

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES E. MOSCONY and : CIVIL ACTION  
PATRICIA A. MOSCONY :  
 :  
v. :  
 :  
QUAKER FARMS, LP, :  
QUAKER DEVELOPMENT CORP. and :  
EDWARD W. WEINGARTNER, JR. : NO. 00-2285

MEMORANDUM ORDER

Plaintiffs allege that defendants failed to complete construction of and convey title to a house on terms agreed to by them. Plaintiffs have asserted claims for breach of contract, violation of the Interstate Land Sales Act and violation of the Pennsylvania Unfair Trade Practices & Consumer Protection Law.

Presently before the court is plaintiffs' Motion for Sanctions in the Form of a Default Judgment against defendants as a sanction for their failure to engage in discovery and to allow the case fairly to proceed to resolution.

A court may render a judgment by default as a sanction against a party who fails to obey an order to provide discovery or fails to appear for deposition. See Fed. R. Civ. P. 37(b)(2)(C) & 37(d).<sup>1</sup> A failure to provide discovery or to

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<sup>1</sup>In assessing a request for such a sanction, the court considers the extent of each party's responsibility for the failure properly to litigate; prejudice to the adverse party; any history of dilatoriness by the recalcitrant party; the willfulness of the offending conduct; the adequacy of other sanctions; and, the merit of the claim or defense. See Harris v. Philadelphia, 47 F.3d 1311, 1330 n.18 (3d Cir. 1995); Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988).

comply with a court order to do so may also fairly be viewed as a failure to defend which justifies an entry of a default judgment under Fed. R. Civ. P. 55(b)(2). See Hoxworth v. Blinder Robinson & Co., Inc., 980 F.2d 912, 918-19 (3d Cir. 1992); Bryant v. City of Marianna, Fla., 532 F. Supp. 133, 137 (N.D. Fla. 1982) (such conduct "denies plaintiffs' right to a determination of their claims as well as the court's duty to dispose of cases before it"). See also National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642-43 (1976); Philips v. Medical Systems Intern., V.B. v. Bruetman, 982 F.2d 211, 214 (7th Cir. 1992) (default judgment against defendants for refusal to provide discovery); Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1310 (2d Cir. 1991) (default judgment against party failing to comply with court order to obtain counsel); U.S. v. De Frantz, 708 F.2d 310, 312 (7th Cir. 1983); (default judgment for failure to appear for deposition with dubious excuse); Jordan Intern. Co. of Del. v. M.V. Cyclades, 782 F. Supp. 25, 27 (S.D.N.Y. 1992) (default judgment against defendant for failure to comply with discovery order); U.S. v. Dimucci, 110 F.R.D. 263, 267 (N.D. Ill. 1986) (default judgment against defendants who failed to appear for deposition).<sup>2</sup>

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<sup>2</sup>A court also has the inherent power to resolve through appropriate sanctions a case that cannot otherwise be disposed of expeditiously because of the willful inaction or dilatoriousness of a party. See Chambers v. NASCO, Inc., 501 U.S. 32, 34 (1991); Link v. Wabash R.R. Co., 370 U.S. 626, 630-32 (1962); Hewlett v. Davis, 844 F.2d 109, 114 (3d Cir. 1988).

Defendant Weingartner, the principal of the Quaker defendants, took physical possession of defense counsel's case file in the spring of 2001 during the discovery period, after counsel withdrew following defendants' failure to pay substantial outstanding bills for legal services. Defendants have since proceeded pro se and thus bear direct responsibility for the failure to provide discovery or properly to litigate this action.

The inability during the allotted discovery period to obtain information from a defendant regarding pertinent issues is obviously prejudicial to a plaintiff in his attempt to prosecute his claims and obtain a prompt resolution of his lawsuit. See Adams v. Trustees, N.J. Brewery Trust Fund, 29 F.3d 863, 874 (3d Cir. 1994) (prejudice encompasses deprivation of information from non-cooperation with discovery as well as the need to expend resources to compel discovery). Defendants' failure to provide discovery and Mr. Weingartner's failure repeatedly to appear for deposition has clearly prejudiced plaintiffs in their ability to resolve their claims.

Plaintiffs are not complaining about an isolated breach. Defendants have been totally recalcitrant in honoring their discovery obligations. They have ignored the court's Rule 26 order of January 18, 2001 directing all parties to proceed in such a manner as to ensure completion of discovery by May 23, 2001, and the court's order of October 3, 2001 directing defendants to respond to discovery requests and directing

defendant Weingartner to appear for deposition after he failed without justification to appear on three prior occasions. The corporate defendants have ignored the court's order of June 26, 2001 to secure the entry of appearance of counsel after defendants' prior counsel withdrew. Defendants have provided no explanation for their continuing failure to comply with these orders. A persistent failure to honor discovery obligations and court discovery orders must be viewed as "a willful effort to evade and frustrate discovery." Morton v. Harris, 628 F.2d 438, 440 (5th Cir. 1980). See also Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991).

Precluding defendants from introducing evidence regarding the matters about which they have failed to provide discovery would be tantamount to a default judgment on liability. Given the egregiousness of defendants' conduct, any proportionate monetary sanction would be substantial and given their complete recalcitrance even in the face of this motion, unlikely to achieve compliance.

Plaintiffs have been deprived of their right to conduct discovery and are clearly being prejudiced by their inability to adjudicate their claims. A court cannot allow a defendant to obstruct the orderly conduct of litigation, effectively avoid any prospective liability and deprive a plaintiff of any right to redress by "stonewalling" discovery attempts.

The meritoriousness of a claim or defense is to be determined from the face of the pleadings. See C.T. Bedwell Sons v. International Fidelity Ins. Co., 843 F.2d 683, 696 (3d Cir. 1988); Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 870 (3d Cir. 1984). Defendants filed a motion to dismiss which was denied on November 9, 2000. They have never filed an answer and thus have not presented even a facially meritorious defense. Moreover, it is difficult conscientiously to characterize any defense as meritorious when the defendant refuses to subject it to scrutiny through the normal discovery process.

Defendants' violation of the federal rules and the court's scheduling and discovery orders has been persistent and flagrant. It has resulted in a significant delay and diversion of resources. There is an absence of any justification. Defendants have effectively thwarted discovery, making impossible the proper and efficient litigation of this action.

The pertinent factors weigh significantly in favor of granting the default judgment requested by plaintiffs. Unless defendants forthwith comply with all outstanding discovery requests and court orders, judgment by default will be entered against them.

**ACCORDINGLY**, this                      day of January, 2002, upon consideration of plaintiffs' Motion for Sanctions in the Form of a Default Judgment (Doc. #19) and in the absence of any response

by defendants thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and default judgment will be entered against defendants on February 20, 2002 unless by the close of business on February 19, 2002 they certify in writing to the court that they have responded to all outstanding discovery requests and Mr. Weingartner has appeared for deposition at plaintiffs' counsel's office after contacting counsel to make the necessary arrangements; and, as to the corporate defendants, also that they have engaged counsel, who shall enter an appearance by February 19, 2002.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**