

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-00968

RECEIVED

Allenwood Owners Association, Inc.

Mike Prince et al.

JUN 17 2016

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Leigh Ellen Gray

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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

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: Plaintiff's Motion to Alter or Amend Judgment came before the Court for a hearing on April 20, 2016. After considering the arguments of the attorneys, the Court denies Plaintiff's Motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

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 (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 26 day of April, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of April, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Marlene Kinard
Judicial Clerk

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUN 17 2016 JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0700968
SC Court of Appeals

Allenwood Owners
Association Inc
John Kovitch
Everett Butler

Stephen Seefeld
Yvette Smith
Amanda Johansson

Mike Prince
Jeff Miller
Fran Stevens
Jacques Talbolt

Stacy Keller
Debra Reed
Meredith Florencio

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **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: _____

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

See attached Order

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 11th day of February, 2016, and a copy mailed first class or placed in the appropriate attorney's box on the 12th day of February, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Kirby Darr Shealy III PO Box 2285 Columbia, SC 29202
Lyndey Ritz Zwing Adams And Reese Llp 1501 Main Street,
5th Floor Columbia, SC 29201
Yvette Smith 4819 NE 21st Ave #7 Fort Lauderdale, FL
33308
Harvey W. McCormick III 95 Sams Pt. Road Beaufort, SC
29907

Krista M. McGuire 200 Meeting Street, Suite 301
Charleston, SC 29412

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Marlene Kinard – Judicial Clerk

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ALLENWOOD OWNERS ASSOCIATION,
INC., STEPHEN SEEFELD, JOHN
KOVITCH, YVETTE SMITH, EVERETT
BUTLER, AND AMANDA JOHANSSON,

Plaintiffs,

vs.

MIKE PRINCE; STACY KELLER; JEFF
MILLER; DEBRA REED; FRAN STEVENS;
MEREDITH FLORENCIO; AND JACQUES
TALBOT,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

RECEIVED
JUN 17 2016
SC Court of Appeals
C/A No.: 2014-CP-07-00968

ORDER

This matter came before the undersigned for hearing on January 15, 2016, on various motions, including the Defendants' Motion to Dismiss for Failure to Prosecute, Motion for Sanctions against Stephen Seefeld and Petition for Rule to Show Cause ("Motion to Dismiss for Failure to Prosecute").¹ Present at the hearing were Krista M. McGuire, Esquire, counsel for the Defendants, Harvey McCormick, III, Esquire, counsel for the Plaintiff, and Kirby D. Shealy, III, counsel for the Individual Plaintiffs in their capacity as Members of the Board of Directors for Allenwood Owners Association, Inc. Having carefully considered the pleadings and motions and all exhibits thereto, the applicable law, and the arguments of counsel, this Court grants Defendants' Motion to Dismiss for Failure to Prosecute.

¹ In addition to the Motion to Dismiss for Failure to Prosecute, the Court heard the following motions filed by Defendants: Motion to Compel 30(b)(6) Deposition of Plaintiff and Deposition of Purported President of Plaintiff, Stephen Seefeld; Motion to Compel; and Motion for Rule to Show Cause and for Civil Contempt. The Court was also scheduled to hear Plaintiff's counsel's Motion to be Relieved as counsel. At the hearing, Plaintiff's counsel, Mr. McCormick, asked the Court to continue the hearing as to the Motion to be Relieved and ultimately withdrew the Motion with leave to refile. The Court notes that Mr. McCormick is Plaintiff's third attorney in this case.
PPAB 3080169v1

I. BACKGROUND

This case arises out of a dispute over the validity of certain Board of Director elections and the controlling leadership of the Allenwood Owners Association, Inc. ("Allenwood" or "Association"). Allenwood is located in Hilton Head, South Carolina. All Defendants reside in the Allenwood community; the individually named Plaintiffs reside out of state. Although the action was filed in the name of Allenwood, former and purported current Board President, Stephen Seefeld ("Mr. Seefeld"), initiated the action on its behalf. In so doing, Mr. Seefeld claims that on February 28, 2014, he and the other individually named Plaintiffs were elected to the Board. Defendants dispute that Mr. Seefeld had the authority to file this suit and claim that they were properly elected to the Board of Directors for Allenwood on March 1, 2014.

Plaintiff filed this action on April 23, 2014, seeking a declaratory judgment on the validity of the February 28, 2014 and March 1, 2014 meetings and asserting claims for conversion, constructive trust, injunction, conspiracy and an accounting. In response, Defendants denied all material allegations and asserted a Counterclaim in which they also sought declaratory relief as to the validity of the meetings in question. Defendants later amended their Answer and Counterclaim to seek judicial relief pursuant to S.C. Code 33-31-703, which allows members of a non-profit corporation to seek judicial relief in the form of a court supervised meeting and election and further amended to seek a declaration on the validity of a Special Meeting of the Association held on December 6, at which they contend they were again elected to the Board.

II. FINDINGS OF FACT

Plaintiff, through its purported President, Mr. Seefeld, has violated an Order of this Court and has disregarded the rules of court in several respects.

1. Plaintiff has twice failed to have a director or employee having full authority to settle physically attend required mediations. Mr. Seefeld, as the purported representative of Plaintiff, was required to attend two mediations, but failed to be physically present for both mediations.

2. On February 27, 2015, pursuant to the ADR Rules applicable to Beaufort County, the parties participated in a mediation in Charleston, South Carolina. Attorney Karl Folkens served as the mediator. Defendants Fran Stevens, Jacque Talbot and Mike Prince personally attended the mediation on behalf of and with full authority of all Defendants. In so doing, Ms. Stevens and Mr. Prince took the day off of work and all representatives traveled from Hilton Head, South Carolina to Charleston, South Carolina. Mr. Seefeld, with no advance notice, did not appear in person for the mediation; he claimed weather difficulties prevented him from traveling from Florida to South Carolina for the mediation. No person with authority for Plaintiff physically attended the mediation.²

3. On August 4, 2015, this case came before the undersigned for a hearing on several motions. At that time, the Court ordered the parties to again mediate the case with a mediator of the Court's choosing. The Court made clear that Mr. Seefeld needed to physically attend the mediation stating: "I can tell you, Mr. Seefeld needs to be here. He's the player, he needs to be here. He seems to be the one to have the greatest interest in it And, of course, I'm going to order that he be here." (See pp. 82-83, Transcript of Motion Hearing.) On October 13, 2015, the Court entered a written Order ("October 13, 2015 Order") expressly requiring "the parties in this case to participate in a mediation as soon as practicable."

² The parties ultimately mediated the case, with Mr. Seefeld attending by telephone; the mediation resulted in an impasse. Defendants have a Motion for Sanctions pending against Mr. Seefeld related to his disclosure of confidential communications made at the February 27, 2015 mediation. The Court held the Motion for Sanctions in abeyance, and Defendants renewed that Motion through their filing of the Motion to Dismiss for Failure to Prosecute.

4. The parties scheduled mediation with Ned Tupper, Esq., for November 11, 2015 in Beaufort, South Carolina. Once again, Plaintiff's representative, Mr. Seefeld, without explanation, did not physically appear for the mediation. As a result of Plaintiff's failure to have a representative with authority physically present at the mediation, the mediation did not go forward. Mr. Seefeld has offered no affidavit detailing why he failed to physically attend the mediation.

5. Defendants Fran Stevens and Jacque Talbot physically attended the second mediation on behalf of and with full authority of all Defendants. Ms. Stevens again took the day off of work and she and Mr. Talbot traveled from Hilton Head to Beaufort for the mediation. Defendants have incurred mediation costs for two mediations, travel costs, attorneys' fees, aggravation and personal inconvenience as a result of Plaintiff's purported President's failure to participate in the mediation process.

6. In addition to failing to physically attend mediation, Plaintiff has failed to comply with the October 13, 2016 Order in other regards. The Order required Plaintiff to respond to several Interrogatories and produce records within thirty (30) days. Specifically, Plaintiff was ordered to (1) answer Interrogatories 8, 9, 13 and 14 of Defendants' First Set of Interrogatories; (2) respond to Request 18 of Defendants' First Requests for Production; (3) produce certain minutes in native format, including the production of any metadata showing the date on which the documents were created and by whom; and (4) respond to Requests 2 and 3 of Defendants' Third Set of Requests for Production. Plaintiff, without explanation, has not produced any of the information or documents it was ordered to produce.

7. Plaintiff has failed to respond to written discovery served over six (6) months ago. On July 9, 2015, Defendants served a Third Set of Interrogatories on Plaintiff. To date, Plaintiff

has not answered the Third Set of Interrogatories and has caused Defendants to file a Motion to Compel.

8. Plaintiff and its purported representative, Mr. Seefeld, have failed to cooperate in the scheduling of depositions. Defendants first noticed the deposition of Plaintiff on March 3, 2015. The deposition did not go forward. Defendants have noticed the deposition of Plaintiff and Mr. Seefeld in his individual capacity a combined total of five (5) times. Each time, the deposition did not go forward at no fault of Defendants or their counsel. Plaintiff has failed to provide convenient alternative dates, despite numerous written and verbal requests to do so. Mr. Seefeld's failure to cooperate in the deposition process has caused Defendants to file a Motion to Compel deposition. Even with Defendants' filing of the Motion to Compel, Plaintiff has not provided any available dates for deposition.

III. CONCLUSIONS OF LAW

This Court has the inherent power to dismiss Plaintiff's claims for failure of the plaintiff to comply with the rules or any order of court. Rule 41(b), SCRPC; *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211, 493 S.E.2d 826, 832 (1997) ("[T]rial judges possess the inherent power to dismiss actions *sua sponte* for a party's failure to prosecute the relevant claims."); *Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) ("The authority of a court to dismiss, *sua sponte*, for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962))). A dismissal for failure to prosecute requires that the plaintiff have shown indifference to the rights of the defendant. *McComas v. Ross*, 368 S.C. 59, 62-63, 626 S.E.2d 902, 904 (Ct. App. 2006). Whether to dismiss for failure to prosecute is within the trial court's sound discretion and is subject to an abuse of discretion standard of

review on appeal. *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 803 (1970).

I hereby find and conclude that Plaintiff, through its purported President, Mr. Seefeld, has failed to comply with the rules and Orders of the Court and in so doing, has showed utter indifference to Defendants' rights.

- Plaintiff violated Rule 6, SCADRR, the South Carolina Court-Annexed Alternative Dispute Resolution Rules and this Court's Order entered on October 13, 2015 by failing to physically attend the mediation scheduled on November 11, 2015. Plaintiff has failed to show good cause as to why its representative, Mr. Seefeld, did not physically attend the mediation.
- Plaintiff violated this Court's Order entered on October 13, 2015 by failing to produce documents and information to Defendants within thirty (30) days as required by the Order. Plaintiff has not offered any justification or explanation that would excuse its failure to produce documents and information to Defendants.
- Mr. Seefeld, the purported President and representative of Plaintiff, has failed to cooperate in the scheduling of his deposition in both his individual and corporate capacities and has caused Defendants to file a Motion to Compel his deposition.
- Plaintiff has failed to respond to Interrogatories served over six months ago and has caused Defendants to file a Motion to Compel.

As evidence by the foregoing, Plaintiff has continually exhibited indifference to the rulings of this Court and Defendants' rights, subjected this Court and Defendants to wasteful expenditures of time and resources, and unreasonably delayed the resolution of this action through its disobedience and dilatory acts. Plaintiff's purposeful and continued refusal to cooperate in discovery and comply with this Court's Order has prohibited Defendants from preparing their defense. In sum, Plaintiff's failure to respect the authority of this Court and blatant disregard for the rules attendant to the litigation cannot be condoned and has earned Plaintiff a dismissal of its claims.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendants' Motion to Dismiss for Failure to Prosecute is hereby granted and Plaintiff's case is dismissed, *with prejudice*. Defendants' counterclaims survive this dismissal.

AND IT IS SO ORDERED.



The Honorable Carmen T. Mullen
Chief Administrative Judge

2/8, 2016
Beaufort County, South Carolina