

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

TIEN THUY LE : CIVIL ACTION
 :
 v. :
 :
 JAMES H. DONNELLY : NO. 96-7554

M E M O R A N D U M

WALDMAN, J.

November 7, 1997

This negligence case was filed over a year ago. Plaintiff alleges that he sustained unspecified injuries in an automobile accident for which defendant's negligence was the proximate cause.

Presently before the court is defendant's Motion to Dismiss Plaintiff's Complaint as a sanction for plaintiff's repeated failure to honor his discovery obligations and court orders.

A court may dismiss an action as a sanction against a party who fails to obey an order to provide discovery. See Fed. R. Civ. P. 37(b)(2)(C). A court may dismiss an action as a sanction against a party who fails to comply with the Federal Rules of Civil Procedure, including discovery rules, or any order of court. See Fed. R. Civ. P. 41(b).

A court also has inherent power to dismiss a case that cannot be disposed of expeditiously because of the willful inaction or dilatoriousness of a party. Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991); Link v. Wabash Railroad Co., 370 U.S.

626, 630-32 (1962). See also Hewlett v. Davis, 844 F.2d 109, 114 (3d Cir. 1988).

The following verified assertions of fact have been made by defendant and not controverted by plaintiff.

On May 1, 1997, defendant noticed plaintiff's deposition for August 11, 1997. Plaintiff canceled the deposition on the morning of August 11, 1997.

On May 5, 1997, defendant served interrogatories and a request for documents on plaintiff. Plaintiff did not respond within thirty days or at any other time.

On July 25, 1997, the court entered an order directing plaintiff to respond to defendant's interrogatories and document requests within fifteen days. Plaintiff did not do so.

On September 2, 1997, the court again ordered plaintiff to respond to these discovery requests and to appear for deposition within fifteen days or face the sanction of dismissal. Plaintiff did not respond to the outstanding discovery requests and did not make himself available for deposition.

A defense medical examination was scheduled for September 10, 1997. Plaintiff canceled that examination. He did agree to reschedule the examination for September 29, 1997. Plaintiff failed to appear for the rescheduled examination.

On September 29, 1997, defendant filed the instant motion to dismiss. On that date, the court executed an order directing plaintiff to appear for a medical examination and to comply with the still outstanding discovery requests by October

6, 1997 or show cause why sanctions including dismissal of his action should not be imposed.

Plaintiff has yet to comply with the foregoing court ordered discovery. Plaintiff has not responded to defendant's motion of September 29, 1997 or honored the court order of that date to show cause why dismissal and other sanctions should not be ordered.

In assessing a motion to dismiss as a sanction, a court generally considers the so-called Poulis factors. See Anchorage Associates v. V.I. Bd. of Tax Review, 922 F.2d 168, 177 (3d Cir. 1990); Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988); Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1987). Not all of these factors need be satisfied to warrant such a sanction. Hicks, 850 F.2d at 156.

Defendant has not asked for sanctions against counsel pursuant to 28 U.S.C. § 1927. There is no suggestion that counsel has directed or encouraged plaintiff to refuse to provide discovery or to appear as scheduled. Plaintiff must assume substantial personal responsibility for the gross violations at issue.

The inability to obtain basic and essential information from and about plaintiff clearly prejudices defendant in defending against and obtaining a prompt and fair resolution of plaintiff's claim. 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 and need to expend resources to compel discovery).

Defendant is not complaining about an isolated breach of the federal rules or a single disregard of a court order. Plaintiff has been totally recalcitrant in meeting his discovery obligations and has defied three court orders to do so. He has engaged in a course of clearly unreasonable and vexatious conduct which has required various extensions, has substantially prolonged the litigation of this claim and has undermined defendant's ability to defend against it.

Plaintiff's persistent failure to honor discovery obligations and court orders compelling her cooperation with discovery must be viewed as willful, and indeed flagrant. In the words of another Court, such tactics evince "a willful effort to both evade and frustrate discovery." Morton v. Harris, 628 F.2d 438, 440 (5th Cir. 1980) (Rule 37(b) dismissal warranted for repeated failure to comply with court orders compelling production of documents).

Given the total refusal to provide discovery and flagrant disregard of court orders, a monetary sanction would have to be quite substantial to be commensurate with or likely to deter the type of egregious violations at issue. See National Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976). There is no suggestion that plaintiff has significant assets. Any meaningful monetary sanction would likely rival dismissal in palatability and approach what plaintiff might

realistically expect to recover in this arbitrations limits case. To preclude plaintiff from presenting testimony about the matters regarding which he has failed to provide discovery would in the circumstances presented be tantamount to a dismissal.

The meritoriousness of a claim must be determined from the face of the pleadings. See C.T. Bedwell & Sons v. Intern. Fidelity Ins. Co., 843 F.2d 683, 696 (3d Cir. 1988); Poulis, 747 F.2d at 870. It follows that this factor is of limited practical utility in assessing a Rule 37 or 41 dismissal motion for if a claim as alleged lacks merit, it would likely be subject to dismissal under Rule 12(b)(6) without the need to weigh other factors. Plaintiff has adequately pled a bare-bones negligence claim. Nevertheless, the court cannot conscientiously characterize plaintiff's claim as meritorious. Plaintiff's persistent refusal to subject his allegations of injury to scrutiny through the normal discovery process must engender skepticism.

Plaintiff's total, continuing and flagrant violations of the federal rules and court orders, the resulting delay and practical inability to move this case, the absence of any justification and the continuing prejudice to defendant particularly militate in favor of dismissal.

Plaintiff invoked the judicial process and then effectively thwarted discovery and ignored court orders to proceed properly to litigate this action. The jurisprudence on sanctions for abuse of the judicial process and the power of a

court to manage its docket can have little practical meaning or effect if the court were not to take potent action in such circumstances. Dismissal is a sanction for egregious cases. This is such a case. The court has encountered no case involving a more pervasive or persistent disregard of discovery rules or court orders. Enough is enough. Plaintiff's claim will be dismissed. An appropriate order will be entered.

