For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

ARNIM METIVIER, Appellant/Plaintiff, v. **LOCKHEED MARTIN CORP., ET AL**, Appellees/Defendants.	**S. Ct. Civ. No. 2020-0035** Re: Super. Ct. Civ. No. 056/2008 (STX)
SAMUEL PRIME, Appellant/Plaintiff, v. **LOCKHEED MARTIN CORP., ET AL**, Appellees/Defendants.	**S. Ct. Civ. No. 2020-0036** Re: Super. Ct. Civ. No. 295/2008 (STX)
JOHN A. WEEKES, Appellant/Plaintiff, v. **LOCKHEED MARTIN CORP., ET AL**, Appellees/Defendants.	**S. Ct. Civ. No. 2020-0037** Re: Super. Ct. Civ. No. 244/2011 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Robert A. Molloy

Argued: June 8, 2021
Filed: March 30, 2023

Cite as: 2023 VI 4

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

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OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Frederick Metivier, Hollis Prime, and Tamyka Khan (collectively "the Appellants") appeal from the Superior Court's April 26, 2020 opinion and order, which denied their motions to substitute themselves as the personal representatives of the deceased Arnim Metivier, Samuel Prime, and John A. Weekes (collectively "the deceased plaintiffs") in the above-captioned cases and dismissing the deceased plaintiffs' claims in their entirety. For the reasons that follow, we reverse the order and judgment below, and remand all three cases to the Superior Court to consider the relevant factors under Rule 6(b) of the Virgin Islands Rules of Civil Procedure, which may require that it conduct an evidentiary hearing.

I. BACKGROUND

¶ 2 The deceased plaintiffs separately filed suits against Lockheed Martin Corporation and various other defendants, alleging that they had been exposed to bauxite and silica dusts, as well as asbestos, while working at a former alumina refinery on St. Croix. In *Metivier*, Frederick filed a motion for leave to substitute himself for his father, Arnim, on June 6, 2018, noting that Arnim had died on April 7, 2013, and that he had been appointed as personal representative for Arnim's Estate on March 12, 2018. In *Prime*, Samuel's son, Hollis, filed a motion to substitute himself as personal representative on August 5, 2019, more than nine years after Samuel died on January 9, 2010. In *Weekes*, Khan, Weekes's daughter, filed a motion for leave to substitute herself as her father's personal representative, noting that he had died on October 17, 2016. Lockheed Martin Corporation opposed all three motions in each case on the ground that Rule 25(a) of the Virgin Islands Rules of Civil Procedure, as well as title 5, section 78 of the Virgin Islands Code, provides that the Superior Court may grant a motion to substitute a party within two years after death. The Appellants, however, asserted that the limitations periods set forth in Rule 25(a) and section 78 were subject to extension for excusable neglect or other good cause, and argued that the factual circumstances in their individual cases warranted permitting the substitutions.

¶ 3 The Superior Court consolidated the three cases, along with five other unrelated cases against different defendants where the plaintiffs who filed the original complaints had died during the pendency of the litigation, for the limited purpose of issuing a single April 26, 2020 opinion and order. *In re Deceased Plaintiffs*, 73 V.I. 165 (V.I. Super. Ct. 2020). The Superior Court determined that the two-year limitations period, while not jurisdictional, was nevertheless mandatory, and could not be extended. Consequently, the Superior Court denied the Appellants' motions for substitution, and dismissed all the deceased plaintiffs' claims. *Id*. at 199. The

Appellants each timely filed separate notices of appeal with this Court on May 29, 2020, V.I. R. APP. P. 5(a)(1), which were consolidated for purposes of oral argument.

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 4 Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d). Title 4, section 32(a) of the Virgin Islands Code vests this Court with jurisdiction over "all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court." Because the Superior Court's April 26, 2020 opinion and order resolved all claims between all the parties in all three of the above-captioned cases, it is a final judgment within the meaning of section 32(a), thereby conferring jurisdiction on this Court. *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 578 (V.I. 2012).

