

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 TURNER'S MARINA, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL HYDE, LAURA HYDE and)
 JOHN WILLIAM CAPUT,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2021-CP-07-02165

**ORDER GRANTING DEFENDANTS
 HYDE AND CAPUT'S MOTIONS TO
 HOLD PLAINTIFF IN CONTEMPT
 OF COURT**

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 SC Court of Appeals

This matter comes before me upon two (2) separate motions filed by the Defendants to hold the Plaintiff in contempt of court. The Defendants, Daniel Hyde and Laura Hyde (collectively "Hyde") filed Defendant Hyde's Motion to Hold Plaintiff in Contempt of Court and to Strike and Dismiss, dated November 10, 2023 ("Hyde Motion"). The Defendant John William Caput filed a Motion to Hold Plaintiff in Contempt of Court and to Strike and to Dismiss on November 20, 2023 ("Caput Motion"). The Hyde Motion and Caput Motion are collectively referred to as "Motions".

A virtual hearing was conducted on December 8, 2023 commencing at 9:30 a.m. Appearing for the Plaintiff was Thomas C. Taylor, for the Defendant Hyde was Russell P. Patterson, and for the Defendant Caput was Harrison Williams. The Plaintiff filed on November 6, 2023 its Memorandum of Law in Opposition to Defendants' Motion to Strike and Dismiss, as well as the Affidavit of Neil A. Turner. After long and careful consideration of arguments of counsel, the pleadings, and materials submitted by counsel, this Court grants said Motions, as discussed below.

A. PROCEDURAL BACKGROUND

1. This is a covenant dispute over Plaintiff's attempts to enforce a claimed right of first refusal for property in an RV Park contained in covenants recorded in the Beaufort County Register of Deeds at DB 325 P. 920. On or about December 6, 2018, Caput sold Hyde Lot 25 for \$69,000. Plaintiff contends it did not waive its right of repurchase and filed an action on November 29, 2021, two (2) years, eleven (11) months and 24 days after the closing seeking to enforce same. Plaintiff asserted claims for specific performance and damages for loss of rentals on the subject property in excess of \$100,000 (Complaint, ¶ 34).

2. The basis of the Motions relate to Plaintiff's failure to comply with Judge R. Scott Sprouse's Order, dated October 26, 2023 ("Order"), as discussed below.

- A. March 6, 2023, Hyde's Second Request to Produce – On March 6, 2023, more than eight (8) months ago, Hyde requested Plaintiff produce "a copy of the income statements or profit and loss statements for the Plaintiff from 2018 to the present" ("Financial Statements") and its federal and state tax returns from 2018 to the present ("Tax Returns") (Ex. 1 to Hyde Motion, ¶¶ 12, 13 – "March 6, 2023 Production Request").
- B. April 17, 2023, Hyde Motion to Compel – The Plaintiff produced no documents nor filed objections to Hyde's March 6, 2023 Production Request and on April 17, 2023 Hyde filed a Motion to Compel under Rule 37 SCRPC ("Hyde Motion Compel").
- C. Plaintiff's May 9, 2023, Response – Three (3) days before Hyde's Motion to Compel was set for a hearing, Plaintiff filed a response to Hyde's March 6, 2023

Production Request, but objected to ¶ 12 seeking the Financial Statements and ¶ 13 seeking the Tax Returns (Ex. 2 to Hyde Motion).

- D. Orders on Motion to Compel – Hyde’s Motion to Compel was argued before Judge R. Scott Sprouse on May 12, 2023. In a Form 4 Order dated May 15, 2023, the Court requested Hyde’s counsel prepare a proposed Order confirming the Court’s ruling on the Financial Statements and Tax Returns.

The Court thereafter entered an Order on June 6, 2023, requiring Plaintiff to produce the requested Financial Statements and Tax Returns in an envelope marked “Confidential” to the Court for an *in camera* review (Order, § 2)¹.

- E. Caput’s June 1, 2023, Request to Produce – On June 1, 2023, Defendant Caput requested Plaintiff produce its federal and state tax returns for 2018 to 2022.
- F. June 16, 2023, Production of Documents – By letter to Judge Sprouse dated June 16, 2023, Plaintiff’s counsel submitted certain tax returns and financial statements for an *in camera* review.²
- G. July 3, 2023, Order Requiring Production of Tax Returns After *In Camera* Review – After Judge Sprouse conducted an *in camera* review of the Financial Statements and Tax Returns, Judge Sprouse in his July 3, 2023 Order found the submitted Financial Statements and Tax Returns “. . . are reasonably calculated to lead to discovery of admissible evidence,” granted Hyde’s Motion to Compel, and ordered the Plaintiff to produce said documents in ten (10) days.

¹ Any documents ordered to be produced were to be subject to a Confidentiality Order to be drafted by Plaintiff’s counsel.

² Although the June 6, 2023 Order specifically held Plaintiff must provide to the Court for an *in camera* review the requested Financial Statements, it is unclear at this time if the full and complete Financial Statements were provided to Judge Sprouse for his *in camera* review. This potential issue need not be decided by this Court in its determination of the Motions.

- H. July 12, 2023, Plaintiff Motion for Reconsideration – On July 12, 2023, under Rule 59(e) SCRPC, Turner filed a Motion to Amend the Court’s July 3, 2023 Order.
- I. Plaintiff’s Request for Delay in Hearing on Rule 59(e) Motion – Plaintiff thereafter requested a delay in the Court ruling on its July 12, 2023 Rule 59(e) Motion until the deposition transcript of Plaintiff’s Rule 30(b)(6) deposition, taken on July 11, 2023, was available. This deposition of the Plaintiff was taken some eight (8) days after the Court had issued its July 3, 2023 Order requiring the production of the Financial Statements and Tax Returns.
- J. Caput’s July 27, 2023, Motion to Compel – The Plaintiff did not respond to Caput’s Requests for Production despite multiple follow up emails and letters to Plaintiff’s counsel, and Defendant Caput was forced to file a Motion to Compel under Rule 37 SCRPC, on July 27, 2023.
- K. Plaintiff’s September 15, 2023, Response – Less than seven days before Defendant Caput’s Motion to Compel was set for a hearing, Plaintiff served a response to Defendant Caput’s Requests for Production, but Plaintiff objected to Request number 10, which sought the production of the at-issue Tax Returns
- L. Plaintiff’s September 26, 2023, Memorandum of Law – Thereafter, Plaintiff filed an extensive Memorandum of Law on September 26, 2023, consisting of 172 pages of materials, in support of its position. On October 6, 2023, Hyde filed its Memorandum of Law in opposition to said motion.
- M. October 26, 2023, Final Order – On October 26, 2023, the Court denied Plaintiff’s Rule 59(e) Motion, requiring the Financial Statements and Tax Returns to be produced subject to a Confidentiality Agreement. Under the July 3, 2023 Order

and the October 26, 2023 Order, said Tax Returns were thus required to be produced on or before November 6, 2023 (i.e., ten (10) days after Order was final).

N. **Refusal to Comply with Court's October 26, 2023 Order** – On November 6, 2023 Plaintiff's counsel wrote counsel for Hyde and Caput (Ex. 7 – to Hyde Motion), stating as follows:

"I am writing today to advise you that Turner's Marina has made the decision not to comply fully with Judge Sprouse's Order dated July 3, 2023, which required production to you and Harrison Williams of copies of certain Turner's Marina LLC's highly confidential federal income tax returns for 2018, 2019, 2020, and 2021." (emphasis added)

As discussed above, counsel for Hyde and Caput thereafter filed their Motions to Hold Plaintiff in Contempt of Court and seeking sanctions under Rule 37(b), SCRCP.

