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Oct 10 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2022-001208
Case No. 2018-CP-10-03286

Karolina Richardson and Krista Richardson,

Respondents,

v.

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC,

Appellants.

**RESPONDENTS' REPLY IN OPPOSITION TO
APPELLANTS' MOTION TO STRIKE MATERIALS
DESIGNATED BY RESPONDENTS FOR INCLUSION
IN RECORD ON APPEAL**

Appellants Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC's Motion to Strike Materials Designated by Respondents should be denied. The applicable rule is found at Rule 210(c), SCACR:

RECORD ON APPEAL

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not *presented* to the lower court or tribunal....(emphasis added).

There is no question that the materials at issue were designated by the Respondents **AND** presented to the lower court. Appellants' Motion to Strike ignores the actual language of Rule 210 and attempts to replace the word "presented" (the actual word / standard contained in SCACR) with the word "filed." There is no requirement that the documents need to be filed – only presented to the lower court.

As background, the materials Appellants seek to strike from the record include correspondence from the undersigned attorney to the multiple attorneys for Defendants / Appellants related to ongoing discovery issues. Plaintiffs / Respondents repeatedly requested the same information – the production of mold complaints from renters at Oyster Park. Defendants / Appellants continued to delay and ignore the requests. As a result of the continued refusal to produce this information, Plaintiffs / Respondents spent countless wasted time and money seeking this information in written discovery, depositions, and costly electronic discovery searches.

The week before the trial, Defendants / Respondents disclosed, for the first time, that neatly organized 3-ring binders containing this information were sitting on the Property Manager's bookshelf at Oyster Park. The day before trial, this information was finally produced. Plaintiffs / Appellants moved for sanctions. In support of this motion, the undersigned sent an email to the Trial Court containing correspondence regarding the discovery issue that was at the heart of the Motion for Sanctions.

Specifically, on Sunday, July 17, 2022, Plaintiffs' / Respondents' counsel emailed the Trial Court twelve (12) exhibits in support of their motion for sanctions.

The email stated as follows:

Please allow this email to serve as a supplement in support of our Motion for Sanctions filed on Friday. The issue is the failure, until Friday, to produce records of approximately 50 mold complaints made by tenants at Oyster Park. I have attached some of the more specific letters and emails on this issue, however, based

on the trial preparation this is by no means complete. I would also stress that I have had countless conversations with the lawyers for the Defendants over the past 3.5 years trying to obtain this information.

The following materials are attached hereto:

Exhibit 1 Letter dated Jan. 25, 2019 to Jamie Ackerman asking for Defendants to supplement discovery to include mold complaints – this information was not provided in their discovery responses.

Exhibit 2 Letter dated Feb. 19, 2019 to Jamie Ackerman again asking for mold complaints (Defendants only produced information about Plaintiffs complaints).

Exhibit 3 Motion to Compel

Exhibit 4 Letter dated Dec. 19, 2019 to Douglas Leadbitter asking for supplemental responses to provide mold complaints.

Exhibit 5 Letter dated July 7, 2020 asking for an update on discovery including Oyster Park resident mold complaints.

Exhibit 6 Email from Gower Wooten and Darnelle – they are “waiting on some additional information from Defendant to respond”

Exhibit 7 Motion to Compel

Exhibit 8 Letter to Doug Leadbitter dated Sept. 24, 2020 asking to supplement responses to mold complaint and confirming will take up with Court at hearing

Exhibit 9 Order dated Jan. 10, 2021 from Judge McCoy granting Plaintiffs’ Motion to Compel (ESI searches and supplement of mold claims)

Exhibit 10 Email from Kirkley White dated Dec. 10, 2021 stating the ESI search would cost “anywhere from \$15,000 to \$50,000” and stating that it was unnecessary because Defendants produced all mold complaints that Defendants have in either hard copy or electronically

Exhibit 11 Email from Emily Sheets (in response to finding an email about a “mold book” kept by Oyster Park staff) dated June 24, 2022 stating Defendants have produced everything we have but she would verify

Exhibit 12 Supplemental document production dated Friday, July 15, 2022 producing approximately 1000 additional documents containing, among other things, an additional 40-50 resident mold complaints.

(Exhibit A).

This is clear evidence the information was “presented” to the Trial Court. Additionally, we know the Trial Court considered this information when forming its opinion on the Motion for Sanctions. In the Trial Court’s Order Granting Plaintiffs’ Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCPCP, it states: “Plaintiffs’ counsel submitted 12 exhibits in support of the Motion for Sanctions including numerous requests for the Defendants to provide and produce records of Oyster Park resident’s complaints of mold.” (**Exhibit B**, p. 2). The Order also specifically references the Affidavit of Attorney’s Fees and Costs. (**Exhibit B**, p. 3). Finally, during the hearing on the Motion for Sanctions, the Trial Court states: “I’ve got the motion and 12 exhibits that were attached; is that right? All right. The motion has already been filed; is that right? Okay. Happy to hear from you.” (**Exhibit C**, at 2:14-17). Thereafter, the hearing is conducted with multiple direct references to the 12 exhibits at issue. (**Exhibit C**, at 2:18 – 34:21).

In summary: 1) there is no question the information was presented timely to the Trial Court; 2) there was no objection raised by Defendants / Respondents at any time the information was presented to the Trial Court (neither to the manner nor contents of the 12 exhibits and Affidavit of Attorney Fees); 3) the Trial Court received the information; 4) the Trial Court considered the information when making its decision; 5) the Trial Court referenced, and relied upon, the information in its Order awarding Sanctions; and finally 6) this same information was, again, considered and discussed at the hearing on the Motion for Sanctions.

Respondents have complied with Rule 210, SCACR, and this information should be included in the Record on Appeal. The Respondents’ Motion to Strike should be denied.

[SIGNATURE BLOCK ON NEXT PAGE]

s/Clayton B. McCullough
Clayton B. McCullough, Esq., SC Bar No. 13722
McCULLOUGH KHAN, LLC
2036 eWall Street
Mount Pleasant, SC 29464
(843) 937-0400
(843) 937-0706 (fax)
clay@mklawsc.com

Counsel for Respondents

October 10, 2023
Mount Pleasant, South Carolina

Exhibit A

From: [Clayton B. McCullough, Esquire](#)
To: [Bobbi Myers](#); [Jeff Ross](#); [Emily Sheets](#); [McCoy, Jennifer Law Clerk \(English Maul\)](#); [Alicia Terwilliger Ph.D.](#)
Subject: Richardson V. Oyster Park
Date: Sunday, July 17, 2022 3:03:51 PM
Attachments: [Exhibit 1.pdf](#)
[Exhibit 2.pdf](#)
[Exhibit 3.pdf](#)
[Exhibit 4.pdf](#)
[Exhibit 5.pdf](#)
[Exhibit 6.pdf](#)
[Exhibit 7.pdf](#)
[Exhibit 8.pdf](#)
[Exhibit 9.pdf](#)
[Exhibit 10.pdf](#)
[Exhibit 11.pdf](#)
[Exhibit 12.pdf](#)

Please allow this email to serve as a supplement in support of our Motion for Sanctions filed on Friday. The issue is the failure, until Friday, to produce records of approximately 50 mold complaints made by tenants at Oyster Park. I have attached some of the more specific letters and emails on this issue, however, based on the trial preparation this is by no means complete. I would also stress that I have had countless conversations with the lawyers for the Defendants over the past 3.5 years trying to obtain this information.

The following materials are attached hereto:

- Exhibit 1 Letter dated Jan. 25, 2019 to Jamie Ackerman asking for Defendants to supplement discovery to include mold complaints – this information was not provided in their discovery responses.
- Exhibit 2 Letter dated Feb. 19, 2019 to Jamie Ackerman again asking for mold complaints (Defendants only produced information about Plaintiffs complaints).
- Exhibit 3 Motion to Compel
- Exhibit 4 Letter dated Dec. 19, 2019 to Douglas Leadbitter asking for supplemental responses to provide mold complaints.
- Exhibit 5 Letter dated July 7, 2020 asking for an update on discovery including Oyster Park resident mold complaints.
- Exhibit 6 Email from Gower Wooten and Darnelle – they are “waiting on some additional information from Defendant to respond”
- Exhibit 7 Motion to Compel
- Exhibit 8 Letter to Doug Leadbitter dated Sept. 24, 2020 asking to supplement responses to mold complaint and confirming will take up with Court at hearing
- Exhibit 9 Order dated Jan. 10, 2021 from Judge McCoy granting Plaintiffs’ Motion to Compel (ESI searches and supplement of mold claims)
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- Exhibit 11 Email from Emily Sheets (in response to finding an email about a “mold book” kept by Oyster Park staff) dated June 24, 2022 stating Defendants have produced everything we have but she would verify
- Exhibit 12 Supplemental document production dated Friday, July 15, 2022 producing approximately 1000 additional documents containing, among other things, an additional 40-50

resident mold complaints.

Thanks very much.

Clay McCullough

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-3286
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR SANCTIONS
Mt. Pleasant Square Associates, II, LLC d/b/a	)	PURSUANT TO RULE 37(b)(2)(C),
Oyster Park Apartments, Dewberry Capital	)	SCRCP
Corporation, and GREP Southeast, LLC,	)	
	)	
Defendants.	)	

This matter came before the Court upon Karolina and Krista Richardson's ("Plaintiffs") Motion for Sanctions pursuant to Rule 37(b)(2)(C), SCRCP against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC ("Defendants"). A hearing was conducted on July 18, 2022, and counsel for the parties were present. Upon careful consideration of the pleadings, discovery facts, additional documentation provided by counsel, oral arguments advanced, and South Carolina law, the Court find Plaintiffs are entitled to sanctions against the Defendants. The Motion is hereby GRANTED.

FINDINGS OF FACT

Plaintiffs have continually requested (in discovery requests, letters, phone calls, emails, at depositions) that Defendants provide information relating to complaints of mold at Oyster Park. On Thursday, July 14th, 2022, after over three (3) years of discovery, Defense counsel, Ross & Cristaldi, LLC, became aware of additional relevant documents. Defense counsel immediately informed Plaintiff's counsel of the documents and that they would be produced no later than the next day, July 15th, 2022. Defendants submitted documentation relating to an additional 50 – 60

mold complaints by residents at Oyster Park on the Friday, July 15th, 2022, prior to the trial beginning on Monday July 18, 2022. The instant motion by the Plaintiffs followed.

Plaintiffs' counsel submitted 12 exhibits in support of the Motion for Sanctions including numerous requests for the Defendants to provide and produce records of Oyster Park resident's complaints of mold. Plaintiffs were forced to file two Motions to Compel on this issue. After a hearing on the second Motion to Compel, this Court ordered that the Defendants produce the discovery sought by way of a Form 4 Order entered January 11, 2021. The Defendants were ordered to produce the documents within 30 days from January 11, 2021. Based on the Defendants' last-minute production prior to trial, through no fault of Ross & Cristaldi, LLC, this court finds they did not comply with the Order.

APPLICABLE STANDARD

If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. Rule 37(b)(2)(C), SCRPC.

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. *See Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974). Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience, or gross indifference to its rights to justify the sanction. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

“An award of attorney's fees and costs is within the sound discretion of the trial court and will not be reversed on appeal absent abuse of that discretion.” *McMillian v. Morin*, 319 S.C. 331, 461 S.E.2d 43, 45 (1995).

The six factors to consider in determining if an award of attorney fees is reasonable are: (A) the nature, extent, and difficulty of the case, (B) the time and labor necessarily devoted to the case, (C) professional standing of counsel, (D) contingency of compensation, (E) beneficial results obtained, and (F) customary legal fees for similar services. *See, e.g., Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

Plaintiffs requested that the answers of Defendants be struck, and that Defendants be entered into default. The Court declines to strike the answer of Defendants.

However, due to the length of this case, the years of litigation, the time that it has taken for Defendants to produce the information they produced on the eve of trial, and the prejudice resulting to Plaintiffs and their counsel, I do find that Plaintiffs are entitled to the sanction of an award of attorneys' fees and costs against Defendants.

Counsel for Plaintiffs has submitted an Affidavit of Attorneys' Fees and costs to the Court. Based on that Affidavit and this motion, the Court grants Plaintiffs the sanctions of attorneys' fees and costs against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC, joint and severally.

After careful consideration of the factors expressed in *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998), and the Affidavit of Clayton B. McCullough Esq., I find that the attorneys' fees and costs requested by Plaintiffs are reasonable based on the (A) the nature, extent, and difficulty of the case, (B) the time and labor necessarily devoted to the case, (C) professional standing of counsel, (D) contingency of compensation, (E) beneficial results obtained, and (F) customary legal fees for similar services. Defendants are hereby ordered to pay the attorneys' fees and litigation costs resulting from Defendants' failure to timely submit and supplement discovery requested by Plaintiffs and previously ordered by this Court.

