

RECEIVED

Mar 26 2025

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.

APPELLANT'S FINAL BRIEF

s/Thomas C. Taylor

Thomas C. Taylor, Esq.

Law Office of Thomas C. Taylor, LLC.

Post Office Box 1808

Bluffton, South Carolina 29910

South Carolina Bar Number: 5499

Telephone: 843-785-5050

Email: tom@thomastaylorlaw.com

ATTORNEY FOR APPELLANT

TURNER'S MARINA, LLC

Bluffton, South Carolina
March 26, 2025

TABLE OF CONTENTS

Table of Authorities.....3
Statement of Issues on Appeal.....4
Statement of the Case.....5
Standard of Review on Appeal.....20
Argument.....20
Conclusion.....29

TABLE OF AUTHORITIES

CASES

Abbot v. Gore, 304 S.C. 116, 403 S.E.2d 154 (Ct. App. 1991).....24

Brasington v. Shannon, 288 S.C. 183, 341 S.E.2d 130 (1986).....20

Chisholm v. Chisholm, 396 S.C. 507, 722 S.E.2d 222 (2012).....20

DiMarco v. DiMarco, 393 S.C. 604, 713 S.E.2d 631 (2011).....20

Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986).....21

Garris v. McDuffie, 288 S.C. 637, 344 S.E.2d 186 (Ct. App. 1986).....20

Gompers v. Buck’s Stove & Range Co., 221 U.S. 418 (1911).....23

Hicks v. Feiock, 485 U.S. 624 (1988).....23

Moseley v. Mosier, 279 S.C. 348, 306 S.E.2d 624 (1983).....20

Poston v. Poston, 331 S.C. 106, 502 S.E.2d 86 (1998).....21, 22, 23

State v. Bevilacqua, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994).....22

STATUTES

S.C.R.Civ.P. 37.....21, 23

S.C.R.Civ.P. 59(e).....10

STATEMENT OF ISSUES ON APPEAL

1. Did the Court err in holding the Plaintiff in criminal contempt of court after being advised that all of the documents that had been ordered produced by the Hon. Scott Sprouse, had in fact already been produced?
2. Did the Court err in considering and acting upon an allegation made by the Defendants' counsel at oral argument, questioning whether "full and complete Financial Statements were provided to Judge Sprouse for his *in camera* review," when that issue had not been previously raised by motion or otherwise?
3. Did the Court err in ordering the Plaintiff to pay \$5,000 for the Defendants to use for taking unknown future depositions?
4. Did the Court err in ordering the Plaintiff to pay attorneys' fees to the Defendants for professional services rendered prior to the filing of the Motions To Hold Plaintiff in Contempt?

STATEMENT OF THE CASE

This appeal arises from a discovery dispute over the requested production of the Plaintiff's federal and state income tax returns from 2018 through 2023, and the requested production of "the income statements or profit and loss statements of the Plaintiff" from 2018 through 2023. (R. p. 508) The Plaintiff objected to the requested production, claiming the documents were highly confidential, corporate financial records that had no relevance to the action and were not reasonably calculated to lead to the discovery of admissible evidence because they are from an entity with no connection to the case. (R. p. 504 and p. 514) The records were then reviewed *in-camera* by Circuit Court Judge R. Scott Sprouse, and ordered produced within ten (10) days to the Defendants, under a Confidentiality Order to be prepared by the Plaintiff's counsel. (R. p. 21) The Plaintiff filed a Motion for Reconsideration, which was denied. (R. p. 15) Ten days later, at the direction of the President of the Plaintiff, in order to position Turner's Marina's for an appeal of the discovery order, the Plaintiff's counsel advised the Defendants' counsel that the Plaintiff would not comply fully with the Order and would not produce the federal income tax returns, but would, upon execution of the proposed Confidentiality Order, produce the Plaintiff's "2018, 2019, 2020, 2021 and 2022 Profit and Loss Statements from Turner's Marina's campground Lot rental program" that were reviewed *in-camera* by Judge Sprouse in June 2023 and ordered produced. (R. p. 496)

Both Defendants then filed Motions To Hold The Plaintiff In Contempt. (R. p. 43 and p. 101) Just prior to the hearing on the motions, the President of the Plaintiff instructed the undersigned counsel to produce all of the documents reviewed *in-camera* by Judge

Sprouse, and the Plaintiff's counsel did so, delivering electronic copies of the documents to the Defendants' counsel prior to the hearing on the motions. (R. pp. 338-487)

The Plaintiff herein, Turner's Marina, LLC, is the successor Declarant to the original developer of the R.V. Resort and Yacht Club on Hilton Head, and Turner's Marina owns a Covenant-based First Right of Repurchase giving Turner's Marina, LLC the right to purchase any of the 200 Lots at the RV Resort that are to be sold, at the price the Lot goes under contract for. The First Right of Repurchase is set forth in paragraph 12.9 of the Covenants, (R. p. 632) and provides that Turner's Marina has thirty (30) days from receiving notice of the proposed sale of a Lot and the terms of the sale, to conduct its due diligence and exercise its right of Repurchase. Turner's Marina contends that in this case, the Defendant Caput sold Lot 25 to the Hyde Defendants before Turner's Marina's 30 day right to exercise its repurchase option had expired, and that Turner's Marina was damaged because it would have exercised its right of purchase before the 30 days expired. Turner's Marina filed its Summons and Complaint against the Defendants on November 29, 2021. (R. pp. 258-267)

