

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

CIVIL ACTION NO: 2022-CP-37-00108

American Pharma Machinery, LLC,

Plaintiffs,

v.

Clements Electrical, Inc.; Alton Frederick Clements, Jr.; Janet Gay Clements; Jason Dix; Nicholas Behringer; Sherry L. Burgess; Nicholson H. Jerry; Francesco Majia Armando Frank; Melissa C. Chastain; Jared Adam Pierce,

Defendants.

RECEIVED**Jun 12 2026****SC Court of Appeals**

**ORDER GRANTING DEFENDANTS
CLEMENTS ELECTRICAL, INC., ALTON
FREDERICK CLEMENTS, JR., JANET GAY
CLEMENTS, JASON DIX, AND NICHOLAS
BEHRINGER'S MOTION TO STRIKE
PLAINTIFF AMERICAN PHARMA
MACHINERY, LLC'S COMPLAINT**

This matter comes before me upon motion by Defendants Clements Electrical, Inc., Alton Frederick Clements, Jr., Janet Gay Clements, Jason Dix, and Nicholas Behringer (hereinafter collectively "Clements Electrical Defendants") to strike Plaintiff American Pharma Machinery, LLC's Complaint.

After reviewing the record, the memoranda of law filed by all parties, and hearing the able arguments of counsel, for the reasons set forth below, this Court grants Defendants Clements Electrical, Inc., Alton Frederick Clements, Jr., Janet Gay Clements, Jason Dix, and Nicholas Behringer's Motion to Strike American Pharma Machinery, LLC's Complaint and dismisses American Pharma Machinery, LLC's causes of action.

LEGAL AUTHORITY

Pursuant to Rule 37(a)(2), if a party fails to answer an interrogatory submitted under Rule 33, the discovering party may move for an order compelling an answer. *See also* Rule 37(a)(3), SCRPC, ("[A]n evasive or incomplete answer is to be treated as a failure to answer."). If the court

grants the motion, the court must also award the moving party reasonable attorney's fees, "unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust."

If a party then fails to obey an order to provide or permit discovery, "the court in which the action is pending *may* make such orders in regard to the failure *as are just*." Rule 37(b)(2), SCRCP, (emphasis added). Therefore, in addition to the remedies set forth under Rule 37(a), SCRCP, if a party fails to comply with an order, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. Rule 37(b)(2)(C), SCRCP. The selection of a particular sanction 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).

Dismissal or a sanction tantamount to dismissal such as striking a pleading is appropriate only when there is bad faith, willfulness, or callous disregard for the rights of others. *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014) (Holding that the trial court did not err in issuing a dismissal order as sanction for appellants' noncompliance with court's orders where appellants' failure to comply with various court orders was willful and deliberate and caused unnecessary delay of the case and prejudice to respondents); *Brandt v. Gooding*, 368 S.C. 618, 630 S.E.2d 259 (2006) (complaint dismissed as contempt sanction for filing false document); *Barnette v. Adam Bros. Logging, Inc.*, 355 S.C. 588, 586 S.E.2d 572 (2003) (upholding the dismissal of complaint for persistent refusal to authorize examination of relevant records); *QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004) (violation of court order to preserve evidence on computer violated by reformatting hard drive supported striking of defendant's pleadings); *Griffin Grading and Clearing, Inc v. Tire Serv. Equip. Mfg. Co., Inc.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) (failure to comply meaningfully with four prior discovery orders supported striking of

pleadings); see also *Rickerson v. Karl*, 412 S.C. 215, 770 S.E.2d 767 (Ct. App. 2015). The trial court is given discretion in determining the severity of these sanctions in the event of willful noncompliance with discovery. *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (The trial court is given discretion in deciding the severity of sanctions “for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice”).

DISCUSSION

The Clements Electrical Defendants’ Motion to Strike and this Order are the result of years of American Pharma and its owner Dorothy Pierce refusing to willingly participate in discovery; subsequent court orders compelling American Pharma and Dorothy Pierce to participate in discovery; American Pharma and Dorothy Pierce refusing to comply with those orders; subsequent court orders sanctioning their conduct; and their refusal thereafter to comply with those orders. American Pharma and Dorothy Pierce’s pattern of willful noncompliance, gross indifference to the Defendants’ rights, and disrespect of the Court’s authority necessitates the drastic remedy of striking American Pharma’s Complaint and dismissing its causes of action.

On December 9, 2025, the Court struck Plaintiff Dorothy Pierce’s Complaint and set forth in detail the reasons for striking her Complaint. The Court finds that the reasons set forth therein apply equally to Plaintiff Dorothy Pierce and Plaintiff American Pharma, as both parties refused to willingly and meaningfully participate in discovery. Accordingly, the Court adopts the reasons set forth in the December 9, 2025 Order in support of its decision to strike American Pharma’s Complaint.

In further support of its decision to strike American Pharma’s Complaint in accordance with Rule 37 of the South Carolina Rules of Civil Procedure is as follows, the Court finds:

1. On July 3, 2025, Dorothy Pierce filed a Motion for Protective Order, requesting protection from in-court appearances from September 2, 2025, through January 30, 2026.

2. On July 22, 2025, the Honorable Judge R. Lawton McIntosh issued an Order denying the Motion for Protective Order.

3. On August 5, 2025, the Clements Electrical Defendants noticed the 30(b)(6) deposition of American Pharma for September 15, 2025 at 11:00 a.m. at the Oconee County Courthouse. The notice was sent via email to Dorothy Pierce, American Pharma's counsel of record (at the time) Robert L. Gailliard, and all other counsel of record.

4. On September 15, 2025, Dorothy Pierce, the owner and sole remaining employee of American Pharma, appeared at the deposition. Mr. Gailliard did not. Because counsel for the Clements Electrical Defendants could not question American Pharma without its attorney present, the deposition did not go forward.

5. On November 13, 2025, counsel for the Clements Electrical Defendants sent an email to Dorothy Pierce and counsel for American Pharma asking for dates in December 2025 for the 30(b)(6) deposition of American Pharma.

6. On November 13 and 14, 2025, Dorothy Pierce responded that she is the principal of American Pharma and will be testifying on its behalf. Dorothy Pierce further stated that she is campaigning in Uganda until January 12, 2026 and will not sit for an in-person deposition until February 2026, despite having her motion for protection denied.

7. On November 18, 2025, during the hearing on the Clements Electrical Defendants' Motion to Strike Dorothy Pierce's Complaint, the Honorable Judge R. Lawton McIntosh placed this case in the #1 spot on the April 6, 2026 Jury Trial Roster.

8. On December 16, 2025, the Clements Electrical Defendants re-noticed the 30(b)(6) deposition of American Pharma for January 8, 2026 at 11:00 a.m. at the Oconee County Courthouse. The notice was sent via email to American Pharma's counsel of record and all other counsel of record. Counsel for the Clements Electrical Defendants appeared at the specified time and place. Neither a representative of American Pharma nor its counsel appeared at the deposition.

9. On January 8, 2026, the Clements Electrical Defendants filed a Motion to Strike American Pharma's Complaint and supplemented the motion with a Memorandum in Support on January 30, 2026.

10. On February 3, 2026, American Pharma filed a Memorandum in Opposition to the Clements Electrical Defendants' Motion to Strike.

11. On February 5, 2026, a hearing was held before the Honorable Judge Patrick C. Fant, III. Counsel for the Clements Electrical Defendants and counsel for American Pharma attended the hearing. During the hearing, counsel for American Pharma informed the Court that Dorothy Pierce was stuck in Uganda and that, due to her recently running for political office in Uganda, was being prevented by the Ugandan government from leaving the country.

12. On February 26, 2026, the Court issued an Order ordering Dorothy Pierce to sit for a deposition within thirty (30) days, or risk the complaint being stricken.

13. On March 3, 2026, a WebEx hearing was held before the Honorable Judge Patrick C. Fant, III. Counsel for the Clements Electrical Defendants and counsel for American Pharma attended the hearing. During the hearing, counsel for American Pharma informed the Court that he had unintentionally misled the Court during the February 5, 2026 hearing on the Clements Electrical Defendants' Motion to Strike American Pharma's Complaint. Specifically, counsel

for American Pharma informed the Court that on March 2, 2026, he was informed by Dorothy Pierce that she was not being detained by the Ugandan government; in reality, she was deported from the United States on November 5, 2025 and cannot re-enter the country. Counsel for American Pharma further informed the Court that because American Pharma cannot produce a witness to testify on its behalf at a deposition or at the April 6, 2026 trial, American Pharma cannot prosecute its case against the defendants.

14. On March 3, 2026, the Clements Electrical Defendants filed a Motion for Reconsideration, asking the Court to reconsider its February 26, 2026 ruling and strike American Pharma's Complaint, in light of the new information provided by counsel for American Pharma.

American Pharma has demonstrated a gross indifference to the Defendants' rights and disrespect of the Court's authority by its repeated willful noncompliance throughout the life of this case. American Pharma has refused to willingly or meaningfully participate in written discovery, refused to willingly participate in depositions, and ignored the sanctions entered against it. Dorothy Pierce, American Pharma's owner and only representative, left the United States and advised party counsel that she will not attend in-person events *despite* the Court denying her Motion for Protective Order. Now, it is the Court's understanding that Dorothy Pierce has been deported and cannot re-enter the country. As such, American Pharma cannot produce a witness to testify on its behalf at deposition or at trial and thus cannot prosecute its case against the defendants.

For the reasons set forth herein and in the Court's December 9, 2025 Order striking Dorothy Pierce's Complaint, the Court **GRANTS** Defendants Clements Electrical, Inc., Alton Frederick Clements, Jr., Janet Gay Clements, Jason Dix, and Nicholas Behringer's Motion to Strike

American Pharma Machinery, LLC's Complaint and dismisses American Pharma Machinery, LLC's causes of action.

AND IT IS SO ORDERED.



Oconee Common Pleas

Case Caption: Dorothy Pierce , plaintiff, et al VS Clements Electrical Inc ,
defendant, et al
Case Number: 2022CP3700108
Type: Order/Other

So Ordered

Patrick C. Fant, III