

STATE OF MICHIGAN
COURT OF APPEALS

LAFAYETTE EAST COOPERATIVE,

Plaintiff-Appellant,

v

JOHN COZART,

Defendant-Appellee.

UNPUBLISHED

September 29, 1998

No. 199937

Wayne Circuit Court

LC No. 95-501833 AV

Before: Gribbs, P.J., and Sawyer and Doctoroff, JJ.

MEMORANDUM.

Previously, under Docket No. 188966, plaintiff filed a delayed application for leave to appeal an August 17, 1995, Wayne Circuit Court order denying plaintiff's motion for reconsideration of a July 7, 1995, circuit court order reversing the 33rd District Court's pretrial order imposing discovery sanctions upon defendant in the form of prohibiting defendant from presenting any witnesses other than himself at trial and also striking ten of fifteen answers filed by defendant. On February 2, 1996, this Court, in lieu of granting plaintiff's delayed application for leave to appeal, reversed the Wayne Circuit Court's August 7, 1995, order denying plaintiff's motion for reconsideration and remanded the case to the circuit court for reconsideration. On November 27, 1996, the Wayne Circuit Court granted plaintiff's motion for reconsideration and "reiterated" its earlier ruling reversing the district court. Plaintiff now appeals by leave granted from the Wayne Circuit Court order reaffirming its August 17, 1995, order denying plaintiff's motion for reconsideration. We reverse.

Plaintiff's first argument is that the circuit court erred in finding that the district court abused its discretion in striking ten of the fifteen answers proffered by defendant in his amended answer. A trial court's decision to grant a motion to strike certain defenses will not be reversed absent an abuse of discretion. *Carmack v Macomb Co Community College*, 199 Mich App 544, 546; 502 NW2d 746 (1993).

MCR 2.115(B) allows a court to "strike from a pleading" any "immaterial" matter. Here, the trial court struck ten of the defenses because they were not relevant to the issue of whether defendant's

residence in plaintiff's cooperative was uninhabitable. Accordingly, we conclude that the circuit court erred in ruling that the district court abused its discretion in striking ten of the defenses.

Plaintiff's second argument on appeal is that the circuit court erred in ruling that the district court abused its discretion in imposing discovery sanctions in the form of prohibiting defendant from presenting other witnesses at trial. We agree. A trial court's decision to impose sanctions for discovery violations is reviewed for an abuse of discretion. *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 450-451; 540 NW2d 696 (1995).

The trial was scheduled to begin on July 14, 1994. A hearing on plaintiff's motion for a default judgment occurred on July 7, 1994. At the hearing, the trial court determined that plaintiff would be prejudiced as a result of defendant's submission of a witness list one week before the scheduled trial date. We hold that the circuit court erred in finding that there was an abuse of discretion on the part of the district court in imposing this discovery sanction.

Reversed.

/s/ Roman S. Gribbs

/s/ David H. Sawyer

/s/ Martin M. Doctoroff