

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**RICHARD R. COOCH  
RESIDENT JUDGE**

**NEW CASTLE COUNTY COURT HOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0664**

July 14, 2004

Paul A. Wernlé Jr., Esquire  
New Castle Corporate Commons  
92 Read's Way  
New Castle, Delaware 19720

Jerome M. Capone, Esquire  
4 East 8<sup>th</sup> Street, Suite 200  
Wilmington, Delaware 19801

**Re: Lee v. McLean  
C.A. No. 01C-05-169 RRC  
On Defendant's Motion to Dismiss. Granted.**

Submitted: July 12, 2004  
Decided: July 13, 2004

Dear Counsel:

Defendant's Motion to Dismiss is scheduled for oral argument on July 21, 2004. By letter to counsel dated June 14, 2004, the Court directed Plaintiff to file a Response by June 25, 2004. The Court advised in that letter that "[f]ailure of Plaintiff to file a Response by this date may result in the Court deeming the motion as unopposed." Nevertheless, Plaintiff did not file a Response by June 25. My civil case manager telephoned Mr. Wernlé on July 8 to ask Mr. Wernlé why no response had been filed; Mr. Wernlé apologized for overlooking the June 25, 2004 deadline date and stated that he would promptly file a Response. A Response was filed on July 12.

The Motion to Dismiss is based on Plaintiff's failure to cooperate with her attorney by keeping in touch with him. Mr. Wernlé advised the Court and opposing counsel at the May 4, 2004 scheduling conference that he had lost contact with his client. The Motion to Dismiss further recites that Defendant tried to schedule Plaintiff's deposition for June 3, 2004 but that Plaintiff's attorney's secretary advised Mr. Capone that Mr. Wernlé was still unable to reach his client.

In Mr. Wernlé's July 12 Response, he notes inter alia that he still is "not [ ] able to contact his client since last fall, despite numerous telephone calls and some correspondence . . . [and that he] was forced to have a skip tracer in order to attempt to locate [his] client." Mr. Wernlé stated that "[m]y intention therefore is to present only oral argument at the time the Motion is heard."

The Court finds no need for oral argument. This case was filed in May 2001. Plaintiff has failed to prosecute this case and to comply with Superior Court rules and orders of court pursuant to Superior Court Civil Rule 41(b). Various deadlines established at the May 4 scheduling conference are fast approaching. The trial is scheduled for December 6, 2004. The case will be dismissed on two bases: 1) Plaintiff's failure to have filed a Response to the Motion to Dismiss by June 25, 2004, which motion the Court deems unopposed and 2) for the reasons otherwise set forth in this letter.

Defendant's Motion to Dismiss is GRANTED. Oral argument scheduled for July 21, 2004 at 9:00 a.m. is cancelled.

IT IS SO ORDERED.

Very truly yours,

RRC/mtc  
cc: Prothonotary