The Turner's Marina LLC entity is made up of two parts: one is a commercial marina operation known as the "Hilton Head Harbor," which is unrelated to the campground RV Resort and called out as a completely separate development in section 12.5 of the Covenants. (R. p. 631) The only relationship to the campground RV Resort is through the successor to the Declarant rights it holds, which among other things, includes the exclusive rental program that Turner's Marina operates, as well as the first right of refusal mentioned above. (R. p. 632)

Paragraph VII of the R.V. Resort Covenants grants Turner's Marina as the successor Declarant, the exclusive rental rights to the Lots "in the absence of use by the Owner or his registered and approved guest," until 2080. (R. pp. 622-623) Turner's Marina operates this exclusive rental program at the RV Resort campground as a "contactless" experience. Customers/renters can reserve Lots online, pay online, and arrive at the campground and drive straight to their rental Lot, with little interaction with Turner's Marina's staff or employees. Additionally, the customers pay the credit card fee and software fee during the booking process, which is no expense to Turner's Marina. From the rentals for each Lot, Turner's Marina pays each Lot owner 50 percent of the gross amount of rental collected and retains 50 percent. Pursuant to the Order from Judge Sprouse dated June 6, 2023 (R. p. 21), Turner's Marina earlier produced the confidential detailed records of the rental histories of all 200 Lots, thereby allowing the Defendants to examine the financial details of rentals of all the various Lots over the last five years.

However, in addition to the detailed confidential rental financials of all 200 Lots that were already produced, the Defendants asserted that they should also be entitled to review the highly confidential tax returns and Profit and Loss Statements from the separate Hilton Head Harbor entity. See the Hydes' Second Request to Produce dated March 6, 2023, which demanded:

"A copy of the income statements or profit and loss statements of the Plaintiff from 2018 to the present."

AND

"A copy of the federal and state tax returns of the Plaintiff from 2018 to the present."

(R. p. 518, nos. 12 and 13)

A hearing was held before Judge Sprouse in Beaufort on May 12, 2023, during which the Plaintiff urged the Court to deny the production of the confidential financial records of the separate Hilton Head Harbor Marina, because nothing contained within those documents would assist the Defendants in formulating a defense to the damage claims, which are based entirely on the financial histories of similar campground Lot rentals during the time period Turner's Marina did not own the Lot, because Turner's Marina was denied its right of first refusal. In order to try to gain access to these confidential records, the Hydes' asserted to Judge Sprouse that these records would enable them "to determine the actual rental revenue and expenses (i.e. personnel, office expenses, utilities, property taxes, payroll taxes, software, accounting, etc.) that should be properly set-off or to be used to reduce the gross Lot rental revenue in determining Plaintiff's claim of damages." See Judge Sprouse's June 6, 2023, Order. (R. p. 21)

Judge Sprouse then ordered the Plaintiff to send the confidential financial records to him for an *in-camera* inspection (R. pp. 22-23), and the documents were sent on June 16, 2023. See the letter from Plaintiff's counsel to Judge Sprouse dated June 16, 2023 (R. pp. 498-500). On that date, printed copies of the following documents were delivered to Judge Sprouse:

- a. Turner's Marina – Campground Profit & Loss, January through December 2018;
- b. Turner's Marina – Hilton Head Harbor Profit & Loss, January through December 2018;
- c. Turner's Marina – Campground Profit & Loss, January through December 2019;
- d. Turner's Marina – Hilton Head Harbor Profit & Loss, January through December 2019;

- e. Turner's Marina – Campground Profit & Loss, January through December 2020;
- f. Turner's Marina – Hilton Head Harbor Profit & Loss, January through December 2020;
- g. Turner's Marina – Campground Profit & Loss, January through December 2021;
- h. Turner's Marina – Hilton Head Harbor Profit & Loss, January through December, 2021;
- i. Turner's Marina – Campground Profit & Loss, January through December 2022;
- j. Turner's Marina – Hilton Head Harbor Profit & Loss, January through December, 2022;
- k. Turner's Marina LLC's Federal Income Tax Return for 2018;
- l. Turner's Marina LLC's Federal Income Tax Return for 2019;
- m. Turner's Marina LLC's Federal Income Tax for 2020; and,
- n. Turner's Marina LLC's Federal Income Tax for 2021. (At that time, the 2022 Federal Tax return had not been filed.)

In its transmittal letter, the undersigned Plaintiff's counsel argued that a review of the tax returns and Profit and Loss Statements shows there was no available information within the documents regarding utilities, and was no breakdown of personnel expenses, nor office expenses in these documents. (R. p. 500) Nor was there available information on property taxes, payroll taxes, software or accounting, because none of those relate to the rental program. (R. p. 500) The only expenses that Turner's Marina had relating to the rental program, were the advertising expenses that were previously produced to the Hyde Defendants. That being the only expense that Turner's Marina was required to make under the Covenants, as seen in section 7 of the Covenants (R. p. 622), Turner's Marina asked the Court to review the confidential financial documents and decline the Hyde Defendants'

request to plunder through the income tax returns and P/L's, where no discoverable benefit awaited them, but substantial prejudice would befall Turner's Marina by the release of the confidential financial records. (R. p. 500) The tax returns and P/Ls were neither relevant to the issues in this case nor were they reasonably calculated to lead to discovery of admissible evidence. See June 16, 2023 Taylor letter. (R. p. 500)

On July 3, 2023, Judge Sprouse entered a Form 4 Order stating, "The Court finds that the submitted documents are reasonably calculated to lead to the discovery of admissible evidence," and ordered the Plaintiff to produce the documents to the Defendants within 10 days. (R. p 18) On July 12, 2023, the Plaintiff filed an S.C.R.Civ.P. 59(e) Motion To Alter or Amend the July 3, 2023 Order, contending the mandatory production of the confidential tax returns was in error and contrary to law. (R. pp 203-204) The Plaintiff further notified the Court that the Defendants had taken a six-and one-half hour Rule 30(b)(6) deposition of Turner's Marina's representative on July 11, 2023, wherein the Plaintiff's representative, Neil Turner, had provided detailed answers under oath that showed the confidential financial records and tax returns at issue would not lead to the discovery of admissible evidence. (R. pp. 203-204)

During the 30(b)(6) deposition, Neil Turner answered all financial questions for the Defendants. He testified that an advertising program is the only required expense he has under the Covenants. See Exhibit A to the Plaintiff's Memo in Support of its Motion To Alter or Amend dated September 26, 2023. (R. p. 144, Transcript p. 74, lines 4-8) He gave the details of the advertising expenses. (R. p. 145, Transcript p. 226, lines 23-25, Transcript p. 227, line 2) He described in detail how reservations are made and paid for. (R. p. 146,

Transcript p. 232, lines 17-24) He explained the “booking fees” and the costs of the reservations system. (R. p. 147, Transcript p. 234, lines 20-25 and Transcript p. 237, lines 1-16)

Mr. Turner went into detail on the performance of the reservation system (R. p. 148, Transcript p. 239, lines 3-25 and Transcript p. 240, lines 2-13), addressing non-existent costs to him for electricity and water (paid for by the Association). He answered more questions about the costs of the reservation system. (R. p. 149, Transcript p. 242, lines 9-25)

Mr. Turner provided detailed financial information as to the costs of his employees (R. p. 150, Transcript p. 247, lines 7-25 and Transcript page 248, lines 3-25), revealing confidential salary information. He provided details as to the costs of maintenance in the campground, which is also born by the Association. (R. p. 151, Transcript, p. 253, lines 9-22) He answered detailed questions about the costs to Turner’s Marina for internet expenses that relate to the campground (“minuscule”). (R. p. 152, Transcript page 254, lines 19-25 and Transcript p. 255, lines 2-8) He advised that there are no insurance costs nor property taxes relating to the campground. (R. p. 152, Transcript page 255, lines 15-24) He addressed the phone bill at page (R. p. 152, Transcript p. 257, lines 14-17)

Mr. Turner also provided detailed confidential information concerning Turner’s Marina’s revenues since that entity purchased the Declarant Rights (R. p. 153, Transcript p. 349, lines 23-25 and R. p. 154, Transcript page 350, lines 2-20), and the reason for the revenue decline (a new competing campground two miles down the road). He agreed to produce copies of his accounting bills. (R. p. 155, Transcript p. 369, lines 3-7) Finally, after

six-and one-half hours of interrogation into his expenses of operating the campground, he noted that:

My income tax returns deal with multifacets of a company. They do not deal with the campground. The litigation on this matter is about a campground violation of the covenants which is a breach of contract that has nothing to do with my marina. It had nothing to do with any of the expenses that I have. In this deposition I have already said that I'm happy to produce things that they may consider expenses that I don't consider expenses, because its already taken care of. So there is literally nothing they can deduce from the tax returns. And even the personal financial statement, they would have to—I'd have to explain everything for them to try to get anything from them.

On October 26, 2023, Judge Sprouse denied the Plaintiff's Motion To Alter or Amend and ordered the highly confidential tax returns and P/L's that he had reviewed produced to the Defendants under the terms of Consent Order of Confidentiality that Plaintiff's counsel was to draft. (R. p. 15)

After serious consideration, Plaintiff Turner's Marina, LLC made the decision not to produce the highly confidential financial records and advised the Defendants on November 6, 2023. (R. pp. 496-497) The decision not to comply fully with Judge Sprouse's Order was made based upon Mr. Turner's intention to appeal the issue of the mandatory production of the confidential tax returns in this situation on behalf of Turner's Marina LLC. On November 10, 2023, the Hyde Defendants filed their Motion To Hold Plaintiff In Contempt Of Court And To Strike And To Dismiss. (R. pp. 101-104) Defendant Caput filed his identical Motion To Hold Plaintiff In Contempt Of Court And To Strike And To Dismiss on November 20, 2023. (R. pp. 43-46) A hearing on the motions was scheduled before Judge Diane Schafer Goodstein for December 8, 2023.