¶ 5 This Court reviews the denial of a motion to substitute a party after death only for abuse of discretion. *Hodge v. McGowan*, 50 V.I. 296, 305 (V.I. 2008) (citations omitted). "An abuse of discretion involves a finding of clearly erroneous fact, an errant conclusion of law, or an improper application of law to fact." *Shoy v. People*, 55 V.I. 919, 925 (V.I. 2011) (citations omitted).

B. Extension of Two-Year Limitations Period

¶ 6 Rule 25(a)(1) of the Virgin Islands Rules of Civil Procedure provides, in its entirety, that

> If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. The motion may be granted at any time within two years after the death.

The first two sentences of Virgin Islands Rule 25(a)(1) are word-for-word identical to Rule 25(a)(1) of the Federal Rules of Civil Procedure, but the last sentence is markedly different. While

Virgin Islands Rule 25(a)(1) provides that a motion for substitution may be granted within two years after death, Federal Rule 25(a)(1) provides that such a motion be made "within 90 days after service of a statement noting the death." And although Federal Rule 25(a)(1) expressly states that "the action by or against the decedent must be dismissed" if a motion for substitution is not made within this 90-day period, Virgin Islands Rule 25(a)(1) does not provide for dismissal or any other consequence if the court does not grant a motion for substitution within two years after death.

¶ 7 As the Superior Court recognized in its April 26, 2020 opinion, this Court, in a decision issued prior to the March 31, 2017 effective date of the Virgin Islands Rules of Civil Procedure, held that Federal Rule 25(a)(1) did not apply to proceedings in the Superior Court pursuant to former Superior Court Rule 7[1] because the 90-day limitations period in the federal rule was facially inconsistent with title 5, section 78 of the Virgin Islands Code, which provides that

> No action shall abate by the death or disability of a party or by the transfer of any interest therein, if the cause of action survives or continues. In case of the death or disability of a party, the court may at any time within two years thereafter, on motion, allow the action to be continued by or against his personal representatives or successor in interest.

See Sweeney v. Ombres, 60 V.I. 438, 442-43 (V.I. 2014). Therefore, the drafters of the Virgin Islands Rule 25(a)(1), consistent with this Court's *Sweeney* precedent, deliberately declined to adopt the last sentence of Federal Rule 25(a)(1) and instead utilized language that largely tracks the provisions of section 78.[2] *See* REPORT OF THE ADVISORY COMMITTEE ON RULES ON THE V.I.

[1] "The practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by . . . the Federal Rules of Civil Procedure . . . ." Former SUPER. CT. R. 7 (repealed Feb. 15, 2019).

[2] In its April 26, 2020 opinion, the Superior Court cites *Jones v. Lockheed Martin Corp*., 68 V.I. 158 (V.I. Super. Ct. 2017), for the proposition that in adopting Virgin Islands Rule 25(a)(1), this Court may have "implicitly repealed" or otherwise superseded section 78. *See Gerace v. Bentley*, 65 V.I. 289, 302–03 (V.I. 2016) ("[T]he overwhelming majority of other jurisdictions where the

RULES OF CIV. PRO. ("[M]uch of Virgin Islands civil practice is regulated by statutes, and—where feasible—the wording of the new Virgin Islands Rules of Civil Procedure make reference to the governing statutes, either in the text of the Rules . . . or in short 'drafting notes' that accompany the initial set of the Rules of Civil Procedure.").

¶ 8 In their appellate briefs, the Appellants do not dispute that their motions for substitution were all untimely under Virgin Islands Rule 25(a)(1).[3] Nevertheless, they maintain that Rule 6(b)(1) of the Virgin Islands Rules of Civil Procedure authorizes the Superior Court to extend the time for a litigant to file, and the court to grant, a motion for substitution under Virgin Islands Rule 25(a)(1). Importantly, they emphasize that although Virgin Islands Rule 6(b)(2) enumerates certain deadlines that can never be extended by the court—such as "the time to act under Rules

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legislature and the judiciary have been vested with concurrent authority to promulgate procedural rules have held that conflicts between rules promulgated by the judiciary and rules promulgated by the legislature are resolved in favor of the judiciary.")). However, neither the April 26, 2020 opinion nor the *Jones* decision explain precisely how Virgin Islands Rule 25(a)(1) is in any way inconsistent with section 78, let alone inconsistent to such an extent that section 78 could be characterized as having been implicitly repealed or superseded.

