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Feb 15 2024

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS**

**R. Lawton McIntosh, Circuit Judge
R. Scott Sprouse, Circuit Judge**

**Appellate Case No. 2023-001516
Common Pleas Case No. 2022-CP-3700182**

Dorothy Pierce,

Plaintiff-Appellant,

v.

**Jerry Edwards; Edwards Group
Holdings, Inc.; Edwards Printing;
Richard Hunt McDuff; MJM Law LLC;
Riley Morningstar; The Journal
Newspaper; and Hal Welch,**

Defendants-Appellees.

DEFENDANTS-APPELLEES' MOTION TO DISMISS

Defendants-Appellees Richard Hunt McDuff and MJM Law LLC (together, the “Attorney Defendants”), through undersigned counsel, hereby join the Journal Defendant’s Motion to Dismiss, filed February 14, 2023, and also separately move to dismiss this appeal and state as follows:

I. INTRODUCTION

As laid out by the Journal Defendants, Plaintiff-Appellant Dorothy Pierce a/k/a Dorothy Wells a/k/a Queen Dorothy Amolo a/k/a Dorothy Alweny (“Plaintiff”) seeks appellate review of two interlocutory orders entered in the Oconee County Court of Common Pleas. The first, issued

by the Honorable R. Scott Sprouse, concluded that certain emails between Richard Hunt McDuff and his client Riley Morningstar were indeed privileged and properly withheld from discovery. The second, issued by the Honorable R. Lawton McIntosh, denied Plaintiff's motion to reconsider sanctions that the Court had entered against her for refusing to comply with a prior order compelling Plaintiff to produce documents that the Attorney Defendants had requested in discovery. Because neither of those orders fits within the narrow confines of this Court's limited appellate jurisdiction over interlocutory orders set forth in S.C. Code Ann. § 14-3-330, this appeal should be dismissed.

II. PROCEDURAL BACKGROUND

This case arises out of several underlying lawsuits involving Plaintiff. One lawsuit concerns the contested last will and testament of Plaintiff's late husband, Seneca resident Doyle Pierce. Another lawsuit was brought by a North Carolina hot sauce company that claims Plaintiff passed off damaged industrial machinery through her Seneca-based equipment distribution business. A third lawsuit arises out of Plaintiff's unsuccessful attempt to open a face-mask manufacturing business during the COVID-19 pandemic. Several other suits have been filed against Plaintiff by her purported customers for breach of contract.

The Attorney Defendants serve as counsel for The Journal, a Seneca-based newspaper that regularly reports on matters in the Oconee County courts as part of its local news coverage. In March 2022 the Journal posted a series of articles about Plaintiff and her involvement in these lawsuits. Plaintiff responded by filing this action against the Journal Defendants and the Attorney Defendants, asserting claims for defamation, intentional infliction of emotional distress, negligence, unjust enrichment, and discrimination, intentional interference with contract, and seeking more than a quarter of a billion dollars in damages. In June 2022, the Court of Common

Pleas granted the Attorney Defendants’ motion to dismiss as to all of those claims except for defamation and intentional interference.

A. The March 22, 2023 Order

On October 27, 2022, Plaintiff served the Attorney Defendants with her first set of requests for production of documents. The Attorney Defendants timely served Plaintiff with their responses and objections, which included objections to disclosing emails protected from discovery by attorney-client privilege. Plaintiff moved to compel, and the Court ordered the Defendants to “submit privilege logs for any evidence that they indicated as privileged in their responses to Plaintiff’s discovery requests within thirty (30) days,” noting that “[t]he Court will then conduct an in-camera review of the disputed items.” Order (Feb. 13, 2023), Ex. A.

The Attorney Defendants timely provided the Court with a privilege log and a copy of the withheld communication, and the Court issued an order stating that, “[a]fter in-camera review of the Privilege Log and submitted correspondence . . . , the court finds that such information is privileged and shall not be subject to discovery by the Plaintiff.” Order (Mar. 22, 2023); Ex. B. That order (the “March 22, 2023 Order”) is the first that Plaintiff has appealed at this time. Subsequently, the Motion to Compel filed against the Attorney Defendants was withdrawn by counsel for Ms. Pierce. As such no live case or controversy exists on this issue against the Attorney Defendants. Form 4 Filed by Plaintiff’s Counsel (September 1, 2023), Ex. C.

B. The September 1, 2023 Order

Plaintiff, by contrast, participated insufficiently in discovery. When Plaintiff belatedly responded to the Attorney Defendants’ discovery requests, she failed to produce or identify vast amounts of responsive material, including any records related to her claim for hundreds of millions of dollars in alleged damages.

The Attorney Defendants notified Plaintiff of these discovery deficiencies, by letter, on December 21, 2022 to which Plaintiff did not respond until December 29, 2022. Notably, discovery in this matter had closed on December 1, 2022 per the Scheduling Order in this matter. Plaintiff was required to provide all responses to discovery by December 1 and failed to do so. The Attorney Defendants therefore moved the Court to compel Plaintiff to provide complete responses to their written discovery requests. The Court heard argument on the Attorney Defendants' motion to compel on January 27, 2023. Following the hearing, the Court ordered Plaintiff, *inter alia*, to provide witness identification and "provide all records in her possession that relate to her claim for damages . . . to Defense Counsel within fifteen (15) days." Order (Feb. 13, 2023); Ex. A.

When Plaintiff failed to comply with that order, the Attorney Defendants moved on March 3, 2023 to sanction Plaintiff for this failure to participate fully and fairly in discovery. The Attorney Defendants gave Plaintiff additional time to provide the required discovery materials. Plaintiff subsequently produced a "Partial Preliminary Estimate of Damages" spreadsheet that she apparently created for purposes of this litigation, along with certain customer exchanges with identifying information improperly redacted, falling far short of her full discovery obligations.

Because Plaintiff did not comply with the Court's order, the Attorney Defendants moved the Court to sanction Plaintiff for failing to satisfy her discovery obligations. The Court issued an order granting that motion on April 4, 2023. In that order, the Court directed Plaintiff "to provide any and all information regarding her alleged damages to the Defendants, as well as a full and complete witness list, by April 23, 2023," and the Court cautioned that "[i]f Plaintiff fails to do so, Plaintiff will be constrained to the witnesses currently identified, and will be allowed to present only the three documents submitted as Court Exhibits 1, 2, and 3 at the March 22, 2023 hearing as evidence of her damages." Order (Apr. 4, 2023); Ex. D.

On April 21, 2023 Plaintiff filed a motion to reconsider the Court’s April 4, 2023 Order granting sanctions against her for failure to comply with the Court’s February 13, 2023 Order, which required her to produce the documents requested by the Attorney Defendants. In her motion to reconsider, Plaintiff argued that she did in fact supply the requested documents. This production, however, included just three documents – Court Exhibits 1, 2, and 3 presented to the Court at the March 22, 2023 hearing – and the Court found that these documents were insufficient to satisfy Plaintiff’s discovery obligations. The Court further reiterated its prior ruling, holding that these three documents are to be the only documents Plaintiff can use to support her claims for damages as a result of her failure to provide the requested financial information. The Court therefore issued an order on September 1, 2023 denying Plaintiff’s motion to reconsider and maintaining the sanctions entered against Plaintiff. Order (Sept. 1, 2023); Ex. E. That order (the “September 1, 2023 Order”) is the second that Plaintiff has appealed.

III. SCOPE OF JURISDICTION OVER INTERLOCUTORY APPEALS

The jurisdiction of this Court to hear interlocutory appeals is limited by statute to certain circumstances. *See* S.C. Code Ann. § 14-3-330. Although Section 14-3-330 sets out the jurisdiction of the Supreme Court, “[t]he court of appeals also exercises its appellate jurisdiction under this statute.” *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 573 (S.C. Ct. App. 2010); *see also* S.C. Code Ann. § 14-8-200(a) (explaining that Court of Appeals “shall apply the same scope of review that the Supreme Court would apply in a similar case”).

As relevant here, under Section 14-3-330, this Court has jurisdiction to hear appeals from “[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions” and from “[a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents

a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(1)-(2).¹

“An interlocutory order is appealable under subsection (1) only if it involves the merits, that is, finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318 (1988) (internal quotation marks omitted). “An appellate court has jurisdiction to review an order affecting a substantial right [under subsection (2)(a)] when the order has the effect of discontinuing the action or preventing an appealable judgment.” *Lakes v. State*, 333 S.C. 382, 384-85 (S.C. Ct. App. 1998). Similarly, when an order “deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable” under subsection (2)(c). *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72 (2000).

IV. ARGUMENT

The Court should grant the Attorney Defendants’ motion to dismiss because neither of the two rulings from which Plaintiff noticed this putative appeal falls within the narrow scope of this Court’s jurisdiction to review interlocutory orders, and the first was voluntarily dismissed by Plaintiff’s counsel. The March 22, 2023 Order denied Plaintiff’s motion to compel, concluding that the Attorney Defendants had properly withheld certain records in discovery as privileged, and the September 1, 2023 Order limited the evidence that Plaintiff can use to establish her alleged damages as a sanction for failing to timely produce responsive and unprivileged financial records during discovery. Both rulings thus do not “involve[] the merits” of this case but rather are

¹ Section 14-3-330 also allows for appellate jurisdiction in certain circumstances following final orders in special proceedings and interlocutory orders involving injunctions. *See* S.C. Code Ann. § 14-3-330(3)-(4). These circumstances are inapplicable here.

ordinary civil discovery orders, and as the Supreme Court has long and consistently held, “an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed.” *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577 (2003); *Patterson v. Spector Broad. Corp.*, 287 S.C. 249, 249 (1985) (“This appeal is from an order compelling discovery which is interlocutory and not directly appealable.”); *Lowndes Prod., Inc. v. Brower*, 262 S.C. 431, 433 (1974) (dismissing appeal “in accord with the rule that, ordinarily, an order denying or compelling discovery is not directly appealable”); *Wallace v. Interamerican Tr. Co.*, 246 S.C. 563, 568 (1965) (dismissing appeal where challenged order “was simply a ruling made by the court in the progress of the cause requiring the pre-trial production of books and records deemed necessary to a proper and expeditious trial of the merits,” as “[s]uch [an] order no more involved the merits than a ruling upon the admissibility of evidence, and is not appealable before final judgment”).

V. CONCLUSION

For the foregoing reasons, the Court should dismiss this putative appeal because the underlying orders are not immediately appealable.

WHEREFORE, for the reasons stated above, the Attorney Defendants request as follows:

- a. That the Court dismiss this appeal in its entirety; and
- b. That the Court issue such other and further relief as it deems appropriate.

Respectfully submitted this ___ day of February, 2024.

/s/ Dakota E. Knehans

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Dorothy Pierce,

Petitioner,

vs,

Edwards Group Holdings INC.,

Respondents.

ORDER

Case #: 2022CP3700182

This matter was before the Court for several motions. The Defendants filed Motions to Compel. The Plaintiff filed a Motion to Compel, along with a Motion for Temporary Injunction. After considering the arguments presented by the parties and reviewing the exhibits submitted, the Court issues the following order:

- 1) The Plaintiff shall provide all records in her possession that relate to her claim for damages and a complete witness list to Defense Counsel within fifteen (15) days.
- 2) The Plaintiff shall have the right to supplement her discovery answers should she retain an expert witness.
- 3) The Defendant shall submit privilege logs for any evidence that they indicated as privileged in their responses to Plaintiff's discovery requests within thirty (30) days. The Court will then conduct an in-camera review of the disputed items. The Court is mindful that constitutional issues relating to freedom of the press may be triggered by the Plaintiff's discovery requests to the Seneca Journal. Counsel for the Journal will only be required to disclose to the Court that an answer to a particular request from the Plaintiff would require disclosure of a confidential source. The Court will not require the disclosure of the source's identity.
- 4) The Plaintiff's Motion for a Temporary Injunction is DENIED. The Court concludes as a matter of law that it lacks jurisdiction to restrain a newspaper from printing an article given the very narrow circumstances in which the U.S. Supreme Court has held such prior restraint to be permissible. Furthermore, the Plaintiff has an adequate remedy at law alleging substantial money damages in her complaint.
- 5) The Protective Order as discussed by Counsel at the hearing shall be submitted to the Court, along with the Plaintiff's proposed modifications, within fifteen (15) days.
- 6) All other provisions of this Court's Scheduling Order Shall remain in full force and effect.



Oconee Common Pleas

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

Case Number: 2022CP3700182

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Dorothy Pierce
PLAINTIFF(S)

Edwards Group Holdings Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After in-camera review of the Privilege Log and submitted correspondence between Mr. McDuff and his client, Journal Reporter Riley Morningstar, the Court finds that such information is privileged and shall not be subject to discovery by the Plaintiff.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/22/2023 .

Kenan G Loomis for Richard Hunt McDuff,MJM Law LLC
Dorothy Pierce for Dorothy Pierce
Maxwell S Mishkin for Edwards Group Holdings Inc,The Journal Newspaper,Riley Morningstar,Jerry Edwards,Edwards Printing,Hal Welch
Chad R Bowman for Edwards Group Holdings Inc,The Journal Newspaper,Riley Morningstar,Jerry Edwards,Edwards Printing,Hal Welch
MJM Law LLC for Kenan G Loomis
Richard Hunt McDuff for Kenan G Loomis
Hal Welch for Chad R Bowman,Maxwell S Mishkin
Edwards Printing for Chad R Bowman,Maxwell S Mishkin
Jerry Edwards for Chad R Bowman,Maxwell S Mishkin
Riley Morningstar for Chad R Bowman,Maxwell S Mishkin
The Journal Newspaper for Chad R Bowman,Maxwell S Mishkin
Edwards Group Holdings Inc for Chad R Bowman,Maxwell S Mishkin
Dorothy Pierce for Dorothy Pierce

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Oconee Common Pleas

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

Case Number: 2022CP3700182

Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Dorothy Pierce

Edwards Group Holding Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:
Nekedia Heath, Esq.

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Plaintiff's Motion to Compel Attorney Defendants is withdrawn as requested by Plaintiff.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Oconee Common Pleas

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

Case Number: 2022CP3700182

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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responsive material, including any records related to her claim for hundreds of millions of dollars in alleged damages. The Journal Defendants notified Plaintiff of these discovery deficiencies, by letter, on November 22, 2022, and agreed to give Plaintiff until December 1, 2022 to remedy them. Plaintiff did not do so. The Journal Defendants thereafter filed a Motion to Compel the missing information. The Court heard argument on the Journal Defendants' motion to compel on January 27, 2023. Following the hearing, the Court ordered Plaintiff, *inter alia*, to "provide all records in her possession that relate to her claim for damages . . . to Defense Counsel within fifteen (15) days." Order (February 13, 2023). Plaintiff produced **three documents**, identified as Court exhibits, none of which satisfy the requirements of the February 13, 2023 Order. The Journal Defendants then filed a Motion for Sanctions against Plaintiff for failure to comply with the discovery order.

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Court exhibits 1, 2 & 3 were filed under seal because of the parties' Confidentiality Agreement.

3. Attorney Defendants' Motion for Sanctions

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

In November 2023, Mr. McDuff's counsel sent Ms. Pierce a good faith letter requesting she supplement her responses to the written discovery and provide responses to the Requests for

Production. Plaintiff did not respond. As such, Mr. McDuff filed a motion to compel Plaintiff to provide complete discovery responses to the written discovery requests. On January 9, 2023, Ms. Pierce supplied supplemental responses to the Interrogatories and written responses to the Requests for Production. In response to Interrogatories requesting witness information, Plaintiff lists “[A]ll Journal Subscriber and Readers”; “current and former employees of the Journal Defendants and Merrell, Jahn & McDuff”; and the Journal Defendants themselves. She also objected to providing tax returns or financial statements to support her damages claims.

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

After hearing the arguments of the Parties, reviewing the discovery responses of Plaintiff, and reviewing Judge Sprouse’s Order, the Court finds as follows.

II. CONCLUSIONS OF LAW

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

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

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

3. Sanctions “protect the rights of discovery provided by the Rules.” *Downey v. Dixon*, 294 S.C. 42, 45 (Ct. App. 1987). The South Carolina Rules empower this Court to determine appropriate sanctions for a party’s failure to comply with its discovery orders. S.C. R. Civ. P. 37(b)(2) (“If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just . . .”).

4. Plaintiff has failed to comply with both the discovery rules and with the February 15, 2023 Order of this Court. As such, sanctions are warranted.

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

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

7. Further, this case is advanced in age and is currently set for mediation in July of this year. A successful mediation requires the Parties to be fully aware of the witnesses to be presented, the nature and amount of damages sought, and how such damages will be substantiated.

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

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Little

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

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

III. CONCLUSION

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that Defendants' Motions for Sanctions are GRANTED and the Defendants are awarded attorney's fees and costs for the pursuit of the requested information, as evidenced by the affidavits submitted of Ms. Dakota E. Knehans, Mr. Chris Smith, and Mr. Maxwell Mishkin. Though additional fees were incurred in the pursuit of discovery from Plaintiff, these affidavits reflect only the Defendants' travel to and attendance at the hearings concerning this discovery. Plaintiff is directed to provide any and all information regarding her alleged damages to the Defendants, as well as a full and complete witness list, by April 23, 2023. Plaintiff shall do so by responding in full to the Journal Defendants' Interrogatories Nos. 2, 3, 4, and 5; the Journal Defendants' Requests for Production Nos. 10 and 11; the Attorney Defendants' Interrogatories Nos. 3, 10, 11, and 26; and the Attorney Defendants' Requests for Production Nos. 2, 6, 11, 19, and 20. If Plaintiff fails to do so, Plaintiff will be constrained to the witnesses currently identified, and will be allowed to present only the three documents submitted as Court exhibits at the March 22, 2023 hearing as evidence of her damages.

Plaintiff shall have the right to request cross-examination of AS Counsel on the sole issue of attorney's fees & cost requested herein. Plaintiff's request for cross-examination shall be filed with the Court & served on opposing Counsel with (enc'd) docs for the date of this order

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

Dated: 4-4-23
Anderson, SC

2. Journal Defendants' Motion for Sanctions

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

3. Attorney Defendants' Motion for Sanctions

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

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

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

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

4. The Court's Order Granting Sanctions

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

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

5. Plaintiff’s Motion for Reconsideration

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

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

II. CONCLUSIONS OF LAW

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

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

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

3. Sanctions “protect the rights of discovery provided by the Rules.” *Downey v. Dixon*, 294 S.C. 42, 45 (Ct. App. 1987). The South Carolina Rules empower this Court to determine appropriate sanctions for a party’s failure to comply with its discovery orders. S.C. R. Civ. P. 37(b)(2) (“If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just . . .”).

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

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

Dated:



Oconee Common Pleas

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

Case Number: 2022CP3700182

Type: Order/Other

S/R. LAWTON McINTOSH

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