

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Bruce Schultze,)
)
 Plaintiff,)
)
 v.)
)
 Stephen A. Brown, Individually)
 and as manager of Pure Market)
 Solutions, LLC, Pure Market)
 Solutions, LLC, SKL, LLC,)
 and John Doe,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-2760

**ORDER STRIKING ANSWER,
 ENTERING DEFAULT, RENDERING
 JUDGMENT AND AWARDED
 ATTORNEY FEES AND COSTS**

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SC Court of Appeals

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This matter came before the court by way of Plaintiff's motion for sanctions alleging Defendants' failure to comply with this court's February 14, 2017 Order Compelling Discovery. The Plaintiff was presented by Joseph M. McCulloch and Kathy Schillaci and Defendants were represented by Karen Simmons. Based on the arguments of counsel and materials submitted, I find that Defendants have not complied with this court's February 14, 2017 Order Compelling Discovery. I additionally find that sanctions, to include striking the Answer, entering default, rendering judgment on liability in favor of Plaintiffs, and scheduling a damages' hearing – all as set forth in the February 14, 2017 Order - are appropriate.

FACTS

Based on the pleadings, it appears that Defendant Stephen Brown approached Plaintiff, a small business owner, about investing in and becoming a 50/50 partner in defendant Pure Market Solutions, LLC ("PMS") with Defendant Brown serving as the other partner and manager. It is alleged that Defendant Brown represented to Plaintiff that the investment monies would be used to secure exclusive marketing rights to certain energy drinks in the United States

and would also be used to buy out the interests of another partner. There appears to be no dispute based on the pleadings that the Plaintiff paid monies into PMS. Plaintiff additionally provided furniture and funds for the purchase of an RV to be used for marketing purposes, which Plaintiff's counsel indicates is the only *currently known* asset purchased with Plaintiff's funds, albeit now titled under a new LLC. The Complaint also alleges the Plaintiff persistently requested business information and access to financial and other records and received continuing promises from Defendant Brown such information and records would be produced. When limited records were eventually provided to Plaintiff, they showed an additional partner not approved or known to Plaintiff and decreasing ownership shares as to Plaintiff, with no explanation for the decrease.

In late 2014, the Plaintiff learned from the new franchise holder that PMS was no longer the owner of the energy drink distributorship, a fact never made known to the Plaintiff by the manager, Defendant Brown. After continued requests for business records and information, the Plaintiff filed this lawsuit on April 29, 2016. The Complaint alleges causes of action for fraud, misrepresentation, breach of contract, breach of contract accompanied by a fraudulent act, conversion, civil conspiracy, unjust enrichment, breach of fiduciary duty, and negligence alleging statutory violations, including the failure and/or refusal to produce business records.

PROCEDURAL HISTORY

Based on the Court's review of the record, Plaintiff filed his lawsuit on April 29, 2016 and filed discovery requests on June 16, 2016. When full discovery was not forthcoming, Plaintiff filed motions to compel on September 16, 2016 and an amended motion to compel on February 1, 2017. The hearing on both motions was held on February 8, 2017. Following the

hearing, this court ordered the production of discovery and set forth sanctions in the event said discovery was not fully produced.

In response to the Order compelling discovery, Defendants' counsel forwarded partial discovery to Plaintiff's counsel via e-mail on February 23, 2017. After review of the materials, Plaintiff's counsel on March 6, 2017 sent a letter to the Defendants' counsel setting forth numerous deficiencies, which letter is attached to Plaintiff's motion. It is undisputed that Plaintiff received no response to the letter, and defense counsel does not dispute receiving the letter. Plaintiff's counsel on March 21, 2017 moved this court, pursuant to Rule 37, SCRCP, and its February 14, 2017 Order, to strike the Defendants' Answer, enter default, render judgment on liability, and proceed with a hearing on damages.

At the hearing on June 1, 2017, defense counsel indicated that some discovery had been provided but did not dispute the fact that full discovery as required by the Order was not produced by Defendants. Pursuant to the February 14, 2017 Order granting attorney fees and costs, Plaintiff submitted Affidavits of Attorney Fees and Costs which had been provided to Defendants' counsel. Defendants' counsel objected only to the extent the attorneys may have both billed for the same services.

FINDINGS

This Court is persuaded and finds that Defendants have failed to comply with the Order compelling discovery and that such failure is willful. Moreover, the Court finds that the sanctions set forth in the February 14, 2017 Order are appropriate under the facts, specifically striking the answer, entering default, rendering judgment on liability in favor of Plaintiff on all counts as against Defendants, and scheduling of a damages hearing. Given the nature of this case and Stephen A. Brown's role as the managing partner of PMS, the court is concerned about

the status of corporate assets and finds it necessary to order the preservation and retention of said assets, as set forth below. Additionally, this court has reviewed the Affidavits of Attorney Fees and Costs, finds such fees and costs to be reasonable, and finds that the two attorneys did not bill for the same services.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) Plaintiff's motion for sanctions for failure to provide full discovery is

GRANTED;

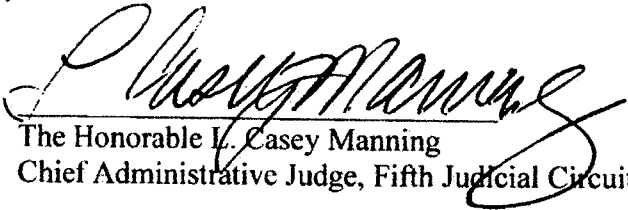
2) Plaintiff's request for striking of the Answer, entering default against Defendants, rendering judgment on liability in favor of Plaintiff and against Defendants, and scheduling of the damages hearing is **GRANTED** consistent with this Court's February 14, 2017 Order. The court directs the Clerk of Court's office to enter same and schedule a damages hearing;

3) This court **ORDERS** that attorney fees in the amount of **\$6,689.27** be paid by Stephen A. Brown (not with PMS funds) within fifteen (15) days with interest accruing and such judgment entered;

4) This court further **ORDERS** Defendant Stephen A. Brown to preserve and protect all business documents and tangible assets of PMS, including any assets transferred to him personally or to companies over which he exerts control. This Order includes but is not limited to the RV discussed in Defendant Brown's deposition (the original of which is on file with this court), bank accounts, other vehicles purchased in whole or part with PMS or Plaintiff's funds, and any and all other assets.

5) The Court further orders Stephen A. Brown to cooperate with additional discovery efforts.

AND IT IS SO ORDERED.


The Honorable I. Casey Manning
Chief Administrative Judge, Fifth Judicial Circuit

This 16 day of June, 2017

Columbia, South Carolina