IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STACEY KALBERMAN, Plaintiff, vs. GEORGIA GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE COMMISSION, et al., Defendants.	Civil Action No. 2012CV216247 Honorable Ural D. Glanville Motion for Sanctions

O R D E R

The above-captioned matter is presently before the Court on Plaintiff's "Motion for Sanctions Under O.C.G.A. §§ 9-15-14(b), 9-11-37, & 15-1-3." (Doc. no. 130). Defendant Georgia Government Transparency and Campaign Finance Commission ("Commission"), Defendant LaBerge, and the Georgia Department of Law ("Department") oppose the instant motion. (Doc. nos. 132-134). On August 25, 2014, the Court held a hearing concerning the instant motion, including argument by Counsel, as well as testimony by Defendant LaBerge and Bryan K. Webb, Office of the Attorney General for the State of Georgia. For the reasons stated, *infra*, the instant motion is **GRANTED**. (Doc. no. 130).

I. BACKGROUND

Ironically, the above-captioned case involves Plaintiff's claim under O.C.G.A. § 45-1-4, Georgia's Whistleblower Statute. (Doc. nos. 2, 11, 59, Compl., Am. Compl., Second Am. Compl.). Following the transfer of the above-captioned case to this

Division, the Court entered a Case Management Order, containing deadlines, policies, and procedures governing the above-captioned case. (Doc. no. 42). Notably, the Case Management Order provides, "[T]he Court reminds the parties that, under the Civil Practice Act, they have a duty to fully cooperate in discovery and that the failure to fulfill this obligation may result in sanctions." (Id. at 1). After a trial lasting several days, the impaneled jury found for Plaintiff in the amount of $700,000.00.[1] (Doc. no. 126). Subsequently, the Court entered a Consent Order Acknowledging Settlement, wherein the parties consented and agreed that Defendants owe Plaintiff $1,150,000.00, in compromise and settlement of the non-wage compensatory damages and litigation expenses. (Doc. no. 127).

Plaintiff contends that, through various media reports and Defendant LaBerge's television interviews, it has recently come to light that members of Governor Deal's Office threatened, in telephone conversations and text messages, Defendant LaBerge in connection with the investigation forming the basis of the above-

[1] As chronicled in the Court's February 7, 2014 Order denying Defendants' Motion for Summary Judgment, Plaintiff was previously employed by Defendant Commission as Executive Secretary. (Doc. no. 98, p. 1). Between March and May 2010, Plaintiff became aware of third-party complaints against gubernatorial candidate Nathan Deal concerning campaign finance compliance with the Georgia Campaign Finance Act, ultimately resulting in the drafting of certain subpoenas. (Id. at 2). After Plaintiff presented the subpoenas to the Commission, Plaintiff's tenure as Executive Secretary ended. (Id. at 1-2). Although the parties disputed the basis and nature of the termination, the verdict represents the Jury's unquestionable finding that, in violation of O.C.G.A. § 45-1-4, Plaintiff was retaliated against based upon the disclosure of a violation of, or non-compliance with, Georgia's Campaign Finance Act.

captioned complaint. (Doc. no. 130, p. 2). Plaintiff asserts that Defendant LaBerge e-mailed, in an effort to preserve, these communications to a personal account and that Defendant LaBerge memorialized, at the direction of Commission Chairman Kevin Abernethy, the telephone conversations and text messages in a Memorandum of Record ("Memorandum"). (Id. at 2-3). Plaintiff maintains that, despite several discovery requests, Defendants' responses to Plaintiff's discovery requests did not include the subject Memorandum, e-mails, or text messages. (Id. at 3-4). Plaintiff explains that at a July 31, 2013 deposition, Defendant LaBerge again failed to reveal the existence of the communications and Memorandum, indicating that all relevant documents had been produced. (Id. at 6). Plaintiff requests that the Court impose sanctions based upon bad faith discovery abuses. (Id. at 11-24).

In pertinent part, the Department counters that, during the course of discovery, Counsel Webb produced all e-mails and other documents produced by Commission employees. (Doc. no. 132, pp. 3-4). The Department explains that, following a certain deposition, Counsel Webb questioned Defendant LaBerge concerning allegations of pressure from the Office of the Governor, resulting in disclosure and production of the Memorandum. (Id. at 4). The Department maintains that, because the Memorandum was not responsive to Plaintiff's discovery requests, it was not disclosed or produced in discovery. (Id. at 5). The Department also

explains that, because Defendant LaBerge failed to produce or disclose the subject e-mails or text messages to Counsel Webb, these documents were also not disclosed or produced. (Id. at 6). The Department submits that, as a result of various lawsuits related to the events giving rise to this matter, Defendant LaBerge then disclosed the existence of the Memorandum and other communications. (Id. at 6-7).

Defendant Commission asserts that, notwithstanding the requirements in the Consent Order, Plaintiff failed to file a dismissal after negotiating the settlement checks, and thus, the Court lacks jurisdiction. (Doc. no. 134, pp. 1-2, 5-7). Similarly, Defendant Commission argues that the settlement agreement bars Plaintiff's sought-after relief. (Id. at 7-11). Alternatively, Defendant Commission maintains that Plaintiff is not entitled to relief under O.C.G.A. § 9-11-37 because the motion is untimely, Plaintiff has not made the required showing, and an award would be unjust. (Id. at 11-19). Defendant Commission states that, under O.C.G.A. § 15-1-3, discovery sanctions are not authorized. (Id. at 19-21). Finally, Defendant Commission concludes that Plaintiff has failed to show that the Commission committed any discovery abuses. (Id. at 3-5). Defendant LaBerge *summarily* argues that the instant motion should be denied for the following reasons: (1) Plaintiff has not shown a discovery violation; (2) Plaintiff has not shown a legal basis for the

sought-after relief; (3) the settlement agreement bars the sought-after relief; (4) the disclosed information is not relevant to Plaintiff's claims; (5) the disclosed information was known to Plaintiff; and (6) Plaintiff has not established prejudice or harm. (Doc. no. 135).

II. DISCUSSION OF LAW

As an initial matter, a brief discussion concerning the basic nature of discovery would be particularly appropriate in light of the instant dispute. Under the Civil Practice Act,

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense . . . including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

O.C.G.A. § 9-11-26(b)(1). Information is relevant if it "appears reasonably calculated to lead to the discovery of admissible evidence." Id. Of course, discovery is not unlimited, and the broad scope of discovery is tempered by O.C.G.A. § 9-11-26(c), which states that, for good cause shown, courts may, *inter alia*, protect a party from annoyance, embarrassment, oppression, or undue burden. O.C.G.A. § 9-11-26(c). Simply put, "[t]he goal of discovery is the fair resolution of legal disputes, to remove the potential for secrecy and hiding of material." Int'l Harvester Co. v. Cunningham, 245 Ga. App. 736, 738 (2000) (quotations

omitted); see also O.C.G.A. § 24-1-1 ("The object of all legal investigation is the discovery of truth.").

Without question, the subject Memorandum, e-mails, and text messages were relevant to the claims and issues raised in the above-captioned complaint. Indeed, disclosure of the Memorandum, e-mails, and text messages would have likely led to the discovery of admissible evidence at trial. Nevertheless, despite the directives contained in the Case Management Order and the Civil Practice Act, the Department and Defendant LaBerge failed to cooperate in discovery. Specifically, the Court finds that, although responsive to Plaintiff's discovery requests, Defendant LaBerge and the Department of Law failed to produce the Memorandum, e-mails, and text messages. Assuming, *arguendo*, Defendant LaBerge and the Department believed that these documents were non-responsive, based upon the nature of these documents, the more prudent course of action would have been to disclose their existence and seek guidance from the Court. However, rather than erring on the side of *transparency* and a fair resolution of the legal issues raised in this matter, the Department chose non-disclosure and Defendant LaBerge chose, purportedly for her own personal reasons, secrecy and document-hiding.[2] Finally, although

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[2] As succinctly stated by a former Director of the Federal Bureau of Investigation,

> Above all, I would teach him to tell the truth. Truth-telling, I have found, is the key to responsible citizenship.

the Court is somewhat sympathetic with the ethical position faced by the Department, **the Court is extremely troubled by the behavior of Defendant LaBerge, who has been dishonest and non-transparent throughout these proceedings.**

Confronted with the conduct of Defendant LaBerge and the Department of Law, the Court is left with the unenviable task of determining what action, if any, should be taken to address the failure to comply with the Civil Practice Act and Case Management Order. In this regard, O.C.G.A. § 15-1-3 provides, "Every court has power . . . [t]o control, in the furtherance of justice, the conduct of its officers and *all other persons connected with a judicial proceeding before it*, in every matter appertaining thereto . . . ."[3] O.C.G.A. § 15-1-3(4) (emphasis added). As the Supreme Court of Georgia has repeatedly explained, a trial court has the inherent authority to control the conduct of *everyone* connected with a judicial proceeding before the trial court.[4] Pennington v. Pennington, 291 Ga. 165, 165 (2012); Bayless v. Bayless, 280 Ga. 153, 155 (2006). To that end, the Georgia Court of Appeals has succinctly explained that, prior to sanctioning under O.C.G.A. § 15-1-3, the Court must afford notice and an

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J. Edgar Hoover, *What I Would Tell a Son*, Family Weekly, July 14, 1963.

[3] Similarly, O.C.G.A. § 15-6-9 states, "The judges of the superior courts have authority . . . "[t]o perform any and all other acts required of them at chambers" . . . "and to exercise all other powers necessarily appertaining to their jurisdiction or which may be granted them by law." O.C.G.A. § 15-6-9.

[4] Indeed, trial courts have "discretion in regulating and controlling the business of the court . . . ." Scocca v. Wilt, 243 Ga. 2, 2 (1979).

opportunity to be heard. Whitley v. Piedmont Hosp., Inc., 284 Ga. App. 649, 659 (2007).

Notwithstanding the arguments asserted in opposition to the instant motion, the failure to comply with the basic discovery principles contained in the Civil Practice Act and the mandate contained in the Case Management Order not only amounts to a flagrant disregard for the basic rules governing litigation and the fair resolution of legal disputes in the State of Georgia, but also an injustice and an undermining of the confidence imposed by the citizens of the State of Georgia in the legal system. Indeed, this is precisely the type of conduct contemplated by the above-cited authority, as it relates to the Court's inherent authority to control the conduct of individuals connected with a judicial proceeding. Furthermore, because the impaneled jury has rendered a verdict in the above-captioned case and the conduct involves a non-party, the Court finds that the imposition of other sanctions, such as the striking of pleadings, infeasible. Simply put, the Court is left with only one recourse, the imposition of monetary sanctions.

III. CONCLUSION

For the reasons stated, *supra*, the instant motion is **GRANTED.** (Doc. no. 130). Although the Court is aware that the imposition of monetary sanctions causes more financial pain to the citizens of Georgia, who are forced to bear the continued burden resulting

from the events giving rise to the above-captioned case, the Court has no other recourse when faced with the conduct of the Department, and most appallingly, Defendant LaBerge, who has repeatedly proven herself to be dishonest and non-transparent. Accordingly, Defendant LaBerge, in her individual and personal capacity, and the Department are **HEREBY ORDERED** to pay Plaintiff the total amount of $20,000.00, representing the reasonable litigation expenses associated with the instant motion. In this regard, Defendant LaBerge, in her individual and personal capacity, and the Department are **ORDERED** to each pay $10,000.00. Failure to comply with the terms of this Order by September 22, 2014, may result in an order of contempt.

SO ORDERED this 3rd day of September, 2014, at Atlanta, Georgia.

Ural D. Glanville, Judge
Fulton County Superior Court
Atlanta Judicial Circuit

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