

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF GREENE

-----X  
CHARLES LAKE and JOANNE LAKE, his  
Wife,

Plaintiffs,

-against-

DECISION/ORDER

Index No. 95-208  
R.J.I. No. 19-95-6238  
John G. Connor, J.S.C.

M.P.C. TRUCKING, INC. and W.R.  
GRACE & CO, INC.,

Defendants.

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APPEARANCES:

**Plaintiffs:** Lewis & Stanzione, Esqs.  
by Ralph C. Lewis, Jr., Esq.

**Defendants:** Bond, Schoeneck & King, LLP  
by Thomas P. McQuade, Esq.  
for M.P.C. Trucking, Inc. ✓

Donohue, Sabo, Varley & Armstrong, P.C.  
by Bruce S. Huttner, Esq.  
for W.R. Grace & Co.

Connor, J.

Defendant M.P.C. Trucking, Inc. (hereinafter "MPC") moves for a conditional order of preclusion pursuant to CPLR 3124 and 3126 dismissing Plaintiffs' Complaint for failure to provide

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responses to MPC's Demand for Bill of Particulars, and Discovery Demands. Defendant W.R. Grace & Co., (hereinafter "WR") cross-moves for the same relief alleging that Plaintiffs have failed to provide Answers to Interrogatories served upon Plaintiffs June 2, 1995. This Court previously ordered Plaintiffs to Answer the Interrogatories by Order dated February 15, 1996. Plaintiffs failed to submit opposition to the instant motion despite having been afforded additional time to do so by the Court.

To date Plaintiff has not responded to MPC's Demand for a Bill of Particulars and Discovery Demands served August 25, 1995. Likewise, Plaintiffs have not answered Interrogatories that are years old. While the Court is cognizant that the parties extended the deadlines for responding to the various discovery demands on numerous occasions while awaiting a determination of Plaintiffs' Pennsylvania Worker's Compensation Case, as of September 1998, the Worker's Compensation Case had culminated and Plaintiffs' counsel sought to be relieved. The Court denied Plaintiffs' counsel's application to be relieved and extended counsel's time to respond to the outstanding discovery demands or submit opposition to the instant motions. It appears that counsel has done neither.

Notwithstanding the aforesaid, the Court is reluctant to penalize Plaintiffs for the laissez-faire approach of their counsel; at this point a dismissal of Plaintiffs' Complaint against Defendants would be too drastic a measure. See, DuBois v. Iovinella, 15 A.D.2d 616 (3rd Dept. 1961); Mills v. Capello, et. al., 6 A.D.2d 841 (2nd Dept. 1958).

Accordingly, the Court grants MPC's motion to the extent that Plaintiffs shall be required to respond to MPC's Demand for Bill of Particulars and Discovery Demands within sixty (60) days of the service of a copy of this Order upon Plaintiffs with Notice of Entry thereon. In the event Plaintiffs shall fail to comply with the aforesaid Demand for Bill of Particulars and Discovery Demands, Plaintiffs shall be precluded at the trial of this action from adducing any proof as to those items for which disclosure has been sought and not provided.

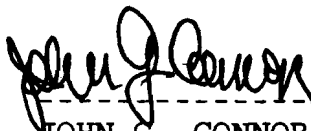
Plaintiffs shall respond to the WR's Interrogatories within sixty (60) days of the service of a copy of this Order upon Plaintiffs with Notice of Entry thereon. In the event Plaintiffs shall fail to provide Answers to the aforesaid Interrogatories, Plaintiffs shall be precluded at the trial of this action from adducing any proof as to those items for which disclosure has been sought and not provided.

Plaintiffs counsel shall be assessed costs on the motion and cross-motion in the amount of \$600.00; counsel shall pay \$300.00 to each of the Defendants as reimbursement for counsel fees incurred in connection with the instant motions and the effort made to gain compliance with their outstanding demands. See, 22 N.Y.C.R.R. §130-1.1. The aforesaid opinion constitutes the decision and order of this Court. All papers shall be forwarded to the attorneys for Defendant MPC for filing and service. The signing of this decision and order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the

applicable provisions of that section relative to filing, entry and notice of entry.

SO ORDERED.

Dated: March 27<sup>th</sup>, 1999  
Hudson, New York



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JOHN G. CONNOR  
Justice of the Supreme Court

Papers Considered: Notice of Motion to Preclude and Compel together with Affirmation of Thomas McQuade, Esq., in support thereof with Exhibits annexed; Notice of Cross-Motion to Preclude and Compel together with Affirmation of Bruce Huttner, Esq. in support thereof with Exhibits annexed.