

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DENNIS BLAKE,

Plaintiff,

-vs-

Case No. 8:08-cv-1394-T-24TGW

LEE GRANT JR. and
ATLAS VAN LINES, INC.,

Defendants.

ORDER

This cause comes before the Court on Defendants' motion to dismiss, and to have oral argument on the motion. (Doc. 19.)

DISCUSSION

Defendants claim that involuntary dismissal is warranted because Plaintiff has perpetrated fraud on the Court. Defendants assert that abundant evidence uncovered in their case investigation contradicts Plaintiff's sworn testimony regarding previous injuries to his knee, back, buttocks, and spine, prior to the accident at issue. Defendants also claim that Plaintiff concealed prior accidents and lawsuits. In response, Defendants ask this Court, based on the contradiction between Plaintiff's statements and Defendants' proffered evidence, to weigh the credibility of the evidence, to find that Plaintiff was deliberately dishonest, and to sanction Plaintiff with dismissal.

The Court declines Defendants' invitation to use its considerable discretion to sanction with dismissal, at this juncture. Defendants assert that the evidence in this case is vastly one-sided and the dishonesty of Plaintiff's statements is inescapably evident. That may or may not

be, but the Court feels that deciding the outcome of this case based on an evaluation of evidence and witness credibility is best left for settlement, summary judgment, or trial.

CONCLUSION

Accordingly, it is ORDERED AND ADJUDGED that Defendants' motion to dismiss and for oral argument is DENIED.

DONE AND ORDERED this 6th day of May, 2009.


SUSAN C. BUCKLEW
United States District Judge

Copies to: Counsel of Record