On November 21, 2023, the then pending three (3) cross motions for summary judgment (filed by the Plaintiff and both Defendants earlier), were set for a hearing before Judge Goodstein on December 6, 2023. When the motions for summary judgment were called for argument on Wednesday, December 6, 2023, all counsel and the Court agreed to carry over the cross-summary judgment motions for two days (until December 8, 2023), so all outstanding motions could be argued at the same time. (All three motions for summary judgment were later denied by Judge Goodstein by Order dated and filed January 18, 2024. (R. pp. 1-3))

On Thursday, December 7, 2023 at 4:18 p.m., Neil Turner and Turner's Marina LLC, "after much deliberation and with grave concerns about you and your clients' willingness to abide by the confidentiality provisions of the 'Consent Confidentiality And Protective Order,' as was provided for in Judge Sprouse's Order," advised the Defendants that Turner's Marina LLC would produce "copies of the income tax returns and P/L's earlier submitted to Judge Sprouse for his review." (R. pp. 492-493) That December 7, 2023 e-mail letter from Turner's Marina's counsel advised the Defendants' counsel that "the documents will be produced upon my receipt of a signed copy of the Confidentiality and Protective Order as attached" and further advised that Turner's Marina considered the pending Motions To Hold The Plaintiff In Contempt, moot. (R. p. 492)

At 4:45 p.m. on December 7, 2023, counsel for the Hyde Defendants acknowledged receipt of the letter that the documents would be produced immediately, and advised by email that the Hyde Defendants would proceed to argue their motion for contempt in the following morning. See e-mail of Russell Patterson, Esq. (R. p. 490) At 4:53 p.m. on

December 7, 2023, counsel for Mr. Caput responded by email with a signed copy of the Consent Confidentiality and Protective Order, advising that Defendant Caput intended to move forward in the morning of December 8, 2023 because Caput did not consider the motion for contempt moot. See email of Harrison Williams, Esq. (R. p. 488)

On Friday morning, December 8, 2023, at 8:46 a.m., the Plaintiff produced by email transmittal to all Defendants, “copies of the documents reviewed in camera by Judge Sprouse and ordered produced to you under the Consent Confidentiality and Protective Order for this case.” (R. p. 338) Copies of the following documents stamped “CONFIDENTIAL” were electronically produced to the Defendants at that time:

- a. Turner’s Marina – Campground Profit & Loss, January through December 2018;
- b. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December 2018;
- c. Turner’s Marina – Campground Profit & Loss, January through December 2019;
- d. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December 2019;
- e. Turner’s Marina – Campground Profit & Loss, January through December 2020;
- f. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December 2020;
- g. Turner’s Marina – Campground Profit & Loss, January through December 2021;
- h. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December, 2021;
- i. Turner’s Marina – Campground Profit & Loss, January through December 2022;
- j. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December, 2022;

- k. Turner's Marina LLC's Federal Income Tax Return for 2018;
- l. Turner's Marina LLC's Federal Income Tax Return for 2019;
- m. Turner's Marina LLC's Federal Income Tax for 2020; and,
- n. Turner's Marina LLC's Federal Income Tax for 2021.

(R. pp. 340-487)

These above-referenced documents that were delivered to the Defendants' counsel electronically on December 8, 2023 at 8:46 a.m., were copies in full of the exact same documents that had be delivered to Judge Sprouse for his *in-camera* review on June 16, 2023 and the exact same records that were ordered produced by Judge Sprouse in his Order dated July 3, 2023.

The motions to hold the Plaintiff in contempt then came on for a hearing before Judge Goodstein December 8, 2023 at 9:30 a.m. At the beginning of the hearing, Judge Goodstein acknowledged the Plaintiff had earlier declined to produce the documents "to set up a position where they can appeal the order that financial documents be provided." (R. p. 270, lines 16-19) In reply, Turner's Marina's counsel advised the Court:

I can help a good bit because I have good news for you. Your Honor, between the Court's discussion with us on Wednesday and this morning, Turner's Marina has, with grave concerns, complied with the Court's order. We have produced the financial documents and we consider the motions would be moot.

(R. p. 271, lines 10-15)

Counsel for the Hyde Defendants then argued to the Court that the documents had been produced 45 minutes prior to the hearing and "I haven't had a chance to review all the

documents but what I see, it's clear that they have not still complied with the order and I'd like to address that." (R. p. 272, lines 10-15) Later in the hearing, without any substantiation, the Hydes' counsel asserted "We still don't have the documents Judge Sprouse said we were supposed to get." (R. p. 278, lines 12-13) The Hydes' counsel then continued his unsubstantiated assertions that the financial records had not been properly produced, and in his efforts to convince Judge Goodstein, actually violated the terms of the Confidentiality Order in the public motions hearing by declaring that "The Plaintiff is a very wealthy and successful operator of an RV Resort. He bought the resort for \$4,600,000. **Just briefly looking at the tax return, he produced—his income revenue's over \$3,000,000 a year.**" (Emphasis added.) (R. p. 280, lines 14-18) That public pronouncement by Mr. Patterson violated the terms of the Consent Confidentiality and Protective Order that prohibits disclosure of the contents of the confidential materials: "Except as expressly provided for in this Protective order, 'confidential' materials and documents and any information contained therein shall not be communicated or disclosed in any manner, either directly or indirectly, to any person or entity not specifically identified below in paragraph 8 and shall be used only for the prosecution and/or defense of *this* litigation and for no other purpose." (R. p. 603, no. 6) That disclosure is indicative of the many reasons Mr. Turner fought to protect the confidential, irrelevant financial statements and income tax returns from being produced to these Defendants and their counsel.

In reply, the Plaintiff's counsel stated:

Your Honor, first, from my position as an attorney, I need to state and make sure that Your Honor understands this. We sent documents to Judge Sprouse for *in-camera* review. He reviewed them and ordered them to be produced. Every one of those documents that he reviewed was produced this morning.

I have no earthly idea what Mr. Patterson is talking about when he says it appears documents have not been produced but I can guarantee you, as a lawyer practicing in this state for 40 years, that the package of documents that Judge Sprouse reviewed were produced for the Defendants this morning.

(R. p. 287, lines 2-7)

When the Hyde's counsel continued his unsubstantiated argument that the Plaintiff had somehow not produced the correct documents ("Apparently they created a set of books that I don't think existed at that time and just carved out lot rental activity....")(R. p. 292, lines 21-23), the Court correctly tried to refocus on the issue of what documents were ordered produced by Judge Sprouse and whether they had in fact, been produced: "And the Order of Judge Sprouse, as of October 2023, October 26th, does that order, and I'm looking at Mr. Patterson and Mr. Williams first, does that order say that Judge Sprouse order that what he has looked at be produced or that the discovery response be responded to?" (R. p. 295, lines 4-8) In reply, the Hydes' counsel admitted to the Court that the Order "references the documents" (R. p. 295, lines 20-21), but then continued the unsubstantiated argument that "we now know Mr. Turner did not submit what the judge originally ordered." (R. p. 295 line 25, and p. 296, line 1.) (The Court record is clear that Judge Sprouse's Order that was the subject of the Motions for Contempt, required the production to the Defendants of a copy of the records reviewed *in-camera*: "Plaintiff shall provide the submitted documents to the Defendant within ten (10) days of this Order." Judge Sprouse Order of July 3, 2023. (R. p. 18)

Despite the fact that counsel for the Defendants were notified on June 16, 2023 of the production to Judge Sprouse on that date of the "2018, 2019, 2020, 2021 and 2022 Profit and Loss Statements" from Turner's Marina's campground Lot rental program and from its

commercial marina operation, the “Hilton Head Harbor,” for the Court’s *in-camera* review, no objection was ever filed nor even noted by the Defendants, to the production of those documents to the Court for its *in-camera* review. Never did the Defendants take the position that the identified documents sent to Judge Sprouse somehow failed to meet the description of the requested documents. It was not until the hearing on December 8, 2023, that the Hydes’ counsel ever raised an assertion that something was amiss. As Judge Goodstein noted, “What I’m being told, by Mr. Patterson, is that he is concerned that the financial statements that had been produced are financials – are 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.” (R. p. 297, lines 16-22.) The Court’s observation was based upon Mr. Patterson’s continuing assertion in open Court that “They sent a, what I believe was created for this order, a piece of a financial statement that carves out lot rentals, not profit and loss statement of the Plaintiff which is what the Court ordered.” (R. p. 299, lines 15-19.)

Counsel for the Plaintiff then again tried to correct the false assertions: “Your Honor, I’m not sure Mr. Patterson is looking at the fact that there are two P&Ls for each year that were given and produced this morning and I certainly acknowledge he’s only had it a short time. One is marked campground the other is marked Turner’s Marina. That is the one, Your Honor, Turner’s Marina, that encompasses all of the other businesses that we fought and do not still believe, as we sit here today, is relevant in this lawsuit or is reasonably calculated to lead to the discovery of admissible evidence. But to refocus, again, Your Honor,

everything that was submitted to Judge Sprouse has been produced and that's all I know that I can do, Judge.” (R. p. 299, lines 20-25, and p. 300, lines 1-7)

Following arguments of counsel, the Court instructed Defendants' counsel to prepare a draft Order for the Court's consideration. On December 29, 2023, the Defendants submitted a proposed Order to the Court. On January 5, 2024, Plaintiff's counsel filed its Memorandum In Objection To Defendants' Proposed Order and provided the Court with a copy. (R. pp. 29-35) On January 11, 2024, Judge Goodstein signed and filed her Order Granting Defendants Hyde and Caput's Motions To Hold Plaintiff In Contempt Of Court, from which the Plaintiff now appeals. (R. pp. 4-14) On January 22, 2024, the Plaintiff filed its Notice of Appeal.

STANDARD OF REVIEW ON APPEAL

A decision on contempt rests generally within the sound discretion of the trial court, and this appellate Court should not disturb such a decision unless it is based on a finding without evidentiary support or where the trial court has abused its discretion. Garris v. McDuffie, 288 S.C. 637, 344 S.E.2d 186 (Ct. App. 1986); DiMarco v. DiMarco, 393 S.C. 604, 608, 713 S.E.2d 631, 633 (2011). As an equitable matter, this Court should review the issue of the exercise of discretion de novo. *See* Chisholm v. Chisholm, 396 S.C. 507, 510, 722 S.E.2d 222, 223 (2012) (reviewing the family court's discretion in awarding attorney's fees under a de novo standard of review). Thus, the trial Court's contempt order should be reversed if this Court finds that it was without evidentiary support or if this Court determines there was an abuse of discretion.

ARGUMENT

- A. THE CIRCUIT COURT ERRED IN HOLDING PLAINTIFF TURNER'S MARINA LLC IN CRIMINAL CONTEMPT OF COURT AFTER RECEIVING NOTICE THAT ALL OF THE DOCUMENTS THAT HAD BEEN EARLIER ORDERED PRODUCED BY JUDGE SPROUSE, HAD IN FACT, BEEN PRODUCED BY THE PLAINTIFF TO THE DEFENDANTS PRIOR TO THE BEGINNING OF THE HEARING.

A judgment of contempt should be imposed sparingly. Garris v. McDuffie, 288 S.C. 637, 344 S.E.2d 186 (Ct. App. 1986). Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Brasington v. Shannon, 288 S.C. 183, 341 S.E.2d 130 (1986), citing Moseley v. Mosier, 279 S.C. 348, 306 S.E.2d 624 (1983). The Circuit Court

herein erred in finding the Plaintiff in willful contempt of court from November 6, 2023 to December 8, 2023, because by the time of the December 8, 2023 hearing, the Plaintiff was not intentionally failing to timely produce the documents that had been reviewed *in-camera* by Judge Sprouse and ordered produced. While the imposition of reasonable sanctions under S.C.R.Civ.P. 37 would have been appropriate on December 8, 2023, an order of contempt was inappropriate, especially one as here, that was criminal in nature.

Contempt in South Carolina falls into two distinct categories: civil and criminal. The determining factor in determining whether contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. Poston v. Poston, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. Poston, 331 S.C. at 11, 502 S.E.2d at 88. A penalty for criminal contempt is unconditional and punitive in nature. *Id.* The contemnor has no power to undo or remedy what has been done and cannot shorten the term by an affirmative act. *Id.* at 11-12, 502 S.E.2d at 88-89.

As Judge Goodstein herself acknowledged, Turner's Marina initially refused to produce the highly confidential financial documents on November 6, 2023, because it was setting up a position "where they can appeal the order that financial documents be provided." (R. p. 270, lines 18-19) "To challenge the specific rulings of [a] discovery order..., the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986). However, after hearing from Judge Goodstein on Wednesday, December 6, 2023, as to her general thoughts on refusal to follow

court orders and contempt, Turner's Marina and Neil Turner elected to comply with Judge Sprouse's Order and produced the documents prior to the hearing on December 8, 2023.

Judge Goodstein's contempt Order herein was clearly for criminal contempt. It was manifestly to preserve the Court's authority and punish Turner's Marina for its earlier disobedience of Judge Sprouse's Order. Judge Goodstein noted during the hearing: "You know, violations for discovery abuse can result in somebody going to the hoosegow, to jail...." (R. p. 306, lines 21-22) She noted later "Needless to say, typically a judge is a little higher about their order being violated than the order of another judge, although we all take it extraordinarily serious when another judge's order has failed to comply with [sic]. But it stings a little bit more and is a little more personal when it's your order." (R. p. 308, lines 23-25 and p. 309, lines 1-3) Thus, the burden of proof as to whether Turner's Marina was in contempt at 9:30 a.m. on December 8, 2023 was beyond a reasonable doubt. Poston, *id.* at 113, 502 S.E.2d at 89. Given the good-faith dispute Turner's Marina had over the ordered production of its confidential financial records and federal income tax returns, that are clearly irrelevant to the issues herein but which had been produced by the time of the hearing, there was no evidence before the Circuit Court warranting the imposition of criminal contempt. The documents had been produced; there was no willful act "with bad purpose either to disobey or disregard the law." State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). The Court's order requiring the payment of \$5,000 by the Plaintiff for future depositions was clearly intended to punish Turner's Marina. The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. State v. Bevilacqua, *id.*

