

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	<i>In Re:</i>
Plaintiff,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al.	)	
	)	
Defendants.	)	

**RECEIVED**  
**Sep 13 2023**  
**SC Court of Appeals**

**ORDER HOLDING ATLAS ASBESTOS COMPANY, LTD. IN CONTEMPT**

Asbestos Corporation, Ltd.(“ACL”) is a defendant in the above referenced matter. On July 10, 2023, this Court, in open court ordered ACL to fully answer discovery and appear for a deposition so that this matter could be prepared for trial. On July 19, 2023, this Court entered an Order stating: “Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt.”

ACL failed to produce a witness as ordered by the Court. ACL has also refused to identify a witness or a date on which it will produce a witness. Moreover, ACL has failed to fully answer discovery and provide documents ordered to be produced by this Court.

ACL has made it clear that it does not intend to participate in this matter and that this Court’s orders on discovery will continue to be ignored. Plaintiffs moved to have this Court hold ACL in contempt and, as a sanction, to strike ACL’s answer.

**LAW AND ANALYSIS**

A determination of contempt resides in the sound discretion of the trial judge. *Hook v. South Carolina Dept. of Health and Environmental Control*, 439 S.C. 52 (Ct. App. March 15, 2023). “Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed.” *Id.* The power of a court to punish for contempt “is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *Miller v. Miller*, 375 S.C. 443 (Ct. App. 2007).

“The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial.” *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). “Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice,” sanctions must be imposed. *Id.* Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* “If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated “[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* “Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those

who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Here there is no dispute that ACL has violated this Court’s orders. Moreover, ACL has indicated that it does not intend to comply with those orders in the future. In light of ACL’s position, this Court has no choice but to find ACL in contempt of court. ACL has failed to produce a witness. ACL has refused to participate in meaningful discovery. It has refused to produce documents. Given this intentional and willful refusal to participate in discovery, the Court hereby strikes ACL’s pleadings.

**IT IS SO ORDERED.**

***[JUDGE’S SIGNATURE PAGE FOLLOWS]***





Richland Common Pleas

**Case Caption:** John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

**Case Number:** 2023CP4001759

**Type:** Order/Sanctions

So Ordered

Jean H. Toal

Electronically signed on 2023-09-07 15:53:57 page 5 of 5