THEREFORE, IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Sanctions against Defendants, pursuant the Rule 37(b)(2)(C) SCRCF, is **GRANTED** and:

- (1) Defendants are hereby ordered to reimburse Plaintiffs (by and through their counsel) for the following attorneys' fees and costs within five (5) days of the date of this order, as a sanction, as a joint and several sanction against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC, in the total amount of \$25,200.00:
 - a. Plaintiffs' payment to Rosen Litigation Technology Consulting \$2,250.00 for computer forensic services relating to Defendants' May 5, 2022, ESI document production;
 - b. Fees of Clayton B. McCullough Esq., resulting from twenty-five (25) hours incurred reviewing Defendants' May 5, 2022 and July 15, 2022 document productions in this matter, totaling \$11,250; and
 - c. Fees of Clayton B. McCullough's paralegal, Alicia Terwilliger, resulting from sixty (60) hours incurred reviewing Defendants' May 5, 2022 and July 15, 2022 document productions in this matter, totaling \$11,700.

IT IS ORDERED.

Jennifer B. McCoy
Presiding Circuit Court Judge

December _____, 2022
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al

Case Number: 2018CP1003286

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2018-CP-10-03286

Karolina Richardson)

) TRANSCRIPT OF RECORD

-vs-)

) July 18, 2022 - Vol 1 of 5

Mt. Pleasant Sq. Ass.)

) Charleston, South Carolina

B E F O R E:

The Honorable Jennifer B. McCoy, Judge

A P P E A R A N C E S:

Clayton B. McCullough, Esquire
Attorney for the Plaintiffs

Jeffrey A. Ross, Esquire
Emily Sheets, Esquire
Attorneys for the Defendants

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 THE COURT: Thank you. Please be seated.
2 Okay, I think we are ready to proceed, if the attorneys
3 are. I'm happy to take up any motions in the order most
4 appropriate.

5 MR. MCCULLOUGH: Your Honor, if it's okay,
6 I would like -- Clay McCullough on behalf of the
7 Plaintiff, and I would like to start with the motion
8 for sanctions that we filed on Friday, if that's okay.

9 THE COURT: Yeah, let's talk about that
10 for sure.

11 MR. MCCULLOUGH: Thank you, Your Honor.

12 THE COURT: Okay. And I've got -- just
13 going through the document that I have so I could follow
14 along. I've got the motion and 12 exhibits that were
15 attached; is that right? All right. The motion has
16 already been filed; is that right? Okay. Happy to hear
17 from you.

18 MR. MCCULLOUGH: Thank you so much. May it
19 please the Court. Again, I'm Clay McCullough, and I am
20 here on behalf of the Plaintiffs, the Richardson family,
21 right here behind me. And just quickly, because I know
22 you know a little bit about the case, this is a lawsuit
23 arising out of -- my clients lived in Oyster Park
24 Apartments in Mount Pleasant that's owned and managed
25 by the Defendants. She moved in, in May of 2017,

1 and I think everything I'm saying now is undisputed.

2 Shortly after moving in, there was a flood
3 in the unit she was in, and she moved to a second unit.
4 She lived in the second unit -- or they lived in the
5 second unit for about six weeks, and she had complained
6 about some smelling and some mildew and things of that
7 nature. And then, I believe, on July the 10th, saw mold
8 in several areas, and began some e-mail communications
9 with the staff of Oyster Park.

10 It was subsequently tested, confirmed
11 to be mold. The Defendants hired a mold remediation
12 company to come in, and she was moved to a third unit.
13 While in the third unit, continued to complain about
14 smells and things of that nature and told them about
15 the concerns about mold. Ultimately, Labor Day weekend
16 moved out.

17 THE COURT: Okay, a whole complex of stuff.

18 MR. MCCULLOUGH: Correct.

19 THE COURT: Okay.

20 MR. MCCULLOUGH: The evidence will show
21 a tremendous amount of early-on medical issues
22 associated with the exposure of mold for both
23 of the Richardsons. There's a lot of medical data
24 and documentation that will be forthcoming.

25 So, I was retained, and we filed a lawsuit

1 in 2018. We sent normal discovery and started
2 the process, and the lawyer that was in Greenville
3 for the Defendants, a gentleman by the name of Jamie
4 Akerman, came in to defend, and we started the normal
5 process of document production. And early on, we had
6 tussled over what information to produce. They produced
7 some records directly associated with the Richardsons
8 and directly associated with an e-mail communication,
9 very little communications, between the Richardsons
10 and the Defendants.

11 We continued to expand what we were asking.
12 And to be honest with you, at that point, I was
13 completely unaware of other issues out there.
14 It shortly became obvious that there were ongoing
15 problems, systemic problems, at Oyster Park. This
16 building leaks in every way I can think that something
17 would leak. It's flooded from the ground. They have
18 multiple roof leaks; they have window leaks; they have
19 plumbing leaks; they have HVAC issues causing excess
20 humidity.

21 Testimony and the documents will show
22 numerous dehumidifiers that have permanently and
23 temporarily been installed. Lots and lots of mold
24 tests, lots and lots of remediation companies coming
25 in. I'm going to fast forward to Friday, and then

1 I'm going to back up.

2 THE COURT: Okay.

3 MR. MCCULLOUGH: The reason I'm fast
4 forwarding to Friday is I've been before Your Honor
5 on several occasions, but I just want you to know two
6 things. One, I've never filed a motion like this before
7 in my career. And, two, everything that I am saying
8 and every blunt assertion I will make is no way, no way
9 aimed at these folks. Emily responded the way she
10 should have responded, on time, and was, like, sorry.

11 THE COURT: Okay.

12 MR. MCCULLOUGH: All right.

13 THE COURT: Right.

14 MR. MCCULLOUGH: So, I went through
15 a frantic on Friday just trying to pull as much
16 as I could.

17 THE COURT: Okay.

18 MR. MCCULLOUGH: All right. We sent
19 a bunch of discovery. Almost immediately, we started
20 to tussle, as I mentioned, in late 2018, 2019. We took
21 some depositions, and at every deposition of the
22 Dewberry, GreyStar folks, it became obvious there's more
23 information that's not forthcoming. There's lengthy
24 pages of testimony -- not testimony, conversations
25 between Mr. Akerman and I, about go to Oyster Park,

1 gather these documents, give me the information.

2 We stopped the deposition of the onsite property
3 managers so they can do just that.

4 THE COURT: Okay.

5 MR. MCCULLOUGH: The information dribbled
6 in. The entire year of 2019 was spent fighting over
7 these issues. They would submit three because I told
8 them about those three, and then we would get some more.
9 And then I would send another letter. We sent discovery
10 they didn't respond to. The first exhibit that
11 I e-mailed is a letter saying, guys, give me these other
12 mold reports, give me -- I mean, there's a whole system
13 in place. We got very little.

14 Exhibit 2, February of 2019, guys, again,
15 let's quit playing games. Send me the information.
16 So as you'll see, this is kind of a recurrent thing --
17 theme. Exhibit 3 is a motion to compel. We sent --
18 and said, here's the discovery, you haven't given
19 me the documentation. Somewhere in this process,
20 Mr. Akerman was no longer at the firm, some guy named
21 Doug Leadbitter took over. There were promises made
22 to gather information, and information was forthcoming.

23 At some point, we got up to 30 to 35
24 people that complained of mold. While this is going
25 on, I have tenants, unsolicited, calling me because

1 I have a lawsuit filed, saying, hey, this is what
2 I know, I heard this, hey, what's happening. A lawyer
3 in his office is right around the corner calling me,
4 trying to put together a class action against Oyster
5 Park. I said, no, I've got my hands full with the
6 lawsuit that we've got.

7 So again in December of 2019, I'm now
8 communicating with Mr. Leadbitter, and again, guys,
9 please, give me this information. The last response
10 we got is -- this is April 30th, 2019. Now we're
11 in December of 2019. So there's always, to be honest,
12 some level of -- you didn't ask this, you didn't
13 ask that. So we have more conversations until I send
14 another round of discovery. This is Exhibit 5.
15 Now we're in 2020, please, send me the information
16 that I keep requesting. You won't send it without
17 being browbeaten. I think Mr. Leadbitter is gone
18 at this point, I'm not quite sure.

19 Exhibit 6, from a paralegal at Gower, Wooten
20 and Darneille saying we're working on it, we're pulling
21 stuff together, we'll provide additional information.

22 Finally, because more stuff never
23 was forthcoming, I filed a second motion to compel,
24 and this one was scheduled -- filed July 30, 2020,
25 and it was again asking for several things. The first

1 thing is I kind of gave up, and I sent a request --
2 there's nothing in this world I hate more than
3 electronic discovery. It is an ending well of resources
4 and money, but there's nothing else I can do. So,
5 I sent together a list of search terms and searches
6 I wanted to have happen.

7 What also happened here in this time period
8 is GreyStar no longer was working at Oyster Park on
9 behalf of Dewberry. And Mr. Leadbitter basically told
10 me he never asked GreyStar for any information because
11 -- although they were a Defendant and a property
12 manager.

13 So, I filed a motion. And then in
14 September, I wanted to follow up, and so I again wrote
15 another letter, and this is pretty important because
16 I think this is kind of why we're here today, and this
17 is Exhibit No. 8. "Doug, you need to respond to the ESI
18 discovery. But, more importantly, you need to provide
19 me these mold complaints and the order of infiltration
20 complaints made by the residents."

21 And again they have a whole system.
22 They fill out forms; it's documented. And it's not
23 like we're talking of millions of people. This is
24 an apartment complex. Give me your old complaints.
25 You've got to have a notebook somewhere; you've got

1 to have documentation of this somewhere. So we have
2 this here. We filed a motion, and then we come before
3 Your Honor.

4 THE COURT: Starting to sound familiar.
5 Okay.

6 MR. MCCULLOUGH: This was in December 3
7 of 2020, and I'm just going to read from the transcript.
8 And, Your Honor, the transcript of this was actually
9 submitted by the Defendants in opposition of the motion
10 for sanctions. So, I'm just going to read it. I'm not
11 going to read it all because I'm sure you've read parts
12 of it, although, it was a long time ago. This is what
13 I'm asking for.

14 The second issue is part of what we sent
15 in correspondence requesting an update on all mold
16 and mildew and more claims that have been made.
17 Your Honor, at last, as of the middle of 2019, there
18 were approximately 30 claims from tenants to Oyster
19 Park about water leaks, mold and mildew. What happened
20 is GreyStar stopped serving as the property manager
21 I believe in the middle of 2019. And what appears
22 has happened is the continuation of the list
23 of complaints to include settlements, to include the
24 nature of the claims and what remediation was conducted,
25 stopped when Dewberry took over as the property manager.

1 The last noted documentation of the claim
2 was from September of 2019. And then we're talking
3 about the electronic searches that they had performed.
4 It was apparently done over a year ago with limited
5 data searches, meaning they certainly didn't search
6 the server. They searched one e-mail address and had
7 no idea they did this search in May 2019. And why
8 they didn't produce it until yesterday? They produced
9 an e-mail from one particular person.

10 The last documentation they gave us were
11 30 mold complaints as of summer of 2019. Here we are
12 18 months later, and about 30 minutes ago they provided
13 me one additional packet of information with one
14 particular complainant.

15 Your Honor, I think they've made virtually
16 no effort to comply with my discovery request. And then
17 you say, Mr. McCullough, I guess you're going to say
18 it's going to go to your UTPA claim. So, I respond
19 further, what I'm asking for is a continuation of what's
20 been going on until today. There was a list of all
21 the water, mildew and mold claims, or complaints made
22 to the property management company. And you said,
23 yeah, no reason to hide the ball. I'm with you.
24 Mr. McCullough, if you know of some names tell him.
25 It's not going to make you -- it's only going to make

1 them produce them that much faster.

2 And then, Your Honor, I entered an order
3 stating a claim to file a motion to compel on July
4 30, 2020, which was heard in this court on December
5 3, 2020. Upon careful consideration of the argument
6 and submissions, this Court grants Plaintiff's motion
7 to compel.

8 So then, Your Honor, we proceed with some
9 ESI searches, and the ESI -- actually, I'm sorry.
10 We kind of carried on. We don't get a supplemental
11 document. The law firm that had been handling the case
12 up to that point I believe had -- was fired. And the
13 current law firm took over, and the lawyer handling
14 it was -- Jones. Sorry. And they have moved for
15 summary judgment.

16 So now we're before Judge Young in November
17 of 2021. And this is me again talking to Judge Young,
18 so what's happened is we had depositions in my office
19 about two and a half years ago, and those depositions,
20 the primary point person, the property manager,
21 essentially the day before had come to a conclusion
22 and told Jamie Akerman that they had never gotten
23 an e-mail search, there were photographs missing,
24 they had a notebook with mold-related claims but never
25 was provided. I've sent motions; I've sent discovery

1 requests. We have not received, it goes on, texts,
2 photographs. To be blunt, there's an active effort
3 to hide mold-related claims at Oyster Park.

