

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

FILED
1999 DEC -9 AM 11:01
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:)
Charles Vereen,)
)
Debtor,)
_____)

Case No. 96-78369-W
Chapter 7

Robert F. Anderson, Trustee for the)
Chapter 7 Bankruptcy Estate of)
Charles Vereen,)
)
Plaintiff,)

Adversary No. 98-80262-W

ENTERED
DEC 10 1999
S. R. P.

v.)

Charles Vereen, Charles Clark Vereen,)
Sonya Ann Vereen Clark, Melanie Renee)
Vereen, Russell Wilson Vereen, Hamilton)
Julian Vereen, Mark Groves, Garrett Sutton,)
Nancy Lake, Vereen Joint Revocable Inter)
Vivos Trust, East Cambridge Limited)
Partnership and Five Star Management,)
)
Defendants.)
_____)

**ORDER STRIKING ANSWER OF
DEFENDANT CHARLES VEREEN**

This matter concerns the motion of Robert F. Anderson ("Anderson"), the plaintiff and the Chapter 7 trustee in this case, to strike the Answer of Defendant Charles Vereen ("Debtor") and for the imposition of sanctions against the Debtor for the Debtor's failure to comply with discovery orders in this adversary proceeding. For the reasons discussed below, the Court finds that the requested sanctions are appropriate in this case, and that the Debtor's Answer should be stricken in this adversary proceeding.

Anderson served his Interrogatories to Defendant Charles Vereen ("Interrogatories") and his Requests for Production of Documents to Defendant Charles Vereen ("Requests for Production") upon the Debtor on or about June 22, 1999. On August 6, 1999, Anderson filed his Motion and Memorandum to Compel Discovery Responses from Defendant Charles Vereen ("Motion to Compel"). Following a hearing

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on the Motion to Compel, the Court entered an Order on August 23, 1999 ordering that the Debtor provide and produce any and all documents responsive to the Interrogatories and the Requests for Production to Anderson's counsel no later than August 31, 1999. On September 17, 1999, Anderson filed his Motion and Memorandum to Strike Debtor's Answer and for Sanctions Against Debtor ("Motion to Strike"), seeking to have the Debtor's Answer stricken and sanctions imposed on the Debtor for the Debtor's failure to respond to the Interrogatories and the Requests for Production in compliance with applicable rules and the Order entered on August 23, 1999. Following another hearing on the matter, the Court entered an Order on November 2, 1999 imposing monetary sanctions in the amount of \$750.00 against the Debtor, to be paid within ten (10) days after entry of the Order, and ordering that the Debtor properly respond to the Interrogatories and the Requests for Production within ten (10) days after entry of the Order. The Order of November 2, 1999 also carried the matter over to November 16, 1999 for a review of the Debtor's compliance with the provisions of such Order.

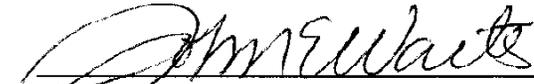
At the hearing on November 16, 1999, Anderson's counsel advised the Court that Anderson had received neither the documents responsive to the Interrogatories and the Requests for Production nor the \$750.00 payment of sanctions from the Debtor. The Debtor did not appear at the hearing on November 16, 1999 to dispute or explain his noncompliance with the Order of November 2, 1999. Anderson renewed his request that the Debtor's Answer in this adversary proceeding be stricken.¹

The Debtor has been given numerous opportunities to provide proper responses to the Interrogatories and the Requests for Production but has failed or refused to provide the responses. Moreover, the Debtor has failed or refused to comply with the Court's Orders entered on August 23, 1999 and on November 2, 1999. No justification or explanation has been offered by the Debtor for his noncompliance with the Orders,

¹ During this time, on November 12, 1999, the Court entered an Order granting summary judgment in favor of Anderson against the Debtor. Although summary judgment has been granted against the Debtor, the Court finds that the Debtor's Answer also should be stricken as a sanction for the Debtor's conduct in this matter.

and the Court finds that the noncompliance is a wilful disregard of this Court's Orders. Sanctions are appropriate under Rule 7037 of the Federal Rules of Bankruptcy Procedure and Rule 37 of the Federal Rules of Civil Procedure. Rule 37(b)(2) provides that, "If a party ... fails to obey an order to provide or permit discovery ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others ... an order striking out pleadings" Rule 37(b)(2) further provides that the Court may "require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure" Such sanctions have been imposed by courts in the Fourth Circuit for failure to comply with Orders compelling discovery. See Hartford Fire Insurance Company v. Leader Construction Company, 176 F.R.D. 202 (E.D.N.C. 1997) (striking the defendant's answer); and American Rockwool, Inc. v. Owens-Corning Fiberglas Corp., 109 F.R.D. 263 (E.D.N.C. 1985) (awarding monetary sanctions). Other bankruptcy courts have also imposed the sanction of striking a party's answer for failure to obey discovery orders. See Goldberg v. Lawrence (In re Lawrence), 227 B.R. 907 (Bankr. S.D. Fla. 1998) (the debtor's repeated failure to answer the trustee's questions regarding the debtor's assets constituted a wilful and bad faith failure to obey discovery orders, warranting entry of default against the debtor). The Court finds and concludes that the sanction of striking the Debtor's Answer in this case is proper and should be granted.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the Answer of Defendant Charles Vereen in this adversary proceeding is hereby stricken as a sanction for his failure to obey the Orders of August 23, 1999 and November 2, 1999.


JOHN E. WAITES
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 9, 1999

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

DEC 10 1999

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~
SHEREE R. PHIPPS
Deputy Clerk

- ✓ *Menes*
- ✓ *MacDonald*
- ✓ *Richards*
- ✓ *Aselden*
- ✓ *Howser*
- ✓ *Allen*
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