

Defendants brought their Motion for Sanctions after Plaintiffs refused to comply with the agreement they put on the record at the February 20, 2025, hearing on Defendants' first Rule to Show Cause and requested that the Court find Plaintiff's in contempt and grant sanctions for Plaintiffs' repeated non-compliance. The Court, having reviewed and considered the case history, current posture, all materials submitted, and oral arguments finds that the Plaintiffs have engaged in a deliberate pattern of discovery abuse, engaged in gross indifference to the discovery process and the rights of the party whom they sued, and willfully failed to follow this Court's July 30, 2024, and February 25, 2025, Orders. For these reasons, as set out in detail below, the Court grants Defendants' Motion for Sanctions pursuant to Rule 37 of the South Carolina Rules of Civil Procedure and hereby strikes all pleadings of the Plaintiffs.

FACTUAL HISTORY

The Court makes the following findings of fact in the issuance of its order. This case was initiated by Plaintiffs filing a Summons and Complaint in the Georgetown Court of Common Pleas on August 3, 2022. Plaintiffs filed an Amended Summons and Complaint on August 10, 2022. Plaintiffs' Complaint consisted of two causes of action for (1) Breach of Contract and (2) Breach of Contract Accompanied by a Fraudulent Act. Plaintiffs alleged that, sometime on or around December 2021, Defendants breached the Partnership Agreement entered into by the parties on March 24, 2018, and that Plaintiffs were entitled to Fifty Percent (50%) of the profits received by Defendants since the alleged breach of the Partnership Agreement.

Defendants were served with the Amended Summons and Complaint on January 17, 2023. A Consent Motion was filed by the parties on February 6, 2023, extending Defendants' time to file responsive pleadings until March 17, 2023.

On March 15, 2023, Defendants issued to subpoenas Marshall Looper and Still Water

Financial, the the former bookkeeper for Abundance Home Care hired by Plaintiff Henderson and also issued a subpoena to Heart of the Carolinas, a third-party entity owned by Plaintiff Henderson, based on accounts belonging to Heart of the Carolinas being listed on documents filed with banks and used to obtain SBA and PPP loans.

Defendants filed their Answer and Counterclaims on March 16, 2023. Defendants' counterclaims alleged that Plaintiffs had breached the Partnership Agreement by obtaining fraudulent loans without authorization, failing to make company books and accounts available, failing to account for private profits, commingling company finances with other individuals and/or entities, and engaging in business ventures that directly conflicted with Plaintiffs' status as a partner. Defendants' counterclaims consisted of nine (9) causes of action: (1) Breach of Contract/Breach of Contract Accompanied by Fraudulent Act; (2) Breach of Duty of Good Faith and Fair Dealing; (3) Breach of Fiduciary Duty; (4) Breach of Contract – Breach of Duty of Loyalty; (5) Conversion; (6) Misrepresentation/Negligent Misrepresentation; (7) Fraud; (8) Unjust Enrichment; and (9) Accounting/Accounting of Private Profits.

Defendants' initial discovery requests were served on Plaintiffs' counsel on March 16, 2023, the same day Defendants filed their Answer and Counterclaims.

Plaintiffs provided their initial discovery responses to Defendants on June 22, 2023. On February 22, 2024, counsel for Defendants sent a deficiency letter to Plaintiffs' counsel detailing deficient interrogatory responses and additional production that was needed from Plaintiffs. Plaintiffs provided supplemental discovery on March 20, 2024, however, Defendants' counsel responded that same day to inform Plaintiffs' counsel that there were still numerous deficiencies in the discovery responses which had not been remedied, and they would be proceeding with filing a Motion to Compel.

Defendants' Motions to Compel:

On March 20, 2024, counsel for Defendants filed two separate Motions to Compel; one seeking to compel discovery responses from Plaintiffs, and another seeking to compel production through a subpoena request to Heart of the Carolinas, a third-party entity owned by Plaintiff Frank Henderson.

A hearing on Defendants' Motion to Compel was set for April 26, 2024. Plaintiffs' counsel provided additional supplemental discovery responses on April 18, 2024, and on April 24, 2024, counsel for Defendants filed a letter notifying the Court that additional discovery had been received from Plaintiffs and requesting to continue the hearings on Defendants' Motions to Compel until after the mediation that was scheduled to take place on May 3, 2024.

Mediation between the parties ultimately resulted in an impasse, and the hearings on Defendants' Motions to Compel were rescheduled for July 25, 2024. At the hearing on Defendants' Motions to Compel, the Motions were resolved by an agreement between counsel wherein Plaintiffs agreed to fully comply with Defendants' discovery requests within forty-five (45) days of the hearing. Plaintiffs' counsel also represented that she would be representing the third-party, Heart of the Carolinas, and informed the Court that Heart of the Carolinas would comply with the subpoena request within forty-five (45) days of the hearing as well. On July 30, 2024, the Honorable Judge Hyman entered an Order based on the parties' agreement, ordering Plaintiffs' compliance with Defendants' discovery requests and Heart of the Carolina's compliance with Defendants' subpoena within forty-five (45) days.

In discussions between counsel following the hearing, Defendants' counsel agreed to extend the time frame for Plaintiffs to comply with the order to sixty (60) days.

Defendants' First Rule to Show Cause:

Ultimately, both Plaintiffs and third-party Heart of the Carolinas failed to comply with the July 30, 2024, Order compelling discovery requests and subpoena production. As a result, Defendants' filed their first Rule to Show Cause on January 15, 2025, based upon Plaintiffs' and Heart of the Carolina's non-compliance with the July 30, 2024, Order.

A hearing was held on Defendants' Rule to Show Cause on February 20, 2025. Counsel for the parties once again reached an agreement regarding the requested discovery and put that agreement on record.

The agreement put on the record by the parties at the February 20, 2025, Rule to Show Cause hearing was as follows: (1) Plaintiffs were to pay \$1,500 to Defendants' attorney within seven (7) days of the hearing for necessitating the Rule to Show Cause; (2) Plaintiffs would produce all monthly bank statements for the Heart of the Carolinas account ending in -8969 for the period of January 1, 2018 through December 31, 2022 within seven (7) days of the hearing; and (3) all other outstanding bank statements identified in the March 16, 2023, deficiency letter attached as Exhibit B to the Motion to Compel filed on March 20, 2024 for the period of January 1, 2018 through December 31, 2022, as well as any other interrogatories or requests for production addressed therein, would be produced within thirty (30) days of the hearing.

On March 3, 2025, counsel for Defendants sent an email to Plaintiffs' counsel inquiring as to the status of the bank statements for the Heart of the Carolinas ending in -8969 and attorney fee payment that had been due on February 27, 2025, pursuant the parties' agreement at the first Rule to Show Cause hearing. Plaintiffs' counsel responded that same day, providing an electronic bank record for the Heart of the Carolinas account ending in -8969 she had received from Plaintiffs and stating that her client had mailed out the check for attorneys' fees that same day.

On March 5, 2025, Defendants' counsel responded to the email stating that the electronic bank record was insufficient as it appeared to be from some accounting application, and that actual copies of monthly bank statements for the time frame of January 1, 2018 to December 31, 2022 were needed to properly evaluate if funds had been misappropriated and to fully comply with the discovery request.

Counsel for Defendants sent another email on March 10, 2025, again following up on the status of the bank records and attorney fee payment. Plaintiffs' counsel responded that same day stating that the check had been mailed out on March 6, 2025, and that they were still waiting on Plaintiffs to provide them with the necessary documents for production.

On March 25, 2025, counsel for Defendants' once again sent an email inquiring as to the status of the bank statements for the Heart of the Carolinas ending in -8969 and also notifying Plaintiffs' counsel that they were now past the agreed upon thirty (30) day deadline to produce the remaining discovery sought through the deficiency letter and agreed upon at the February 20, 2025, hearing on Defendants' second Motion to Compel. Later that same day, Plaintiffs' counsel shared a Dropbox link to the bank statements she had received from Plaintiffs.

On April 1, 2025, Defendants' counsel sent an email informing Plaintiffs' counsel that the Dropbox link only contained 22 monthly statements for the agreed upon time frame of January 1, 2018 to December 31, 2022, and also noting out that all of these statements were supposed to be produced within seven (7) days of the February 20, 2025 hearing, and it was now more than forty (40) days after the hearing and Plaintiffs had only produced partial statements for the one account that was supposed to be produced within one week of the hearing. Counsel for Defendants requested confirmation that all the discovery would be produced by the end of the week, and informed Plaintiffs' counsel of their intent to file a motion for contempt and sanctions

in which they would be seeking to strike Plaintiffs' pleadings for Plaintiffs' continued abuse of discovery if the discovery was not received by the end of the week.

On April 11, 2025, a Date Certain Roster Meeting was held, and counsel for the parties agreed to a date certain of December 14, 2025, for the trial in this matter.

Defendants' Second Rule to Show Cause/Motion for Sanctions:

On April 25, 2025, Defendants filed a Motion for Contempt and Sanctions, seeking to strike Plaintiffs' pleadings. A hearing on Defendants' Motion was set for May 22, 2025.

On May 20, 2025, just prior to the hearing on Defendants' Motion for Sanctions, Plaintiffs produced additional bank statements for the Heart of the Carolinas account ending in - 8969 which covered the period through the end of 2021, however no statements were produced for the year 2022. Plaintiffs failed to produce or comply with the remainder of the agreement and order compelling discovery.

At the hearing on Defendants' Motion for Contempt and Sanctions, counsel for Defendants presented arguments regarding Plaintiffs' repeated noncompliance with discovery, despite Plaintiffs' assurances to this Court that they would comply with discovery on two prior occasions. Counsel for Defendants argued that Defendants had been prejudiced by the inability to conduct any forensic accounting or depose Plaintiffs due to the lack of discovery, and that the severity of the relief sought was supported given that trial was set to take place before the end of the year. Defendants' counsel also submitted an attorney fee affidavit prior to the hearing, seeking attorneys' fees in the amount of \$9,236.67 which had been incurred by Defendants and were directly attributable to Plaintiffs' discovery abuses over the course of this litigation.

Plaintiffs' counsel informed the Court that she had stressed the importance of compliance with her clients, had notified Plaintiffs of the possible severity of the repercussions for

noncompliance, and had received little communication in the preceding months from Plaintiffs. Plaintiffs' counsel represented that Plaintiff Henderson had informed her of a medical issue which was responsible for his delayed compliance with the discovery, and urged the Court for an additional thirty (30) days to allow for Plaintiff to comply before the Court granted any of the relief sought by Defendants.

ANALYSIS

Pursuant to Rule 37, SCRPC, when a party fails to respond to discovery requests or obey an order to provide or permit discovery, the court may "make such orders in regard to the failures that are just." Rule 37(b)(2). Rule 37 expressly grants the trial court power to "order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party." Rule 37(b)(2)(C). "Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd. Pshp.*, 334 S.C. 96, 122-23, 512 S.E.2d 510 (Ct. App. 1998) (citing *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 545, 489 S.E.2d 679, 683 (Ct. App. 1997). It is the discretion of this Court to award sanctions for Plaintiffs' failure to respond fully to discovery requests and refusals to obey court orders. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987).

When discovery violations show bad faith, willful disobedience, or gross indifference to another litigants' rights, it is justified to strike that party's pleadings. *QZO, Inc. v. Moyer*, 358 S.C. 246, 255, 594 S.E.2d 541, 546 (2004). When determining the proper sanction, the Court should consider the precise nature of the discovery sought, the discovery posture of the case, willfulness, and the degree of the prejudice. *See Samples v. Mithcell*, 329 S.C. 105, 112, 495

S.E.2d 213, 216 (1997). Where a party's right to discovery is abused, prejudice must be presumed unless the party failing to submit the discovery can show a lack of prejudice. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

The South Carolina Supreme Court has held that such sanctions are not "unduly harsh in light of [a party's] willful and repeated failure to comply with various orders of the trial court, which resulted in unnecessary delay and prejudice to the [other party]." *Davis v. Parkview Apartments*, 409 S.C. 266, 283 (2014).

Prior to Defendants bringing their Motion for Sanctions, the Plaintiffs had entered into two agreements on the record at the previous two hearings on Defendants' Motions to Compel – all regarding Plaintiffs failure to provide discovery responses, primarily those relating to the financial information sought by Defendants. The agreement put on the record at the February 20, 2025, Motion to Compel hearing included Plaintiff agreeing to pay a monetary sanction for their failure to comply with Rule 37. Defendants' motions continued to seek the enforcement of previous Court ordered discovery and were necessary as a result of Plaintiffs' noncompliance with prior orders and failures to follow the Rules of Civil Procedure. All parties were aware that the character of the discovery sought was relevant and discoverable as demonstrated by Plaintiffs' agreeing to produce the discovery sought by Defendants.

Plaintiffs representations to Defendants and the Court during the first Motion to Compel hearing on July 25, 2024, that they would produce the sought discovery, failing to and forcing a second Motion to Compel to be filed by Defendants, and the subsequent willful noncompliance with the representations at the February 20, 2024 Motion to Compel hearing are a continuation of Plaintiffs' dilatory tactics throughout this case which have prejudiced Defendants' ability to defend against Plaintiffs' claims and support their counterclaims with discoverable information

necessary to prepare for trial. Plaintiffs were aware that a trial was imminent. Plaintiffs made numerous representations that they would produce the discovery both prior to and subsequent to both hearings on Defendants' Motions to Compel, all along breaching the deadlines and extensions to deadlines granted by Defendants' counsel. In the wake of those representations, Plaintiffs' failure to comply with the July 30, 2024, and February 25, 2025 Orders of the Court demonstrate a clear willful disobedience towards Court orders and callous disregard for the Defendants' rights. In choosing to make false representations to opposing counsel, and even their own counsel, Plaintiffs effectively wasted over a year's worth of time. These actions alone are sufficient to grant an order of sanctions striking the pleadings of Plaintiffs. When taken as a whole in context with the Plaintiffs' prior discovery abuse, monetary sanctions and continuing noncompliance with orders and the Rules of Civil Procedure, it is apparent to this Court that no other sanction is likely to have an effect on the behavior of these Plaintiffs.

Despite the efforts of Plaintiffs' counsel to obtain information and comply with previous court orders and agreements, Plaintiffs have demonstrated an egregious failure to participate in meaningful discovery. Their repeated non-compliance clearly constitutes willful disobedience and gross indifference to the rights of adverse parties.

Recognizing that this is a drastic result and one which this court cannot recall having imposed in decades, Defendants' motion is granted, however no ruling is made on the award of attorney's fees. An affidavit of attorneys' fees incurred as a result of Plaintiffs' discovery abuse was just filed on the day before the hearing and there should be an opportunity for the Plaintiffs to challenge any award in a subsequent hearing.

In a climate where discovery abuses are relatively common, this Court has not seen the extent of non-compliance that has forced defense counsel to repeatedly seek the assistance of the Court.

Defense counsel appears to have been gracious in granting extensions throughout the pendency of this action. The court finds no fault with Plaintiffs’ counsel based on the presentation made at the hearing on this matter.

The Court finds from a review of the totality of the record that the Plaintiffs’ conduct is in bad faith, is willfully disobedient to the orders of the Court, and demonstrates a gross indifference to the Defendants’ rights seeking to delay a case on the verge of trial. Having considered the nature of the discovery sought, the discovery posture of the case, the Plaintiffs’ willfulness, and the degree of prejudice the noncompliance has caused to the Defendants, it is the holding of this Court that the Pleadings of Plaintiffs Frank Henderson and Antioch Group shall be struck in accordance with Rule 37 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Hon. William P. Keesley
Presiding Judge, Fifteenth Judicial Circuit

Date: _____ 2025

_____, South Carolina



Georgetown Common Pleas

Case Caption: Frank Henderson , plaintiff, et al VS Infinity Home Care , defendant,
et al
Case Number: 2022CP2200650
Type: Order/Sanctions

Circuit Judge (Code #2050)

s/ William P. Keesley