4 Even from the discovery that I have
5 received, we've gotten over 45 written complaints
6 that were submitted by tenants of Oyster Park, and
7 we got virtually no internal e-mails, no text messages,
8 no photographs.

9 My last conversation about all of this
10 is they didn't represent GreyStar anymore because
11 Dewberry either didn't retain or fired GreyStar.
12 Judge Young stated, all right, let's get that settled.
13 Y'all have to provide responses to his discovery.

14 Next, Your Honor, we started on an ESI
15 process. I will tell you that this ESI was unnecessary.
16 We didn't need to do it, but we had to do it because
17 this appeared to be the only way to get this
18 information. They have never produced the documentation
19 that you had ordered, or that Judge Young ordered.

20 And so the next document, Exhibit 10,
21 is with Kirkley [ph.] White, the lawyer at Jeff
22 and Emily's firm, basically trying to talk me out
23 of doing ESI searches, is the way I read it. And she
24 states, "We anticipate anywhere between 150 to 500 hours
25 for review, 50 e-mails per hour, as a rule of thumb,

1 at approximately 100 hours per hour, contracted terms
2 on hourly rate to be determined. This cost will range
3 anywhere between \$15,000 to \$50,000 depending on
4 the volume of e-mails that are returned. At a minimum,
5 we need you to deposit \$5,500 for me to proceed
6 with the collection and search. This equates to half
7 the cost of the anticipated search."

8 She goes on to write, "Also please keep
9 in mind we already produced on two separate occasions
10 the file for all the mold-related complaints, kept on
11 hard copy or electronically at Oyster Park, and separate
12 search hits from all the e-mails related to mold claims
13 and complaints from tenants of Oyster Park. And I have
14 updated these as our clients received them, so we expect
15 the results of these searches to duplicate what your
16 client had already received in discovery. However,
17 given the court order, we will not be de-duplicating
18 documents from the prior production in an abundance
19 of caution in case anything was inadvertently missed
20 in the first collection."

21 The searches were run. We got -- I don't
22 remember what the document was called, but a tremendous
23 response of stuff. This poor woman spent a month
24 or two of her life going through it, and it essentially
25 substantiated the mold claims we had up until that date.

1 So we were pretty confident that they had been told
2 that the problems were resolved, and the problems were
3 -- Oyster Park does not have any problems anymore.

4 So from our perspective, it made sense
5 that the materials that we got on the ESI search matched
6 the material we have been provided because the problems
7 were solved.

8 THE COURT: Okay.

9 MR. MCCULLOUGH: And then going through
10 this, we came across an e-mail talking about a mold
11 book. I e-mailed Ms. Sheets asking, what's the mold
12 book? And this is Exhibit 11, and she says, as far
13 as I know we produced everything, but I'll verify.
14 This e-mail will suffice.

15 And I will say one more time I have no doubt
16 that she believed that when she wrote that, because
17 when you're having a lawsuit with two motions to compel
18 that have been granted, and you're spending thousands
19 and thousands of dollars, certainly if there are
20 notebooks with mold claims that had been requested about
21 a thousand times sitting in your office, you're going
22 to produce them.

23 THE COURT: Yeah.

24 MR. MCCULLOUGH: They weren't, until Friday.
25 And so we got another thousand documents on Friday

1 with about 50 more mold claims.

2 THE COURT: Okay.

3 MR. MCCULLOUGH: So, Your Honor, we are
4 asking for an extremely rare thing, which is this
5 honorable Court to sanction the Defendants because
6 I believe the Defendants are the ones that were not
7 being responsive to their lawyers, or they ignored
8 this honorable Court's order. And the assurances,
9 frankly, I think they were not being truthful with
10 counsel.

11 We cite to the case of McNair v. Fairfield
12 County, which was 665 S.E.2d 830, that states Rule
13 37(b)(2)(c), South Carolina Rules of Civil Procedure,
14 "When a party fails to comply with a discovery order,
15 the trial court has the discretion to impose a sanction
16 it deems just, including an order dismissing the action.
17 Absent an abuse of discretion, the trial court's
18 imposition of discovery sanctions will not be reversed
19 on appeal, and the party appealing from the order
20 of sanction carries the burden of proving an abuse
21 of discretion occurred. Severe sanctions, such as the
22 dismissal of an action, should only be imposed in cases
23 involving bad faith, willful disobedience or gross
24 indifference to the opposing party's rights."

25 Finally, "In determining the appropriateness

1 of a sanction, the court considers -- should consider
2 such factors as the precise nature of the discovery
3 and the discovery posture of the case, willfulness
4 and degree of prejudice."

5 Your Honor, we believe this is a willful
6 disobedience and gross indifference to the opposing
7 party's rights. We believe that these notebooks were
8 sitting in the offices of Dewberry, probably at Oyster
9 Park, for the last two and a half years. There's
10 no rational reason this information was not produced.
11 They're going -- have said, there's no prejudice,
12 we gave it to them. They were able to cram some
13 more stuff into documents that we object to.

14 Well, I hadn't talked to 50-plus people.
15 I don't know what's out there. I will tell you we
16 are -- we've been up for trial three times, and we're
17 not going to push it off anymore. But if there's ever
18 been a situation where the Defendants had intentionally,
19 intentionally, not provided information, they can fight
20 and kick and scream about whether or not it's
21 admissible, but it's definitely discoverable. It's been
22 ordered to be discovery.

23 And this wild goose chase that they sent
24 us on, the ESI, because they didn't produce it means
25 that the lawyers on both sides have spent countless

1 hours -- and the only thing that we can do at this
2 point, respectfully, is something significant.
3 So we're asking you to strike the pleadings; we're
4 asking you to hold them in default; we're asking this
5 to be turned into a damages hearing.

6 THE COURT: Happy to hear from defense
7 counsel.

8 MS. SHEETS: Your Honor, good afternoon.
9 May it please the Court. Emily Sheets for the
10 Defendants. Your Honor, I'm ---

11 THE COURT: For the record, I don't envy
12 your position today, Ms. Sheets, but I'm happy to hear
13 from you.

14 MS. SHEETS: I appreciate Your Honor's
15 courteousness, and I appreciate Plaintiffs' counsel's
16 grace as well. I am not going to rehash the history
17 here. I don't dispute the history; the history is what
18 it is. I do want to qualify that -- because I think
19 qualification is especially important.

20 Here's the bottom line. The question
21 is, first, what's the posture of discovery been like,
22 and here's the posture. The reality is that you have
23 a large entity, GreyStar, that is the property manager
24 of Oyster Park when discovery first started in this
25 case. They managed hundreds to probably thousands

1 of apartments. Their servers are immensely populated
2 with tens of thousands of pages of documents. And so
3 to sit here and say, oh, gosh, it will just be so easy,
4 just open your Oyster Park folder, and, you know,
5 just poof and make it appear.

6 Well, the reality is that's just not how
7 large corporations operate. There's stuff everywhere.
8 It's not just one folder here; it's one folder and 25
9 folders in here. So that's where the case started,
10 that's where discovery began. And as this case kind
11 of went on in time, you got other entities being
12 involved, Dewberry Capital took over the property
13 management of this apartment.

14 At the point where they took it over,
15 there's sort of a relationship, if you will, between,
16 to the extent that there was one, between Dewberry
17 Capital and GreyStar, ended. And GreyStar went on their
18 way, they were managing other apartments. They had
19 no involvement with Oyster Park. Dewberry Capital takes
20 over.

21 At that point, Dewberry Capital has
22 no control over getting the documents from GreyStar.
23 Those people are gone; those people don't work at Oyster
24 Park anymore. And to some extent, the documents went
25 with them, so now you have a communication gap, right?

1 You've got a corporation over here that needs things
2 from a corporation over here, but then you've got the
3 people in the middle that are sort of no longer there.

4 And so, you know, for better or worse,
5 it takes time. It's not an unwillingness; it's not
6 an inability; it's not a lack of desire. It's just
7 it takes time to sort of -- for one entity to figure out
8 who they should be talking to now that the relationship
9 has changed.

10 So, you know, to the extent that the first
11 year and, you know, even two years, we all know how
12 litigation works. It's slower than it should be,
13 for better or worse, for everyone, right? And so
14 as time went on, there was active consideration of these
15 elements. There were actively folks trying to figure
16 out what everyone had. And as that happened, this
17 is really key, that information is produced.

18 And so as we go in time, we admittedly have
19 this hearing to order an ESI search. That ESI search
20 is done. My office coordinated it, and I can assure
21 you that was not an easy or a quick process.
22 But we were able to find the people that needed to be
23 found and coordinate between GreyStar and Dewberry over
24 a terabyte of data. It was taken down from the GreyStar
25 servers and the Dewberry servers and provided to the

1 ESI manager.

2 My office worked very closely with
3 Mr. McCullough's office. We made sure that, even
4 despite before, that we had the exact sort of tailored
5 list of terms, because we didn't want to document dump
6 them. I mean, let's be clear. We were trying not
7 to document dump them; we weren't trying to conceal.
8 And I think that's really important because I think
9 that goes to the heart of the sanctions. What was
10 the conduct? What was the desire, the intention behind
11 that conduct? And it simply was I don't want to
12 document dump them, and so we undertake the ESI search.

13 Even after the ESI search, I think to our
14 credit, Mr. McCullough and I did a great job trying
15 to tailor that. I think we did. Even after that
16 though, 136,000 documents were produced, but there's
17 more. We actually stopped the ESI search a little over
18 three-fourth of the way through because it was getting
19 extensive.

20 Our fears and Ms. White's fears from the
21 e-mail that Mr. McCullough read to you, come to realize,
22 right, that this is going to be thousands of man hours.
23 And so Mr. McCullough and I agreed together that we
24 would stop that search, and that instead of us hand
25 reviewing each of those documents, we would immediately

1 turn them over so that we can both simultaneously search
2 them under a callback agreement, and if a privileged
3 document is in there, we would call it back.

4 And to Mr. McCullough's office's credit,
5 we've had to do that a couple of times. We've had
6 to send an e-mail and say, hey, you need to call
7 us back, and they have been willing to do that.
8 But there's still more out there. And I point
9 that out to you because I think it goes to the heart
10 of what our intent and our willingness was, that there
11 are still documents out there.

12 So why does that matter? Why does that
13 matter in relation to these notebooks? Your Honor,
14 I don't know how long those notebooks have been around;
15 I don't know who created them. I haven't had time
16 to figure that out. I only know they exist, and I only
17 know that at the moment we figured out they exist,
18 we immediately produced them. There's a telephone call;
19 there was an active effort to get those to him within
20 hours.

21 So what's the story there? The story
22 is this: When you talk to Dewberry Capital, and you
23 talk to Oyster Park, and you talk to GreyStar, in their
24 mind we have done the most extreme thing that we can do.
25 Each of our entities have spent countless hours making

1 sure we pulled everything we needed to pull off
2 our servers to make sure that we spent the thousands
3 of dollars we were ordered to spend in both company
4 hours and attorney hours to pull together those
5 documents, to getting the ESI search done and to
6 get those over to the Plaintiff.

7 And, Your Honor, the bottom line here
8 is, you know, we're talking about sanctions and arguably
9 next to being held in contempt. I can't think
10 of a higher penalty that can be issued here today,
11 and it's a big deal. I think it's just really, really
12 important here for us to focus on whether or not there's
13 a concerted effort.

14 Your Honor, the evidence just doesn't
15 bear that out. There's no concerted effort to conceal.
16 If anything, there's a concerted effort not to frustrate
17 the process. There's a concerted effort to make sure
18 that discovery responses are pointed, they're targeted,
19 they matter to the actual case.

20 And, Your Honor, we simply would submit
21 to this Court that sanctions just aren't warranted
22 here. You know, is the fact that we had to produce
23 documents on the eve of trial unfortunate? It sure
24 is. It was unfortunate for everybody. Our office
25 and Mr. McCullough's office certainly had better things

1 to do than to look through 800 pages of extra documents
2 at the eleventh hour. But the reality is they were
3 produced. They were produced timely.

4 And, Your Honor, the information that
5 we have today on the notebooks is everyone assumed
6 that everyone had the information in there because
7 the information came off the servers that we pulled
8 the information from to begin with. And, Your Honor,
9 honestly, we have not had time to cross-reference those
10 notebooks to the 136,000. We haven't.

11 But we've had time to peruse, and what
12 we found is, Your Honor, the vast majority of the
13 information in those notebooks is contained in the
14 136,000-page ESI search, which has been sitting
15 in Mr. McCullough's office for months. Your Honor,
16 I understand the frustration; I think we can all
17 understand the frustration.

18 The reality is this unfortunate event
19 on the eve of trial simply does not rise to the level
20 of a severe penalty of sanctions. And if certainly
21 sanctions somehow are warranted, it's certainly doesn't
22 mean that the pleadings in this case and that our
23 clients would have an inability to defend in this court
24 based on their constitutional rights and to have their
25 case heard out by members of the jury in its entirety.

