

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2011-CP-07-4999

STEFFANI WALTHER and MICHAEL
WALTHER,

Plaintiffs,

vs.

EDDIE MAPLE and KATE MAPLE,
INDIVIDUALLY and D/B/A EQUINE
MANAGEMENT, LLC,

Defendants.

BEAUFORT COUNTY
CLERK OF COURT
13 OCT 29 PM 3:28
**ORDER GRANTING DEFENDANTS'
MOTION FOR SANCTIONS AGAINST
PLAINTIFFS AND DISMISSAL
WITHOUT PREJUDICE**

This matter having come before me on a motion for sanctions filed by the Defendants Eddie Maple and Kate Maple, Individually and D/B/A Equine Management, LLC, hereinafter referred to as "Defendants". Defendants were represented at the hearing by Phillip Florence, Jr. of the Florence Law Group, LLC. Neither Plaintiffs nor Plaintiffs' counsel were present at the hearing. The Court confirmed that Plaintiffs' counsel received timely notice of the date and time of the hearing. The Court further delayed the start of the hearing for approximately Thirty (30) minutes to provide Plaintiffs' counsel ample time to arrive at the hearing. Counsel for Plaintiffs did not submit any pleadings or memorandum in opposition to Defendants' Motion for Sanctions. For the reasons set forth below, the Court GRANTS Defendants' Motion for Sanctions against Plaintiffs.

This case was commenced by Plaintiffs in December of 2011 against Defendants alleging defamation and breach of contract. Plaintiffs were initially represented by represented by attorney P. Jeffrey North. The Defendants filed an Answer on January 3, 2012, and the parties engaged in the discovery process. Written discovery was exchanged and Defense Counsel

requested from Plaintiffs' counsel mutually available dates to schedule the depositions of the Plaintiffs. Plaintiffs' counsel informed Defense counsel that Plaintiffs were unavailable for deposition until the summer of 2012 due to their travelling schedule. During the summer of 2012, Defense counsel again requested available dates to schedule the depositions of the Plaintiffs. Plaintiffs' counsel stated that Plaintiffs were unavailable for depositions but indicated a willingness to resolve the matter. Discovery was put on hold while the parties engaged in settlement negotiations for the next few months.

In December 2012, Defense counsel was informed that Mr. North would no longer represent Plaintiffs in this matter. On February 6, 2013, Defense counsel was informed that Robert V. Mathison, Jr. was retained as counsel for Plaintiffs in this matter. After a status conference with the Court on February 8, 2013, counsel for both parties agreed upon a Consent Scheduling Order in which the discovery deadline was stated as August 15, 2013. Since then, Defense counsel has twice noticed and subpoenaed the depositions of Plaintiffs. Defendants first noticed the Plaintiffs' depositions for March 25, 2013, at the office of Mr. Mathison. On March 7, 2013, Defense counsel received an email from Mr. Mathison stating that he had a conflict with March 25, 2013, but was available for these depositions the entire week of April 8, 2013 and April 15, 2013. In response, Defense counsel agreed to postpone the Plaintiffs' depositions until April 8, 2013. Accordingly, Defense counsel issued an Amended Notice of Deposition and Amended Subpoena of Plaintiffs for April 8, 2013, to be taken in the office of Mr. Mathison.

On April 5, 2013, at 4:17 p.m., the Friday before the scheduled depositions, Defense counsel received an email from Plaintiffs' counsel stating that the Plaintiffs' deposition were not going forward on April 8, 2013, due to yet another scheduling conflict. In response on that same date, Defense counsel again agreed to postpone the Plaintiffs' depositions but requested that

Plaintiffs' counsel provide alternative dates for the Plaintiffs' depositions as soon as possible. Having not heard anything further from Plaintiffs' counsel and to avoid any further delays in scheduling Plaintiffs' depositions, Defendants filed a Motion to Compel Plaintiffs' depositions requesting an Order from the court requiring that Plaintiffs appear at their scheduled depositions.

On July 17, 2013, a hearing was held on Defendants' Motion to Compel before The Honorable Marvin H. Dukes, III. During the hearing, the parties agreed that Plaintiffs would appear for their depositions on or before, but no later than, August 28, 2013. On July 24, 2013, Judge Dukes issued an Order requiring Plaintiffs to appear for their depositions on or before, but no later than, August 28, 2013.

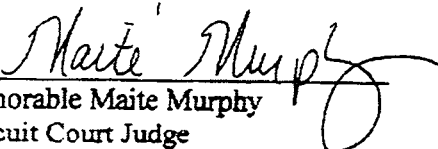
In accordance with the Order of Judge Dukes dated issued July 24, 2013, Defendants properly served a Fifth notice to Plaintiffs that their deposition were scheduled to be taken on August 28, 2013. On August 7, 2013, Plaintiffs' counsel sent an email to Defendants' counsel stating that he had an unidentified scheduling conflict with August 28, 2013, and would prefer to conduct the depositions in September of 2013. Defendants' counsel sent Plaintiffs' counsel a reply email in which he made clear that Defendants did not agree to postpone the deposition past the court ordered date of August 28, 2013. However, in the spirit of cooperation, Defense counsel did make clear that Defendants would be amenable to rescheduling the depositions to a date prior to August 28, 2013, to accommodate Plaintiffs' counsel's unidentified scheduling conflict and requested alternative dates prior to August 28, 2013. Plaintiffs' counsel did not respond to Defendants request for an alternative dates prior to August 28, 2013. Therefore, Defendants' counsel moved forward with his preparations for taking the Plaintiffs depositions on August 28, 2013.

On August 28, 2013, Defendants' counsel traveled from Charleston, S.C. to Plaintiffs' counsel's office in Hilton Head to take the court ordered and properly noticed depositions of Plaintiffs or, at the very least, to make a record of the Plaintiffs failure to appear. Defendants' counsel knocked on the front door of Plaintiffs' counsel's office with the court reporter several times but did not get a response. At that time, Defendants' counsel traveled to the offices of the court reporter and made a full record of the events related to the Defendants' multiple efforts to schedule and take the Plaintiffs' depositions.

Based upon the above stated events, Defendants filed a Motion for Sanctions pursuant to Rule 37 of the South Carolina Rules of Civil Procedure and requested that the Plaintiffs be held in contempt of court and that the Court issue the appropriate sanctions against Plaintiffs including dismissal of all causes of action in this matter with prejudice, and award Defendants' attorney's fees and costs.

The Court grants Defendants' Motion for Sanction and further finds that Plaintiffs have willfully and intentionally failed to appear for their properly noticed depositions on multiple occasions. Additionally, in accordance with the discretion afforded to the Court pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, this Court orders, as sanctions against Plaintiffs, the dismissal of the Plaintiffs' case without prejudice and that Plaintiffs pay reasonable and customary attorney's fees and costs related to Defense counsel's time and efforts to schedule and take Plaintiffs' depositions in the amount of \$9,691.18.

AND IT IS SO ORDERED.


Honorable Maite Murphy
Circuit Court Judge
Fourteenth Judicial Circuit

October 29 2013
Beaufort, South Carolina