
Date: Thursday, April 28, 2022, 01:45 PM EDT

Mr. Futeral,

At this point money is no object. There have been no threats, disruptive or histrionic behavior on my part. I reacted to what Your client did to me when I made the mistake of trusting them. I won't make that mistake again. If you review your emails, you'll see that you and Pet Helpers have consistently threatened and attempted to do me harm after I caught on to their fraud scheme.

You probably don't want me there because you know your staff will realize I'm an innocent victim. I don't have anyone to come to the office. My friend said she was treated like dirt there.

Janet Frisco

Sent from Yahoo Mail on Android

On Thu, Apr 28, 2022 at 1:14 PM, Stephan Futeral
<sfuteral@charlestonlaw.net> wrote:

Ms. Frisco,

You are not allowed at my office because of your histrionic and disruptive behavior, the loathsome and antagonistic things you have written about my staff, and the threats you have made.

If you wish to send a third party with the check, that is fine. If you continue to play games by refusing to pay unless we file a Rule to Show Cause, then do not be shocked when the court orders that you pay additional sanctions for the filing of Rule to Show Cause. You have until Friday to pay.

Best wishes,

Stephan Futeral



Stephan Futeral, Esq.
Civil & Family Court Mediator, Futeral & Nelson, LLC

843.284.5500

charlestonlaw.net

1004 Anna Knapp Ext, Mt. Pleasant SC 29464



IMPORTANT: The information contained in this distribution, or copy of this communication is strictly prohibited by both State and Federal communications laws. If you have received this communication in error, please immediately notify us by telephone at the above number and permanently delete the original message received by you. **IRS CIRCULAR 230 NOTICE:** Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and



Futeral & Nelson LLC

1004 Anna Knapp Boulevard
Mount Pleasant, South Carolina 29464

11-9-21

Mailing Address:

P.O. Box 1385

Mount Pleasant, South Carolina 29465

Tel: 843-284-5500 | Fax: 843-284-5501

charlestonlaw.net

November 9, 2021

VIA FAX (843) 529-7400 OR (843) 529-7475

Sheriff Al Cannon Detention Center

Attention: Records Department

3841 Leeds Avenue

North Charleston, SC 29405

RE: Pet Helpers, Inv. vs. Janet Frisco

Case: 2021-CP-10-2682

Payment of Fees by Janet Frisco to Opposing Counsel, Stephan V. Futeral, Esquire

Dear Records Department:

Please find attached a copy of the following:

1. Copy of Cashier's Check in the amount of \$5,434.32.
2. Receipt of Cashier's Check in the amount of \$5,434.32.
3. Copy of Certified Form 4, Judgment in a Civil Case.

Pursuant to the attached Form 4, Janet Frisco is to be released upon payment of \$5,434.32 to opposing counsel, Stephan V. Futeral, Esquire.

Should you have any questions or require additional information, please contact our office.

Sincerely,

Michelle McManigal
Michelle McManigal
Paralegal

/mm
enclosure

EXHIBIT C

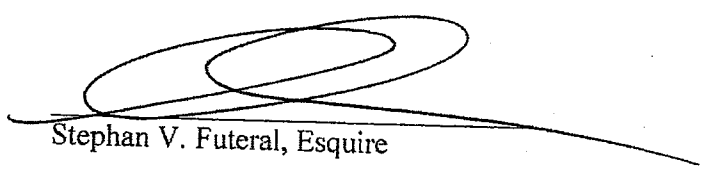
Date/Time	Event	Party	Date	Case No.	Judge	Notes	Status
11/21/2021 11:30 AM	Motion/Partial Summary Judgment & cts/v	Pet Helpers Inc- P/L	06/16/2021	2021CP1002682	Slander/Label	Stephan Victor Futeral (843) 284-5500	Janet Frisco
11/21/2021 11:30 AM	Motion/Contpl Discovery cts/v	Pet Helpers Inc- P/L	07/27/2021	2021CP1002682	Slander/Label	Stephan Victor Futeral (843) 284-5500	Continued
16/12/2021 11:30 AM	Motion for Time Change	Janet Frisco-DEF	06/15/2021	2021CP1002682	Slander/Label	Stephan Victor Futeral (843) 284-5500	denied
16/12/2021 11:30 AM	Motion to Amend Original Answer Pursuant to SCRC Rule 15 B	Janet Frisco-DEF	10/19/2021	2021CP1002682	Slander/Label	Stephan Victor Futeral (843) 284-5500	denied
2012/17/2021 11:30 AM	Motion/Appeal	Nathaniel J Brown-APL	06/16/2021	2021CP1002817	Magistrate Civil 910	Ivone G Brown (843) 991-2224 Nathaniel J Brown (843) 991-2224	Zemre C Smith

hearing and attending the hearing for a total of 2.4 hours. My time spent in this matter is valued at \$660.00.

13. My paralegal has spent 1.0 hours in communicating with the Defendant and hearing preparation which totals \$150.00.

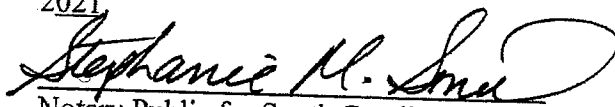
14. The total attorney's fees, costs and expenses related to this matter total **\$810.00**.

15. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Stephan V. Futeral, Esquire

Sworn to before me this 17th of December,
2021



Notary Public for South Carolina

My commission expires: 1/12/2031

<u>Date</u>	<u>Hours</u>	<u>Description</u>	<u>Rate</u>	<u>Billable</u>	<u>User</u>
10/19/21	0.10	Email from Janet encl Motion to Amend (.1)	\$150.00	\$15.00	Stephanie Smith
10/19/21	0.10	Review Motion to Amend Answer	\$275.00	\$27.50	Stephan Futeral
12/9/21	0.10	Email to Def. re Motion to Amend Answer (.1)	\$150.00	\$15.00	Stephanie Smith
12/16/21	0.80	Prepare for hearing; draft affidavit of attorney's fees.	\$150.00	\$120.00	Stephanie Smith
12/16/21	0.30	Prepare for Hearing	\$275.00	\$82.50	Stephan Futeral
12/17/21	2.00	*Travel to/from and attend hearing.	\$275.00	\$550.00	Stephan Futeral
		*Anticipated Time			
		TOTAL ATTY FEES		\$810.00	

EXHIBIT D

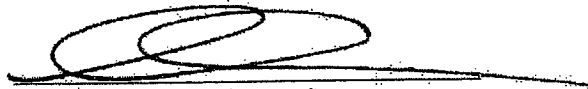
12. As to time spent for the hearing on Plaintiff's Motion for Partial Summary Judgment, Plaintiff's Motion for Sanctions, and Defendant's Motion to Amend, I have spent 28.3 hours in drafting pleadings, reviewing documents filed by Plaintiff, performing legal research, preparing for and attending the motions hearing, and drafting the order.

13. My client was charged 3.1 hours at the hourly rate of \$350.00 which is valued at \$1,085.00. I spent 25.2 hours at the reduced hourly rate of \$275.00 per hour which is valued at \$6,930.00. My total time spent is valued at \$8,015.00.

14. My paralegal spent 10.4 hours in reviewing filing documents, drafting pleadings and affidavits, communicating with the court, and preparing the file for the motions hearing at the hourly rate of \$150.00 for a total value of \$1,560.00.


15. My client has incurred filing fees in the amount of \$63.48.

16. The total attorney's fees, costs and expenses related to Plaintiff's Motion for Partial Summary Judgment, Plaintiff's Motion for Sanctions, and Defendant's Motion to Amend total \$9,638.48.



Stephan V. Futeral, Esquire

Sworn to before me this 27th of April,
2022.


Notary Public for South Carolina
My commission expires: 1/12/2031

<u>Date</u>	<u>Hours</u>	<u>Description</u>	<u>Rate</u>	<u>Billable</u>	<u>User</u>
6/15/21	3.10	Research defamation and summary judgment. Draft motion outline. Draft email to Stephanie regarding law and facts for motion for summary judgment. Brief telephone call with client. (2.0) PCs w/ SMS (.3) Drafting Motion for Summary Judgment (.8)	\$350.00	\$1,085.00	Stephan Futeral
6/15/21	0.20	Online filing of Motion for Summary Judgment (.2)	\$150.00	\$30.00	Stephanie Smith
6/29/21	0.10	Receive Objection to MSJ; save to file (.1)	\$150.00	\$15.00	Stephanie Smith
1/19/22	1.30	Research sanctions for failure to comply with order of discovery, review emails, draft motion.	\$275.00	\$357.50	Stephan Futeral
1/24/22	0.40	Ltr to Frisco encl filed Motion for Sanctions; draft certificate of service; email to Frisco encl same (.4)	\$150.00	\$60.00	Stephanie Smith
2/11/22	0.10	Email to court re scheduling of motions (.1)	\$150.00	\$15.00	Stephanie Smith
2/14/22	3.70	PCs w/ SMS (.3) Drafting of memo re Summary Judgment Motion (3.4)	\$275.00	\$1,017.50	Stephan Futeral
2/14/22	0.30	PCs w/ SVF (.3)	\$150.00	\$45.00	Stephanie Smith
2/15/22	1.70	Research and finalize memo in support of summary judgment.	\$275.00	\$467.50	Stephan Futeral
2/17/22	0.20	Review draft memo in support of SJ motion (.2)	\$150.00	\$30.00	Stephanie Smith
2/22/22	0.20	PC w/ clerk of court and email w/ follow up (.2)	\$150.00	\$30.00	Stephanie Smith
3/1/22	2.20	Draft Reply to Defendant's 2nd Motion to Amend Answer and Counterclaims (1.8) PCs w/ SMS (.4)	\$275.00	\$605.00	Stephan Futeral
3/1/22	0.90	PCs w/ SVF (.4) Revise draft reply to 2nd motion to amend answer and submit to court for filing (.3) draft letter to Frisco and email (.2)	\$150.00	\$135.00	Stephanie Smith
3/2/22	0.10	Email from court re scheduling hearing; email to client (.1)	\$150.00	\$15.00	Stephanie Smith
3/3/22	0.30	PC w/ clerk of court; PC w/ SVF (.2) Email to client (.1)	\$150.00	\$45.00	Stephanie Smith

3/22/22	0.20	Email from Court; calendar hearings; email to client (.2)	\$150.00	\$30.00	Stephanie Smith
3/24/22	0.70	Prepare Notice of Hearing and Certificate of Service; efile with court (.4) Draft letter to Frisco; email to Frisco re hearing notice (.3)	\$150.00	\$105.00	Stephanie Smith
3/24/22	0.60	Review 3rd motion to amend. Draft reply to 3rd motion to amend.	\$275.00	\$165.00	Stephan Futeral
3/25/22	0.50	Review draft of reply to 3rd motion to amend; efile; letter to Frisco encl same; email to Frisco (.4) Emails from Frisco to Court; reply to Frisco (.1)	\$150.00	\$75.00	Stephanie Smith
3/28/22	0.30	Review emails from Frisco (.3)	\$150.00	\$45.00	Stephanie Smith
4/5/22	0.10	Review emails from Frisco (.1)	\$150.00	\$15.00	Stephanie Smith
4/5/22	0.10	Review emails from Frisco (.1)	\$275.00	\$27.50	Stephan Futeral
4/6/22	0.10	Emails from Court; forward to client re scheduling (.1)	\$150.00	\$15.00	Stephanie Smith
4/7/22	0.80	PC w/ SVF (.2) Draft Affidavit of Susko in support of Motion for Summary Judgment (.6)	\$150.00	\$120.00	Stephanie Smith
4/7/22	0.20	PC w/ SMS (.2)	\$275.00	\$55.00	Stephan Futeral
4/12/22	0.70	Prepare Memo re SJ Motion for filing; mark exhibits; file w/ court (.4) Draft letter to Frisco encl filed memo; email to Frisco & copy to client (.3)	\$150.00	\$105.00	Stephanie Smith

4/13/22	0.20	Review documents/emails submitted by Frisco (.2)	\$150.00	\$30.00	Stephanie Smith
4/21/22	2.50	Prepare file for motion hearings; index pleadings (.8) Review additional filings from Frisco; email to client (.2) PC w/ SVF (.7) Draft timeline (.8)	\$150.00	\$375.00	Stephanie Smith
4/21/22	3.70	PC w/ SMS and review filings (.9) Prepare for motion hearings (2.8)	\$275.00	\$1,017.50	Stephan Futeral
4/22/22	1.80	Travel to/from and attend hearings (1.6) PCs w/ SMS (.2)	\$275.00	\$495.00	Stephan Futeral
4/22/22	0.20	PCs w/ SVF (.2)	\$150.00	\$30.00	Stephanie Smith
4/24/22	4.00	Drafting of Order.	\$275.00	\$1,100.00	Stephan Futeral
4/25/22	1.90	Drafting of Order.	\$275.00	\$522.50	Stephan Futeral
4/26/22	3.90	Continue drafting order	\$275.00	\$1,072.50	Stephan Futeral
4/26/22	0.10	PC w/ SMS re fee affidavit (.1)	\$275.00	\$27.50	Stephan Futeral
4/26/22	0.10	PC w/ SVF re fee affidavit (.1)	\$150.00	\$15.00	Stephanie Smith
4/27/22	1.20	Drafting of attorney fee affidavit (1.2)	\$150.00	\$180.00	Stephanie Smith
		TOTAL ATTY FEES		\$9,575.00	
		<u>FEES AND COSTS</u>			
		Summary Judgment - Motion fee		\$31.74	
		Sanctions - Motion fee		\$31.74	
		TOTAL		\$63.48	
		TOTAL ATTY FEES AND COSTS		\$9,638.48	

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Jun 07 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas, 9th Circuit Court
The Honorable Bentley D. Price

Court of Appeals Case No. 2022-000775

Circuit Court Case No. 2021-CP-10-2682

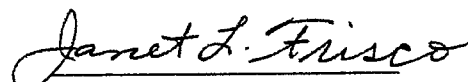
Pet Helpers, Inc..... Respondent
Janet L. Frisco.....Appellate

PROOF OF SERVICE

I certify that I have served the Appellant's *Reply to the Return to the Motion to Appear in Forma Pauperis* by delivering the same via email and United States mail, postage prepaid, on June 7, 2022 addressed to the Respondent as follows:

Stephan V. Futeral,
Attorney for the Respondent
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, South Carolina 29464
sfuteral@charlestonlaw.net

Respectfully,


Janet L. Frisco, Pro Se

Dated: June 7, 2022

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Jun 17 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas, 9th Circuit Court

The Honorable Bentley D. Price

Court of Appeals Case No. 2022-000775

Circuit Court Case No. 2021-CP-10-2682

Pet Helpers, Inc..... Respondent

Janet L. Frisco.....Appellant vs.

Melissa Susko, Third Party Defendant

**MOTION TO STAY THE IMPOSITION OF SANCTIONS PENDING APPEAL PERSUANT TO SCRCF
62(g) AND BRIEF IN SUPPORT**

"RULE 62 (g) POWER OF APPELLATE COURT NOT LIMITED. *The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgement subsequently to be entered. An application for such relief should first be made to the trial court under Rule 62 (c) or (d), but when such application is not practicable it may first be made to an appellate court or a judge or justice thereof."*

Janet Frisco, Appellate, hereby files this Motion to Stay the Imposition of Sanctions ordered by Judge Bentley D. Price May 5, 2022 in the Charleston County Court of Common Pleas, 9th Circuit pending appeal, and states as follows:

I. INTRODUCTION

Appellant has filed an appeal with the South Carolina Appellate Court concerning the sanctions and other orders filed May 5, 2022 because my case against Pet Helpers was suppressed by the judges. I was not allowed to present evidence that Pet Helpers, Inc. had staged the adoption of my dog Toby that I surrendered to them on April 13, 2021. The restraining orders were granted on the Plaintiff's lawyer's testimony alone that I had committed slander and libel against them during my public protests after I concluded from posted photographs on their website and a former employee informing me that the executive director, Melissa Susko, was certified to euthanize and had been involved in the deaths of at least two dogs that the former employee was aware of. I have reason to believe Pet Helpers used an employee to stage the adoption the weekend of May 7-9th, 2021 in order to solicit donations on their website and collect subsidies from the Bissell Pet Foundation that sponsored a low-cost adoption event that weekend. In order to obtain the restraining orders/gag order, their attorney claimed I had trespassed on his client's property in violation of a No Trespass Order and I was not allowed during hearings to show the tax map or police reports that I had obtained that proved I was innocent. The plaintiff's lawyer said the police did not have the final word and that "they" could reopen it. He also said I had threatened Pet Helpers' employees because I had told the Ms. Susko I was coming over to Pet Helpers with God's army when she was rude to me when I spoke to her on the phone after the alleged adoption.

He also concealed evidence of the fake adoption and later manufactured evidence in the form of a forged adoption application that he presented to the court at the hearing on April 22, 2022. He is guilty of abusing civil process, fraud upon the court, misuse of sanctions and my false imprisonment. I currently have a complaint against him in South Carolina Supreme Court Disciplinary Counsel concerning these infractions and may seek damages against him.

II. ARGUMENTS

A. The Discretionary Factors Dictate that this Order for Sanctions Should be Stayed Pending Appeal:

In determining whether to grant a stay pursuant to Rule 62(g) of the Federal Rules of Civil Procedure, a district court must consider four factors:

1) Whether the stay applicant has made a strong showing that he is likely to succeed on the merits; 2) whether the applicant will be irreparably injured without a stay; 3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and 4) whether public interest will be served by granting the stay.

Because all four factors militate in favor of a stay, Appellant respectfully requests that this Court grant a stay of ordered sanctions, pending the resolution of the pending appeal.

1. Appellant Has Presented a Substantial Case on the Merits of this Appeal:

The first factor requires the Court to consider whether Counsel has made a showing of likelihood of success on the merits. However, this factor does not require the district court to conclude that its decision was in error or to find a probability of success in the merits. Rather the movant need only present "a substantial case on the merits when a serious legal question is involved and show that the balance of the equities [i.e., consideration of the other three factors] weighs heavily in favor of granting a stay." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Ruiz v. Estelle*, 650 F.2d 555, 565, (5th Cir. 1981). As one district court noted, "it is unlikely that a district court would ever to be able to find that defendants

will be likely to succeed on the merits of their appeal. To make such a finding, the district court would be saying that it erred in not granting defendant's original motion. *C.B.S. Employees Fed. Credit Union v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 716 F.Supp. 307, 309 (W.D. Tenn. 1989; see also *Washington Area Transit Commission v. Holiday Tours, Inc.* 559 F.2d 841, 843 (D.C.Cir. 1977) ("[A district] court is not required to find that ultimate success by the movant is a mathematical probability"); *Steiner v. Apple Computer, Inc.* No.C-07-04486-SBA, 2008 WL 1925197 (N.D. CAL.2008) (granting a stay despite finding that the defendant was "not likely to succeed on appeal").

Thus, the stay procedure of Rule 62(g) "affords interim relief where relative harm and the uncertainty of final disposition justify it (Ruiz, 650 F.2d at 565)." Irrespective of the final outcome of the appeal because appellant presents a substantial case on the merits of her appeal, a stay is warranted. To wit, Appellant Pro Se will appeal this order on the following grounds:

- a. Plaintiff lacked standing to move for sanctions because their complaint is a cover-up of criminal fraud and their attorney committed fraud upon the court by making false statements about the defendant, concealing evidence of the faked adoption and later manufacturing false evidence in the form of a forged adoption application.
- b. I was not allowed to defend myself during the course of the litigation or present evidence in support of my statements against the plaintiff that they had committed criminal fraud in staging the adoption of my dog Toby, that they were cruel to him in not allowing me to return for him, motivated by greed for money, and had euthanized other animals at their adoption center and would have killed Toby after they used him to make money and had no further use for him if I hadn't publicly protested and drew so much attention to them.

2. Appellant will be irreparably harmed without a stay of the order for sanctions pending an appeal:

I don't have the money on hand to pay the sanctions and would have to try and borrow it. If I am unable to borrow it, I will have to go to jail and not be able to work, pay my mortgage, car payment and my pets will be impounded. I could even die in jail because of the inhumane conditions I could be subjected to. They torture you for minor infraction by confining you in the behavior modification room with a metal table to sleep on, strip you naked, clothe you in a "turtle suit" and feed you bologna sandwiches through a slit in the door for undetermined periods of time. Mr. Futeral has already threatened to take action if I don't pay it by June 17, 2022.

3. No Party will be Substantially Harmed by the Granting of the Stay:

Pet Helpers has had to spend only minimal amounts of money because I have paid all their lawyer's excessive fees in the form of sanctions that were wrongly granted by the lower court. I have already paid their lawyer \$7208.56 in sanctions to cover his inflated legal costs incurred with his lawsuit, which is an abuse of civil process implemented to cover up Pet Helpers' criminal fraud.

4. The Public Interest Weighs in Favor of the Stay:

If I don't have to pay the \$9638.48 with interest \$9701.66 and be plunged into serious debt, I will be able to continue my appeal and defend myself from Pet Helpers malicious cover-up lawsuit. They will be exposed for the fake adoption of my dog Toby and probably numerous other scams and will no longer be able to victimize individuals who trust them with their pets,

bilk the public under false pretenses or perpetrate fraud on businesses that are striving to assist homeless animals by subsidizing adoptions.

Secondly the public has an interest in avoiding the appearance of impropriety in the legal profession (See United States v. Jennings, 724 F.2d 436, 449 {5th Cir. 1984}) Until the South Carolina Court of Appeals determines conclusively whether sanctions were warranted in this matter, since the Plaintiff's entire lawsuit is an abuse of civil process, sanctions should not be imposed, as this creates the appearance of impropriety which in truth it is.

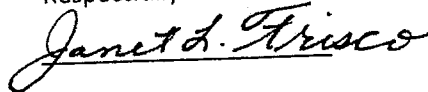
B. Sanctions were not warranted Under the Court's Inherent Powers, or Were Excessive:

The Plaintiff's attorney charged excessive legal fees on his affidavits such as \$550.00 to travel to and from his office to the court house approximately ten miles away. Sanctions were imposed because Plaintiff's attorney was granted restraining orders by making false statements on filed documents and in hearings that I had trespassed on Pet Helpers property and threatened their employees. Judges who presided at the hearings for restraining orders did not require any evidence of these allegations or allow me to defend myself against the false accusations. Judges did not exercise the standard of discretion or due diligence in their decisions. Judge Bentley Price accepted an alleged adoption application without any supporting evidence such as an identification card that would prove it was authentic when Pet Helpers' attorney submitted it to the court as evidence that my dog Toby's adoption was legitimate. Plaintiff's attorney, Stephan V. Futeral, was granted every one of his motions and requests in the Charleston County Court of Common Pleas, 9th Circuit which is the reason it would not be practicable for me to submit this application for a stay of the sanctions to the presiding judge, because they have been overtly biased in Pet Helpers' favor throughout the entire litigation and there is no reason to believe they would change that course at this point.

III .CONCLUSION

A stay is warranted here, because appellant's appeal raises serious legal questions, Appellant will be irreparably harmed absent a stay, no party will be substantially harmed by granting of a stay, and public interest in avoiding the appearance of impropriety in the legal profession weighs in favor of a stay. For the foregoing reasons, appellant respectfully requests that the Court stay the imposition of sanctions pending the resolution of the appeal of the Court's order of May 5, 2022.

Respectfully submitted,



Janet L. Frisco,
Appellant, Pro Se
203 Cardinal Drive
Summerville, SC 29485
843-804-0875
janetfrisco@yahoo.com

Dated: June 17, 2022

RECEIVED

Jun 17 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas, 9th Circuit Court

The Honorable Bentley D. Price

Court of Appeals Case No. 2022-000775

Circuit Court Case No. 2021-CP-10-2682

Pet Helpers, Inc..... Respondent

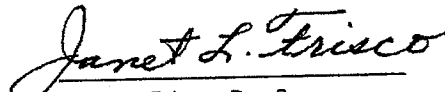
Janet L. Frisco.....Appellate vs
Melissa Susko, Third-Party Defendant

PROOF OF SERVICE

I certify that I have served the Respondent ***MOTION TO STAY THE IMPOSITION OF SANCTIONS PENDING APPEAL PURSUANT TO SCRPC 62(g) AND BRIEF IN SUPPORT*** by delivering the same via email and United States mail, postage prepaid, on June 17, 2022 addressed to the Respondent as follows:

Stephan V. Futeral,
Attorney for the Respondent
1004 Anna Knapp Blvd., Suite 3
Mt. Pleasant, South Carolina 29464
sfuteral@charlestonlaw.net

Respectfully,


Janet L. Frisco, Pro Se

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Pet Helpers, Inc.,

Plaintiff,

vs.

Janet Frisco,

Defendant,

vs.

Melissa Susko,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 21-CP-10-02682

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SC Court of Appeals

**ORDER ON MOTIONS HEARING
HELD ON APRIL 22, 2022**

ELECTRONICALLY FILED - 2022 May 05 2:46 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002682

This matter came before the court on April 22, 2022, for: (1) a Motion for Partial Summary Judgment on behalf of Plaintiff and Third-Party Party Defendant Melissa Susko [hereinafter Susko], (2) a Motion for Sanctions against Defendant Frisco for failure to comply with an order compelling discovery, (3) Defendant Frisco's Second Motion to Amend, and (4) Defendant Frisco's Third Motion to Amend. Plaintiff's counsel, Susko, and Janet Friso, *pro se*, attended the hearing. After reviewing the record in this case, the pleadings, affidavits, and memorandums filed by the parties, and hearing the arguments of Plaintiff's counsel and of Defendant Frisco, this court makes the following findings of fact and conclusions of law.

BACKGROUND

Plaintiff is a non-profit "no-kill" pet adoption center and spay/neuter clinic. On April 13, 2021, Defendant relinquished ownership of a dog to Plaintiff. On May 8, 2021, the canine was adopted by a third party. After relinquishing ownership of the dog to Plaintiff, Defendant demanded the dog's return. When Plaintiff declined to return the dog to Defendant, Defendant

threatened to bring "God's Army" to Plaintiff's business location. Defendant also threatened that she would "light up the internet" regarding Defendant's grievances. Thereafter, Defendant engaged extensive campaign of publishing numerous social media posts and videos, protesting in front of Plaintiff's business, and claiming that, as a matter of fact:

- a) Plaintiff killed the dog;
- b) Plaintiff cruelly euthanize other animals in its shelter;
- c) Plaintiff was cruel to the dog;
- d) Plaintiff is cruel to other animals in its shelter; and
- e) Plaintiff "staged" the dog's adoption.

Additionally, after the dog's adoption and during a portion of this litigation, Defendant sent numerous emails to third parties, including the Post & Courier, making the same factual allegations regarding Plaintiff and Susko. This action followed.

PROCEDURAL HISTORY

1. Plaintiff's Complaint and First Injunction

On June 9, 2021, Plaintiff initiated this action by filing a Summons, Complaint and Motion for Emergency *Ex Parte* Restraining Order. In its Complaint, Plaintiff asserted causes of action for slander, libel, and a permanent and temporary injunction against Defendant.

On June 11, 2021, this court issued an *Ex Parte* Restraining Order and Injunction against Defendant enjoining her from making the statements set forth above. Thereafter, on June 17, 2021, the court issued and filed a Temporary Restraining Order and Injunction after a hearing regarding the *Ex Parte* Restraining Order and Injunction was held the same day.

2. Defendant's Complaint and Consolidation

On June 17, 2021, Defendant filed a Summons and Complaint, Janet Frisco v. Pet Helpers, Inc., Case Number 2021-CP-10-2848, against Plaintiff and Susko. The gravamen of Defendant's claims can be summed up by the following allegation - "I suffered severe depression and grief and am still suffering due to the separation [Plaintiff and Susko] needlessly created by not returning the dog to me." Plaintiff and Susko answered and counterclaimed for malicious prosecution. Upon motion by Plaintiff, Frisco v. Pet Helpers, Inc. was consolidated with this action by order of this court filed on January 6, 2022.

3. Second Restraining Order Against Defendant

On October 12, 2021, this court issued a second Order for Injunction and Temporary Restraining Order expanding the prohibitions listed in the first Order for Injunction and Temporary Restraining Order. Additionally, this court sanctioned Defendant for \$5,434.34 for violating the first Order for Injunction and Temporary Restraining Order. However, Defendant failed to comply with the first and second Orders for Injunction and Temporary Restraining Order and to pay the sanction.

4. Defendant's Contempt of Court

On November 5, 2021, this court held Defendant in contempt for violating the Injunction and Restraining Orders more than eighty (80) times and sentenced Defendant to thirty (30) days in jail purgeable upon payment of \$5,434.32 to Plaintiff's counsel. Defendant spent approximately four days in jail before paying the sanction.

5. Defendant's First Motion to Amend

On October 19, 2021, Defendant filed her first motion to amend. On January 11, 2022, the court issued an order denying Defendant's motion because Defendant failed to submit a proposed

amended pleading for the court's review and because Defendant sought inappropriate relief such as the dismissal of Plaintiff's lawsuit. Additionally, the court ordered Defendant to pay \$560 in sanctions to Plaintiff for filing a meritless motion. As of April 22, 2022, Defendant has failed to pay the sanctions to Plaintiff.

6. Defendant's Failure to Comply with Order of Discovery

Defendant refused to answer Plaintiff's Interrogatories and Requests for Production that were due on or before July 23, 2021. On December 17, 2021, this court ordered Defendant to respond to Plaintiff's discovery by January 17, 2022, and financially sanctioned Defendant for \$1,214.24 for her refusal to respond to Plaintiff's discovery.

On January 21, 2022, Plaintiff filed a Motion for Sanctions for Defendant's Failure to Comply with the Order Compelling Discovery. As April 22, 2022, Defendant still refuses to comply with the order compelling discovery or to pay the financial sanctions to Plaintiff.

7. Defendant's Second Motion to Amend

On February 28, 2022, Defendant filed a "Return to Defendant's Motion to Amend Answer Pursuant [sic] to SCRCP 15(b) and Counterclaim for Malicious Prosecution." This motion is, in essence, Defendant's second Motion to Amend. Like Defendant's first Motion to Amend, Defendant failed to submit to this court a proposed amendment for this court's review. Moreover, Defendant sought additional relief, including:

- 1) Reimbursement of the sanctions placed on Defendant resulting from the court's finding of contempt of court;
- 2) Return of the dog that Defendant admits she legally transferred ownership to Plaintiff and was adopted by a third party nearly a year ago; and
- 3) Payment of \$50,000.00.

Lastly, as noted herein, as of April 22, 2022, Defendant had not complied with the court's order regarding Defendant's first Motion to Amend to pay \$560 in sanctions to Plaintiff.

8. Defendant's Third Motion to Amend

On March 24, 2022, Defendant filed a "Motion for Leave to Supplement Answer to Plaintiff's Complaint Pursuant [sic] to SCRPC Rule 15(d) and Amended Counterclaim for Malicious Prosecution." This motion is, in essence, Defendant's third Motion to Amend. Like Defendant's first and second Motions to Amend, Defendant failed to submit to this court a proposed amendment for this court's review. Again, Defendant sought relief such as the return of the dog and an award of \$50,000.

9. Motion for Partial Summary Judgment

On June 16, 2021, Plaintiff filed its Motion for Partial Summary Judgment that was initially scheduled to be heard by the court on December 17, 2021. In her return to Plaintiff's Motion for Summary Judgment, Defendant claimed to need additional time to complete discovery. However, Defendant had not submitted interrogatories or requests for production since the initiation of this lawsuit. Nevertheless, to afford Defendant extra time to engage in discovery, Plaintiff voluntarily moved to continue the summary judgment motion. Defendant opposed Plaintiff's motion to continue the summary judgment hearing, but the court granted Plaintiff's continuance request. Since the hearing date of December 17, 2021, Defendant has not engaged in discovery.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defendant's Second and Third Motions to Amend

It is well established that a motion to amend is addressed to the circuit court's sound discretion, and the party opposing the motion has the burden of establishing prejudice. Foggie v. CSX Transp., Inc., 313 S.C 98, 431 S.E.2d 587 (1993). Here, Defendant's 2nd Motion is based on

Rule 15(b), SCRCP that provides “[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.” (emphasis added). Since there has been no trial in this case, Defendant’s second Motion to Amend is without merit.

Additionally, Defendant failed in both her second and third Motions to Amend to submit a proposed amendment to the court or to Plaintiff’s counsel. Without a proposed amended pleading, this court cannot determine the merits of Defendant’s motion, and Plaintiff and Susko are prejudiced in their ability to respond meaningfully to Defendant’s motions. Additionally, in her motions, Defendant seeks frivolous relief such as the dog’s return and \$50,000 in damages. Lastly, this court holds that because Defendant has failed to pay \$560 in sanctions arising from her 1st Motion to Amend, the interests of justice would not be served by allowing Defendant to avoid the court-ordered sanctions while allowing Defendant to amend her pleadings. Accordingly, this court denies Defendant’s second and third Motions to Amend.

2. Plaintiff’s Motion for Partial Summary Judgment

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “[T]he evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

To oppose a motion for summary judgment, “the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a fishing expedition.’” Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433,

439 (2003) (quoting Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991)). Moreover, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

Here, Defendant did not submit anything to the court, such as the affidavit of a witness, to create a genuine issue of material fact to substantiate any of Defendant’s claims or defenses. Instead, on April 21, 2022, Defendant filed a Memorandum in Opposition to Plaintiff’s Motion for Partial Summary Judgment and filed an Affidavit by Defendant. In her Affidavit, Defendant claims:

I, Janet Frisco, pursuant to SCRCF Rule 56(f) request additional time to submit discovery requests to Plaintiff which is essential to justify my opposition to their Motion for Partial Summary Judgment. I cannot present by affidavit facts concerning the staged adoption of my dog Toby and Pet Helper’s fraud soliciting donations and subsidies without their discovery disclosures.

Rule 56(f), SCRCF provides:

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

Regarding Defendant’s affidavit, Rule 56(g), SCRCF provides:

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney’s fees, and any offending party or attorney may be adjudged guilty of contempt.

Here, Defendant claims in her Memorandum opposing summary judgment that “I never claimed on any filed document I needed more time for discovery.” However, Defendant twice

claimed she needed more time for discovery. On December 8, 2021, Defendant filed two memoranda in opposition to Plaintiff's motion for partial summary judgment. In her memoranda, Defendant claimed, "I have not . . . had the opportunity to pose interrogatories to the Plaintiff," and "I have not been able . . . to request interrogatories or production from the Plaintiff. . . ." As previously stated, the court continued Plaintiff's summary judgment motion from December 17, 2021 until the date of this hearing to give Defendant additional time to initiate and complete discovery. Accordingly, Defendant's argument that she "never claimed on any filed document" for more time to conduct her discovery is meritless.

Additionally, under Rule 56(g), this court holds that Defendant filed her affidavit on April 21, 2022, in bad faith and solely for delay. Instead of engaging in discovery since December 17, 2021, Defendant sent numerous pejorative and disparaging emails to Plaintiff's counsel and his staff, such as:

- 1) I realize that your wife wouldn't hang around with an old fart that wasn't loaded so you have to bleed people who earn their money honestly. As for [the paralegal of Plaintiff's counsel] maybe she and your wife and can start a bordello. It's a lot more honest than what they're doing now for money.
- 2) [Y]ou [the paralegal of Plaintiff's counsel] are guilty of trying to cover up Pet Helpers fraud. The longer you perpetuate the lie and the malicious prosecution, the greater the repercussions will be when the truth comes out. As I said previously, you're going to need to get an honest job once Mr. Futeral loses his license to practice law.

