

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

**KIMBERLY AINSWORTH and WAYNE
AINSWORTH, as parents and natural
Guardians of BRANDON AINSWORTH,
Minor,**)

Plaintiffs,)

v.)

**FIGARO ENGINEERING COMPANY,
a Japanese Corporation; and
FIGARO USA, INC., an Illinois Corporation,**)

Defendants.)

Case No. 10 L 10733

ORDER

This matter has come before the Court on motions filed simultaneously by the two defendants, specifically Motion of Figaro USA, Inc. to Reconsider Default Orders and Motion of Figaro Engineering to Reconsider Default Orders. The plaintiffs thereafter submitted their response memorandum to which the defendants have replied. Proper notice has been given and all parties are represented by their respective counsel. The Court, being advised in the premises and considering the matters on file herein, FINDS as follows:

1. The Court has ordered the defendants to comply with discovery requests and obligations repeatedly. Those orders are reflected in the orders that have been filed herein as well as in the transcripts of the many hearings that have been conducted in this matter. The orders include, but are not limited to, the Order entered on December 7, 2011.
2. This case was filed in the Circuit Court of Cook County on September 20, 2010 relevant to the injuries claimed by a minor (Brandon O. Ainsworth) as a consequence of a carbon monoxide exposure on December 4, 2002 in Seward County, Kansas. Prior to the filing in Cook County, a case had been instituted in the Twenty-Sixth Judicial District Court in and for Seward County, Kansas (the "Kansas litigation") for injuries claimed by Mr. and Mrs. Ainsworth, Hailey and Jamie Ainsworth, and Brandon Ainsworth. During the course of the Kansas litigation, a Motion for Leave to File Third Party Petition was filed on June 19, 2006, seeking the addition of Figaro Engineering, Inc. and Figaro USA as defendants in that case. On August 14, 2006, the law firm of Sherman Taff Bangert Thomas & Coronado entered its appearance in that litigation and filed a motion to dismiss the third party petition on behalf of both of the Figaro entities. Ultimately, Figaro USA remained a party in that case while Figaro Engineering was dismissed by an Order of August 6, 2007 by the District Court of Seward County on the basis that the Kansas Court lacked personal jurisdiction over Figaro Engineering.

3. Within the Kansas litigation, the Ainsworth plaintiffs served interrogatories and document requests on both Figaro entities on October 17, 2006. On March 20, 2007 in the Kansas litigation, the Ainsworth plaintiffs also served additional interrogatories and document requests that were specifically directed to Figaro Engineering.
4. In response to discovery requests submitted by the plaintiffs in this litigation and prior to December 7, 2011, the Figaro defendants submitted information and documentation concerning the destruction by chemical liquification of the following quantity of documents:
 - a. 1,660 kilograms of documents delivered on December 27, 2002.
 - b. 1,570 kilograms of documents delivered on January 30, 2003.
 - c. 460 kilograms of documents delivered on June 25, 2003.
 - d. 210 kilograms of documents delivered on August 21, 2006.
 - e. 2,310 kilograms of documents delivered on February 22, 2007.
 - f. 2,490 kilograms of documents delivered on March 15, 2008.
 - g. 980 kilograms of documents delivered on March 18, 2008.
 - h. 970 kilograms of documents delivered on September 16, 2008.
 - i. 1,810 kilograms of documents delivered on September 6, 2010.
5. The instances of destruction that were reported prior to December 7, 2011 and the manner in which they coordinated with events in the Kansas litigation are discussed in Footnote 3 (pages 4-5) of Plaintiffs' Joint Response to Defendants' Motions to Reconsider Default Orders dated September 14, 2012.
6. After repeated violations of this Court's orders and after repeated violations of the defendants' discovery obligations, the Court entered an order on December 7, 2011 that required the defendants to fully answer and respond to each interrogatory and each production request propounded by the plaintiffs in the instant matter by December 19, 2011. The order also provided that failure to comply with those requirements would result in an assessment against the defendants, jointly and severally, in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per day, an amount that was to double in two week intervals if the failure to comply continued.
7. On January 13, 2012, the plaintiffs submitted their Motion for Rule 219(c) Sanctions Against Defendants Figaro Engineering Company and Figaro USA. The parties submitted their respective memoranda, proper notice was given, and all parties were represented by their respective counsel. On March 28, 2012, being advised in the premises, and having considered the matters on file herein, the Court granted plaintiffs' motion as reflected in the Order entered thereon as well as in accordance with the Court's ruling as reflected in the transcript of the hearing. The Court entered an order of default as to liability against Defendants Figaro Engineering and Figaro USA and affirmed the December 7, 2011 order of monetary sanctions against the defendants.

8. On April 19, 2012, the defendants served their Motion to Vacate Orders of Default and Sanctions; Or, in the Alternative, Motion for Contempt Order; and Motion to Stay Damages Discovery Until Liability is Resolved. The parties submitted their respective memoranda, proper notice was given, and all parties were represented by their respective counsel. On June 4, 2012, being advised in the premises, and having considered the matters on file herein, the Court denied defendants' motion as reflected in the Order entered thereon as well as in accordance with the transcript of the hearing. The findings detailed in that Order are reaffirmed herein.
9. In September of 2012, the defendants submitted two related motions, Motion of Figaro Engineering to Reconsider Default Orders and Motion of Figaro USA, Inc. to Reconsider Default Orders. The parties submitted their respective memoranda, proper notice was given, and all parties were represented by their respective counsel.
10. In connection with their September 2012 motions, the Figaro defendants submitted information and documentation on September 7, 2012 concerning the destruction of additional documents that had not been previously disclosed. This information included the following:
 - a. 129 boxes of documents were destroyed or scheduled for destruction on August 9, 2010.
 - b. 96 boxes of documents were assembled for destruction on December 7, 2011 and were ultimately destroyed on December 19, 2011.
 - c. 71 boxes of documents were assembled for destruction on December 22, 2011 and were ultimately destroyed on January 16, 2012.
11. This Court has reviewed multiple and lengthy depositions that were taken of officials of each of the defendants.
12. Each of the defendants has repeatedly and flagrantly violated the orders of this Court, including the failure to fully and completely respond to interrogatories and document requests. It is noted that both defendants were represented by the same attorneys in the Kansas litigation and that they are likewise both represented by the same attorneys in this matter. It is also noted that officers and/or directors of one of the Figaro entities have also served as officers and/or directors of the other Figaro entity.
13. The defendants have failed to meet the criteria required under Illinois law for the granting of a motion to reconsider. There is no misapplication of existing law. There is no newly discovered evidence that was unavailable at the time of the ruling that would be unsupportive of the Court's rulings. There has been no establishment of any change in existing law.
14. The record is replete with numerous court orders regarding the defendants' non-compliance with their discovery obligations and with the orders of this Court. The

misconduct of the defendants fully and deservedly warrants the imposition of Illinois Supreme Court Rule 219(c) sanctions, including default and monetary assessments.

15. The actions of the defendants, and each of them, have been intentional and egregious, deliberate and contumacious, and have fully demonstrated an unwarranted disregard of the Court's authority and the fundamental rights of the plaintiffs.
16. It is appropriate that default on all issues of liability be entered against each of the defendants for their violations of their discovery responsibilities, their violations of the multiple orders of this Court, and their violations of Rule 219(c).
17. It is appropriate that monetary sanctions be levied against the defendants, jointly and severally, in accordance with the assessment schedule specified in the Court's order of December 7, 2011. Those assessments are appropriately levied from December 20, 2011 through and including March 28, 2012, being the date this Court ruled on Plaintiffs' Motion for Rule 219(c) Sanctions Against Defendants Figaro Engineering Company and Figaro USA. Accordingly, the total monetary assessment against the defendants, jointly and severally, should be the sum of Five Million Eighty-Five Thousand Dollars (\$5,085,000.00) to be paid to the Circuit Court of Cook County at the time judgment is ultimately rendered in this case or settlement otherwise achieved between plaintiffs and defendants.

IT IS HEREBY ORDERED:

1. The Motion of Figaro USA, Inc. to Reconsider Default Orders shall be, and hereby is, denied.
2. The Motion of Figaro Engineering to Reconsider Default Orders shall be, and hereby is, denied.
3. Pursuant to the provisions of Rule 219(c) and the Court's authority, judgment by default against each of the defendants on all issues of liability was ordered on March 28, 2012 and that order shall be, and hereby is, reaffirmed herein.
4. Pursuant to the provisions of Rule 219(c) and the Court's authority, a monetary assessment in the amount of Five Million Eighty-Five Thousand Dollars (\$5,085,000.00) shall be, and hereby is, levied against the defendants, jointly and severally, to be paid to the Circuit Court of Cook County at the time judgment is ultimately rendered in this case or settlement otherwise achieved between plaintiffs and defendants.
5. The parties shall be, and hereby are, ordered to appear for the next case management conference at 11:30 a.m., January 2, 2013, at which time a schedule will be adopted for the conclusion of any remaining damage discovery, including damage experts for all parties. Counsel for plaintiffs and counsel for defendants shall submit their proposed

discovery schedule to the Court on or before December 27, 2012 and shall provide copies of such proposals to the Guardian Ad Litem by the same date.

ENTER

ENTER: JAN - 8 2013

KATHY M. FLANAGAN #267

JUDGE

NO.

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