

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

The Gulfstream Café, Inc.,

Plaintiff,

vs.

J. Mark Lawhon, Individually, and
Palmetto Industrial Development,
LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 2016-CP-22-00961

) ORDER DENYING DEFENDANTS'
) MOTION TO ALTER OR AMEND
) THE COURT'S ORDER DATED
) NOVEMBER 14, 2018

) RECEIVED
) AUG 28 2019
) SC Court of Appeals

This matter is before the Court on Defendants' Motion to Alter or Amend the Court's Order Dated November 14, 2018. On that date, the Court entered an Order finding Defendants in criminal contempt of Court for engaging in deliberate and intentional acts that interfered with Gulfstream's use of the non-exclusive easement in direct violation of the Court's Permanent Injunction entered on June 12, 2018, and modified on July 27, 2018. On November 28, 2018, Defendants filed the instant Motion to Alter or Amend pursuant to South Carolina Rule of Civil Procedure 59(e). At about the same time, the Defendant filed an appeal of the Court's Order dated November 14, 2018. That appeal has now been dismissed by the Defendant and the Court can now address this motion. Based up on the filings in this matter, the arguments of counsel, and the entire record at trial, the Court enters the following order.

South Carolina Rule of Civil Procedure 59(e) permits a party to file a motion to alter or amend the judgment. The purpose of Rule 59(e) is to enable a party to request that the Court reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). As with other motions under Rule

59, a motion to alter or amend is addressed to the sound discretion of the trial court. See Brinkley v. South Carolina Dept. of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). Notably, Rule 59(g) requires that a motion to alter or amend be provided to the judge within 10 days after filing.

Having reviewed Plaintiff's Motion to Alter or Amend, Defendants' response, the record in this case, and having considered the arguments of the parties, the Court hereby denies Defendants' Motion to Alter or Amend on the following grounds.

First, Defendants filed their Motion to Alter or Amend on November 28, 2018, but they did not submit that motion to the Court until December 21, 2018. Because Defendants did not submit the Motion within the 10-day timeframe required by Rule 59(g), the Motion is untimely, and the Court is empowered to deny the Motion on that basis alone. Gallagher v. Evert, 353 S.C. 59 (2002).

Even considering the merits of Defendants' Motion, the Court finds that the evidence supports a finding of contempt beyond a reasonable doubt. The evidence made clear that Defendants willfully, voluntarily, and intentionally disobeyed the Court's Permanent Injunction by interfering with the easement at issue in the present case. This conduct occurred on several occasions during the summer of 2018. Further, the Court finds that the contempt sanction of \$5,000 to be reasonable in light of the nature of Defendants' conduct and the fact that Defendants were previously held in contempt in this case.

Accordingly, Defendants' Motion to Alter or Amend the Court's Order Dated November 14, 2018 is hereby DENIED.

SO ORDERED this ___ day of _____, 2019.

The Honorable Steven H. John
Resident Circuit Court Judge
Fifteenth Judicial Circuit



Georgetown Common Pleas

Case Caption: Gulfstream Cafe Inc VS J Mark Lawhon , defendant, et al
Case Number: 2016CP2200961
Type: Order/Other

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129