

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jan 20 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-000804

John Doe,Appellant,

v.

Bishop of Charleston, a Corporation Sole, and The Bishop
of the Diocese of Charleston, in his official capacity,.....Respondents.

NOTICE OF RESPONSE TO AND COMPLIANCE WITH
ORDER OF NOVEMBER 20, 2020

Pursuant to the November 20, 2020 Order of the Honorable James E. Lockemy, Chief Judge of the South Carolina Court of Appeals, the Record on Appeal has been reviewed by the undersigned and a genuine effort to comply with the terms of the referenced Order has been undertaken. Certain items have been deleted from the record as originally submitted. These are the texts of three depositions. As to the additional three items which Respondents requested be stricken, the undersigned hereby notifies the Court and counsel for Respondents that Appellant believes an error has been made to the extent those documents, Lousia Storen’s writing of June 15, 2016 to Vicar General Msgr. Richard Harris, which was made a part of the deposition of Louisa Storen, Victim Assistance Coordinator of the Diocese of Charleston, Louisa Storen’s deposition

itself, because the deposition and the document were adjuncts to the witness's motion for a protective order which motion was made weeks before the call of the summary judgment motion for hearing and which clearly involved critical discovery issues. Similarly, the May 3, 2017 Amended Order of the Honorable J.C. Nicholson was part of the record since July 16, 2019. Based on the foregoing these three documents have not been stricken or modified in any way upon our referenced review of the previously submitted Record on Appeal. These we believe to have been long submitted to the Court and counsel for Respondents must have inadvertently viewed them as not having been so.

Please all readers hereof, including counsel for the Respondents, note that as of December 12, 2019, the date of the hearing which is the subject of this appeal, the deposition of Louisa Storen was subject to pending motion seeking a protective order, and made by her own counsel, and pending in the court file in this matter. Such motion was called to the attention of the presiding judge at the summary judgment hearing. Appellant requested that he not be required to defend a summary judgment motion until the pending discovery appeals of Respondents and discovery related motions and discovery itself could be completed.

Further, Judge Nicholson's Amended Order on Limited Collateral Review of May 3, 2017 in *John Doe 2, et al v. Bishop of Charleston, et al 2010-CP-10-5520*, which Respondents also asked to be stricken from the record, was in fact made a part of the record by Appellant through counsel and was attached as Exhibit B to Appellant's Memorandum in Support of Plaintiff's Motions for Limited Collateral Review filed July 16, 2019, and has been before the Court since that time.

Louisa Storen is the Victim Assistance Coordinator of Respondents, particularly being so engaged by the Diocese of Charleston; that means she is the intake person at the Diocese for claims

of sexual abuse by priests or other officials of the Diocese. In that capacity she was contacted by John Doe upon his regaining recall of his abuse at the hands of Diocesan employees, two of his school teachers. Respondents never identified Ms. Storen as a witness in the matter, and no documents from her were identified or produced in response to written discovery requests from Appellant but should have been. Such requests were made September 5, 2018, but ignored by Respondents and the items hidden. Ultimately, Ms. Storen was located and deposed on November 18, 2019. At her deposition she produced some documents, including a detailed email to Msgr. Richard Harris, the Vicar General, second in command to the Bishop, who deals with issues of sexual abuse of children by priests and other officials of the Diocese. Such email is attached as Exhibit 1 hereto.

In addition, it must be pointed out that writings relating to the matter of Doe's molestation were specifically requested from the Diocese, as were many others, and this writing, in the hands of the Vicar General, subordinate only to the Bishop of the Diocese of Charleston, was hidden from the Appellant for some three years; it has still not been produced by Respondents as of today – nor has a privilege log.

Ms. Storen was represented by her own counsel at her deposition. She was instructed not to answer certain questions and she, by counsel, requested a protective order from the trial judge before whom the case was pending, and by whom the subject summary judgment motion was heard and granted. In light of the foregoing, the issue of Ms. Storen, her deposition, and documents, was squarely before the Court and had been for some weeks before the summary judgment motion hearing.

Attached as Exhibit 2 hereto are some excerpts from discussions had with the Court on the day of hearing, December 12, 2019. These specifically, among other things, reference, as to Ms.

Storen, the pendency of this discovery related motion. However, vested with full knowledge of the deposition issues and the related request for protection by the deponent, the hearing judge insisted upon going forward. Exhibit 1 clearly evidences that Ms. Storen names two other people who were victimized by the Appellant's perpetrator(s), but the names of those individuals are redacted as are multiple other statements. So, in addition to being not notified of this until the time of the Storen deposition, and having unilateral redaction made at the hands of the Respondents, it was absolutely necessary, fair, and equal justice demanded, that Appellant be given this material before having to defend a summary judgment motion.

See Exhibit 2, Transcript of Record December 12, 2019

P52, L7-24

THE COURT:

One, where's Dawes Cooke?
But, two, what, in fact, are you trying – are
they trying to illicit that is being blocked?
I guess, is the question.

MR. DUKES:

Judge, Dawes is an attorney.

THE COURT:

Well, I know Dawes. I mean, I'm just
saying.

MR. DUKES:

He represent (sic) Louisa Storen.

THE COURT:

Okay.

MR. DUKES:

He instructed her not to answer a
question and filed a motion for a protective order.

THE COURT:

Oh, so we don't even need to hear
that, because he needs to argue that.

MR. DUKES:

He needs to argue that.

THE COURT:

Okay. Well, there we go.
So that one is done. That one takes care of
Dawes's deal. So Dawes is just going to have to come at
some point.

Again, this issue was squarely before the Court and was in the case file having been made a few weeks before the summary judgment hearing commenced. Moreover, the hearing judge was part of discussion on the record concerning same. The trial court determined to deal with the discovery related pending motions later and hear the summary judgment motion first on December 12, 2019. Fairness be damned.

Also, Appellant located and noticed the deposition of the sister of the chief perpetrator Chris Hartnett. Hartnett never married and Appellant believes he lived for at least a portion of his adult life in a house with his sister. When her deposition was noticed she claimed an inability to be deposed for some health reason, even though she was full time employed and had been at the same job for some twenty or twenty-five years, and she, too, sought protection by motion. The trial judge, the Honorable Bentley Price, who was out of state when the issue of continuing the deposition time or otherwise granting some order of protection to the deponent was raised, by telephone issued an order continuing the deposition, but never scheduled a hearing to determine the issues of protection raised thereby. This is the sister of the chief perpetrator. Still today there has been no hearing on that matter, and it too was specifically discussed with the summary judgment hearing judge, as can be seen by the attached examples from the record of the hearing (Exhibit 2), who insisted upon doing it at a later time, but hearing the summary judgment motion on December 12, 2019.

See Exhibit 2, Transcript of Record December 12, 2019

P53, L7-15

THE COURT:

And then for Doe, is the motion to quash deposition subpoena by non-party Elizabeth Hartnett Diamond. Whose motion is that?

MR. DUKES:

That is Robert Sumner filed that motion, I think. And remember, he's in a mediation out of town today and the correspondence between Robert and Julie (Judge

Price's clerk) yesterday confirmed that he didn't have to come today.

THE COURT: All right. We'll deal with Robert later. All right. Oh, that's right.

P53, L21-P54, L16

THE COURT: Motion to quash subpoena deposition by non-party Elizabeth Hartnett Diamond.

MR. RICHTER: She is the sister of the perpetrator in the Doe case.

THE COURT: Is that the one that I continued whenever I left town?

MR. RICHTER: That's right. That's exactly right. Your memory is correct.

THE COURT: All right. We'll deal with that. Well, that takes care of Doe. All right. So...

MR. RICHTER: Well, Judge, there's a lot about Doe that's not yet taken care of.

THE COURT: Yeah, but I'm not taking up any of the motions for summary judgment as to any of those specific causes of action.

MR. RICHTER: I understand that, but we have motions you granted – you granted our motions to compel. But your orders – you issued two orders that said Plaintiff's Motion to Compel is granted. Those – those orders have been disregarded and we need – we need those enforced so that we can get that material to work it with.

P55, L15-P56, L8

THE COURT: What has he not done? Let's just go to each specific thing that you allege that is still being withheld.

MR. RICHTER: We sought, for example – like, I'll give you a clear example, the Diocese published a list of either 41 or 42, what they call credibly accused – credibly accused sex abusers; priests.

Now, we, in our discovery request, asked for a lot

of things including the records on those 41 people, because I'm interested in finding patterns of conduct; witnesses to how the Diocese covered these things up; treating experts, who I might be able to utilize the benefits of, for my clients who could use some comfort in life, and many other – other things.

So that was just disregarded, they refused to do it. Just refused to do it.

THE COURT: All rights. So let's stop.

MR. RICHTER: I made a motion to compel. You ordered that you granted my motion to compel.

See Exhibit 3, Order Denying Defendants' Motion for Partial Summary Judgment and Granting Plaintiff's Motion to Compel Discovery dated July 24, 2019

10. The Plaintiff's Motion to Compel is hereby granted. Based upon my foregoing conclusions with respect to the status of the Bishop as a party-defendant, the Bishop is ordered to produce responses to the Plaintiff's September 5, 2018 and December 4, 2018 first set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. The Diocese is ordered to review and supplement its responses to the May 13, 2019 second set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. To the extent the Diocese claims privilege or confidentiality to certain documents or information, the Diocese is ordered to have such documents ready and available in advance of the August 19, 2019 hearing. If the Court finds the documents or information are in fact not privileged, the documents and information are to be produced at the August 19, 2019 hearing or within 24 hours. As required by the SCRCF, the Defendants are to compile and send Plaintiff's Counsel a proper privilege log. Additionally, upon entry into a confidentiality order or if the Court declines to enter a confidentiality order, the documents and information are to be turned over to the Plaintiff at the conclusion or (sic) the August 19, 2019 hearing, or within 24 hours thereafter.

See Exhibit 2, Transcript of Record December 12, 2019

P57, L7-P59, L24

THE COURT: Well, I understand what he's saying.
He responded because I ordered him to. And he still says

it's certain – and I had ruled, I remember that certain things weren't privileged, I think was what I ended up saying, is that anything that is attorney/client privilege don't disclose and then I said –

MR. RICHTER: That's right.

THE COURT: ---hand over everything else.

MR. DUKES: And that was in a discrete group of documents.

THE COURT: Right.

MR. DUKES: And we appealed that order.

THE COURT: Right.

MR. DUKES: And that's still up on appeal.

THE COURT: All right.

MR. DUKES: We filed a motion for a rehearing the other day.

THE COURT: Okay.

MR. RICHTER: Those orders have been – those appeals have been ruled on and the Court of Appeals has dismissed – I've got two orders in – not, two orders in my hand, I've got two docket sheets in my hand, and Ms. Larkin has just highlighted.

MR. DUKES: Judge, we filed a motion for rehearing.

THE COURT: That's right. So, look, I actually won one, halfway.

MR. DUKES: We have just filed a motion for rehearing with the Court of Appeals. The remittitur has not come back to the Court, so you don't have jurisdiction over it.

THE COURT: Well, I understand. But let's do this, I think to make it more efficient, have you – have you, Mr. Richter, filed a motion to compel as to each

specific discovery response that has not been, I guess, satisfactorily responded to or no?

MR. RICHTER: I did initially do that, yes, when they refused to produce these things. Those you heard in July.

THE COURT: Well, let's condense that down again and refile it. And then let's go line by line and determine what, in fact, you're entitled to and I'll get it to you. Because it's not before me today. And, I mean, I don't want to go line by line right now, obviously, even if the Court of Appeals hasn't come back as to the rehearing. So let's do it, I think that's the best uses of our time.

So just file a motion to compel as to what you believe that the Diocese is withholding, and I'll determine whether, in fact, it's discoverable or not. All right.

MR. RICHTER: Please. And I'll do that, Your Honor ---

THE COURT: All right.

MR. RICHTER: -- thank you for your instruction. But let me urge upon your attention, it's difficult for me to say, "Here's what they're not giving me," because if I knew what they had, in some instances, you know I could ---

THE COURT: Well, that's in every case, because the trucking company isn't going to give over everything. I mean, they're going -- you ask for something, you get it. You don't ask for it and you don't know it exists, that's just the way (sic) these cases go. You don't know it exists. You don't get to just say send me everything that's going to hurt your case.

So -- but let's go line by line on that and we'll readdress those later on. All right.

So, I'm just -- that's it for Doe. All right. We'll deal with Dawes and Robert later.

P75, L18-20

MR. RICHTER: Anyway, we need that. We need compliance with

discovery. We made two motions to compel, you granted them both, they were both ignored.

P76, L11-14

THE COURT:

So I wanted Mr. Dukes to get his summary judgment motions argued so we could at least move on past that.

So I will rule on all of the summary judgment issues in Doe.

P76, L23-P77, L1

THE COURT:

The Dawes Cooke motion will have to be heard at a later date.

The Robert Sumner motion will have to be heard at a later date.

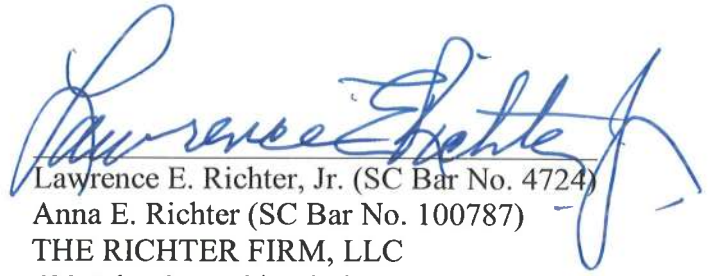
P82, L12-19

THE COURT:

I agree that I don't think that I can set this for trial. I will look into it with the pending motion that's at the Court of Appeals, and I'll certainly let you know all of my answers, probably going to be by the end of the day tomorrow. Because I need to do some research, I want to read some stuff, and I also want to reach out and contact some people. And so I will have you a decision by Thursday of next week.

This writer is operating on the premise that the above referenced matters are simply oversights or inadvertent misstatements by Respondents' counsel in requesting that they be stricken. They are clearly a part of the case file in this matter as to which Rule 56 makes specific reference to parties to the motion having the right to rely upon. Each has long been part of the record in the case. Beyond that, I think no clarification is needed and assure the Court that we have strived to comply with the terms of the Order of November 20, 2020. The Record on Appeal will timely be adjusted.

Clearly, hearing and granting a summary judgment motion such as referenced is manifestly unfair and prejudicial when there are substantial discovery issues pending, particularly while such are pending before this Court or the South Carolina Supreme Court.



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Anna@RichterFirm.com

ATTORNEYS FOR APPELLANT

January 20, 2021

Bonnie Sigers

From: Louisa Storen <louisa@louisastoren.com>
Sent: Wednesday, June 15, 2016 1:03 PM
To: Bonnie Sigers
Subject: FW: [REDACTED]

From: Louisa Storen [mailto:louisa@louisastoren.com]
Sent: Wednesday, June 15, 2016 12:08 PM
To: 'Msgr. Richard D. Harris, V.G.' <msgrharris@stjosephcolumbia.org>
Subject: [REDACTED]

Dear Monsignor,

I met with [REDACTED] for a couple hours yesterday in Greenville. I learned the following:
 His father, [REDACTED], a realtor (a partner of Joseph Griffith) and legislator from Charleston. [REDACTED] was the second of seven children.

[REDACTED] related that at the age of five he was molested by a neighbor boy who was 16. He never told anyone. [REDACTED] stated he had a disastrous few years in elementary school at Sacred Heart in that he repeated first and second grades twice. When he was eleven years old he was repeatedly molested by two teachers – Chris Hartnett and Hal Brooks. He said that on several occasions he was taken on an outing in Columbia with Mr. Hartnett and they went to a house where there was a “party” involving Mr. Harnett, Mr. Brooks and some other boys. [REDACTED] did not tell anyone (his father wasn’t around much due to his time at the State house). [REDACTED] decided his only way to stop the abuse was to run away. At thirteen he ran away for the first time to California. The next few years consisted of his being returned home, being put in juvenile detention, being put in several different schools and running away repeatedly. In his early 20’s [REDACTED] joined the Marine Corps. Eventually he married a woman and they had three children. His wife and three children were killed in house fire, which led to [REDACTED] becoming extremely depressed and suicidal. He had a child outside of marriage, a son who lives in Florida with two grandchildren. Nine years after the fire he remarried a woman who had five daughters. This has been an exceedingly happy marriage and he enjoyed helping her raise her daughters.

Three years ago he and his wife moved to Greenville because one of her daughters lives there. He suffers from heart disease and diabetes. Currently he works as a meat cutter at Publix and his wife works at the local technical college. During his life [REDACTED] had many different jobs including a landscaping business in Charleston.

Other pertinent information include: [REDACTED] noted that two other boys were abused by these same teachers. Their names are [REDACTED] and [REDACTED]. As an adult [REDACTED] approached Ralph about their shared experience and [REDACTED] only said “that faggot’s dead”. Mr. Hartnett in fact did die of Aids. [REDACTED] does not have any idea what happened to Hal Brooks. When he was in school [REDACTED] was befriended by another teacher who was also gay name Jeff Pelham. [REDACTED] believed that Mr. Pelham suspected the other two teachers had been inappropriate with [REDACTED] but the two of them never talked about it.

During the years while in Charleston [REDACTED] was an active member of the Cathedral. He spoke fondly of Monsignor Roth. He thought about confiding in Monsignor Roth but never did. [REDACTED] wife does not know about the molestation he suffered as a child. Previously he went to a counselor at the VA outpatient clinic in Greenville. He said the counseling was devastating for him and felt the counselor dug too deeply and too quickly into these painful memories. He did not want to go back there. Since that counseling experience, he has been unable to think about anything else. He said that he had not slept for three nights prior to my visit. I have offered him counseling with an experienced therapist in



Greenville that we have used before. [REDACTED] was especially pleased that she was Roman Catholic and would like to see her.

[REDACTED] had a great deal of trouble telling me his story. Frequently, he broke down in tears and would not talk about parts of his life eg. The details of the house fire. I did not take notes and am not completely sure about some details; he may only have four stepdaughters.

With your approval, I will set him up with therapist, Dorothy Whalen. Please let me know if I should ask him if he is willing to talk to Paul Buseti and also if this case and [REDACTED] need to go before the sexual advisory board. Please call me with any questions.

Sincerely, Louisa

Total Control Panel

[Login](#)

To: bonnie@catholic-doc.org

[Remove](#) this sender from my allow list

From: louisa@louisastoren.com

You received this message because the sender is on your allow list.

1 difference, maybe it doesn't make any difference -- but she
2 didn't reveal to this person, Doe, who needed care -- she
3 didn't reveal that Whalen, the expert's husband was, for the
4 past, I think, 18 years, and is a Deacon of the Roman
5 Catholic Church, ordained.

6 THE COURT: Well, what are we -- I'm getting lost.
7 One, where's Dawes Cooke?

8 But, two, what, in fact, are you trying -- are
9 they trying to illicit that is being blocked?

10 I guess, is the question.

11 MR. DUKES: Judge, Dawes is an attorney.

12 THE COURT: Well, I know Dawes. I mean, I'm just
13 saying.

14 MR. DUKES: He represent Louisa Storen.

15 THE COURT: Okay.

16 MR. DUKES: He instructed her not to answer a
17 question and filed a motion for a protective order.

18 THE COURT: Oh, so we don't even need to hear
19 that, because he needs to argue that.

20 MR. DUKES: He needs to argue that.

21 THE COURT: Okay. Well, there we go.

22 So that one is done. That one takes care of
23 Dawes's deal. So Dawes is just going to have to come at
24 some point.

25 MR. RICHTER: And, Judge, I'll tell you frankly,

1 and I'm not authorized to speak for Dawes, but I know he'll
2 agree with this, I think that you, me and Dawes can get on
3 the telephone and in two minutes take care of that matter.

4 THE COURT: Well, just do that. We'll just get
5 everybody on the phone.

6 MR. DUKES: That's fine.

7 THE COURT: And then for Doe, is the motion to
8 quash deposition subpoena by non-party Elizabeth Hartnett
9 Diamond. Whose motion is that?

10 MR. DUKES: That is Robert Sumner filed that
11 motion, I think. And remember, he's in a mediation out of
12 town today and the correspondence between Robert and Julie
13 yesterday confirmed that he didn't have to come today.

