

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2018-CP-40-00156

Jane Doe,)
)
 Plaintiff,) **NOTICE OF MOTION, MOTION AND
vs.) MEMORANDUM IN SUPPORT TO
) ENFORCE JUDGE MANNING'S
 Joseph Ben Barton, Kevin Burnham and) MAY 29, 2019 ORDER
 Midlands Physical Medicine, LLC,)
)
 Defendants.)

 TO: DEFENDANTS, ABOVE NAMED BY AND THROUGH THEIR ATTORNEY OF RECORD**

NOTICE OF MOTION AND MOTION

YOU WILL PLEASE TAKE NOTICE that the Plaintiff Jane Doe, by and through her undersigned attorneys, within ten (10) days after the filing of this motion or as soon thereafter as counsel may be heard, will move before the Presiding Judge of the Fifth Judicial Circuit, Court of Common Pleas, County of Richland for an Order holding Defendants in civil contempt of court for disobeying Judge Manning's May 29, 2019 Order and for an Order to enforce Judge Manning's Order.

MEMORANDUM IN SUPPORT

Procedural History

On January 8, 2018, Plaintiff filed a Complaint in this matter containing causes of action for malicious prosecution, abuse of process, defamation per se, assault, battery, outrage, and wrongful termination in violation of public policy. The Complaint states that while Plaintiff was employed by Defendants that her boss, Defendant Joseph Ben Barton ("Barton"), wanted to "convert her into a Scientologist," "requested that Doe have sexual intercourse with him," "requested that Doe give him oral sex," made Doe "a sexually explicit video of himself

masturbating" and texted Plaintiff such things as "Show me your bald [EXPLICIT]" and "I don't like banging chicks that screw blacks."¹ In addition, the Complaint states that Barton assaulted the Plaintiff at her place of employment "by forcibly attempting to touch her vagina through her scrubs" and also, at her place of employment, that Barton "removed his penis from his pants in front of Doe" and "told her to engage in oral sex."² Discovery was undertaken in this matter including party depositions and the recovery of the text messages cited above.

On December 20, 2018, the parties mediated this matter in Columbia, South Carolina with Mediator Thomas W. Traxler, Esq. of Carter, Smith, Merriam, Rogers & Traxler, PA. At the conclusion of this mediation the parties and their attorneys signed a "Mediation Settlement Agreement" ("Settlement Agreement") which states that "This settlement agreement is Rule 43(k) compliant." Defendants failed to abide by the Settlement Agreement.

On February 19, 2019, Plaintiff filed her **FIRST** Motion to Enforce Settlement because Defendants refused to pay the full amount owed. After waiting another three months, on May 28, 2019, Plaintiff's Motion to Enforce Settlement was heard by the Honorable L. Casey Manning.

On May 29, 2019, Judge Manning ruled that the Settlement Agreement complied with Rule 43(k) and ordered Defendants to pay all amounts owed by July 29, 2019. (See Order attached as **Exhibit A** and incorporated by reference.) Once again, Defendants have refused to pay and have now disobeyed Judge Manning's Order. Defendants still owe Plaintiff \$25,000.00. This is Plaintiff's **SECOND** motion to collect the amounts lawfully owed to her since January 20, 2019.

¹ See Complaint at paragraphs 31, 51, 52, 60, and 62.

² See Complaint at paragraphs 69 and 70.

Discussion

Judge Manning's Order holds that if Defendants did not pay the final \$25,000.00 owed by July 29, 2019 then Plaintiff shall (A) recover her attorneys' fees and costs (B) is entitled to post judgment interest starting from January 29, 2019 at the South Carolina statutory rate and is entitled to (C) other such relief as is required. (See **Exhibit A** at paragraph 5 A-C.) Defendants have not paid the final \$25,000.00. Defendants have disobeyed Judge Manning's Order and they should be held in civil contempt of court.

It is clear that Defendants have acted "with bad purpose either to disobey or disregard the law..." See, *In re Brown*, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998). In *Brown*, the Supreme Court of South Carolina describes the type of willful disobedience of a court order that is necessary to support a finding of civil contempt.

It is past time for the Plaintiff to be rid of Barton and have him out of her life once and for all. The refusal by Barton to honor his word or obey the Court's Order is his most recent attempt to inflict damage upon the Plaintiff. By failing to honor the Settlement Agreement and by disobeying this Court's Order, Barton has again harmed the Plaintiff. Barton's refusal to pay allows him to stay in Plaintiff's life thus preventing her from the psychological and emotional closure she needs to recover from his repulsive acts and denying her the funds she needs to move on. There is no excuse for his actions in the past or now. Defendants should be held in civil contempt for their willful disobedience of Judge Manning's Order³. The Defendants have repeatedly told the Plaintiff and this Court that they would pay yet they have not. Defendants

³ See also, *DiMarco v. DiMarco*, 393 S.C. 604, 607, 713 S.E.2d 631, 633: "Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive."

should be ordered to immediately pay the amounts listed above. Defendants have not honored their word and now they have disobeyed this Court. This has gone on long enough.

Conclusion

Plaintiff requests that this Court issue an order finding the Defendants in civil contempt of court and compelling Defendants to obey Judge Manning's Order by immediately paying the final \$25,000.00 owed plus post judgment interest starting from January 29, 2019 at the South Carolina statutory rate and require Defendants to immediately reimburse the Plaintiff for her attorney's fees and costs incurred in having to file **both** motions to enforce the settlement agreement and provide any other and further relief this Court deems just and proper.

BLAND RICHTER, LLP
Attorneys for the Plaintiff

s/Eric S. Bland
Eric S. Bland (SC Bar No. 64132)
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Ronald L. Richter, Jr. (SC Bar No. 66377)
Scott M. Mongillo (SC Bar No. 16574)
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

July 31, 2019
Columbia, South Carolina