1 And, Your Honor, so we would respectfully
2 submit to you, and I have a written copy of the memo
3 in our exhibit, so I'm certainly happy to pass it
4 up to you if Your Honor doesn't have it available.
5 Your Honor, sanctions just simply aren't warranted
6 here, and certainly it would be hardly -- inequitable
7 to strike the pleadings from this case.

8 THE COURT: I need to really have a clear
9 idea of where these notebooks are. So we need to go
10 back, if you don't mind.

11 MS. SHEETS: Sure.

12 THE COURT: A couple more questions of you.
13 And I know you're -- I mean, I appreciate your difficult
14 position. I'm just asking you to kind of explain
15 to me a little bit more thoroughly how the -- how that
16 came to light on Friday.

17 MS. SHEET: Sure.

18 THE COURT: To the extent you can, tell me
19 how it came to your attention.

20 MS. SHEET: I need to be a little careful
21 here, so I'm going to try to be careful and also try
22 to give you a full answer at the same time.

23 THE COURT: Right.

24 MS. SHEETS: On Thursday, I was having
25 a conversation with the current manager sitting

1 at Oyster Park.

2 THE COURT: Physically, is the manager
3 there?

4 MS. SHEETS: Yes.

5 THE COURT: Okay.

6 MS. SHEETS: She was physically sitting
7 in the office. I was having a conversation with her,
8 I was asking for clarification on a point. She asked
9 for me to hold for a moment, and she was going to look
10 at something, and I said sure. And as she was looking
11 at something, I could hear pages rustling. And so
12 at that moment, I did what most lawyers would have done,
13 and I said, hey, whatcha looking at? And that was
14 the moment that it was revealed to me that it was
15 a notebook.

16 Again being careful, I probed that question
17 again because I thought -- I was fearful that something
18 might have been missed. I said, are there more than
19 one notebook? The answer was yes. And I said, well,
20 someone from my office is going to be at your office
21 within the hour, I need them ready. And within
22 the hour, someone from my office was standing in their
23 office collecting notebooks. Within that hour, then
24 coming back to my office, we had four people looking
25 through those notebooks because at that moment I really

1 didn't know what they were, and I thought, well, maybe
2 this is a work product, maybe in-house counsel has,
3 you know, asked them to keep these in their place
4 because it's just easier for them to do so.

5 But as we began to look through the
6 notebooks, what we found is those notebooks are tabbed,
7 they have a unit number on them, and essentially any
8 time a resident contacted the complex, you know, that
9 contact would go into the tab. And so as we're flipping
10 through, that's what we found. This is a notebook
11 of resident contacts.

12 THE COURT: I assume it's some sort
13 of form that someone is sitting in the office taking
14 the complaint.

15 MS. SHEETS: So some of the tabs, not all
16 of the tabs, contained forms. Some of the tabs just
17 had e-mails; some of the tabs have pictures. It really
18 just depends on what it was. I mean, if we're talking
19 about my bicycle got stolen, then the tab looks
20 different. If we're talking about my mailbox key
21 doesn't work, the tab looks different. If we're talking
22 about my washing machine broke, the tab looks different,
23 and so on and so forth.

24 So these notebooks are not -- let me be very
25 clear. Here's what these notebook are not. These

1 notebooks are not a compilation of the complaints
2 that are listed in the pleadings of this case. These
3 notebooks are printings of what is on the apartment
4 system so that when Ms. Suzy that lives down the hallway
5 comes in, instead of having to search through all
6 of our records, we pull a tab. That's what they are.

7 THE COURT: Okay. So it's all sorts
8 of complaints.

9 MS. SHEETS: All sorts of ---

10 THE COURT: These are not, like, the mold
11 notebooks.

12 MS. SHEETS: These are not the plumbing,
13 pipe leak notebooks.

14 THE COURT: Okay.

15 MS. SHEETS: They're not the HVAC notebooks;
16 they're not a roof notebook.

17 THE COURT: And how many are there?
18 How many notebooks?

19 MS. SHEETS: Your Honor, I honestly can't
20 remember the number. But I can tell you that I remember
21 that when Pro Copy copied it for us, it was two large
22 binders.

23 THE COURT: Okay.

24 MS. SHEET: It is what it comes out to.

25 THE COURT: Is there a timeframe? Past five

1 years, past three years?

2 MS. SHEETS: Your Honor, the first record in
3 the notebook begins -- and someone is welcome to correct
4 me if I'm wrong, but the first record in the notebook
5 starts in late 2018. The next record in the notebook
6 is 2020.

7 THE COURT: Okay. Okay. And if you don't
8 know, that's fine, you just tell me I don't know,
9 I guess. This transpired, you said, late Thursday.

10 MS. SHEETS: Thursday afternoon, I believe,
11 about 3:30. And so I believe at 4:15 -- our project
12 manager arrived at the office at 4:30.

13 THE COURT: And then turned over to
14 Plaintiff.

15 MS. SHEETS: We called Pro Copy that night,
16 late, and asked them to please be available for us if
17 they could. We needed them first thing Friday morning.
18 Unfortunately, they were a couple of hours off of that
19 timeframe just, you know, taking time to collate the
20 copy. We provided both a hard copy in the exact manner
21 they were produced to us and an electronic copy that's
22 searchable because again, Your Honor, we're not trying
23 to make it hard.

24 In fact, if anything, we're trying to make
25 it as easy as we possibly can, and certainly we're going

1 to get to the relevancy of this information here when
2 Mr. Ross has an opportunity to speak. But the question
3 here -- you know, and we agree it was discoverable.
4 Hence, why when we were in possession of it, we handed
5 it over.

6 And again, Your Honor, I can't stress to
7 you enough I did not get the impression on Thursday that
8 anyone thought they had withheld anything. If anything,
9 several folks were called, both sitting in that
10 apartment complex and sitting in other places.
11 The impression I got was, well, we produced those.
12 Obviously, as we found out, there was different
13 information out there.

14 There -- Your Honor, I represent to this
15 Court I do not have an understanding that there was
16 a concerted effort. I think there's truly just a --
17 somewhere between lack of understanding and ---

18 THE COURT: Okay. All right. Okay.

19 MS. SHEETS: Your Honor, thank you.

20 MR. MCCULLOUGH: Briefly.

21 THE COURT: Sure.

22 MR. MCCULLOUGH: And I will reiterate again,
23 but I think it's important. She picked up the -- she
24 called me. She goes, yikes, she got it to me quickly.
25 So she handled it exactly the way I would want somebody

1 to handle it.

