

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Richard A. Gorman,)
)
Plaintiff,)
)
-vs-)
)
John C. Monarch,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

ORDER FOR SANCTIONS

C.A. No. 2021CP2303414

RECEIVED

Feb 27 2025

SC Court of Appeals

This matter comes before the Court upon various Motions filed by the parties which were heard on March 23, 2023. Andrew Radeker and David Moore appeared on behalf of the Plaintiff and Steven Buckingham appeared on behalf of Defendant.

The original Complaint seeking damages for defamation and civil conspiracy was filed on August 8, 2014 and subsequently dismissed under Rule 40j. The Complaint was restored under the current civil action number on July 15, 2021. By Order issued October 18, 2022, Judge Letitia Verdin designated this case as complex and assigned it to Judge Gravely. The complexity of the case seems to lie with the tortured procedural and discovery history of this litigation. The duration of the case rivals *Jarndyce v. Jarndyce* of Bleak House fame (C. Dickens, 1852).

There were several Motions considered by the Court on March 23, 2023.

Defendant had filed a Motion to Schedule a Trial and the trial has been set for the week of October 31, 2023.

Defendant also filed a Motion to Strike the affidavit of Illya Shpetrik presented by the Plaintiff. In support of this motion, Defendant argued that this affidavit was acquired in connection with a settlement of a case between Shpetrik and the Plaintiff and therefore violates

the Rule of Professional Conduct and S.C. Rules of Civil Procedure. Although there may be issues as to the validity and veracity of the affidavit and the consideration which should be given by the Court, the Court does not find that the Defendant has established a sufficient basis to strike the affidavit and Defendant's Motion is respectfully denied.

The primary Motion before the Court is Plaintiff's Motion for Sanctions for Defendant's repeated refusal to comply with discovery and Orders to Compel. The history of the discovery dispute in this case is as follows:

-In 2014 (in the action before it had been restored under a new number), Plaintiff served Defendant with discovery requests seeking access to certain electronic data which is the primary issue of this Motion.

-A Motion to Compel discovery was filed in 2018, but the hearing was cancelled because counsel understood that an agreement had been reached between the parties as to the discovery to be provided.

-As of June, 2020, the discovery issues had not been resolved and Plaintiff filed another Motion to Compel. This Motion to Compel was resolved by a Consent Order issued August 21, 2020 in which defendant agreed to provide for examination the electronic devices in issue.

-As of August, 2021, Defendant had failed to comply with discovery requests and the previous Consent Order of August 21, 2020 and Plaintiff filed another Motion to Compel on August 17, 2021, along with a Motion for Sanctions for Destruction of Evidence. After a hearing on Plaintiff's Motion, Judge Alex Kinlaw, Jr. issued an Order on March 28, 2022 ordering the production of the electronic devices in issue but continued the Plaintiff's Motion for Sanctions.

-On April 7, 2022, Defendant moved for a reconsideration of the March 28, 2022 Order after which Judge Kinlaw reissued his previous Order on April 27, 2022.

- On May 18, 2022, Defendant appealed both Orders of Judge Kinlaw and on May 24, 2022, the Court of Appeals summarily dismissed the Appeal “because the underlying order is not immediately appealable.” The Defendant filed a Motion to Reconsider this dismissal, but the rehearing was denied by Order of the Court of Appeals filed November 15, 2022.

-Following the denial of the Defendant’s Petition for Rehearing, Judge Kinlaw heard the Motion to Reconsider his Order on December 2, 2022 and issued an Order on January 12, 2023 denying the Defendant’s Motion.

So now the Court is presented with the sole issue of what sanctions to impose on Defendant for failure to comply with the various Court Orders relating to Discovery.

In addressing this issue, the Court must first determine the nature of Defendant’s non-compliance with the previous Order. In the Consent Order of August 21, 2020, paragraph 1) d, the Defendant specifically agreed to the following:

With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

Clearly, Defendant agreed to provide electronic devices chosen by Plaintiff and had this agreement incorporated into a Consent Order which was filed with the Court. And as before, there was no meaningful compliance by Defendant and Plaintiff was required, once again, to file a Motion to Compel. That Motion resulted in the March 28, 2022 Order from Judge Kinlaw which sets forth very specific requirements for production of the electronic devices and safeguards to protect the Defendant’s information. Instead of complying, Defendant proceeded

with a futile attempt of an appeal of an interlocutory order and Motion for Reconsideration. Now, that Defendant has run out of options, he continues to refuse to provide discovery as Ordered by the Court.

In response to the Plaintiff's Motion for Sanctions, Defendant argues that producing the information requested by the Plaintiff will allow the Plaintiff to have significant personal and confidential information which can be disseminated to the world via social media and other formats. Judge Kinlaw's Order sets forth some very specific safeguards to protect the Defendant's information. So, it all boils down to this: Defendant has agreed and been required by 2 separate orders to provide certain electronic devices and has refused to do so. The Court must now fashion a remedy that is appropriate for Defendant's noncompliance and sufficient to protect the sanctity of Court's authority.

In his Motion for Sanctions filed February 10, 2023, Plaintiff argues that Defendant's actions and noncompliance is so egregious that the Court should strike the Defendant's Answer and Counterclaim and declare the Defendant in default. As cited by the Plaintiff, such a sanction which "results in a default or dismissal is a severe punishment that should be imposed only if there is some showing of bad faith, willful disobedience, or gross indifference to the rights of the adverse party." *Rickerson v. Karl*, 412 S.C. 215, 770 S.E.2d 767, 770 (Ct. App. 2015). In light of the Defendant's actions, the Court finds that his non-compliance is in bad faith, willfully disobedient or at a minimum a gross indifference to the Plaintiff's rights. Pursuant to Rule 37, SCRCP, the Court is empowered

to impose a wide variety of sanctions. However, the sanction imposed should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958). The sanction should be aimed at the specific misconduct of the party sanctioned. In other words, the sanction should be a rifle-

shot, not a shotgun blast. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990).

Upon consideration of these matters, the Court seeks to impose a sanction which is a “rifle-shot” which would compel compliance by Defendant, impose appropriate sanctions for non-compliance but provide protection of personal and confidential information.

After review of the record, the Court finds that the Defendant is in willful violation of 2 court Orders: the consent order of August 21, 2020 and the subsequent order of Judge Kinlaw issued on March 28, 2022. Thus, the Court finds Defendant in Civil Contempt of these Orders and imposes the following sanctions:

1) the Defendant shall fully comply with the March 28, 2022 Order of Judge Kinlaw within 45 days of this Order or shall be fined \$7500 and his Answer and Counterclaim shall be stricken and Defendant shall be deemed in default; and

2) the Court hereby awards attorneys fees and costs to Plaintiff for all actions in connection with the Motion to Compel, responding to the Appeal and the hearings for these Motions. Plaintiff’s Counsel shall provide an affidavit for costs and attorneys fees within 10 days of receipt of this Order and Defendant’s counsel shall, within 5 days of receipt of the affidavit, submit any objections to Plaintiff’s request for attorneys fees and costs. Upon receipt and review of these submission, the Court shall issue a separate Order awarding to the Plaintiff attorneys fees and costs.

To provide additional safeguards to the Defendant from the dissemination of his personal and confidential information, in addition to the safeguards set forth in Judge Kinlaw’s Order, the Court orders as follows:

1) All of the provision of Judge Kinlaw’s Order shall be strictly complied with; and

2) Any dissemination or use of the information by Plaintiff shall result in the imposition of severe sanctions. Prior to the use of any information or dissemination in any fashion, including in court proceedings and filings with the Court, the Plaintiff must provide notice to Defendant and obtain written consent or Order of the Court prior to the dissemination of any information protected by this Order.

It is so Ordered.

Judge Gravely's e-signature to follow



Greenville Common Pleas

Case Caption: Richard A Gorman vs. John C Monarch , defendant, et al

Case Number: 2021CP2303414

Type: Order/Sanctions

So Ordered

s/ Honorable Perry H. Gravely, #2755