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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Civil Action No. 2021CP2700069
Appellate Case No. 2025-001116

Mark W. McGilton, ... Respondent,

v.

1223 May River Road, LLC, D.R. Horton, Inc., and
Lotty Trucking, LLC f/k/a Ramos Trucking, LLC, ... Defendants,

of which D.R. Horton is . . . . . Appellant,

AND

1223 May River Road, LLC, ... Third-Party Plaintiffs,

v.

Kenneth Scott Builders, Inc., ... Third-Party Defendants.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities i

Counter-Statement of the Issues on Appeal 1

Counter-Statement of the Case/Facts 2

Standard of Review 18

Arguments 19

I. The Trial Court Did Not Abuse its Discretion in Striking Appellant's Answer and Entering a Default as a Sanction for Appellant's Continued Contempt of Court and Willful Discovery Violations 19

II. The Trial Court's Sanctions Were Proportionate to the Severity of Appellant's Misconduct, Which Included Continuing Violations of a Previous Contempt Order Where Appellant Was Warned That Additional Violations May Result in its Answer Being Struck, and Were Thereby Necessary to Protect the Integrity of the Judicial Process 24

III. Appellant Waived its Right to Appeal or Otherwise Contest the Facts and Basis of Judge Goodstein's March 3, 2024, Order of Contempt and Sanctions When it Failed to Appeal that Order, Continued to Violate Orders of the Court Without Good Cause, and Continued to Conceal Important, Responsive Discovery Material 26

IV. By Failing to Respond to the Plaintiff's Discovery for 354 Days, Violating Existing Discovery Orders, Continuing to Violate Discovery Orders and Withholding Discovery Material after Being Held in Contempt of Court and Specifically Warned, and Failing to Seek Relief from the Court Regarding the Scope of Discovery, Appellant Waived its Objections to the Scope of Discovery 27

Conclusion 30

TABLE OF AUTHORITIES
CASES

South Carolina

Buffalo Creek Investments, Inc. v. Pettus, 440 S.C. 111, 889 S.E.2d 608 (Ct. App. 2023) 27

CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011) 20, 22

Daufuskie Island Utility Co., Inc. v. South Carolina Office of Regulatory Staff, 440 S.C. 523, 892 S.E.2d 302 (2023) 26

Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014) 18, 19, 22

Downey v. Dixon, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987) 18, 19, 28

Dunn v. Dunn, 298, S.C. 499, 381 S.E.2d 734 (1989) 18, 20

Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) 19

Halverson v. Yawn, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1997) 24

Hoeffner v. The Citadel, 311 S.C. 361, 429 S.E.2d 190 (1993) 28

In re Anonymous Member of S.C. Bar, 346 S.C. 177, 552 S.E.2d 10 (2001) 25

In re Mt. Hawley Ins. Co., 427 S.C. 159, 829 S.E.2d 707 (2019) 28

Innovative Waste Mgmt., Inc. v. Crest Energy Partners GP, LLC, 445 S.C. 19, 911 S.E.2d 406 (2025) 18, 25

Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) 27

Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) 19

Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996) 24

Richardson v. Twenty-one Thousand & No/100 Dollars ($21,000.00) U.S. Currency, 430 S.C. 594, 846 S.E.2d 14 (Ct. App. 2020) 20

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 743 S.E.2d 778 (2013) 27

State v. Jenkins, 436 S.C. 362, 872 S.E.2d 620 (2022) 28

QZO, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004) 19

Welch v. Advance Auto Parts, Inc., 445 S.C. 640, 916 S.E.2d 320 (2025) 18, 25

Whitfield v. Schimpf, 444 S.C. 633, 911 S.C. 310 (2025) 28

Other Jurisdictions

In re Alford Chevrolet–Geo, 997 S.W.2d 173 (Tex. 1999) 25

United States v. Procter & Gamble Co., 356 U.S. 677 (1958) 25

STATUTES

S.C. Code Ann. §§ 30-4-10 (Supp. 2024), *et. seq* 15

RULES

Rule 1, SCRCP 25

Rule 11, SCRCP 3, 4, 5, 7, 8, 9, 10, 12, 13, 23

Rule 26(b)(1), SCRCP 28

Rule 26(c), SCRCP 26

Rule 30(b)(6), SCRCP 12, 16

Rule 37, SCRCP 17

Rule 37(b)(2)(D), SCRCP 19

Rule 37(d), SCRCP 6

Rule 401, SCRE 28

Rule 402, SCRE 28

COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Did the trial court abuse its discretion in striking Appellant's answer and entering default as a sanction for Appellant's repeated and continued contempt of court and willful discovery violations?

II. Were the trial court's sanctions necessary to protect the integrity of the judicial process and proportionate to the severity of Appellant's misconduct, which included repeated and continuing violations of a previous contempt order, where Appellant was specifically warned that additional violations may result in its Answer being struck?

III. Did the Appellant waive its right to appeal or otherwise contest the facts and basis of the March 3, 2024, Order of Contempt and Sanctions when it failed to appeal the Order, continued to violate Orders of the Court without good cause, and continued to conceal important, responsive discovery material?

IV. By failing to respond to the Plaintiff's discovery for 354 days, continuing to violate existing discovery orders, withholding discovery material after being held in contempt of court, and failing to seek relief from the Court regarding the scope of discovery, did Appellant waive its objections to the scope of discovery?

COUNTER-STATEMENT OF THE CASE/FACTS

This matter arises from a catastrophic motor vehicle collision that occurred on March 13, 2018, on May River Road in Bluffton in Beaufort County, South Carolina. Respondent suffered devastating, life-altering permanent injuries when an uninsured dump truck, having six of its eight brakes out of service, and which had been operating on a D.R. Horton (Appellant) work site called "Cypress Ridge" for nearly a year and a half prior to the wreck, could not stop when approaching backed up traffic, swerved and collided with the Respondent's vehicle head-on while the dump truck was returning to work at that same worksite, and after having just dumped dirt loaded from Appellant's worksite at a different project. (R. pp. 70-73, ¶¶ 7-21).

Respondent first filed suit against the dump truck driver, Alfredo Uriostegui, Mr. Uriostegui's purported company, Jacob AU Trucking, LLC, and the company who engaged Mr. Uriostegui on a full time basis, Kenneth Scott Builders, Inc. (R. pp. 189-194) (R. pp. 68-81). Respondent filed a second lawsuit against Appellant and additional parties in Jasper County, South Carolina, alleging causes of action against Appellant, including Negligence and Gross Negligence under Joint Enterprise Liability, Negligent Entrustment, Vicarious Liability, and Negligent Selection. (R. pp. 108-121).

Respondent alleged that Mr. Uriostegui, the dump truck operator, had removed dirt from Cypress Ridge and dumped the dirt at a separate work site and was returning to Cypress Ridge (Appellant's job site) to do more work at the time of the collision. (R. pp. 111, ¶¶ 10-12). Mr. Uriostegui's deposition testimony revealed that he had worked nearly exclusively at Appellant's Cypress Ridge development on a nearly daily basis for well over a year prior to the collision. (R p. 1597, ll. 19-25; 1599, l. 14 - p. 1600, l. 12; p. 1602, ll. 3-18; p. 1630, ll. 11-16; p. 1664, l. 14-

p. 1794, l. 12). Mr. Uriostegui testified further that he was returning to Cypress Ridge at the time of the collision to either retrieve more dirt or to continue work for the day at Cypress Ridge. (R. p. 1602, ll. 1-21; 1608, l. 20 - p. 1609, l. 20; p. 1612, ll. 6-14).

Appellant immediately began its prolonged, egregious, and methodical pattern of discovery violations in this case by failing to answer the Respondent's initial discovery requests that were served in July 21, 2021. (R. pp. 131-156). When Appellant failed to answer discovery and failed to file any Motion for a Protective Order, Respondent sent emails to Appellant's counsel on September 3, 2021. (R. p. 158). On September 15, 2021, Appellant requested an extension of 15 days to answer discovery despite the deadline to respond having already passed. (R. p. 160). Respondent consented to the extension and sent a letter under Rule 11, SCRCP, on September 17, 2021, but Appellant still did not produce discovery. (R. p. 160).

On September 30, 2021, Appellant's counsel's office reached out to Respondent's counsel and stated that they were still attempting to obtain the project file from the Appellant. No discovery was produced. (R. p. 471). Respondent emailed Appellant's attorney's office again on November 1, 2021 and received no response. (R. p. 158). Then, after Appellant had answered no discovery other than the Respondents initial Requests for Admission, Respondent filed his first Motion to Compel and for Sanctions on November 4, 2021. (R. pp. 131-160). Appellant did not respond and did not attempt to answer discovery for the following nine (9) months.

On July 11, 2022, Appellant received notice of that Respondent's Motion to Compel was scheduled to be argued on August 17, 2022. Appellant ultimately provided initial answers to Respondent's discovery but, finding the answers and responses grossly inadequate, on August 10, 2022, Respondent sent another letter pursuant to Rule 11 to Appellant. (R. pp. 473-475)

Respondent detailed Appellant's indifference to the rights of opposing parties and the court system in his Memorandum in Support of his First Motion to Compel:

> [The Appellant's] gross indifference is demonstrated by the failure to respond to Plaintiff's discovery requests for a year (7 days short thereof), despite Plaintiff following up with defense counsel and filing motions to compel same. Further, D.R. Horton's bad faith is demonstrated by the timeline of events leading up to the hearing on Plaintiff's motion for sanctions. That is, D.R. Horton refusing to give its project file to its counsel (Exhibit 6 (email correspondence showing that D.R. Horton would not give materials to its counsel), D.R. Horton filing multiple motions once Plaintiff's motion for sanctions was placed on the motions roster to attempt to conceal and explain away its bad faith conduct, D.R. Horton providing inadequate and incomplete responses to Plaintiff's discovery requests once Plaintiff's motion for sanctions was placed on the motions roster. (Exh. 7, Pl.'s Rule 11 Letter dated August 8, 2022), and, finally, D.R. Horton dumping hundreds of pages of documents (albeit, only appearing to consist of its insurance policy) on Plaintiff the day before the hearing on the instant motion (over one year after being served with requests) in a feeble attempt to mitigate their standing with the court in regards to their discovery misconduct.
>
> Plaintiff's discovery efforts and case has been hamstrung by D.R. Horton's indifference to the rules of this court and his rights for over a year. D.R. Horton knows of the proper method of objecting to discovery requests—by filing a Motion to Stay and/or for a Motion for a Protective Order (indeed, it did so over a year after receiving Plaintiff's requests and approximately two weeks before the hearing date). Instead, it is determined that it may create its own rules of procedure, ignoring those mandated by this judicial system. This is not hyperbole—Plaintiff's Exhibits to this memorandum show that similar discovery practice is standard procedure for D.R. Horton in various other cases within South Carolina. See Exh. 1-5.

(R. 239-240)

On September 20, 2022, the Honorable Bentley Price (Judge #1) entered a Consent Order filed by Respondent and consented to by Appellant, wherein Respondent withdrew his Motion to Compel "without prejudice and with leave [for Respondent] to file the motion again and seek sanctions should Defendant D.R. Horton not comply with [Respondent's] outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to

resolve any further discovery disputes." (R. pp. 1-2). Pursuant to the Consent Order, Appellant withdrew with prejudice its Motion to Transfer Venue and "agreed that venue is proper in Jasper County and this case will continue to be pending and tried in Jasper County Circuit Court." *Id.*

After the hearing, Respondent continued to reach out to Appellant's attorneys regarding discovery deficiencies. (R. p. 471). What followed was a nine-month process of back and forth emails and phone calls, whereby Appellant first requested search terms, then rejected the search terms Respondent proposed. The time-line below demonstrates the extensive time and effort it took Respondent to obtain a single fact discovery deposition from Appellant:

August 22, 2022	Appellant sent Respondent an email stating, "Glad we could get those motions worked out last week. Are you preparing any Orders? Also, you indicated you thought you were missing emails and correspondence. At this point all emails would be archived and we'd need to do an ESI search through corporate. Did you have a list of terms you'd like us to search? I was thinking.... Also, will you please check to see if we owe you anything else?" (R. p. 1508-1509)
August 31, 2022	Appellant sent a follow-up email to Respondent regarding search terms.(R. p.1507)
September 13, 2022	Respondent replied that counsel was reviewing the search terms Appellant suggested and will have input by the end of the week. (R. p. 1505)
October 25, 2022	Respondent sent an email to Appellant with the search terms and stated, "I think we will need to expand the scope of the list. Here is our proposal: [list of search terms]." Respondent also attached the previous Rule 11, SCRCP, letter and explained in the email what was still outstanding and outright missing. (R. p. 1504-1505)
November 8, 2022	Appellant responded via email requesting a conference call with Appellant's counsel John Crawford regarding the ESI. Appellant also stated that they reviewed the Rule 11 letter and did not believe they owed anything except 1 name - Jared O'Saka (Appellant's regional manager). Respondent replied back letting them know counsel's availability to talk that week. (R. p. 1512)

March 24, 2023	Appellant responded that John Crawford tried to call, but the voicemail was full and requested a call back. Respondent replied, "Why don't you all try the office? Tied up now but will call when I'm free." Appellant tried to call John Crawford's cell phone as requested, but the mailbox was full and he said he would try to touch base "on Monday." (R. p. 1515-1516)
April 1, 2023	Respondent sent an email to Appellant with the times and dates of availability to talk the following week. Appellant replied the same day that they are available on 04/04/2023. (R. p. 1515)
April 4, 2023	There is a call between the Respondent and the Appellant. (R. p. 1514)
May 4, 2023	Respondent sent a Deposition Notice of Jared O'Saka (as an individual), which was scheduled for June 13, 2023. (R. pp. 612, 1121)

This deposition thus took nearly nine (9) months to schedule.

At Mr. O'Saka's deposition Respondent discovered that Appellant possessed significant discovery material that Appellant had not produced despite the September 20, 2022, Consent Order. (R. pp. 1121-1312) Respondent set forth what transpired after the deposition of Mr. Osaka in his Renewed Motion to Compel D.R. Horton, Inc. and Rule to Show Cause Regarding Sanctions, pursuant to Rule 37(d), SCRCP, against Appellant, filed on October 17, 2023:

> During the deposition of O'Saka, it was discovered that D.R. Horton possessed numerous files of material relevant to Plaintiff's discovery requests that it had not previously produced, nor supplemented. After the deposition, counsel for Plaintiff and Defendant mutually agreed that responses would be supplemented, and that D.R. Horton would furnish information to allow Plaintiff to understand the nature of the material that exists, and the scope of what material is missing from responses.
>
> On July 17, 2023, the undersigned e-mailed D.R. Horton's counsel as a follow-up concerning supplemental discovery responses, wherein D.R. Horton agreed to look into providing McGilton with a "file tree" of the filing system disclosed by Mr. O'Saka and also providing files for projects involving Kenneth Scott Builders, LLC (hereinafter, "KSB"). On July 21, 2023, McGilton's counsel followed up with D.R. Horton's counsel again regarding the outstanding

supplemental discovery responses. On July 21, 2023, D.R. Horton's counsel responded that discovery would be supplemented the following week. On August 11, 2023, D.R. Horton's counsel provided a screen shot of some folders purportedly contained within D.R. Horton's files of relevance to the case and asked what the Plaintiff would like to review. In an email on August 15, 2023, Plaintiff's counsel asked to review all documents in the folders. On August 15, 2023, D.R. Horton's counsel agreed to get the material ready to produce and suggested a confidentiality agreement prior to producing due to certain financial material. Plaintiff consented to a reasonable confidentiality agreement on August 22, 2023 relative to confidential material and asked that the non-confidential material be furnished immediately.

After receiving no further response or further material from D.R. Horton, On September 19, 2023 Plaintiff served counsel for D.R. Horton a letter pursuant to Rule 11, SCRCP, relating to D.R. Horton's failure to respond to discovery, and to D.R. Horton's pattern of discovery violations, asking D.R. Horton immediately fully respond to discovery (Exhibit 3, Plaintiff's Sept19, 2023 Rule 11 letter). Plaintiff has received no response to his September 19, 2023 Rule 11 letter to date.

Here, Plaintiff McGilton renews his Motion to Compel that he has been forced to file a second time against D.R. Horton relating to its failure to respond to initial discovery in this important, significant matter, and files this Rule to Show Cause as to why the Court should not sanction D.R. Horton for its continued discovery abuse, or otherwise find it in Contempt.

Plaintiff has substantial rights and needs to obtain the information and documents relevant to his case in the possession of the adverse party. D.R. Horton's failure to reasonably, fully, and completely respond to McGilton's discovery requests has impaired McGilton's ability to timely prosecute and investigate his case (which was filed in January 2021) and will continue to impair McGilton's ability to adequately and timely investigate this case and prepare for trial.

Therefore, McGilton not only renews his Motion to Compel D.R. Horton to respond to McGilton's discovery requests fully and completely, he also seeks enforcement of the Court's September 21, 2022, Order, wherein D.R. Horton consented to allow the Plaintiff to refile with this Court and seek sanctions should D.R. Horton fail to respond to his outstanding discovery requests.

It is undisputed that D.R. Horton holds significant material responsive to the Plaintiff's initial discovery requests served on July 21, 2021, that, despite being duly served with the same, and despite the passage of over two years, it has

failed to produce.

(R. pp. 524-526) (herein, "Second Motion to Compel").

The Second Motion to Compel included Respondent's most recent Rule 11 correspondence dated September 19, 2023 as an Exhibit. (R. p 533-534). Within the letter, Respondent set forth his concerns and demands regarding discovery:

> Dear John [Crawford]:
>
> I am writing in regard to D.R. Horton's ("DRH") failure to supplement discovery that was disclosed during Jared O'Saka's ("O'Saka") deposition held on June 13, 2023. After the deposition, we agreed that you would provide Mark McGilton ("Plaintiff") with a file "tree" of the filing system discussed by Mr. O'Saka, and also the entire project files for projects involving Kenneth Scott Builders (and not just files that are specifically named or reference Kenneth Scott Builders or Ken Tosky). We still have not received discovery relative to the volumes of material that have not been produced which were disclosed during Mr. O'Saka's deposition.
>
> On July 17, 2023, we sent you an email informing you it has been over a month since the agreement of producing supplemental documents, and we still do not have the material agreed upon. On July 21, 2023, we sent a follow-up email requesting an update from the July 17, 2023 email. On July 21, 2023, you replied that you would follow-up with Mr. O'Saka and have the material produced between July 24-28, 2023. On August 3, 2023 we agreed that you would provide a "mapping" of folders on or before August 11, 2023.
>
> On August 11, 2023, you sent us a screenshot of the files contained in the folders to be produced asking what we would like to review. On August 15, 2023, we replied that we would like to review everything in the folder. You responded that you will get it ready to produce and would like to enter into a confidentiality agreement prior to producing the material. We agreed to enter into a reasonable confidentiality agreement on August 23, 2023, and asked that all non-confidential material be immediately produced.
>
> To date, we have not received a confidentiality agreement nor supplemental non-confidential discovery. It is not our duty or burden to continuously request material responsive to requests, and your client has demonstrated a pattern of discovery violations.

> We request that your client immediately supplement the responses per its obligations under the South Carolina Rules of Civil Procedure. Please provide this firm with supplemental discovery responses immediately. We reserve the right to file a motion to compel same.
>
> This letter is our Rule 11, SCRCP, consultation in this regard. Please know that this letter does not identify all deficiencies related to DRH's discovery responses and production. Instead, the issues above constitute DRH's failure to produce material that was agreed upon over three months ago, and does not waive any argument to identify and demand answers and more thorough responses to other deficiencies in the future. Please let us know if you have any questions.

(R. pp. 533-534) (emphasis added).

Despite receiving the above Rule 11 correspondence and despite Respondent filing the second, renewed Motion to Compel, Appellant did not supplement discovery with material that it acknowledged existed. Again, it only responded by producing a "file dump" of discovery material on the eve of the date of the Motion to Compel and Sanctions hearing. (R. p. 26).

On December 7, 2023, the Honorable Diane Goodstein (Judge #2) held a hearing on the Second Motion to Compel, Rule to Show Cause, and Sanctions. Judge Goodstein held D.R. Horton in contempt of court for its sustained and repeated discovery violations. Within the March 5, 2024 Order filed after the hearing, Judge Goodstein made the following factual findings:

> Although D.R. Horton had agreed to provide information and materials the information was not immediately forthcoming. On July 17, 2023, Plaintiff's counsel e-mailed D.R. Horton's counsel as a follow-up concerning outstanding discovery responses, wherein D.R. Horton agreed to look into providing Plaintiff with a "file tree" of the filing system disclosed by Mr. O'Saka at his deposition and also providing files for projects involving Kenneth Scott Builders, LLC (hereinafter, "KSB"). On July 21, 2023, Plaintiff's counsel followed up with D.R. Horton's counsel again regarding the discovery material that had not been produced. On July 21, 2023, D.R. Horton's counsel responded that discovery would be supplemented the following week. On August 11, 2023, D.R. Horton's counsel provided a screen shot of some folders purportedly contained within D.R.

> Horton's digital files of relevance to the case including its work with KSB and asked which material the Plaintiff would like to review. In an email on August 15, 2023, Plaintiff's counsel asked to review all documents in the folders. On August 15, 2023, D.R. Horton's counsel agreed to prepare the material for production and suggested a confidentiality agreement prior to producing due to certain financial material. Plaintiff consented to a reasonable confidentiality agreement on August 22, 2023, relative to confidential material and asked that the non-confidential material be furnished immediately.
>
> After receiving no further response or further material from D.R. Horton, on September 19, 2023, Plaintiff served counsel for D.R. Horton another letter pursuant to Rule 11, SCRCP, relating to and detailing D.R. Horton's failure to respond to discovery, describing the material sought, and reiterating D.R. Horton's pattern of discovery violations. Plaintiff received no response to his September 19, 2023 letter and filed the present Motion to Compel, for Sanctions, and Rule to Show Cause on October 17, 2023 (herein, the "Second Motion to Compel").
>
> The Second Motion to Compel was filed and the motion roster for the instant motion was published on November 7, 2023, scheduling the motion for December 7, 2023. On Friday, December 1, 2023, D.R. Horton sent Plaintiff its proposed confidentiality order, but no additional discovery. On the evening of December 6, 2023, D.R. Horton provided Plaintiff with discovery. This discovery was provided nearly 29 months after Plaintiff's initial discovery request.

(R. pp. 25-26).

Judge Goodstein sanctioned Appellant and, as mentioned, held it in contempt, and ordered that:

> It may purge the contempt before trial by engaging in no more willful discovery violations. It shall strictly abide by time deadlines. It shall cooperate fully and timely answer and respond to discovery requests. It shall cooperate fully with Plaintiff in scheduling and producing witnesses for depositions. It shall otherwise strictly comply with this court's September 22, 2022 Order and with this Order.

(R. p. 29). Judge Goodstein's order added: "Also, I am providing D.R. Horton with a clear and explicit warning that upon a finding of any further discovery violations by any judge, *that its pleadings will be subject to being struck.*" *Id.* (emphasis added) (R. p. 29). Judge Goodstein

concluded her order as follows:

> The Court holds D.R. Horton in contempt. It may purge its contempt by:
>
> 1. Fulfilling all of its discovery obligations from this point forward, and by avoiding any actions that warrant further Motions to Compel or Rule to Show Cause being filed by the Plaintiff;
>
> 2. By strict compliance with all discovery deadlines and answering any existing or supplemental discovery requests; and,
>
> 3. By strict compliance with this Order and the Court's September 22, 2022 Consent Order.
>
> IT IS SO ORDERED

(R. p. 30).

Despite the clear and explicit warning in the March 5, 2024, Contempt Order, Appellant immediately violated deadlines contained within a consent scheduling order by failing to disclose experts in the case by March 27, 2024. (R p. 20, R. p. 35). Pursuant to the January 17, 2024, Consent Scheduling Order, the case was subject to trial on or before August 1, 2024. (*Id.*). Over two (2) months after the deadline for the Appellant to identify experts passed, Appellant filed a motion to amend the scheduling order on June 6, 2024 to obtain leave to disclose experts. (R. 676). Respondent filed a Memorandum in Opposition to the Appellant's Motion in Amend on June 10, 2024. (R. 682).

The Honorable Robert Bonds (Judge #3) held an expedited hearing on the Motion to Amend Scheduling Order, and issued an Order on June 13, 2024, finding, "[Respondent] failed to comply with the scheduling order and has not shown good cause for such violation." (R. p. 35). The June 13, 2024 Order required Appellant to make its "experts available to the Plaintiff at the time and place of the Plaintiff's choosing. If an agreement cannot be made, the court is to be

immediately contacted." (R. p. 35). The Order set a discovery deadline of September 15, 2024, required mediation by October 15, 2024, set the case for a date certain trial on October 21, 2024, and required Appellant to provide a detailed outline of the experts' testimony. (R. pp. 35-36).

Given the short time-frame to take Defendant's expert's depositions, Respondent's attorney's office emailed Appellant's attorney's office on June 17, 2024 asking whether it was authorized to accept service of subpoenas to its experts. Respondent received no response and followed-up on June 18, 2024, and twice on June 21, 2024. Respondent still did not receive a response to any of these emails. On June 24, 2024, Respondent sent a Rule 11, SCRCP, correspondence to Appellant's counsel consulting on several issues, including a request to identify previously produced material, requesting dates and input for topics concerning Rule 30(b)(6) designations after previous requests were ignored, informing Appellant that "we will serve subpoenas directly to their experts," and requesting a "detailed outline of the experts' testimony as required by the Court's June 13, 2024 Order." (R. pp. 937-939).

In response to this correspondence, Appellant provided four possible deposition dates for one expert, Charles Alford, for August 28, September 4, September 9, or September 11, and provided no dates for any other expert. Meanwhile, Respondent provided several dates for its experts and Defendant noticed three depositions of Respondents' experts on June 26, 2024.

On June 27, 2024, Appellant wrote in response to Respondents' June 24, 2024, Rule 11 letter. (R. pp. 940-942). In the June 27, 2024, Letter, Appellant's counsel refused to further outline its expert's deposition testimony and created a theme where it began to accuse Respondent's attorney of "setting us up," claiming that Respondent's attorney intentionally made vague expert designations to prevent them from identifying experts. (*Id.*). Appellant's attorney

closed the letter by stating, "If you want to work together then let's get through this. If you want to litigate this wreck case through threats, accusations and sleight of hand, we can deal with that too." (R. p. 942).

Respondent replied to Appellant's June 27, 2024, correspondence on June 29, 2024, again requesting a detailed outline of expert testimony pursuant to the June 13, 2024, Order. Respondent's attorney closed the letter stating:

> Please know that I do not enjoy and do everything I can to avoid drafting Rule 11 letters and motions to compel to force an opposing party to comply with court rules and prior orders of the court. It is not fun. It is exhausting. I would prefer to focus on the substantive issues of a case and not be dragged into a discovery dispute. Unfortunately, as reflected in Judge Goodstein's Order, but for those efforts to compel your client to comply with the South Carolina Rules of Civil Procedure, my client would have no discovery from D.R. Horton in this case.
>
> Despite our disputes, I have enjoyed getting to know you and John during this litigation. I look forward to working with you in a professional manner and to avoid frivolous disputes and bickering and personal attacks. The June 24, 2024, Rule 11 letter was written for that purpose. So is this correspondence.
>
> We have provided multiple deposition dates for our experts and have noticed the deposition of a witness that you wished to depose. I look forward to receiving dates for D.R. Horton's 30(b)(6) depositions. Please identify or describe the December 6, 2023 production so that we can prepare for and streamline depositions. Please provide a detailed outline of the expected testimony of the experts that you have identified. Given the time deadlines involved with this case, please satisfy these requests and furnish the material or dates requested on or before Tuesday, July 9, 2024.

(R. pp. 1335-1336).

On July 18, 2024, Respondent took the deposition of Mr. Uriostegui, the dump truck driver engaged on D.R. Horton's Cypress Ridge project and involved in the collision at issue in this case. Mr. Uriostegui testified that he regularly worked on a site in Cypress Ridge where

Appellant was building its regional office building. (R. p. 1806, l. 14 - p. 1808, l. 23). He testified that he loaded and removed dirt from the site where Appellant was building its regional office building both across Hulston Landing Rd. to another phase of the Cypress Ridge development as "good dirt." (R. p. 1806, l. 14 - p. 1808, l. 23). He testified that he removed dirt from the site where Appellant was building its regional office building and hauled it off site for use at other construction sites. (R. p. 1806, l. 14 - p. 1808, l. 23). He testified he regularly worked all day hauling dirt from the office building site to the town-home site at Cypress Ridge. (R. p. 1755, l. 23 - 1726, l. 3).

Mr. Uriostegui testified that he helped build the building pad for what he referred to as "the clubhouse," which was "the big white building, a white big house" when "you come in the first left" in Cypress Ridge and that it was a project being worked on by Kenneth Scott Builders, Inc. (R. p. 1772, l. 24 - 1774, l. 10). He repeatedly reiterated that he worked on the building pad for what he called the clubhouse which is near the RV storage area of Cypress Ridge (R. p. 1801, ll. 6-12; pp. 1803, l. 22 - 1804, l. 21) (R. p. 1804, ll. 19-21, responding to the question, "did you help build the pads for this actual clubhouse?" with "I did.").

When asked where he was trying to go at the time of the collision, Mr. Uriostegui stated, "[b]ack to the job site." (R. p. 1609, ll. 3-4). When asked whether he had more work to do that day, he testified, "Yes, Sir." (R. p. 1609, ll. 5-6). When asked specifically whether he was "definitely going to back [sic] Cypress Ridge to do more work?" at the time of the collision, Mr. Uriostegui testified, "Yeah." (R. p. 1609, ll. 21-25). When asked again, "But you were certainly going back to Cypress Ridge at that time?" he answered, "Yes, sir." (R. p. 1612, ll. 12-14).

Based upon Mr. Uriostegui's deposition testimony, Respondent's counsel searched for

any permits or plans relating to what is known as the "Commercial" phase or Office/RV Lot phase of the Cypress Ridge development within material produced by Appellant, D.R. Horton. While Appellant produced invoices and payment requests from Kenneth Scott Builders, Inc. relating to the Office/RV Lot phase (showing that Kenneth Scott Builders invoiced D.R. Horton over $300,000.00 for work), Appellant produced no permits or plans relating to the Office/RV lot phase. Plaintiff then filed a Freedom of Information Act (FOIA)[1] request for material relating to the Office/RV lot phase of development by Appellant D.R. Horton with the Town of Bluffton.

In response to the FOIA request, the Town of Bluffton produced:

1. A copy of the building permit for the regional office headquarters for D.R. Horton showing that D.R. Horton was both the applicant and the General Contractor for the Office and RV phase of Cypress Ridge (R. pp. 809-813, Exhibit 2);

2. Plans showing that plans for D.R. Horton's regional office and the R/V Lot phase were one of and the same (R. p. 815-817, Exhibit 3);

3. Volumes of communications (hundreds if not thousands of pages) between D.R. Horton's 30(b)(6) deponents, the Town of Bluffton concerning the control, methods, permitting, and means of the development of Cypress Ridge, and scores of communications between Kenneth Scott Builders, Inc. and D.R. Horton's employees; and

4. Several notices of inspection and notices of violations relating to grading, surface and wastewater rules and regulations from the Town of Bluffton.

(R. p. 804-817).

Appellant premised its defense in this case on the contention that it was merely the owner or developer of the land subject to the project at issue and was not the general contractor. It alleged that it had no control and held no duties over the acts of the alleged independent contractor who hired the uninsured and un-maintained dump truck that was involved in the

[1] S.C. Code Ann. §§ 30-4-10 (Supp. 2024), *et. seq.*

collision at issue in this matter. However, not only did Appellant admit being the developer and general contractor in their initial answers to Respondent's interrogatories (Appellant's Answer to Respondent's Interrogatories), which took nearly a year to produce after being duly served, material Respondent discovered through the FOIA requests (and not produced by Appellant) demonstrated that Appellant was a general contractor of record for the project where the dirt was repeatedly excavated and removed from Appellant's job site by of Mr. Uriostegui. Emails received through FOIA show that Appellant was intricately involved in the majority, if not all, planning, communications and decisions involved between the Town of Bluffton and the project at issue.

The amount of material withheld and not produced by Appellant that is responsive to the Respondent's discovery requests was staggering, totaling thousands of pages, and the material was incredibly detrimental to Appellant's defenses in this case. As general contractor, it held nondelegable duties over its jobsite and the subcontractors it was bound to supervise, including Kenneth Scott Builders, Inc. and Jacob AU Trucking, LLC. The material was discovered approximately one month before the discovery deadline in the case, requiring yet another extension of the scheduling order. Even so, Appellant still failed to produce the material Respondent received via the FOIA request.

Importantly, before Respondent obtained this material through his FOIA request, Appellant took the deposition of the Respondent's OSHA and safety compliance expert, insisting that it be taken before Appellant's Rule 30(b)(6) depositions. The newly discovered and undisclosed documents materially impacted the nature of Respondent's expert's deposition testimony and subjected the expert to unfair and inaccurate cross-examination at trial.

In short, Appellant's continued contempt of court and failure to comply with discovery requests prejudiced Respondent and placed Respondent in a position where he was to review and analyze thousands of documents prior to the end of the discovery period of this case, and had already prejudiced the Respondent relative to its expert's testimony.

Judge Maite Murphy (Judge #4) was the fourth judge to address Appellant's recalcitrant conduct. She had before her not only Respondent's motion for a rule to show cause pursuant to Rule 37, SCRCP, but a baseless motion Appellant filed seeking Rule 37 sanctions against Respondent. Judge Murphy rejected Appellant's claim that Respondent had presented witnesses for deposition who were not prepared. (R. p. 53).

Regarding Respondent's motion, Judge Murphy found Appellant inexplicably failed to cooperate with discovery by withholding for over three (3) years documents that undercut its defense. Judge Murphy restated the prior rulings by Judge Price, Judge Goodstein and Judge Bonds, including Judge Goodstein's finding of contempt and specific warning that further discovery abuse would subject Appellant to having its Answer stricken. Judge Murphy sanctioned Appellant by striking its Answer and ordering the entry of default for Appellant's egregious discovery violation. (R. pp. 45-54).

On January 27, 2025, Appellant filed a motion for reconsideration of Judge Murphy's order. (R. pp. 733-797). Respondent filed a response to the motion on February 24, 2025. (R. pp. 1550-1941). On June 3, 2025, Judge Murphy entered an amended order granting in part and denying in part Appellant's motion, leaving intact the prior order striking Appellant's Answer and declaring Appellant in default. (R. pp. 56-66).

This appeal followed.

STANDARD OF REVIEW

"Imposing sanctions for violating discovery rules is guided by the trial court's discretion, meaning the 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); *Innovative Waste Mgmt., Inc. v. Crest Energy Partners GP, LLC*, 445 S.C. 19, 28, 911 S.E.2d 406, 410 (2025); *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). *See, also, Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987) ("The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court"); *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762, S.E.2d 535, 543 (2014) (an appellate court will not interfere with "a trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters" unless the court abuses its discretion); *Dunn v. Dunn*, at 502, 381 S.E.2d at 735 ("An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and therefore, amounted to an error of law.") (citations omitted).

ARGUMENTS

I. The Trial Court Did Not Abuse its Discretion in Striking Appellant's Answer and Entering Default as a Sanction for Appellant's Continued Contempt of Court and Willful Discovery Violations

South Carolina law grants trial courts broad discretion to impose sanctions for discovery violations. *See Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997). Striking a party's pleading is not only appropriate but necessary where the party's conduct demonstrates bad faith, willfulness, or gross indifference. *See Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-199, 511 S.E.2d 716, 719 (Ct. App. 1999) ("Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction."). *See also QZO, Inc. v. Moyer*, 358 S.C. 246, 256, 594 S.E.2d 541, 547 (Ct. App. 2004) ("When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment.").

Rule 37(b)(2)(D), SCRCP, specifically authorizes the trial court to hold a party in contempt of court for failure to follow a discovery order of the trial court. It is well within the sound discretion of the trial court on deciding what is an appropriate sanction for the conduct that warrants a finding of contempt of court. *Davis v. Parkview Apts.*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) (quoting *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987) ("The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.")). The only reason for the appellate court to interfere with a sanction issued by the trial court is if the appellant can show "that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of the appellant, and therefore,

amounted to an error of law." *Id.* (quoting *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)). That is clearly not the case in this appeal, where Appellant's contempt for multiple circuit court orders was so blatant and demonstrated, at a minimum, gross indifference.

Appellant contends that Judge Murphy abused her discretion by not analyzing factors set forth in *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 82, 716 S.E.2d 877, 885 (2011) ("In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice."). Appellant contends this alleged failure results in an abuse of discretion as a matter of law under *Richardson v. Twenty-one Thousand & No/100 Dollars ($21,000.00) U.S. Currency*, 430 S.C. 594, 600, 846 S.E.2d 14, 17 (Ct. App. 2020) ("If the court does not consider these factors, an abuse of discretion occurs"; Court reversed the trial court's order denying a motion for sanctions for discovery abuse and remanded under instructions to grant a continuance, permit the discovery, and permit the parties to consider future strategy). (App. Br. pp. 6, 17-20, 29-37). The Court should not be persuaded by this argument.

In her amended order, Judge Murphy outlined the manner in which Respondent discovered documents that belied Appellant's contention that it was merely the owner of the property and not the general contractor for the project:

> Defendant D.R. Horton has based its defense in this case on the premise that it is merely an owner of the development and did not have a hand in the construction or act as a general contractor. (See Def. D.R. Horton, Inc.'s Mtn. for Summary Judgment as to Pl. Mark W. McGilton, and Def. D.R. Horton, Inc.'s Mtn. to Reconsider, Alter or Amend Order on its Mtn. for Summary Judgment). Defendant deposed the Plaintiff's safety and compliance expert, highlighting the contention that D.R. Horton was purportedly merely an owner of the land and not a General Contractor. Plaintiff's safety and compliance expert testified that D.R. Horton's responsibilities over the land and development merely as owner and not

acting as contractor would be very limited if existent at all.

After Plaintiff's Safety and Compliance Expert testified, in a subsequent deposition Mr. Alfredo Uriostegui, the driver of the dump truck involved in the collision in this matter, testified that he regularly worked on a site in Cypress Ridge where D.R. Horton was building its regional office building. (Uriostegui Dep. 235:14-237:23). He also testified that he loaded and removed dirt from the site where D.R. Horton was building its regional office building both across Hulston Landing Rd. to another phase of the Cypress Ridge development as "good dirt." (Uriostegui Dep. 235:14-237:23). He testified further that he removed dirt from the site where D.R. Horton was building its regional office building and hauled it off site for use at other construction sites. (Uriostegui Dep. 235:14-237:23). Finally, Mr. Uriostegui testified he regularly worked all day hauling dirt from the office building site to the townhome site at Cypress Ridge. (Uriostegui Dep. 184:23-185:3).

Based upon the later deposition testimony of Mr. Uriostegui, Plaintiff's counsel searched for any permits or plans relating to what is known as the "Commercial" phase or Office/RV Lot phase of the Cypress Ridge development within material produced by Defendant D.R. Horton. While Defendant had produced invoices and payment requests from Kenneth Scott Builders, Inc. relating to the Office/RV Lot phase (showing that Kenneth Scott Builders invoiced D.R. Horton over $300,000.00 for work), D.R. Horton produced no permits or plans relating to the Office/RV lot phase. Plaintiff filed a Freedom of Information Act (FOIA) request for material relating to the Office/RV lot phase of development by D.R. Horton with the Town of Bluffton. In response to the FOIA request, the Town of Bluffton produced:

1. A copy of the building permit for the regional office headquarters for D.R. Horton showing that D.R. Horton was both the applicant and the General Contractor for the regional office building within the commercial phase a/k/a office and RV phase of Cypress Ridge;

2. Documents showing that plans for the site of D.R. Horton's regional office and the R/V Lot phase were one and the same;

3. Volumes of communications (hundreds if not thousands of pages) between D.R. Horton's 30(b)(6) deponents, the Town of Bluffton concerning the control, methods, permitting, and means of the development of Cypress Ridge, and several communications between Kenneth Scott Builders, Inc. and D.R. Horton's employees; and

4. Several notices of inspection and notices of violations relating to grading,

> surface and wastewater rules and regulations from the Town of Bluffton directed to Defendant D.R. Horton.
>
> These documents tend to show that D.R. Horton was the general contractor of record for the very phase of work which was being completed by the Dump Truck Operator (as defined in Plaintiff's Complaint) when the Dump Truck Operator collided with the Plaintiff on his way back to Cypress Ridge to perform more work for D.R. Horton. The documents support Plaintiff's contention that D.R. Horton was the General Contractor over the phase of development from which the Dump Truck Operator mined dirt and regularly hauled loads of dirt off site. That is, these documents are evidence that Defendant D.R. Horton was acting as the General Contractor over the Dump Truck Operator, having power, control and responsibility over him.
>
> The documents support Plaintiff's contention that D.R. Horton allowed an uninsured and un-maintained dump truck to operate on its construction site and the Operator to keep its truck on its construction site for well over a year. D.R. Horton concealed these facts from the Plaintiffs and failed to disclose these facts to the court in its motion for Summary Judgment. D.R. Horton was in possession of these very same documents but failed to produce them for over three years after Plaintiff's discovery requests to which these documents would have been responsive.

(R. pp. 59-62). These findings suffice to demonstrate prejudice sufficient to meet the test outlined in *CFRE*. Judge Murphy added:

> This Court finds Defendant D.R. Horton has engaged in willful disobedience as well as gross indifference to the prior orders of this Court, resulting in prejudice to the Plaintiff and justifying said sanctions. *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008); *see also Davis v. Parkview Apartments*, 409 S.C. 266[, 762 S.E.2d 535] (2014). Judge Price's order was direct; Judge Goodstein's order held D.R. Horton in contempt and provided a clear warning; and Judge Bonds' order found D.R. Horton failed to demonstrate good cause for continuing to violate prior orders. Defendant D.R. Horton's repeated disregard for the discovery process and subsequent court orders has caused prejudice to the Plaintiff.

(R. p. 63).

The record in this case provides more than reasonable evidence demonstrating Appellant's willful misconduct. Despite being served with discovery requests on July 21, 2021,

Appellant failed to produce responsive documents for nearly one (1) year. Respondent's counsel repeatedly contacted Appellant's counsel, granted Appellant an extension to respond to Respondent's discovery requests, sent his first letter pursuant to Rule 11, SCRCP, on September 17, 2021, and then filed his first Motion to Compel and Motion for Sanctions on November 4, 2021.

Appellant continued its willful disregard for the court's orders after being held specifically held in contempt. As noted above, Respondent served his initial discovery requests on July 21, 2021. Respondent asked Appellant to identify all communications between Appellant D.R. Horton, Inc. and Kenneth Scott Builders, Inc. relating to Cypress Ridge (R. p. 138). Respondent asked Appellant to "Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense of this case." (R. p. 136). Respondent asked Appellant to identify all documents "which You have knowledge relating to this lawsuit." (R. p. 139). Further, Respondent requested a copy of any building permits, zoning permits, or other documents obtained by Appellant to develop Cypress Ridge, located at 210 Hulston Landing Rd., Bluffton, SC 29909. (R. p. 154). Respondent also requested "[c]opies of all documents identified, referred to, or used in your answers to Plaintiff's First Set of Interrogatories." (R. p. 151).

This was not the first time Appellant has systematically failed to follow the orders of the trial court and the SCRCP. Appellant failed to cure its contempt and continued to ignore the warnings of Judge Goodstein's Order. The failure to produce the most important material in this case constituted a grave violation of the court's previous Orders.

Appellant cannot demonstrate in this appeal that the striking of its answer imposed by the

trial court was without reasonable factual support as it was the Appellant that failed to follow three prior court orders. Further, there is no prejudice resulting to the right of the Appellant as it was the Appellant that injected the issue of its status as general contractor into the case. The Appellant should not be permitted to come to this Court and claim that the striking of its answer was not warranted. The trial court acted within its discretion in finding that Appellant was in contempt of court multiple times and that Appellant should be sanctioned for disregarding the trial court's order. This Court should affirm.

II. The Trial Court's Sanctions Were Proportionate to the Severity of Appellant's Misconduct, Which Included Continuing Violations of a Previous Contempt Order Where Appellant Was Warned That Additional Violations May Result in its Answer Being Struck, Thereby Necessary to Protect the Integrity of the Judicial Process

Striking a party's pleading is a remedy of last resort, but it is entirely justified where lesser sanctions would be insufficient to address the misconduct. *See Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1997). In this case, the trial court considered lesser sanctions but concluded that they would not adequately address the prejudice caused to Respondent or deter similar misconduct in the future. This Court should affirm.

Appellant's discovery violations were not isolated incidents but part of a deliberate pattern of misconduct that spanned the duration of the litigation. The trial court's sanctions were necessary to protect the integrity of the judicial process and to ensure that Respondent received a fair trial. *Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996) ("Whatever sanction is imposed should serve to protect the rights of discovery provided by the rules."). Respondent was prejudiced at every stage of the litigation, by being forced to attempt to pry out any discovery responses from Defendant, schedule matters with the Defendant, and repeatedly continue trial

dates because of the Appellant's disregard of the Rules of Civil Procedure and failure to produce material until being forced to do so by the court, repeatedly. It is reasonable to believe that Respondent would never have been able to proceed to trial or know that it had all relevant material before trial given Appellant's pattern and method of willful discovery violations. Appellant's contention that the sanctions were excessive is wholly unsupported by the record.

Appellant demonstrated a "cavalier disdain of the elementary rules of civil procedure." *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 650, 916 S.E.2d 320, 325 (2025). As the Supreme Court in *Welch* explained, "[f]ortune may favor the bold, but a party that persists in a bold refusal to comply with basic ordered discovery may soon realize it is the architect of its own misfortune. So it is here." *Id.* The Court explained further:

> Our civil procedure is guided by rules whose prime directive is to "secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP; *see also In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) ("The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." (quoting *In re Alford Chevrolet–Geo*, 997 S.W.2d 173, 180 (Tex. 1999))); *id.* ("[T]he 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.'" (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682, 78 S. Ct. 983, 2 L. Ed.2d 1077 (1958))). A party can foul out of the process. *See Innovative Waste*, [445 S.C. 19, 22, 911 S.E.2d 406, 407 (2025)] ("[I]n discovery, time does eventually run out on bad behavior.").

Welch, at 656, 916 S.E.2d at 329.

Appellant persisted in a bold refusal to abide by the orders entered by Judge Price, Judge Goodstein, and Judge Bonds. It is the architect of its own misfortune. *Welch*. Even after Judge Murphy held the Rule to Show Cause hearing, Appellant produced thousands of pages of project files which it had not previously produced. (R. p. 1352). Then, on December 23, 2024, three and

a half (3 ½) years after receiving Respondent's discovery requests and over a year after the December 6, 2023, hearing where Judge Goodstein held Appellant in contempt for its discovery violations, Appellant informed Respondent that it had identified additional responsive material and had collected approximately 46,000 emails potentially responsive to Respondents' requests. (R. 1352). Judge Murphy proceeded in the only manner that would ensure respect for the administration of justice and vindication of the Respondent's right to full and fair discovery.

The Court should affirm Judge Murphy's discretionary ruling striking Appellant's answer and declaring Appellant in default.

III. Appellant Waived its Right to Appeal or Otherwise Contend the Facts and Basis of Judge Goodstein's March 3, 2024 Order of Contempt and Sanctions When it Failed to Appeal that Order, Continued to Violate Orders of the Court Without Good Cause, and Continued to Conceal Important, Responsive Discovery Material

Appellant contends the discovery Respondent served was "overbroad" and burdensome, and sought material that was irrelevant. (App. Br. pp. 37-39). The Court should decline to address this argument.

Appellant never objected to the discovery or sought a protective order pursuant to Rule 26(c), SCRCP. Furthermore, Appellant appealed only from Judge Murphy's January 15, 2025, order finding Appellant violated the prior orders (including Judge Goodstein's warning) and the June 3, 2025, order resolving Appellant's Motion for Reconsideration. (Notice of Appeal with attachments). Appellant failed to appeal the intermediate orders entered by Judge Price, Judge Goodstein or Judge Bonds, including the order of contempt. Those rulings are therefore the law of this case. *See, e.g., Daufuskie Island Utility Co., Inc. v. South Carolina Office of Regulatory*

Staff, 440 S.C. 523, 530, 892 S.E.2d 302, 306 (2023) ("[A]n unappealed ruling, right or wrong, is the law of the case."); *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."); *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (a party may not seek relief from an order not appealed "because the order has become the law of the case"); *Buffalo Creek Investments, Inc. v. Pettus*, 440 S.C. 111, 119, 889 S.E.2d 608, 612 (Ct. App. 2023) (same).

Even so, each of those orders contain a reasonable factual basis in the record and are not controlled by any error of law. The rulings are, therefore, within the circuit court's sound discretion. And each of these rulings overwhelmingly support Judge Murphy's decision in this case.

This Court should refuse to address any challenge to the discovery orders entered by Judge Price, Judge Goodstein or Judge Bonds.

IV. By Failing to Respond to the Plaintiff's Discovery for 354 Days, Violating Existing Discovery Orders, Continuing to Violate Discovery Orders and Withhold Discovery Material after Being Held in Contempt of Court and Specifically Warned, and Failing to Seek Relief from the Court Regarding the Scope of Discovery, Appellant Waived its Objections to the Scope of Discovery

Appellant's attempt to deflect responsibility by pointing to Respondent's prior settlement with Kenneth Scott Builders, Inc. is both irrelevant and disingenuous. (App. Br. pp. 1-2, 8). Appellant's discovery obligations were independent of the settlement and were entirely within its control. The trial court properly focused on Appellant's misconduct and the prejudice caused to Respondent. This Court should reject Appellant's argument and affirm.

South Carolina law requires courts to consider the totality of the circumstances when

imposing sanctions. *See Downey v. Dixon*, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987). The trial court's decision to strike Appellant's answer was based on the totality of the circumstances and should be affirmed without hesitation.

Appellant further baldly asserts it "had nothing to do with the accident." (App. Br. p. 8). The documents Respondent obtained pursuant to FOIA tell another story – that Appellant was, in fact, the general contractor and not "just an owner" as it claims. (App. Br. p. 8). Appellant admits it did not produce the documents Respondent obtained through FOIA because Appellant unilaterally determined "*they are not relevant*" to the discovery requests. (App. Br. pp. 9-10) (italics in original). The Court should not be persuaded by these assertions.

The scope of discovery in South Carolina is generally broad. *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 829 S.E.2d 707 (2019). "As a result, parties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim." *Id.*, at 166, 829 S.E.2d at 712. *See, also,* Rule 26(b)(1), SCRCP ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party....").

"The central premise of the law of evidence is, 'All relevant evidence is admissible ....'" *Whitfield v. Schimpf*, 444 S.C. 633, 648, 911 S.C. 310, 318 (2025), *citing* Rule 402, SCRE and *State v. Jenkins*, 436 S.C. 362, 391, 872 S.E.2d 620, 635 (2022). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Whitfield v. Schimpf, supra,* (citing Rule 401, SCRE). *See, also, Hoeffner v. The*

Citadel, 311 S.C. 361, 365, 429 S.E.2d 190, 192 (1993) ("Evidence is relevant and admissible if it tends to establish or make more or less probable some matter in issue.").

It was not Appellant's right to unilaterally decide that the documents it possessed, that were in fact responsive to Respondent's discovery requests, were not relevant. If Appellant believed the requests sought material beyond the broad scope of relevancy, it was incumbent upon Appellant to seek a protective order from the court, or even to simply object and respond to a motion to compel. It was not permissible, however, for Appellant to withhold the material and force Respondent to obtain it from a third party. This is particularly so where three (3) judges had already found Appellant failed to cooperate in discovery, and one of them held Appellant in contempt and warned Appellant of the consequences for future recalcitrant conduct.

The trial court was not persuaded by Appellant's feigned argument that it innocently believed the material was non-responsive to discovery or was irrelevant. This Court should affirm the trial court's decision.

CONCLUSION

For the foregoing reasons, the Court should affirm trial court's discretionary order striking Appellant's answer and entering default judgment. There is sufficient evidence of Appellant's willful and egregious discovery violations to justify the court's imposition of severe sanctions, and the trial court's decision was a proper exercise of its discretion under South Carolina law.

Respectfully submitted,

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