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8/20/14

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

IN THE COURT OF COMMON PLEAS
C/A # 2011-CP-17-00413

Guess Farm Equipment Company, Inc., d/b/a
Guess Irrigation Company,



*Plaintiff/Third-Party Plaintiff/Counter-
Defendant*

FILED
GWEN T. HYATT
2014 AUG 25 AM 9:01
CLERK OF COURT
DILLON COUNTY

v.

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

A CERTIFIED
TRUE COPY

Defendants/Counter-Plaintiffs,

v.

Valmont Industries, Inc.

CLERK OF COURT
DILLON COUNTY

Third-Party Defendant.

RECEIVED
JAN 19 2016
SC Court of Appeals

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

On May 7, 2014 came Plaintiff Guess Farm Equipment Company, Inc. (hereinafter, "Guess"), by counsel, and Defendants Justice Family Farms, LLC ("JFF") and Catfish Bay, LLC ("Catfish") (collectively referred to herein as "Defendants"), by counsel, with respect to four pending discovery-related motions.¹ For reasons set forth herein, those motions are granted in part and denied in part.

I. The Causes of Action

In order to properly frame the discovery at issue, it is critical to note the pending causes of action. The essence of Guess' pending litigation involves the final invoices sum of \$144,016

¹ Third-party Defendant Valmont Industries, Inc. also appeared, by counsel, but was not a movant for any motions at issue, nor was Valmont the opposing party to any such motion.

relating to the irrigation system installed at JFF's Catfish Bay farm. Guess' Complaint sets forth

10 counts:

<i>Count</i>	<i>Defendant</i>	<i>Basis</i>	<i>Relief requested</i>
1	Catfish Bay property itself	Mechanic's lien	Enforce lien and sell land to collect \$144,016, interest, costs, fees
2	JFF	Breach of contract	\$144,016, interest, fees
3	JFF & Catfish	Unjust enrichment for unpaid work	\$144,016, interest
4	JFF	Breach of contract (Paxville project)	\$650.00, interest, fees
5	JFF	Unjust enrichment for unpaid work (Paxville project)	\$650.00, interest
6	JFF and "parties to be identified"	Civil conspiracy ²	Special damages, punitive as allowed by law
7	JFF	Abuse of process (filing suit in W.Va. to coerce Guess to agree to 'unfair' terms)	Damages to compensate Guess for actual damages, punitives as allowed by law
8	JFF	Unfair trade practices	Damages to compensate Guess for actual damages (trebled), fees, interest
9	JFF	Breach of implied covenant of good faith/fair dealing	\$144,016, interest, fees and punitives as allowed by law ³
10	JFF	Recovery of fees/costs per S.C. Code section 27-1-15	\$144,016, interest, fees

II. Principles of Law Regarding Discovery

South Carolina's Rule 26(b)(1) provides:

² The civil conspiracy allegedly consists of attempting to impose terms upon Guess that were not part of the original contract and then using those terms to justify non-payment; attempting to hold Guess responsible for delays caused by JFF, by third parties with whom JFF separately contracted, and/or by force majeure events; filing a "baseless" suit in West Virginia even though Guess does not transact business there.

³ South Carolina does not recognize punitive damages for this type of breach. See *Williams v. Reidman*, 339 S.C. 251, 274, 529 S.E.2d 28 (Ct. App., S.C. 2000) (stating "implied covenant of good faith and fair dealing has been viewed as another contract term. Under a breach of contract claim, a party's damages are limited to those under the contract, and no tort remedies are available, including punitive damages" and noting difference with "bad faith" claims in insurance policy context, *id.* at 268-274).

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, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought *appears reasonably calculated to lead to the discovery of admissible evidence*. (emphasis added)

South Carolina trial Courts have been generally advised that the “central issue” of litigation provides the benchmark against which to measure relevancy of discovery requests. See *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dept. of Health & Env'tl. Control*, 387 S.C. 380, 692 S.E.2d 920, 925 (S.C. 2010). The *Oncology* Court approvingly cited a Texas case which stated that “[a]lthough the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the dispute’s resolution. Thus, discovery must be ‘reasonable tailored’ to include only relevant matters.” *Id.*, 692 S.E.2d at 924-25. In *Oncology*, the Court declined to rewrite overly broad discovery requests so as to render them proper but, instead, vacated trial Court orders compelling responses to same (and thus requiring the propounding party to start over). *Id.* at 925.

