

STATE OF SOUTH CAROLINA)	NINTH JUDICIAL CIRCUIT
)	CASE NO. 2011-CP-10-07166
COUNTY OF CHARLESTON)	

OTHA M. DELANEY, OCTAVIA D. WATSON, ALICIA S. ALSTON, and PAUL D. MCGUIGGAN, JR., individually and on behalf of all others similarly situated as Co-Class Representatives,

Plaintiffs,

vs.

FIRST FINANCIAL OF CHARLESTON, INC.,

Defendant.

**ORDER DENYING
PLAINTIFFS' MOTION FOR
RECONSIDERATION OF DENIAL OF
MOTION FOR SANCTIONS**

THIS MATTER COMES BEFORE THE COURT on Plaintiffs' motion, filed February 2, 2026 (the "Subject Motion"), for reconsideration of the Court's order, filed January 22, 2026, denying the motion for sanctions, filed August 6, 2024 (the "Underlying Motion").

Plaintiff Otha M. Delaney filed this lawsuit against Defendant on October 4, 2011, asserting, for himself and on behalf of a class of others similarly situated, a single cause of action alleging that the pre-sale notice of disposition of collateral that Defendant sent him did not comply with the requirements of Chapter 9 of South Carolina's Uniform Commercial Code.

On November 30, 2011, Defendant responded to the suit by filing a motion to dismiss based on the statute of limitations, arguing that the action was time-barred because more than three years had elapsed between when Defendant sent Delaney the disputed pre-sale notice in May of 2008 and when Delaney brought this suit in October of 2011.

On February 22, 2012, Delaney served FFC with interrogatories, requests for production, and requests for admission. The requests for production consisted of just three numbered

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SC Court of Appeals

requests, and the only debtor file for which production was requested was Delaney's. Delaney did not send Defendant a preservation letter identifying any material to be maintained.

On March 29, 2012, the Court entered a consent order extending Defendant's time to respond to Delaney's discovery requests until after Defendant's pending motion to dismiss was decided.

By order filed April 30, 2013, the Court granted Defendant's motion to dismiss and thereafter denied Delaney's motion to reconsider by order filed March 17, 2014, prompting Delaney to appeal.

The appeal proceeded in due course, and by opinion filed September 28, 2016, the Court of Appeals affirmed the dismissal.

Having not received from Delaney a petition for rehearing, the Court of Appeals remitted the case to this Court on October 19, 2016. Ordinarily, the issuance of the remittitur marks the conclusion of an appeal. Thus, with the issuance of the remittitur on October 19, 2016, Delaney's appeal, and, in turn, the case itself, appeared to be concluded, with the dismissal constituting final judgment. Over Defendant's objection, however, the Court of Appeals recalled the remittitur on November 2, 2016, and allowed Delaney to petition for rehearing, which petition it denied by order filed February 16, 2017.

On March 20, 2017, Delaney petitioned the Supreme Court for a writ of certiorari. The Supreme Court granted the petition by order filed March 28, 2018, and thereafter reversed the dismissal of the case by opinion filed May 8, 2019, ruling that, although Defendant had sent Delaney the pre-sale notice about which he complained in May of 2008, Delaney's cause of action had not accrued until Defendant sold the collateral in December of 2008, making the filing of this lawsuit in October of 2011 within the three-year statute of limitations.

After the Supreme Court denied Defendant's petition for rehearing, the case was remitted to this Court on July 15, 2019.

On October 23, 2019, Defendant responded to Delaney's discovery requests. At that time, Defendant produced Delaney's file and the other material responsive to Delaney's requests for production. By that time, however, Defendant did not possess the files and data for other defaulting borrowers (besides Delaney) to whom it had sent pre-sale notice from roughly October 2008 through December 2011. By way of a 30(b)(6) deposition in April of 2021, Defendant testified that it followed what it understood to be a requirement that it maintain this documentation for a period of twenty-six months before having it destroyed by a shredding company to protect its customers' privacy.

The Underlying Motion was preceded by a substantially identical motion for sanctions that was filed April 7, 2022, withdrawn June 6, 2022, re-filed June 9, 2022, and again withdrawn February 26, 2024, before being re-filed again on August 6, 2024, as the Underlying Motion.

The Underlying Motion asked the Court to sanction Defendant for failing to preserve the aforementioned documentation from roughly October 2008 through December 2011. The parties submitted written materials in support of their respective positions; the Court heard oral argument on the matter at length on January 9, 2026; and after careful and deliberate consideration, the Court denied the motion via order filed January 22, 2026. Following the filing of Plaintiffs' motion to reconsider on February 2, 2026, the Court again heard oral argument on the matter at length on February 19, 2026.

The imposition of sanctions with respect to discovery matters is generally entrusted to the sound discretion of the trial court. *See Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 456–59, 814 S.E.2d 643, 656–58 (Ct. App. 2018). Having again carefully and

deliberately considered this matter, the Court adheres to its decision to deny the Underlying Motion, which it finds to be a just and proper exercise of its judicial discretion under the circumstances that is duly supported legally and factually.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Subject Motion, i.e., Plaintiffs' motion for reconsideration of the denial of sanctions, is respectfully DENIED.

AND IT IS SO ORDERED.

ROBERT J. BONDS
Presiding Circuit Judge

_____, South Carolina

March __, 2026



Charleston Common Pleas

Case Caption: Otha Delaney VS First Financial Of Charleston Inc

Case Number: 2011CP1007166

Type: Order/Sanctions

So Ordered

s/ Robert Bonds, 2770