

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

1999 NOV 24 A 10:30

Marilyn Jo Gerber)

v.)

Sweet Gallery, Inc. et al.)

Washington Superior Court
Docket No. 500-9-98 Wncv

SUPERIOR COURT
WASHINGTON COUNTY

MEMORANDUM OF DECISION

This matter is before the court on the Defendant's Motion to Dismiss. Plaintiff has appeared in this action pro se. The Defendant is represented by Peter Joslin, Esq.

Background

In February of 1999, the parties agreed to a six month delay in responding to the court's request to prepare a Pretrial Order. Accordingly, no court events were scheduled. During that interval, Attorney Joslin entered an appearance for the Defendants and their prior attorney withdrew. The case was scheduled for a status conference on August 30, 1999. Plaintiff did not appear. The notice that was sent by the court to her last known mailing address were returned to the court as undeliverable. The court scheduled a hearing for her to show cause why the matter should not be dismissed for lack of prosecution. The Notice of Hearing, scheduled for October 6, 1999, was sent to her last known mailing address, and was returned to the court as undeliverable. She did not appear. At the hearing, the court granted Defendants' Motion to Dismiss for lack of prosecution.

Prior to signing the dismissal order prepared by Attorney Joslin, the court became aware of another address for Plaintiff, and therefore set a new hearing for her to appear and show cause why the action should not be dismissed for lack of prosecution. The court also ordered Plaintiff to pay Defendants' attorneys' fees for having obligated Attorney Joslin to appear in court unnecessarily. Notice of hearing was sent to the parties for a hearing on November 22, 1999.

Plaintiff has filed an objection to dismissal, claiming she wishes to continue the case. Nonetheless, she did not request a continuance of the hearing; she merely stated she did not plan to attend. Plaintiff has caused the court to convene hearings and use court time for them on three

occasions without appearing. She has not maintained a valid current address with the court, and caused both court resources and the time of Defendants' attorney to be wasted. She has not provided a good reason why she has not met her responsibilities to keep her address current with the court and Defendants' attorney, and she has not appeared to explain why the action should not be dismissed for her failure to pursue it. She has recently stated that she wishes to pursue the action, but has done nothing to attempt to do so.

Therefore:

Defendants' Motion to Dismiss is granted for lack of prosecution pursuant to V.R.C.P. 41(b)(2).

The Dismissal is without prejudice, except that pursuant to V.R.C.P. 41(b)(3) and (d), Plaintiff may not recommence the causes of action included in the Complaint in this action without first having compensated Defendant or his attorney for all reasonable attorneys' fees for time spent by him in attending the hearing on October 6, 1999, including preparation of a draft order, and in responding to Plaintiff after service of the Notice of Hearing of November 22, 1999.

SO ORDERED.

Dated at Montpelier, Vermont this 23rd day of November
1999.

Mary Miles Teachout
Hon. Mary Miles Teachout
Superior Judge, presiding