

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-004730

06/28/2006

HONORABLE JANET E. BARTON

CLERK OF THE COURT
E. Schneider
Deputy

FILED: 06/30/2006

ELLA MALEY

MICHAEL N POLI

v.

SPA AT RANCHO MANANA L L C, THE, et al. C ANDREW CAMPBELL

MICHAEL J CHILDERS

MINUTE ENTRY

NOTE: Effective June 30, 2006, the Hon. Janet E. Barton's division will be located in the Central Court Building, 201 W. Jefferson, Suite 7A, Courtroom 701, Phoenix, Arizona 85003, telephone number: (602) 506-5340.

The Court has reviewed Defendants' Motion to Dismiss Claims with Respect to Lost Wages and Lost Business Income, filed on April 7, 2006, Plaintiff's Response to Defendants' Motion to Dismiss Claims with Respect to Lost Wages and Lost Business Income, filed on April 26, 2006, and Defendants' Reply in Support of Motion to Dismiss Claims with Respect to Lost Wages and Lost Business Income, filed on May 4, 2006. Plaintiff did request oral argument. However, the Court is of the opinion that oral argument would not assist it in resolving the issues raised in the parties' pleadings. Therefore, as permitted by Rule 7.1(c), Ariz.R.Civ.P., the Court will rule on Plaintiff's Motion without oral argument.

At the hearing held on February 14, 2006, this Court ordered that "Plaintiff shall submit to Defendants by April 1, 2006, a complete list of Plaintiff's lost wages, how the amounts were calculated, and any documents in support of the lost wage claim." *See* Minute Entry filed on February 16, 2006. Defendants claim that Plaintiff failed to comply with this Order and, as a result, this Court should dismiss Plaintiff's lost business income and lost wages claim. Plaintiff, on the other hand, claims that she complied with this Order by producing her tax returns for 2002, 2003, and 2004 in response to Defendants' August 10, 2005 Request for Production of Documents. The tax returns produced by Plaintiff, however, would not identify the amount of

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lost business income and/or lost wages Plaintiff is claiming or how she calculated such amount. Indeed, this Court simply is unable to fathom how Defendants are to determine the amount of lost wages/lost business income Plaintiff purportedly suffered from income tax returns which show that Plaintiff claimed a net profit from the operation of her business of \$27,802 in 2004, \$22,233 in 2003, and \$26,098 in 2002, and a gross profit of \$67,268 in 2004, \$53,175 in 2003, and \$61,825 in 2002. Thus, this Court agrees with Defendants that Plaintiff has failed to comply with an Order of this Court and should be sanctioned.

Rule 37(b)(2)(B), Ariz.R.Civ.P., provides that if a party fails to obey an order to provide discovery the court may make such orders in regard to the failure as are just including an order “refusing to allow the disobedient party to support or oppose designated claims or defenses” For the reasons set forth below, this Court is of the opinion that this is the appropriate sanction herein.

This case was filed on March 16, 2005. Thus, as of this date, Plaintiff has had over 15 months to provide Defendants with the information at issue, which is clearly information Defendants are entitled to and which Plaintiff is required to disclose pursuant to Rule 26.1, Ariz.R.Civ.P. Plaintiff was further put on notice at the February 14, 2006 hearing, and as a result of the Minute Entry from that hearing, that she was required to produce such information by April 1, 2006 at the absolute latest. Plaintiff, for whatever reason, chose to ignore this Order. The deadline for Defendants to disclose their expert witnesses expired on May 1, 2006. Without specific and detailed information regarding the amount and basis for Plaintiff’s lost wages claim, Defendant was unable to designate rebuttal expert opinions on this topic. Thus, Defendants have been prejudiced by Plaintiff’s actions herein. For these reasons,

IT IS ORDERED granting Defendants’ Motion to the extent it seeks sanctions for Plaintiff’s failure to comply with this Court’s February 14, 2006 Order.

IT IS FURTHER ORDERED precluding Plaintiff from supporting her claim of lost wages and/or lost business income with any evidence, testimony or calculations that have not been previously produced or disclosed.