THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-26-9457

Horry County, a Body Politic, ... Respondent,

v.

Aquasino Partners of South Carolina, LLC,
Ventures South Carolina, LLC, Suncruz
Casinos, LLC, and Highland Park Real Estate
Development Corporation, ... Defendants,

Of whom

Aquasino Partners of South Carolina, LLC,
Suncruz Casinos, LLC, and Highland Park
Real Estate Development Corporation are .... Appellants.

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SC Court of Appeals

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QUESTIONS PRESENTED

I. Did the Circuit Court Abuse its Discretion When it Found That the Appellants Willfully and Intentionally Violated a Court-Ordered Discovery Deadline?

II. Did the Circuit Court Abuse its Discretion When it Sanctioned the Appellants for this Violation by Issuing an Order Striking Their Answer and Holding Them in Default?

STATEMENT OF THE CASE

This is a discovery dispute. The circuit court found that the appellants willfully and intentionally violated an order that directed them to answer several discovery requests by a certain date. Then, the court sanctioned the appellants for this violation by striking their answer and placing them in default. The question presented is whether either ruling constitutes an abuse of the circuit court judge's discretion.

In November of 2011, Horry County instituted this lawsuit by serving and filing a complaint. The complaint named five corporations as defendants.

The complaint alleged that the defendants ran a gambling boat business and that they were breaking a contract that required them to collect a fee of $7 per-passenger and to remit that fee to the County each month. These boats are regulated by the Gambling Cruise Act. See S.C. Code Ann. §§ 3-11-100 to -500. According to the complaint, the defendants had not remitted any fees to the County for the months of August or September. (Complaint).

At the same time the County served the defendants with the complaint, the County served them with interrogatories and requests to produce documents.

The defendants responded with a motion to dismiss, alleging that the complaint failed to state a cause of action. The defendants filed this motion in January of 2012.

The next month, the County filed a motion for a temporary injunction. The County also asked the Court to appoint a receiver. Both requests represented an effort to preserve the disputed fees while the case was pending. The County filed these requests in February.

Three months later, in May of 2012, the County filed a motion to compel the defendants to respond to the discovery requests it had served the previous November.

On July 23, 2012, the circuit court conducted a hearing on the four motions. During the hearing, the defendants revealed that they would be claiming the contract with the County was both illegal and unenforceable. (July 23 Tr., pp.4-13).

One week after the hearing, the circuit court filed an order that granted the County's motions and denied the motion to dismiss. This order required the defendants to respond to the County's initial discovery, and it also required the defendants to respond to the County's supplemental discovery. (July 30 Order, p.3). The initial discovery had been served 8 months before the hearing. The supplemental discovery had been served roughly 2 months before the hearing. Neither had been answered. The court's order specified that the defendants' discovery responses were due by a date certain—August 22, 2012. *Id.*

On September 12, 2012, the County's attorney filed an affidavit in which he stated that the defendants had not provided any answers to the discovery requests. (Affidavit of Philip Thompson, with attachments). The next day, the County requested that the court schedule a hearing and require the defendants to show why they should not be held in contempt for violating the court's order. (Pl.'s Reply to Mot. to Recons, Ex. 35).

When another week passed without any response, the County filed a motion for sanctions. (Mot. for Sanctions). The circuit court heard these matters on October 15, 2012.

The County's argument was that the court's order was clear and the defendants' violation of the order was equally clear. The County was able to document that it had consented to an untimely request to extend the deadline, see (Aff. of Philip Thompson, Ex.A), and the County was able to further document that it waited to request sanctions until after a written request for the discovery went unanswered. *Id.*, Ex. B.

The County acknowledged that it had recently received discovery responses from some of the defendants, but the County alleged that the responses remained untimely and were incomplete. (Oct. 15 Tr., p.10, line 19 - p.13, line 19). Just as it requested in the motion for sanctions, see (Motion for Sanctions), the County requested that the court strike the defendants' answer and hold them in default. (Oct. 15 Transcript, p.12).

The defendants opposed the County's request with several arguments. First, they argued that they did not have to respond to the discovery because they granted the County the right to come to their place of business and inspect their business records. *Id.* at 6-7. Second, they alleged that discovery was not needed because the case only involved issues of law. *Id.* at 8. Finally, the defendants alleged that the delays were attributable to the fact that they believed the County's outside attorneys had an ethical conflict of interest. *Id.* at 18-21. This argument claimed that the Thompson and Henry law firm could not represent the County because two of the lawyers who helped one of the defendants negotiate the contract for the per-passenger fee did so while working at Thompson and Henry.

At the conclusion of the hearing, the circuit court made an oral ruling that the defendants willfully violated its order. *Id.* at 21. As a sanction, the court ordered the answer stricken and placed the defendants in default. *Id.* This ruling was memorialized in a Form

4 Order filed October 22, 2012, and a written order that was signed October 31 and filed November 2. See (Nov. 2 Or., pp.1-5).

The appellants filed a timely motion for reconsideration. The arguments for reconsideration mirror the arguments the appellants are presenting on appeal. The appellants principally argued that the court failed to consider that they had offered the County the opportunity to access their business records. The appellants characterized this as being "very cooperative" in discovery. They also argued that there was no showing of disobedience, that the County had not been harmed, and that the appellants had no personal knowledge of any of the discovery requests. According to this last argument, any and all blame was attributable to the appellants' lawyers. See (Br. in Supp't of Mo. to Reconsider).

The County opposed the request for reconsideration, filing a memorandum in opposition and attaching several exhibits in support. The County documented repeated delays in the case, as well as multiple requests for discovery that had gone unanswered. The County also presented documents that it believe demonstrated misrepresentations from the defendants about discovery, and the County argued that the only responses it had ever received from the defendants were incomplete. The County suggested that this conduct was evidence of willfulness, and the County claimed that it demonstrated a pattern of non-compliance, which was evidence of bad faith. See (Pl.'s Reply to Mot. to Recons.).

On March 6, 2013, the circuit court denied the motion for reconsideration. There was no hearing. On April 5, 2013, the appellants initiated this appeal.

There is more to the broader history of this case, but the preceding paragraphs endeavor to describe only that which is relevant to this appeal, which is a discovery dispute.

ARGUMENT

This Court reviews the findings at issue under the abuse of discretion standard, and neither the circuit's court finding of wilfulness nor its decision to harshly sanction the appellants amounts to an abuse of discretion. On this record, it was reasonable for the court to view the appellants' pattern of conduct as demonstrating wilful non-compliance and bad faith. It was similarly reasonable, on this record, for the court to punish the appellants by imposing the harsh sanction of striking their answer. Because these findings are reasonable, this Court should affirm.

I. Because a Reasonable View of the Record Suggests That the Appellants Made No Effort to Meet the Court-ordered Discovery Deadline, the Circuit Court Did Not Abuse its Discretion in Finding That the Appellants' Conduct Was Wilful.

The circuit court found that the appellants wilfully violated the order to provide discovery responses by a specific date. See (Nov. 2 Or., p.3). Because a reasonable view of the evidence supports this finding, this Court should affirm.

a. A Violation Is Wilful When a Reasonable Person Would Realize That What He or She Is Doing Is Wrong.

The Supreme Court has defined "wilfulness" as "[t]he failure to exercise slight care." *Hicks v. Atlantic Coast Line R. Co.*, 187 S.C. 301, __, 197 S.E. 819, 823 (1938). Wilfulness has also been defined as "doing a negligent act knowingly." *Yaun v. Baldridge*, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964). Individual or subjective motivations are not controlling. For example, we determine whether a tort is reckless, wilful, or wanton by asking whether a person of ordinary prudence would have realized that he or she was

invading the plaintiff's rights. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 577-78, 106 S.E.2d 258, 263-64 (1958). This is an objective test, and it recognizes that the law treats ordinary negligence and wilful negligence differently. The law places an accidental breach of duty in a different category from conduct that is so out-of-bounds that a reasonable person would have obviously realized that his or her actions were wrong.

b. A Reasonable view of the Record Suggests That the Appellants Made No Effort to Meet the Court's Deadline and Had No Excuse for this Conduct.

Because questions of discovery and sanctions are generally entrusted to the lower court's discretion, this appeal requires this Court to examine whether the circuit court's finding has any reasonable support in the record. See, e.g., *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). Here, the circuit court explained that its finding of wilfulness was based on the parties' written filings, the delays in the case, the arguments of the attorneys, and the transcript of the only other hearing. (Nov. 2 Or., p.3). A reasonable view of these records supports the court's decision.

The deadline in the circuit court's order is reasonably clear. The order specifically instructed the defendants to respond to the County's first interrogatories, first requests for production, supplemental interrogatories, and supplemental requests for production. (July 30 Or., p.3). The order specifically gave the defendants 30 days to accomplish this, and the order specified the due date—August 22, 2012. *Id.* This provision appears to be free from any ambiguity, and it does not appear to contain any contingency. A reasonable person could thus interpret this part of the order to be exactly what it was: a court-ordered deadline that the appellants ignored at their peril.

A reasonable person could also view the appellants' conduct as indicating that they knew they were operating under this deadline. For example, during the hearing in July, the appellants' attorney acknowledged the discovery requests and asked for 30 days to respond to them. (July 23 Tr., p.22, lines 15-24). When the County's attorney inquired as to whether this proposal applied to all of the discovery—both the initial and the supplemental—the appellants' lawyer affirmatively responded that it applied to "everything." *Id.* at 22, line 25 - p.23, line 8. A reasonable person might view this as an admission that the deadline applied.

It would be reasonable to take the same view of the written correspondence between the lawyers. Nearly a week after the court's deadline had passed, the appellants' lawyer wrote the County's lawyer about the discovery. See (Aff. of Philip Thompson, Ex. A). The appellants' lawyer wrote that although he was working on the discovery, he needed a one-day extension due to a personal emergency. *Id.* The County's lawyer granted this request, but noted that the original due date had already passed. *Id.*

To a reasonable person, this back-and-forth might indicate that the appellants knew they were required to answer the discovery and that they knew they were required to answer it by a specific date. The circuit court did not *have* to take this view, but at the same time, it was not unreasonable for the court to do so.

c. Though the Appellants Offered Excuses for Their Conduct, the Circuit Court Acted Reasonably in Rejecting Those Excuses.

This Court's decision in *QZO, Inc. v. Moyer* may offer a useful comparison. *Moyer* was a discovery dispute that involved destroying evidence. The circuit court ordered one party to surrender a computer hard drive during discovery, and after the hard drive was

turned over, the party seeking discovery learned that the hard drive had been reformatted the day before the deadline. In affirming the finding of a wilful violation, this Court noted the deferential treatment given to the lower court's findings and observed that while Mr. Moyer believed there was no evidence he had intentionally violated the order, it was up to the trial court to decide whether Mr. Moyer's explanations for his conduct were credible. 358 S.C. 246, 257, 594 S.E.2d 541, 547 (Ct. App. 2004).

This same principle governs this part of this case. While the appellants presented the circuit court with several excuses for their non-compliance, they have not presented a cogent explanation of why it was unreasonable for the circuit court to reject those excuses.

For example, the principal justification offered to the circuit court was that formal discovery was unnecessary because the County had permission to access the defendants' business records. See (Oct. 15 Tr., pp.6-7). On this record, a reasonable person could conclude that this explanation was incredulous. The appellants' lawyer authored written correspondence in which he referenced the deadline, (Aff. of Philip Thompson, Ex. A), and a reasonable person might view this as being inconsistent with the claim that the appellants did not think they needed to follow the deadline. There is also the fact that the appellants' attorney agreed to the deadline during the hearing, (July 23 Tr., p.22-23), as well as the fact that the court's order specifically lists the discovery requests *and* the deadline. (July 30 Or., p.3). If the appellants believed they had satisfied their discovery obligations, a reasonable person might expect them to reveal this theory before the sanctions hearing—not during it.

Another justification the appellants offered was that the County's lawyers were prohibited from participating in the case. See (Oct. 15 Tr., pp.18-21).

A reasonable person might dismiss this argument based on the way it was presented. The first mention of this alleged conflict occurred in written correspondence that the defendants' attorney sent to the County's attorney in June. See (Pl.'s Reply to Mot. to Recons., Ex. 20). There was no further mention of a conflict until October, when the appellants filed a motion to disqualify the Thompson and Henry law firm, 4 days before the hearing on the County's request for sanctions. Compare (Mot. to Disqualify) with (Oct. 15 Tr., p.1). The motion for sanctions had been pending for almost 3 weeks, see (Mot. for Sanctions), there had been no mention of a conflict during the hearing in July, see (July 23 Tr., pp.1-46), and there had been no mention of a conflict in response to the order that set the discovery deadline. A reasonable person might view this history as suggesting that the alleged conflict of interest, as well as the motion to disqualify Thompson and Henry, was an eleventh-hour stalling tactic and not a legitimate explanation for the appellants' conduct.[1]

The circuit court was bound to consider the appellants' excuses, but it was not bound to accept them. On this record, the finding of a wilful violation is not unreasonable.

II. Because a Reasonable View of the Record Suggests That the Appellants Had No Interest in Following the Rules, the Circuit Court Did Not Abuse its Discretion When it Issued an Order Striking Their Answer and Holding Them in Default.

The circuit court found that the appellants had unnecessarily delayed the progress of this case and that further delays were likely. See (Nov. 2 Or., p.4). Because a reasonable

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[1]Incidentally, there is no conflict. This situation is governed by Rule 1.10(b) of the South Carolina Rules of Professional Conduct, which provides that a law firm is not prohibited from litigating against a former colleague's client unless a lawyer that is still with the firm possesses confidential information related to the prior representation. Thompson and Henry's response to this allegation, including a discussion of the rule, appears in its brief in opposition to reconsideration. See (Pl.'s Reply to Mot. to Recons., pp.28-31).

view of the evidence supports the finding that the appellants had little to no interest in moving this case toward a resolution or allowing the County to use the rights provided by the discovery rules, this Court should affirm the circuit court's sanction.

a. Discovery Is Designed to Help Parties Prepare for Trial, and Discovery Sanctions Should Be Designed to Protect the Rights Provided by the Rules.

Both this Court and the Supreme Court have issued several decisions dealing with discovery abuse and sanctions. Several of those decisions include language recognizing the importance of discovery. These decisions describe that one purpose of discovery is to promote out-of-court settlements by having the parties "lay their cards on the table." *Moran v. Jones*, 281 S.C. 270, 275, 315 S.E.2d 136, 139 (Ct. App. 1984); *Martin v. Dunlap*, 266 S.C. 230, 239, 222 S.E.2d 8, 13 (1976). Because some cases do not settle, a closely-related purpose of discovery is that it allows parties to prepare for trial. See *Samples v. Mitchell*, 329 S.C. 105, 113-14, 495 S.E.2d 213, 217 (Ct. App. 1997) (recognizing this purpose). The result the rules are designed to achieve is that once the discovery process is complete, the trial (if one results) will be a fair trial that affords the parties a full and meaningful opportunity to litigate the merits of their claims and defenses.

These same principles inform the question of determining the appropriate sanctions for discovery misconduct. South Carolina's appellate courts have instructed that the sanctions should be targeted toward the type of misconduct that occurred, should protect the rights that have been violated, and should not go beyond the necessity of the situation.[2] For

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[2]A number of decisions recognize these principles. These decisions include *Griffin Grading & Clearing v. Tire Serv. Equip. Mfg.*, 334 S.C. 193, 198-99, 511 S.E.2d 716, 718-19 (Ct.

example, failing to disclose a witness, if done in bad faith, usually results in the witness being excluded. See, e.g., *Moran*, 281 S.C. at 273-77, 315 S.E.2d at 138-140. It does not usually result in the court entering judgment against the offending party and ending the case.

b. The Circuit Court Has the Discretion to Decide the Proper Sanction, and Severe Sanctions Require Only That the Violation Be Wilful.

Determining the appropriate sanction is a matter entrusted to the circuit court's discretion. Thus, in previous instances when an appellate court has reversed a sanction, the appellate court has made the determination that the circuit court abused its discretion.

Several decisions describe circumstances that constituted an abuse of discretion. Examples include a sanction that had no real relationship to the violation, *Downey*, 294 S.C. at 45-46, 362 S.E.2d at 318-19 (the fine was minimal and did not protect the plaintiff's right to receive discovery); an order placing a party in default when the discovery was mailed before the deadline but was not received until hours after the deadline, *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154-55, 399 S.E.2d 439, 440-41 (Ct. App. 1990); and an order where the sanction of default inappropriately affected parties who were not impacted by the discovery misconduct. *Karppi*, 327 S.C. at 543-45, 489 S.E.2d at 682-83.

The appellants contend that the circuit court abused its discretion by not warning them before striking their answer. This Court should reject that argument, for two reasons.

First, no case has held that a party must be warned by the court before the court imposes a significant sanction. South Carolina courts have consistently described that the

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App. 1999); *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 543-45, 489 S.E.2d 679, 682-83 (Ct. App. 1997); *Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996); and *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987).

predicate for a serious sanction is a finding that there has been wilful misconduct. See, e.g., *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991); *Griffin Grading & Clearing*, 334 S.C. at 196-97, 511 S.E.2d at 717-18. While there *are* cases in which an appellate court has observed that the court warned the disobedient party before imposing a severe sanction, none of these cases mention a warning being required. See, e.g., *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 593-95, 586 S.E.2d 572, 575-76 (2003); *Balloon Plantation*, 303 S.C. at 154-55, 399 S.E.2d at 440-41. To the same end, this Court's decision in *QZO, Inc.*, affirmed the decision to strike a party's pleadings, and this Court's decision makes no mention of the disobedient party being warned. See 358 S.C. at 255-58, 594 S.E.2d at 546-48. If there was a warning requirement, these cases would be written differently.

Second, the reason a judicial warning is not required is that the rules of civil procedure provide the warning. The rules authorize a court to punish this sort of disobedience—disobeying a court order—by resolving contested matters against the disobedient party, by refusing to allow the disobedient party to support a claim or defense, by striking all or part of the disobedient party's pleadings, or by holding the disobedient party in contempt. See Rule 37(b)(2), SCRCP. All of these sanctions are severe. All of them are harsh. As the Fifth Circuit noted in *Diaz v. Southern Drilling Corp.*, the rules advise everyone of the possible penalties for misconduct. 427 F.2d 1118, 1127 (5th Cir. 1970). This Court cited the *Diaz* decision in *Downey v. Dixon*. See 294 S.C. at 45, 362 S.E.2d at 318. These authorities reinforce what a reasonable person might say is perfectly obvious: ignoring a court order will likely have significant consequences—not trivial ones.

c. **A Reasonable Person Could Conclude That the Appellants Had No Interest in Following the Rules and Having this Case Decided on the Merits.**

Understanding the circuit court's sanction requires recognizing that the circuit court's experience with this case was broader than the issue of discovery. The court was describing this experience when it wrote that its finding of a wilful violation was based on the "delays" in the case. See (Nov. 2 Or., pp.3-4). A reasonable person could view this record and conclude that the appellants had little to no interest in having this case decided on the merits and had little to no regard for the rules of discovery.

It took 11 months for the County to receive any discovery responses. The initial discovery was served in November of 2011, and the defendants did not respond until October of 2012, on the Thursday before Monday's hearing on sanctions. The County was able to document 15 pieces of written correspondence related to discovery.[3] Several pieces of this correspondence went completely unanswered by the defendants. The only plausible explanation for the County's decision to wait a week between its request for hearing, see (*Id.*, Ex. 35), and its request for sanctions, see (*Id.* Ex. 36), is that the County hoped the defendants would respond to the request for a hearing by answering the discovery. A reasonable person could thus view the appellants' conduct as showing a complete disinterest in the discovery rules and the County's rights to prepare its case for trial.

A reasonable person could view the defendants' communications and their discovery responses as showing a similar level of disinterest. For example, in one of the first communications concerning discovery, the defendants' lawyer claimed that he had not

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[3]See (Pl.'s Reply to Mot. to Recons., Ex's 2, 4, 5, 7, 11, 18, 33, 34, 35, 36, and 40).

received any discovery requests from the County. In fact, the defendants' lawyer had signed a document accepting service of the discovery months earlier, as the County's lawyer wrote in response to this claim. See (*Id.*, Ex.5).

In similar fashion, when the defendants finally responded to discovery, only three of them responded. The County's discovery had been addressed to all of the defendants, and all of the defendants had filed a motion to dismiss and an answer, but the discovery responses were inexplicably filed only on behalf of three of them. Compare (Mot. to Dismiss) (the motion to Dismiss) and (Answer) (the answer) with (Def's First Answers to Interr.) (the first answers to the County's interrogatories). This was why the County told the circuit court that the parties were sure to be back in court again. (Reply to Mot. to Recons., pp.20-22); (Oct 15 Tr., p.13, ll. 14-19). To a reasonable person, the delivery of responses that are obviously incomplete might indicate that the defendants had little to no regard for the County's rights. No rule allows a party to avoid its obligations by adopting a "come and get it" policy.

This sort of conduct played out in this case repeatedly. On more than one occasion, the defendants claimed that there were no facts in dispute and that this case only involved issues of law. See (*Id.* Ex. 11); (July 23 Tr., p.20); (Oct. 15 Hr'g, p.8). Yet, the defendants never filed a motion for summary judgment and never requested a protective order limiting any discovery they believed was unnecessary.

The defendants also claimed that they were trying to expedite the case. See (July 23 Tr., p.20). Yet, they did not answer the complaint until 10 months after it was filed, and every attempt to schedule a hearing was met with delay. The defendants associated lawyer-legislators and had hearings continued by claiming that these lawyers were necessary to the

case. (Pl.'s Reply to Mot. to Recons., Ex's 9, 10, 19, 26). Yet, no lawyer-legislator ever signed a pleading or a motion, no lawyer-legislator ever appeared at any hearing, and the appellants asserted legislative protection on the same day that their lawyer resigned from the legislature. See (*Id.*, Ex's. 10, 12). A subsequent lawyer-legislator did not notice his appearance in the case until 9:30 in the morning, the same day a hearing was scheduled. (*Id.*, Ex. 24). When the circuit court judge—the same judge who sanctioned the appellants—attempted to schedule the hearing for the following day in late June, this lawyer responded that the legislative session technically ended in November. (*Id.*, Ex. 28). The record contains 11 pieces of correspondence that involve the judge or his law clerk and are focused on setting hearings for this case.[4] During the two hearings, the judge noted these delays on multiple occasions. See (July 23 Tr., pp.20-21; Oct 15 Tr., pp.17-18).

This cycle—which a reasonable person could call obstructionist—is what makes the circuit court's sanction appropriate. As the County and the court attempted to move this case forward, the appellants fought this effort. And as the County sought to develop its claims and the basis for the appellants' defenses, the appellants refused to comply. Striking a pleading is an appropriate sanction when it is directed at a party who has manifested an unwillingness to participate in the process of litigation. That is what makes this case similar to other cases involving such a severe sanction. See *McNair v. Fairfield County*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008); *Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1997); QZO*, Inc.*, 358 S.C. at 257, 594 S.E.2d at 548; *Barnette*, 355 S.C. at 593, 586 S.E.2d at 575; and *Griffin Grading & Clearing*, 334 S.C. at 198, 511 S.E.2d at 718.

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[4]See *Id.*, Ex's 14, 16, 24, 27, 29, and 46.

The appellants' answer is that this misconduct emanated from their attorney. This Court rejected such an argument in *Griffin*, see 334 S.C. at 200, 511 S.E.2d at 719, and as the County argued to the circuit court, the record suggests that at least one of the appellants' corporate officers was present when the judge ordered the defendants to answer the County's discovery. See (Pl.'s Reply to Mot. to Recons., p.11) referencing (July 23 Tr., p.19).

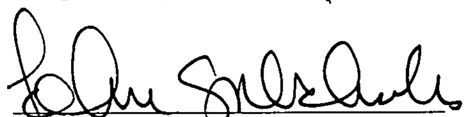
In similar fashion, the appellants point out that they followed other parts of the court's order, such as the command to pay the disputed fees to a receiver.

It is hard to see how this impacts the misconduct that the appellants *did* commit. To a reasonable person, the misconduct here could suggest that the appellants had no interest in litigating this case. This sanction is severe, but on this record, it is not unreasonable.

CONCLUSION

This case involves a harsh sanction, but the circuit court determined that the case involved serious misconduct. Because this was reasonable, this Court should affirm.

Respectfully submitted,



August 5, 2013

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-26-9457

Horry County, a Body Politic, ... Respondent,

v.

Aquasino Partners of South Carolina, LLC,
Ventures South Carolina, LLC, Suncruz
Casinos, LLC, and Highland Park Real Estate
Development Corporation, ... Defendants,

Of whom

Aquasino Partners of South Carolina, LLC,
Suncruz Casinos, LLC, and Highland Park
Real Estate Development Corporation are .... Appellants.

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RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

The respondent proposes the following for inclusion in the Record on Appeal:

1. Motion to Disqualify Counsel;
2. Brief in Support of Motion to Reconsider, dated January 23, 2013;
3. Plaintiff's Reply to the Defendants' Motion to Reconsider, plus exhibits 2, 4, 5, 7, 9, 10, 11, 12, 14, 16, 18, 19, 20, 24, 26, 27, 28, 29, 33, 34, 35, 36, 40, 46, and 52;
4. Affidavit of Philip Thompson, with attachments, filed September 12, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

August 5, 2013

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Initial Brief of Respondent* and *Designation of Matter to be included in the Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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August 5, 2013

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