2 That being said, the idea -- first of all,
3 Dewberry is a very sophisticated organization.
4 They have in-house counsel; they have claims managers;
5 they have lots and lots and lots of people in Atlanta
6 and locally working for them. The idea that they
7 weren't aware that there's a lawsuit that's going
8 to trial today is asinine. The e-mails that we have
9 going back from 2017 when this first happened included
10 in-house counsel, claims managers dealing with the
11 situation. They've had two courts order that they
12 produce this information.

13 The entire ESI process was unnecessary.
14 The only reason we had to do it is because they
15 absolutely intentionally were hiding the ball for three
16 and a half years. And I can't be more -- they were
17 intentionally hiding the ball for three and a half
18 years. And every time I would call and say, hey, I had
19 another call from another tenant. Oh, here it is,
20 here's that document production.

21 The vast majority of the thousand documents
22 that we got were mold and work claims. The vast
23 majority. It's the same people that were dealing
24 with the ESI. These are Dewberry employees that
25 are going through, and they know that we're spending

1 thousands and thousands of dollars in man hours to get
2 all the mold complaints, and they're searching e-mails
3 from the people at Oyster Park, and they're gathering
4 information from the people at Oyster Park, that they're
5 actually going to tell you with a straight face it never
6 occurred to them to turn over the notebooks that contain
7 all these mold complaints sitting in the office next
8 to the computer that we're spending thousands of dollars
9 to have searched. That's just not plausible, I'm sorry.

10 Your Honor, again, I've never done this
11 before, but this is willful disobedience and gross
12 indifference to the opposing party's rights.

13 The Richardsons have been through a lot as a result
14 of the Defendants' conduct. And to be blunt, they
15 shouldn't have to go through this trial. We should
16 proceed to a damages hearing. This is inexcusable,
17 and it was intentional.

18 MS. SHEETS: Your Honor, I just want
19 to leave -- the question on the law here is what's
20 the posture of discovery and what prejudice there is to
21 the Plaintiff. Your Honor, all three of the Defendants
22 in this case have produced information, responses to
23 interrogatories, lots of information. I would honestly,
24 and this might be a little bit dramatic, but at this
25 point we're approaching something like 108,000 pages

1 of documents, and here's the reality. To strike
2 the pleadings at this late stage we would be punishing
3 the very conduct we're being accused of committing.

4 The reality here is that the Defendants
5 are behaving the way the Defendants should behave.
6 You know, if Mr. McCullough wants to take a deposition,
7 happy to facilitate that. If Mr. McCullough wants
8 to see a specific person or talk to a specific person
9 because he thinks there's something else out there,
10 happy to facilitate that. We need to do that at 8:00
11 p.m. tonight, we'll try to work that out.

12 Your Honor, there just simply is not a level
13 of -- that needs to be here to issue a stern punishment
14 of striking the pleadings in this case. You know,
15 if we want to talk about punishment, we can talk about,
16 you know, bills being paid or something to that extent.
17 But certainly, Your Honor, not to prejudice our client
18 for behaving the way that they should have behaved.
19 And, Your Honor, we thank you for your time.

20 THE COURT: You know, sometimes I feel like
21 in this world of technology and, you know, big corporate
22 America, sometimes the most basic things tend to get
23 overlooked, and, you know, not the attorneys' fault.
24 It seems like, you know, it would have been the most
25 obvious step to go to the physical office location

1 of the apartment complex on day one when you're sued
2 and say, hey, I need all your records of complaints.
3 That's pretty basic lawyering 101 discovery procedure.

4 So it's baffling, frankly, that it's gotten
5 to this point after this many years, that literally
6 on the eve of trial these are produced. I haven't
7 seen them, and I'm going off of the lawyer's description
8 of these notebooks. I do appreciate your candor.
9 And again, I appreciate your position today, Ms. Sheets.
10 You've done an impeccable job presenting the issues
11 on your client's behalf.

12 I do think that striking the pleadings
13 in this particular case, while I have considered it,
14 I think it is a step -- a bit too far. And it is for
15 lots of reasons, some of those include the fact that
16 there was obviously a change of hands in the corporation
17 at some point in time. I'm not excusing the fact that
18 this is some big corporation. That's not an excuse.
19 I don't want my ruling to be in any way some sort
20 of, like, oh, well, the company is big enough, like,
21 they can pretty much get out of whatever discovery
22 procedure they can. That's not the case.

23 But I think absent a specific showing
24 of the willful disobedience or the gross indifference,
25 I think I have a hard time -- that's a really -- that

1 is the most extreme sanction, and I have a hard time
2 applying that to this particular set of facts, given
3 everything I've heard. I think it's close, but I don't
4 think we're quite there.

5 I will, however, consider sanctions.
6 And, you know, Mr. McCullough, I know you probably --
7 you haven't had time to even probably represent what
8 kind of sanctions to seek, potentially, as a plan B.
9 But financial -- Lord knows, all the money and time
10 that your office had to spend going through the ESI
11 search would be something I would be happy to consider.

12 I know -- and I appreciate your client's
13 position, that you've come all this way, I don't --
14 from what I understand, you don't necessarily seek
15 a continuance at this point in time. But if it's
16 something you want to talk about, again I'm happy
17 to consider that as well, if it's something you feel
18 like you need to do. So, I'm happy to hear from
19 you on some alternative sanctions, but I do think
20 it's sanctionable. I don't think it's strike pleadings
21 sanctionable.

22 MR. MCCULLOUGH: Your Honor, the next two
23 that I would think would be the -- the most obvious
24 would be the financial piece of it, which I can put
25 together. To be honest, I haven't prepared that.

CERTIFICATE OF REPORTER

State of South Carolina)

County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 18th of July, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 22, 2022



Yvestre Torres

Circuit Court Reporter

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Oct 10 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2022-001208
Case No. 2018-CP-10-03286

Karolina Richardson and Krista Richardson,

Respondents,

v.

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC,

Appellants.

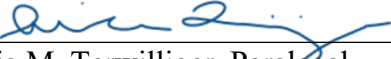
PROOF OF SERVICE

I, Alicia M. Terwilliger, paralegal at McCullough Khan, LLC, hereby certify that a true and correct copy of Respondents' Reply in Opposition to Appellants' Motion to Strike Materials Designated by Respondents for Inclusion in Record on Appeal was served upon counsel for Appellants in the above-captioned matter, via email, this 10th day of October, 2023, addressed as follows:

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