

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

JUN 29 2007

KELLIE WELCH,

Plaintiff,

v.

SOLAR DIMENSIONS, INC., et al.,

Defendants.

By: JAMES N. HATTEN, Clerk  
10 Deputy Clerk  
CIVIL ACTION NO.

1:06-CV-2160-JEC

ORDER

This is an action brought pursuant to the Americans with Disabilities Act. It is before the Court on defendants' motions to dismiss [47, 49] and motion to compel [47], as well as the Court's Order of May 23, 2007 [53].

On April 23, 2007, the Solar Dimensions defendants filed a motion to dismiss or, alternatively, to compel discovery [47]. In this motion, the Solar Dimension defendants requested that the Court dismiss the action because the plaintiff had willfully failed to produce documents or respond to the defendants' requests for admissions, interrogatories and production of documents and because the plaintiff refused to prosecute her case. Alternatively, defendants requested that the Court compel plaintiff to comply with her discovery obligations.

In support of this motion, plaintiff notes that counsel for the plaintiff had previously contacted counsel for the defendant, on March 23, 2007, and reported that plaintiff's counsel could not respond to defendants' discovery request because plaintiff would not communicate with her attorneys. (Solar Dimensions' Motion to Dismiss [47] at 7). The deadline for plaintiff's response was March 26, 2007, which date came and went with no response by plaintiff.

Defendants note that they expended considerable resources in complying with plaintiff's voluminous discovery requests, believing that plaintiff was serious about proceeding with her action, but learning the day after they had produced over 500 pages of documents that plaintiff "was nowhere to be found." *Id.* at 8.

Defendants note that FED. R. CIV. P. 41(b) provides for dismissal where a plaintiff fails to prosecute her case or comply with federal rules. Defendants further note that FED. R. CIV. P. 37 provides a separate basis for dismissal, as this rule permits a court to dismiss an action where a party refuses to comply with her discovery obligations. Finally, the defendants seeks an award of fees and costs incurred by the defendants in bringing the motion. *Id.* at 17.

Defendant Benefit Compliance filed a similar motion to dismiss [49] based on plaintiff's same willful disobedience to respond to legitimate discovery requests.

Apparently, in response to their client's failure to participate in the litigation of her claims, her counsel moved to withdraw as her counsel [43, 44] on April 6, 2007, which motion the Court granted on May 23, 2007 [53]. In that Order, the Court directed the plaintiff to have new counsel appear within ten days or else notify the Court of the plaintiff's intention to proceed *pro se*. In a separate order issued the day before, the Court had indicated that plaintiff's response to the defendants' motions to dismiss would be due ten days after the Court had ruled on her attorney's motions to withdraw.

Those ten days have come and gone and plaintiff has not been heard from, either to oppose the motions to dismiss or to indicate whether she intends to proceed with this action. Indeed, plaintiff's copy of the May 23, 2007 Order [53], which was mailed certified, return receipt requested, was returned May 30, 2007, with the notation "Moved, Left No Address" [13].<sup>1</sup> This suggests either that plaintiff refused to accept this notice or that the address given by her to the Court is not a valid address.

As of this date, plaintiff has *failed* to respond to the defendants' motions to dismiss, to the defendants' requests for discovery, or to the Court's Order of May 23, 2007 [53]. Thus, pursuant to Local Rule 7.1B, the motions are deemed to be unopposed.

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<sup>1</sup> The notice was mailed by regular mail as well, which has not been returned.

In addition, the motions are meritorious, as plaintiff's refusal to comply with her discovery obligations and her refusal to prosecute her case warrant dismissal, pursuant to FED. R. CIV. P. 41(b) and FED. R. CIV. P. 37.

Accordingly, the Court **GRANTS** the defendants' Motions to Dismiss **WITH PREJUDICE** Plaintiff's First Amended Complaint [47-1, 49-1] and **DENIES**, as moot, defendants' Alternative Motions to Compel [47-2, 49-2]. The Court further awards defendants costs and attorneys fees incurred in connection with the filing of the motion to dismiss. If defendants wish to proceed with a request for costs and attorney's fees, they should file a memorandum setting out those expenses within **twenty (20) days**. Finally, the Court **dismisses without prejudice** the Solar Dimensions defendants' counterclaims, which were state law claims arising out of the same facts as the plaintiff's federal law claims. As the Court has now dismissed those claims by plaintiff for which federal jurisdiction existed, it declines to exercise ancillary jurisdiction over the state-law claims that are the subject of the Solar Dimensions defendants' counterclaims.

The Clerk shall issue judgment for the defendants as to the plaintiff's claims. If they wish, defendants may file a memorandum within twenty days setting out attorney's fees and costs incurred in filing their respective motions to dismiss.

SO ORDERED, this 29 day of JUNE, 2007.

  
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JULIE E. CARNES  
UNITED STATES DISTRICT JUDGE