

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

KEITH HARRISON,)
vs.)
ENKEI AMERICA, INC.,)
Defendant.)
Plaintiff,)
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1:09-cv-01106-LJM-DML

Entry and Order Directing Dismissal of Action

I.

The overall purpose of discovery under the *Federal Rules of Civil Procedure* is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result. *See United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958); *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) (“wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for the truth”). Discovery in civil litigation is intended to be an essentially cooperative, self-regulating process for which the parties would take responsibility, with little judicial intervention required. *See* Edward D. Cavanagh, *The August 1, 1983 Amendments to the Federal Rules of Civil Procedure: A Critical Evaluation and a Proposal for More Effective Discovery Through Local Rules*, 30 Vill. L. Rev. 767, 775 & n.34 (1985). In this case, plaintiff Keith Harrison has, without justification, delayed and impeded the development of the action through his refusal to participate in the normal discovery process. This has necessitated the issuance of court orders that he do so, has caused significant and excessive delay in the action, and still he has not complied.

The Federal Rules of Civil Procedure contain provisions for the imposition of sanctions—even extreme sanctions such as the dismissal of a complaint—against parties who fail to adhere to the discovery provisions of those Rules or who fail to obey court orders issued in the course of the pretrial development of a lawsuit. *See Maynard v. Nygren*, 332 F.3d 462, 467 (7th Cir. 2003); *Newman v. Metropolitan Pier & Exposition Authority*, 962 F.2d 589 (7th Cir. 1992); *In re State Exchange Finance Co.*, 896 F.2d 1104 (7th Cir. 1990). A case may be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to follow an order of the court. *See Maynard*, 332 F.3d at 467. “This authority [under Rule 41(b)] flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co.*,

Ltd., 756 F.2d 399, 401 (5th Cir. 1985)(citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629 (1962)). The dismissal of an action under the circumstances is an available, though drastic, measure. Dismissal under Rule 41(b) is “an extraordinarily harsh sanction that should be used ‘only in extreme situations, where there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing.’” *Dunphy v. McKee*, 134 F.3d 1297, 1299 (7th Cir. 1998) (quoting *In Re Bluestein & Co.*, 68 F.3d 1022, 1025 (7th Cir. 1995)). The ruling in this Entry reflects the proper balancing of these considerations in the circumstances of this case.

The defendant’s unopposed motion to dismiss (dkt 33) is **granted** and the dismissal of the action is imposed as a sanction against the plaintiff for his prolonged and unjustified disregard of discovery obligations shared by all civil litigants in federal court in disobedience of court orders issued to compel his compliance with these obligations. *See Fischer v. Cingular Wireless, LLC*, 446 F.3d 664 (7th Cir. 2006). The action is **dismissed**. The dismissal shall be with prejudice. The costs of the action are assessed against the plaintiff.

II.

The trial setting, the final pretrial conference setting, and all status conferences are vacated.

III.

Judgment consistent with the ruling in Part I of this Entry shall now issue.

IT IS SO ORDERED.

Date: 05/27/2010



LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana