

No. 74045-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

STI AMERICA, INC., Respondent,
v.
LEYEN FOOD, LLC, Appellant.

APPELLANT'S OPENING BRIEF

Terence K. Wong
Attorney for Appellant Leyen Foods, LLC
12835 Newcastle Way, Suite 301
Newcastle, WA 98056
(425) 228-6782
WSBA #24502

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INTRODUCTION

Appellant Leyen Food, LLC (“Leyen”) is a California-based company which sells mainly wholesale poultry to retailers all over the United States. STI America (“STI”) is a company which purchased salmon roe from Leyen on a one-time basis, for a price of \$82,191.60. Avalon Leasing, Inc., is a Washington corporation, which is in the business, among other business, of consulting wholesale seafood companies in the United States.

On or around 2014, STI tendered the amount of \$82,191.60 it owed to Leyen for the payment of the purchase of the salmon roe. Avalon sent notice to STI that it had a priority claim for the amount tendered. Leyen also claimed the \$82,191.60 as payment for the salmon roe sold to STI. As a result of these competing demands for the funds, STI filed suit in King County Superior Court to interplead the disputed amount. The parties subsequently stipulated for the deposit of the \$82,191.60 into the court registry and the dismissal of STI as plaintiff in the case. As a result, the left Avalon and Leyen as the parties in the case, each claiming ownership of the funds held in the court registry.

During the course of the case, Avalon requested discovery to Leyen. Leyen answered to the best of its knowledge the interrogatories it was served, including providing Avalon with its documents as requested by Avalon’s request for production of documents. Avalon was not satisfied

with the answers and production of documents provided by Leyen and made three motions to compel for discovery against Leyen, including sanctions and/or attorneys' fees. In Avalon's motion in limine, the trial court ordered that Leyen was prohibited from presenting any evidence at trial. As a result, an agreed judgment was entered with the intent of appealing the order as a matter of right.

ASSIGNMENTS OF ERROR

1. The trial court erred in ordering that Leyen is prohibited from presenting any evidence at trial as a discovery sanction.
2. The trial court erred in ordering attorneys' fees and costs as a discovery sanction.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should the trial court grant Avalon's motion to compel discovery when Leyen provided all the answers to Avalon's interrogatories and provided all its documents it had in its possession to Avalon's request for production of documents? (Assignment of Error No. 1).
2. Does a trial court abuse its discretion when it orders that Leyen is not allowed to present any evidence at trial when Leyen has provided everything in its possession and in good faith to Avalon's discovery demands, pursuant to Civil Rule 33 and 34? (Assignment of Error No. 2).
3. Does a trial court abuse its discretion when it orders that Leyen is not allowed to present any evidence at trial when the trial court fails to

make a record of its basis for its decision to prohibit Leyen from presenting evidence? (Assignment of Error No. 3).

4. Does a trial court abuse its discretion when it orders that Leyen is not allowed to present any evidence at trial when the trial court fails to consider less harsher penalties, in contradiction to Civil Rule 37(b)? (Assignment of Error No. 4).

STATEMENT OF THE CASE

A. STI America Files Complaint for Interpleader

On February 13, 2013, STI files a complaint for interpleader, depositing the \$82,191.60 into the Court registry. CP 1.

B. Avalon Files First Motion to Compel

On March 20, 2015, Avalon files its first motion to compel discovery. CP 46. Avalon moves for an order compelling Leyen to answer its first set of interrogatories and requests for production. CP 46. Leyen responds by requesting additional time to answer Avalon's discovery requests due to the difficulty of the Leyen employees residing out of state and their scheduling. CP 50. The trial court orders deadlines for the Leyen's requests and imposes fees, which were paid. CP 51.

C. Avalon Files Second Motion to Compel

On April 7, 2015, Avalon files its second motion to compel discovery, requesting that Leyen answer its first set of interrogatories and requests for

production of documents. CP 52. Leyen responds again by requesting additional time to complete the discovery requests. CP 56. The trial court orders that Leyen answer the interrogatories and other discovery requests no later than May 6, 2015 and imposed fees, which were paid. CP 57.

D. Avalon Files Third Motion to Compel

Avalon files its third motion to compel discovery on May 28, 2015, alleging that the answers provided by Leyen were either not answered, incomplete or evasive CP 59. Leyen responds to the this third motion to compel by stating that it had answered all of the questions completely and truthfully, and had fully provided all documents it had in its possession as requested. CP 62A. Furthermore, Leyen had requested the trial court to appoint a special discovery master, pursuant to CR 53.3. CP 62A. The trial court ordered that Leyen again answer the discovery requests, imposed fees, and denied Leyen's request for a special discovery master. CP 67.

E. Avalon Files Its Motion In Limine Prior to Trial

On June 22, 2015, Avalon files a motion in limine, moving the trial court to sanction Leyen for supposed failures to provide discovery and witness disclosures (although Avalon never disclosed its witnesses to Leyen). CP 74. Leyen responds by providing the trial court with the full set of answered discovery requests. CP 76. The trial court orders, among other

things, that Leyen “may not introduce any evidence or testimony at trial relating to any claim to the STI funds held by this court...” CP 81.

F. Parties File Stipulated Order on Claims and Disbursement

In light of the trial court’s ruling on precluding Leyen from introducing evidence and witnesses at trial, the parties file an agreed order on claims and disbursement on September 15, 2015. CP 86.

G. Leyen Files a Notice of Appeal

On September 30, 2015, Leyen files its notice of appeal. CP 92.

ARGUMENT

I. THE TRIAL COURT ERRED IN ORDERING THE PRECLUSION OF EVIDENCE AND TESTIMONY AND AWARD OF FEES AS DISCOVERY SANCTIONS IN ITS ORDER IN LIMINE

The trial court's order granting sanctions against Leyen by precluding Leyen from introducing any evidence or testimony as to its claim for the money amounts to an order of default, including its award of fees and costs to Avalon, which is an abuse of discretion, and is reviewed accordingly.

A. The Trial Court Abused Its Discretion In Ordering The Sanction Because There Was No Evidence of Substantial Prejudice to Avalon

As Division II of this Court recently "cases should be resolved on the merits rather than by default judgment." *Hyundai Motor America v. Magana*, 141 Wn. App. 495, 515, 170 P.3d 1165 (2007), *rev. granted*, 164 Wn.2d

1020, 195 P.3d 89 (2008). The issue of "whether a default judgment is appropriate depends on whether it is a just result." *Id.* Here, the trial court did not take the necessary steps to ensure that its discovery sanctions ruling created a just result. Specifically, the trial court neglected its duty to ensure that there was substantial prejudice before entering a default. *Id.* at 510. Accordingly, the trial court abused its discretion in entering the preclusion of evidence and testimony, which amounted to a default as a discovery sanction. Since Leyen had complied with the discovery requests, there should not have been any further order for attorney's fees and costs. The order precluding Leyen from introducing evidence and testimony at trial should be reversed; the resulting judgment and any additional judgments should be vacated; and the matter should be remanded for trial.

B. Avalon Did Not Establish Substantial Prejudice Because It Was Provided With All of the Documents Leyen Had in Its Possession and Would Present at Trial

In its motions for compelling discovery, Avalon indicates that it had not received complete answers or somehow the answers were incomplete or evasive. CP 46, 52 and 59. Finally, in compliance with the trial court's order, Avalon was provided the answers and was given the documents that Leyen had in its possession that was to be used as evidence at trial. CP 62A. Avalon had all of its documents that Leyen

was to present at trial. Furthermore, Avalon had the names of the potential witnesses disclosed in the interrogatories that were answered.

Under Civil Rule 34(a)(1), a party responding to requests for production need only produce documents “in the responding party’s possession, custody, or control.” Similarly, under Civil Rule 33(a) a party responding to interrogatories need only conduct a reasonable inquiry and “furnish such information as is available to the party.” Civil Rule 26(g). Here, Leyen provided all of its documents to Avalon it had in its possession and the documents it had intended to use at trial.

C. The Trial Court Abused Its Discretion by Failing to Impose a Less Harsher Sanction

In deciding whether to enter a default sanction, a court must consider the practical effect of the discovery violations and must find substantial prejudice in the affected party's ability to prepare for trial before default can be entered. *Id.* at 517 n.19 (“[N]ot only is it appropriate for us to consider the practical effect of [the defendant's] violation, it is necessary to do so to safeguard [the defendant's] constitutional right to due process.”). Neither the Avalon’s moving papers nor the trial court's ruling indicate any basis for concluding that documents allegedly not received caused substantial prejudice to the Avalon. Accordingly, as was the case in *Magana*, a finding that the Avalon was significantly prejudiced “is unfounded.” *Id.* at 520-21.

Here, as in *Magana*, lesser sanctions “could adequately address the goal of encouraging good faith compliance with discovery requests and timely trial preparation.” *Id.* at 520. In fact, the trial court had

already imposed fees and costs against Leyen in the previous motions to compel. CP 51, 57, and 67.

Furthermore, to impose a sanction similar to default (as in this case), the record of the trial court must show three things – the trial court’s consideration of a lesser sanction, the willfulness of the violation, and substantial prejudice arising from it. *Mayer v. Sto Indus, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006), relying on *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997). A trial court abuses its discretion when it fails to consider and enter specific findings under *Burnet*. See *Blair v. Travelcenters of America*, 171 Wn.2d 342, 254 P.3d 797 (2011).

Here, there were no oral arguments or any other discussions with counsel and the trial court. Relying solely on Avalon’s representations that the discovery was incomplete and willful, the trial court ordered the preclusion of Leyen’s witnesses and evidence at trial, all of which were provided to Avalon prior to trial. The preclusion of Leyen’s witnesses and evidence at trial equates to a default, which is the harshest penalty for alleged violations of discovery that were cured and provided for to Avalon.

CONCLUSION

For the foregoing reasons, the Court should:

1. Remand this matter for trial to the trial court;
2. Reverse the trial court’s order precluding Leyen from introducing evidence or testimony at trial; and

3. Reverse the trial court's financial sanctions, including Avalon's attorneys' fees and costs.

Respectfully submitted,



TERENCE K. WONG, WSBA #24502
NEWCASTLE LAW GROUP, P.C.
12835 Newcastle Way, Suite 301
Newcastle, Washington 98056
(425) 228-6782
Counsel for Appellant
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