

RECEIVED

FEB 04 2015

SC Court of Appeals

Exhibit A

11403

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Kerry Paul

CASE NUMBER: 2014-CP-40-002
South Carolina Department of Employment and Workforce

RECEIVED

FEB 04 2015

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

2015 JAN 27 AM 2:27
JANET E. MCGRADY
CLERK OF COURTS

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Complaint is dismissed with prejudice.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *Retford* Judge Code 2164 Date January 7, 2015

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Bloodgood

Christi Cox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Janette W. McBride

received
1/20/15

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Kerry Paul,)
)
Plaintiff,)

C/A No.: 2014-CP-40-00271

v.)

ORDER

South Carolina Department of)
Employment and Workforce,)

Defendant.)

RECEIVED

FEB 04 2015

SC Court of Appeals

RICHLAND COUNTY
FILED
2015 JAN -7 PM 2:27
JENNIFER W. ALPERSON
S.C.P. & C.S.

This matter was before the court on November 25, 2014, for a third and final hearing to determine whether and to what extent the Plaintiff should be sanctioned for repeated discovery abuses in violation of Rule 37, SCRCP and whether Plaintiff's claims should be dismissed for her intentional breach of and improper use of Defendant SCDEW's attorney-client privileged information. After conducting three separate hearings; reviewing the pleadings, discovery exchanged, transcripts, affidavits and submissions of the parties; and after considering the legal authority submitted by the parties, as well as the arguments, statements and representations of the parties and counsel, I find and conclude that the Plaintiff's complaint should be dismissed with prejudice.

The rationale for my decision is set forth in detail below. In short, Plaintiff's repeated and intentional lack of candor before this Court regarding basic discovery issues necessitates dismissal of her claims. Over the course of six months Plaintiff has changed her discovery position no less than four times in hearings and discovery responses. Plaintiff's abusive discovery conduct began with her unjustified refusal to name alleged factual witnesses, and

ended with Plaintiff's denial that any such witnesses ever existed. Before finally admitting she had no direct witness to disclose, Plaintiff submitted numerous contradictory statements in her sworn discovery responses, failed to disclose her communications with SCDEW's General Counsel, and intentionally referenced information, which on its face, was covered by the attorney-client privilege. The end result is that the Plaintiff admittedly cannot and/or will not identify a single witness capable of verifying the defamation allegations in her Complaint. Because the Plaintiff is unwilling to abide by the rules and orders of this Court and because the Plaintiff has now ultimately admitted her allegations are nothing more than mere speculation, the Plaintiff's claims should be dismissed.

BACKGROUND

This case arises from events surrounding Plaintiff's termination as Director of Human Resources from the South Carolina Department of Employment and Workforce ("SCDEW"). On January 14, 2014, the Plaintiff was terminated by SCDEW after it discovered (*inter alia*) the Plaintiff had downloaded Personal Identifying Information ("PII") from SCDEW's secure computer network to an unencrypted thumb drive. As a result of her termination, Plaintiff initiated two separate legal actions: 1) a grievance proceeding challenging the factual and legal basis of her suspension and termination; and 2) this lawsuit. Plaintiff's grievance proceeding is not before this Court, and is not affected by this order.

In this lawsuit, Plaintiff sued SCDEW and its director, Cheryl Stanton, alleging causes of action for defamation, abuse of process and violation of S.C. Code §1-11-490.¹ Plaintiff alleges

¹ S.C. Code § 1-11-490 requires state agencies to "disclose a breach of the security of the system following discovery or notification of the breach in the security of the data to a resident of this State whose unencrypted and unredacted personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person when the illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the resident." Plaintiff's complaint does not appear to state a viable cause of action under § 1-11-490. See Morgan v. Haley, 2013 WL 8336089 (Common Pleas, Feb. 4,

that SCDEW falsely reported Plaintiff's download of PII to the South Carolina Law Enforcement Division (SLED) as a "data breach," which induced SLED to procure and serve a search warrant on Plaintiff at her home. Plaintiff also alleges that SCDEW defamed Plaintiff by referring to her as a "thief" and by reporting Plaintiff's download of PII to third parties and the public-at-large in a manner that caused Plaintiff to suffer damages. Eventually, Plaintiff voluntarily dismissed all claims against Stanton with prejudice, leaving SCDEW as the only defendant.²

PLAINTIFF'S DISCOVERY ABUSES

Plaintiff's refusal to identify witnesses that may support her claims and her intentional unwillingness to provide complete and accurate discovery responses has a long and frustrating history. On March 28, 2014, SCDEW served Plaintiff with initial interrogatories and requests for documents seeking the identity of all witnesses and any other evidentiary support for the allegations in the Plaintiff's Complaint.³ Some of SCDEW'S interrogatories required Plaintiff to "identify all 'false and defamatory statements' . . . alleged in . . . Plaintiff's Complaint, including: (a) the time and date of the statement, the person(s) who received the statement, and

2013).

² SLED is not, and has never been, a party to this action. Prior to dismissing Stanton, Plaintiff filed a motion to amend her complaint to join SLED as an additional defendant, however, Plaintiff apparently abandoned her motion and this order renders such motion moot. With regard to the abuse of process claim, the Plaintiff makes no specific allegations against SCDEW, but instead alleges that Stanton was "acting outside the scope of her employment." With the dismissal of Stanton as a Defendant, it appears that Plaintiff's Complaint fails to state a viable claim for abuse of process. S.C. Code 15-78-70, *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 403, 697 S.E.2d 551, 556 (2010).

³ Of specific relevance to this order, Plaintiff's complaint included the following factual allegations:

"Stanton published false statements inferring that Plaintiff stole, misused, did not confidentially maintain PII data, and/or used such confidential information for financial gain, which statements are false;" Complaint at ¶ 133

"Defendants' false statements and actions . . . were published to persons outside DEW and to lower level employees who had no involvement in this matter or supervisory authority over Plaintiff;" Complaint at ¶ 136

"After Plaintiff was placed on unpaid involuntary leave, Defendant Stanton told lower level employees at DEW and senior staff at other agencies multiple times that Plaintiff is a thief and she was being uncooperative." Complaint at ¶137.

(c) the content of the statement.” Other interrogatories required Plaintiff to disclose the identity of SCDEW’s “lower level employees” and other persons to whom the “false and defamatory statements” were allegedly made. Finally, other interrogatories sought the identity of “all persons who informed Plaintiff that the [alleged false and defamatory] statements were made.”

Plaintiff fails to respond to the written discovery in good faith and refuses to identify the names of the “current SCDEW employees” whom she claims are witnesses to her claims.

On May 30, 2014, Plaintiff served her initial written responses to SCDEW’s Interrogatories. Rather than specifically identify the alleged defamatory statements or the purported witnesses, Plaintiff responded that “Stanton has defamed plaintiff repeatedly and often” and that the alleged defamatory statements “were heard by all of the employees who attended meetings Defendant Stanton called in December of 2013 and January of 2014.” (Plaintiff’s Interrogatory Responses, Nos. 24, 29). Plaintiff failed to identify any specific defamatory statements allegedly made, and Plaintiff further refused to identify any direct witnesses who allegedly heard the defamatory statements, responding only that “the names of these employees are already known to Defendants.” *Id.*

Plaintiff further alluded in her initial responses to specific witnesses (as if she had spoken with them already) who were current employees of SCDEW. However, Plaintiff flatly refused to identify the names of the witnesses or alleged sources of the facts alleged in her complaint. Plaintiff specifically stated in her written responses that:

[Plaintiff] is extremely concerned that Defendants will retaliate against innocent employees of DEW if their names are provided. Plaintiff will not divulge the name of this DEW employee without a court order as she is not willing to jeopardize his/her job.

(See Plaintiff Interrogatory Responses, Nos. 24, 29, 26, 28, 30 and 31, *emphasis added.*) The clear message from Plaintiff’s sworn discovery responses is that she spoke with current

SCDEW employees whom she believes are direct witnesses to substantiate her allegations, but she refuses to name them. Understandably, Defendants refused to accept Plaintiff's deficient answers and filed a motion to compel.

Plaintiff again refuses to divulge the names of the alleged SCDEW employee witnesses, but now asserts the witnesses are "undiscoverable" because they are clients of Plaintiff's attorney.

Defendants' motion to compel first came before this Court for hearing on July 23, 2014. At that hearing, Plaintiff again acknowledged that she "knows" the identity of certain SCDEW employee witnesses whom she claims were present when the alleged defamatory statements were made. (July 23, 2014 Transcript, p. 22 lines 17-18). This time, however, Plaintiff claimed she would not identify them because these current SCDEW employees were also represented by her [Plaintiff's] attorney:

PLAINTIFF'S ATTORNEY: Under the rules I have been retained by more than one employee at [SCDEW]. Under the rules of ethics, I have been retained for a similar – they are also afraid that they will get retaliated against.

So these are 20- to 25-year employees at DEW with young families. I understand . . . that if they get fired, they can file a lawsuit for retaliation; but I have to tell you, filing a lawsuit for retaliation means you don't pay your mortgage, you don't have a job, and you are blackballed.

....

THE COURT: So because they hired you, they are now non-discoverable in Ms. Paul's case when they are witnesses?

PLAINTIFF'S ATTORNEY: No, no – well, yes, Your Honor. I am not going to provide their names if I cannot.

(See July 23, 2014 Hearing T. pages 27-28).

Upon hearing this representation, this Court immediately adjourned the hearing and directly advised the attorneys that the hearing would be reconvened for purposes of considering sanctions under Rule 37 S.C.R. Civ. P.

Plaintiff serves supplemental discovery responses still failing to identify the current SCDEW employee witnesses, and instead provides alleged details of privileged meetings with SCDEW's outside legal counsel.

On August 5, 2014, Plaintiff supplemented her responses to the interrogatories, setting forth in great detail Defendants' alleged defamatory actions and statements. Plaintiff's responses described one or more alleged meetings between upper-level SCDEW employees and outside counsel who had been retained by SCDEW to provide legal advice. Plaintiff claimed to be paraphrasing or quoting specific statements that allegedly were made during those meetings. Plaintiff again failed to answer Defendants' interrogatories which sought the alleged witness(es) of the statements Plaintiff claims were made. (See August 5, 2014 Letter from Plaintiff's Counsel.)

On August 6, 2014, Defense Counsel wrote Plaintiff's Counsel, expressing concern regarding the information contained in Plaintiff's supplemental discovery responses and noting that Plaintiff's supplemental responses raised "a very serious issue regarding the breach of SCDEW's attorney-client privilege." SCDEW demanded that Plaintiff "identify the source of the breach [of SCDEW's privilege] no later than close of business on Thursday, August 7, 2014." Defense Counsel also expressed concern over Plaintiff's continued refusal to identify the true source of her information. (See August 6, 2014 Letter from Defense Counsel.)

Plaintiff's Counsel responded on August 12, 2014, identifying David Salley, a former SCDEW employee who was not working at SCDEW at the time of the alleged defamation (and who is not even alleged to have been present at the meetings at issue), as well as "other non-DEW employees" as the alleged source of Plaintiff's information regarding SCDEW's attorney-client meetings. Plaintiff did not provide any explanation of how these non-SCDEW employees could be retaliated against or why they would be Plaintiff Counsel's clients in matters adverse to SCDEW. (See August 12, 2014 Letter from Plaintiff's Counsel.)

On August 15, 2014, Plaintiff also finally produced Plaintiff's post-termination cell phone records (records which were previously requested by SCDEW in its original written discovery submitted in March 2014). However, Plaintiff produced these records only after making substantial redactions (at least 600 individual redactions), including all calls between the Plaintiff and any SCDEW employees. (See August 15, 2014 Letter from Plaintiff's Counsel.) Although Plaintiff represented that the redactions also included all calls between Plaintiff and Plaintiff's counsel, Plaintiff never provided a privilege log nor did she ever provide the names of the SCDEW employees with whom Plaintiff spoke, rendering it impossible to know how many of the 600 redacted calls were to SCDEW. Communications with SCDEW employees is not privileged and Plaintiff provided no credible basis to avoid disclosure of the communications.

Plaintiff admits for the first time that she has no direct witness to the alleged defamation, and further represents that she has not talked to any SCDEW employees about this case.

On September 8, 2014, at Defendant's request, I reconvened the hearing on Defendant's motion to compel and for sanctions pursuant to Rule 37 S.C.R. Civ. P. At that hearing, I again engaged Plaintiff's Counsel in a lengthy dialogue in an effort to ascertain the true identity of the SCDEW employees whom Plaintiff claimed were witnesses purportedly "at risk for retaliation" by providing testimony in this case. See Transcript of Sep. 8, 2014 hearing, at 21-32.

Ultimately, Plaintiff's Counsel admitted that Plaintiff knew of no specific SCDEW employees at risk for retaliation, and that Plaintiff knew that the attorney-client privilege prevented her from talking to SCDEW employees *ex parte*. *Id.* at 32, l. 4-5; 45, lines 4-8. Plaintiff's Counsel further represented that Plaintiff did not know of any specific persons who heard the alleged defamatory statements of SCDEW or Stanton, and that Plaintiff did not know who attended the meetings where the statements allegedly were made. Plaintiff's Counsel went on to explain that neither she nor the Plaintiff could definitively identify Plaintiff's witnesses

because Counsel had been “**very careful not to talk to anybody until I’m in a situation where I have a deposition and I can ask him.**” Id. at 32, l. 17; 41, l. 9-17; 31, l. 21-23. Plaintiff’s Counsel also represented that Plaintiff “**knows what attorney/client privilege is**” and had been instructed not to contact any SCDEW employees. Id. at 45, l. 4-8.

At that hearing, I expressed grave concern that “somebody [was] misrepresenting information to the court.” Id. at 23.

SCDEW subsequently discovers that Plaintiff and her attorney have been communicating with SCDEW’s General Counsel during the pendency of this action.

On November 4, 2014, Defendants supplemented the record with three affidavits. One affidavit, given by John Faust, established that Plaintiff had, in fact, placed at least two telephone calls to the personal cell phone number of Derrick McFarland, SCDEW’s General Counsel, during the course of this action. The other affidavits, both given by Derrick McFarland, averred that Mr. McFarland had spoken to Plaintiff’s Counsel on no less than five occasions during this lawsuit. Mr. McFarland specifically acknowledged that at least one of these communications directly concerned the Plaintiff’s employment with SCDEW and facts presented in this lawsuit. Mr. McFarland further acknowledged that he had met personally with Plaintiff’s Counsel regarding his “personal employment situation” and had signed a “Legal Services and Fee Agreement” with Plaintiff’s Counsel during that meeting, which occurred during the course of this lawsuit. Neither Plaintiff nor Plaintiff’s Counsel had previously revealed these facts to Defendants or to this Court. (See Supplemental Affidavits of John Faust and Derrick McFarland.)

Six months after her initial refusal to name her alleged SCDEW employee witnesses, Plaintiff finally admits that she does not have, and never had, any witnesses to the alleged defamation.

On November 25, 2014, I convened a third and final hearing in this matter. At this hearing, Plaintiff again represented that Plaintiff could not identify any specific witnesses to the alleged false and defamatory statements by SCDEW or Stanton. Plaintiff's Counsel also acknowledged, for the first time, that she had maintained an attorney-client relationship with SCDEW General Counsel Derrick McFarland during the pendency of this action.

Plaintiff did not present any evidence to refute the affidavits submitted by SCDEW nor did she present any memorandum or authority in opposition to SCDEW's request for dismissal under Rule 37, SCRPC. At that hearing, Plaintiff requested, and was granted, an opportunity to supplement the record. However, Plaintiff did not avail herself of that opportunity, and has now waived that right.

LEGAL STANDARD & ANALYSIS

In cases of discovery abuse, trial courts have broad discretion to fashion an appropriate remedy. Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). Rule 37(b)(2)(C) empowers a trial court to impose those sanctions it deems just including, if warranted, an order dismissing the action. "The imposition of sanctions is generally entrusted to the sound discretion of the circuit court." Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 593, 586, S.E.2d 572, 575 (2003). "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." McNair v. Fairfield County, 379 S.C. 462, 467, 665 S.E.2d 830, 832-833 (Ct. App. 2008). Dismissal is "harsh medicine," which should only be invoked when there is "some element of bad faith, willfulness, or gross indifference to the rights

of other litigants.” Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997)(citing Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996) and Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)).

In this case, I conclude that dismissal of Plaintiff’s complaint is the appropriate remedy. Plaintiff has played “fast and loose” in discovery and with this Court by providing shifting explanations for her failure to identify her alleged witnesses – to finally disclose only after direct questioning by this Court that she never had such a witness who could corroborate allegations of defamation she asserted against Defendants.

Plaintiff’s discovery position has changed four times in no less than six months. When Plaintiff was initially asked to disclose the source of factual information alleged in her complaint, she **first** objected on grounds that by identifying witnesses to Defendants, she might expose those witnesses to “retaliation” by SCDEW. Plaintiff’s Counsel then refused to disclose the identity of certain witnesses to the court, with a **second** objection that some of Plaintiff’s witnesses were also Counsel’s clients who were entitled to confidentiality. After Plaintiff and her attorney were warned of potential sanctions for failing to properly identify witnesses, Plaintiff served supplemental discovery responses which provided a **third** explanation that non-SCDEW employees were the alleged source of Plaintiff’s factual information (even though Plaintiff admits that these individuals were not present at any meeting when the alleged defamation occurred). None of Plaintiff’s newly-identified third-party witnesses met the description of current SCDEW employees susceptible to “retaliation,” and none of them were “other clients” of Plaintiff’s attorney in matters against SCDEW.

In her **fourth** and final iteration to this court, Plaintiff’s Counsel conceded that Plaintiff could not specifically identify any witness to Defendants’ alleged defamatory comments, and

that Plaintiff did not know of any witnesses to the alleged defamatory statements of Stanton or SCDEW at the time Plaintiff filed suit. Rather, Defendant finally discovered through its own efforts, and despite Plaintiff's attempts at concealment, that both Plaintiff and Plaintiff's Counsel had been communicating with General Counsel for SCDEW during the course of this litigation. These facts were not disclosed to Defendant or to this court for months, though both Plaintiff and Plaintiff's Counsel had numerous opportunities to make those disclosures and an affirmative duty to do so. Rather, it appears that Plaintiff deliberately tried to conceal her communications with SCDEW employees (including the agency's General Counsel) by redacting certain telephone numbers from Plaintiff's telephone records before producing those records to Defendants. Plaintiff's conduct can only be characterized as bad faith, willfulness or gross indifference to the rights of Defendant.

Plaintiff's transgressions and discovery abuses have caused significant prejudice to Defendants. First, SCDEW has expended considerable time and expense trying to defend itself against serious allegations of defamation that Plaintiff now concedes was based on her own speculation and not on any concrete facts she received from a witness before filing suit. Second, Plaintiff's shifting description of her witnesses without identifying them has made it impossible for SCDEW to investigate and defend itself against Plaintiff's seemingly unfounded allegations for months. Finally – and perhaps most troubling – Plaintiff and her counsel have attempted to use information in their written discovery responses that, on its face, is clearly privileged, as the responses specifically referenced alleged discussions between SCDEW and its outside legal counsel, Thad Westbrook, Esq. Such willful conduct by the Plaintiff displays a direct disregard of SCDEW's fundamental right to preserve its privileged information as well as the rules of this Court. Her attempt to gain an unfair advantage in this litigation by accessing and attempting to

use information that was clearly privileged is highly prejudicial and seriously damaging to SCDEW. Camden v. Maryland, 910 F. Supp. 1115, 1124 (D. Md. 1996).

Moreover, dismissal is warranted as a sanction because the overwhelming evidence before me makes clear that the Plaintiff intentionally provided inaccurate information to this Court and engaged in willful conduct that was grossly indifferent to the Defendants' rights, including its right to preserve its attorney-client privileged information:

- Plaintiff verified "every single one of" her discovery answers (September 8, 2014 Tr. at 22, l. 12-17) – discovery answers that (as described above) tell vastly different (and at times contrary) stories over time. Most notably, Plaintiff's initial written response is completely opposite to her final representation before this Court.
- Plaintiff's Counsel specifically instructed the Plaintiff "not to contact" current employees of SCDEW and represented that Plaintiff "knows what attorney-client privilege is." Id. at 45, l. 4-8. Yet, phone records that Plaintiff produced in this litigation show that Plaintiff called SCDEW's General Counsel on at least two occasions. (See Faust Affidavit.) By Plaintiff's Counsel own admission, such contact was improper.
- Plaintiff's Counsel admits Plaintiff's story has changed over time: "When I – when I talk to my client, every time I talk to her, she remembers and says, oh yeah." Id. at 37, l. 14-16. However, Plaintiff's different answers over time do not merely reflect minor recollections of additional facts, but rather a complete change in the story altogether.
- Plaintiff allegedly learned from former employee David Salley that the alleged defamatory statements were made. September 8, 2014 Tr. at 11-15. However, if true, then Plaintiff originally refused to give Mr. Salley's name in discovery responses for fear he would be "retaliated against" even though he was not an employee at the time the statement was made or when the responses were provided. Id. at 31, l. 24 through 32, l. 4. Plaintiff's refusal to provide discovery is not credible, and she has not explained why her story has changed so drastically over time.

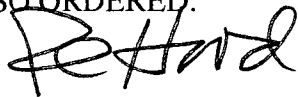
In ordering dismissal of this action, I am mindful of the fact that Plaintiff has an ongoing grievance proceeding, through which she continues to pursue a wrongful termination claim

against SCDEW.⁴ Consequently, dismissal of this action does not leave Plaintiff without remedy or recourse. If Plaintiff's employment was wrongfully terminated, as she alleges, she has a remedy that is unaffected by this order. I am also mindful of the fact that, nearly a year after filing this action, Plaintiff remains unable or unwilling to identify a single witness who is competent to testify regarding the alleged statements that form the crux of Plaintiff's entire complaint. A civil lawsuit – particularly one alleging defamation – must be based on more than speculation, rumor or innuendo.⁵ See Rules 8 & 11 S.C.R. Civ. P. Plaintiff has failed to offer more than that in support of her claims, and – perhaps worse – she has repeatedly misrepresented to this Court the nature of her evidence in efforts to conceal that speculation and innuendo is all she has.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Plaintiff's complaint is hereby dismissed with prejudice.

IT IS SO ORDERED.



The Honorable Robert E. Hood

January 6, 2015

⁴ Prior to filing this lawsuit, Plaintiff initiated a grievance proceeding challenging her suspension and termination from SCDEW. After a hearing before the full grievance panel in September 2014, the panel unanimously upheld the Plaintiff's termination. The Plaintiff has exercised her right to appeal this decision to the Administrative Law Court, and this appeal is currently still pending.

⁵ In fact, at the July 23, 2014 hearing, Plaintiff's counsel admitted that a defamation claim must allege and show "when, what, where, why, what was said." July 23, 2014 Tr. At 23, l. 25. Plaintiff's Counsel has admitted she and her client did not have any witnesses to provide these facts at the time of filing as required under Rule 11.