

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LEASE EQUITIES FUND, INC.,

Plaintiff-Appellant,

v

SHAHEEN, JACOBS & ROSS, P.C., STEVEN P.  
ROSS, and MICHAEL J. THOMAS,

Defendants-Appellees.

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UNPUBLISHED

January 4, 2000

No. 205271

Wayne Circuit Court

LC No. 96-605445 NM

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion to dismiss this case with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sued defendants for legal malpractice. Plaintiff repeatedly failed to produce witnesses for deposition, failed to produce requested documents, and failed to comply with the court's order to provide complete answers to interrogatories. One week prior to mediation plaintiff withdrew the names of its four expert witnesses, and indicated that it intended to substitute two new experts. The trial court granted defendants' third motion to dismiss the case for failure to provide discovery, MCR 2.313(B)(2), finding that because (1) plaintiff had failed to comply with discovery orders, (2) discovery had closed, (3) mediation was scheduled for one week later, and (4) plaintiff had withdrawn its expert witnesses, no other sanction was appropriate.

Among the factors which a trial court should consider when determining an appropriate discovery sanction are: (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. *Vicencio v Ramirez*, 211 Mich App 501, 507; 536 NW2d 280 (1995). We review a trial court's decision on a motion for discovery sanctions for an abuse of discretion. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990).

Plaintiff argues that the trial court abused its discretion by granting defendants' motion to dismiss the case. We disagree and affirm. Plaintiff failed to comply with two orders specifically directing that its president be produced for deposition within a specified period. Plaintiff answered defendants' interrogatories, but failed to provide complete answers as ordered. Plaintiff did not provide information regarding the anticipated testimony of its expert witnesses. One week prior to the scheduled mediation date, plaintiff informed defendants that it was withdrawing its expert witnesses, and would be substituting new experts. Plaintiff filed no motion to allow such a substitution. In a professional malpractice action, expert testimony is needed to establish the standard of conduct, a breach of that standard, and causation. *Dean v Tucker*, 205 Mich App 547, 550; 517 NW2d 835 (1994). Plaintiff's failure to provide information regarding the anticipated testimony of its expert witnesses prejudiced defendants in that it deprived defendants of information necessary to formulate a possible defense and a mediation position. Throughout the course of this litigation, plaintiff repeatedly and wilfully failed to comply with discovery orders. Plaintiff's failure to comply and its withdrawal of its expert witnesses left the case in a condition in which it could not be prosecuted. Under the circumstances, the trial court's grant of defendants' motion for dismissal did not constitute an abuse of discretion. MCR 2.313(B)(2); *Vicencio, supra*.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage