

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

THOMAS C. OBENCHAIN,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 2004-05-111
)	
IONSEP CORPORATION INC.,)	
)	
Defendant.)	

Date Submitted: March 16, 2007
Date Decided: April 13, 2007

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ORDER ON PLAINTIFF'S MOTION FOR DEFAULT JUDGEMENT AND
DEFENDANT'S MOTION TO COMPEL

Plaintiff Thomas C. Obenchain ("Obenchain") brings this Motion for Default Judgment against Defendant Ionsep Corporation Inc. ("Ionsep"). Defendant Ionsep also brings a Motion to Compel Discovery against Plaintiff Obenchain. After hearing argument on March 16, 2007, the Court reserved decision. This is the Court's decision and order.

Plaintiff has requested a default judgment based on Defendant's conduct throughout the course of discovery and other pre-trial litigation. Plaintiff argues that Defendant responded to an earlier discovery request only after a five-month delay. Plaintiff further states that Defendant was served with Plaintiff's Second Request for Production and Second Set of Interrogatories on or about October 27, 2006 and that Defendant has not yet answered this discovery. On December 4, 2006 Plaintiff asked for deposition dates for representatives of Defendant Ionsep, but no date has been set since the written discovery remains unanswered.

Defendant makes its Motion to Compel based on interrogatories, requests for production, and requests for admission served on Plaintiff on November 17, 2006. Defendant also wrote to Plaintiff on December 12 and 22, 2006, seeking to schedule Plaintiff's deposition.

Under Rule 37(a), a party may apply for an order compelling discovery "upon reasonable notice to other parties and all persons affected thereby." CCP Civ. R. 37(a). Where a party "fails to obey an order to provide or permit discovery," including an order under Rule 37(a), "the Court may make such orders in regard to the failure as are just," including an order "rendering a judgment by default against the disobedient party." CCP Civ. R. 37(b)(2)(C). Because there is no outstanding order under Rule 37(a) compelling Defendant to answer Plaintiff's October 27, 2006 discovery requests, the Court finds that default judgment is not a remedy available to Plaintiff.

In the alternative, since production of discovery is long overdue, the Court orders Plaintiff's outstanding discovery requests to be produced by Defendant within ten (10) days of this Order, the outstanding discovery being as follows:

- Plaintiff's Second Request for Production
- Plaintiff's Second Set of Interrogatories

Based on this case's history of problems with discovery request compliance, including counsels' inability to schedule depositions in an orderly manner to their mutual satisfaction, the Court hereby orders the following deposition schedule: All depositions shall be held on the same day, within thirty (30) days of the date of this Order. Depositions will take place at Defendant's Counsel's office unless Plaintiff's counsel and Defendant's counsel mutually agree upon another location. Those representatives of Defendant previously noticed for deposition by Plaintiff's counsel shall be deposed first. Immediately upon completion of their depositions, Plaintiff's counsel shall produce all outstanding discovery for Defendant. Ninety (90) minutes after Plaintiff has turned over Defendant's outstanding discovery requests, Defendant's deposition of Plaintiff Obenchain shall begin.

Regarding Defendant's Motion to Compel answers to its outstanding interrogatories, requests for production, and requests for admission, such discovery is included under the Court's Order regulating depositions. As already discussed, Plaintiff shall produce its answers to these discovery requests immediately after Plaintiff completes the depositions of those representatives of Defendant previously noticed.

ORDER

For the aforementioned reasons, Plaintiff's Motion for Default Judgment is hereby DENIED. Defendant is to produce outstanding discovery as specified herein. Also in accordance with the aforementioned specifications, Defendant's Motion to

Compel is hereby GRANTED. Both Plaintiff and Defendant are hereby ordered to complete discovery in the manner prescribed by this Court.

IT IS SO ORDERED this 13th day of April, 2007.

Joseph F. Flickinger III
Judge