

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON)

Guess Farm Equipment Company, Inc., d/b/a) Civil Action No. 2011-CP-17-00413
Guess Irrigation Company,)

Plaintiff,)

vs.)

Justice Family Farms, LLC, Catfish Bay,)
LLC, and Carter Bank & Trust,)

Defendants.)

**ORDER GRANTING MOTION TO
ALTER OR AMEND ORDER
GRANTING IN PART AND DENYING IN
PART PLAINTIFF GUESS FARM
EQUIPMENT COMPANY, INC.'S
DISCOVERY-RELATED MOTIONS**

Guess Farm Equipment Company, Inc.,)
Third Party Plaintiff,)

vs.)

Valmont Industries, Inc., d/b/a Valmont)
Irrigation, a/k/a Valley Irrigation,)

Third Party Defendant.)

**FILED
GWEN T. HYATT
2015 JAN 27 PM 2:31
CLERK OF COURT
DILLON COUNTY**

This matter came before me on December 16, 2014 for a hearing on a Motion to Alter or Amend Order Granting in Part and Denying in Part Plaintiff Guess Farm Equipment Company, Inc.'s Discovery-Related Motions (the "Motion") filed by the Plaintiff, Guess Farm Equipment Company, Inc. d/b/a Guess Irrigation Company ("Guess Irrigation"). The Motion seeks the alteration or amendment of this court's Order Granting in Part and Denying in Part Plaintiff Guess Farm Equipment Company, Inc.'s Discovery-Related Motions dated August 18, 2014 (the "Discovery Order").

Appearing at the hearing were Robert T. Strickland and Robert W. Buffington on behalf of Guess Irrigation, and Samuel F. Arthur, III on behalf of Defendants Justice Family Farms, LLC ("JFF") and Catfish Bay, LLC ("Catfish Bay"). Also present was counsel for the Third Party Defendant, Valmont Industries, Inc.

After carefully reviewing the record and the applicable law, and after considering the arguments of counsel, I hereby grant the Motion and award such relief as set forth herein.

FACTUAL AND PROCEDURAL BACKGROUND

According to the Complaint, Guess Irrigation entered into a contract with JFF on or about February 9, 2011 (the "Contract"), regarding the installation of a Valley irrigation system at Catfish Bay farm, a farm in Dillon and Marlboro Counties. In the Contract, JFF agreed to pay Guess Irrigation the total sum of \$1,070,580.50, which included \$766,228.70 for work and equipment under the base contract plus \$304,351.80 in approved change orders. Though Guess Irrigation maintains it completed its work in a timely and proper manner, JFF has not paid Guess Irrigation the full amount owed under the Contract, and a balance of \$144,016.00 remains, exclusive of interest and costs. As a result, Guess Irrigation filed a mechanic's lien against the Catfish Bay farm property and subsequently brought this lawsuit to foreclose the mechanic's lien. In addition to causes of action for foreclosure of mechanic's lien, breach of contract, and *quantum meruit*, the Complaint also asserts causes of action for civil conspiracy, violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), abuse of process, breach of the implied covenant of good faith and fair dealing, and recovery of attorney's fees and costs pursuant to S.C. Code Ann. § 27-1-15.

JFF and Catfish Bay originally defaulted on the Complaint, but the default was set aside by agreement. In addition to answering the Complaint, JFF asserted counterclaims against Guess Irrigation, generally alleging that the irrigation system was not timely or properly installed, thus causing damage to Catfish Bay farm's 2011 crop.

Guess Irrigation subsequently filed the following discovery motions directed to the Defendants:

1. Plaintiff's Motion to Compel, filed May 22, 2013;
2. Plaintiff's Motion to Compel and Motion to Extend Time to Name Reply Experts, filed June 3, 2013;
3. Plaintiff's Motion to Determine the Sufficiency of Defendants' Responses to Plaintiff's First Request for Admissions, filed June 4, 2013; and
4. Plaintiff's Motion to Compel Defendants' Answers to Plaintiff's Fifth Set of Interrogatories, filed August 12, 2013.

A hearing on these four motions was held on May 7, 2014, and the court entered the Discovery Order on August 18, 2014.

ANALYSIS

Guess Irrigation seeks the alteration or amendment of the Discovery Order in two respects: (a) direct JFF and Catfish Bay to fully respond to Guess Irrigation's Interrogatories No. 26 and 33 and Requests for Production Nos. 34 through 39; and (b) omit any finding that Guess Irrigation's discovery requests should be limited to inquiries regarding activities occurring within South Carolina or the implication that activities of the Defendants outside South Carolina are not relevant.

I. GUESS IRRIGATION'S INTERROGATORIES NO. 26 AND 33 AND REQUESTS FOR PRODUCTION NOS. 34-39.

Guess Irrigation's Interrogatory No. 26 and Requests for Production Nos. 34-38 generally sought net worth and financial information for calendar or fiscal years 2011 and 2012 of all persons or entities who own an interest in either JFF or Catfish Bay, as well as all persons or entities who own an interest in those entities. Guess Irrigation takes exception to the statement, on page 6 of the Discovery Order, that "Guess [Irrigation's] discovery seeks information about the net worth of a mere owner of an entity, *without any basis for doing so*" (emphasis added). Guess Irrigation asserts it had a legitimate basis for seeking the requested information, arguing that JFF and Catfish Bay may be shell companies, and thus the principle that the wealth of a defendant is a relevant factor in assessing punitive damages¹ logically extends to any persons or entities who own controlling interests in the Defendants.

The Discovery Order required the Defendants to produce net worth data on JFF upon entry of a proposed protective order. Counsel advised at the hearing that a Consent Confidentiality Order was recently entered and JFF is in the process of producing that information. Upon reconsideration, the court agrees that upon receipt of the financial data on JFF, Guess Irrigation may renew its motion to compel responses to Interrogatory 26 and Requests for Production 34 to 38 should Guess Irrigation believe the net worth data shows JFF to be a shell company with limited assets, or should facts develop during discovery triggering another exception that allows inquiry into the net worth of a company's owners (*i.e.*, the entity is the alter ego of its owners, the entity is a mere instrumentality, the entity and its owners are so intertwined that they can be considered amalgamated, etc.). If made, that motion may be heard by any judge presiding over the case.

¹ See Branham v. Ford Motor Co., 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (quoting Welch v. Epstein, 342 S.C. 279, 307, 536 S.E.2d 408, 423 (Ct.App.2000)).

Guess Irrigation's Request for Production No. 39 sought documentation regarding other litigation in which JFF, Catfish Bay, and their controlling persons or entities have been involved in the last five years and in which similar allegations were made against those parties. Guess Irrigation's Interrogatory No. 33 sought information regarding 47 different companies of which James C. Justice, II is claimed to be the President and CEO in a biography publicly posted on the website of The Greenbrier, a resort in West Virginia owned, like JFF and Catfish Bay, by one or more of the Justice family of companies. Upon reconsideration, the court agrees that Guess Irrigation should also be allowed to revisit these issues after reviewing the net worth data being produced by JFF. Should Guess Irrigation believe the net worth data shows JFF is a shell company with limited assets, or should facts develop during discovery triggering another exception that allows inquiry into the net worth of a company's owners (*i.e.*, the entity is the alter ego of its owners, the entity is a mere instrumentality, the entity and its owners are so intertwined that they can be considered amalgamated, etc.). Any such motion may be heard by any judge presiding over the case.

II. GUESS IRRIGATION'S DISCOVERY REQUESTS SHOULD NOT BE LIMITED TO INQUIRIES REGARDING ACTIVITIES OCCURRING IN SOUTH CAROLINA.

On page 7 of the Discovery Order, the court wrote: "[C]onduct over which this Court would have jurisdiction may be limited to only that occurring in South Carolina. In other words, a request could only be proper if it was limited to 'litigation' arising out of conduct committed in South Carolina and ascribed to Justice Family Farms, LLC[.]" Guess Irrigation is concerned the Defendants will claim this ruling bars discovery into evidence concerning the Defendants' conduct outside of South Carolina. The court understands Guess Irrigation's concern and did not

intend to place geographic limitations on Guess Irrigation's discovery. Furthermore, the court is aware of no South Carolina case law—and the Defendants have pointed to none—limiting the “capable of repetition” analysis under the SCUTPA to activities occurring within this state's borders. Accordingly, the court agrees with Guess Irrigation that, while South Carolina courts may not have jurisdiction over disputes arising in other states, Guess Irrigation is not prohibited from seeking information regarding the Defendants' activities in other states to determine whether their alleged conduct is capable of repetition or is otherwise relevant to the SCUTPA claim. Nothing in the Discovery Order shall be construed to find otherwise, and the sentences from the Discovery Order referenced above shall be considered deleted therefrom.

IT IS, THEREFORE, ORDERED that Guess Irrigation's Motion to Alter or Amend Order Granting in Part and Denying in Part Plaintiff Guess Farm Equipment Company, Inc.'s Discovery-Related Motions is **GRANTED** to the extent provided in this Order.

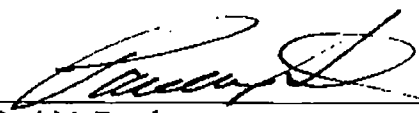
IT IS ORDERED that upon receipt of the financial data on Justice Family Farms, LLC, Guess Irrigation may renew its motion to compel responses to Interrogatories 26 and 33 and Requests for Production 34 to 39 should Guess Irrigation believe the net worth data shows Justice Family Farms, LLC to be a shell company with limited assets, or should facts develop during discovery triggering another exception that allows inquiry into the net worth of a company's owners (*i.e.*, the entity is the alter ego of its owners, the entity is a mere instrumentality, the entity and its owners are so intertwined that they can be considered amalgamated, etc.). If made, that motion may be heard by any judge presiding over the case.

IT IS FURTHER ORDERED that the fourth and fifth sentences in the second paragraph on page 7 of the Discovery Order are to be considered deleted therefrom for all intents

and purposes, and nothing in the Discovery Order shall be construed to limit Guess Irrigation's discovery requests to inquiries regarding activities occurring within South Carolina or to imply that activities of the Defendants outside South Carolina are not relevant.

IT IS FURTHER ORDERED that Guess Irrigation's Motion is denied to the extent not specifically granted by this Order.

IT IS SO ORDERED.



Paul M. Burch
Judge, Fourth Judicial Circuit

January 25, 2015
Dillon, South Carolina