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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| | ) | **FIFTH JUDICIAL CIRCUIT** |
| **COUNTY OF RICHLAND** | ) | |



Kenneth B. Loveless,

Plaintiff,

v.

Lesley Ann Stiles a/k/a
Leslie Lou Stiles,

Defendant.

C/A No.: 2022-CP-40-01364

**ORDER GRANTING DEFENDANT'S MOTION TO COMPEL, DEEM MATTERS ADMITTED AND FOR SANCTIONS**

This matter is before the Court on Defendant Leslie Stiles'[1] motion to compel, deem matters admitted, and for sanctions against Plaintiff Kenneth B. Loveless. At issue are Plaintiff's responses and objections to 30 interrogatories, 25 document requests, and 18 requests to admit.

On December 2, 2022, the Court held a hearing on the motion at the Richland County Courthouse. Plaintiff was represented by Desa Ballard of Ballard & Watson, Attorneys at Law. Defendant was represented by Christopher P. Kenney of Richard A. Harpootlian, P.A. After reviewing Defendant's motion, Plaintiff's discovery responses, and hearing argument from the parties, the Court granted Defendant's motion, ordered Plaintiff to respond to the interrogatories and document requests within 10 days, deemed the requests to admit admitted, and retained jurisdiction to resolve any subsequent disputes related to Defendant's motion. This written Order memorializes the Court's oral Order on December 2, 2022, and the rationale for it.

[1] Stiles' answer and motion indicate she is misidentified in the caption as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

**Factual Background and Procedural Background**

This libel action was filed on March 16, 2022. At all times relevant to this action, Plaintiff was an elected member of the board of trustees for Lexington-Richland School District 5 (District 5). Defendant is the administrator of page called "Deep Dive Into D5" located on the social media website Facebook. Plaintiff's claim arises from statements made on the Facebook page that Plaintiff contends are "libel *per se*" and were "voluntarily published on the internet by [Defendant] and by others with her [Defendant's] consent, ratification, and endorsement" which Plaintiff alleges were intended by Defendant to be seen by the public "with specific knowledge they were false and/or with a reckless disregard for whether they were false or not." Compl. ¶ 5.

On April 13, 2022, Defendant filed and answer and counterclaim for abuse of legal process, which she served with the discovery at issue here.

On May 13, 2022, Plaintiff served responses and objections.

On May 27, 2022, Defendant moved to compel and asked the Court to deem matters admitted and sanction Plaintiff for responses she argued "failed to fairly respond to the substance, are replete with boilerplate and frivolous objections, and refuse to produce a single document." Def.'s MTC, 1–2. While Defendant's motion offered examples of responses that she argued were illustrative of "bad-faith litigation conduct by the person who chose to file this lawsuit," her motion challenges *all* of Plaintiff's objections and responses to her interrogatories, document requests, and requests to admit and asks the Court to (1) deem all objections and claims of privileged improperly stated and waived, (2) require Plaintiff to submit specific, verified written interrogatory responses, (3) require the production of all requested documents, (4) deem all requests to admit as admitted, (5) sanction Plaintiff for frivolous objections, and (6) award Defendant attorney's fees and costs.

The Court reviewed Defendant's motion, Plaintiff's discovery responses and objections, Defendant's memorandum of law, and the relevant rules and case law. The Court also considered the argument of the parties during the December 2, 2022, hearing.

**Legal Standard**

A trial court's exercise of discretion in resolving discovery disputes will not be disturbed so long as it is not based on an error of law or factual conclusions that lack evidentiary support. *Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 333, 628 S.E.2d 894, 898 (Ct. App. 2006).

**Discussion**

Having reviewed Plaintiff's discovery objections and responses, the Court believes they reflect a lack of seriousness and are an intentional departure from the discovery rules that warrants much of the relief sought by Defendant. A litigant may not bring a defamation claim like the allegations Plaintiff made here and then refuse to answer questions and disclose documents to the opposing party. Nevertheless, more than six months after Defendant served discovery, Plaintiff is yet to offer substantive responses or produce any documents. This is not acceptable under the discovery rules. The relief ordered by the Court during the motions' hearing and memorialized here is required for at least three reasons.

First, the proper scope of discovery in this case is broad. The South Carolina Rules of Civil Procedure authorize discovery on "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party[.]" Rule 26(b)(1), SCRCP. "Any matter" includes information concerning the existence of other discoverable information without concern for whether it will be admissible at trial. *Id*. Thus, it has long been the law in South Carolina that and "an objection on relevance grounds is likely to limit only the most excessive discovery

request" and relevance is broadly construed to that end. *See Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215–16 (Ct. App. 1997) (quoting J. Flanagan, South Carolina Civil Procedure 216 (2d ed.1996)).

The Court has reviewed Defendant's discovery requests and has not identified any item that would fall outside the very broad scope of what our courts deem "relevant" under Rule 26. The claims and defenses joined here—including the defense of truth—necessarily require broad investigation into the facts underlying the disputed statements. Defendant is also entitled to learn what impact, if any, those statements have had on Plaintiff's reputation in the community because "the focus of defamation is not on the hurt to the defamed party's feelings, but on the injury to his reputation." *See Holtzscheiter v. Thomson Newspapers, Inc. (Holtzscheiter II)*, 332 S.C. 502, 517, 506 S.E.2d 497, 505 (1998) (Toal, J., concurring). Further, Defendant is entitled to discovery on her counterclaim for abuse of legal process, which requires her to prove an improper, ulterior purpose (usually coercion to obtain collateral advantage not involved in the proceeding) and an overt act to that end. *See Pallares v. Seinar*, 407 S.C. 359, 370–71, 756 S.E.2d 128, 133–34 (2014). These observations are not as an exhaustive list of what Rule 26 might allow in this case, but merely illustrate the broad scope in an action with the type of claims joined by the parties.

Plaintiff's principal effort to resist this conclusion was his counsel's argument that much of the discovery sought was not relevant because Plaintiff brought this suit in his "private" capacity, not as a member of the school board. The Court rejects this argument. Based on the Court's review of the Complaint, the disputed statements were made about Plaintiff's performance as a member of the school board. The Facebook page where those statements were purportedly made is called "Deep Dive Into D5"—i.e., it is a forum to discuss the school district where Plaintiff was an elected member of the board. Further, as an elected official during the relevant period, the

Court finds Plaintiff is a public-official plaintiff within the meaning of *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964), and progeny. *See also Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 208, 838 S.E.2d 698, 718 (Ct. App. 2019) (a public official is someone who's position "would invite public scrutiny and discussion of the person holding it"). The Court is unaware of any precedent that allows a public official to bring a defamation action in his "private" capacity or to use that distinction as a basis to limit the scope of discovery.

Second, if Plaintiff had legitimate concerns about Defendant's discovery requests, he has failed to raise those concerns in the manner that the discovery rules require. When an interrogatory is objected to, the reason must be stated in lieu of an answer, and it is not objectionable merely because an answer involves an opinion or contention that relates to fact or the application of law to fact. Rule 33(a), (d), SCRCP. Similarly, objections to document requests require a specific reason for any objection. Rule 34(b), SCRCP. Likewise with requests to admit; they must be admitted or denied with a denial that fairly meets the substance and is limited to the matter disputed. Rule 36(a), SCRCP. Objections based on privilege must expressly make the claim and describe the nature of the information withheld in a manner that will allow the requesting party to assess the applicability of the privilege or protection. Rule 26(b)(5)(A), SCRCP. Defendant construes these rules to require the responding party to "fairly apprise the requesting party of the information being withheld and the basis for the withholding." Def.'s MTC, 1. The Court agrees.

When discovery threatens a party with annoyance, embarrassment, oppression, or undue burden, a court can grant protection upon good cause shown. Rule 26(c), SCRCP. Applying this rule entails burden shifting followed by balancing. First, the resisting party must show a particularized harm, then the requesting party must respond with a showing of relevance and necessity. *See Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009). If both sides

meet their burden, then the court must balance the particularized harm against the need for the discovery. *Id.* However, before such a dispute finds its way before a court, Rules 26, 33, 34, and 36 require the exchange of information in a manner designed to *narrow* the items reasonably in dispute by making specific requests and specific objections. Plaintiff has not done that here.

When non-specific, unsupported objections are made, it unnecessarily burdens litigants and the court with discovery matters that should either be worked out between the parties or worked out to the greatest extent possible leaving the court to handle truly difficult questions over which reasonable minds might disagree. Interposing formulaic objections followed by an answer "preserves nothing and serves only to waste the time and resources of both the parties and the court" while "leaving the requesting party uncertain as to whether the question has actually been fully answered[.]" *Curtis v. Time Warner Ent.-Advance/Newhouse P'ship*, No. 3:12-CV-2370-JFA, 2013 WL 2099496, at *3 (D.S.C. May 14, 2013) (Anderson, J.) (ordering litigant to submit all new discovery responses). Accordingly, "[b]oilerplate, general objections standing alone waive any actual, specific objections." *State Farm Fire & Cas. Co. v. Admiral Ins. Co.*, 225 F. Supp. 3d 474, 485 (D.S.C. 2016) (Gergel, J.) (citing *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 358–59, 364 (D. Md. 2008), and deeming litigant's objection waived).

Here, the Court concludes that Plaintiff's objections are the sort of non-specific, boilerplate that the discovery rules do not permit. The examples highlighted by Defendant's motion (MTC, 2) are instructive. Plaintiff's objections purport to justify his refusal to produce a single document. He refuses to answer interrogatories about specific factual allegations in the complaint. *See* MTC at Ex. B at Interrog. Resp. Nos. 9–13. He repeatedly interposes one-word objections without any explanation, representation, or showing of the sort of annoyance, embarrassment, oppression, or undue burden that might constitute good cause for relief under Rule 26(c). *See*, *e.g.*, MTC at Ex.

B at Interrog. Resp. Nos. 17–30, Ex. C at Resp. Nos. 6–8, 10–16 & 19–25. Plaintiff's responses to requests to admit are argumentative, fail to fairly engage the substance, and incorporate the sort of non-specific "general" objections that make it impossible to discern what, in fact, has been admitted and what remains in dispute. *See*, *e.g.*, MTC at Ex. D at Resp. Nos. 1–3, 6–16 & 18.

Again, these examples are illustrative (not exhaustive) of an approach the Court finds incompatible with the discovery rules. Based on the Court's review, Plaintiff has failed to interpose any specific objection that might reasonably place Defendant on notice of the nature of the objection or the information being withheld such that she could evaluate the merit of that claim and attempt to resolve it with judicial intervention. In the absence of such a showing, the Court assumes no justification exists.[2]

Finally, while the rules presume a remedy, the need for one here is underscored by the scope of the problem and the fact that the litigant flouting the discovery rules is the plaintiff—the party that chose to bring this case. The discovery rules authorize a court considering a motion to compel to order discovery, treat "an evasive or incomplete answer … as a failure to answer," and presumes fees and costs will be awarded to the prevailing party. Rule 37(a)(3)–(4), SCRCP ("the court shall, … require the party … whose conduct necessitated the motion … to pay to the moving party the reasonable expenses incurred…").

Defendant requests sanctions in the form of fees and costs and urges the Court to issue a compulsory discovery order that deems objections waived. The Court declines to order fees and costs at this time but believes two compulsory remedies are appropriate.

[2] This conclusion is borne out by that fact that Plaintiff's has not pointed to one single item as a specific example of discovery from which he needs protection. In another motion heard during the motions' hearing, Plaintiff sought protection based on broad, unsupported claims that Defendant's discovery was "completely unrelated" and sought in "bad faith." Mot. Protect. Order, 3. However, at no point did Plaintiff provide a *specific* example that would purportedly warrant this protection.

First, during the December 2, 2022, hearing, the Court ordered Plaintiff to resubmit full and complete discovery responses to all interrogatories and document requests within 10 days. Plaintiff's objections to those discovery items are hereby overruled. At Defendant's request, the Court is also retaining jurisdiction to ensure compliance with that order.

Second, Plaintiff's objections and responses to Defendant's request to admit are also overruled and those 18 requests are deemed admitted due to the evasive responses initially submitted. The Court finds these remedies proportional to the infraction considering the law, the full record, and the reasoning outlined above.

**Conclusion**

For the reasons explained above, Plaintiff's objections to Defendant's discovery are overruled. Plaintiff has 10 days from December 2, 2022, to resubmit substantive responses to Defendant's 30 interrogatories and 25 document requests, and to produce responsive documents. Defendant's 18 requests to admit are hereby deemed admitted.

Defendant's request for fees and costs is denied without prejudice. The Court is retaining jurisdiction of this dispute to ensure compliance with this Order.

**AND IT IS SO ORDERED.**

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

Richland Common Pleas

**Case Caption:** Kenneth B Loveless vs Lesley Ann Stiles , defendant, et al

**Case Number:** 2022CP4001364

**Type:** Order/Compel

So Ordered

Jean H. Toal