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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The Honorable Diane Schafer Goodstein
Beaufort County

Trial Court Case No. 2021-CP-07-02165

APPELLATE CASE NO. 2024-000105

Turner's Marina, LLC,

Appellant,

v.

Daniel Hyde, Laura Hyde and

John William Caput,

Respondents.

**RESPONDENTS DANIEL HYDE, LAURA HYDE AND
JOHN WILLIAM CAPUT'S REDACTED JOINT
INITIAL BRIEF**

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion in holding the Appellant in civil contempt of court for Appellant's express refusal to comply with an order of the trial court?
2. Did the trial court properly afford the Respondents the right to complete additional discovery at the Appellant's financial expense as a direct result of Appellant's refusal to comply with discovery orders of the trial court?
3. Did the trial court properly exercise its discretion in ordering Appellant to pay the Respondents' attorney's fees incurred in compelling the production of the tax returns and financial records of the appellant?

STATEMENT OF THE CASE

This matter is a covenant dispute over Plaintiff's attempts to enforce a claimed right of repurchase for property in an RV Park located in Hilton Head, South Carolina, with the alleged right of repurchase contained in covenants recorded in the Beaufort County Register of Deeds at DB 325 P. 920. On or about December 6, 2018, Respondent Caput sold Respondent Hyde Lot 25 in the RV Resort for \$69,500. Appellant contends it did not waive its right of repurchase and filed an action on November 29, 2021, two (2) years, eleven (11) months and twenty-four (24) days after the closing seeking to enforce its claimed right of repurchase. Appellant asserted claims for specific performance and damages for loss of rental revenue on the subject property in excess of \$100,000 (Compl. at ¶ 34).

This is an appeal of Judge Goodstein's January 11, 2024 Order Granting Defendants Hyde and Caput's Motions to Hold Plaintiff in Contempt of Court. Respondents filed the referenced motions for contempt because of Plaintiff's express refusal to comply with Judge Sprouse's July 3, 2023 Form 4 Order compelling Appellant to produce tax returns and financial documents that were requested by the Defendants after Judge Sprouse's *in camera* review of the requested documents, and Judge Sprouse's subsequent Order filed on October 26, 2023 denying Appellant's Motion to Alter or Amend Judge Sprouse's July 3, 2023 Order compelling the production of the tax returns and financial documents. The tax returns that are the basis of the order compelling their production by Appellant are essential to this matter as Appellant is claiming lost rental revenue as a result of the alleged violation of Appellant's alleged right of repurchase for the at-issue lot; thus, Appellant's historical revenues are at issue and discoverable in this matter. Further, Judge Sprouse conducted an *in camera* review of the at-issue tax returns before ordering that they be produced. Below is a detailed procedural history of this matter as it relates to the matters on

appeal, namely the order holding Appellant in contempt of court and ordering appropriate sanctions.

- A. March 6, 2023, Respondent Hyde’s Second Request to Produce – On March 6, 2023, Respondent Hyde requested Appellant 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”) (Def. Hyde’s Mar. 6, 2023 Req. for Produc. to Pl.).
- B. April 17, 2023, Respondent Hyde’s Motion to Compel – The Appellant produced no documents nor filed objections to Respondent Hyde’s March 6, 2023 Production Request and on April 17, 2023 Respondent Hyde filed a Motion to Compel pursuant to Rule 37, SCRCP. (Hyde’s April 17, 2023 Mot. to Compel).
- C. Plaintiff’s May 9, 2023, Response – Three (3) days before Respondent Hyde’s Motion to Compel was set for a hearing, Appellant filed a response to Respondent Hyde’s March 6, 2023 Production Request, but objected to ¶ 12 seeking the Financial Statements and ¶ 13 seeking the Tax Returns. (Pl’s. May 9, 2023 Resp. to Hyde’s Req. for Produc.).
- D. Orders on Motion to Compel – Respondent 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 (Jun. 6, 2023 Order on Defs. Daniel and Laura Hyde’s Mot. to Compel Pl. to Resp. to Disc.)¹.