Accordingly, this court denied Defendant's request to continue the summary judgment hearing.

"The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). "The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's

communication to others of a false message about the plaintiff. Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct.” Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, ___ (S.C. 1998). “If a defamation is actionable *per se*, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages.” Id. at 510, 506 S.E.2d at ___.

Libel is actionable *per se* if it involves

written or printed words which tend to degrade a person, that is, to reduce his character or reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous’ In other words, if the trial judge can legally presume, because of the nature of the statement, that the plaintiff’s reputation was hurt as a consequence of its publication, then the libel is actionable *per se*. Essentially, all libel is actionable *per se*.

Id. at 510-11, 506 S.E.2d at ___ (quoting Lesesne v. Willingham, 83 F. Supp. 918, 921 (E.D.S.C. 1949)) (citation omitted).

Slander is actionable *per se* if the defendant “charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one’s business or profession.” Holtzscheiter, 332 S.C. 502, 511, 506 S.E.2d at ___.

Here, the record shows that Defendant made numerous defamatory statements on social media via text and video, during Defendant’s in-person protests regarding Plaintiff and Susko, and emails to third persons and organizations such as the Post & Courier. Defendant’s statements include:

- a) “[T] hey’re, they’re just cruel. And they’re dishonest, and they’re deceptive.”

- b) "[Pet Helpers are] despicable, just horrible, horrible human beings... They didn't help Toby. They hurt Toby. They made him suffer. And I'm sure he's not the only one."
- c) "Melissa [Susko], she has licensed euthanize and she has euthanized other dogs are ordered that they be euthanized even though they were not sick, or aggressive. But she's all about corporate greed."
- d) "I think they're killing other dogs, because I've heard people who are former employees here, and they told me that they, they're killing dogs."
- e) "I think they had, you know, a plan for him a death plan for him the whole time... I'm talking about Melissa [the Executive Director of Pet Helpers] because she's she's got a certification to kill dogs. And she's done it herself. And she's ordered dogs killed too ... I'm sure that's just the tip of the iceberg here."
- f) "[My] sign says, corporate greed kills my dog, Toby. Corporate greed. And the other side says Pet Helpers killed Slim Jim May 11th ... And I'm not going to stop until first of all these people, a bunch of people here, Melissa, Katie, and intake, and anybody else that knew and the guy that killed him, anybody else, they'll all be fired. If this company cares, this place will be shut down and reopened by somebody who really cares about animals. . . . But it's really a kill shelter."
- g) "And most of these dogs will not make it out of here alive. They really won't. Toby did not make it out of this place alive... And then they killed him. They killed Toby. They killed my dog."

- h) "I'm here to tell you it's not so quick giving them money. Don't give them any more money. You don't ever surrender a dog to any shelter. And if they claim to be no kill, don't believe them."
- i) "But my sign, I'm protesting Janet Frisco is protesting Pet Helpers in their cruelty to my dog and probably too many other dogs. But my sign says Pet Helpers killed Slim Jim May 11th."
- j) "[Pet Helpers] killed him because they didn't adopt him to anyone. They killed him. And I know they did."
- k) "[Pet Helpers] just let him suffer and then they, you know, we're taking a lot of pictures of him and you know, and they just let him suffer here for a whole month."
- l) "[Plaintiff] used [Toby] as a marketing tool to solicit donations and then euthanized him after they staged an adoption the weekend of May 7-11, 2021."

Defendant's statements include allegations that Plaintiff is engaged in the criminal offense of animal cruelty and that Plaintiff and Susko are unfit for their profession. This court holds that these and other written and spoken statements by Defendant are actionable *per se*. Accordingly, the law presumes Defendant acted with common law malice and that Plaintiff suffered general damages.

Plaintiff submitted affidavits and exhibits to the court to show that Defendant's claims that Plaintiff killed the dog were false. Moreover, in Defendant's answers to requests for admission, the only discovery request Defendant responded to, Defendant conceded that her claims that Plaintiff and Susko killed the dog are untrue.

Defendant's counterclaims against Plaintiff and Susko can be summed up by the following allegation: "I suffered severe depression and grief and am still suffering due to the separation [Plaintiff and Susko] needlessly created by not returning the dog to me." Additionally, after

learning the dog was still alive, Defendant pivoted her case to claim that Plaintiff had “staged” the dog’s adoption by allowing one of Plaintiff’s staff, Blaine John, to adopt the dog to prevent Defendant from reclaiming the dog.

Assuming, arguendo, that Defendant has asserted a viable cause of action regarding a “staged” adoption. Defendant has not produced even a scintilla of evidence to substantiate her allegations. As is well-settled under South Carolina law, our courts do not allow cases to proceed to trial based on “speculation and conjecture” McKnight v. S.C. Dept. of Corrections, 684 S.E.2d 566, ___ 385 S.C. 380, 389 (S.C. Ct. App. 2009). Moreover, Plaintiff submitted affidavits, including the affidavit of Blaine John, refuting Defendant’s accusation.

Before the hearing, Defendant emailed the court, “Why doesn’t [the court] ask to see the unredacted adoption application of May 8, 2021 and see if John Blaine’s name is on it as the adopter? That would determine whether Pet Helpers staged the adoption of [the dog].” During the hearing, Defendant repeated her request that the court conduct an *in-camera* review of the adoption paperwork. Plaintiff voluntarily provided the dog’s adoption contract for the court’s *in camera* review, and the contract confirmed that the adopter was not Plaintiff’s employee Blaine John. This court then asked Defendant why her claims should proceed to trial. Defendant responded that she sought damages for emotional harm because, in essence, Plaintiff did not capitulate to Defendant’s demands to reclaim ownership of the dog from the adopter and transfer ownership back to Defendant. However remorseful Defendant may feel for transferring ownership of the dog to Plaintiff, Defendant has asserted no legal or equitable claim that would be actionable under South Carolina law against Plaintiff or Susko for such regret.

Defendant also claims that Plaintiff should be liable to Defendant because she was unaware that the dog would be featured during a “low cost” adoption event. As the dog’s owner, Plaintiff

could exercise its own discretion regarding potential adopters for the dog. Defendant has neither the standing to complain about how Plaintiff selects a potential adopter nor does she assert a recognizable claim under South Carolina law.

Accordingly, this court grants summary judgment to Plaintiff on its causes of action for libel and slander. Also, this court holds that Plaintiff's claims for libel and slander are *per se* actionable and that Defendant is liable to Plaintiff for damages in an amount to be determined by a jury. Additionally, after reviewing Defendant's counterclaims against Plaintiff and Susko, this court holds that Defendant has not stated any viable causes of action. Moreover, as set forth herein, this court strikes all claims and defenses asserted by Defendant for her willful failure to comply with court-ordered discovery and grants a default judgment against Defendant for Plaintiff's and Susko's claims for malicious prosecution.

3. Plaintiff's Motion for Sanctions for Defendant's Failure to Comply with Court-Ordered Discovery

Plaintiff properly served interrogatories and requests for production, and Defendant's responses were due by July 23, 2021. Defendant requested an extension of time to answer to discovery, and Plaintiff extended the deadline until July 30, 2021. However, on July 26, 2021, Defendant corresponded with Plaintiff's counsel regarding her discovery responses and wrote to Plaintiff's counsel that he should seek mental health treatment and "Don't hold your breath for the discoveries."

On January 11, 2022, this court issued an Order Compelling Discovery. Specifically, the court ordered Defendant to answer Plaintiff's Interrogatories and Requests for Production and pay to Plaintiff's counsel sanctions of \$1,214.24 within thirty (30) days of the hearing date on December 17, 2021.

On January 18, 2022, Plaintiff's counsel wrote to Defendant and inquired about the overdue discovery responses and payment of sanctions. Defendant responded by writing "I'm willing to lose everything I own to expose the evil of corporations like Pet Helpers, lawyers, law enforcement and the courts if need be." To date, Defendant has neither answered Plaintiff's outstanding discovery nor paid sanctions to Plaintiff.

Rule 37(b)(2), SCRPC provides, in part:

If a party . . . party fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order . . . or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

* * *

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

In Davis v. Parkview Apartments, our Supreme Court affirmed the trial court's issuance of a dismissal order as a sanction. 409 S.C. 266, 283, 762 S.E.2d 535, 544 (2014). The court held that the sanctions imposed were not unduly harsh considering the appellant's

willful and repeated failure to comply with various orders of the trial court, which resulted in unnecessary delay and prejudice to the respondents. Id.

Here, Defendant provided no justification or other circumstance regarding Defendant's failure to comply with court-ordered discovery. It is clear to this court that Defendant is willfully disobeyed the court, is purposefully delaying this case, and is seeking to prejudice Plaintiff's right to have its claims and defenses heard.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1) This court grants summary judgment to Plaintiff on its causes of action for libel and slander. Also, this court holds that Plaintiff's claims for libel and slander are actionable *per se* and that Defendant is liable to Plaintiff for damages in an amount to be determined by a jury. Lastly, this court grants Plaintiff and Third-Party Defendant Susko summary judgment regarding Defendant's counterclaims.
- 2) As an additional basis for this court's ruling, under Rule 37(b)(2)(C), this court grants judgment by default against Defendant for Plaintiff's claims for libel and slander *per se*, and Defendant's claims against Plaintiff and Susko are hereby dismissed with prejudice.
- 3) Under Rule 37(b)(2)(C), this court grants judgment by default against Defendant for Plaintiff's malicious prosecution claim, and Defendant is liable to Plaintiff for damages regarding the malicious prosecution claim to be determined by a jury.
- 4) Under Rule 37(b)(2)(C), this court grants judgment by default against Defendant for Plaintiff's claim for a permanent injunction. Defendant is permanently enjoined from:

- a. Communicating to third parties outside of the judicial process, whether orally or in writing, about this action and the matter of Janet Frisco vs. Pet Helpers, Inc. et. al. 2021-CP-10-2848 except for allowing Defendant to speak to: (1) her attorney should she hire one; (2) her priests or rabbis, and (3) Defendant's physicians or mental health care professionals;
- b. Communicating to third parties outside of the judicial process, whether orally or in writing, about Pet Helpers, Inc., Melissa Susko, Executive Director for Pet Helpers, Inc., its staff or its legal representatives except for allowing Defendant to speak to: (1) her attorney should she hire one; (2) her priests or rabbis, and (3) Defendant's physicians or mental health care professionals;
- c. Making any statements, written or verbal, regarding this lawsuit, the parties involved, or their legal counsel, stating or implying that (1) Plaintiff or its staff euthanized the dog, (2) that Plaintiff or its staff mistreated the dog in any way, (3) that Plaintiff or its staff euthanizes other animals, (4) that Plaintiff or its staff mistreats the animals in their care in any way, or (5) that Plaintiff or its staff stage fake adoptions;
- d. Communicating to third parties, whether orally or in writing, that Defendant is the owner of the canine known as Toby/Slim Jim;
- e. Posing as the current owner of the canine known as Toby/Slim Jim;
- f. Attempting to register the canine through any tracking services, such as Pet Link or 24 Pet Watch;

- g. Attempting to track, follow, identify, or contact the current owner of the canine;
 - h. Disparaging Plaintiff, its staff, or its legal counsel;
 - i. Contacting Plaintiff and its staff;
 - j. Coming onto Plaintiff's property; and
 - k. Communicating with Plaintiff's counsel or his staff in a derogatory or disrespectful manner.
- 5) Under Rules 37(b)(2)(C) and 56(g), in addition to the sanctions previously ordered by the court in the amount of \$1,774.24, this court orders Defendant to directly to Plaintiff's counsel additional sanctions in the amount of \$9,638.48 within thirty (30) days of the date of this order.

The Honorable Bentley D. Price
Presiding Judge, 9th Judicial Circuit
Charleston County Court of Common Pleas

Dated: _____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Pet Helpers Inc VS Janet Frisco
Case Number: 2021CP1002682
Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766