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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

The Honorable Patrick C. Fant III, Circuit Court Judge

Appellate Case No. 2025-001957
Lower Court Case No. 2024-CP-42-01687

Donald Roth, ... Respondent,

v.

The River Bend Sportsman's Resort, Inc., Riverbend Properties, Inc., Ralph H. Brendle, Paul J. Barnwell, Robert T. Estes, and Paul Lehner, ... Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court abused its discretion in striking Appellants' Answer after Appellants repeatedly failed to comply with discovery obligations and violated three separate court orders compelling discovery despite monetary sanctions and express warnings from the court.

II. Whether the circuit court's damages award was supported by competent evidence presented at the damages hearing, including Respondent's testimony, appraisal evidence, and evidence concerning the sale and value of the Property.

STATEMENT OF THE CASE

This action arises out of Appellants' efforts to transfer and sell real property worth millions of dollars while excluding Respondent, Donald Roth ("**Roth**" or "**Respondent**"), a 16.66% shareholder of Riverbend Properties, Inc. ("**Riverbend Properties**"), from his ownership interest and any resulting proceeds. After entering into an agreement to sell the Property to a third party for millions of dollars, Appellants transferred the Property from Riverbend Properties to a related entity, The River Bend Sportsman's Resort, Inc. ("**Sportsman's Resort**"), and thereafter sold portions of the Property to a third party, excluding Roth from the proceeds. Roth thereafter filed this action asserting claims for, among other things, conversion, conspiracy, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act.

During discovery, Appellants repeatedly failed to comply with their discovery obligations and violated three separate court orders compelling discovery responses. As a result of Appellants' continued noncompliance after previous sanctions and express warnings, the circuit court struck Appellants' Answer. Following a damages hearing, the circuit court entered judgment in favor of Respondent. Appellants now appeal both the order striking their Answer and the resulting damages award.

I. Factual Background

Sportsman's Resort was incorporated in 1985 for the purpose of owning and operating a hunting preserve in Inman, South Carolina. The initial shareholders of Sportsman's Resort were Ralph Brendle, Paul Barnwell, Robert Estes, Paul Lehner (collectively "**Individual Appellants**"), as well as Paul Barnwell, who is now deceased. Roth began working at the hunting reserve in 1991 and subsequently purchased shares in Sportsman's Resort in 1993. Ralph Brendle served as President and "principal executive officer" throughout Sportsman's Resort's existence.

Riverbend Properties was incorporated seven years later in June 1992. Riverbend Properties' business purpose was to own and hold rural real estate, which it leased to Sportsman's Resort. Roth was an original shareholder in Riverbend Properties, owning 16.66% of the shares. The remaining shareholders of Riverbend Properties were the Individual Appellants and Paul Barnwell. As with Sportsman's Resort, Brendle likewise served as President and "principal executive officer" throughout Riverbend Properties' existence.

On July 24, 1992, Riverbend Properties purchased approximately 374 acres of land (the "**Property**") for $365,504.00. The Property was encumbered by a 20-year mortgage issued by Palmetto Farm Credit, which was personally guaranteed and signed by all six shareholders of Riverbend Properties, including Roth. Riverbend Properties leased the Property to Sportsman's Resort. Sometime thereafter, a small portion of the original 374 acres was subdivided and sold, leaving a remainder of 322.146 acres owned by Riverbend Properties.

From 1993 through 1996, the shareholders in both Sportsman's Resort and Riverbend Properties were the same. However, in 1996, a dispute arose between Roth and Brendle concerning unaccounted funds belonging to Sportsman's Resort. Roth accused Brendle of having mismanaged or absconded with said funds, which resulted in Brendle requesting Roth to leave Sportsman's Resort. Roth left and sold his shares in Sportsman's Resort. However, Roth remained a shareholder in Riverbend Properties. **Importantly, Roth was the only shareholder of Riverbend Properties that was not also a shareholder of Sportsman's Resort.**

Following his departure from Sportsman's Resort in 1996, Roth was not actively involved in the management or operations of Riverbend Properties. Instead, he retained his ownership interest in the Property through his shares in Riverbend Properties with the expectation that the Property would eventually be sold at a profit. Roth continued receiving annual K-1s reflecting his

ownership interest in Riverbend Properties, but he was not notified of shareholder meetings, provided meeting minutes or corporate resolutions, or given financial, banking, or mortgage-related information concerning Riverbend Properties. Meanwhile, the remaining shareholders of Riverbend Properties—all of whom also remained owners of Sportsman's Resort—continued operating both entities.

