

STATE OF MICHIGAN
COURT OF APPEALS

BERGIN FINANCIAL, INC., d/b/a PERFECT
MORTGAGE, INC.,

UNPUBLISHED
September 16, 2008

Plaintiff-Appellant,

v

No. 278088
Oakland Circuit Court
LC No. 2005-063743-CB

DELSEAN LITTLEJOHN,

Defendant-Appellee,

and

AMERICAN HOME MORTGAGE
CORPORATION,

Defendant.

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant Delsean Littlejohn's (defendant) motion to strike a response brief filed by plaintiff as untimely, and to obtain entry of an accelerated order granting summary disposition. We reverse and remand for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court erred in entering the order being appealed, contending that the dismissal of plaintiff's claims was too drastic a sanction for the untimely filing (by nine days) of the response brief to defendant's motion for summary disposition, particularly because the cause for the late filing was the negligence of a single attorney in the firm representing plaintiff.

We review the trial court's refusal to consider the brief filed after the deadline set in its scheduling order for an abuse of discretion. See *Kemerko Clawson, LLC v RXIV, Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005). A trial court has no obligation to consider whether enforcing a scheduling order is just under the circumstances. See *Kemerko Clawson, supra* at 352-353. In other words, a trial court has the discretion to categorically refuse to consider a brief filed after the time set by a scheduling order. See also *EDI Holdings LLC v Lear Corp*, 469 Mich 1021; 678 NW2d 440 (2004) (reinstating an order granting summary disposition to the

plaintiff because this Court “clearly erred in finding that the [circuit court] abused its discretion when it enforced the summary disposition scheduling order”). Accordingly, the trial court was not required to consider plaintiff’s argument to the effect that the negligence of a particular attorney should have been considered an excuse for the late filing. A party is responsible for inaction by the party’s agent. *Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 224; 600 NW2d 638 (1999). The trial court did not abuse its discretion in striking plaintiff’s response brief.

The trial court also, however, granted defendant’s request for an accelerated order for summary disposition in its favor. Plaintiff, while not responding in a timely manner to defendant’s motion for summary disposition, had timely filed its own motion for summary disposition--with documentary evidence attached--which was still pending at the time the trial court entered its order of dismissal. Under the circumstances of this case, this motion and the accompanying brief served, in essence, as a proper “response” to defendant’s motion for summary disposition. In granting defendant’s summary disposition motion, the trial court ignored the fact that plaintiff had, in fact, properly submitted documentary evidence in support of its position (albeit in a different form and under different title than that of a timely “responsive brief”). Reversal is thus necessary and, on remand, the trial court is directed to examine the respective summary disposition motions on their merits.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto