IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

UNITED CORPORATION,

Plaintiff,

v.

SOS FURNITURE COMPANY, INC., et al.,

Defendants.

CASE NO.: 2019-CA-004626-O

DIVISION 43
BUSINESS COURT

SOS FURNITURE COMPANY, INC.,

Counterclaim-Plaintiff,

v.

UNITED CORPORATION,

Counterclaim-Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS AGAINST SOS FURNITURE COMPANY, INC.[1]

AND NOW, this matter having come for hearing on May 17, 2021 on this Court's Order to Show Cause (Filing # 126236062) dated May 5, 2021, the Court finds as follows:

1. On March 30, 2021, Plaintiff UNITED CORPORATION moved the Court to impose sanctions on Defendant SOS FURNITURE COMPANY, INC. for

[1] A separate order regarding co-defendants, MAGED SALEM; MADHAT SALEM; MAJDI SALEM; and MARWAN SALEM (hereinafter "Salem Defendants") will be issued by the Court.

Defendant SOS FURNITURE COMPANY, INC.'s failure to comply with this Court's March 8, 2021 Order Granting Motion to Compel (Filing # 122681543).

2. Independently on March 31, 2021, Plaintiff UNITED CORPORATION moved the Court to impose additional sanctions on Defendant SOS FURNITURE COMPANY, INC. pursuant to Fla. R. Civ. 1.380 for fraud upon the court (Filing # 124138248).

3. On April 22, 2021, the Court granted Attorney Luis F. Navarro and the law office of Navarro's motion to withdraw as counsel of record for Defendant SOS FURNITURE COMPANY, INC.

4. On May 5, 2021 the Court entered its Order to Show Cause (Filing # 126236062). In the May 5th Order to Show Cause the Court found that "the allegations, if taken as true, may warrant the extreme sanction of striking the pleadings. *See Kozel v. Ostendorf,* 629 So. 2d 817 (Fla. 1993)."

5. In the May 5th Order to Show Cause the Court ordered, *inter alia,* that the "Defendants are ORDERED TO SHOW CAUSE why the Court should not strike their pleadings as a sanction for the aforementioned conduct."

6. At no point subsequent to the withdrawal of Mr. Navarro has any attorney filed his/her notice of appearance on behalf of Defendant SOS FURNITURE COMPANY, INC.

7. At the May 17, 2021 hearing on Court's Order to Show Cause Defendant SOS FURNITURE COMPANY, INC. was not represented by counsel and did not

provide any evidence, argument, or reason why the Court should not strike Defendant SOS FURNITURE COMPANY, INC.'s pleadings. Additionally, Defendant SOS FURNITURE COMPANY, INC. did not place into the record any evidence before the Court as to the *Kozel* factors.

8. The Court finds that 1) Defendant SOS FURNITURE COMPANY, INC.'s disobedience was willful, deliberate, and contumacious, and NOT an act of neglect or inexperience; 2) Defendant SOS FURNITURE COMPANY, INC. has been previously sanctioned (on November 10, 2020 [Filing # 116466187], on November 30, 2020 [Filing # 117363424]) and admonished for discovery violations (on March 8, 2021 [Filing # 122681543]), 3) there is no record evidence whether Defendant SOS FURNITURE COMPANY, INC. was personally involved in the act of disobedience; 4) the delay has prejudiced UNITED CORPORATION through undue expense, loss of evidence (e.g. the inability to obtain interrogatory responses); 5) Defendant SOS FURNITURE COMPANY, INC. failed to offer any justification (let alone a reasonable justification) for its noncompliance; and 6) the delay created significant problems of judicial administration as this case has languished in on-going discovery disputes and has failed to reach timely resolution.

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Based on the foregoing, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUGED** that Defendant SOS FURNITURE COMPANY, INC.'s responsive pleading and defenses are hereby **STRUCK.**

In support of this Order, the Court makes the following **CONCLUSION OF LAW**:

The February 22, 2021, post-judgment order appointing a receiver pursuant to Florida Statutes §56.29 and/or §56.10 in Miami-Dade County Circuit Court case, *Tempur-Pedic North America, LLC v. SOS Furniture Company, Inc., et al.*, Case No.: 2020-022321-CA-01 ("Dade County Receivership Order") did *not* prohibit compliance in this case. The Dade County Receivership Order did not, because it cannot, operate a pseudo-bankruptcy stay as Fla. Stat. § 56.10 provides no such authority to a Florida Circuit Court. Consequently, and notwithstanding the Dade County Receivership Order, SOS still had to comply with this Court's March 8th Discovery Order.

The Court rejects Defendant SOS FURNITURE COMPANY, INC.'s argument is that the Dade County Receivership Order operated to enjoin, nullify, or denude this Court's March 8th Discovery Order. *See Orlando Tower Serv., Inc. v. Koon*, 647 So. 2d 190, 191 (Fla. 1st DCA 1994) (citing *Commercial Bank of Okeechobee v. Proctor,* 349 So.2d 710 (Fla. 1st DCA 1977) ("[i]t is improper for one circuit court to enjoin the decision of another circuit court."). Thus, this Court's March 8th Discovery Order remained valid at all points in time. *See id.* Consequently, this Court had, has, and continues to have, "the inherent authority to enforce its previously entered orders". *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.,* 639 So.2d 606 (Fla. 1994).

"[T]he striking of pleadings or entering a default for noncompliance with an order … is the most severe of all sanctions which should be employed only in extreme circumstances." *Mercer v. Raine*, 443 So. 2d 944, 946 (Fla. 1983). However, "[a] deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness." *Id.* (citations omitted). The Court finds Defendant SOS FURNITURE COMPANY, INC.'s conduct rises to the level calling for the severest of sanctions under *Mercer*.

It is further,

ORDERED that monetary sanctions are hereby imposed against Defendant SOS FURNITURE COMPANY, INC. in the form of reasonable attorneys' fees and costs to United Corporation for its preparation and prosecution of the respective Motions for Sanctions, and reserves ruling on the amount to be awarded.

DONE AND ORDERED in Chambers in Orlando, Orange County, Florida this 20 day of May, 2021.

THE HON. JOHN E. JORDAN
CIRCUIT COURT JUDGE