

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

JOHN J. GUMBS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. ST-13-CV-62
	)	
BUREAU OF CORRECTIONS,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's motion to dismiss. For the following reasons, Defendant's motion will be granted.

FACTUAL AND PROCEDURAL HISTORY

On January 8, 2013, Plaintiff, acting *pro-se*, filed a "Motion to Compel" demanding that Defendant send him his "legal documents, other important materials ..., books, religious and educational material, [and other] remaining property" from the Golden Grove Correctional Facility on St. Croix.¹ On May 28, 2013, the Court denied Plaintiff's motion and dismissed the case without prejudice because Plaintiff had not filed a complaint in compliance with Superior Court Rule 22 and Federal Rule of Civil Procedure 8. Plaintiff filed an "Amended Complaint,"² and Defendant filed a motion to dismiss³ on the grounds that Plaintiff failed to serve the Governor of the Virgin Islands with a copy of the summons and pleadings as required by Superior Court Rule 27(b) and Federal Rule of Civil

¹ Motion to Compel, at page 1.

² Plaintiff filed his pleading on July 8, 2013.

³ Defendant filed its motion on June 30, 2014.

Procedure 4(j)(2).⁴ Through a Memorandum Opinion and Order dated June 26, 2015, the Court denied Defendant's motion to dismiss, outlined Plaintiff's procedural mistakes, and gave Plaintiff an extension of time to amend his "Amended Complaint" to comply with Federal Rule of Civil Procedure 10(b) and to properly serve Defendant with a copy of the summons and the amended pleadings in compliance with Federal Rule of Civil Procedure 4. Plaintiff filed a Complaint on July 24, 2015, mailed a copy to Defendant's Warden Diane Prosper and Acting Director Rick Mullgrav and delivered a copy to the Attorney General's Office. Defendant filed another motion to dismiss on October 26, 2015, again asserting that Plaintiff failed to properly serve Defendant.

STANDARD

Superior Court Rule 27(b) establishes that "the summons and process shall be served in the same manner as required to be served by Rule 4 of the Federal Rules of Civil Procedure."⁵ The Bureau of Corrections is an agency within the Executive Branch of the Governor of the Virgin Islands.⁶ It is administered by a director rather than a warden.⁷ Federal Rules of Civil Procedure 4(j) requires that "a state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by delivering a copy of the summons and of the complaint to its chief executive officer." The chief executive officer of the Government of the Virgin Islands is the Governor of the

⁴ The evidence indicated that Plaintiff mailed copies of the "Amended Complaint" to the Warden at the Bureau of Corrections and to the Attorney General.

⁵ Rule 27(b) also provides that "all references to 'United States or any officer or agency of the United States' shall be read instead 'Virgin Islands or any officer or agency of the Virgin Islands.' "

⁶ 3 V.I.C. § 372.

⁷ 3 V.I.C. §§ 373, 374.

Virgin Islands.⁸ As a result, “a plaintiff suing a department of the Government of the Virgin Islands must serve a summons and the complaint on the Governor of the Virgin Islands.”⁹ In addition, service must be accomplished “within 120 days after the complaint is filed,” failing which the court “must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”¹⁰

ANALYSIS

Here, the Court gave Plaintiff ample opportunity to comply with the procedure rules in the thirteen months since Gumbs first filed his Motion to Compel. The Court granted Plaintiff an extension of time to perfect service upon Defendant through an Opinion and Order dated June 26, 2015. In the Opinion, the Court referred to the procedures that needed to be followed and strongly recommended that Plaintiff consult with an attorney regarding the pleading requirements of the Court. The Court also warned Plaintiff that his failure to comply with the Superior Court Rules and the Federal Rules of Civil Procedure could result in the dismissal of his claims.

Plaintiff still has not complied with the rules of procedure. He has failed to properly serve the Governor of the Virgin Islands as required by Federal Rule of Civil Procedure 4(j) and Superior Court Rule 27(b). Although *pro se* litigants are given much latitude by the trial court, they are “generally ... required to inform themselves regarding procedural

⁸ See 48 U.S.C. § 1591 (stating “[t]he executive power of the Virgin Islands shall be vested in an executive officer whose official title shall be the ‘Governor of the Virgin Islands’”).

⁹ *Dutch W. Indian Trading Co. v. Gov’t of the V.I.*, 2014 V.I. LEXIS 66, *3-5 (V.I. Super. Ct. Aug. 26, 2014). See also *Jarvis v. Gov’t of the Virgin Islands*, 2009 U.S. Dist. LEXIS 11993, at *3 (D.V.I. 2009) (requiring that pursuant to Rule 4(j), a plaintiff must serve the summons and complaint on the Governor of the Virgin Islands when suing the Virgin Islands Bureau of Internal Revenue).

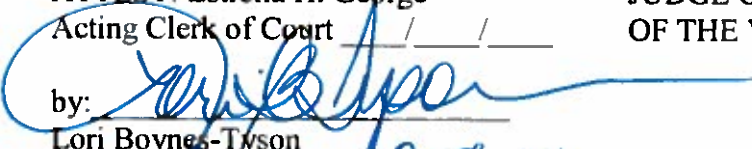
¹⁰ Fed. R. Civ. P. 4(m) (2015).

rules and to comply with them."¹¹ Given that Plaintiff has not demonstrated good cause to extend the time limit for service under Fed. R. Civ. P. 4(m) for a second time,¹² Plaintiff's amended Complaint will be dismissed.

An Order consistent with this Opinion shall follow.

Dated: February 4, 2016

ATTEST: Estrella H. George
Acting Clerk of Court

by: 

Lori Boynes-Tyson
Court Clerk Supervisor 2/8/16


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

¹¹ *Peebles v. Moses*, 40 V.I. 75, 77, 1999 V.I. LEXIS 5, *4, 1999 WL 117764 (V.I. Terr. Ct. 1999) (citing *Edwards v. Immigration and Naturalization Services*, 59 F.3d 5, 8 (2d Cir. 1995)). See also *Simpson v. Bd. of Dirs. of Sapphire Bay Condominiums West*, 62 V.I. 728, 732, 2015 V.I. Supreme LEXIS 18, *7 (VI. 2015) ("even though this Court has a policy of giving greater leeway to pro se litigants, pro se status alone is not sufficient to justify a party's failure to follow procedural rules"); see also *Appleton v. Harrigan*, 61 V.I. 262, 267-68 (V.I. 2014).

¹² The Court notes that Plaintiff was granted an extension of time to properly serve Defendant in part because Plaintiff was incarcerated at the time his "Amended Complaint" was filed. However, Plaintiff has submitted evidence that he was released from incarceration and was on parole in June 2015. See Plaintiff's motion to dismiss, dated June 4, 2015, in Case No. ST-15-CV-195. While Plaintiff indicates that he is under medical treatment, he continues to represent himself and prosecute his claims in this matter and in Case No. ST-15-CV-195. As a result, there is no evidence before the Court indicating that Plaintiff was prevented from properly serving the Governor of the Virgin Islands in compliance with Fed. R. Civ. P. 4(j).