STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF GEORGETOWN	)	**CIVIL ACTION NO.: 2022-CP-22-00739**
RYAN COBB, MALON COBB, COBB TRUCKING, LLC, and BRANDY COBB,	)	
PLAINTIFFS,	)	
vs.	)	**ORDER**
DAVID ALAN BIGELOW, HERITAGE HAULING, INC.; BOGGS CONTRACTING, INC.; and SAFE SHIELD, LLC,	)	
DEFENDANTS.	)	

THIS MATTER came before the Court on Plaintiffs' Motion for Sanctions Against Defendant Boggs Contracting Inc. for Abuse of Discovery.

THE MOTION was filed on January 2, 2025, and incorporated a memorandum in support detailing Boggs Contracting Inc.'s ("Boggs") discovery abuses and requested, *inter alia*, that the Court strike Boggs' Answer to Plaintiffs' Amended Complaint. On February 11, 2025, Boggs filed a Response in Opposition to Plaintiff's Motion for Sanctions conceding many of the discovery abuses alleged by the Plaintiffs, but contending that they were unintentional.

THIS MATTER came before the Court for a hearing on February 20, 2025. The Court, having thoroughly considered the Motion, the memoranda in support of and in opposition to the Motion, the parties' exhibits, the arguments of counsel at the hearing, the applicable law, and other appropriate matters of record, finds and concludes that the Motion should be GRANTED for the reasons and in the manner set forth below.

FINDINGS OF FACT

This case arises out of a February 3, 2022 collision that severely injured Plaintiffs. The motion before the Court arises out of alleged discovery abuses committed by Defendant Boggs.

For two years, Boggs did not produce discoverable information and twice stated under oath that documents did not exist that Plaintiffs since discovered do exist.

On February 3, 2022, Plaintiffs Ryan and Malon Cobb were traveling in a commercial delivery truck. They stopped in paving construction traffic on US-17 Alternate near Andrews, South Carolina. Boggs managed the paving project. The paving project necessitated a one-lane traffic pattern. Defendant David Bigelow drove a dump truck owned by Defendant Heritage Hauling and working for Boggs to deliver materials to the paving project. Bigelow did not stop when he approached the construction traffic but, instead, ran into the back of Plaintiffs' vehicle and pushed them off the road and into a ditch. Plaintiffs suffered severe injuries, including a partial leg amputation and brain injury.

Part of Plaintiffs' theory of liability in the case is that the construction warning signs did not comply with the traffic control safety plan because, on the dash cam footage of the dump truck that hit Plaintiffs, two signs appear face down on the side of the road. (Exhs. 20-21 to Pl. Memo.). The present dispute before the Court arises out of emails (related to the warning signs) that Boggs did not produce and stated under oath did not exist.

On August 30, 2022, Plaintiffs sued Boggs, Bigelow, and Heritage Hauling, and then proceeded with discovery. (Cmplt.). A pattern ensued in which Boggs repeatedly did not respond at all or did not fully respond to discovery.

On December 15, 2022, Plaintiff sent Boggs a First Set of Requests for Production. (Exh. 6 to Pl. Memo.). Relevant to the sanctions motion, Plaintiffs made the following routine request:

> 15. Any and all email messages, text messages, or messages of any kind the Defendant sent to or received from anyone regarding this motor vehicle collision.

(Exh. 6 p. 5). Boggs did not respond at all to the First Set of Requests for Production. On April 4, 2023, Plaintiffs filed a motion to compel. (Exh. 7 to Pl. Memo.). The motion was set on the

May 11, 2023 motion roster. (Public Index). On May 10—the day before the hearing—Boggs sent some discovery responses to Plaintiffs. (Exh. 8 to Pl. Memo.). However, Boggs produced nothing in response to Request 15 and stated a boilerplate objection.

> Defendant objects to this Request to the extent that it is irrelevant, overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that it seeks work product, attorney-client privileged communications or communications prepared in anticipation of litigation. Boggs reserves the right to supplement this Response as litigation and discovery of this matter are ongoing.

(Exh. 8 p. 7).

On September 1, 2023, Plaintiffs sent a Third Set of Requests for Production to Boggs. (Exh. 9 to Pl. Memo.). It included the following relevant request:

> 42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.

(Exh. 9 p. 6). Again, Boggs did not produce any documents in response to this request and made a boilerplate objection with no indication of whether any such documents existed.

> Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

(Exh. 10 to Pl. Memo. p. 8).

On December 4, 2023, Plaintiffs filed a second motion to compel against Boggs. (Exh. 11 to Pl. Memo.). The motion was set on the February 2024 roster for a hearing. (Public Index). On January 31, counsel for Plaintiffs and Boggs discussed the pending motion. Plaintiffs agreed to withdraw the motion based on the promise that Boggs would provide a written verification of its responses. (Exh. 15 to Pl. Memo.).

The following day, on February 1, 2024, Boggs served its Supplemental Responses to

Plaintiffs' Third Requests for Production. (Exh. 12 to Pl. Memo.). The supplemental response to Request 42 states:

> SUPPLEMENTAL RESPONSE: Based on Defendants' attorneys' conference with Plaintiffs' attorneys on January 31, 2024, Defendants understand that Plaintiffs are not seeking any material protected by the privileges outlined above. Additionally, Defendants agree to withdraw their objection that Request No.: 22[1] is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding the remaining objections asserted herein, **no materials responsive to this Request exist**.
>
> This Defendant reserves the right to supplement this Response as additional information becomes available during the course of discovery.

(Exh. 12 p. 4) (emphasis added). Just after Boggs' counsel emailed the supplemental responses, he sent another email to Plaintiffs' counsel stating: "In response to our conference, we will provide a verification to these responses signed by a representative of Boggs." (Exh. 13 to Pl. Memo.). Two weeks later, on February 16, 2024, Boggs still had not provided a verification. (Exh. 14 to Pl. Memo.).

On March 7, 2024, Plaintiffs filed a third motion to compel against Boggs. (Exh. 15 to Pl. Memo.). One basis for the motion was Boggs' failure to provide the promised verification. Plaintiffs explained that counsel was preparing for Boggs' Rule 30(b)(6) deposition and needed the verification or complete responses before that deposition. (Exh. 15 pp. 5-6). Plaintiffs requested sanctions of attorney's fees and an order striking Boggs' answer. (Exh. 15 p. 10).

The motion was set on the April 18, 2024 roster for a hearing. (Public Index). On April 17, 2024—the day before the hearing—Boggs provided a verification. (Exh. 16 to Pl. Memo.). The verification of Boggs' discovery responses was signed by Kevin J. Hayes, Jr., as an "officer of Boggs Contracting." *Id.*

Plaintiffs took a Rule 30(b)(6) deposition of Mr. Hayes on April 24, 2024. (Exh. 17 to Pl.

[1] The Court presumes this is a typo and Boggs meant to say "Request No.: 42."

Memo.). He testified under oath that the verification is accurate. (Exh. 17). He testified that Boggs' search for responsive documents consisted of him searching his own emails and asking a few other Boggs employees to search their emails. *Id.* He testified that two emails produced by Boggs were the only responsive documents. *Id.*

Over six months later, On December 4, 2024, new counsel appeared for Boggs. (Mot. & Order for Substitution). On December 13, 2024, Plaintiffs took the deposition of Christopher Bourque, a representative of the South Carolina Department of Transportation ("SCDOT"). During that deposition, Boggs' new counsel asked Mr. Bourque questions about an email between Mr. Bourque and Matt Guillot—a Boggs employee that worked on the subject construction site. The email had not been produced to Plaintiffs.

The subject line of the email is "County Line Road Accident – 2/3/22" and it is a discussion between SCDOT and Boggs about whether the traffic control plan was in order at the time of the accident. (Exh. 18 to Pl. Memo.). Boggs concedes that the email should have been produced in discovery. (Boggs Memo.).

This discovery of the unproduced email resulted in Boggs then producing at least 133 responsive documents. (Boggs' Memo. in Opp. pp. 6-7). The production included an investigative report of a forensic engineering company with accompanying video and photos taken the day after the collision. This is the first time in over two years of litigation that Plaintiffs learned of the investigation.

On January 2, 2025, Plaintiffs filed a motion for sanctions against Boggs asking, *inter alia*, for the Court to strike Boggs' answer. Boggs filed a response in opposition arguing that its discovery failures were unintentional, Plaintiffs did not suffer prejudice, prior defense counsel is at fault, and Rule 37 does not apply because Boggs did not violate a court order. (Resp. in Opp.).

Boggs filed a second affidavit of Kevin J. Hayes, Jr., along with its memorandum in opposition to the motion. (2nd Aff. of Hayes). In this affidavit, Mr. Hayes changes his testimony about the existing responsive discovery and blames Boggs' prior defense counsel.

Mr. Hayes stated that, after Plaintiffs filed the motion for sanctions, he learned that an employee of its management services affiliate provided documents related to the collision to Boggs' insurer in September 2022. (2nd Aff. of Hayes pp. 1-2). The documents included an investigation report done the day after the collision. The report included the email discovered during Mr. Bourque's deposition, as well as photos, video, and other documents. The employee left the company a few weeks later and, according to Hayes, no one else at Boggs besides that one person had knowledge of the investigative report. Yet, Hayes states that he is the most knowledgeable person at Boggs about the litigation.

LEGAL STANDARD

"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).

ANALYSIS

After much deliberation, and for the reasons explained below, the Court grants Plaintiffs' motion for sanctions and strikes Boggs' answer. This decision is not made lightly and is made with a full understanding of its ramifications in this case. Central to the Court's ruling is its belief that Boggs' conduct is more than just a discovery violation—it includes the use of a false affidavit and false testimony under oath at a deposition. Plaintiffs made every attempt to obtain discoverable information and then to receive a satisfactory assurance that it did not exist. Boggs twice gave Plaintiffs false assurances while under oath. This thwarts the judicial process and upends the purposes of the discovery rules.

"Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). "[C]ourts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006) (holding in part that "[d]ismissal of a complaint is a proper sanction against a complainant who submits fraudulent documents to the court").

Boggs' conduct warrants a sanction. It withheld discoverable, relevant, material evidence for two years. Plaintiffs filed three motions to compel seeking discovery responses. Because of their disbelief that a corporation could only have two emails about a major collision at its worksite, Plaintiffs sought a verification from Boggs and questioned Boggs in its Rule 30(b)(6) deposition. Boggs gave a false affirmation and false testimony under oath. This conduct was intentional and in bad faith. The conduct is sanctionable.

Boggs argues that a sanction is not warranted because its failure to disclose was unintentional—blaming its prior counsel and a departing employee who sent the investigation information and other documents to the insurance company. The Court does not accept these arguments. The Court finds the failure to disclose was intentional. Boggs knew that Plaintiffs wanted all communications and information about the accident yet, Boggs twice stated it had (almost) none. It made these statements *under oath*. The Court finds it almost inconceivable that there would be only two corporate emails that discuss an event such as this accident. Mr. Hayes states that he is the person most knowledgeable at Boggs about this litigation. Yet, he omits any knowledge of the documents regarding the investigation that Boggs ordered the day after the accident. This omission is telling, especially given that it was seemingly simple for him to find the documents after Plaintiffs filed the motion for sanctions. Further, his affidavit states that no

one affiliated with Boggs had knowledge of the information sent to the insurance carrier. The record belies this assertion. Matt Guillot is the Boggs employee who communicated with Mr. Bourque on the missing email that started this dispute. Mr. Hayes testified in the Boggs Rule 30(b)(6) deposition that he asked Mr. Guillot for responsive documents. (Exh. 17 to Pl. Memo., depo. p. 98). Mr. Guillot certainly had knowledge of his own email and that it was not produced.

As to the former employee, that employee's knowledge of the documents sent to the insurer is imputed to Boggs. *Palmer v. Sovereign Camp, Woodmen of the World*, 197 S.C. 379, 389, 15 S.E.2d 655, 660 (1941) (stating knowledge of agent on matters within agent's scope of duty is imputable to the principal, and the principal is bound by the knowledge of such agent); 18B Am. Jur. 2d *Corporations* § 1442 (2004) ("A corporation's knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment.").

As to the prior counsel, the Court's ruling in no way touches upon the actions of any of the lawyers involved. Boggs is the one who provided the verification and Rule 30(b)(6) testimony. Further, Boggs' attempt to place blame on its attorney is not legally supported because "the acts of an attorney are directly attributable and binding on the client." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 200, 511 S.E.2d 716, 719 (Ct. App. 1999).

Having decided that a sanction is warranted, the Court turns to the particular sanction—striking Boggs' answer. "The selection of a sanction for discovery violations is within the trial court's discretion." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198511 S.E.2d 716, 718 (Ct. App. 1999). While the Court does not grant a sanction under Rule 37, SCRCP, the law regarding an appropriate choice of sanction informs the Court's decision.

"[T]he sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case." *Griffin Grading*, 334 S.C. at 198, 511 S.E.2d at 719. "In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice." *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997).

As to the nature of the discovery requests—they were aimed at highly relevant information of Boggs' communications regarding the collision.

As to the discovery posture of the case—Plaintiffs spent two years of litigation without the information and even without knowledge that Boggs conducted an engineering investigation the day after the collision. Indeed, Plaintiffs spent two years believing no such evidence existed based on Boggs' representations. This affected questions asked at depositions, including Boggs' Rule 30(b)(6) witnesses, as well as trial preparation.

As to willfulness—the Court discussed above its finding that Boggs' conduct is intentional and willful. Boggs stated in its discovery responses, in a verification of those responses, and in its Rule 30(b)(6) deposition that responsive documents did not exist. In fact, they did exist, and that was well within Boggs' knowledge. Here, where Boggs signed a verification and then gave testimony under oath about a particular fact within its knowledge, and gave false information, the Court finds it is willful and in disregard of Plaintiffs' discovery rights.

As to prejudice, the Court finds Plaintiffs suffered prejudice because of Boggs' conduct. "The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required." *Downey v.*

Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). Here, prejudice is not only presumed but is, in fact, proven. Plaintiffs were denied discoverable, relevant information for two years of litigation—including Boggs' accident investigation done the day after the collision. Plaintiffs took a Rule 30(b)(6) deposition of Boggs and accepted false testimony based on a false verification. Compounding these problems is that Boggs cannot be believed when it says that everything responsive has been produced.

Boggs cannot show a lack of prejudice. It argues that its conduct was not intentional, and that the missing discovery has now been provided with "ample time to fully prepare for trial." (Boggs' Memo. in Opp. pp. 14-16). The Court disagrees that this rebuts a finding of prejudice.[2] As explained throughout this Order, Boggs' conduct was intentional. The case is currently on a June 16, 2025 trial roster. That there is time before trial does not negate the lost opportunities in discovery caused by Boggs' untruthfulness. Plaintiffs specifically told Boggs they wanted the verification to prepare for its Rule 30(b)(6) deposition. (Exh. 15 to Pl. Memo. pp. 5-6). Plaintiffs then deposed Boggs' Rule 30(b)(6) witness without the information after receiving Boggs' assurances that Plaintiffs had all discoverable, existing information. Plaintiffs deposed an additional 30(b)(6) witness, Matt Guillot (the Boggs' employee who wrote a withheld email), without the information. Guillot was questioned about the traffic control plan and the signs on the day of the accident. (Exh. 21 to Pl. Memo.). The newly-produced emails and investigation

[2] Boggs mistakenly relies on *Jamison v. Ford Motor Co.*, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007), as supporting a finding of no prejudice in this situation. (Boggs' Memo. in Opp. pp. 15-16). In *Jamison*, the Court found "Ford complied with the rules of discovery" where "the record fail[ed] to substantiate that Ford either knew about or possessed the evidence in question when initially responding to Jamison's discovery requests." *Id.* at 271, 644 S.E.2d at 767. In contrast, in this case Boggs had direct knowledge of the investigation that it ordered, that was within its possession, and that it sent to the insurance carrier. Further, it undeniably failed to comply with the rules of discovery numerous times.

materials were highly relevant to both of those depositions. "The entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *Samples v. Mitchell*, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997) (internal quotation marks omitted).[3] Boggs essentially argues "no harm, no foul"—that because Plaintiffs now have the information and trial is still weeks away, they can simply produce the documents and avoid any consequences. That is contrary to the law cited above. The Court in its discretion finds that Plaintiffs were prejudiced by Boggs' conduct.

The Court exercises its discretion in weighing all four factors and finds that all four are present in this case and weigh in favor of granting Plaintiffs' motion and striking Boggs' answer.

"Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." *Samples v. Mitchell*, 329 S.C. 105, 114, 495 S.E.2d 213, 217 (Ct. App. 1997). For a sanction that amounts to default, courts generally require "some element of bad faith, willfulness, or callous disregard of the rights of other litigants." *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (internal quotation marks omitted). As explained above, Boggs' conduct amounts to bad faith, willfulness, and a disregard of the rights of Plaintiffs to fair and honest discovery. It would be overly lenient to impose no sanction, as Boggs asks the Court to do. After considering numerous sanctions, the Court, in its discretion, believes that striking Boggs' answer is an appropriate sanction supported by the law and evidence in this situation.

[3] "The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. . . . In this respect, the discovery process is designed to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *In re Anonymous Mbr. of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (internal quotation marks and citations omitted).

The Court is fully aware of the severity and effect of the sanction but believes that anything less would "encourage, rather than discourage, noncompliance with the Rules" and the oath to testify truthfully in sworn verifications and depositions. *Downey v. Dixon*, 294 S.C. 42, 45, 46 n.2, 362 S.E.2d 317, 318 n.2 (Ct. App. 1987). The Court also considered the effect that striking Boggs' Answer may have on Boggs' co-defendants and finds that, under the allegations in the Complaint, striking Boggs' answer will have no prejudicial effect on the remaining defendants' ability to defend themselves.

Boggs argues that striking its answer is a "nuclear-level" sanction. (Memo. in Opp. p. 12). The Court disagrees. "[W]hatever sanction is imposed should serve to protect the rights of discovery provided by the Rules" and should not be so minimal as to "encourage, rather than discourage, noncompliance with the Rules." *Downey v. Dixon*, 294 S.C. 42, 45, 46 n.2, 362 S.E.2d 317, 318 n.2 (Ct. App. 1987). Boggs consistently provided not only incomplete but, more importantly, false responses to discovery. When Plaintiffs' counsel focused in on the absence of responsive documents, which should have prompted a thorough and detailed search, Boggs doubled down on its denial of the documents' existence. It signed a verification and provided Rule 30(b)(6) testimony that is false. A sanction striking Boggs' answer is not "nuclear-level" but, instead, is "rifle-shot" aimed at the specific misconduct of the party. *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 441. Any lesser sanction would encourage, rather than discourage, noncompliance with the Rules and would make a verification a meaningless discovery tool.

Boggs argues that because it did not violate a discovery order, Rule 37, SCRCP, does not allow for sanctions in this situation. Its argument is misplaced and disingenuous. First, the Court grants sanctions using its inherent powers and not based on Rule 37. Sanctions are permissible for discovery violations outside of Rule 37. *See, e.g.*, *Gathers v. S.C. Elec. & Gas Co.*, 311 S.C. 81,

427 S.E.2d 687, 689 (Ct. App. 1993) (discussing an adverse jury charge as a sanction for destruction or loss of evidence). Second, Boggs' argument is disingenuous because part of its bad faith conduct was aimed at avoiding entry of a court order. Plaintiffs filed three motions to compel against Boggs. Each time Boggs avoided a court order with an eleventh-hour response. Importantly, all of these responses were incomplete, dishonest, and nonresponsive as to the discovery at issue. Because of these responses, Plaintiffs believed there was no basis for entry of a court order. If Boggs had been honest in its responses, Plaintiffs could have obtained a court order. Instead, Boggs wants to restrict Plaintiffs' remedies because of its conduct intended to avoid a court order. Boggs cannot avoid a court order under false pretenses and then seek to avoid sanctions because there is no court order.

The Court recognizes the law regarding a sanction to strike a defendant's answer and has not taken the decision to do so lightly. In this case, however, the Court concludes that this sanction is fully warranted. This decision is in no way a comment on the merits of this case, nor upon the actions of any of the lawyers that were, or are, involved in this case. The Court's decision is rooted in its sound discretion and based upon the applicable law, the conduct of the corporate defendant, Boggs, and the resulting prejudice to Plaintiffs.

THEREFORE, IT IS ORDERED that the Plaintiffs' Motion for Sanctions Against Defendant Boggs Contracting Inc. for Discovery Abuse is GRANTED, and Bogg's Contracting Inc.'s Answer to Plaintiff's Amended Complaint is hereby STRICKEN.

SO ORDERED, this the ____ day of April, 2025.

_____

The Honorable David P. Caraker, Jr.
South Carolina Circuit Court Judge

Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Other

IT IS SO ORDERED

s/ David P. Caraker, Jr.