- E. Caput’s June 1, 2023, Request to Produce – On June 1, 2023, Respondent Caput requested Appellant produce its federal and state tax returns for 2018 to 2022. (Def. John William Caput’s Req. for Produc. to Turner’s Marina, LLC dated June 1, 2023).
- 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. (June 16, 2023 Ltr. from Appellant to Judge Sprouse).
- 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. (July 3, 2023 Form 4 Order by Judge Sprouse).
- H. July 12, 2023, Plaintiff Motion for Reconsideration – On July 12, 2023, under Rule 59(e), SCRCP, Appellant filed a Motion to Amend the Court’s July 3, 2023 Order. (Pl’s. Rule 59(e), SCRCP Mot. to Alter or Am. Order Compelling Produc. of Tax Returns and Financial Statements of Turner’s Marina, LLC).
- I. Plaintiff’s Request for Delay in Hearing on Rule 59(e) Motion – Appellant thereafter requested a delay in the Court ruling on its July 12, 2023 Rule 59(e)

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

Motion until the deposition transcript of Appellant's Rule 30(b)(6) deposition, taken on July 11, 2023, was available. This deposition of the Appellant 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. Respondent Caput's July 27, 2023, Motion to Compel – The Appellant did not respond to Respondent Caput's Requests for Production despite multiple follow up emails and letters to Appellant's counsel, and Respondent Caput was forced to file a Motion to Compel under Rule 37, SCRPC, on July 27, 2023. (Def. John William Caput's Mot. to Compel Pl.).
- K. Appellant's September 15, 2023, Response – Less than seven days before Respondent Caput's Motion to Compel was set for a hearing, Appellant served a response to Respondent Caput's Requests for Production, but Appellant objected to Request number 10, which sought the production of the at-issue Tax Returns. (Pl's. Resp. and Objections to Def. John William Caput's Req. for Produc.).
- L. Plaintiff's September 26, 2023, Memorandum of Law – Thereafter, Appellant 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, Respondent Hyde filed its Memorandum of Law in opposition to said motion.
- M. October 26, 2023, Final Order – On October 26, 2023, the Court denied Appellant'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 the Order was final. (Oct. 26, 2023 Form 4 Order by Judge Sprouse).

N. Refusal to Comply with Court’s October 26, 2023 Order – On November 6, 2023

Appellant’s counsel wrote counsel for Respondents, 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)

(Nov. 6, 2023 Ltr. from Appellant to Resp’ts.).

Then, Respondent Hyde filed a Motion to Hold Plaintiff in Contempt of Court and to Strike and Dismiss, dated November 10, 2023. (Def. Hyde’s Mot. to Hold Pl. in Contempt of Court and to Strike and Dismiss). Respondent Caput filed a Motion to Hold Plaintiff in Contempt of Court and to Strike and to Dismiss on November 20, 2023. (Def. John William Caput’s Mot. to Hold Pl. in Contempt of Court and to Strike and to Dismiss).

A virtual hearing was conducted on December 8, 2023, with the roster commencing at 9:30 a.m., wherein the Respondents asserted that the most severe sanctions should be employed to confront a clear, unambiguous challenge to the Court’s authority. Respondents requested the following relief:

- a. Appellant be held in Contempt of Court;
- b. That its Complaint be stricken and that the case proceed to trial on Respondent Hyde’s and Caput’s Counterclaims;
- c. That in the alternative, Appellant’s claim and causes of action for any monetary damages, attorney fees or costs be stricken;

- d. That Respondents Hyde and Caput be awarded its reasonable attorney's fees and costs; and
- e. Such other sanctions as the Court deems advisable.

Prior to the hearing on the motions to hold Appellant in contempt of court, Appellant's counsel produced the Tax Returns and certain financial statements approximately forty-five (45) minutes prior to the motion hearing, and asserted that any request to hold the Appellant in contempt of court was now moot. Appellant also argued it 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 Appellant or provided to governmental or regulatory agencies. Appellant 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, Appellant took the position for the first time it was planning to appeal Judge Sprouse's Orders requiring production but could not do so until it was held in contempt. (Mot. Contempt Hr'g Tr. 4, 5, 6, 15, 23, 24, Dec. 8, 2023).

In response, Respondents asserted the disobedience of Judge Sprouse's Order was deliberate and intentional. Respondents also asserted it was part of an established pattern of Appellant in this case of abusing the discovery process to substantially increase the litigation costs of Respondents in a scorched-earth litigation strategy. Respondents cited 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.

After the trial court considered the arguments of the parties, the court issued its Order Granting Defendants Hyde and Caput's Motions to Hold Plaintiff in Contempt of Court on January 11, 2024. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court). In its order the trial court rejected the Appellant's arguments and found the Appellant 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 the trial court. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 6). The fact that the Appellant turned over some or all of said documents a mere forty-five (45) minutes prior to the contempt hearing, leaving Respondents' counsel with no meaningful opportunity to review same, was considered by the Court, but the trial court held that such action was clearly "too little - too late." (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 7).

At the hearing, Judge Goodstein ordered that Appellant be sanctioned as follows:

A. Payment of Attorney Fees and Costs of Defense Counsel

(i) From thirty (30) days after Respondent Hyde's March 6, 2023 Second Request to Produce, Appellant was ordered to pay to the counsel for Respondent 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 the contempt hearing, preparing the order granting the motions for contempt, dealing with any

motion for reconsideration filed by Appellant, etc. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 7).

(ii) From thirty (30) days after Respondent Caput's June 1, 2023 Request to Produce, Appellant was ordered to pay to the counsel for Respondent 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 the contempt hearing, preparing the order granting the motions for contempt, dealing with any motion for reconsideration filed by Appellant, etc. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 7).

(iii) Respondents' counsel was to prepare an Affidavit of Attorney Fees, setting forth the fees and costs described above, and file it with the trial court and separately send same to Appellant's counsel. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 8).

(iv) Appellant then had 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 was no objection, Appellant shall pay the requested amounts to Respondents' counsel within seven (7) days thereafter. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 8).

(v) If a hearing is timely requested, Respondent's counsel will keep track of their time and costs in any such review or challenge to the fees and costs. If the challenge was not successful, the costs and fees associated with said challenge will be paid by Appellant. If the challenge was successful, the trial court would revise the requested fees

and costs accordingly. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 8).

B. Depositions as to Production of Financial Statements

(i) Respondent's counsel raised the issue at the motion hearing that Appellant further did not comply with Judge Sprouse's Orders of May 15, 2023 and June 6, 2023 by producing for an *in camera* review a copy of the income statements or profit and loss statements of the Plaintiff from 2018 to the present. Appellant asserted it fully complied with said Orders. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 8).

(ii) To resolve that dispute, Appellant, as a further sanction of its Contempt of Court, was ordered to deposit in ten (10) days the sum of \$5,000.00 with its counsel to be held in trust ("Trust Funds"). Then, Respondent's 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, Respondents' counsel are not limited to said issues, and can ask whatever questions and seek whatever documents they wish, as allowed under the SCRCF. Under this Order, Respondent's counsel was limited to two (2) depositions. If additional depositions are needed, an appropriate motion for permission must be filed. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 8–9).

(iii) The Trust Funds will be disbursed to Respondents' counsel to cover the deposition expenses (i.e., court reporter) and the reasonable attorney's fees and costs

incurred by Respondents' counsel. The same process of said counsel submitting an Affidavit of Attorney Fees discussed above will be used for these fees and costs. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 9).

(iv) Upon completion of said deposition(s), Respondents counsel were to be free to file whatever motions they deem appropriate as to the actions of the Appellant in complying with Judge Sprouse's Orders of May 15, 2023 and June 6, 2023. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 9).

(v) If it is discovered that Appellant did not provide Judge Sprouse with all of the documents requested in Judge Sprouse's Order for the *in camera* review, or that Appellant 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, Appellant was ordered to 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. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 9).

C. Further Discovery Responses by Plaintiff

(i) All additional and supplemental discovery responses in this case by the Appellant were to be done by a personal verification affidavit by the Appellant or the Appellant's representative that is verifying the truthfulness and completeness of said discovery response. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court at 9).

However, before any deadlines for compliance with Judge Goodstein’s Order were met, Appellant filed this appeal seeking to overturn Appellant’s contempt of court.

STANDARD OF REVIEW

The standard of review of this appeal is abuse of discretion. “The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.” *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). An appellate court will not interfere with “a trial court’s exercise of its discretionary powers with respect to sanctions imposed in discovery matters” unless the court abuses its discretion. *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014). “An ‘abuse of discretion’ may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law.” *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citations omitted).

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN HOLDING APPELLANT TURNER’S MARINA LLC IN CIVIL CONTEMPT OF COURT FOR ITS EXPRESS REFUSAL TO ABIDE BY AN ORDER OF THE TRIAL COURT

As stated in the standard of review for this appeal, the award of sanctions is left to the sound discretion of the trial court. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). It is clear from the record in this case that the Appellant disregarded and ignored an order of the trial court when the Appellant wrote a letter to counsel for the Respondents stating that Appellant was not going to produce the Tax Returns that Appellant was specifically ordered to produce. This is clearly a contempt of court that warrants sanctions against Appellant, and the trial judge properly exercised her discretion in ordering Appellant to be sanctioned for ignoring an

order of the trial court. Further, it is clear that the contempt ordered was for civil contempt and not for criminal contempt, as there was no term of imprisonment ordered nor were any funds to be paid into the court as a punishment. Rather, the sanctions were to indemnify Respondents for the large amount of time and expenses that were incurred in order to pursue proper and complete discovery responses from the Appellant.

Rule 37(b)(2)(D), SCRCF, specifically authorizes the trial court to hold a party in contempt of court for failure to follow a discovery order of the trial court. Then, the common law of this state holds that it is well within the sound discretion of the trial court on what is an appropriate sanction for the conduct that warranted a finding of contempt of court. *Davis v. Parkview Apts.*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) (quoting *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987) (“The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.”). The only reason for the appellate court to interfere with a sanction issued by the trial court is if the appellant can show “that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of the appellant, and therefore, amounted to an error of law.” *Id.* (quoting *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)). That is clearly not the case in this appeal where the contempt of the Appellant for an order of the trial court was so blatant.

It is clear that Appellant was in contempt of court when on November 6, 2023, Appellant’s counsel wrote to counsel for Respondents that

“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)

(Nov. 6, 2023 Ltr. to Patterson and Williams). This letter by Appellant’s counsel stating the intent of the Appellant was a clear and blatant refusal by the Appellant to comply with an order of the trial court. This clear statement that the Appellant was ignoring an order of the trial court was in addition to the Appellant’s continual disregard of the South Carolina Rules of Civil Procedure by not timely responding to discovery, forcing all named defendants to file multiple Motions to Compel for simple discovery requests, and driving up the costs of this litigation unnecessarily by not acting in good faith. (Hyde’s April 17, 2023 Mot. to Compel; Def. John William Caput’s July 27, 2023 Mot. to Compel Pl.; Jan. 11, 2024; Order Granting Defs. Hyde and Caput’s Mots. to Hold Pl. in Contempt of Court). These actions by the Appellant not only prejudice the Respondents’ ability to defend this case, but also waste the trial court and this court’s time and resources by causing excessive discovery disputes and motions practice in what should be a simple and straightforward case to litigate.

It is clear that the Appellant cannot show in this appeal that the sanction imposed by the trial court was without reasonable factual support as it was the Appellant itself that stated in a letter to opposing counsel that Appellant was going to violate an order of the trial court. Further, there is no prejudice resulting to the right of the Appellant as it was the Appellant that injected the issue of lost profits into this matter and caused Appellant’s tax returns to become relevant and discoverable in this case, which conclusion is further bolstered by Judge Sprouse’s *in camera* review of the Tax Returns and then his order directing Plaintiff to produce said Tax Returns.

The Appellant cannot now come to this court and claim that the sanctions ordered against Appellant are not warranted because Appellant produced the at-issue tax returns forty-five (45) minutes before the hearing in this matter was set to begin. This is what is commonly referred to as “too little, too late” for Appellant to attempt to avoid the sanction for Appellant’s contemptuous

conduct in this matter. The trial court clearly acted within its discretion in ordering that Appellant was in contempt of court and that Appellant should be sanctioned for disregarding an order of the Trial Court.

Further, the contempt order by the trial court is clearly for civil contempt and not for criminal contempt as the monetary sanctions were to be paid to the Respondents and not into the court.

The Appellant attempts to argue that the standard for the contempt order by the trial court is beyond a reasonable doubt because the contempt is criminal in nature—this argument is without support from the caselaw, is without support from the cases cited by the Appellant, and is without merit. “If the sanction is a fine, it is remedial and civil if paid to the complainant even through the contemnor has no opportunity to purge himself of the fine or if the contemnor can avoid the fine by complying with the court’s order.” *Poston v. Poston*, 331 S.C. 106, 109, 502 S.E.2d 86, 88 (1998). “If the sanction is a fine, it is punitive when it is paid to the court.” *Id.*

In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court’s prior order, including reasonable attorney’s fees. The award of attorney’s fees is not a punishment but an indemnification to the party who instituted the contempt proceeding. Thus, the court is not required to provide the contemnor with an opportunity to purge himself of these attorney’s fees in order to hold him in civil contempt.

Id. at 114, 502 S.E.2d at 90. The *Poston* court even goes on to state that “usually a complainant is not entitled to attorney’s fees in a criminal contempt proceeding” and that “after all, the award of attorney’s fees is not part of the punishment; instead, this award is made to indemnify the party for expense incurred in seeking enforcement of the court’s order.” *Id.*

The correct standard for the finding of contempt in this matter is clear and convincing evidence. *Id.* (citing *United Mine workers of America v. Bagwell*, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994) (“Civil contempt must be proven by clear and convincing evidence.”)). It is clear in this matter that the Appellant expressly stated in a letter to opposing counsel that Appellant intended to violate an order of the trial court by not producing the tax returns that Appellant was ordered to produce, thus, the clear and convincing standard to support the finding of civil contempt by Appellant was clearly met.

The sanctions that were ordered in this matter were both to indemnify the Respondents for previously incurred attorney’s fees and to indemnify Respondents for the attorney’s fees they would incur to depose Appellant regarding the financial documents that were to be produced.

II. THE TRIAL COURT PROPERLY AFFORDED THE RESPONDENTS THE RIGHT TO COMPLETE ADDITIONAL DISCOVERY AT APPELLANT’S EXPENSE AS A DIRECT RESULT OF APPELLANT’S REFUSING TO COMPLY WITH DISCOVERY ORDERS

A. The sanction of \$5,000 for additional discovery as to the origin of the Financial Statements and Tax Returns is an appropriate remedy due to Appellant’s misconduct in discovery.

As discussed above, Respondent Hyde initially requested the Appellant on March 6, 2023 to produce “a copy of the income statements or profit and loss statements of the Plaintiff from 2018 to the present” (“Financial Statements”) and “a copy of the federal and state tax returns of the Plaintiff from 2018 to the present” (“Tax Returns”). (Def. Hyde’s Mar. 6, 2023 Req. for Produc. to Pl., reqs. 12 and 13). By Orders of the Court on May 15, 2023 and June 6, 2023, Judge Sprouse ordered the Appellant’s to produce said documents for an *in camera* review. (Jun. 6, 2023 Order on Defs. Daniel and Laura Hyde’s Mot. to Compel Pl. to Resp. to Disc). Then, on July 3,

2023, Judge Sprouse issued an Order finding that the documents were “. . . reasonably calculated to lead to discovery of admissible evidence” and ordered Appellant to produce same in ten (10) days. (July 3, 2023 Form 4 Order by Judge Sprouse).

Appellant on July 12, 2023, filed a very extensive Motion for Reconsideration under Rule 59(e), SCRCF, consisting of 164 pages of materials. (Pl’s. Rule 59(e), SCRCF Mot. to Alter or Am. Order Compelling Produc. of Tax Returns and Financial Statements of Turner’s Marina, LLC). By Order of October 25, 2023, Judge Sprouse denied said motion. (Oct. 26, 2023 Form 4 Order by Judge Sprouse). Ten (10) days later, on November 6, 2023, Appellant’s counsel’s advised Respondents’ counsel the Appellant, “made the decision not to comply fully with Judge Sprouse’s Order dated July 3, 2023” and refused to produce the Tax Returns. There was no mention of any plan to appeal said decision. (Nov. 6, 2023 Ltr. from Appellant to Resp’ts.).

In the same November 6, 2023 Letter, Appellant stated it was willing to produce the Financial Statements if opposing counsel would execute a proposed confidentiality agreement. (Nov. 6, 2023 Ltr. from Appellant to Resp’ts). Counsel for Hyde responded three (3) days later, on November 9, 2023, sending to Appellant’s counsel the requested executed confidentiality agreement. Counsel for Respondent Hyde also stated that he did not agree with the withholding of the tax returns and would be filing an appropriate motion shortly thereafter. (Patterson E-mail dated Nov. 9, 2023 at 4:48 p.m.). Despite receiving the requested confidentiality agreement on November 9, 2023, Appellant never produced the promised Financial Statements until forty-five (45) minutes before the start of Respondents’ motions to hold the Appellant in contempt of court on December 8, 2023 at 8:46 a.m. (Taylor email to Patterson and Williams on December 8, 2023 at 8:46 a.m., with attachments).

As stated above, approximately forty-five (45) minutes before arguments on these complex motions, Appellant produced one-hundred and fifty-eight (158) pages of complicated Financial Statements and Tax Returns. During the motion hearing before Judge Goodstein, and as set forth in Her Honor's later order, the tactics employed by Appellant provided "defense counsel with no meaningful opportunity to" review the extensive financial documents prior to the hearing. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in Contempt of Court, 6, 7). Obviously, the timing of the production of the documents, ordered to be produced almost a month prior to the December 8, 2023 hearing, was entirely within the control of the Appellant. The Appellant now complains that the trial court exceeded its authority in issuing a sanction allowing the Respondents an opportunity to investigate whether the Financial Statements produced were in fact "original" financial records in existence at the time they were ordered to be produced or were they created for the purpose to be produced to opposing counsel. Judge Goodstein clearly explained in detail during the hearing the impact of the deliberate and intentional disobedience of the court orders by Appellant, as follows:

And the fact the documents are turned over today while it's something, I don't know what it is because counsel hasn't had a full and fair opportunity to look at them and it puts the Defendant's counsel in a terrible position, number one, to have to try and argue to the Court and give the Court information that-- and I've watched Mr. Patterson struggling trying to figure out whether or not they have or they don't have the documents entitled to and that's not fair and just--- it's just not fair.

Although he's clearly trying to argue this motion, Mr. Williams has tried to argue this motion and look at the documents at the same time, that's just not fair. It's not the way discovery rules are anticipated.

So while I note the Plaintiff has, to some extent, relented, I have no idea to what extent because the Defendants have not been given an opportunity to make that determination. So, while there certainly

something, I don't know what it is. Some good. I don't know how far well is.

(Mot. Contempt Hr'g Tr., 38, 39, Dec. 8, 2023).

It is clear that the discovery dilemma faced by counsel for Respondents and Judge Goodstein was entirely the fault of the Appellant by not complying with prior court orders, and then not producing documents it promised to produce when counsel for Respondent Hyde signed the Confidentiality Agreement on November 9, 2023. This conduct is consistent with a clear pattern of discovery abuses by Appellant throughout this case. By waiting a mere forty-five (45) minutes before the hearing, Appellant intentionally created a situation where the Court, and opposing counsel, had no opportunity to review what had been produced. The moderate sanctions imposed by Judge Goodstein in ordering depositions as to the origin of the Financial Statements is certainly reasonable and appropriate under the circumstances. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987) (“whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules”).

B. Financial Statements may have been specifically created and produced in response to Judge Sprouse's Orders.

During the December 8, 2023, motion hearing, there was considerable discussion as to whether the Appellant had produced then existing Financial Statements, or as Judge Goodstein characterized same—the “organic” financial records, or were they specifically created financial statements for the purpose of discovery in this case, wherein the Appellant divided up the Appellants business operations into two categories, [REDACTED]

[REDACTED] What was produced forty-five (45) minutes prior to the hearing would appear to be [REDACTED]

(Financial Statements). [REDACTED]

[REDACTED] (Tax Reutrns). Judge Goodstein stated the following as to this issue:

Let me ask this question. Are these financial-- one thing about discovery is that when there is a request to produce it does not--- that does not impose upon a party, any party, to created document that does not exist.

But by the same token, if there is a document that does exist, it does not mean that a party can go create a document other than the document that exists and provide a specially created document and then produce that document.

In other words, it is the existing document, the original document, that ought to be provided unless, of course, there's either an agreement of counsel to redact that document in some form or fashion or a redaction is done pursuant to Court order.

What I am being told, by Mr. Patterson, is that he is concerned that the financial statements that had been produced are financials -- not original financial statements but sanitized or financial statements that have been created for purposes of this litigation rather than the ones that existed organically I think is the term that gets used.

(Mot. Contempt Hr'g Tr. 31:3-22, Dec. 8, 2023).

Judge Goodstein was very concerned about the manner of the production of the Financial Statements [REDACTED], and whether new, separate financial statements were generated solely in response to the production request served by the Respondents. She stated that if that in fact occurred, it would be "an enormous problem". (Mot. Contempt Hr'g Tr., 36:6-7, Dec. 8, 2023).

To address this possible "enormous problem," under Judge Goodstein's discretion to address the admitted contempt of court of Appellant, she ordered a relatively modest amount of discovery by way of depositions of the parties who prepared the Financial Statements to determine who prepared same, how they are the prepared, and whether their production complied with Judge Sprouse's orders. (Jan. 11, 2024 Order Granting Defs. Hyde and Caput's Mots. to Hold Pl. in

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

For this reason alone, the modest sanctions imposed by Judge Goodstein in relation to the contempt of court findings against the Appellant are reasonable, well justified, and should be upheld. Clearly there are serious issues with the financial records that the Appellant eventually produced, and it was within the discretion of the trial court to order the Appellant to pay for the additional discovery needed to investigate these discrepancies in the Tax Returns and Financial Statements in order to ensure compliance with Judge Sprouse's Orders.

D. The Rule 30(b)(6) Deposition of Appellant did not involve Financial Statements or Tax Returns.

Appellant asserts that Judge Goodstein should not have imposed the sanction of requiring the Appellant to pay for depositions of its accountants, bookkeepers, or other parties who prepared

the Financial Statements and Tax Returns since the Respondents could have questioned Neil Turner, the Appellant's Rule 30(b)(6), SCRCP designee as to said documents at his deposition on July 11, 2023. (Appellant Initial Brief at 27). This position has no basis for several reasons.

First, the Appellant never produced the Financial Statements or Tax Returns until the morning of December 8, 2023. The deposition was taken on July 11, 2023, some five (5) months earlier. Simply put, since the Appellant refused to produce these documents prior to the deposition, there was no way Appellant's designee could be questioned as to the documents. This was part of an intentional strategy, employed throughout this case, to thwart legitimate discovery efforts of the Respondents.

Second, both counsel for Respondents Hyde and Caput specifically reserved all rights to continue Appellant's 30(b)(6), SCRCP, deposition and question this witness once the Financial Statements and Tax Returns were produced. (Dep. of Turner, 196-197, 375:18-25).

Finally, Appellant has attempted to confuse the issues before this Court by asking the Appellate Court to focus its attention on whether the Financial Statements and Tax Returns it produced to Judge Sprouse on June 16, 2023 for an *in camera* review were the same documents eventually produced to the Respondents forty-five (45) minutes before arguments began in the December 8, 2023 contempt hearing. Respondents have never taken that position, but instead have raised the issue of whether the Financial Statements and Tax Returns provided for the *in camera* review complied with Judge Sprouse's Orders of May 15, 2023 and June 6, 2023. Judge Goodstein discussed this issue at length, as set forth above, and provided a conservative, middle of the road, sanction and remedy to address this issue, which directly resulted from the deliberate actions of the Appellant. These reasonable sanctions should be upheld by this Court.

III. THE COURT PROPERLY EXERCISED ITS DISCRETION IN ORDERING APPELLANT TURNER'S MARINA LLC TO PAY THE RESPONDENTS' ATTORNEY'S FEES INCURRED IN COMPELLING THE PRODUCTION OF THE FINANCIAL RECORDS OF THE APPELLANT.

Rule 37(a)(4), SCRCP, states that if a motion to compel discovery is granted in favor of the filing party "the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order." Further, Rule 37(b)(2) states that for a party that has violated an order to compel the "court in which the action is pending may make such orders in regard to the failure as are just" and subsection (D) states that such orders can include "an order treating as a contempt of court the failure to obey any orders."

As extensively discussed above, it is in the sound discretion of the trial court what sanctions to impose, the Appellant expressly stated that Appellant intended to violate an order on a motion to compel, and it is in the discretion of the trial court to award the Respondents their attorney's fees incurred from the moment that the Appellant's discovery responses were due until the date that Appellant was held in contempt of court. Specifically, the trial court ordered the following:

(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.

(Jan. 11, 2024 Order at 7).

Additionally, as stated above, the purpose of the civil contempt sanction in the form of an award of attorney's fees is to indemnify the party who had to initiate the contempt proceeding to again try and compel a party to comply with the South Carolina Rules of Civil Procedure and to comply with orders of the trial court. *Poston* at 114, 502 S.E.2d at 90.

It was clearly within the trial court's discretion to indemnify the Respondents for their attorney's fees from the date that Appellant should have complied and produced the requested Tax Returns and Financial Statements. Appellant has lost its challenge to producing the Tax Returns at every step of the way and it was within the court's power and discretion to reimburse Respondents for attorney's fees that they should not have had to incur in the first place.

CONCLUSION

Judge Goodstein clearly and appropriately acted within her discretion in holding the Appellant in contempt of court and issuing appropriate sanctions for Appellant's admitted contempt of court. For the reasons and arguments stated above, Respondents respectfully request that this Court deny the Appellants appeal, award costs to the Respondents for the costs of the appeal, including all attorney's fees incurred pursuant to Judge Goodstein's Order and the South Carolina Appellate Court Rules, and remand this matter to the trial court for further disposition upon the merits.

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