[3] While the Appellants appear to concede that their motions for substitution were untimely filed, this may not necessarily be the case. Unlike Federal Rule 25(a)(1), neither Virgin Islands Rule 25(a)(1) nor section 78 establish a deadline for a party or other individual to file a motion for substitution; rather, the two-year limitation period in Virgin Islands Rule 25(a)(1) and section 78 is expressly directed to the court. Moreover, Virgin Islands Rule of Civil Procedure 17(e) provides, with respect to wrongful death actions under 5 V.I.C. § 76 and survival actions under 5 V.I.C. § 77, that "the action may be prosecuted in the name of a plaintiff identified in the complaint as acting as a personal representative" without the need for court approval, subject to the authority of the court to replace the plaintiff as personal representative. In fact, in her motion to substitute, Hollis expressly relied on Rule 17 to argue that she was permitted to substitute herself for Samuel as of right at any time without court approval, given that Samuel's claims against Lockheed Martin had "aris[en] out of a wrong which result[ed] in physical injury." 5 V.I.C. § 77. Nevertheless, because the Appellants have not developed this argument on appeal, but instead proceed on the assumption that their motions were untimely, we decline to consider this possible construction on appeal without the benefit of any briefing by the parties and instead assume, without deciding, that all three motions were untimely.

50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b)," and "the period within which a motion may be made for a new trial, or for correcting an illegal sentence"—the filing or granting of a motion for substitution under Virgin Islands Rule 25(a)(1) is not among them.

¶ 9 The Superior Court correctly recognized that the two-year limitations period is not a jurisdictional mandate but is rather akin to a statute of limitations. *In re Deceased Plaintiffs*, 73 V.I. at 186. Yet while Virgin Islands Rule 6(b)(1) provides that "the court may upon a showing of good cause or excusable neglect, extend the date for doing [an] act" that is "required or allowed to be done by or within a specified period," and that Virgin Islands Rule 25(a)(1) applications are not excluded from this authority, *see* Virgin Islands Rule 6(b)(2), the Superior Court held that it lacked the authority to extend the two-year limitations period because "to construe 'two years after death' to mean 'two years after the [suggestion of] death' would be to [improperly] rewrite the rule." 73 V.I. at 194-95 (quoting *Rohn & Assocs., LLC v. Marshall A. Bell & Assocs., P.C.*, 71 V.I. 392, 409-10 (V.I. Super. Ct. 2019)).

¶ 10 But Virgin Islands Rule 25(a)(1) differs from Federal Rule 25(a)(1) in a critical respect: the federal rule includes a deadline upon which the action *must* be dismissed, whereas the Virgin Islands rule does not. Although the Superior Court acknowledged that "the federal rule mandates dismissal if more than 90 days have passed after death was suggested on the record, and the decedent's successor or representative has not come forward" and that "the Virgin Islands rule does not mandate dismissal," the Superior Court characterized this difference as only "not explicitly" mandating dismissal. 73 V.I. at 194. And while recognizing that "Rule 6(b) of the Virgin Islands Rules of Civil Procedure . . . does not reference Rule 25 as one of the rules under which '[a] court may not extend the time to act," *id.* (quoting V.I. R. CIV. P. 6(b)), it nevertheless determined that it "cannot necessarily read its omission to also mean its inclusion" because "[i]t is

clear that Virgin Islands Rule 25(a) was modeled after Federal Rule 25(a) and the body of case law construing that rule may properly be considered in construing the Virgin Islands rule." *Id.* Ultimately, the Superior Court held that it "cannot find that the Supreme Court of the Virgin Islands, when it borrowed the suggestion of death on the record requirement, . . . meant to delay the requirement of granting the motion 'within two years after the death.'" *Id.* (quoting V.I. R. CIV. P. 25(a)(1)).