14 THE COURT: All right. We'll deal with Robert
15 later. All right. Oh, that's right.

16 MR. DUKES: That's also something that can be
17 handled over the phone.

18 MR. RICHTER: That cannot be handled over the
19 phone, Your Honor.

20 MR. DUKES: Why it can't ---

21 THE COURT: Motion to quash subpoena deposition by
22 non-party Elizabeth Hartnett Diamond.

23 MR. RICHTER: She is the sister of the perpetrator
24 in the Doe case.

25 THE COURT: Is that the one that I continued

1 whenever I left town?

2 MR. RICHTER: That's right. That's exactly right.
3 Your memory is correct.

4 THE COURT: All right. We'll deal with that.
5 Well, that takes care of Doe. All right. So...

6 MR. RICHTER: Well, Judge, there's a lot about Doe
7 that's not yet taken care of.

8 THE COURT: Yeah, but I'm not taking up any of the
9 motions for summary judgment as to any of those specific
10 causes of action.

11 MR. RICHTER: I understand that, but we have
12 motions you granted -- you granted our motions to compel.
13 But your orders -- you issued two orders that said
14 Plaintiff's Motion to Compel is granted. Those -- those
15 orders have been disregarded and we need -- we need those
16 enforced so that we can get that material to work it with.

17 THE COURT: Well, what's the -- what's that
18 motion? Well, it's not on here.

19 MR. DUKES: Judge?

20 THE COURT: It would be a motion to compel, is
21 what it would be.

22 MR. RICHTER: That's right.

23 MR. DUKES: If I may point out to the Court, in
24 September, and it is in the transcript, I don't have the
25 transcript with me, but I'll read it to you, if you need me

1 to, I'll get it and read it to you.

2 Your Honor said to me -- in the big court room
3 right over there -- "Mr. Dukes, you did exactly what I
4 instructed you to do and I thank you for that." and we
5 handed up a notebook of all our discovery responses for you
6 and for Julie to look at.

7 Mr. Richter says I've disregarded it. Your Honor
8 said that I did exactly what you instructed us to do.

9 THE COURT: All right. I'm confused.

10 MR. RICHTER: I think I can help.

11 THE COURT: All right.

12 MR. RICHTER: Help you understand it.

13 As to a certain thing that Your Honor was
14 referencing, you said, "You did it, Mr. Dukes."

15 THE COURT: What has he not done? Let's just go
16 to each specific thing that you allege that is still being
17 withheld.

18 MR. RICHTER: We sought, for example -- like, I'll
19 give you a clear example, the Diocese published a list of
20 either 41 or 42, what they call credibly abused -- credibly
21 accused sex abusers; priests.

22 Now, we, in our discovery request, asked for a lot
23 of things including the records on those 41 people, because
24 I'm interested in finding patterns of conduct; witnesses to
25 how the Diocese covered these things up; treating experts,

1 who I might be able to utilize the benefits of, for my
2 clients who could use some comfort in life, and many
3 other -- other things.

4 So that was just disregarded, they refused to do
5 it. Just refused to do it.

6 THE COURT: All right. So let's stop.

7 MR. RICHTER: I made a motion to compel. You
8 ordered that you granted my motion to compel.

9 THE COURT: All right.

10 MR. DUKES: No, sir. You instructed us to respond
11 to their discovery.

12 THE COURT: Okay.

13 MR. DUKES: Because, remember, we had objected to
14 the discovery and didn't answer any of them, because the
15 discovery was served on the Ecclesiastical Office of Bishop.
16 And we contended that that wasn't a proper party and that's
17 up on appeal now. And you instructed us to go ahead and
18 answer, so we did. And Your Honor said you did exactly what
19 I ordered you to do, and we had a long discussion in July
20 about we'd have to do a line-by-line analysis of the
21 discovery request and our objections and you'd rule on
22 those.

23 Mr. Richter has not filed a motion to compel after
24 we served discovery responses on him.

25 THE COURT: Okay.

1 MR. DUKES: But, even if we didn't, we responded
2 to discovery as you directed. You said -- you said in Court
3 that we did exactly what you told us to do, and we have to
4 do another round of analysis, I suppose, of our objections.

5 THE COURT: Okay. All right.

6 MR. RICHTER: Can I respond, please?

7 THE COURT: Well, I understand what he's saying.
8 He responded because I ordered him to. And he still says
9 it's certain -- and I had ruled, I remember that certain
10 things weren't privileged, I think was what I ended up
11 saying, is that anything that is attorney/client privilege
12 don't disclose and then I said ---

13 MR. RICHTER: That's right.

14 THE COURT: --- hand over everything else.

15 MR. DUKES: And that was in a discrete group of
16 documents.

17 THE COURT: Right.

18 MR. DUKES: And we appealed that order.

19 THE COURT: Right.

20 MR. DUKES: And that's still up on appeal.

21 THE COURT: All right.

22 MR. DUKES: We filed a motion for a rehearing the
23 other day.

24 THE COURT: Okay.

25 MR. RICHTER: Those orders have been -- those

1 appeals have been ruled on and the Court of Appeals has
2 dismissed -- I've got two orders in -- not, two orders in my
3 hand, I've got two docket sheets in my hand, and Ms. Larkin
4 has just highlighted.