B. DISCUSSION

The Defendants assert that the most severe sanctions should be employed to confront a clear, unambiguous challenge to the Court's authority. Hyde and Caput requested the following relief:

- a. Plaintiff be held in Contempt of Court;
- b. That its Complaint be stricken and that the case proceed to trial on Hyde's and Caput's Counterclaims;
- c. That in the alternative, Plaintiff's claim and causes of action for any monetary damages, attorney fees or costs be stricken;
- d. That Hyde and Caput be awarded its reasonable attorney fees and costs; and
- e. Such other sanctions as the Court deems advisable.

Plaintiff's counsel produced the Tax Returns and certain financial statements approximately forty-five (45) minutes prior to this motion hearing, and asserted that any request

to hold the Plaintiff in contempt of court was now moot. Counsel also argues his client had serious reservations as to the relevance of the requested documents and had legitimate concerns said highly confidential information would be distributed or released to parties in other pending litigation with the Plaintiff or provided to governmental or regulatory agencies. Plaintiff also argues it has already provided the rental history of the other 200 RV lots, which should be sufficient in relation to its damages claim. Finally, Plaintiff argues it was planning to appeal Judge Sprouse's Orders requiring production but could not do so until it was held in contempt.

In response, defense counsel asserts the disobedience of Judge Sprouse's Order was deliberate and intentional. Defense counsel also asserts it was part of an established pattern of Plaintiff in this case of abusing the discovery process to substantially increase the litigation costs of Defendants. Defendants cite the following examples:

- a. April 17, 2023 Hyde Motion to Compel Discovery – Rule 30(b)(6) Deposition, Request to Produce dated November 29, 2022, March 6, 2023 Interrogatories and Request to Produce; March 7, 2023 Interrogatories;
- b. May 9, 2023 Hyde Motion to Enforce Compliance with Subpoena;
- c. June 30, 2023 Hyde Motion to Disqualify Plaintiff's Expert and Compel Production of Documents;
- d. July 27, 2023 Caput Motion to Compel Interrogatories and Request to Produce dated June 1, 2023;

This Court rejects the Plaintiff's arguments and finds the Plaintiff in willful contempt of court from November 6, 2023 to December 8 2023, for intentionally failing to timely produce the Financial Statements and Tax Returns and for directly ignoring an Order of this Court. The fact that the Plaintiff turned over some or all of said documents a mere forty-five (45) minutes prior to

this hearing, leaving defense counsel with no meaningful opportunity to review same, has been considered by the Court, but such action is clearly “too little - too late.”

The award of sanctions under Rule 37(e) SCRCP is left to the sound discretion of the Court. *Downey v. Dixon*, 294 S.C. 42, 362 S.E.2d. 317 (Ct.App. 1987); *Burns v. Burns*, 323 S.C. 45, 448 S.E.2d. 571 (Ct.App. 1984). Compliance with the Court’s orders is at the very foundation of our judicial system in South Carolina. The willful, intentional disobedience of a Court Order requires serious sanctions. While defense counsel has strongly asserted Plaintiff’s Complaint should be dismissed, in whole or in part, this Court declines to apply this extreme remedy at this time. Instead, the Plaintiff will be sanctioned as follows:

A. Payment of Attorney Fees and Costs of Defense Counsel

(i) From thirty (30) days after Hyde’s March 6, 2023 Second Request to Produce, Plaintiff shall pay to the counsel for the Defendant Hyde all attorney’s fees and costs associated with their efforts to obtain the Financial Statements and Tax Returns. This includes their time and costs in preparing for and attending this hearing, preparing the Order granting the Motions, dealing with any Motion for Reconsideration filed by Plaintiff, etc.

(ii) From thirty (30) days after Caput’s June 1, 2023 Request to Produce, Plaintiff shall pay to the counsel for the Defendant Caput all attorney’s fees and costs associated with their efforts to obtain the Financial Statements and Tax Returns. This includes their time and costs in preparing for and attending this hearing, preparing the Order granting the Motions, dealing with any Motion for Reconsideration filed by Plaintiff, etc.

(iii) Defense counsel will each prepare an Affidavit of Attorney Fees, setting forth the fees and costs described above, and shall file it with the Court and separately send same to Plaintiff's counsel. Defense counsel will notify by phone or request a reply e-mail from Plaintiff's counsel to confirm Plaintiff has received said Affidavits.

(iv) Plaintiff shall thereafter have ten (10) days to object to all or part of said requested fees and costs, and to request a hearing to cross-examine counsel. If there is no objection, Plaintiff shall pay the requested amounts to defense counsel within seven (7) days thereafter.

(v) If a hearing is timely requested, defense counsel will keep track of their time and costs in any such review or challenge to the fees and costs. If the challenge is not successful, the costs and fees associated with said challenge will be paid by Plaintiff. If the challenge is successful, the Court will revise the requested fees and costs accordingly.

B. Depositions as to Production of Financial Statements

(i) Defense counsel has raised the issue at the Motion hearing that Plaintiff did not comply with Judge Sprouse's Orders of May 15, 2023 and June 6, 2023 by producing for an *in camera* review of "[A] copy of the income statements or profit and loss statements of the Plaintiff from 2018 to the present (Hyde Second Request to Produce, 3/6/23 ¶ 12 – Ex. 1 to Hyde Motion). Plaintiff asserts it fully complied with said Orders.

(ii) To resolve this dispute, Plaintiff, as a further sanction of its Contempt of Court, shall deposit in ten (10) days the sum of \$5,000.00 with its counsel to be held in trust ("Trust Funds"). Defense counsel may take the depositions of any bookkeeper, accountant, or any other person they deem advisable, as to whether what was provided to Judge Sprouse for the *in camera* review were the documents ordered to be produced in his

Orders of May 15, 2023 and June 6, 2023. While the primary purpose of the deposition(s) will relate to said issues, defense counsel are not limited to said issues, and can ask whatever questions and seek whatever documents they wish, as allowed under the SCRCRCP. Under this Order, defense counsel is limited to two (2) depositions. If additional depositions are needed, an appropriate motion for permission must be filed.

(iii) The Trust Funds will be disbursed by Defendants' counsel to cover the deposition expenses (i.e., court reporter) and the reasonable attorney fees and costs incurred by defense counsel. The same process of said counsel submitting an Affidavit of Attorney Fees discussed above will be used for these fees and costs. (See Section 6(A))

(iv) Upon completion of said deposition(s), defense counsel are free to file whatever motions they deem appropriate as to the actions of the Plaintiff in complying with Judge Sprouse's Orders of May 15, 2023 and June 6, 2023.

(v) If it is discovered that Plaintiff did not provide Judge Sprouse with all of the documents requested in Judge Sprouse's Order for the *in camera* review, or that Plaintiff created new documents to provide to Judge Sprouse after the discovery request was made or after the order was issued for the *in camera* review, Plaintiff must produce the original documents that were used to create any documents or any documents that were withheld within seven (7) days of the completion of the depositions as ordered herein.

C. Further Discovery Responses by Plaintiff

(i) All additional and supplemental discovery responses in this case by the Plaintiff must be done by a personal verification affidavit by the Plaintiff or the Plaintiff's representative that is verifying the truthfulness and completeness of said discovery response.

As noted above, given the serious nature of Plaintiff intentionally defying a Court Order, this Court strongly considered dismissing all or part of Plaintiff's claims. Any further issues with the Plaintiff following the discovery procedures under the SCRCP and compliance with Court Orders will be dealt with in a swift and just fashion, and result in the Plaintiff Complaint being stricken.

AND IT IS SO ORDERED.

Diane Schafer Goodstein
Circuit Court Judge

_____, South Carolina
December _____, 2023



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS Daniel Hyde , defendant, et al

Case Number: 2021CP0702165

Type: Order/Sanctions

It is so Ordered!

s/Diane S. Goodstein