¶ 11 We disagree. While portions of Virgin Islands Rule 25(a) were certainly modeled after Federal Rule 25(a), the decision to explicitly incorporate some—but not all—of the substantive language of a federal court rule into a Virgin Islands court rule is not evidence of an intent to implicitly adopt the portions of the federal rule that were omitted. On the contrary, this Court has repeatedly held that a deliberate choice to borrow some—yet not all—of the substantive language of another jurisdiction's court rule constitutes impressive evidence that it was not the intent to implicitly adopt the omitted provisions. *See In re V.I. Bar Ass'n*, 75 V.I. 393, 399-400 (V.I. 2021) (holding that this Court, by adopting verbatim Rules 5.5(a)-(b) of American Bar Association Model Rule of Professional Conduct 5.5, yet choosing not to similarly adopt Model Rules 5.5(c)-(e), made a "deliberate" decision to depart from the Model Rule); *Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017) (holding that the inclusion of language in Virgin Islands Rule of Civil Procedure 8 identifying the Virgin Islands as "a notice pleading jurisdiction" evidenced an intent to reject the heightened pleading standard of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), even when Virgin Islands Rule 8 was otherwise nearly word-for-word identical to Rule 8 of the Federal Rules of Civil Procedure); *Corraspe v. People*, 53 V.I. 470, 482 (V.I. 2010) (holding that prohibition on judicial participation in plea bargaining found in Rule 11 of the Federal Rules of Criminal Procedure did not apply to Superior Court proceedings because Superior Court Rule 126,

while adopting many aspects of the federal rule, did not codify that prohibition); *see also Hansen v. Bryan*, 68 V.I. 603, 609 n.3 (V.I. 2018) (holding that federal case law that interpreted a Florida state rule involving attorney's fees did not form a sufficient basis for the court to consider the federal court's interpretation in its own analysis of a Virgin Islands rule with different language that also involved attorney's fees).

¶ 12 Had this Court, in adopting Virgin Islands Rule 25(a), intended to make dismissal mandatory, it could have easily done so by simply preserving the explicit language found in Federal Rule 25(a) that "the action by or against the decedent must be dismissed." Likewise, if this Court intended to prohibit a party from ever obtaining an extension of time Virgin Islands Rule 6(b)(1) to file a motion for substitution under Virgin Islands Rule 25(a), it could have explicitly included a Rule 25 motion in the lengthy list of un-extendable deadlines delineated in Virgin Islands Rule 6(b)(2). That this Court chose not to adopt the mandatory dismissal language, and similarly elected not to identify the deadline to file a motion for substitution as an un-extendable deadline, is clear and dispositive evidence of our intent to adopt a different rule than the federal rule. Consequently, the Appellants were permitted to request, and the Superior Court authorized to grant, an extension of time to effectuate a substitution of parties pursuant to Virgin Islands Rule 6(b)(1).

C. Excusable Neglect or Good Cause for an Extension

¶ 13 The Superior Court committed error when it denied the Appellants' motions for substitution and dismissed the deceased plaintiffs' claims based on an erroneous belief that it could not extend the two-year limitations period under Virgin Islands Rule 6(b)(1). This error, however, would not necessarily compel reversal of the April 26, 2020 opinion and order, for the Superior Court held that even "assuming, arguendo, that Rule 6(b) of the Virgin Islands Rules of Civil

Procedure could apply to excuse the failure to comply with the two-year deadline . . . the [c]ourt cannot find good cause here." 73 V.I. at 195.[4] Because the Superior Court provided an alternate reason for denying the substitution motions and dismissing the claims, we may not reverse the April 26, 2020 opinion and order unless we areto also hold that the Superior Court erred with respect to this determination. *See* V.I. R. APP. P. 4(i) ("No error or defect in any ruling or order or in anything done or omitted by the Superior Court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.").

¶ 14 The Superior Court's reasons for declining to find good cause were different in all three cases, and each is therefore addressed separately in turn.