5 MR. DUKES: Judge, we filed a motion for
6 rehearing.

7 THE COURT: That's right. So, look, I actually
8 won one, halfway.

9 MR. DUKES: We have just filed a motion for
10 rehearing with the Court of Appeals. The remittitur has not
11 come back to the Court, so you don't have jurisdiction over
12 it.

13 THE COURT: Well, I understand. But let's do
14 this, I think to make it more efficient, have you -- have
15 you, Mr. Richter, filed a motion to compel as to each
16 specific discovery response that has not been, I guess,
17 satisfactorily responded to or no?

18 MR. RICHTER: I did initially do that, yes, when
19 they refused to produce these things. Those you heard in
20 July.

21 THE COURT: Well, let's condense that down again
22 and refile it. And then let's go line by line and determine
23 what, in fact, you're entitled to and I'll get it to you.
24 Because it's not before me today. And, I mean, I don't want
25 to go line by line right now, obviously, even if the Court

1 of Appeals hasn't come back as to the rehearing. So let's
2 do it, I think that's the best uses of our time.

3 So just file a motion to compel as to what you
4 believe that the Diocese is withholding, and I'll determine
5 whether, in fact, it's discoverable or not. All right.

6 MR. RICHTER: Please. And I'll do that, Your
7 Honor ---

8 THE COURT: All right.

9 MR. RICHTER: -- thank you for your instruction.

10 But let me urge upon your attention, it's
11 difficult for me to say, "Here's what they're not giving
12 me," because if I knew what they had, in some instances, you
13 know I could ---

14 THE COURT: Well, that's in every case, because
15 the trucking company isn't going to give over everything. I
16 mean, they're going -- you ask for something, you get it.
17 You don't ask for it and you don't know it exists, that's
18 just the way these cases go. You don't know it exists. You
19 don't get to just say send me everything that's going to
20 hurt your case.

21 So -- but let's go line by line on that and we'll
22 readdress those later on. All right.

23 So, I'm just -- that's it for Doe. All right.
24 We'll deal with Dawes and Robert later.

25 So what is the next set of motions? I assume this

1 believe you can set this case for trial as long -- until the
2 remittitur comes back from the Court of Appeals.

3 THE COURT: What do you all need from me to
4 continue to move forward with the discovery process of this
5 case? And I'm not talking about Doe, I'm talking about Roe.

6 MR. RICHTER: I need the documents that we have
7 asked them for. I need them to take -- maybe, to take
8 depositions concerning those various documents.

9 We need the unredacted form of the matters where
10 there are, for example -- I don't remember the document
11 number -- but there will be a document well, let's say, the
12 Vicar General writes to the Bishop, or something, and says,
13 you know, These nine people we know about, or these 13
14 people.

15 We've got -- you're going to be amazed when you
16 see all the facts, or whoever sits here, will be amazed
17 facts to see all of the facts.

18 Anyway, we need that. We need compliance with
19 discovery. We made two motions to compel, you granted them
20 both, they were both ignored.

21 THE COURT: All right. Here's what I want to keep
22 this case moving and to be somewhat -- what you'll have to
23 understand is that, you know, you always tell me about all
24 of these things that I'll be amazed to see, and all of the
25 things that they're hiding, and all of that kind of stuff,

1 and until I think we go line by line, which, of course, I
2 have dreaded going to have to actually do, here's what I
3 want you to do.

4 I want you to file a motion to compel as to
5 every -- everything you just -- you keep talking about
6 these -- these eight people that were on this board, or
7 whatever it this document is that has the nine people on it,
8 that's fine. File a motion to compel every single one of
9 them. And we're going to go line by line, and have to deal
10 with the discovery issues.

11 So I wanted Mr. Dukes to get his summary judgment
12 motions argued so we could at least move on past that.

13 So I will rule on all of the summary judgment
14 issues in Doe.

15 I've held in abeyance the specific causes of
16 action one. And in Roe we have -- I want you -- so the
17 Defendant's motion for protective order as to the Bishop's
18 deposition, I ruled on a part of that. But I want you to
19 put your motion to compel, what questions that you want the
20 Bishop to answer, and I may or may not, at that time,
21 reconvene his deposition. Let me take a look at that when
22 you do it.

23 The Dawes Cooke motion will have to be heard at a
24 later date.

25 The Robert Sumner motion will have to be heard at

1 a later date.

2 What is -- just so, I guess, the John Doe 432 can
3 kind of move forward. What is Sires motion to intervene?

4 What is that?

5 MR. DUKES: Sires is Mr. Richter's client. He was
6 the lead Plaintiff in the class action, I think, wasn't he
7 53?

8 MR. RICHTER: Judge, Allen Sires is unfortunately
9 saddled with certain health matters that sometimes make his
10 actions seem a bit erratic.

11 In any event, he was a Plaintiff -- a claimant in
12 the -- in the Class case and has had an ongoing battle with
13 the Diocese. These things are not -- I represented him --
14 we, the group, class lawyers, represented him and all of the
15 claimants during that period in -- 12 years ago.

16 His last -- my last contact with him and the last
17 time I had seen him converse with the Diocese, was, again,
18 many years ago. He lost access to his children, by a Family
19 Court action. I had no involvement, I don't know anything
20 about the matters of any of that. Mr. Sires is a troubled
21 gentleman. And he wanted the Diocese to get his children
22 back for him.

23 And Peter Shahid and I and the Bishop and a couple
24 of Vicars General, and I don't remember who else attended a
25 meeting with him, really to say that, you know, what they

1 MR. DUKES: That's actually not correct, Larry.

2 MR. RICHTER: I'm concerned about that because it
3 was 4:55 on Tuesday afternoon when they gave us affidavits
4 that they want us to have to deal with in a 9:30 motion.

5 THE COURT: Yes, sir. We're going to be together
6 again, so we'll deal with it when we need to deal with it
7 again. This isn't your last bite of the apple.

8 So get the motions to compel that you want, line
9 itemed over to them, and you all can respond to it and let
10 me know if we need to have a hearing. And that's what we'll
11 do next.

12 I agree that I don't think that I can set this for
13 trial. I will look into it with the pending motion that's
14 at the Court of Appeals, and I'll certainly let you know all
15 of my answers, probably going to be by the end of the day
16 tomorrow. Because I need to do some research, I want to
17 read some stuff, and I also want to reach out and contact
18 some people. And so I will have you a decision by Thursday
19 of next week.

20 MR. RICHTER: Okay.

21 MR. DUKES: And, Judge, I will -- as we were
22 preparing our motion with the Court of Appeals, we have --
23 one of the lawyers in our firm is on the Board of the
24 Defense Trial Attorneys and there's a case in the Supreme
25 Court right now that they've invited briefing on immediate

CERTIFICATE OF REPORTER

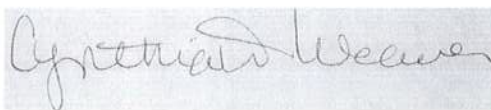
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State of South Carolina)
County of Berkeley)

I, Cynthia D. Weaver, Official Court Reporter for the
Fifteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in Motions Hearings for Berkeley County,
South Carolina, on the 19th day of December, 2019

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

January 25, 2020



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-10-03929

John Doe,

Plaintiff,

v.

The Diocese of Charleston, a Corporation
Sole, and the Bishop of the Diocese of
Charleston, in his official capacity,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY**

DATE OF HEARING:	July 17, 2019
PRESIDING JUDGE:	Bentley D. Price
PLAINTIFF'S ATTORNEY:	Lawrence E. Richter, Jr. and Jennifer S. Ivey
DEFENDANTS' ATTORNEY:	Richard E. Dukes
COURT REPORTER:	Patricia Szoke

2019 JUL 24 AM 10:02
JULIE A. ARMSTRONG
CLERK OF COURT
FILED

THIS MATTER came before the Court for a hearing on July 17, 2019 on Defendant, the Bishop of Charleston, a Corporation Sole's (hereinafter the "Corporation Sole")¹ Motion for Partial Summary Judgment as to the Bishop of the Diocese of Charleston, in his official capacity (hereinafter "the Bishop" and collectively "the Diocese") and Plaintiff's Motion to Compel Discovery.

Present at the hearing were Lawrence E. Richter, Jr. and Jennifer S. Ivey, Counsel for the Plaintiff, and Richard E. Dukes, Counsel for the Defendants. Also present in the courtroom were non-lawyer staff for both Plaintiff and Defendants' Counsel and Dr. Gregory B. Adams.

¹ In its pleadings, including the Motion for Partial Summary Judgment, the Corporation Sole claims that it is incorrectly identified by the Plaintiff as the "Diocese of Charleston, a Corporation Sole." Accordingly, from this point forward, the caption in this case is to be restyled as John Doe v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity.



After a full review of the pleadings, the legal memoranda filed by the parties, arguments of counsel, and considering the controlling legal authorities, this Court makes the following findings of fact and conclusions of law:

THE BISHOP, IN HIS OFFICIAL CAPACITY AS A PARTY-DEFENDANT

1. The first matter heard by the Court was the Corporation Sole's Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment sought dismissal of the Bishop as a defendant in this case on the basis that: (i) the Bishop is not a real party in interest, and is not a proper defendant; (ii) the Bishop does not have the capacity to sue; and (iii) the Corporation Sole is the only proper party and the only party with the capacity to be sued.

2. Plaintiff argued that the Bishop is a proper and necessary defendant. The Plaintiff presented numerous public documents from multiple lawsuits and records of real estate transactions bearing directly on this issue. Specifically, it was powerfully and persuasively shown that there is a long precedent of the Diocese being sued in the name of the Bishop, as styled in this Complaint (i.e., "the Bishop of Charleston, in his official capacity") in South Carolina and within those same cases the Bishop has answered, sought affirmative relief, entered settlement agreements, and in some instances, been afforded relief. The Plaintiff offered proof that the Bishop has conveyed property pursuant to legal instruments recorded in South Carolina and that the Bishop entered into the 2007 class action settlement in his official capacity, having been sued in that name, not objecting, and represented by counsel throughout that matter, and even showed that the very Counsel who made challenge that the Bishop as referenced in the caption is a non-entity and not capable of being sued actually represented and acted for the Bishop when sued using the exact same nomenclature. Further, it was shown that then general counsel for the Diocese brought a suit using the same name as used herein with the

Diocese/Bishop in the role of Plaintiff seeking a monetary recovery against various insurance carriers. The Plaintiff also chronicled the Bishop's actions in this case, which included numerous responses and acts before the issue of the Bishop not being a proper defendant was raised.

3. The Plaintiff further argued that not only is the Bishop a proper defendant, but that it is necessary for the Bishop to be named as a Defendant for the Plaintiff to obtain the relief he seeks. The Plaintiff presented to the Court S.C. Code § 33-56-180, which provides in pertinent part: "An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant."

4. Based upon the long precedent of the Bishop using South Carolina courts to sue in the name of the Bishop, the Bishop's history of being sued in South Carolina, and other legal acts taken by the Bishop under this South Carolina's laws, I find that the Bishop has the capacity to be sued and is a proper party-defendant to this suit.

5. I further find that the Bishop is a necessary party for relief. Based upon the existence of statutory rules like S.C. Code § 33-56-180(A) and the facts of this case, the inclusion of the Bishop as a party-defendant may be critical to the viability of the Plaintiff's claims.

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

6. The Court also considered the Plaintiff's Motion to Compel Discovery. The Plaintiff seeks to compel responses to: (1) its first set of written discovery, issued to the Bishop on September 5, 2018; and (2) its second set of written discovery, issued to both Diocese Defendants on May 13, 2019.

7. The First Set of Written Discovery: Plaintiff seeks to compel the Bishop's responses to the Plaintiff's First Set of Interrogatories, First Requests for Production, served upon the Bishop on September 5, 2018. Plaintiff also seeks to compel the Bishop's responses to Plaintiff's First Requests for Admission, served to the Bishop on December 4, 2018. The Bishop has objected to all these discovery requests upon him based upon the Corporation Sole's Motion for Partial Summary Judgment. The Diocese has further sought an order of protection as to the Bishop based upon the pendency of the Motion for Partial Summary Judgment.

8. The Second Set of Written Discovery: The Plaintiff also seeks to compel full and complete responses to the Plaintiff's Second Set of Interrogatories and Requests for Production that were issued to the Corporation Sole and the Bishop on May 13, 2019. The Bishop did not respond to this discovery, based upon the pendency of its Motion for a Protective Order, but the Corporation Sole did. However, the Plaintiff argues that the responses made by the Corporation Sole were packed full of dilatory and delay-intentioned objections, and were not valid or sufficient responses. The Diocese maintained its objections and represented to the Court that it is going to be necessary to go line-by-line through every discovery request and have this Court rule on each.

9. The Diocese represented that it cannot produce responses, including responses to the September 5, 2018 discovery issued to the Bishop, the May 13, 2019 discovery issued to both Defendants, and the June 6, 2019 document requests by subpoena *duces tecum* to the Chief Financial Officer of the Diocese, John Barker, and its Vicar General Rev. Msgr. Anthony Droze VG, in the Roe case, until a confidentiality order is entered by the Court. The Diocese has filed a Motion for Entry of a Confidentiality Order. Plaintiff's Counsel has expressed a need for the information the Diocese seeks to shield, and as such, I find it necessary to consider the parties'

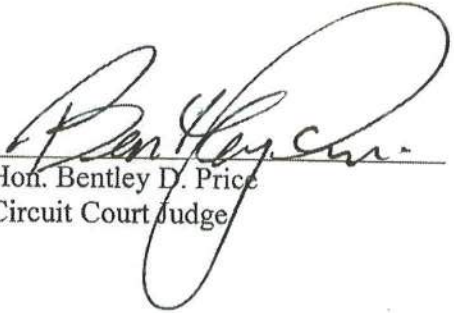
positions attendant to a line-by-line review of the Plaintiff's discovery requests and the Diocese's objections. Given the Scheduling Order in this case, I will consider both of these matters on August 19, 2019.

10. The Plaintiff's Motion to Compel is hereby granted. Based upon my foregoing conclusions with respect to the status of the Bishop as a party-defendant, the Bishop is ordered to produce responses to the Plaintiff's September 5, 2018 and December 4, 2018 first set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. The Diocese is ordered to review and supplement its responses to the May 13, 2019 second set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. To the extent the Diocese claims privilege or confidentiality to certain documents or information, the Diocese is ordered to have such documents ready and available in advance of the August 19, 2019 hearing. If the Court finds the documents or information¹ are in fact not privileged, the documents and information are to be produced at the August 19, 2019 hearing or within 24 hours. As required by the SCRCPP, the Defendants are to compile and send Plaintiff's Counsel a proper privilege log. Additionally, upon entry into a confidentiality order or if the Court declines to enter a confidentiality order, the documents and information are to be turned over to the Plaintiff at the conclusion of the August 19, 2019 hearing, or within 24 hours thereafter.

11. This Court will consider the Plaintiff's request to impose costs, fees, and sanctions on the Diocese under Rule 37, SCRCPP at the time of the August 19, 2019 hearing.

NOW, THEREFORE, IT IS HEREBY

ORDERED AND ADJUDGED that Defendants' for Partial Summary Judgment is **DENIED**. Plaintiff's Motion to Compel is **GRANTED** and Defendants' discovery-related motions are rendered moot.



Hon. Bentley D. Price
Circuit Court Judge

24 day of July, 2019
Charleston, South Carolina