STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 20 CVS 10612
NANCY WRIGHT; GREG WRIGHT; and JODY STANSELL, individually and as members of LORUSSO VENTURES, LLC d/b/a CINCH.SKIRT, Plaintiffs, v. KRISTA LORUSSO, individually and as a member-manager of LORUSSO VENTURES, LLC d/b/a CINCH.SKIRT, Defendant, v. LORUSSO VENTURES, LLC d/b/a CINCH.SKIRT, Nominal Defendant.	**ORDER FOLLOWING SHOW-CAUSE HEARING**

1. Trial courts have inherent authority to sanction parties for repeated, willful noncompliance with procedural rules and court orders. This authority is rarely exercised because it is rarely necessary to do so. But the plaintiffs here—Nancy Wright, Greg Wright, and Jody Stansell—have routinely disregarded applicable rules and deadlines. After their most recent infractions, the Court directed them to show cause why they should not face sanctions. (*See* ECF No. 120 ["Show-Cause Order"].) The Court has reviewed the response to the show-cause order, (ECF No. 122), held a hearing on 16 June 2022, and now determines as follows.

2. This case arises from a dispute among the members of a limited liability company known as Cinch.Skirt. In short, the Wrights and Stansell accuse their comember Krista LoRusso of fraud and mismanagement, and LoRusso counters with allegations of defamation and diversion of business opportunities. Almost two years of litigation have yielded slow progress, largely because the Wrights and Stansell have repeatedly missed deadlines set by rule or court order. Their overdue discovery responses, for example, led to an avoidable Business Court Rule 10.9 dispute. Their failure to serve Cinch.Skirt with summons before it expired prompted a wasteful and, again, avoidable round of motion practice. And their many belated filings include their reply to LoRusso's initial counterclaims, their second amended complaint, and their brief in opposition to Cinch.Skirt's motion to dismiss.*

3. Alarmed, the Court questioned counsel about this dilatory behavior at a hearing on 9 March 2022, admonished the Wrights and Stansell to follow procedural rules and court orders going forward, and warned that further infractions would result in sanctions. The warning went unheeded. Just hours after that hearing, the Wrights and Stansell let their time to reply to LoRusso's amended counterclaims

* Earlier orders describe these events in greater detail. (*See, e.g.*, ECF Nos. 53, 64, 119, 120.) It is worth noting that the Wrights and Stansell have also failed to meet their own self-imposed deadlines. When they stated their intent to seek leave to file a second amended complaint, they represented at least three times (in filings and by e-mail) that they would do so in August or September 2021. They did not. In the interim, LoRusso and Cinch.Skirt filed separate motions to dismiss, which were scheduled to be heard in November 2021. On the eve of that hearing, the Wrights and Stansell finally and unexpectedly filed their motion to amend without having first consulted with opposing counsel as required by Business Court Rule 7.3. The Court had concerns about the delay and the lack of consultation but, with the reluctant consent of LoRusso and Cinch.Skirt, granted the motion to amend and denied the motions to dismiss as moot. The Court's order also gave the Wrights and Stansell a deadline to file the second amended complaint, which they missed.

expire with no action. They did not file the reply, raise concerns about it in open court, or seek an extension or other relief at any time before expiration of the deadline.

4. What followed was a needless procedural mess. LoRusso moved for entry of default. (*See* ECF No. 110.) Only then did the Wrights and Stansell file their reply out of time together with a motion to reopen and extend the expired deadline. (*See* ECF Nos. 111, 112.) This latter motion was frivolous: motions to extend made "after the expiration of the specified period" require a heightened showing of "excusable neglect," N.C. R. Civ. P. 6(b), but the Wrights and Stansell gave "no reason at all for having failed to file their reply in timely fashion," (Show-Cause Order 2). The Court denied their motion and turned to the awkward question of what to do with an untimely reply filed after a default motion but before entry of default. Generally, "defaults may not be entered after answer has been filed, even though the answer be late." *Peebles v. Moore*, 302 N.C. 351, 356 (1981). This meant that the Court could not enter default even though LoRusso had been entitled to that relief at the time of her motion. (*See* Show-Cause Order 2–3.)

5. Having decided against entering default, the Court observed that LoRusso may be entitled to other relief. The Wrights and Stansell had made a habit of disregarding procedural rules and the Court's admonitions, and their noncompliance had forced LoRusso to move for default and to respond to a frivolous motion. Thus, "having previously warned the Wrights and Stansell about their repeated rule violations," the Court ordered them to show cause "why they should not have to

reimburse LoRusso for the reasonable costs incurred in filing the motion for entry of default and in responding to the motion to reopen and extend the reply period." (Show-Cause Order 4.)

6. In their response, the Wrights and Stansell do not attempt to explain, defend, or justify their misconduct. (*See* ECF No. 122.) Nor do they question the Court's "longstanding and inherent" authority to sanction a disobedient party, *Minor v. Minor*, 62 N.C. App. 750, 752 (1983), including for the "wilful failure to comply with the rules of court," *Few v. Hammack Enters., Inc.*, 132 N.C. App. 291, 298 (1999); *see also Lomax v. Shaw*, 101 N.C. App. 560, 563 (1991) (discussing "inherent authority to impose sanctions for willful failure to comply with the applicable rules"); *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at *39 (N.C. Super. Ct. Sept. 3, 2019), *aff'd*, 376 N.C. 798 (2021) (collecting cases).