1. The *Metivier* Case

¶ 15 In its April 26, 2020 opinion, the Superior Court provided the following explanation to support its decision not to find good cause under Virgin Islands Rule 6(b)(1):

> Arnim passed away on April 12, 2013. Frederick filed an ex parte petition with the Probate Division approximately five years later, on March 2, 2018. Counsel represents that his "office lost contact with his," meaning Arnim's, "aged widow." Counsel eventually located Frederick and petitioned the court for his appointment. But counsel's own motion reveals that he knew that Arnim had died because he lost contact with Arnim's widow, meaning he had been in contact with her and knew that Arnim had passed. No excuse is proffered to explain why five years passed other than counsel's failure to keep in touch with his clients. But counsel no longer had a client once the plaintiff died. Cases belong to the parties, not the attorneys.

73 V.I. at 195-96 (internal citations and quotation marks omitted).

¶ 16 The Superior Court's findings are deficient in several respects. Virgin Islands Rule 6(b)(1)

[4] The Superior Court had concluded that "because the two-year deadline in section 78 was incorporated into Rule 25, good cause and excusable neglect are not factors for consideration in a motion to substitute." 73 V.I. at 197.

enumerates several factors that the Superior Court may consider in deciding whether to grant a request to extend the date for doing an act, including

> whether the request to extend time is made before or after the required date; the reason for the movant's delay; whether the reason for delay was within the reasonable control of the movant; the danger of prejudice to the parties; the length of the delay; the potential impact of the delay on judicial proceedings; whether the party seeking the extension has acted in good faith, and all other relevant circumstances surrounding the party's failure to meet the originally prescribed deadline.

V.I. R. CIV. P. 6(b)(1). Significantly, this portion of Virgin Islands Rule 6(b)(1) has no counterpart in the analogous federal rule. Rather, the Reporter's Note accompanying Virgin Islands Rule 6 reflects that this enumerated list of factors was codified in Rule 6(b)(1) to incorporate existing case law, and specifically cites to this Court's decisions in *Fuller v. Browne*, 59 V.I. 948 (V.I. 2013), *Beachside Assocs. v. Fishman*, 53 V.I. 700 (V.I. 2010), and *Brown v. People*, 49 V.I. 378 (V.I. 2008), which collectively identified these factors as ones that the Superior Court should consider when making a determination on a request to extend time. While it goes without saying that not every one of these factors will necessarily be relevant in every single case, the Superior Court did not make any findings with respect to many factors that are clearly relevant, such as whether the delay prejudiced any other parties, whether the delay impacted the proceeding, whether Frederick acted in good faith, and whether the reason for the delay was within Frederick's reasonable control. Rather, the Superior Court instead appears to have based its decision primarily on the amount of time that passed since Arnim's death and the conduct of Arnim and Frederick's counsel. The failure of the Superior Court to make appropriate findings on—and assign weight to—all the relevant Rule 6(b)(1) factors necessitates reversal.[5] *Accord, Halliday v. Footlocker Specialty Inc*.,

[5] Moreover, the Superior Court's findings with respect to the factors it analyzed appear to contradict each other, in that the Superior Court found that "[n]o excuse is proffered to explain

53 V.I. 505, 511 (V.I. 2010).

2. The *Prime* Case

¶ 17 The Superior Court stated that it would find no good cause for an extension in the *Prime* case because

> Hollis failed to disclose the date of Samuel's death in her August 5, 2019 motion, which is troubling, because [Lockheed Martin] represented that Samuel died on January 9, 2010. Thus, it appears Hollis was attempting to conceal the nine year delay. Because she did not disclose the delay, she also did not argue good cause. It was in her reply, filed by a different attorney, where she argued good cause. But arguments raised for the first time in a reply are deemed waived.

73 V.I. 196. As with the *Metivier* case, the Superior Court failed to analyze many of the Rule 6(b)(1) factors, focusing instead almost exclusively on the time that elapsed since Samuel's death. Moreover, while the Superior Court found that Hollis had attempted to conceal a nine-year delay, the record reflects that the August 5, 2019 motion had been filed by counsel and not Hollis personally, and Rule 6(b)(1) directs the court to consider whether the "*party* seeking the extension acted in good faith." (emphasis added.)