III. The Specific Discovery Request at Issue

A. Guess’ Motion to Compel filed May 22, 2013 based on 3rd Interrogatories and Requests for Production (generally, financials).

This Motion to Compel relates to Interrogatory number 26 found in Guess’ Third Set of Interrogatories, which says: “State the net worth of any individual or entity identified in response to Interrogatories 23, 24, or 25 for calendar or fiscal years 2011 and 2012.” Interrogatories 23, 24 and 25 are restated below with responses in *italics*:

23. Provide the names and addresses of all persons or entities that own any interest in Justice Family Farms, LLC or Catfish Bay, LLC. For each individual or entity identified, provide the following information:

- a. The percentage of ownership each has in Justice Family Farms, LLC or Catfish Bay, LLC; and
- b. As to any corporation, limited liability company, partnership, limited liability partnership, or other entity identified in response to Interrogatory 23, provide the names and addresses of all persons or entities that own any interest in that entity.

ANSWER: Defendants reply that James C. Justice Companies, Inc. (302 S. Jefferson Street, Roanoke, VA 24011) has a 100% ownership interest in Justice Family Farms, LLC. Catfish is an entity whose assets are now owned by James C. Justice Companies, Inc. Because Plaintiff's footnote seeks to clarify the purpose of this interrogatory, Defendants offer further in response that the principal decision-makers who own James C. Justice Companies, Inc. include James C. Justice, II and James C. Justice III, both of whom are at 302 S. Jefferson St., Roanoke, VA 24011. These two named individuals ultimately control the Defendants. Defendants object to any remaining portion of this request for which no response is provided on the basis same is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

24. For each entity identified in response to Interrogatory 23(b), provide the names and addresses of all persons or entities that own any interest in that entity. For each individual or entity identified, provide the following information:

- a. The percentage of ownership each has in that entity; and
- b. As to any corporation, limited liability company, partnership, limited liability partnership, or other entity identified in response to Interrogatory 24, provide the names and addresses of all persons or entities that own any interest in that entity.

ANSWER: James C. Justice, II owns 51% and James C. Justice, III owns 35% of James C. Justice Companies, Inc., identified above in #23 as the entity which owns Defendants. Address is supplied above.

25. For each entity identified in response to Interrogatory 24(b), provide the names and addresses of all persons or entities that own any interest in that entity. For each individual or entity identified, provide the following information:

- a. The percentage of ownership each has in that entity; and
- b. As to any corporation, limited liability company, partnership, limited liability partnership, or other entity identified in response to Interrogatory 25, provide the names and addresses of all persons or entities that own any interest in that entity.

ANSWER: See #24 above.

Defendants answered Interrogatory number 26 (which asked for net worth on each person/entity identified in 23-25) as follows:

ANSWER: Defendants object to this interrogatory on the grounds that the information requested is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence, and that it is unduly burdensome and invasive of their privacy. However, as to issues of collectability of any judgment, should one be entered against Defendants, we would offer the alternative suggestion of providing a Letter of Credit from a bank or other financial institution.

Guess' requests for production numbered 35-38, which are also part of their motion to compel, essentially seek the same information, albeit in document form. Each request asks for such documentation demonstrating net worth for 2011-2012 for Catfish Bay, LLC (request number 35), each person/entity named in response to interrogatory number 23 (request number 36), each person/entity named in response to interrogatory number 24 (request number 37), and each person/entity named in response to interrogatory number 25 (request number 38). As to each request, Defendants responded: "Objection. The documents requested are irrelevant, unreasonably burdensome, and/or the information sought is not reasonably calculated to lead to the discovery of admissible evidence."

Interrogatory Number 26 asks for "net worth" information relating to those who own the LLCs who are actual parties to this litigation. Guess' Rule 11 April 26, 2013 letter seeks to justify this requesting, arguing "net worth is clearly relevant because punitive damages are sought in the Complaint's Sixth (civil conspiracy), Seventh (abuse of process) and Ninth (breach of implied covenant of good faith and fair dealing) causes of action." Guess' argument does not, however, justify the impermissibly broad scope of the interrogatory.

Guess' own justification eliminates any need to provide a response relating to Catfish Bay, LLC because Catfish Bay, LLC is not exposed to a potential punitive damages award in any of those referenced counts. Punitive damages can only be awarded against a defendant exposed

to a punitive damages award, as Guess' April 26, 2013 letter indicates. Because that defendant is Justice Family Farms, LLC, financial information requested in Guess' discovery associated with Justice Family Farms, LLC shall be produced to Guess.⁴

Other than the aforementioned financial information relating to Justice Family Farms, LLC, Guess is not entitled to any further discovery relating to this interrogatory or related requests for production of documents. Guess' discovery seeks information about the net worth of a mere owner of an entity, without any basis for doing so. Punitive damages can only be imposed upon a defendant, and not a non-party. *See Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236, 251-52 (S.C. App. 2008) ("Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence [regarding] the *defendant's* misconduct . . . factors relevant to consideration of punitive damages are: . . . *defendant's wealth or ability to pay*) (citations omitted) (emphasis added). *See also Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.* 397 S.C. 348, 725 S.E.2d 112 (S.C. App. 2012) ("[p]unitive damages should only be awarded if the *defendant's* culpability . . .") (citing *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003). *See id.* at 725 S.E.2d at 122 ("only after the jury has evaluated the evidence and concluded the plaintiff is entitled to punitive damages does it become the jury's duty to *impose such damages on the defendant.*") (emphasis added).

⁴ Interrogatory number 26 does not request Justice Family Farms, LLC's net worth data. During oral argument, counsel for Justice Family Farms, LLC offered to tender financial information relating to Justice Family Farms, LLC to the Court to hold *in camera* until such time as it may become appropriate for their disclosure and/or to submit same directly to counsel for Guess once a protective Order limiting their disclosure was entered. Justice will, within 10 days of entry of this Order, submit a proposed protective order, which the Court will consider and, upon entry of a protective Order by the Court limiting their disclosure, Justice Family Farms, LLC shall provide those financials to counsel for Guess within 14 calendar days.

Although of a different nature than the financial information sought by the discovery requests denied above, Guess' request for production number 39 asks for copies of "all pleading, verdicts and settlement agreements for any Litigation listed in response to Interrogatory number 27." Interrogatory number 27 asks that Justice Family Farms and/or Catfish Bay list "all lawsuits, arbitrations or other formal dispute resolution procedures" for any person or entity named in response to interrogatory numbers 23, 24 or 25 within the past five (5) years." Those persons or entities are noted above and constitute owners of Justice Family Farms, LLC or Catfish Bay, LLC.

Guess maintains that it is entitled to propound request for production number 39 regarding 'other litigation' because of their Unfair Trade Practices Act, which is Count 8 of Guess' Complaint and which alleges conduct *ascribed to Justice Family Farms, LLC* "in this Complaint" violates that Act. Accordingly, the Court will not compel responses to this request because it is not limited to Justice Family Farms, LLC. As noted above, the Court is not required to rewrite such a request to render it acceptable. Separately, conduct 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, the named defendant in count 8.

THEREFORE, the Court hereby **DENIES** Guess' Motion to Compel responses to Interrogatory number 26, Requests for Production numbered 35-38, and Request for Production numbered 39.

B. Guess' Motion to Compel and Motion to Extend Time to Name Reply Experts filed June 3, 2013.

Justice has not contested this motion as it relates to the information sought by Guess' Fourth Set of Interrogatories numbered 28-33 and Guess' Fourth Request for Production numbered 40-46 (relating, generally, to crop yield, applications onto the Catfish Bay farm, crop insurance or subsidies). Accordingly, that portion of Guess' motion is **GRANTED** and Justice shall have fourteen (14) calendar days from the date of this instant Order to provide responses relating to such discovery requests.

It was also acknowledge during oral argument that this Court will refer this cause to a particular Judge who will then issue a new Scheduling Order to govern deadlines in this matter. Relatedly, the present Scheduling Order was entered into before Guess filed a third-party action against defendant Valmont, who is now a party to this action. Concerns regarding Guess being able to timely disclose their expert (or their expert's reports) or to allow their experts time to digest the views of any expert of Defendants, are now moot and that portion of Guess' motion is **DENIED AS MOOT**.

C. Guess' Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Request for Admissions, filed June 4, 2013.

Because Defendants' supplemental responses to Defendant's First Request for Admissions resolved many of the concerns raised by Guess' motion, a portion of that motion is hereby **DENIED AS MOOT**, and other portions are discussed below.

Guess maintains that Justice should be compelled to further supplement its response to Request for Admission number 22, which asks Defendants to admit that when Paul Sullivan sent certain emails to Guess he did so as Justice's "agent." Defendants denied this request, and further responded that Mr. Sullivan was "outside legal counsel for Defendants at that time and acting as their attorney, not agent." The Court finds Defendants response adequate and

therefore DENIES Guess' motion as to Request for Admissions number 22. Whether Mr. Sullivan was acting as an agent just because he was outside counsel calls for legal conclusions left for the trier of fact or the Court and not Defendants response to same is sufficient.

The Court finds that Defendants responses to Request for Admissions number 25-30 are also sufficient. Defendants were asked to say whether certain exhibits were true and genuine copies of originals. One objection lodged stated that Defendants are not the custodian of those record, which is true. Moreover, Defendants further responded that notwithstanding any such objection, the documents were true and genuine copies. The Court DENIES Guess' motion as to Request for Admissions 25-30.

Guess asks that Defendants be compelled to further respond to Request for Admission number 31, which asks if James C. Justice, II "ultimately controls the controlling interest in Greenbrier Hotel Corporation." The Court DENIES Guess' motion as to that request. Neither Mr. Justice, II, nor the Greenbrier Hotel Corporation, are parties to this litigation.

Guess asks that Defendants be compelled to further respond to Request for Admission number 32, which asks if James C. Justice, II "ultimately controls the controlling interest in James C. Justice Companies, Inc." The Court DENIES Guess' motion as to that request because (a) neither Mr. Justice, II, nor James C. Justice Companies, Inc., are parties to this litigation and/or (b) the phrase "ultimately controls the controlling interest" is sufficiently subject to interpretation.

Guess asks that Defendants be compelled to further respond to Request for Admission number 33, which asks if James C. Justice, II "ultimately controls the controlling interest in Justice Family Farms, LLC." The Court DENIES Guess' motion as to that request because (a) the phrase "ultimately controls the controlling interest" is sufficiently subject to interpretation and/or (b) Defendants did further respond that 100% of Justice Family Farms, LLC is owned by

James C. Justice Companies, Inc. and further responds that James C. Justice, II is a key decision-maker for James C. Justice Companies, Inc.

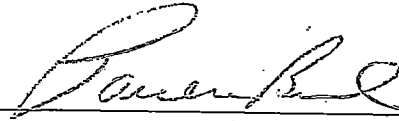
D. Guess' Motion to Compel Defendants' Answers to Plaintiffs' Fifth Set of Interrogatories, filed August 12, 2013.

Guess' Fifth Set of Interrogatories to JFF and Catfish attaches to it a copy of document that purports to be a brief biography of Mr. James C. Justice, II appearing on letterhead from The Greenbrier®. The Interrogatory highlights a sentence in this document that says Mr. Justice "is the President and CEO of 47 different companies," and asks JFF and Catfish to provide full expansive details regarding those entities (such as full name, principal location, corporate structure, locations where companies transact business, percentage of ownership Mr. Justice has in each, and the degree of Mr. Justice's role in each such company).

Mr. Justice is not a party to this instant litigation. The "central issue" in this case pertains to whether Justice owes Guess for the balance of the work Guess says they performed on the irrigation system or whether, instead, Guess owes Justice for damages relating to the improper/untimely installation of that irrigation system. Guess' discovery request seeks information about *other* companies, simply because those companies have a certain individual as a common officer as that of an entity that is a party to the litigation. All counts only pertain to JFF (or Catfish), yet the interrogatory at issue asks Defendants to provide information about over forty other entities simply because those entities may have a common officer or director. This is untenably broad, even more so considering there are no allegations that the individual in question, Mr. James C. Justice, II, interacted with Guess. That discovery is impermissible, and the Court will not attempt to cure it with narrowing edits. Accordingly, the court DENIES Guess' motion to compel responses to the Fifth set of Interrogatories as set forth above.

Let the Clerk forthwith send a copy of this Order to all Counsel of Record.

AND IT IS SO ORDERED!



Hon. Paul M. Burch
Presiding Judge, Fourth Judicial Circuit

August 18, 2014

Chesterfield, South Carolina