

Georgia State University College of Law
Reading Room

Georgia Business Court Opinions

5-4-2012

Order on Motion for Sanctions (Avalon Holdings LLC)

Melvin K. Westmoreland
Fulton County Superior Court

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

Institutional Repository Citation

Westmoreland, Melvin K., "Order on Motion for Sanctions (Avalon Holdings LLC)" (2012). *Georgia Business Court Opinions*. 249.
<https://readingroom.law.gsu.edu/businesscourt/249>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact mbutler@gsu.edu.

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

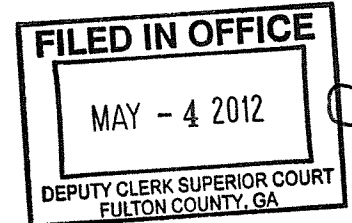
AVALON HOLDINGS, LLC, DARRYL)
B. MOORE, LAVERIA A. KNOWLES,)
and ALICE J. EKBERG,)

Plaintiffs,)

v.)

REGAL PLAZA FUNDING, LLC,)
AMERIS BANK, and WILLIAM P.)
MOSS, III, as Substitute Trustee Under)
Deed of Trust Date January 8, 2008,)

Defendants.)



Civil Action File No.
2009-CV-176138

ORDERON MOTION FOR SANCTIONS

This matter is before the Court on Defendant Ameris Bank’s (“Ameris”) Motion for Sanctions Against Plaintiff Darryl B. Moore. Upon consideration of the motion, the briefs submitted on the motion and the record of the case, the Court finds as follows:

Ameris moves the Court for sanctions against Plaintiff Darryl Moore (“Mr. Moore”) based on his failure to sit for a deposition pursuant to the Court’s Order of May 24, 2011, and subsequent scheduling orders. Specifically, Ameris seeks dismissal of Mr. Moore’s claims against it with prejudice, the entry of judgment against Mr. Moore on Ameris’s counterclaims against Mr. Moore and attorneys’ fees incurred in bringing this motion.

If a party fails to attend his deposition, the court may, among other things, issue “an order striking out pleadings or parts thereof...or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.” O.C.G.A. § 9-11-37(b)&(d). “[The] dismissal of a party’s pleadings for failure to respond to a discovery order is


an extreme sanction which is warranted only where there exists a clear record of delay or contumacious conduct, and a lesser sanction would not better serve the interests of justice.”

Serwitz v. General Elec. Credit Corp., 174 Ga. App. 747 (1985).

Ameris argues that Mr. Moore displayed willful and conscious indifference to the Court’s Orders and his discovery obligations, in particular, given his conduct on January 19, 2012, in failing to appear for a properly-noticed deposition. On the other hand, Mr. Moore points out that the parties agreed to extend the deposition schedule on many occasions and his counsel believed that Ameris would once again agree to accommodate Mr. Moore’s availability given his extended European stay. Additionally, Mr. Moore offers to reimburse Ameris for its fees incurred in bringing the instant motion and in deposing Mr. Moore on March 5, 2012.

Although the Court frowns upon Mr. Moore’s cavalier attitude towards fulfilling his discovery obligations, the Court does not find his behavior so extreme as to warrant the imposition of the most severe sanctions. Furthermore, the Court does not believe that Ameris’s position was so compromised by the delay that dismissal of Mr. Moore’s claims and entry of default judgment against him is the appropriate remedy. Accordingly, Mr. Moore is **ORDERED** to pay the fees incurred by Ameris in advancing the instant motion and for the deposition taken March 5, 2012. Ameris’s motion is **GRANTED**, in part, **DENIED**, in part, consistent with this ruling.

SO ORDERED this 4th day of May, 2012.


MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies sent electronically to:

Attorneys for Plaintiffs	Attorneys for Defendants
<p>James M. Johnson, Esq. KNIGHT JOHNSON LLC One Midtown Plaza 1360 Peachtree Street Suite 1201 Atlanta, GA 30309 jjohnson@knightjohnson.com</p>	<p><u>Attorneys for Defendant One Georgia Bank and William P. Moss, III, as Substitute Trustee Under Deed of Trust Dated January 8, 2008:</u> Paul G. Durdaller, Esq. Gregory G. Schultz, Esq. Donald P. Boyle, Jr., Esq. TAYLOR ENGLISH DUMA LLP 1600 Parkwood Circle, Suite 400 Atlanta, GA 30339 pdurdaller@taylorenghish.com gschultz@taylorenghish.com dboyle@taylorenghish.com</p> <p>Regal Plaza Funding, LLC C/O Michael Shenk, Registered Agent 1405 Old Alabama Road, Suite 110 Roswell, GA 30076</p>
<p><u>Receiver:</u> Michael J. Gorby Ledic Management Group LLC Gorby, Peters & Associates, P.C. Two Ravinia Drive, Ste. 1500 Atlanta, GA 30346-1204 Phone: (404) 239-1150 Ext. 101 Fax: (404) 239-1179 mgorby@gorbypeters.com</p>	