When the motions were filed, the Defendants were clearly seeking the imposition of a civil contempt order to coerce the Plaintiff into complying with Judge Sprouse's Order. "The purpose of civil contempt 'is to coerce the defendant' to do the thing required by the order for the benefit of the complainant." Poston, 331 S.C. 111, 502 S.E.2d at 88, quoting Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 441 (1911). The sanctions for civil contempt are conditioned on compliance with the court's order. Poston, 331 S.C. at 112, 502 S.E.2d at 89. The conditional nature of the punishment allows the contemnor to discharge himself of the sentence by doing what he had previously refused to do. *Id.*, quoting Hicks v. Feiock, 485 U.S. 624, 633 (1988). In this case, once the Plaintiff produced the documents prior to the hearing, there was no more basis for an order of civil contempt to coerce Turner's Marina into compliance. At that point, the Circuit Court could have and should have, relied upon S.C.R.Civ.P. 37 to implement reasonable, appropriate sanctions to cover the costs incurred by the Defendants in seeking the motions between November 6, 2023 and December 8, 2023. 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 punishment but an indemnification to the party who instituted the contempt proceeding. Poston, *id.* at 114. Recovery of attorney's fees for the necessity of the Motions for Contempt would be appropriate.

B. THE CIRCUIT COURT ERRED IN CONSIDERING AND ACTING UPON AN ALLEGATION MADE BY THE DEFENDANTS' COUNSEL AT ORAL ARGUMENT ASSERTING THAT THE PLAINTIFF HAD NOT PRODUCED ALL OF THE DOCUMENTS REQUIRED IN JUDGE SPROUSE'S ORDER.

As is noted above in the Statement of the Case and in its first Argument, the Hydes' counsel repeatedly made unsubstantiated claims to the Court during the December 8, 2023 hearing that the Plaintiff had failed to produce all of the documents required by Judge Sprouse's Order of July 3, 2023. Although the Court was assured by Plaintiff's counsel that all of the documents reviewed by Judge Sprouse and ordered produced, had in fact been produced that morning, the Court's Order of January 11, 2024 erroneously embraced this "dispute" and ordered Turner's Marina to punitively pay to the Defendants' counsel, the sum of \$5,000 within ten (10) days to fund 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. See Judge Goodstein's January 11, 2024. (R. pp. 11-12, par. (ii))

The purported issue of whether or not the Plaintiff had provided Judge Sprouse with the correct documents for his *in-camera* review, was not raised in either of the motions and was not appropriately before the Court on December 8, 2023. Due process requires that a litigant be placed on notice of the issues which the court will consider to afford the litigant an opportunity to be heard. Abbot v. Gore, 304 S.C. 116, 119, 403 S.E.2d 154, 156 (Ct. App. 1991). The Plaintiff and its counsel were unprepared for such baseless allegations, and that objection was made formally by the filing of the Plaintiff's Memorandum In Objection To Defendants' Proposed Order, as was filed January 5, 2024 (R. pp. 29-25), six days prior to the Court signing and filing Mr. Patterson's proposed Order on January 11, 2024. (It should also be noted that the Order itself, as footnote 2 on page 3, states that the Court was "unsure" of this issue, but despite that caveat, the Order requires the punitive payment by the Plaintiff

of \$5,000 into a fund to finance the Defendants' future depositions based, at best, on speculative conjecture.) (R. p. 6) (Again, the motions giving rise to the Court's Order complained solely of the Plaintiff's refusal to produce the documents that were reviewed *in camera* by Judge Sprouse, and ordered produced. To the best of the Plaintiff's knowledge, no one—including the Defendants' counsel – disputes that each and every document reviewed by Judge Sprouse, and ordered produced, was produced in full on December 8, 2023 prior to the hearing.)

C. THE COURT ERRED IN ORDERING “AS A SANCTION OF ITS CONTEMPT,” THE PAYMENT BY THE PLAINTIFF OF \$5,000 TO FUND THE FUTURE 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.”

The Hyde Defendants' March 6, 2023 Request for Production at issue demanded production of “A copy of the income statements or profit and loss statements of the Plaintiff from 2018 to the present.” (R. p. 518, no. 12) The Plaintiff objected to the request on May 9, 2023, stating that “This request seeks the production of confidential financial information that has no relevance to this action and is not reasonably calculated to lead to the discovery of admissible evidence.” (R. p. 513, no. 12) Judge Sprouse's Order dated June 6, 2023 (also drafted by Mr. Patterson), states: “As to the requested financial statements and tax returns, Plaintiff shall within ten (10) days of this Order provide a full and complete copy of the

requested documents to the Court in an envelope marked ‘confidential.’ The Court will complete an in-camera review of said documents and determine if any of the documents should be produced to Defendant Hyde. Should the Court determine that any of the documents reviewed in camera are discoverable, the Court will advise the parties of which, if any, of the documents are to be copied and produced to the Defendants.” (R. pp. 22-23)

Turner’s Marina’s “income statements or profit and loss statements of the Plaintiff from 2018 to the present” were then delivered to Judge Sprouse on June 16, 2023 in the form of:

- a. Turner’s Marina – Campground Profit & Loss, January through December 2018;
- b. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December 2018;
- c. Turner’s Marina – Campground Profit & Loss, January through December 2019;
- d. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December 2019;
- e. Turner’s Marina – Campground Profit & Loss, January through December 2020;
- f. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December 2020;
- g. Turner’s Marina – Campground Profit & Loss, January through December 2021;
- h. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December, 2021;
- i. Turner’s Marina – Campground Profit & Loss, January through December 2022;
- j. Turner’s Marina – Hilton Head Harbor Profit & Loss, January through December, 2022;
- k. Turner’s Marina LLC’s Federal Income Tax Return for 2018;

- l. Turner's Marina LLC's Federal Income Tax Return for 2019;
- m. Turner's Marina LLC's Federal Income Tax for 2020; and,
- n. Turner's Marina LLC's Federal Income Tax for 2021. (The Federal Tax Return for 2022 had not been filed at that time.)

(R. pp. 340-487)

A copy of the June 16, 2023 transmittal letter identifying the documents being produced to Judge Sprouse for *in camera* review was delivered to the Defendants' counsel contemporaneously with its delivery to Judge Sprouse, and between that date and December 8, 2023 at the hearing before Judge Goodstein, neither of the Defendants' counsel raised any issue or complained in any way about the scope of the documents that were delivered for the Judge's *in-camera* review.

On July 3, 2023, Judge Sprouse filed his Form 4 Order granting the Motion to Compel and directing that the "Plaintiff shall provide the submitted documents to the Defendant within ten (10) days of this Order." (R. p. 18) At that moment on July 3, 2023, any issue of whether the Plaintiff had met the somewhat amorphous requirements of the Defendants' description of "[a] copy of the income statements or profit and loss statements of the Plaintiff from 2018 to the present" was addressed and subsumed by Judge Sprouse's order wherein he confirmed his *in-camera* review of the submitted documents, opined that the documents "are reasonably calculated to lead to the discovery of admissible evidence," and ordered them produced. Following the Plaintiff's motion to alter or amend that Order, Judge Sprouse on October 26, 2023, again affirmed his finding that the submitted documents should be produced, but cautioned that "The parties are aware that discoverability does not necessarily

mean admissibility. (R. p. 15) This order is without prejudice to any motions/objections regarding the admissibility of the materials submitted. These questions are in the sole discretion of the trial judge. The Court notes that these financial materials are sensitive. Accordingly, the materials submitted shall not be disseminated to third parties.” (R. p. 15)

There has never been any good-faith, fact-based assertion made that the documents produced by Turner’s Marina on June 16, 2023 to Judge Sprouse and to the Defendants on December 7, 2023, were in any way lacking as the documents then in Turner’s Marina’s custody, control or possession, responding to a request for “the income statements or the profit and loss statements of the Plaintiff from 2018 to the present.” If the Defendants had any real concerns about whether the documents submitted to Judge Sprouse had complied with the wording in the Request for Production, they could have and should have asked Neil Turner during his six- and one-half hour deposition taken on July 11, 2023.

The Order requiring Turner’s Marina to pay \$5,000 for the future depositions was unwarranted and unsupported by the evidence, and can only be seen as another example of the Circuit Court’s erroneous imposition of criminal contempt sanctions against Turner’s Marina without evidentiary support beyond a reasonable doubt.

D. THE CIRCUIT COURT ERRED IN ORDERING THE PLAINTIFF TO PAY ATTORNEY’S FEES TO THE DEFENDANTS FOR TIME SPENT PRIOR TO THE FILINGS OF THE MOTIONS TO HOLD THE PLAINTIFF IN CONTEMPT.

As is noted above and well-briefed earlier, the issue of whether or not the highly confidential financial documents of Turner’s Marina LLC (as opposed to the relevant

financial documents regarding the campground where Mr. and Mrs. Hyde resided in contravention to the Declaration of Covenants), was a good faith dispute between the parties and their counsel. Judge Sprouse's two orders, neither of which included any attorney's fees to the Defendants, make clear that Judge Sprouse understood and appreciated Turner's Marina's good-faith position, but simply felt the broad breadth of discovery and the Confidentially Order protected Turner's Marina appropriately. Although Turner's Marina did not, and does not agree with the Court Orders, it produced the documents after the Defendants filed their motions for contempt. The appropriate sanctions based upon the evidence before the Court would be an award of attorney's fees from November 6, 2023 forward until Judge Goodstein's Order of January 11, 2024.

CONCLUSION

For the foregoing reasons, those portions of the Circuit Court Order of January 11, 2024 holding the Plaintiff in criminal contempt, requiring the Plaintiff to fund \$5,000 for future depositions of unknown individuals, and requiring the Plaintiff to pay the Defendants' attorney's fees prior to November 6, 2023, should be reversed.

Respectfully submitted,

Law Office of Thomas C. Taylor, LLC

s/Thomas C. Taylor

Thomas C. Taylor

SC Bar No.: 5499

P.O. Box 1808

Bluffton, SC 29910-1808

Phone: 843-785-5050

Fax: 843-738-4502

Email: tom@thomastaylorlaw.com

March 26, 2025
Bluffton, South Carolina

ATTORNEY FOR PLAINTIFF
TURNER'S MARINA LLC

