

STATE OF VERMONT  
WASHINGTON COUNTY

FILED  
2006 OCT 31 P 3:01  
WASHINGTON SUPERIOR COURT  
WASHINGTON COUNTY

BANK OF AMERICA, N.A. )  
Plaintiff, )  
v. )  
JAMES M. LUSHER, )  
Defendant. )

Washington Superior Court  
Docket No. 267-5-06 Wincv

ENTRY ORDER

Plaintiff's attorney Jessica Ellicott failed to appear for a pretrial conference on Monday, October 30, 2006. Her fax motion of Friday, October 27<sup>th</sup>, in which she requested permission to appear by telephone for no reason except, implicitly, convenience, had been denied for specific stated reasons. Despite the denial, she did not appear, but instead sent a fax letter to the clerk stating that she would not come, and claiming that the Defendant had not responded to her proposed discovery and pretrial order.

In addition to failing to appear without permission, she misconstrued the purpose of the pretrial conference. There was no need for Defendant to respond to her October 18<sup>th</sup> letter proposing a pretrial schedule, because on August 14, 2006, at a status conference Ms. Ellicott attended, Judge Toor had already established a pretrial schedule, providing for completion of discovery, a motion deadline, and a one-day jury trial after November 15<sup>th</sup>. The pretrial conference on October 30<sup>th</sup> was to prepare for the jury trial, not to establish a discovery schedule.

At the pretrial conference on October 30<sup>th</sup>, the court permitted the Defendant to make an oral Motion to Dismiss under Rule 41(b)(2) for Attorney Ellicott's failure to appear at the conference and failure to comply with the court's Entry Order denying her motion for telephonic appearance.<sup>1</sup> Defendant also stated that Attorney Ellicott had failed to respond to his correspondence to her in June regarding a stipulated pretrial order as requested by the court, and that answers to his timely-filed interrogatories and requests to admit were overdue.

Plaintiff's attorney is hereby given notice of Defendant's oral Motion to Dismiss, and shall have until November 14, 2006 to file a response. Defendant shall have until November 27, 2006 to file a reply.

In addition, Attorney Ellicott is hereby notified that, depending on the contents of any response to the motion, the court may consider scheduling a hearing to determine whether she should be sanctioned for her failure to appear at the hearing on October 30, 2006 pretrial conference. See *Lawson v. Brown's Home Day Care Center, Inc.*, 2004 VT 61, ¶ 14, 177 Vt.

<sup>1</sup> The court specifically stated in its Entry Order that there are good reasons for "personal appearance at a pretrial conference."

528; *Van Eps v. Johnston*, 150 Vt. 324, 326-28 (1988) (discussing court's inherent authority to discipline attorneys).

The pretrial scheduling order established on August 14, 2006 remains in effect.

Dated at Montpelier, Vermont this 31<sup>st</sup> day of October 2006.

  
\_\_\_\_\_  
Mary Miles Teachout  
Superior Court Judge