

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)
)
Chalmus J. Burgess, Sr. as Personal)
Representative of the Estate of Jacob)
Burgess,)
)
Plaintiff,)
)
v.)
)
Estill Gas Company, Inc., and Ben Hadwin,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-25-00261

**ORDER ON PLAINTIFF'S MOTION
TO ALTER OR AMEND**

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MAR 25 2021

SC Court of Appeals

Presiding Judge: Hon. Deadra L. Jefferson
Plaintiff's Attorney: Lane D. Jeffries, Esq.
Defendants' Attorney: Heather K. Coleman, Esq.
Date of Hearing: November 12, 2020
Court Reporter: N/A

This matter came before the Court on Plaintiff's Motion to Alter or Amend, filed December 3, 2020. The Plaintiff asks the Court to reconsider its Order Denying Plaintiff's Motion to Compel, filed November 25, 2020. The Court received a copy of the Motion for Reconsideration on December 10, 2020 via U.S. Mail from Plaintiff's counsel. The Defendants filed their response to Plaintiff's Motion to Alter or Amend on December 15, 2020. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff's Motion to Alter or Amend is heard and respectfully Granted in Part and Denied in Part.¹

PROCEDURAL HISTORY

This matter originally came before the Court on November 12, 2020 on Plaintiff's Motion to Compel, filed October 2, 2020. Plaintiff's Motion to Compel challenged the sufficiency of the Defendants' responses to Plaintiff's First Supplemental Interrogatories and First Requests for Production, served June 15, 2020. The Plaintiff filed its Motion and Memorandum in Support on

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

October 2, 2020. The Defendants filed their Memorandum in Opposition on October 30, 2020. On November 25, 2020, the Court issued an Order denying the Plaintiff's Motion to Compel, finding that the Defendants' responses were sufficient. On December 3, 2020, the Plaintiff filed the present Motion asking that the Court grant the Plaintiff's October 2, 2020 Motion to Compel, or in the alternative, set forth the legal and factual basis for denying Plaintiff's October 2, 2020 Motion to Compel.

CONCLUSIONS OF LAW

“The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she 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 or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRCP. “[T]he ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion.”

Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018) (citation omitted) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000)).

“A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule 59(g), SCRCP; See also Smith v. Fedor, 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017) (“Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.”).

I. For the following reasons, the Plaintiff’s Motion to Alter or Amend is Granted in Part and Denied in Part.

The Plaintiff raises four (4) issues in its Motion to Alter or Amend. The Court will address each issue in turn.

A. The Plaintiff’s Motion to Alter or Amend as to Defendants’ Claims of Privilege Without A Privilege Log is Denied.

The Plaintiff’s Motion to Alter or Amend as to Defendants’ claims of privilege without a privilege log is Denied because the Court determined that the Defendants’ responses were sufficient as the Defendants indicated that no privilege logs were produced because the Defendants have not determined any documents to be privileged.

B. The Plaintiff’s Motion to Alter or Amend as to Defendants’ Improper General Objections, Abusive Objections to Standard Interrogatories, Non-specific Boilerplate Objections, and Answers Subject to Objections is Denied.

The Plaintiff’s Motion to Alter or Amend as to Defendants’ improper general objections, abusive objections, non-specific objections, and answers subject to objections is Denied because the Court determined that the Defendants’ responses were sufficient, despite references to

objections, because the Defendants answered the substance of the Plaintiff's discovery requests notwithstanding their objections.

C. The Plaintiff's Motion to Alter or Amend as to the Plaintiff's assertion that the Defendants' Documents Are Not Organized or Produced as Kept in the Usual Course of Business is Granted.

The Plaintiff's Motion to Alter or Amend as to the Defendants' failure to organize and state with specificity its responses to Plaintiff's Requests for Production is Granted.

The Plaintiff issued thirty seven (37) Requests for Production to the Defendants on June 15, 2020. The Defendants' responses to the majority of Plaintiff's Requests for Production lack specificity. Defendants' responses to Plaintiff's Requests for Production include: "Please see Answer to Standard Interrogatory 2 and documents produced herewith;" "Please see Response to Request No. 1 and documents produced herewith;" "Please see Answer to Standard Interrogatory 1 and 2 and documents produced herewith;" and "Please see Response to Request No. 4."

The Court finds that these responses are deficient as they lack specificity and the Plaintiff cannot be expected to know what documents or responses provided by the Defendants are responsive to which of the Plaintiff's Requests for Production.

Accordingly, the Plaintiff's Motion to Alter or Amend as to Requests for Production 1-13, 17-19, 21-22, 25-34, and 36 is Granted, and Plaintiff's Motion to Compel as to Requests for Production 1-13, 17-19, 21-22, 25-34, and 36 is Granted. The Defendants are required to set forth their responses to the above-enumerated Requests for Production with specificity within thirty (30) days of the date of receipt of this Order.

D. The Plaintiff's Motion to Alter or Amend as to Defendants' Refusal to Disclose Net Worth is Granted.

Plaintiff's Supplemental Interrogatory No. 13 states, "[s]tate your net worth." The Defendants responded, "Defendants object to this Interrogatory in that it seeks information

unlikely to lead to admissible evidence. Further, Defendants are in possession of ample insurance coverage as identified in Answer to Standard Interrogatory 3. Objection notwithstanding, Defendants will agree to obtaining a statement of net worth signed by the Defendants accountant and have the same sealed and present at the trial of the case, to remain sealed until such time as the issue of punitive damages is presented to the jury.”

The Court Grants the Plaintiff’s Motion to Alter or Amend as to Supplemental Interrogatory No. 13, and Grants the Plaintiff’s Motion to Compel as to Supplemental Interrogatory No. 13. The Court finds that the Defendants net worth is relevant and is reasonably calculated to lead to the discovery of admissible evidence. See Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Envtl. Control, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010) (The general scope of discovery allows discovery of any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is “reasonably calculated to lead to the discovery of admissible evidence.”).

Accordingly, it is Ordered that the Defendants shall provide a full and complete response to Supplemental Interrogatory No. 13 within thirty (30) days of the date of receipt of this Order.

CONCLUSION

After fully considering the Plaintiff’s Motion to Alter or Amend, for the foregoing reasons, the Motion is heard and respectfully Granted in Part and Denied in Part.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Fourteenth Judicial Circuit

February _____, 2021
Charleston, South Carolina
At Chambers



Hampton Common Pleas

Case Caption: Chalmus J. Burgess, Sr.As Personal Representative Of The Estate Of
Ja VS Ben Hadwin , defendant, et al
Case Number: 2020CP2500261
Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128