

STEPHEN C. VINCENTI and	:	IN THE COURT OF COMMON PLEAS OF
VALERIE FOUCART VINCENTI	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
Plaintiffs/Respondents	:	
	:	
vs.	:	NO. 03-00,646
	:	
DEBORAH SHULTZ,	:	
	:	
Defendant/Petitioner	:	1925(a) OPINION

Date: December 10, 2004

**OPINION IN SUPPORT OF THE ORDER OF AUGUST 5, 2004 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Deborah Shultz (hereafter “Shultz”) has appealed this Court’s August 5, 2004 Order denying her Motion for Reconsideration. The Motion had requested the Court to reconsider its Order of December 8, 2003 and the subsequent entry of judgment against Shultz on February 4, 2004. The judgment against Shultz was entered because Shultz had failed to comply with Court orders directing that she furnish discovery responses. Shultz filed her Notice of Appeal on August 30, 2004. On August 31, 2004, this Court issued an order in compliance with Pa.R.A.P. 1925(b) directing Shultz to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the order. Shultz filed her Statement of Matters on September 13, 2004.

On April 23, 2003, Plaintiffs Stephen Vincenti and Valerie Foucart Vincenti (hereafter “Vincentis”) filed a Complaint against Shultz alleging that she had breached a contract to purchase Vincentis’ personal residence. The Complaint alleged that the contract had been entered into on April 25, 2002. Vincentis sought to recover the expenses suffered as a result of the breach of contract, which were approximately \$20,591. On June 20, 2003, Shultz

filed an Answer and Counterclaim asserting that it was Vincentis who breached the contract by not making the premises available for occupancy as required by the contract. Allegedly, this in turn caused Shultz to suffer the loss of the deposit and to incur rental charges and real estate fees in the total amount of approximately \$4,600. Thereafter, the pleadings were closed when Vincentis filed an Answer to the Counterclaim on July 10, 2003.

On September 26, 2003, a Motion for Sanctions Against Defendant for Defendant's Failure to Answer Plaintiffs' Interrogatories to Defendant and Request for Production of Documents was filed by Vincentis against Shultz. On October 7, 2003, this Court issued an Order deferring action on the Motion until Vincentis refilled the Motion with a certificate of concurrence and verification, as required by Lycoming County Rule of Civil Procedure 4019(d). Vincentis refilled the Motion on October 14, 2003. On October 21, 2003, the Court signed the Order proposed by Vincentis granting their motion and requiring Shultz to answer Vincentis' interrogatories within 20 days of the date of the Order. This Order was filed October 28, 2003.

On November 12, 2003, Vincentis filed a Motion for Sanctions with Entry of Default Judgment Against Defendant, Debra Shultz, for Failure to Obey Discovery Order. An evidentiary hearing and argument on the motion was held December 8, 2003. Shultz did not bring any answers to the interrogatories to the December 8, 2003 hearing. Shultz made statements at the hearing, which indicated she did have access to some of the requested documents but not to others. Her explanation as to why she did not have access to some of the documents was vague and otherwise not credible. It was also apparent at this hearing that the law office of Shultz's attorney, Richard Scheib, had been requesting discovery responses and

the documents for several months but Shultz had spurned their requests and their advice to produce the documents and other information necessary to answer the interrogatories.

The Court issued an Order on December 8, 2003 granting the Motion and giving Shultz ten days to furnish copies of all requested documents she then had access to and an affidavit identifying the documents she did not have access to and stating the reasons why she did not have them. The Order also gave Shultz until January 31, 2003 to furnish a complete response to the request for production of documents and answers to the interrogatories. The Order further provided that if Shultz failed to comply, then Vincentis could enter judgment against her by filing a praecipe for entry of judgment with a verification or affidavit stating that Shultz had failed to comply with the Order. This order also awarded Vincentis counsel fees in the amount of \$150 as a further contempt sanction.

Also on December 8, 2003, the Court issued a second Order granting a motion for leave to withdraw filed by Shultz's counsel, Richard Scheib, Esquire. The Order stated that Shultz would be deemed to be representing herself until a new attorney entered his appearance, and that all papers and documents would be served upon her at her home address. The Order stayed the proceedings in the matter until January 9, 2004, so that Shultz would have an opportunity to secure new counsel. However, the Order explicitly stated that the stay did not affect Shultz's obligation under the first December 8, 2003 Order to furnish discovery responses within ten days and otherwise comply fully with completing discovery by January 31, 2004. A third Order of December 8, 2003 was issued directing a case scheduling conference be held February 3, 2004.

On December 24, 2003, Shultz's new attorney, Scott T. Williams, Esquire, filed an appearance on her behalf. On January 21, 2004 a letter of the same date and responses to interrogatories were delivered by Attorney Williams to Vincentis' attorney, Elliot B. Weiss. The letter stated that some of the responses were incomplete and that further responses would be worked on and subsequently filed through amended answers. Enclosed with the letter was a \$150 payment of attorney fees that were imposed as a contempt sanction in the December 8, 2003 Order. On January 27, 2004, there was a telephone conversation between Attorney Williams and Attorney Weiss in which Attorney Williams stated that a formal response to the request for documents was to be forthcoming, but there would be little or no additional documentation provided than that which was attached to the responses to interrogatories. The attorneys agreed to continue the scheduling conference, which had been scheduled for February 3, 2004. This agreement was memorialized in a written continuance request signed by counsel, approved by the Court and filed January 29, 2004. There was no agreement to extend the January 31, 2004 discovery deadline.

January 31, 2004, the Court deadline for Shultz to supply the discovery information was a Saturday. On the following Wednesday, February 4, 2004, Vincentis filed a Praecipe for Default Judgment seeking a judgment in the amount of \$23,091.08 plus attorney's fees of \$500, which were based on Shultz's failure to fully comply with the December 8, 2003 Court Order. Vincentis also filed on February 4, 2004 an Affidavit of Non-Compliance averring that Shultz had failed to comply with the December 8, 2003 Order. Specifically, the Affidavit of Non-Compliance stated that no documents had been furnished to Vincentis or their counsel, Shultz had not filed an Affidavit stating what documents were not furnished because

she did not have access to them and why she did not have access to them, and Shultz had supplied incomplete answers to interrogatories. Judgment was then entered against Shultz on February 4, 2004.

On February 6, 2004, Shultz filed a Motion to Reconsider Order, Open/Strike Default Judgment. Shultz's motion asserted that judgment should not have been entered against her because she substantially complied with the December 8, 2003 Order. Shultz alleged that on January 21, 2004 she provided Vincenti with completed interrogatories, in that the response contained all appropriate and available documentation she had in her possession at that time. The Motion further alleged that Attorney Williams had a telephone conversation with Attorney Weiss informing him that a formal response to the request for production of documents was forthcoming, but little or no additional documents then those already attached to the answers to interrogatories would be available. Vincentis filed a response to the Motion to Reconsider on February 17, 2004. Hearing and argument on the Motion was delayed due to illness of Vincentis' counsel until June 29, 2004. Subsequent to argument and after consideration of the representations/statements made on the record at the June 29, 2004 hearing, this Court entered its Opinion and Order dated August 5, 2004, which is the subject of the present appeal.

The appeal should be dismissed because Shultz has failed to advance any reason why it would be appropriate for the Court to reconsider its December 8, 2003 Order and open/strike the default judgment that was entered against her. The June 29th argument confirmed the facts that had been made of record at the December 8, 2003 hearing. It was clear to the Court on June 29, 2004 (as it had been in December) that Shultz's failure to furnish

discovery responses was willful and intentional and was designed to frustrate Vincentis' prosecution of the case. As stated in the August 5, 2004 Opinion and Order, this Court was "... not at all satisfied that even if the judgment were Stricken that Shultz would comply with the discovery requests and produce the necessary information or at least offer a good-faith reason as to why the information would not otherwise be available."

The Court would note that Shultz approached the reconsideration and sought to strike the entry of judgment on the same legal basis as if the judgment had been entered as a result of a default under Pa. R.C.P. 237.1. Shultz argued that she was entitled to relief from the judgment pursuant to Pa.R.C.P. 237.3. Shultz asserted that the Motion to Reconsider was filed within ten days of the judgment being entered and the Motion raised a meritorious defense. Motion to Reconsider Order, Open/Strike Default Judgment, ¶¶8,9.

Contrary to Shultz's argument, Pa. R.C.P. 237.3 does not apply to this situation. However, even if Shultz's argument is that the reasoning and theory behind Pa.R.C.P. 237.3 should be applied to this as an analogous situation, her request must be denied.

Contrary to ¶9 of Shultz's Motion to Reconsider, there was nothing set forth in ¶¶ 1-11 that raised a meritorious defense. In addition, by analogy to the attachment of a verified complaint/answer requirement under Pa.R.C.P. 237.3, the Motion to Reconsider should have included full responses to interrogatories and the actual documents requested to be produced in discovery, or at least an affidavit stating what items could not be produced and the reasons why those items could not be produced. Shultz did none of this. Therefore, even if Pa.R.C.P 237.3 applied to this situation by analogy Shultz has failed to comply with its requirements.

The Court acknowledges that entry of judgment is a harsh remedy for failure to comply with discovery orders. However, it is clear that the recalcitrance of Shultz, even as of the date of the June 29, 2004 argument, to come forth with the requested discovery, but instead offering \mere promises of future compliance, merited the action taken by this Court and fully supported the refusal to reconsider the entry of judgment. Accordingly, the Order of August 5, 2004 should be affirmed and the appeal dismissed.

BY THE COURT,

William S. Kieser, Judge

cc: Elliott B. Weiss, Esquire
Scott T. Williams, Esquire
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)