

Elovo Gaona as Administrator of the Estate of Rafael C. Gaona Morocho v. Melvin Pac Interiano, IESI PA Corporation, Munoz & Son Trucking Corp. and Cesar Munoz

Elovo Gaona as Administrator of the Estate of Rafael C. Gaona Morocho, Plaintiff v. Melvin Pac Interiano, IESI PA Corporation, Munoz & Son Trucking Corp. and Cesar Munoz, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action No. 2011-3602

HEADNOTES

Civil Procedure; Motions; Discovery; Sanctions

1. The court may enter appropriate sanctions against a party who fails to answer interrogatories, provide requested discovery, or fails to comply with an Order of Court regarding discovery. Pa. R. Civ. P. 4019(a)(1).
2. Pa. R. Civ. P. 4019(a)(1) has been interpreted to allow the trial court to dismiss a complaint.
3. Dismissal of a complaint is the most severe sanction and should be imposed only in extreme circumstances.
4. In deciding to dismiss a complaint, the trial court is required to balance the equities carefully and dismiss only where the violation of the discovery rules is willful and the opposing party has been prejudiced.
5. In deciding to dismiss a complaint, the trial court must consider the nature and severity of the discovery violation, the defaulting party's willfulness or bad faith, the prejudice to the opposing party, the ability to cure prejudice, and the importance of the precluded evidence in light of the failure to comply.
6. Where Plaintiff's counsel never objected to a discovery request, failed to fulfill the discovery request, continually ignored communications from opposing counsel, inexcusably failed to appear before the court, and had previous sanctions imposed, the Court found that dismissal of the Complaint was a proper sanction.

Appearances:

Stephen Mullkoff, Esq., Attorney for Plaintiff
Corey J. Adamson, Esq., Attorney for Defendant
Chris Reeser, Esq., Attorney for Defendant
Melvin Pac Interiano, pro se, Defendant

OPINION

Procedural History

This matter was initiated by a Complaint filed on August 23, 2011 by Elovo Gaona, as Administrator of the Estate of Rafael C. Gaono-Morocho. The Complaint alleges a wrongful death and survival action arising from the death of Mr. Gaono-Morocho. Following the filing of preliminary objections, Plaintiff filed an Amended Complaint on October 11, 2011. The Defendants responded to the Complaint and the parties moved to the discovery phase of this matter. On September 22, 2011, Defendants Munoz & Son Trucking and Cesar Munoz (Moving Defendants) served Plaintiff with Interrogatories and a Request for Production of Documents. On November 10, 2011, Plaintiff provided partial responses to the discovery requests and requested sixty additional days to provide complete responses. Having received no further discovery from Plaintiff, Moving Defendant filed a Motion to Compel on March 23, 2012. The Court granted the motion on March 27, 2012.

On April 22, 2012, Plaintiff, again, provided partial responses to the discovery requests. Moving Defendant filed a Motion for Sanctions on June 15, 2012 requesting that Plaintiff be precluded from providing any evidence of the decedents loss of future earning capacity due to Plaintiff's failure to provide any discovery to that effect despite the Court's March 27, 2012 Order compelling such discovery. The Court issued a Rule to Show Cause as to why the Motion for Sanctions should not be granted. Plaintiff did not respond. The matter was listed for argument on September 7, 2012 and a hearing was held on that date. Plaintiff did not appear and provided no reason to the Court as to why he did not. The Court heard argument

from Moving Defendant and granted the Motion for Sanctions at the conclusion of the argument. The sanction was preclusion of any evidence to support the Plaintiff's claim for loss of future earnings. Moving Defendant continued to make requests for complete discovery, but was once again met with no response from Plaintiff. On November 26, 2012, Moving Defendant filed the instant Motion for Sanctions seeking to dismiss the Complaint due to Plaintiff's continued failure to provide complete discovery. The matter was placed on the January 2013 argument list. Moving Defendant also filed a brief in support on November 28, 2012. On December 3, 2012, the Court issued a Rule to Show Cause on the Plaintiff as to why the second Motion for Sanctions should not be granted. Plaintiff filed a response to the Motion on December 10, 2012. On December 11, 2012, the Court ordered that the matter would be decided on briefs alone. Plaintiff has not filed a brief. The matter is now ready for decision.

Discussion

Pursuant to Pa. R. Civ. P. 4019(a)(1) a court may enter appropriate sanctions against a party who fails to answer interrogatories, provide requested discovery, or fails to comply with an Order of Court regarding discovery. Pa. R. Civ. P. 4019 has been interpreted to allow for dismissal of the Complaint. *Pride Contracting, Inc. v. Biehn Const., Inc.*, 553 A.2d 82 (Pa. Super. 1989). It is within the trial court's discretion to determine whether sanctions should be imposed. *Stewart v. Rossi*, 681 A.2d 214 (Pa. Super. 1996). "[D]ismissal is the most severe sanction, it should be imposed only in extreme circumstances, and a trial court is required to balance the equities carefully and dismiss only where the violation of the discovery rules is willful and the opposing party has been prejudiced." *Id.* Prejudice is defined as a "substantial diminution of a party's ability to properly present its case." *Id.*

In *Pride Contracting* the Superior Court held that dismissal of a claim was proper, as long the trial court considered as all options listed in Pa. R. Civ. P. 4019, when the non-compliant party repeatedly failed to comply with discovery requests, made no good faith effort to comply with the discovery requests, disobeyed court orders, and prejudiced the moving party. The Superior Court also noted that the non-compliant party offered no excuse for its actions, nor did it assert that it had complied with the requests to the best of its ability or was unable to comply. In *Stewart*, the Superior Court looked at the following factors: the nature and severity of the discovery violation, the defaulting party's willfulness or bad faith, the prejudice to the opposing party, the ability to cure prejudice, and the importance of the precluded evidence in light of the failure to comply.

Here, we find Plaintiff's conduct to be equally egregious as the conduct described in *Pride Contracting* and *Stewart*. Cf. *Cove Centre, Inc. v. Westhafer Const., Inc.*, 965 A.2d 259 (Pa. Super. 2009) (finding sanctions for failure to comply with discovery requests was not warranted because the non-compliance was merely the result of a gap in time in finding new counsel and new counsel acted diligently in responding to them once retained). Interrogatories and a Request for Production of Documents were served in September of 2011. Plaintiff never objected to the request for discovery or sought a protective order. See Pa. R. Civ. P. 4009.12(a); 4019(2). Plaintiff provided partial responses to the request for documents, and requested sixty additional days to complete discovery. Plaintiff then ignored a late February telephone message and a March 5, 2012 follow-up letter from Moving Defendant. We also note many other unanswered attempts to correspond with Plaintiff which are evidence in the Motion to Compel, first Motion for Sanctions, and the instant Motion for Sanctions. Plaintiff then disobeyed a March 27, 2012 Order of Court compelling discovery when he served partial responses to the requests for discovery. Plaintiff then ignored a July 23, 2012 Rule to Show Cause regarding sanctions for failing to comply with the March 27 Order. Plaintiff's counsel then failed to appear for a hearing on the Motion for Sanctions, offering no reason, prior to or after the hearing, for his conduct. Following this hearing, the Court granted the first round of sanctions in this matter. Moving Defendant made additional attempts to correspond with Plaintiff, all have been ignored. Moving Defendant was forced to file a second motion for sanctions and the Court, once again, issued a Rule to Show Cause. This time, Plaintiff filed a response. The response, however, consists of generic admissions and denials. It fails to show any cause as to why the Motion for Sanctions should not be granted. The response offers no objections, reasons for delay, or attempts to cure the non-compliance. Plaintiff also failed to file a brief to explain his position, despite the Court's Order dated December 11, 2012 which indicated that the matter would be decided on briefs, without oral argument.

The *Pride Contracting* and *Stewart* factors indicate that we are to make our determination based upon the following factors. Nature of the Violations: Regarding discovery served nearly one and a half years ago, Plaintiff has provided partial responses to the request for documents, has provided no responses to interrogatories, has ignored numerous communications from opposing counsel, has ignored court orders, has failed to provide any reason for his refusal to provide discovery, and has failed appear for a hearing. Plaintiff's conduct has warranted more court involvement than a simple, undisputed discovery request should need. Willfulness or Bad Faith: This is not a matter where Plaintiff has indicated that he is unable to complete discovery. Plaintiff has not asserted any privilege, lack of knowledge, difficulty in obtaining information, or any objection. Plaintiff has shown a disregard for opposing counsel's requests, as well as the

Court's orders. Plaintiff has also shown a disregard for opposing counsel's time, as well as the Court's time. Plaintiff has avoided any communication with Moving Defendants. We cannot find any reason as to why Plaintiff's conduct is anything other than willful or in bad faith. Prejudice: Moving Defendant alleges that it is prejudiced by the amount of time that has passed since the accident giving rise to this action. Three and a half years have passed since the accident and witnesses' memories are fading. No depositions have been conducted. Further, without the responses to discovery requests, Moving Defendant will be unable to put on a defense. Ability to Cure Prejudice: Clearly, nothing can cure the passage of time. Further, Plaintiff's blasé attitude toward this matter and previous orders of court indicate that he will not be diligently moving this matter along any time soon. Every day that passes is prejudicial to the ability of the defendants to present their case effectively. We also note that Plaintiff has still made no effort to comply or offer a reason as to why discovery should not be fulfilled. Finally, we look to the availability of other sanctions under Rule 4019. The Court has already issued a sanction precluding Plaintiff from offering evidence of future earnings loss. Plaintiff did not respond to this sanction in any manner and continued his conduct. Clearly the use of sanctions is ineffective to illicit proper conduct from this party. We are left with no less punitive measure other than dismissing Plaintiff's claim against Moving Defendants.

Conclusion

We grant the Motion for Sanctions filed by Moving Defendant, Munoz & Son Trucking Corporation and Cesar Munoz seeking dismissal of the claim against them. Plaintiff's conduct and disregard for prior sanctions has left the Court with no alternative. The Complaint will be dismissed with prejudice as to the Moving Defendants. [1]

ORDER

AND NOW, this 15th day of February 2013, upon consideration of the Motion for Sanctions and brief in support filed by Defendants, Munoz & Son Trucking Corp. and Cesar Munoz, Plaintiff's answer thereto, and finding no need for oral argument,

THE COURT HEREBY ORDERS that the moving Defendants' Motion for Sanctions is GRANTED pursuant to the attached opinion. All claims by Plaintiff against Munoz & Son Trucking Corp. and Cesar Munoz are dismissed with prejudice.

Pursuant to Pennsylvania Rules of Civil Procedure 236, the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.

[1]1. Although not requested, we also note that no hearing is required to dismiss this action. Neither notice nor hearing is required to impose sanctions under Rule 4019. *Pride Contracting*, 553 A.2d at 85. Plaintiff has received notice and an opportunity to submit argument, however, Plaintiff has failed to submit a brief. Further, the Court held a hearing for the first round of sanctions and Plaintiff demonstrated a disregard for appearing before the court at that time and felt no need to explain his lack of appearance.