

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020CP2605135

Greg Lilly a/k/a Gregory Stuart Lilly, II,)
and Laura Lilly,)

Plaintiffs,)

vs.)

Steven S. Walkup,)

Defendant.)

ORDER DENYING
DEFENDANT'S MOTION
TO AMEND ANSWER AND
COUNTERCLAIM

(Not ending action)

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AUG 28 2024
SC Court of Appeals

Defendant's Motion to Amend his Answer and Counterclaim is denied. This case was filed in September of 2020. It is scheduled for trial on May 21, 2024 after being continued from June 7, 2023 and October 19, 2023. This court's Order pursuant to the October, 2023 hearing addressed Defendant's Motions from that hearing and included scheduling terms. Those scheduling terms were modified by Consent Scheduling Orders dated February 24, 2024 and March 8, 2024.

Immediately after mediation failed (March 27, 2024), Defendant filed a Motion to Amend his Answer and Counterclaim on April 1, 2024 (addendum filed April 2, 2024) seeking to amend to conform to evidence and to add a Third Party Complaint against his ex-wife, former attorney (Davis Inabnit, Esq.), Plaintiff's Counsel (William P. Young, Esq.) and his lender (Southwest Stage Funding, LLC d/b/a Cascade Financial Services). Defendant acknowledges receiving additional discovery documents before the October, 2023 hearing. The documents attached to his Memorandum in Support of his Motion to

Amend contain documents that are several years old and are addressed specifically to him as follows: Deed to Steven Walkup dated November 9, 2018, Mr. Walkup's Family Court 2011 divorce documents, loan documents (executed by Mr. Walkup) and 2020 letters addressed to Mr. Walkup from Cascade Finance that appear to have been provided to Mr. Walkup from this lender pursuant to a written 2020 request. Defendant's initial Answer acknowledges a settlement with his lender for a discounted sum in 2020.

This is a breach of contract/specific performance case to determine the parties' respective obligations and performance under the contract. The Defendant's request to amend his Answer and Counterclaim appears to be a dilatory procedural attempt to further delay trial on the merits.

The Defendant failed to attach a proposed Amended Answer and Counterclaim to his Motion to Amend as directed by the court's December, 2023 Order. The format and content of this document is incomprehensible making it difficult for any potential Third Party Defendant recipient to respond. This Motion and supporting Memoranda contains a proposed Third Party Complaint containing allegations against Defendant's former counsel, Plaintiff's counsel, his lender and former wife that appear unrelated to facts and circumstances associated with the parties' alleged breach of contract. At the very least, these new allegations are not based on newly discovered evidence but relate to facts and circumstances that the Defendant knew or should have known years ago.

If the Defendant feels that allegations contained in the proposed Third Party Complaint are actionable, he is encouraged to consult an attorney and seek redress in the Family Court, Office of Disciplinary Counsel or other appropriate forum. Defendant is also free to present evidence to the court in support of his position with relevance to be

determined at the trial on the merits. The documents (dated 2011 through 2020 addressed to Defendant and/or containing his signature) attached to his Memorandum in support of his Motion to Amend do not appear to be “newly discovered” evidence warranting delay of this trial. Defendant acknowledges receipt of his discovery requests prior to the October, 2023 hearing, therefore he had ample time (over five months) to file a Motion to Amend his Answer and Counterclaim.

The terms of the current Consent Scheduling Order are clear. Trial on the merits is to occur within sixty days of the March 27, 2024 mediation. Defendant has no pending motion to modify the Consent Scheduling Order and has presented no credible reason to do so. To allow Defendant’s pleading to be amended at this juncture would further delay the trial on the merits and is inappropriate due to Defendant’s inexcusable delay.

Defendant’s Motion to Amend Answer and Counterclaim is denied. This Motion also contains a demand for a jury trial, which is now moot. Rule 38 (b) of the South Carolina Rules of Civil Procedure states that “Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue”. Defendant’s last pleading served October 30, 2020 was not followed by a timely demand for a jury trial. Rule 38 (d) further states that “The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury”.

IT IS SO ORDERED.

[SIGNATURE PAGE OF MASTER IN EQUITY TO FOLLOW]



Horry Common Pleas

Case Caption: Greg Lilly , plaintiff, et al VS Steven S Walkup
Case Number: 2020CP2605135
Type: Order/Other

So Ordered

s/Alan D. Clemmons 3088 Master in Equity