7. Instead, the Wrights and Stansell blame LoRusso. They contend that she jumped the gun by moving for default and should have tried first to resolve any disagreement informally through counsel. Nonsense. LoRusso was within her rights to move for entry of default. She did not act precipitously or without justification. Nor has she rushed to the courthouse with every rule violation by her opponents. And there is little reason to believe that informal overtures would have accomplished much. More than once, the Wrights and Stansell have stubbornly refused to take simple measures—responding to discovery requests, renewing a summons—to cure their own procedural missteps absent the Court's involvement. Neither law nor equity required LoRusso or her counsel to suffer unending rule violations out of

professional courtesy. Responsibility rests with the Wrights, Stansell, and their counsel—and with them alone.

8. Not only did the Wrights and Stansell fail to comply with governing rules, but the circumstances leave no doubt that their noncompliance was willful. The whole episode is striking. This was the second time that they had technically defaulted as to LoRusso's counterclaims without offering any reason for failing to reply on time. Amazingly, this latest violation came just hours after the Court warned them that further lapses would result in sanctions. Time and again, the Wrights and Stansell have shirked their responsibilities as litigants by disregarding deadlines established in the North Carolina Rules of Civil Procedure, the Business Court Rules, and this Court's orders. One violation may not amount to much, but many a little makes a mickle.

9. LoRusso has surely suffered prejudice. The Wrights and Stansell forced her hand: spend the time and money to move for default and oppose a frivolous motion for extension of time, or acquiesce to yet another violation of procedural rules. Her choice was reasonable. And it got results. The Wrights and Stansell filed their reply only when faced with certain default.

10. In short, this conduct merits sanctions. The Wrights and Stansell failed to comply with governing rules and attempted to absolve their actions by filing a frivolous motion to reopen the reply period. Their noncompliance was willful, occurred after receiving notice that sanctions would follow further violations, and evidences their ongoing disdain for governing rules and orders. Their conduct also

prejudiced LoRusso by forcing her to seek relief and to respond to a frivolous motion. *See Lomax*, 101 N.C. App. at 563 (affirming sanctions award made after court put counsel on notice that infraction "could result in the imposition of sanctions").

11. Choosing what sanction to impose depends on the gravity of the offense. *See, e.g.*, *Patterson v. Sweatt*, 146 N.C. App. 351, 357 (2001); *Out of the Box Developers, LLC v. LogicBit Corp.*, 2014 NCBC LEXIS 7, at *10 (N.C. Super. Ct. Mar. 20, 2014). A severe sanction, such as striking the reply, would be too harsh here. A lesser, monetary sanction is more proportionate to the offense and is well within the Court's authority to award. *See, e.g.*, *Bryson v. Sullivan*, 330 N.C. 644, 658 (1992) (noting "inherent power of the court" to impose sanctions for frivolous filings (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50–51 (1991)); *Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 674 (1987) (holding that "a trial court has the inherent power to tax a plaintiff with the reasonable costs, including attorney's fees incurred by a defendant in a proceeding in which a plaintiff has failed to comply with a court order"); *Ashton v. City of Concord*, 2003 N.C. App. LEXIS 1693, at *11 (Aug. 19, 2003) (holding that a trial court has the "inherent power to order plaintiff to pay attorney's fees for his vexatious conduct and abuse of the judicial system").

12. In the show-cause order, the Court noted that LoRusso may be entitled to reimbursement for the costs that she incurred in moving for default and in responding to the motion to reopen and extend the reply period. At the hearing, LoRusso abandoned any request for the costs related to her default motion. She seeks only those fees that she incurred in responding to the motion to reopen and extend the

reply period. The Wrights and Stansell have offered no persuasive reason that they should not have to reimburse LoRusso for her response to that frivolous motion, and the Court concludes that this is an appropriate sanction. It should go without saying that future violations of procedural rules and court orders may warrant more severe sanctions.

13. For these reasons, the Court **ORDERS** as follows:

    a. The Wrights and Stansell shall pay the reasonable costs that LoRusso incurred in responding to their motion to reopen and extend the reply period.

    b. The Court strongly encourages the parties to stipulate to this amount. To that end, the parties shall meet and confer in good faith no later than 13 July 2022. If the parties reach agreement, they shall jointly submit their stipulation to the Court for its approval by 20 July 2022. If the parties cannot agree, then LoRusso may file her fee petition and supporting evidence by 20 July 2022. The Wrights and Stansell shall file any objections by 27 July 2022. The petition and response each may not exceed 2,500 words. No reply brief is permitted. Be advised that the reasonable costs incurred by LoRusso in pursuing a fee petition may be considered as part of any award.

SO ORDERED, this the 29th day of June, 2022.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases