

State of Illinois
County of Cook



IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT***LAW DIVISION**

GMAC MORTGAGE, LLC)
Plaintiffs,)
VS.)
JOSEPH YOUNES, ET. AL.,)
Defendants.)
_____)
RICHARD DANIGGELIS,)
Defendant/Counter-Plaintiff)
VS)
JOSEPH YOUNES, PAUL)
SHELTON, ERIKA RHONE,)
JOHN LAROCQUE, Et. Al.,)
Counter-Defendants.)

07 CH 29738
(Transfer to Law Division)

ORDER

This matter having come on to be heard for trial on Richard Daniggelis' Counterclaim pursuant to this court's May 1, 2017 order;

And Attorney Andjelko Galic having appeared on behalf of Richard Danniggelis;

And Paul Shelton having appeared on his own behalf answering ready for trial;

And the Plaintiff through counsel having moved for a continuation of the trial, or in the alternative that the matter be dismissed without prejudice;

THE COURT HEREBY FINDS AS FOLLOWS:

1. The counterclaim was filed on December 3, 2009, and has been pending for over seven years.
2. On January 17, 2017 the predecessor judge entered an order stating that the matter would be dismissed on March 14, 2017 if the body attachment against John LaRocque had not been served.

3. Nonetheless, upon plaintiff's request on March 14, 2017 the matter was continued to April 17, 2017. On April 17, 2017 the matter was continued to May 1, 2017 for final status and trial setting, and on May 1, 2017 the matter was set for trial on July 10, 2017 at 10:30am.

4. Today, plaintiff's counsel stated to the court that the delay in the execution of the body attachment was due to the Cook County Sheriff's Department conduct and that they advised him that the matter was not a priority.

5. After the matter was called for trial, Attorney Galic presented a motion to continue trial claiming that the plaintiff was unable to appear because he was at home with an ill brother, and because the body attachment was still outstanding. Such was an intentional misrepresentation to the court because his client had been present in the courtroom prior to the court session.

7. The motion was denied, and counsel then moved for a voluntary nonsuit, once again claiming that his client was not available.

8. Section 2-1009 of the Code provides as follows:

"(a) The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause." 735 ILCS 5/2-1009 (a)

9. 735 ILCS 5/2-1009(a) requires the payment of costs in order for a party to voluntarily dismiss his action without prejudice, and notice must be given. The court has no discretion to deny the plaintiff's motion for voluntary dismissal, as long as the requirements are met. *Vaughn v.*

Northwestern Memorial Hospital, 210 Ill. App. 3d 253, 257 (1991) appeal denied, 139 Ill. 2d 605(1991).

10. Plaintiff gave no notice of his motion to voluntarily dismiss.

11. Further, the plaintiff has not paid the defendants' costs or even represented a willingness to pay any costs.

12. Defendant Paul Shelton orally moved for judgment in his favor because of plaintiff's failure to proceed.

IT IS HEREBY ORDERED:

- 5217 A. The motion to continue trial is denied.
- 5040 B. The motion for voluntary nonsuit is denied.
- 4011 C. The matter is dismissed with prejudice for failure to proceed.
- 8301 D. Judgement is entered in favor of Paul Shelton and against the plaintiff.
- E. This matter is taken off call.

Judge Diane M. Shelley

JUL 10 2017

Circuit Court - 1925

ENTERED


Judge Diane M. Shelley #1925

July 10, 2017