FILED
2017 DEC 29 PM 2:28
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
CPM Federal Credit Union,	)	Civil Action No.: 2014-CP-10-7597
Plaintiff,	)	
vs.	)	**ORDER DENYING PLAINTIFF'S RULE 59(e) MOTION, GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANTS' MOTION MOTION FOR SANCTIONS**
George W. Lockwood and Sarah P. Thackston	)	
Defendants.	)	

RECEIVED
JAN 29 2018
SC Court of Appeals

These matters came before the Court on Plaintiff's Rule 59(e) Motion to Reconsider, Defendants' Second Motion for Summary Judgment and Defendants' Motion for Discovery Sanctions. This Order first addresses the Motion for Reconsideration, which is denied. It then addresses the Motion for Summary Judgment, which is granted in part and denied in part. This Order will finally address the Motion for Sanctions, which is granted. This Court considered the motions, the pretrial memoranda and attached documents submitted by Plaintiff, CPM Federal Credit Union (CPM), and Defendants, George Lockwood and Sarah Thackston, and the oral arguments presented by the parties during a hearing on October 23, 2017.

RECONSIDERATION STANDARD OF REVIEW

Rule 59(e) of the South Carolina Rules of Civil Procedure allows a party to ask the court to reconsider a previous decision. See SCRCP 59(e); See also South Carolina Circuit Court Motions, Oppositions and Replies Motion to Amend Judgment, SC KR Circuit 267, SC Circuit MOT-AM-JUD 267, 2012 WL 71002735. A motion for reconsideration may be filed "when [a party] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on

an argument or issue, and the party wishes for the court to reconsider to rule on it . . . ." Elam v. S.C. Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Plaintiff here requested that the Court reconsider its October 11, 2016 determination that § 33–8–420 provides the appropriate statute of limitations for breach of fiduciary duty claims against officers of corporations. After reviewing each parties' motions and all evidence presented, this Court holds that § 33–8–420 governs this issue and this motion is respectfully DENIED.

SUMMARY JUDGMENT STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). "Summary judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. . . In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 85, 502 S.E.2d 78, 81 (1998) (citing Hamiter v. Retirement Div. of S. C. Budget and Control Bd., 326 S.C. 93, 96, 484 S.E.2d 586, 587 (1997)). Additionally, "the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." City of Columbia v. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994) (citing Owens v. Magill, 308 S.C. 556, 563, 419 S.E.2d 786, 790 (1992)).

CPM Federal Credit Union filed its Articles of Incorporation on November 21, 1955 and listed its entity type as a 'Corporation' and not a credit union. Business Entities Online, S.C. Sec'y of State Mark Hammond, https://businessfilings.sc.gov/BusinessFiling/Entity/Search (last visited

Nov. 29, 2017). Furthermore, Plaintiff refers to CPM as a corporation on page 10 of its Complaint. Therefore, by its own determination, CPM Federal Credit Union is a corporation and shall be treated as such by the laws of this State. As previously determined, § 33–8–420 'Standard of conduct for officers in Corporations, Partnerships and Associations' is applicable and governs Plaintiff's breach of fiduciary duty claim in this matter. Subsection (e) of the statute concerns the statute of limitations for commencing an action against a corporate officer for a breach of their fiduciary duty to the corporation and states, "[a]n action against an officer for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently." S.C. Code Ann. § 33–8–420(e).

ANALYSIS

In Clearwater Trust v. Bunting, where the applicability of the statute of limitations set forth in § 33–8–420 was similarly at issue, our Supreme Court held that "[a] breach of fiduciary duty suit against a corporate officer or director, even where that breach has been concealed, must be brought no later than two years after discovery of that breach." 367 S.C. 340, 353, 626 S.E.2d 334, 340 (2006). During the hearing for this motion, Defendant presented to the Court a Letter of Understanding and Agreement (LUA), which was created and entered into between the National Credit Union Association (NCUA) and CPM Federal Credit Union on November 27, 2012. Letter of Understanding and Agreement, NCUA & CPM Fed. Credit Union (Nov. 27, 2012). The LUA was signed by each member of the CPM board of directors on December 4, 2012. See id. In pertinent part, the LUA states on page 2, paragraph 3 that "[s]enior management is not following board approved policy and has demonstrated irresponsible business contracts, and credit decisions

including conflicts of interest." Id. Plaintiff has failed to present credible evidence to support their contention that they made any new discoveries of wrongdoing after December 5, 2012, when Mr. Lockwood and Ms. Thackston were fired. After reviewing the contents of the LUA, the motions and memoranda of all parties and hearing oral argument on October 23, 2017, it is evident that Plaintiff was aware, at least by December 4, 2012, of sufficient facts and circumstances to put them on notice of potential breaches of their fiduciary duties by Defendants.

Viewing all evidence in the light most favorable to the nonmoving party, this Court finds that CPM either knew or should have known of all of its claims against defendants Lockwood and Thackston by December 4, 2012. Therefore, this Court finds the two year statute of limitations for breach of fiduciary duty had run when the case was filed on December 12, 2014 and summary judgment is GRANTED as to that claim.

Plaintiff also brings suit against Defendants for common law negligence. This Court finds that § 15–3–530(5) of the South Carolina Code sets forth the applicable statute of limitations for negligence claims. S.C. Code Ann. § 15–3–530. That section states "[w]ithin three years . . . (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law . . ." must be commenced. Id. The South Carolina Court of Appeals found in 3 Chisholm St. Homeowners Ass'n, Inc. v. Chisolm St. Partners, LLC that § 15–3–530(5) applies to negligence claims, noting "[s]ection 15–3–530 of the South Carolina Code . . . sets forth a three-year statute of limitations for actions based in negligence and contract." See No. 2014-UP-128, 2014 WL 2581458, at *1 (S.C. Ct. App. Mar. 26, 2014); see also S.C. Code Ann. § 15–3–530(1) and (5). This Court finds that the two causes of action are separate claims and do not allege a single wrong. Plaintiff timely filed its claim of negligence against Defendants, therefore summary judgment as to that cause of action is DENIED.

SANCTIONS STANDARD OF REVIEW

Rule 26 of the South Carolina Rules of Civil procedure govern the discovery process in civil suits. SCRCP 26. The purpose of discovery "is to enable one who is asserting a right or claim to determine the exact nature of such right or claim and the extent thereof." Earle v. Webb, 182 S.C. 175, 175, 188 S.E. 798, 802 (1936). Meaningful discovery allows parties to "enhance the truth-seeking process, to enable the attorneys to better prepare for trial, to eliminate surprise, and to promote an expeditious and final determination of controversies in accordance with the substantive rights of the parties." 27 C.J.S. Discovery § 2 (citing D.C. v. S.A., 178 Ill. 2d 551, 227 Ill. Dec. 550, 687 N.E.2d 1032 (1997)).

When one party fails to comply with the rules of discovery, other parties may move for sanctions. Rule 37 of the South Carolina Rules of Civil Procedure 'Failure to Make or Cooperate in Discovery: Sanctions' states, "[i]f a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just. . . ." SCRCP 37(b)(2). "The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App. 1987). In ruling on a motion for discovery sanctions "for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of the prejudice." Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (1997) (citing Laney v. Hefley, 262 S.C. 54, 60, 202 S.E.2d 12, 15 (1974)); See also Moran v. Jones, 281 S.C. 270, 276, 315 S.E.2d 136, 139–40 (Ct. App. 1984). Rule 37(a)(4) further states that upon a successful motion for sanctions, "the court shall, after opportunity for hearing, require the party . . . whose conduct necessitated the motion . . . to pay the

moving party the reasonable expenses incurred in obtaining the order, including attorney's fees . . . ." SCRCP R 37(a)(4).

ANALYSIS

Throughout this suit Plaintiff has failed to comply with Defendants' discovery requests and with the Court's September 27, 2016 Order granting Defendants' Motion to Compel discovery. This matter was initially set for trial on October 17, 2016. Plaintiff's consistently unresponsive and late document production, including production of 90,221 documents eleven days before trial, created the need for the Court to grant a continuance on November 1, 2016. Subsequent to the continuance, Plaintiff continued to fail to timely and meaningfully participate in discovery and Defendants ultimately filed a Motion for Sanctions and two Motions for Summary Judgment based on newly discovered evidence. Defendants also took four additional depositions as a result of information discovered after the original trial date. After listening to argument and reviewing all relevant documents, this Court finds that discovery sanctions are an appropriate response to Plaintiff's actions.

THEREFORE, IT IS ORDERED

That Plaintiff's Rule 59(e) Motion for Reconsideration is **DENIED**;

That Defendants' Motion for Summary Judgment is **GRANTED IN PART and DENIED IN PART**;

That Defendants' Motion for Sanctions is **GRANTED** and Plaintiff must pay Defendant Lockwood $39,789.65 and Defendant Thackston $67,837.00 for all expenses incurred in filing and arguing their Motion to Compel, Motion for Sanctions, Second Motion for Summary Judgment, and for additional depositions, but not for general trial preparation.

State of South Carolina
The Circuit Court

Maité Murphy
Judge

5200 E. Jim Bilton Boulevard
Post Office Box 802
St. George, SC 29477
Phone: (843) 832-0391
Fax: (843) 832-0392
mmurphyj@sccourts.org

MEMORANDUM

To: Charleston County Clerk of Court

From: Robin I. Dukes, Administrative Specialist

Reference: CPM Federal Credit Union v. George W. Lockwood and Sarah P. Thackston
Case No.: 2014-CP-10-7597

Date: December 21, 2017

Enclosed you will find a Order regarding the above referenced matter. This Order has been signed by The Honorable Maite Murphy, Circuit Court Judge. Please file accordingly. Thank you.