

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

LAWRENCE P. GILLEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. N10C-05-090 PRW
	)	
CONTINENTAL POWER	)	
CORPORATION, and	)	
EDWARD HENRY KIMMEL,	)	
	)	
Defendants.	)	

Submitted: April 7, 2014¹
Decided: April 8, 2014

ORDER

This 8th day of April 2014, upon consideration of the Defendants' Submission for Attorneys' Fees and Costs Related to Plaintiff's Motion for Continuance and Second Amended Pretrial Stipulation, the Plaintiff's response thereto, and the record in this matter, it appears to the Court that:

(1) Plaintiff, Lawrence P. Gillen, filed this breach of contract action *pro se* in May 2010. The matter finally proceeded to trial in December 2013 after numerous changes in Mr. Gillen's legal representation.

¹ Action on the Defendants' Submission for Attorneys' Fees and Costs Related to Plaintiff's Motion for Continuance and Second Amended Pretrial Stipulation was stayed until after the Court decided the Plaintiff's then-pending motion for a new trial. See *Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Wallace, J. (Apr. 7, 2014) (Mem. Op. and Order) (D.I. 238) (denying motion for new trial).

(2) Mr. Gillen had litigated the matter *pro se* for almost three and one-half years. In late July 2013, as trial neared, an attorney entered his appearance on Mr. Gillen's behalf. Almost immediately Mr. Gillen's counsel requested a trial continuance and filed numerous motions *in limine*. The Court granted the continuance² and held hearings on the Plaintiff's motions *in limine*.³ Several weeks later Mr. Gillen's attorney was permitted to withdraw due, in part, to Mr. Gillen's failure to meet his financial obligations and he was again *pro se*. At that hearing Mr. Gillen made a verbal motion to continue the trial date which was denied. Mr. Gillen was, however, granted leave to file written objections to the pretrial stipulation and written motions to reargue the Court's pretrial evidentiary rulings if he wished.⁴ None followed.

(3) Instead a new attorney entered his appearance and moved for a continuance of the trial date. Over the Defendants' objection, the Court granted this second continuance to allow new counsel the opportunity to

² *Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Wallace, J. (Aug. 1, 2013) (Judicial Action Form) (D.I. 184) (granting first trial continuance).

³ *Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Wallace, J. (Sept. 25, 2013) (Order) (D.I. 194).

⁴ *Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Wallace, J. (Oct. 14, 2013) (Judicial Action Form) (D.I. 198).

properly prepare.⁵ When the Court granted this second trial continuance, however, it ordered that Plaintiff would be assessed certain costs incurred by Defendants related to the continuance.⁶ Mr. Gillen has not argued that he was improperly assessed costs associated with this trial continuance, but only that the Defendants “did not include a detailed accounting of those charges . . . [did] not give a breakdown as to how those charges were incurred . . . and have clearly not complied with the Court’s order . . . and therefore their [request for costs] should be denied by the Court.”⁷

(4) The Delaware Supreme Court has recently spoken to the importance of this Court’s trial scheduling orders and the necessity of the parties to follow the procedures and deadlines set forth therein,⁸ an ultimate goal of which is to ensure that trials go forward as scheduled.⁹

⁵ See *Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Wallace, J. (Oct. 21, 2013) (Superceding Scheduling Order) (D.I. 209).

⁶ *Id.*

⁷ Pltf’s Resp. at ¶¶ 2-3.

⁸ E.g., *Christian v. Counseling Resource Associates, Inc.*, 60 A.3d 1083 (Del. 2013); *Turner v. Delaware Surgical Group, P.A.*, 67 A.3d 426, 429 (Del. 2013) (noting that parties must comply with the provisions of the Court’s Rule 16(e) trial scheduling order).

⁹ See *Christian*, 60 A.3d at 1088 (“When time is set aside for a trial and the trial is continued, the original trial days are lost. The trial court can turn to other matters, but other litigants awaiting trial generally cannot be substituted. Thus, rescheduling a trial date usually means setting a date that is often another year or more away, after all other scheduled trials.”)

(5) The proceeding penultimate to trial is the pretrial conference. “The pretrial conference and order is designed to familiarize the litigants with the issues in the case; reduce surprises at trial; and facilitate the overall litigation process.”¹⁰ The pretrial order, which is entered following the pretrial conference, “controls the subsequent course of the action.”¹¹ Here Mr. Gillen’s actions in the months leading up to trial frustrated the processes set forth in the Court’s trial scheduling orders – i.e., the ability to submit a complete pretrial stipulation, to have a meaningful pretrial conference, and ultimately conduct the trial as scheduled. Given these failures the Court, on the occasion where it was necessary to reschedule the trial for a second time, sanctioned the Plaintiff for these violations.¹²

(6) This Court has inherent authority to impose sanctions for the violation of orders which it enters (or, in this case, attempts to enter) pursuant to Superior Court Civil Rule 16 and to assess reasonable costs for

¹⁰ *Cebenka v. Upjohn Co.*, 559 A.2d 1219, 1225 (Del. 1989) (citing 6 C. Wright & A. Miller, *Federal Practice and Procedure* § 1522, at 566 (1971)).

¹¹ Super. Ct. Civ. R. 16(a)(2).

¹² *Hill v. DuShuttle*, 58 A.3d 403, 406-07 (Del. 2013)(holding that trial court may and should use a continuum of lesser sanctions for violations of pretrial procedure and management).

those violations.¹³ In this case, the sanction which was imposed against Plaintiff was the direction to pay Defendants a portion of their counsel fees and costs which were directly related to his dilatoriness that caused two trial continuances and the duplication of effort in preparing multiple pretrial stipulations and responses to motions. Delaware courts have held that a party's negligence in meeting its obligations under Rule 16 can justify the imposition of sanctions in the form of counsel fees and costs.¹⁴ The imposition of costs should come as no surprise to Mr. Gillen; he sought and obtained just such sanctions earlier in this matter.¹⁵

(7) Having reviewed the parties' positions as to the appropriate costs to be assessed as sanctions in this matter, Plaintiff is ordered to pay

¹³ *Cebenka*, 559 A.2d at 1225; *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159-60 (Del. 1970).

¹⁴ *See, e.g., Simmons v. Bayhealth Medical Center, Inc.*, 2009 WL 74005 (Del. Super. Ct. Jan. 7, 2009) (recognizing this Court's inherent authority to impose sanctions for violations of order relating to pretrial procedure and management and imposing sanctions in the form of costs associated with the trial continuance).

¹⁵ *See Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Herlihy, J. (Aug. 10, 2010) (Order) (D.I. 21) (granting costs to Plaintiff associated with his motion to compel); *Gillen v. Continental Power Corp.*, Del. Super., C.A. No. N10C-05-090, Herlihy, J. (May 3, 2011) (Order) (D.I. 61) (granting Plaintiff's motion for discovery sanctions).

Defendants \$2,000 in attorneys' fees and \$997.69 in costs.¹⁶ Thus, Plaintiff is ordered to pay Defendants a total of \$2,997.69.

SO ORDERED this 8TH day of April, 2014.

/s/ Paul R. Wallace
PAUL R. WALLACE, JUDGE

Original to Prothonotary
cc: Counsel via File and Serve
Mr. Lawrence P. Gillen, *pro se*

¹⁶ See *Bader v. Fisher*, 504 A.2d 1091, 1096 (Del. 1986) (trial court's imposition of sanctions in the form of a reasonable, if not lenient, amount of attorney's fees and costs was no abuse of discretion under the circumstances).