

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 19, 2019
Certiorari to the Court of Appeals, 2018CA618 District Court, City and County of Denver, 2017CV30158	
Petitioners: Frances Jane Moorer Scott and Galen LeMar Amerson, v.	Supreme Court Case No: 2019SC365
Respondents: Atlas Law Firm, P.C. and DebtBusters, P.C.	
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, AUGUST 19, 2019.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 23, 2019
Certiorari to the Court of Appeals, 2018CA618 District Court, City and County of Denver, 2017CV30158	
Petitioners: Frances Jane Moorer Scott and Galen LeMar Amerson, v.	Supreme Court Case No: 2019SC365
Respondents: Atlas Law Firm, P.C. and DebtBusters, P.C.	
ORDER OF COURT	

Upon consideration of the Motion for Reconsideration of Denial of Petition for Writ of Certiorari filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is,
DENIED.

BY THE COURT, SEPTEMBER 23, 2019.

Appendix B

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 26, 2019
Denver District Court 2017CV30158	
Plaintiffs-Appellees: Atlas Law PC and DebtBusters PC, v. _____	Court of Appeals Case Number: 2018CA618
Defendants-Appellants: Frances Jane Moorer Scott and Galen LeMar Amerson.	
MANDATE	

This proceeding was presented to this Court on the record on appeal. In accordance with its announced opinion, the Court of Appeals hereby ORDERS:

JUDGMENT AFFIRMED AND CASE REMANDED WITH DIRECTIONS

POLLY BROCK
CLERK OF THE COURT OF APPEALS

DATE: AUGUST 26, 2019

Appendix C

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: February 6, 2018 ▲ COURT USE ONLY ▲ Case Number: 17CV30158 Courtroom: 209
ATLAS LAW FIRM, P.C. a Colorado P.C. & DEBTBUSTERS P.C., a Colorado P.C., Plaintiffs, v. FRANCES JANE MOORER SCOTT, an individual & GALEN LEMAR AMERSON, an individual, Defendants	
ORDER: PLAINTIFF'S RENEWED MOTION FOR ENTRY OF JUDGMENT AGAINST DEFENDANTS	

This matter is before the Court on Plaintiff's Motion for Entry of Judgment against the Defendants and Plaintiff's Motion for Partial Summary Judgment against Defendant Amerson on Claim Two of the Complaint. Having reviewed the pleadings, the case file and having presided over multiple hearings regarding discovery disputes, I make the following findings and rule accordingly.

This is a rather straight forward case involving a dispute over legal fees. The Plaintiffs represented the Defendants in several matters in state and federal court, including federal bankruptcy court. Plaintiffs bring claims for breach of contract, Mr. Amerson's liability under the C.R.S. § 14-6-110, quantum meruit, and unjust enrichment. The amount in question is

Appendix D

\$18,183.20. This case has a rather tortured history that includes the case originally being filed in state district court, being removed by the Defendants to federal court before it was ultimately remanded back to state district court by Judge Lewis Babcock.

After being remanded to state court, the case has been subjected to numerous issues relating to discovery, specifically the continuing pattern of the Defendants of only providing evasive and unresponsive answers to interrogatories and requests for admission. The Court is now in receipt of the fourth attempt by the Defendants to answer the interrogatories and admissions that were first served on the defense in October, 2017. On more than one occasion this Court instructed the Defendants that they must answer the questions presented in the interrogatories and request for admissions honestly and that the Court found the answers to be evasive and unresponsive and that it was in the Court's opinion that the Defendants were engaged in an attempt to derail this litigation. The Courts last admonition was on January 30, 2018. At that hearing the Court clearly stated that if the Defendants continued to provide evasive answers the Court may grant the Plaintiff's request for entry of judgment against the Defendants.

On February 1, 2018, the Plaintiffs filed their motion entitled "Plaintiffs' Fourth Notice of Discovery Dispute and Renewed Motion for Entry of Judgment against Defendants." Attached, as exhibits to the motion, were Defendant Scott's and Defendant Amerson's responses.

Pursuant to C.R.C.P. 37(b)(2)(C), the trial court has broad discretion to impose discovery sanctions when a party fails to comply with its discovery obligations, and the court may dismiss an action or enter a default judgment. *In re Marriage of Emerson*, 77 P.3d 923 (Colo. App. 2003) (citing *Scott v. Matlack, Inc.*, 39 P.3d 1160 (Colo. 2002)); see also *Asamer Oil (U.S.) Inc. v. KMOCO Oil Co.*, 759 P.2d 808 (Colo. App. 1988).

A trial court may not impose discovery sanctions unless a court order compelling a response to a discovery request has been violated. *O'Reilly v. Physicians Mut. Ins. Co.*, 992 P.2d 644 (Colo. App. 1999). Because entry of dismissal or default judgment are drastic remedies, when the trial court enters either dismissal or default as a discovery sanction it must adequately describe its reasoning for choosing the sanction. *Audio-Visual Sys., Inc. v. Hopper*, 762 P.2d 696 (Colo. App. 1988)(citing *Kwik Way Stores, Inc. v. Caldwell*, 745 P.2d 672 (Colo. 1987). Although the presence or absence of culpable conduct is an important consideration in the imposition of a litigation ending sanction such as default judgment, a finding of willfulness or bad faith is not required. *Kwik Way Stores, Inc. v. Caldwell*, supra; see also *Muck v. Stubblefield*, 682 P.2d 1237, 1240 (Colo. App. 1984); *Callahan v. Wadsworth, Ltd.*, supra. When a party engages in conduct "that manifests a flagrant disregard of discovery obligations or constitutes a substantial deviation from reasonable care in complying with discovery obligations," default judgment may be an appropriate sanction. *Kwik Way Stores, Inc. v. Caldwell*, supra, 745 P.2d at 677.

Here, the Defendants conduct manifests a flagrant disregard of discovery obligations and clearly violated the Court's order regarding responses to interrogatories and requests for admission and production. The Court admonished the Defendants on more than one occasion to provide adequate answers to the interrogatories and the requests for admission and production. Time after time the Defendants have failed to follow this Court's order in that regard, with a trial set to commence two weeks from today. The Court also finds the actions of the Defendants to be willful and deliberate in an attempt to stonewall the legal process. Ms. Scott, while appearing pro se, is a seasoned litigator and her pleadings reflect her understanding of civil procedure and the discovery process. The prejudice to the Plaintiff is significant as it has hindered their ability to prepare for depositions, adequately prepare motions for summary judgment, and to prepare for the Defendants' defenses at trial.

For these reasons the Court GRANTS the Plaintiffs' motion and enters judgment, pursuant to C.R.C.P 37(b)(2)(C), against the Defendants for the amount sought in the complaint. The Plaintiff will have 14 days to submit an affidavit of reasonable attorney fees and costs associated with the prosecution of the case. Absent a valid objection from the Defendants, counsel for the Plaintiffs fees shall be reviewed and awarded by the Court. The jury trial is hereby vacated.

BY THE COURT:



Jay S. Grant
District Court Judge

Denver District Court Court
1437 Bannock Street, Rm 256
Denver CO 80202 United States



GALEN LEMAR AMERSON
25887 CONIFER RD SUITE 105
404
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300-1010

To: Galen Lemar Amerson

Subject: Service of documents in 2017CV30158.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Denver County - District
- Case Number: 2017CV30158
- Filing ID: N/A
- Filed Document Title(s):
 - ORDER: PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT
- Submitted on Date/Time: Tue Feb 06 18:30:03 MST 2018
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Denver District Court Court

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judicial Branch website <http://www.courts.state.co.us/Index.cfm>.

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