IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CARMEN AYALA and DAVID PADILLA,	)	
Plaintiffs,	)	
v.	)	C.A. No. 99-216 GMS
P. ANGELO AND SONS, INC., CHEVY CHASE BANK, and ABCO INDUSTRIES, INC.,	)	
Defendants.	)	
v.	)	
MELVIN SKLAROFF and CAROL SKLAROFF,	)	
Third-Party Defendants.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

The plaintiffs, Carmen Ayala and David Padilla ("the plaintiffs"), initiated this action against the defendants, Chevy Chase Bank ("Chevy Chase"), P. Angelo and Sons, Inc. ("Angelo"), and ABCO Industries, Inc. ("ABCO") (collectively "the defendants") on April 1, 1999. The plaintiffs asserted federal and state law claims based on the defendants' alleged failure to complete improvements to their home and to adequately disclose the terms of the financing agreement to which the plaintiffs contractually agreed. The plaintiffs were represented by Susan E. Flood, Esq. ("Flood") of Legal Services Corporation of Delaware.

Chevy Chase answered the complaint, cross claimed against Angelo and ABCO, and asserted third party claims against Melvin and Carol Sklaroff ("the Sklaroffs"). On January 6, 2000, the

court entered default judgments against Angelo and ABCO for failure to respond to the Complaint. On January 5, 2000, Chevy Chase and the Sklaroffs entered into a stipulation of dismissal with respect to Chevy Chase's third party complaint. Thus, the plaintiffs and Chevy Chase were the only remaining active litigants in this action. At a March 8, 2000 mediation before Magistrate Judge Thynge, the plaintiffs and Chevy Chase reached a tentative settlement agreement. However, Chevy Chase's subsequent efforts to effectuate the settlement were stalled by a break in communication between the parties.

Almost a year later, on February 14, 2001, Flood filed a motion for leave to withdraw as the plaintiffs' counsel. In her motion, Flood stated that the plaintiffs had failed to respond to any of her letters or telephone calls. The court granted Flood's motion to withdraw and sent notice of the ruling to the plaintiffs.

On April 23, 2002, the court notified the plaintiffs of a status conference set for May 14, 2002. The plaintiffs failed to appear. Due to the plaintiffs continued inaction with regard to this matter, Chevy Chase filed the present motion to dismiss for failure to prosecute. Because the plaintiffs have failed to prosecute their cause of action, or effectuate a settlement, for over two years, the court will grant the motion to dismiss.

II. DISCUSSION

Since the sanction of dismissal is a drastic one, it is only appropriate when a litigant acts in "flagrant bad faith" or with "callous disregard"of the court's orders. *See Harris v. City of Philadelphia*, 47 F.3d 1311, 1330 n. 18 (3d Cir. 1995). The court may also impose this sanction under its inherent power "to prevent undue delays in the disposition of pending cases and to avoid congestion in [its] calendar[.]" *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-631 (1962).

Upon review of the plaintiffs' record of inaction in this case, the court concludes that dismissal is warranted. The plaintiffs affirmatively ignored the court's April 23, 2002 scheduling order and failed to appear for the May 14, 2002 status conference. Indeed, they have failed to participate in any of the proceedings before the court since March 8, 2000. These actions rise to the level of "callous disregard" of the court's orders and its docket management concerns. Thus, the court finds itself with no other choice than to bring to an end a matter that the plaintiffs appear unwilling to prosecute.

III. CONCLUSION

For these reasons, IT IS HEREBY ORDERED that:

1. Chevy Chase's Motion to Dismiss for Failure to Prosecute (D.I. 49) is GRANTED.

2. The Clerk of the Court shall close the case.

Dated: July10, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE