

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

) TENTH JUDICIAL CIRCUIT

DOROTHY PIERCE,

) Case No.: 2022-CP-3700182

) Plaintiff,

) v.

) ORDER GRANTING
) DEFENDANTS' MOTIONS FOR
) SANCTIONS

) JERRY EDWARDS; EDWARDS GROUP
) HOLDINGS; EDWARDS PRINTING;
) RICHARD HUNT MCDUFF; MJM LAW,
) LLC; RILEY MORNINGSTAR; THE
) JOURNAL NEWSPAPER; AND HAL
) WELCH,

) Defendants.

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Sep 25 2023

SC Court of Appeals

THIS MATTER is before the Court on Plaintiff’s Motion to Reconsider the Court’s April 4, 2023 Order (the “Order”) Granting Defendants’ Motions for Sanctions (the “Motions”) pursuant to Rule 37(b)(2)(C) of the South Carolina Rules of Civil Procedure. Based on the Motions, the Brief in Support of Plaintiff’s Motion for Reconsideration, the Briefs in Support of Defendants’ Motions, Plaintiff’s Memorandum of Law in Opposition to the Motions, and the arguments of the parties during both the August 1, 2023 and March 22, 2023 hearings on the Motions, the Court DENIES Plaintiff’s Motion for Reconsideration and Affirms the Grant of Sanctions Against Plaintiff. The factual and legal bases of the Court’s decision are as follows.

I. FACTUAL BACKGROUND

1. Background of the Case

Plaintiff filed the operative Amended Complaint in this case on March 17, 2022, seeking more than \$250 million from the Journal Defendants and the Attorney Defendants. The Court dismissed some of Plaintiff’s claims against the Defendants on June 20, 2022. Discovery into the remaining claims began at this point.

2. Journal Defendants' Motion for Sanctions

The Journal Defendants served written discovery requests dated August 22, 2022, to which Plaintiff partially responded two months later. Plaintiff failed to produce or identify vast amounts of responsive material, including any records related to her claim for hundreds of millions of dollars in alleged damages. The Journal Defendants notified Plaintiff of these discovery deficiencies, by letter, on November 22, 2022, and agreed to give Plaintiff until December 1, 2022 to remedy them. Plaintiff did not do so. The Journal Defendants thereafter filed a Motion to Compel the missing information. The Court heard argument on the Journal Defendants' motion to compel on January 27, 2023. Following the hearing, the Court ordered Plaintiff, *inter alia*, to “provide all records in her possession that relate to her claim for damages . . . to Defense Counsel within fifteen (15) days.” Order (Feb. 13, 2023). Plaintiff produced **three documents**, subsequently identified as Court Exhibits 1, 2, and 3, none of which satisfied the requirements of the February 13, 2023 Order. The Journal Defendants then filed a Motion for Sanctions against Plaintiff for failure to comply with the discovery order.

3. Attorney Defendants' Motion for Sanctions

Mr. McDuff served his First Set of Interrogatories and First Requests for Production on September 6, 2022. On October 10, 2022, Plaintiff served written responses to Mr. McDuff's Interrogatories, and failed entirely to respond to the Requests for Production or produce a single document. Within these written responses, Plaintiff refused to identify any witnesses who could support her claims within the Amended Complaint stating, “[b]y disclosing this information right now, the legal strategy of the plaintiff could be known. The plaintiff, therefore, declines to answer this question at this time” and “[d]ue to legal strategy, the Plaintiff declines to answer this question.”

In addition to refusing to identify witnesses Plaintiff refused to provide any information regarding how she calculated her alleged damages.

In November 2023, Mr. McDuff's counsel sent Plaintiff a good faith letter requesting she supplement her responses to the written discovery and provide responses to the Requests for Production. Plaintiff did not respond. As such, Mr. McDuff filed a motion to compel Plaintiff to provide complete discovery responses to the written discovery requests. On January 9, 2023, Plaintiff supplied supplemental responses to the Interrogatories and written responses to the Requests for Production. In response to Interrogatories requesting witness information, Plaintiff listed "[A]ll Journal Subscriber and Readers"; "current and former employees of the Journal Defendants and Merrell, Jahn & McDuff"; and the Journal Defendants themselves. Plaintiff also objected to providing tax returns or financial statements to support her damages claims.

As with the Journal Defendants, the Court heard argument on Mr. McDuff's motion to compel on January 27, 2023. Following the hearing, the Court ordered Plaintiff, *inter alia*, to produce "all records in her possession that relate to her claim for damages and a complete witness list to Defense Counsel within fifteen (15) days." Plaintiff provided the same three documents which were provided to the Journal Defendants, and re-sent a nearly identical witness list, which did not satisfy her obligations under the Order. Mr. McDuff moved on March 15, 2023 to sanction Plaintiff as a result.

4. The Court's Order Granting Sanctions

The Court heard argument on Defendants' Motions for Sanctions on March 22, 2023 and granted those Motions the same day. *See* Form 4 (Mar. 22, 2023). The Court memorialized that ruling in a formal Order entered on April 4, 2023, providing that unless Plaintiff responded in full to an enumerated list of Defendants' written discovery requests, "Plaintiff will be

constrained to the witnesses currently identified, and will be allowed to present only the three documents submitted as Court exhibits 1, 2, and 3 at the March 22, 2023 hearing as evidence of her damages.” *See* Order at 5 (Apr. 4, 2023).

5. Plaintiff’s Motion for Reconsideration

On April 21, 2023 Plaintiff filed her Motion to Reconsider the Court’s April 4, 2023 Order granting sanctions against her for failure to comply with the Court’s January 27, 2023 Order, which required her to produce the documents requested by the Defendants. In her Motion to Reconsider, Plaintiff argued that she did in fact supply the requested documents, but this production included just three documents – Court Exhibits 1, 2, and 3 presented to the Court at the March 22, 2023 hearing – and the Court found that these documents were insufficient to satisfy Plaintiff’s discovery obligations. The Court further reiterated its prior ruling, holding that these three documents are to be the only documents Plaintiff can use to support her claims for damages as a result of her failure to provide the requested financial information.

After hearing the arguments of the parties and reviewing the briefs submitted, the discovery responses of Plaintiff, and the relevant portions of the record, the Court concludes as follows.

II. CONCLUSIONS OF LAW

1. Pursuant to the South Carolina Rules of Civil Procedure, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. *See* S.C.R.C.P. 26(b)(1).

2. As the Court of Appeals has explained, “The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party. Essentially, the rights of discovery articulated by the rules give the

attorney the means to prepare for trial.” *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652 (Ct. App. 2003).

3. Sanctions “protect the rights of discovery provided by the Rules.” *Downey v. Dixon*, 294 S.C. 42, 45 (Ct. App. 1987). The South Carolina Rules empower this Court to determine appropriate sanctions for a party’s failure to comply with its discovery orders. S.C. R. Civ. P. 37(b)(2) (“If a 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 . . .”).

4. Plaintiff has failed to comply with both the discovery rules and with the February 13, 2023 Order of this Court. As such, sanctions are warranted.

5. The determination of whether a court should impose sanctions pursuant to Rule 11, SCRCP, is a matter of equity. *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104 (Ct. App. 2011).

6. In making a determination concerning the appropriate sanction for this conduct, the Court considers the following factors: “the nature of discovery sought, the discovery stage of the case, willfulness, and the degree of prejudice.” *Richardson v. \$21,000.00 U.S. Currency & Various Jewelry*, 430 S.C. 594, 600 (Ct. App. 2020).

7. Here, the discovery requests to which Plaintiff has failed to appropriately respond concern essential elements of the case at issue, including the witnesses who can attest to the facts and damages alleged by Plaintiff and the very damages alleged themselves.

8. Plaintiff’s failure to provide this basic information, even after directed to do so by this Court, is evidence of willfulness.

9. Finally, the Plaintiff have been provided no evidence to support Plaintiff’s claims for damages, and have been denied access to the witnesses Plaintiff believes have pertinent

knowledge regarding her allegations within the Complaint. Plaintiff's failure to provide this information is clearly prejudicial to the Defendants.

10. Plaintiff's argument that she has submitted all of the evidence in her possession is unconvincing. Her brief does not include nor reference any of the ordered productions.

11. The Court's prior sanctions are supported by the law and the evidence presented to the Court and should not be disturbed.

III. CONCLUSION

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion to Reconsider the Defendants' Motions for Sanctions is DENIED. The award to the Defendants is affirmed. The Defendants are awarded attorney's fees and costs for the pursuit of the requested information, as evidenced by the affidavits submitted of Ms. Dakota E. Knehans, Mr. Chris Smith, and Mr. Maxwell Mishkin. Though additional fees were incurred in the pursuit of discovery from Plaintiff, these affidavits reflect only the Defendants' travel to and attendance at the hearings concerning this discovery. Plaintiff will be constrained to the witnesses identified as of April 4, 2023, and will be allowed to present only the three documents submitted as Court Exhibits 1, 2, and 3 at the March 22, 2023 hearing as evidence of her damages.

THE HONORABLE R. LAWTON McINTOSH
OCONEE COUNTY CIRCUIT COURT,
PRESIDING JUDGE

Dated:



Oconee Common Pleas

Case Caption: Dorothy Pierce VS Edwards Group Holdings Inc , defendant, et al

Case Number: 2022CP3700182

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH