

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WHITEHALL SPECIALTIES, INC,

Plaintiff,

v.

STEVEN DELAPORTAS, IONIAN
FOODS, LLC, and DEL SUNSHINE,
LLC,

Defendants.

ORDER

04-C-0436-C

Defendants Steven Delaportas, Ionian Foods, LLC, and Del Sunshine, LLC, have moved for reconsideration of this court's March 10, 2005 order and for vacation of the judgment entered against them on March 11, 2005. The motion will be denied. Nothing in the motion persuades me that it was error to enter judgment in favor of plaintiff Whitehall Specialties, Inc. as a sanction for defendants' egregious violations of their discovery obligations under the Federal Rules of Civil Procedure.

Defendants contend that the court erred in finding plaintiff prejudiced by the discovery violations, arguing that the vast majority of plaintiff's discovery requests went to its claim for damages, yet they acknowledge that "the primary issue in this case was aimed

at the amount of money to which Plaintiff was entitled in this case.” Dfts.’ Mot. for Reconsid., dkt. #49, at third unnumbered page. This contention seems to speak for itself. The issue *is* damages. Of course, plaintiff needs discovery on the main issue in the case.

Defendants ask how plaintiff could have been prejudiced when the parties agreed that plaintiff shipped approximately \$2,200,000 worth of product for which it had involved defendant Ionian and for which Ionian had received payment from Wal-Mart. Id. at fourth unnumbered page. If I follow this argument, defendants are saying that plaintiff could not have been prejudiced by their failure to provide discovery because everyone agreed that plaintiff was entitled to \$2,200,000. I would ask, if this was the agreement, how are defendants hurt by the entry of a judgment against them in the amount of \$2,200,000? If, as defendants have maintained repeatedly, they are unable to produce the documentation that might prove their entitlement to credits, recoupments, offsets related to customers’ rejected shipments, charge backs, deductions and set-offs against the \$2,200,000, what would be the point of vacating the judgment against them?

If defendants do have “a mountain of documentation,” id. at sixth unnumbered page, to support their claim to credits, as they say they do, then plaintiff is prejudiced by defendants’ failure to produce enough records to enable plaintiff to check this documentation. Defendants do not deny that they have no invoices from Ionian or Del Sunshine for cheese shipped to Wal-Mart or other customers for the years 2003 and 2004

or that they have no business records, no financial information and no tax returns for either company. Without these records, how can plaintiff correlate its direct shipments to customers on behalf of the defendant companies with defendants' invoices to customers for payments made to defendants?

Defendants contend that the court erred in including defendant Delaportas in its order because the record does not show any failure to provide discovery on his part and it is error to impose liability on an individual for the failures of a corporation. It appears that defendants have not read the March 10 order or the predecessor order of January 11, 2005 with any care. Had they done so, they would have seen many instances in which I referred to the involvement of defendant Delaportas in the discovery violations. Delaportas acknowledged in an affidavit the backdating of discovery documents, Delaportas Aff., dkt. #26, at 3; he did not go to his bank to request his records until January 5, 2005, long after those records should have been produced, Mar. 10 order, Shanaberger Aff., dkt. #41, Exh. A; he set up both Ionian and Del Sunshine and shares the responsibility for the non-filing of tax returns for the companies, Dfts,' Br. in Opp., dkt. #40, at 8; and he is the one who testified in prior litigation that many of Ionian's business records were stolen from his car and others were destroyed in a flood at its previous business premises, *id.* at 8-9, yet until defendants filed their brief in opposition to plaintiff's motion for sanctions, they never gave plaintiff's counsel this explanation for non-production despite the numerous opportunities

they had to do so. Mar. 10 order, dkt. #46, at 14.

Defendant suggests that the court could have used less drastic means to insure that defendant met its discovery obligations. I am unaware of any that would have been effective in the face of defendants' kind of recalcitrance and dissembling.

ORDER

IT IS ORDERED that the motion for reconsideration of the court's March 10, 2005 order and vacation of the judgment entered on March 11, 2005, filed by defendant Steven Delaportas, Ionian Foods, LLC, and Del Sunshine, LLC, is DENIED.

Entered this 25th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge