

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Community First Bank, Inc. )

**RECEIVED**

CASE NO: 2015-CP-37-00635

Plaintiff SEP 27 2017

VS. SC Court of Appeals

ORDER ON DEFENDANT FREDERICK  
D. SHEPHERD'S MOTION  
FOR SANCTIONS

John Michael Powell, Frederick D.  
Shepherd, Jr., James E. McCoy, MPS Golf  
Course, Inc., and MPS Development Inc., )

Defendant )

This matter is before the Court pursuant to Defendant, Frederick D. Shepherd Jr.'s ("Shepherd") Motion for Sanctions against Plaintiff, Community First Bank, heard on March 31, 2017 in Colleton County. Defendant's Motion for Sanctions was based on Plaintiff's failure to comply with the Court's previous Order compelling discovery. The Court's Previous Order concerning Defendant Shepherd's Motion to Compel ordered Plaintiff to Bates stamp the produced documents due to their voluminous nature; to provide a privilege log to Defendants; to delineate which documents were responsive to each particular interrogatory and request for production, provide amended redactions due to the excessive nature of the original redactions and to reproduce any illegible documents that Defendants requested.

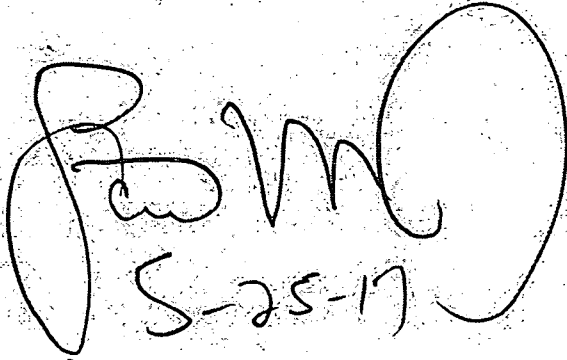
At the Sanctions hearing on March 31, 2017, Defendant provided the Court with two binders of various documents referencing prior discovery requests and communications between the parties regarding discovery. Plaintiff objected to the admission of the binders as outside the scope of the hearing. Plaintiff's motion was denied, however, Plaintiff was given an opportunity to respond to what it described as newly asserted violations. Plaintiff filed a cross motion for sanctions which is denied. Based on the testimony presented at the hearing and briefs submitted

after the hearing, **IT IS HEREBY ORDERED** that Shepherd's Motion for Sanctions is GRANTED. Plaintiff is ordered as follows:

1. Specific discovery requests by the Defendant falls under the Court's Order to Compel. Plaintiff's failure to respond is found to be willful and intentional and appears to be a concerted effort to obviate the issues in this case. Plaintiff has engaged on what it terms rolling discovery which is not provided for in the Rules of Civil Procedure. In fact, Rule 33 requires responses to interrogatories to be answered separately and fully in writing under oath unless objected to, in which case the reasons objected to shall be stated in writing in lieu of an answer.
2. Because of Plaintiff's willful noncompliance with the Rules of Civil Procedure and this Court's prior Order, the Court finds Defendant Shepherd entitled to attorney's fees incurred in bringing his Motion for Sanctions. Plaintiff's counsel shall have fifteen (15) days from the filing of this Order to request a hearing on the amount of attorney's fees. If requested, Plaintiff shall have the opportunity to cross examine Defendant's counsel on all fees and costs claimed in preparing this Motion for Sanctions.
3. In fifteen (15) days, Plaintiff shall fully and completely comply with discovery generally and specifically. Plaintiffs shall provide complete, legible and up to date copies, including but not limited to:
  - a. Substantially similar loans;
  - b. Documents relating to Insider/Board of Director unsecured loans;
  - c. Executive committee meeting minutes;
  - d. Documents relating to investigations into the allegations of the complaint;
  - e. Any and all documents related to the charge off of the Powell loan (2010-2012);

- f. Documents relating to the charge off process;
  - g. Safety and soundness reports, including those referring to the Powell loan;
  - h. Documents relating to any MPS loans.
4. Concurrent with Plaintiff's responses as required in this Order, Plaintiff shall file an affidavit of Community First Bank's CEO as previously provided. Plaintiff provided affidavit shortly after the hearing, however it was premature.
  5. The Court does not include Plaintiff's failure to properly respond to requests for admission in this Order but considers Plaintiff's responses to requests for admission as further evidence of discovery gamesmanship in this matter.
  6. Concurrent with discovery, Plaintiff shall provide a complete and thorough privilege log specifying the privilege asserted and describing documents for Defendant's to consider the appropriateness of the assertion of privilege, and if available, the documents' respective Bates numbers.
  7. At the hearing, the Court learned that one month prior to Plaintiff's filing this lawsuit, its CEO filed a document with the Internal Revenue Service requesting a criminal investigation into Defendant Powell. When the Court questioned Plaintiff's counsel whether or not an attorney advised Plaintiff to file this document, Plaintiff's counsel reported no one present at the hearing counseled the CEO about filing the document but would question other members at his firm. Plaintiff's counsel later advised the Court that the document was requested by the Internal Revenue Service and therefore, Plaintiff's compliance cannot be viewed as an attempt to use criminal prosecution to garner an edge in a civil matter inasmuch as plaintiff was required to file the document.

8. Within thirty (30) days of this order, Plaintiff's counsel is to provide the Court, **AND NO ONE ELSE**, correspondence and/or communication from the Internal Revenue Service to the bank requesting that criminal investigation request be filed.
9. Defendant Attorney Doug Patrick to prepare a formal Order consistent with this Order, delineating the chronological history of this matter as outlined in the binders, considering the arguments made on March 31, 2017 and the briefs submitted to the Court.
10. The proposed order shall be sent to opposing counsel prior to its submission to the Court. If the parties are unable to work out any differences concerning the language used in the Order, Plaintiff shall file a list of objections to the Court specifying the part of the Order objected to and proposing language to be used instead.

  
5-25-17