

Exhibit “5”

July 23, 2021 Order Denying Plaintiff’s Motions for Clarification and Reconsideration and Setting Hearing on Motion to Intervene

Plaintiff/Appellant Michael D. Royal’s Notice of Appeal

Michael D. Royal

v.

*Free Kindergarten Association of Charleston,
The Attorney General of the State of South Carolina,
and the Charleston County School District*

Charleston County Court of Common Pleas Case No. 2018-CP-10-05739

Appellate Case No. 2022-_____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Michael D. Royal)
)
 Plaintiff,)
)
 vs.)
)
 Free Kindergarten Association of)
 Charleston, the Attorney General of the)
 State of South Carolina and the Charleston)
 County School District,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Civil Action No.: 2018-CP-10-05739

**ORDER DENYING
 PLAINTIFF’S MOTIONS FOR
 CLARIFICATION AND
 RECONSIDERATION AND
 SETTING HEARING ON
 MOTION TO INTERVENE**

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SC Court of Appeals

I. MOTION TO CLARIFY

Plaintiff’s Motion to Clarify this court’s order of June 7, 2021 was filed on June 17, 2021. The motion addresses the court’s basis for its Order granting Defendant School Board’s (CCSD) motion for sanctions and setting a sanction of \$1,000.00 on Plaintiff to be paid to attorney for CCSD. To be clear, Plaintiff Royal’s conduct in this case is the basis for the court’s sanctions and includes his dilatory and obstructive conduct at his deposition. The court reaffirms the sanction and will address additional conduct hereinbelow. Plaintiff’s Motion to Clarify is DENIED.

II. MOTION TO RECONSIDER JUNE 21 ORDER

Plaintiff’s Motion to Reconsider this court’s Order of June 21, 2021 was filed on July 12, 2021. While this motion does not appear to be timely, this court addresses the issues raised therein. First, Plaintiff Royal takes issue with the court’s limitation of his scope of damages; however, Royal acknowledges that he consented to limiting his expert witness to one witness who will opine on “lost rents that might have come from renting parking spaces.” While this statement suggests

that Plaintiff's expert will be asked to speculate as to the amount of his damages, that issue is not yet before the court. Royal goes on to assert that he "first and foremost seeks specific performance of a real estate agreement;" the court awaits Plaintiff's proof on this issue. This will be gleaned from the facts of this case, but the court notes that, so far, Plaintiff has sought to drag out discovery in this 2018 case by objecting at his deposition and his claim of privilege to over 600 documents. The privilege log will be addressed separately and only after this court has twice reviewed the documents to which Plaintiff asserts - and has the burden to establish - any privilege.

Next, Royal asserts that sanctions are not appropriate as the court has failed to rule on his June 17, 2021 Motion to Clarify addressed above (See Section I). Then, Royal challenges the court's authority to amend its June 7, 2021 Order as more than 10 days had expired since the June 7 Order was issued. Clearly, Mr. Royal can read the rules of procedure, but does not properly apply them. His final argument exhibits just that, as a "pro se party who has never appeared as an individual in litigation prior to ... the instant action," Plaintiff seeks relief from this court when, despite consultation with several lawyers, he has repeatedly stated he represents himself.

The Motion is without merit and is DENIED.

III. **MOTION TO RECONSIDER JUNE 25 ORDER**

Plaintiff Royal submitted to the court a list of 602 documents to which he claimed privilege. The court reviewed the entire list of documents (many were repetitive email chains) and found that more than half were not privileged. Royal then filed his blanket objection to the court's findings, again alleging that all documents produced were privileged. The court denied all the objections, finding that Plaintiff's arguments were not persuasive and the documents were not protected. Plaintiff has now submitted to the court a list of 110 specific documents for which he individually asserts the privilege.

Plaintiff contends the court has not followed the authority of State v. Doster, 276 S.C. 647, 284 S.E. 2d 218 (1981), in making its decision that the documents are not privileged. Once again, Plaintiff has failed to properly apply the law as it relates to his case. The burden is on the party asserting the privilege to establish the basis for the privilege. Despite repeated requests and this court's efforts to review the multitude of documents, the court has found that, as to a majority of the documents to which the privilege is asserted, Plaintiff has not satisfied the Doster test.

Notwithstanding this ruling, there are 227 documents to which the court has ruled the privilege applies and, further, the court reiterates its June 25 ruling that, if a document is deemed privileged, it can be redacted from any subsequent document or communication chain (e.g., emails) which only makes reference to the document; i.e., the document itself remains privileged but reference to it is not. The court disagrees with Royal's assertion that every communication with his lawyer is privileged; e.g., the numerous emails with his counsel Mr. Tibbals about where they should meet for breakfast do not qualify as a privileged communication to this court.

The court will send an email with the exhibits listed specifically addressing which documents are deemed privileged and which documents Plaintiff is ordered to produce within ten (10) days. On this basis, the Plaintiff's Motion to Reconsider the June 25, 2021 Order is DENIED.

IV. UDC'S MOTION TO INTERVENE

In preparing this Order, the court found a Motion to Intervene to which the current interveners have consented, but raised issues regarding the status and authority of June Wells. The court hereby sets an in-person evidentiary hearing on this Motion to Intervene for August 9, 2021 at 2 p.m.

IT IS SO ORDERED!

SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Michael D Royal VS Free Kindergarten Association Of Charleston ,
defendant, et al
Case Number: 2018CP1005739
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062