

STATE OF MICHIGAN
COURT OF APPEALS

LEASE EQUITIES FUND, INC.,

Plaintiff-Appellee,

v

CHARTERS, INC., d/b/a
JET U.S., SCOTT TRAVEL, INC.,
and JOHN L. ADAMS, a/k/a
LARRY ADAMS,

Defendants-Appellants.

UNPUBLISHED

May 30, 1997

No. 185983

Oakland Circuit Court

LC No. 94-461464 CK

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Beginning in July, 1994, the Oakland Circuit Court ordered defendants to comply with plaintiff's request for documentary discovery. Three orders, each of which threatened defendants with sanctions for noncompliance, failed to achieve compliance with defendants' discovery obligations. Defendants were given one last chance on the day originally scheduled for trial.

When the case was next called for trial on November 1, 1994, plaintiff's counsel represented to the court that compliance with the trial court's October 25, 1994, instructions had not occurred by the specified deadline. Defense counsel initially insisted that defendants had complied, eventually conceding that the requisite affidavit had not been furnished to plaintiff's counsel by the deadline, but had only been filed with the court by that deadline. The trial court thereupon ordered that defendants' affirmative defenses be stricken. Defendants sought rehearing of that decision, which was denied, and leave to appeal was granted to review the issue thus presented.

Defendants insist that the trial court should not have entered such sanctions, faced with disparate factual representations by opposing counsel, without conducting an evidentiary hearing. To the contrary, the record indicates that on November 1, 1994, the trial court first inquired of plaintiff's counsel whether, if it saw a need, she was prepared to testify that defendants had not furnished the

requisite discovery, or affidavits that documents requested did not exist, by the established deadline. She indicated her willingness to so testify under oath.

When the trial court then turned to defense counsel, it was similarly prepared to conduct an evidentiary hearing, but when defense counsel conceded that compliance with the trial court's order had not occurred, the trial court properly saw no reason to conduct an evidentiary hearing to resolve issues of fact that were no longer disputed. The trial court's concomitant imposition of sanctions, where defendants had failed to furnish discovery relevant to their affirmative defenses despite four court orders extending over four months and past the scheduled date for commencement of trial was therefore a proper exercise of the trial court's discretion. *Barlow v W R Grace & Co*, 191 Mich App 244; 477 NW2d 133 (1991). Accordingly, the November 1, 1994, order imposing such discovery sanctions, and May 1, 1995, order denying reconsideration of that order for sanctions, are affirmed. The stay heretofore entered by this Court is vacated, and the cause is remanded to the Oakland Circuit Court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald