

Dec 08 2022

SC Court of Appeals

FILED

2022 DEC -7 PM 4: 59
JULIE J. ARPS, CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Pet Helpers, Inc., Plaintiff

Vs.

Janet Frisco, Defendant

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL COURT,

CASE NO. 2021-CP-10-2682

MOTION FOR ORDER TO COMPEL
DISCOVERY & OPPOSITION TO PROPOSED
ORDER OF CONFIDENTIALITY

TO: PLAINTIFF, PET HELPERS, INC.

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the presiding Judge, Court of Common Pleas for Charleston County, within ten (10) days or as soon thereafter as counsel may be heard, for an Order, pursuant to Rule 37(a) SCRPC, compelling Defendant’s Answers to Interrogatories and sanctioning said party pursuant to Rule 37(d), SCRPC for their willful failure to answer properly served interrogatories.

LAW/ANALYSIS-RULE 37 SCRPC

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition in progress, to the court where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the place where the deposition is being taken.

(2) Motion. If... a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond, that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Pursuant to Rule 37(a)(2) SCRCP:

"If a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request." Under Rule 37(a)(4), if the court grants this motion, then court must award the moving party attorney reasonable attorney's fees "unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust."

In addition to the remedies set forth under Rule 37(a), SCRCP:

"This court may sanction a party pursuant to Rule 37(d), SCRCP: If a party or an officer, director or managing agent of a party fails to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act 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."

The sanctions referenced above are as follows:

(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 striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party

Here, Defendant properly served the attached interrogatories to the Plaintiff, but Plaintiff's Attorney states the following:

1. " Regarding Interrogatories 1 through 5 and 9 through 25, on May 5th 2022, the court filed an order granting partial summary judgement to Plaintiff on all legal and factual issues regarding both parties' claims and, as such, the only remaining issue for trial is the amount of damages owed to the Plaintiff. Accordingly, Plaintiff objects on the grounds that Defendants interrogatories are overly broad, unduly burdensome, and not calculated to lead to discovery of admissible evidence on the sole remaining issue of damages in the case."

Defendant's Response is the orders of May 5, 2022 are presently pending appeal in the South Carolina Court of Appeals, but the Plaintiff's lawyer neglected to mention that fact in his objections refusing to answer 1 through 5 and 9 through 25 of Defendant's interrogatories, but according to 37 (a) 1 the Court of Common pleas is the appropriate court to compel discovery because the orders are "pending action" due to the appeal and not final until a decision is reached.

The Defendant also filed the attached affidavit pursuant to SCRPC Rule 56(f) and read it during her arguments at the hearing on April 22, 2022. The affidavit requested a continuance to allow Defendant to submit interrogatories to the Plaintiff in order to support that the Plaintiff had staged the adoption of my dog Toby. This is my first opportunity to submit the discovery requests and I now submit them in conjunction with my appeal to prove that there was an issue of material fact that should have been considered before the court ordered the partial summary judgement and other orders against me that are presently under appeal. The court should also have allowed the continuance since it is customary for Discovery to be completed before a Motion for a Partial Summary Judgement is filed or granted.

The appeals court will make the decision on whether "the only sole remaining issue is damages to be paid to the Plaintiff" as their lawyer contends or whether a jury will be allowed to decide on the triable issue that exists in this case.

The Plaintiff's interrogatories and production requests to the Defendant were overly broad, unduly burdensome and calculated to prevent the defendant from implementing a defense to their accusations that I committed libel and slander, but the court still consented over those objections, to the sanctions and other requests Plaintiff's lawyer made on his motion to compel discovery against the Defendant. My interrogatories are necessary to prove

that the only motivation the Plaintiff's had for not returning my dog to me was that they were only interested in making money and didn't care if they deliberately inflicted emotional pain on me.

2. "Plaintiff objects to Interrogatory 6 that requests the amount of donations in 2021."

The Defendant's response to the Plaintiff's objection and motion for an order of confidentiality is that donors and the public have a right to know how much money is taken in by this non-profit and the corresponding statistics on the animals that are processed in order to access if they are being truthful and responsible with funds that are given to them for the purpose of helping homeless animals or if they are running a scam operation. Defendant objects to the order of confidentiality because these figures are always legally available to the public.

It's important to Defendant's case to know how much money in donations they received in particular for Toby after soliciting donations on their website (Interrogatory #17). The question is necessary to ascertain how much money Pet Helpers stood to lose if they returned him to me which is what I contend motivated their cruelty in not allowing us to reunite when I requested it.

3. Regarding the Interrogatories 7 and 8, Plaintiff answers as follows:

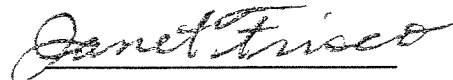
"Melissa Susko Executive Director of Pet Helpers Adoption Center and Spay/Neuter Clinic, 1447 Folly Road, Charleston S.C. 29412 843-795-1100

Written statements already in Defendants possession. Ms. Susko will testify regarding damages sustained by Pet Helpers from defendant's defamatory statements."

The Defendant's response is that I need to know, prior to the trial, any and all individuals that will be called as witnesses against me. They should be specifically stated in the answer to my interrogatories as per Rule 37 (a) (3) concerning evasive or incomplete answers be considered a failure to answer.

If my appeal is granted by the appellate court, I will be given an opportunity to cross-examine Ms. Susko and any other witnesses that are called which will give me an opportunity to question Ms. Susko about her own actions in order to prove that she is the actual cause of any damages that Pet Helpers has experienced. All of my interrogatories are necessary, going into trial phase of this case, to gather statements under oath to support that Ms. Susko did in fact stage Toby's adoption for profit, is in fact certified to euthanize and was planning to lethally dispose of Toby after Pet Helpers solicited donations on their website using photographs of the alleged adoption and afterwards in the "Happy Ending Update" if I had not publicly protested.

DATED: December 7, 2022

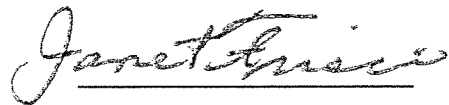


Janet L. Frisco, Pro Se Defendant
203 Cardinal Drive
Summerville, South Carolina 29485
janetfrisco@yahoo.com

CERTIFICATE OF SERVICE

The foregoing document **MOTION FOR ORDER TO COMPEL DISCOVERY** was served on the following by email and U.S. Mail with sufficient postage affixed this 7th day of December 2022.

Stephan V. Futeral
1004 Anna Knapp Blvd., Suite 3
Mount Pleasant, South Carolina 29464
843-284-5500
sfuteral@charlestonlaw.net

A handwritten signature in cursive script that reads "Janet Frisco". The signature is written in black ink and is positioned above a horizontal line.

Janet Frisco, Pro Se
Defendant

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE #:2021-CP-10-2682

PET HELPERS, INC.,

Plaintiff,

vs.

JANET L. FRISCO,

Defendant.

DEFENDANT'S FIRST INTEROGATORIES
TO PLAINTIFF

2022 NOV 29 PM 4: 30
JULIE L. ARMSTRONG
CLERK OF COURT
DGR

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TO PLAINTIFF PET HELPERS, INC.:

YOU WILL PLEASE TAKE NOTICE that you are hereby required to answer in writing, under oath, the following Interrogatories pursuant to Rule 33, SCRCP. These interrogatories shall continue from the time of service until the time of trial so that the information sought, which comes to the knowledge of the party, representative, or counsel, after the original answers have been submitted, shall promptly be undersigned.

DEFINITIONS AND INSTRUCTIONS

The term "identify" when used in connection with the term "documents" or "prepared materials" means, regardless of whether the production of such items is objected to, list and describe such items, stating separately for each (a) its' location; (b) the name and title of the person(s) who has custody of the items; (c) its' date; and (d) its' author.

The term "describe" when used in connection with an event, conversation, or transaction means to identify the sources from which the information was derived and to identify all parties to the transaction, to state the date and place where the transaction took place, to set forth in detail the statements made and actions taken by each party to the transaction, to identify each document to other recorded or prepared material relating to such transaction, regardless of whether the production of such information is objected to.

"Document" means every writing or record of every type and description that is or has been in your or your respective representatives (s) or attorney(s) possession, control or custody, or of which you or your representative(s) or attorney (s) have knowledge including but not limited to print-out sheets, movie film, videotape, slides, photographs, microfilm, notes, letters, memorandums, worksheets, books, magazines, diaries, calendars, appointment books, charts, tables, papers, agreements, contracts, invoices, budgets, payrolls, check stubs, canceled checks, analysis, projection, transcripts, minutes of meetings, of any kinds, correspondence, drafts, data processing, disks, or tapes and computer produced interpretations thereof, instructions, announcements and mechanical or electrical sound recordings and transcripts

thereof. "Document" also means all copies which are not identical to the original, such as those bearing marginal comments, alterations, notes or other notations not present in the original documents as originally types, or otherwise prepared.

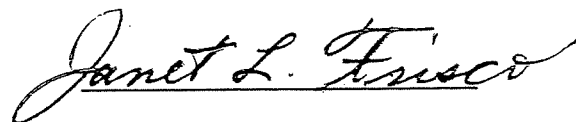
Whenever an Interrogatory calls for information claimed by YOU to be privileged, please supply sufficient factual detail to enable the Court to determine whether or not such document or communication is entitled to claim of privilege, including (1) the date and dates of the communication or document; (2) the name and position of each person who participated in the preparation of the document; (3) the name and position of each person who participated in the communication, or in the case of a document, state to whom the document was addressed, and the name of each person to whom the document, or the contents thereof have been communicated by copy, exhibition, reading, or oral conversation of any kind; (4) the general subject matter of the communication or document; and (5) the basis or bases for the claim of privilege.

INTERROGATORIES

1. Set forth the names of all veterinarians and offices that that provide medical services to Pet Helpers, Inc.
2. Provide any credentials, training or certificates held by Ms. Melissa Susko, the executive director qualifying her to euthanize dogs or cats.
3. Provide records of the number of all dogs and cats that were processed through Pet Helpers Intake Department of surrendered, stray or any otherwise acquired the year of 2021.
4. Provide record of the total number of adoptions that were processed by Pet Helpers in 2021.
5. Provide records of the number of dogs or cats that were moved to other shelters or rescue facilities during 2021.
6. Provide the amount in dollars of donations given to Pet Helpers by individuals, businesses or any other source in 2021.
7. For each person known to you to be a witness concerning the facts of the case, set forth either in a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
8. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
9. Explain what percentage of animals can be lethally disposed of and for what reasons at a "no-kill shelter".
10. Is there any government agency that oversees the handling of animals at animal shelters such as Pet Helpers and reviews their records?

11. Did Pet Helpers advertise on their website that they try to keep pets and their owners together and help people avoid surrendering their pets?
12. Does Pet Helpers believe that dogs and cats do not suffer the effects of separation when they are abandoned by their owners at shelters?
13. Did Ms. Susko order two of her employees to try and entice the defendant to violate Ms. Susko's No Trespass Notice and to take photographs on or about June 5th, 2021 so she could press charges against the defendant?
14. Was Ms. Susko directly or indirectly involved in the deaths of two dogs, Cody and Dixie, while Sue Lambert was an employee there?
15. Did Ms. Susko tell Ms. Lambert she had received training in euthanasia as she was returning from the training?
16. Does Ms. Susko have a donation goals/quotas she must achieve set down by Pet Helpers' Board of Directors?
17. What was the dollar amount in donations Pet Helpers received on Toby after posting the "I'm Going Home" and "Happy Ending Update" photos on their website?
18. Was Toby still confined at Pet Helper's shelter in the photograph titled "Happy Ending Update" posted on Pet Helpers' website in May of 2021?
19. Did Pet Helper's employee, Blaine John, pose with Toby in an adoption photo holding a sign which read, "I'm Going Home" on or about May 10, 2021 on Pet Helpers' website?
20. Did Melissa Susko leave a phone message on May 7, 2021 for the Defendant stating that Toby had been adopted that morning?
21. Was the redacted adoption application the Plaintiff's lawyer submitted to the Defendant dated May 8, 2021?
22. Did the Defendant electronically submit an adoption application on the evening of May 7, 2021 that Katie Leasure in the Pet Helper's Intake Department had sent her on May 6, 2021?
23. On a preadoption form dated May 8, 2021, why were the names of two other dogs crossed off on the form?
24. Is it fraudulent for a nonprofit organization to collect donations and subsidies under false pretenses?
25. Did Pet Helpers send the defendant a video of Toby with Melissa Susko and other employees of Pet Helpers on or about June 15, 2021 to prove he was alive?

Dated: November 29, 2022

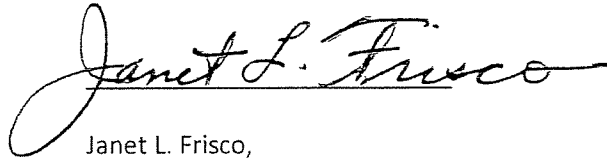


Janet L. Frisco, Pro Se Defendant
203 Cardinal Drive
Summerville, South Carolina 29485
843-804-0875
janetfrisco@yahoo.com

CERTIFICATE OF SERVICE

The forgoing document, *DEFENDANT'S FIRST INTEROGATORIES*, was served on the following by email and U.S. Mail with sufficient postage affixed, this 29th day of November 2022.

Stephan V. Futeral
Post Office Box 66427
Mt. Pleasant, South Carolina 29465
843-284-5500
sfuteral@charlestonlaw.net



Janet L. Frisco,
Pro Se Defendant

BY _____

DGF

JULIE J. ARMSTRONG
CLERK OF COURT

2022 NOV 29 PM 4:30

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL COURT
CASE NO.: 2021-CP-10-2682

PET HELPERS, INC.,

AFFADAVIT OF JANET FRISCO

Plaintiff

JANET FRISCO,

Defendant

BY DCR

JULIE J. ARMSTRONG
CLERK OF COURT

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PERSONALLY, appeared before me, Janet Frisco, who after being duly sworn, deposes and states as follows:

I, Janet Frisco, pursuant to SCRPC 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 Judgement. 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.

Janet Frisco
Janet Frisco

SWORN to and subscribed before me
this 21 day of April 2022.

Sherry M. Funk
Notary Public for South Carolina
My commission expires 09/24/2022