Beginning in 1999, the Individual Appellants repeatedly refinanced and encumbered the Property without Roth's knowledge or consent. On May 26, 1999, Riverbend Properties refinanced the Property with a five-year mortgage in the amount of $272,000.00. In August 2001, Riverbend Properties again refinanced the Property, this time with a five-year mortgage in the amount of $540,000.00. One year later, on August 30, 2002, Riverbend Properties again refinanced the Property with a five-year mortgage in the amount of $704,000.00. Roth did not sign any of these mortgages, was not informed they existed, and did not receive any proceeds from the loans. Instead, the proceeds were used to fund the operations of Sportsman's Resort rather than for any purpose related to Riverbend Properties itself.

After nearly two decades of silence toward Roth concerning the affairs of Riverbend Properties, the Individual Appellants executed a document on July 27, 2018, purportedly transferring the Property from Riverbend Properties to Sportsman's Resort. The document stated the transfer was in consideration for Sportsman's Resort having made mortgage, tax, insurance, and maintenance payments relating to the Property, along with a future payment of $60,000.00 to Riverbend Properties upon the eventual sale of the Property. Roth neither knew of nor consented to the transaction. Notably, the document was never recorded in the Spartanburg County Register of Deeds Office, and Roth continued receiving K-1s reflecting his ownership interest in Riverbend Properties in the years thereafter.

On or about May 18, 2021, the Property was again encumbered without Roth's knowledge or consent. Riverbend Properties executed a 25-year mortgage with HomeTrust Bank in the amount of $1,920,000.00, with Sportsman's Resort also identified as a borrower on the loan. On the same date, Riverbend Properties and Sportsman's Resort further encumbered the Property with a second HomeTrust Bank mortgage in the amount of $190,000.00. Brendle signed both loans on behalf of Riverbend Properties and Sportsman's Resort. Roth was not informed of either transaction, did not consent to either loan, and received no benefit from either encumbrance.

Shortly thereafter, the Individual Appellants took steps to transfer ownership of the Property away from Riverbend Properties altogether. On October 24, 2023, Sportsman's Resort entered into a Purchase and Sale Agreement with Riverbend Partners, LLC, an unrelated third party, for the sale of River Bend property for $8 million. Included within the sale was the 322-acre Property owned by Riverbend Properties. On October 30, 2023, just six days after Sportsman's Resort entered into an $8 million agreement to sell the Property to a third party, Brendle executed a deed on behalf of Riverbend Properties transferring the Property to Sportsman's Resort for stated consideration of $10.00. Roth was not informed of the transfer beforehand, was not asked to consent to it, and did not receive any portion of the consideration.

The evidence presented at the damages hearing established that, at the time of the October 2023 transfer, the Property had an appraised value of approximately $21,000.00 per acre, resulting in a total value exceeding $6.7 million. An appraisal prepared in September 2023 in connection with the pending sale reflected a contract price of $20,000.00 per acre and valued the Property at $21,000.00 per acre. A subsequent 2024 appraisal prepared for Sportsman's Resort likewise characterized the transfer between Riverbend Properties and Sportsman's Resort as a transaction "between related parties" that was "not arm's length," with a stated consideration of zero dollars.

Following the transfer, Sportsman's Resort sold at least a portion of the Property to Riverbend Partners, LLC for more than $4.2 million. Roth did not receive any proceeds from the transfer or subsequent sale, despite maintaining his 16.66% ownership interest in Riverbend Properties throughout the relevant time period.

II. Procedural History

Respondent filed his Complaint on April 23, 2024, asserting causes of action against all Appellants for conversion, conspiracy, violation of the South Carolina Unfair Trade Practices Act, and unjust enrichment, as well as breach of fiduciary duty as to Brendle.[1] On May 9, 2024, Respondent served his first set of discovery requests (including interrogatories, requests for production, and request for admission) on each Appellant.

Over two months later, on July 19, 2024, Appellants provided responses to Respondent's requests for admission, along with some answers to Respondent's first set of interrogatories. In addition to the insufficient answers to the first set of interrogatories, Appellants failed and refused to respond to Respondent's requests for production, as well as Respondent's second set of interrogatories.[2] Appellants filed an Answer on July 24, 2024.

On July 26, 2024, Respondent wrote to Appellants outlining the deficiencies in their discovery responses, requesting supplementation, and explaining why the requested discovery (which included financial information concerning the individual Appellants) was both permissible and necessary. Appellants did not respond to the deficiency letter. On August 8, 2024, Respondent filed a Motion to Compel, which was scheduled to be heard on September 25, 2025.

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[1] Respondent also asserted claims for an accounting, inspection of corporate records pursuant to S.C. Code Ann. § 33-16-102, and piercing the corporate veils of Sportsman's Resort and Riverbend Properties.

[2] Respondent served his second set of interrogatories on July 26, 2024.

On September 23, 2024, Appellants' counsel stated that Appellants wished to enter into a consent order compelling discovery rather than proceed forward with the hearing. Respondent's counsel prepared an order, to which Appellants expressly consented.

On September 26, 2024, Judge Mark Hayes entered the "Consent Order Requiring Defendants to Fully Respond to Discovery" ("**First Discovery Order**"). The First Discovery Order clearly and unequivocally stated: "[Appellants] are hereby ordered to fully and completely respond to the [Respondent's] discovery requests on or before **October 23, 2024**." The First Discovery Order states that "Plaintiff and the Defendants agree that the discovery requests propounded by the Plaintiff and served upon the Defendants are reasonable and relevant per SCRCP 26(b)(1), and this Court agrees." The First Discovery Order explicitly required Appellants to: (1) fully respond to Respondent's requests for production and second set of interrogatories and (2) supplement their answers to "fully and completely answer" specifically enumerated interrogatories within Respondent's first set of interrogatories by October 23, 2024.

The day before Appellants' discovery responses were due, on October 22, 2024,[3] Appellants emailed a letter to Respondent, which contained some supplemental answers to Respondent's first set of interrogatories; however, those responses were inadequate and incomplete. Importantly, Appellants objected to a number of interrogatories that the court ordered them to supplement to fully and completely answer. Moreover, Appellants did not provide responses to Respondent's requests for production of documents or Respondent's second set of interrogatories. Accordingly, Appellants directly violated the First Discovery Order.

[3] Although the letter is dated October 17, 2024, it was only emailed to Respondent's counsel on October 22, 2024.

The following day, Respondent wrote to Appellants in an attempt to resolve the matter, outlining the concerns with the inadequacy of the discovery responses, as well as the missing responses. Appellants did not respond. Respondent additionally emailed Appellants on three separate occasions asking Appellants to provide the discovery responses they were ordered to provide pursuant to the First Discovery Order. Appellants ignored these repeated pleas and failed to supplement or provide additional documents or information.

Respondent subsequently filed a Motion for Order and Rule to Show Cause on November 4, 2024, which was heard by Judge Fant on January 8, 2025. Judge Fant issued the Order Granting Plaintiff's Motion for Order and Rule to Show Cause on January 24, 2025 ("**Second Discovery Order**"). Again, the court found that the discovery requests propounded by Respondent and served upon the Appellants were reasonable and relevant pursuant to SCRCP 26(b)(1). The court ruled that it "again finds that the [Appellants] are required to respond in full to the [Respondent]'s First Interrogatories, the [Respondent]'s First Requests for Production, and the [Respondent]'s Second Interrogatories, producing any and all responsive information, documents and records in their possession or within their ability to obtain." The court further ordered Appellants to take reasonable steps, including executing authorizations, to identify and obtain the requested information, documents and records. Pursuant to the Second Discovery Order, the court ordered Appellants to provide full and complete responses to all sets of discovery requests within forty-five (45) days of the Second Discovery Order, as well as pay Respondent's attorney's fees and costs within thirty (30) days of the Second Discovery Order. Judge Fant retained jurisdiction over the Motion for Order and Rule to Show Cause and Second Discovery Order until it was fully resolved—retaining the right to assess additional sanctions should Appellants fail to comply with the prior orders of the court.

Following the Second Discovery Order, on January 30, 2025, Appellants provided *some* supplemental discovery responses. Once again, the responses were deficient and incomplete. Importantly, Appellants reiterated their objections to discovery requests that the court unambiguously ordered Appellants to produce **twice**. Respondent sent another deficiency letter to Appellants. Appellants did not respond; Appellants did not further supplement their discovery responses.

On March 11, 2025, Respondent advised the court that: (1) although Appellants had supplemented some discovery responses, Appellants had not fully responded to all the discovery requests, and in fact, had continued to object to discovery requests that the court had ordered Appellants produce on two separate occasions, and (2) Appellants had not paid Respondent's attorney's fees and costs in violation of the Second Discovery Order.

On March 26, 2025, the court issued a Supplemental Order to the Second Discovery Order ("**Third Discovery Order**"). Judge Fant reviewed the available information and positions of all parties and concluded that Appellants had not fully responded to Respondent's First Interrogatories, Respondent's First Requests for Production, and Respondent's Second Interrogatories, producing any and all responsive information, documents and records in their possession or within their ability to obtain—in direct violation of the Second Discovery Order. The court again ordered Appellants to do so on or before April 10, 2025, outlining the specific discovery requests that each Appellant was ordered to fully and completely answer. Importantly, the court **expressly ruled and warned** Appellants that should they fail to fully respond to Respondent's discovery requests as ordered, the court "shall strike [Appellants' Answer]."

On April 4, 2025, Appellants Riverbend Properties and Sportsman's Resort again propounded deficient and incomplete supplemental answers to Respondent's first set of

interrogatories. Appellants did produce limited additional corporate records—which they contended did not exist for nearly a year. However, none of the Appellants supplemented their responses to the requests for production as ordered by the court three times.[4] Individual Appellants did not supplement their respective answers to Respondent's first set of interrogatories as ordered by the court three times. Additionally, Appellants did not supplement their answers to Respondent's second set of interrogatories as ordered by the court three times.[5]

On April 11, 2025, Respondent advised the court that Appellants had not fully responded to Respondent's discovery (which Appellants acknowledged in correspondence to the court) in violation of the court's Third Discovery Order. Accordingly, the court issued an order striking Appellant's Answer on April 16, 2025. Appellants filed a Motion to Reconsider on April 22, 2025, which was denied on May 27, 2025.

Respondent filed a Motion for Entry of Judgment on June 25, 2025. A hearing was held on August 5, 2025, before Judge Newman. At the hearing, Respondent presented testimony as to the value of the Property, appraisals of the Property, and the amount for which the Property was sold to a third party. Specifically, Respondent testified:

> Q And do you understand that the [P]roperty, which was originally held by [Riverbend] Properties, the 322 acres, was transferred from [Riverbend] Properties to Sportsman's Resort for ten dollars?
>
> A Yes.
>
> Q Is it your understanding that at least a portion of that property has been sold by Sportsman's Resort to [Riverbend Partners, LLC], a third party, for a price of $20,000 per acre?

[4] Moreover, the production was woefully inadequate and incomplete. For example, not a single email was produced.

[5] Of note, Appellants likewise did not respond to additional discovery that was served on February 21, 2025.

A Yes.

Q Do you understand they're also under contract to buy the remaining balance of the 322 acres at that price?

A Yes, sir.

Q All right. And is it your understanding that the appraised value of the [P]roperty was $21,000 per acre?

A Yes.

Q Is it your opinion that the fair market value of the [P]roperty belonging to Riverbend Properties at the time of its transfer to Sportsman's Resort was $21,000 per acre?

A Yes, sir.

Q Do you believe that you were entitled to 16.66 percent of the value of the [P]roperty, which was taken from you without your knowledge or consent?

A I do.

Q Do you believe the value of the [P]roperty at the time of its transfer was $6,762,000, based upon a price per acre of $21,000?

A Yes.

Q And would your share, 16.667 percent of that number, be $1,127,225?

A That's correct.

(Aug. 5, 2025 Hr'g Tr., p. 30).

The court entered an Order for Judgment on August 25, 2025. Based upon the record, the Complaint, the evidence presented at the August 5, 2025 damages hearing, and Respondent's testimony, the court held that Respondent is entitled to One Million, One Hundred Twenty-Seven Thousand, Two Hundred Twenty-Five and 0/100 ($1,127,225.00) in actual damages, as well as treble damages plus attorney's fees pursuant to the South Carolina Unfair Trade Practices Act, for a total judgment in the amount of Three Million, Four Hundred Twelve Thousand, Three Hundred

Eighty-One and 0/100 ($3,412,381.00) Dollars. (Order of Judgment, Aug. 25, 2026). This Appeal followed.

STANDARD OF REVIEW

"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). "A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred." *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 489 S.E.2d 679, 681 (Ct. App. 1997) (citing *Clark v. Ross*, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985) (overruled on other grounds by *Sherer v. James*, 290 S.C. 404, 351 S.E.2d 148 (1986))). "The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion." *Id.* "An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law." *Id.* An appellate court "will not disturb the sanctions unless no reasonable evidence supports them or they were imposed contrary to the correct law." *Welch v. Advance Auto. Parts, Inc.*, 445 S.C. 640, 650, 916 S.E.2d 320, 325 (2025).

"The trial judge has considerable discretion regarding the amount of damages…" *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004) (reviewing the sufficiency of evidence supporting damages awarded by circuit court following default). "Because of this discretion, [the appellate court's] review on appeal is limited to the correction of errors of law." *Id.*; *200 River Landing Drive Phase I Condo. Ass'n, Inc. v. Watkins Serv., Inc.*, No. 2023-001832, 2026 WL 948929, at *1 (Ct. App. Apr. 8, 2026). The Court of Appeal's "task in

reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award." *Id.*

ARGUMENT

I. The Circuit Court Did Not Abuse its Discretion in Striking Appellants' Answer after Appellants Violated Three Court Orders.

The circuit court acted well within its discretion in striking Appellants' Answer after Appellants repeatedly ignored discovery obligations, violated three separate court orders, disregarded monetary sanctions, and continued withholding responsive information even after being expressly warned their Answer would be stricken.

The selection of a sanction is within the trial court's discretion. *Griffin Grading & Clearing, Inc. v. Tire Service Equip. Manufacturing Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999). In determining the appropriateness of a sanction, the court should consider such factors as the posture of the case, the willfulness, and degree of prejudice. *Id.* at 199, 511 S.E.2d at 719. When a party fails to obey a Court order, the trial court may strike that party's pleadings and enter a default judgment. *Id.* at 198, 511 S.E.2d at 718 (citing Rule 37(b)(2)(c), SCRCP); *see also Karppi*, 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRCP, **expressly grants** trial court power to order judgment by default for either the violation of a court order or a party's failure to respond to certain discovery requests). When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." *Griffin*, 334 S.C. at 198, 511 S.E.2d at 718; *see also Karppi*, 327 S.C. at 547, 489 S.E.2d at 684 (Anderson, J., concurring) ("A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party.").

Again, the burden rests with Appellants to demonstrate that the circuit court abused its discretion in imposing sanctions for failing to comply with a discovery order. *Karppi*, 327 S.C. at 542, 489 S.E.2d at 681. Appellants have failed to make such a showing.

Appellants cite to *Karppi v. Greenville Terrazzo Co., Inc.*, claiming that it is "remarkably similar" to the case at hand. 327 S.C. 538, 489 S.E.2d 679, 681 (Ct. App. 1997). It is not. *Karppi* is readily distinguishable both procedurally and factually. In *Karppi*, this Court "reluctantly" held that the trial court's sanction of striking the answer of a defendant was unduly harsh under the circumstances, particularly because of the profound effect it had on the co-defendant to the litigation. Here, by contrast, the only parties affected by the sanction were the very parties who repeatedly and willfully disregarded the court's discovery orders.

Moreover, Appellants' misconduct here was persistent, knowing, and continued over the course of nearly a year despite repeated intervention by both Respondent and the court. Respondent served discovery requests on May 9, 2024. Appellants delayed more than two months before providing only partial responses and wholly failed to respond to Respondent's requests for production and second set of interrogatories. Even after Respondent sent a detailed deficiency letter explaining the deficiencies in the responses and the relevance of the requested information, Appellants ignored the correspondence entirely, necessitating Respondent's Motion to Compel.

Importantly, the First Discovery Order was not the result of a contested hearing, but rather a consent order expressly agreed to by Appellants. In that order, Appellants expressly agreed that Respondent's discovery requests were "reasonable and relevant" pursuant to Rule 26(b)(1), SCRCP, and agreed to fully and completely respond by October 23, 2024. Nevertheless, Appellants refused to comply. Instead, on the eve of the deadline, Appellants served incomplete supplemental interrogatory responses, reasserted objections to discovery the court had already ordered them to

answer and to which they had agreed, and wholly failed to provide responses to Respondent's requests for production and second set of interrogatories.

Even then, Respondent attempted repeatedly to resolve the matter without further court intervention. Respondent sent additional correspondence outlining the remaining deficiencies and emailed Appellants on multiple occasions requesting compliance with the First Discovery Order. Appellants ignored those communications.

Following Appellants' continued noncompliance, Judge Fant entered the Second Discovery Order, again finding the requested discovery reasonable and relevant and again ordering Appellants to fully respond to all outstanding discovery requests. The court additionally ordered Appellants to pay Respondent's attorney's fees and costs and expressly retained jurisdiction to impose further sanctions should Appellants continue to violate the court's orders. Yet Appellants still failed to comply. Appellants' January 30, 2025 supplemental responses remained deficient and incomplete, including objections to discovery requests the court had twice ordered them to answer. Appellants likewise failed to timely pay the attorney's fees and costs ordered by the court.

Thereafter, the court entered the Third Discovery Order upon specifically finding that Appellants still had not fully responded to Respondent's discovery requests. The Third Discovery Order again identified the precise discovery Appellants were required to provide and expressly warned Appellants that failure to fully comply would result in the striking of their Answer. Despite this unmistakable warning, Appellants still failed to fully respond. Appellants produced only limited additional records—some of which they had previously contended did not exist—and still

failed to provide complete responses to the requests for production, first interrogatories, and second interrogatories as ordered by the court on three separate occasions.[6]

The sanction imposed in the case of *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.* is similar to the sanction in the case *sub judice.* 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999. After Griffin Grading filed suit against Tire Service, the circuit judge struck Tire Service's answer as a discovery sanction. On appeal, this Court determined that the striking of Tire Service's answer as a discovery sanction was warranted based on Tire Service's failure to comply meaningfully with four prior orders compelling discovery, even after the imposition of the assessment of attorney fees and after Tire Service was warned of the consequences of its failure to comply with the court's order.

The same reasoning applies here. Appellants repeatedly ignored their discovery obligations, violated three separate court orders, continued asserting objections to discovery requests already ruled discoverable, failed to comply even after monetary sanctions were imposed, and disregarded the court's express warning that their Answer would be stricken if they continued their noncompliance.

South Carolina appellate courts have repeatedly affirmed severe sanctions, including striking pleadings and dismissal, where parties persistently fail to comply with discovery obligations and court orders. *See McNair v. Fairfield Cnty*, 379 S.C. 462, 464–67, 665 S.E.2d 830,

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[6] *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011) ("An affirmative duty does exist to answer interrogatories and respond to requests to produce.") (citing Rules 33(a) and 34(b), SCRCP); *see also Samples v. Mitchell,* 329 S.C. 105, 109–10, 495 S.E.2d 213, 215–16 (Ct. App. 1997) (stating that parties must disclose all evidence, or at least the existence of evidence, that relates to the case, not only evidence intended to use at trial)); *Innovative Waste Mgmt., Inc. v. Crest Energy Partners GP, LLC*, 445 S.C. 19, 29, 911 S.E.2d 406, 411 (2025) (holding that documents withing a party's legal control, although held by third parties such as banks or accounts, remain subject to production, even if not in a party's physical control).

831–33 (Ct. App. 2008) (holding the circuit court did not abuse its discretion by striking the defendant's answer because the defendant failed to (1) produce documents requested during discovery, (2) coherently organize the documents it did produce, and (3) provide complete responses to interrogatories, and the court told defendant to correct the discovery issues several times and warned the defendant "it was inclined to strike [defendant's] answer"); *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 595, 586 S.E.2d 572, 576 (2003) (holding the circuit court did not abuse its discretion by dismissing one of the plaintiff's actions "[g]iven [plaintiff's] persistent refusal to comply with the trial court's orders"); *QZO, Inc. v. Moyer*, 358 S.C. 246, 257–58, 594 S.E.2d 541, 548 (Ct. App. 2004) (holding the circuit court did not abuse its discretion by striking appellant's answer in response to appellant's intentional defiance of the trial court's temporary restraining order and his willful destruction of evidence); *Halverson v. Yawn*, 328 S.C. 618, 620–21, 493 S.E.2d 883, 884–85 (Ct. App. 1997) (affirming the circuit court's order striking appellant's complaint because plaintiff failed to comply with the court's order to comply with discovery and presented no evidence showing she complied with the order).

Accordingly, the court acted well within its discretion in striking Appellants' Answer under these circumstances, and thus, the court's April 16, 2025 Order should be affirmed.

II. The Circuit Court's Damages Award is Fully Supported by the Record and Should Be Affirmed.

The circuit court's damages award should be affirmed because Respondent presented ample evidence establishing both the fair market value of the Property and the value of Respondent's ownership interest. Appellants' contention that Respondent failed to present evidence of damages is plainly contradicted by the record. At the damages hearing, Respondent presented sworn testimony regarding the value of the Property, documentary evidence establishing the Property's appraised value, and evidence of an arm's-length sale of the Property to a third party

at nearly the same per-acre value ultimately adopted by the circuit court. The record contains more than sufficient evidence to support the court's award.

"The plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence." *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 240, 246 S.E.2d 880, 881 (1978). In order for damages to be recoverable, the evidence should be sufficient to "enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.* The evidence, however, should be such that a court or jury can reasonably determine an appropriate amount. *Gray v. S. Facilities, Inc.*, 256 S.C. 558, 570, 183 S.E.2d 438, 444 (1971).

"The trial judge has considerable discretion regarding the amount of damages…" *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004) (reviewing the sufficiency of evidence supporting damages awarded by circuit court following default). "Because of this discretion, [the appellate court's] review on appeal is limited to the correction of errors of law." *Id.*; *200 River Landing Drive Phase I Condo. Ass'n, Inc. v. Watkins Serv., Inc.*, No. 2023-001832, 2026 WL 948929, at *1 (Ct. App. Apr. 8, 2026). The Court of Appeal's "task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award." *Id.*

It is well settled law in South Carolina that a property owner can testify to the value of his real property. *Stanley v. Atl. Title Ins. Co.*, 377 S.C. 405, 410, 661 S.E.2d 62, 65 (2008); *Howell v. State Highway Dep't*, 167 S.C. 217, 230, 166 S.E. 129, 133 (1932); *South Carolina State Hwy. Dep't v. Wilson,* 254 S.C. 360, 370, 175 S.E.2d 391, 397 (1970); *Gauld v. O'Shaugnessy Realty*

Co., 380 S.C. 548, 561–62, 671 S.E.2d 79, 86–87 (Ct. App. 2008); *Rogers v. Rogers*, 280 S.C. 205, 311 S.E.2d 743 (Ct. App. 1984). Here, Respondent testified as to the value of the Property at the damages hearing. Respondent testified that, at the time Riverbend Properties transferred the Property to Sportsman's Resort, the value of the property was Six Million, Seven Hundred Sixty-Two Thousand ($6,762,000) Dollars. (Aug. 5, 2026, Hr'g Tr., p. 30). Respondent further testified that the fair market value of the Property was $21,000 per acre. (*Id.*). *Significantly*, Appellants do not dispute Respondent's testimony concerning the value of the Property.

Additionally, Respondent presented an appraisal for the value of the Property that determined the fair market value of the Property was $21,000 per acre.[7] (*Id.* at 28). Respondent also presented evidence that a portion of the Property was already sold to a third party for $20,000 per acre and the third party was under contract to purchase the remaining portion of the Property for the same price. (*Id.* at 30). *See Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 561–62, 671 S.E.2d 79, 86–87 (Ct. App. 2008) (citing *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App.1997) ("[A] property owner's opinion of his commercial property was within the bounds of proper testimony when it was based on comparable land. Hawkins initiated an action for breach of contract after an intersection that was to be located on his land was rendered impossible by road formation. He testified land at the corners of a nearby major intersection sold for $450,000 per acre, thus the land on each corner of the proposed intersection on his property would be worth $2,000,000.")). Therefore, Respondent presented sufficient evidence concerning the value of the Property.[8]

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[7] Appellants did not produce either the September 21, 2023 Appraisal Report or the October 14, 2024 Appraisal report in the course of discovery. Instead, Respondent was forced to subpoena those documents directly from the seller.

[8] Appellants' reliance on *Battle v. Ozmint* is inapposite. No. 2:12-CV-1350-CMC-BHH, 2013 WL 1342516 (D.S.C. Mar. 11, 2013), *report and recommendation adopted*, No. CA 2:12-1350-CMC-

Appellants additionally argue that the circuit court refused to consider the mortgages and other debts encumbering the Property. The record reflects otherwise. The court expressly considered Appellants' arguments concerning the mortgages and the outstanding debt associated with the Property. (*Id.* at 44–47). The circuit court correctly determined, however, that those debts did not diminish the value of Respondent's ownership for purposes of damages because Respondent neither participated in nor benefited from the repeated "cash-out" refinances undertaken by Appellants to fund the operations of Sportsman's Resort. (*Id.*). Indeed, the evidence established that Respondent was never informed of the refinances, never consented to them, never signed the later mortgages, and never received any proceeds or otherwise benefited from those transactions. (*Id.* at 19–21, 36–39).

Moreover, Appellants' focus on the remaining mortgage debt ignores the nature of the wrongful conduct at issue. The relevant injury occurred when Appellants transferred the Property from Riverbend Properties for *reportedly* nominal consideration, thereby depriving Respondent of his ownership interest in the Property itself. Accordingly, the relevant measure of damages was the fair market value of Respondent's ownership interest at the time of the transfer—not whatever net

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BHH, 2013 WL 1342494 (D.S.C. Apr. 2, 2013). (Although Appellants cite to *Battle* as No. 2:12-CV-1350-CMC-BHH, 2014 WL 1342616 (D.S.C. Mar.11, 2014), Respondent has been unable to locate a decision corresponding to that citation. Respondent therefore presumes Appellants intended to reference the decision identified herein.)

Appellants appear to cite to *Battle* in support of their argument that the damages award was excessive; however, *Battle* does support the proposition that a party's failure to comply with discovery obligations and court-ordered discovery responses cannot result in default judgment. *See supra* Part I. Rather, in *Battle*, the pro se plaintiff moved for default judgment even though the defendants had timely filed an answer and the plaintiff's prior motion to compel had been denied. Indeed, the court in *Battle* expressly recognized that sanctions, including default, may be appropriate for failure to comply with court-ordered discovery. *Battle*, 2013 WL 1342494, at *2 (citing FRCP 37(b)(2)).

proceeds Appellants later realized after satisfying debt obligations they themselves had incurred. The evidence presented at the hearing established that, at the time of transfer, the Property had a fair market value of $21,000 per acre, resulting in a total value exceeding $6.7 million. The circuit court therefore acted well within its discretion in awarding Respondent damages based on his 16.66% ownership interest in the Property.

Because the circuit court relied upon the Complaint, record, and competent evidence presented at the damages hearing, including Respondent's testimony concerning the value of the Property, independent appraisals valuing the Property at $21,000 per acre, and evidence of an arm's-length third party sale at substantially the same value, the court's damages award was supported by the record and did not constitute an error of law. Therefore, under the applicable limited standard of appellate review, this Court should affirm the circuit court's August 25, 2025 Order of Judgment in its entirety.

CONCLUSION

The circuit court acted well within its discretion in striking Appellants' Answer after Appellants repeatedly failed to comply with their discovery obligations and violated three separate court orders compelling discovery. Despite multiple opportunities to comply, the imposition of attorney's fees, and an express warning that continued noncompliance would result in their Answer being stricken, Appellants persisted in providing deficient discovery responses and withholding responsive information and documents. Under these circumstances, the sanctions imposed by the circuit court were well within the circuit court's discretion.

Likewise, the circuit court's damages award is fully supported by competent evidence contained in the record, including Respondent's testimony, appraisal evidence, and evidence

concerning the sale of the Property to a third party. Accordingly, the circuit court committed no error of law.

For these reasons, Respondent respectfully requests this Court affirm the circuit court's April 16, 2025 Order striking Appellants' Answer and the circuit court's August 25, 2025 Order of Judgment.

Respectfully submitted,

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