¶ 18 In addition, the Superior Court further erroneously stated that Hollis had raised the issue of good cause for the first time in a reply to Lockheed Martin's opposition. Although Hollis did not request an extension of time under Rule 6(b)(1) in her August 5, 2019 motion, that motion never even cited to Rule 25(a)(1), and instead cited only to Rule 17 of the Virgin Islands Rules of Civil Procedure, arguing that Rule 17 permits substitution as of right without the need for court approval in a survival action. In its opposition, Lockheed Martin disagreed with this interpretation of Rule 17, and argued that the motion was untimely under Rule 25(a)(1) and could not be extended

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why five years passed other than counsel's failure to keep in touch with his clients" but simultaneously found that "counsel no longer had a client once the plaintiff died."

because the two-year limitations period was mandatory and jurisdictional. Because the purpose of a reply is just that—to reply to the opposition—Hollis was certainly entitled to respond to Lockheed Martin's contention that Rule 25(a)(1) and not Rule 17 was the applicable rule and that the time under Rule 25(a)(1) could not be extended by making legal and factual arguments in support of such an extension.[6] Thus, it was error for the Superior Court to conclude that Hollis was required to first raise good cause in the August 5, 2019 motion, given that good cause is not even a factor to be considered under Rule 17(e).

3. The *Weekes* Case

¶ 19 The Superior Court stated in its April 26, 2020 opinion that it could not find good cause in any of the cases. But the Superior Court provided no explanation as to why this was the case for the *Weekes* case. The failure to provide any explanation whatsoever constitutes an abuse of discretion and necessitates reversal. *Halliday*, 53 V.I. at 511-12.

III. CONCLUSION

¶ 20 The Superior Court erred when it held that it lacked the authority to extend the two-year limitations period set forth in Rule 25(a)(1) of the Virgin Islands Rules of Civil Procedure or section 78 of title 5 of the Virgin Islands Code. While the Superior Court held, in the alternative, that it would not find good cause for an extension under Rule 6(b) of the Virgin Islands Rules of Civil Procedure, it failed to make sufficient and appropriate findings regarding the actions of the

[6] Significantly, although Hollis expressly argued that Rule 17 permitted substitution as of right without court approval and relied on that rule rather than Rule 25(a)(1), the Superior Court never considered this argument, but instead analyzed the motion as if it had only been brought under Rule 25(a)(1). This itself constituted error. *See Bryan v. Fawkes*, 61 V.I. 416, 476 (V.I. 2014) (citations omitted) ("[A] court can never exercise its discretion to simply ignore a claim that a party has brought squarely before it.").

parties–and not their counsel–to support that denial. Therefore, we reverse the April 26, 2020 opinion and order, and remand all three cases to the Superior Court to consider the relevant Rule 6(b) factors, which may require that it conduct an evidentiary hearing.[7]

Dated this 30th day of March, 2023.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

[7] We emphasize that our decision to remand this case to the Superior Court for appropriate findings does not preclude the Superior Court from ultimately concluding that there is no good cause or excusable neglect to warrant granting an extension. While Virgin Islands Rule 25(a)(1) does not mandate dismissal, Virgin Islands Rule 6(b) also does not mandate that an extension of time be granted. It may very well be the case, after weighing all the evidence, that the Superior Court may conclude that the length of the delay, any demonstrable, material prejudice to the opposing parties, and other relevant factors may nevertheless warrant denying the extension. Even so, the Superior Court should bear in mind that the party opposing a motion to substitute cannot claim to be prejudiced merely because it would be required to defend against the plaintiff's claims if the extension is granted. Rather, as we have explained, "[p]rejudice to the opposing party is generally demonstrated by either increased expense to the opposing party arising from the extra costs associated with filings responding to dilatory behavior or increased difficulty in the opposing parties' ability to present or defend their claim(s) due to the [untimely] behavior." *Molloy v. Indep. Blue Cross*, 56 V.I. 155, 189 (V.I. 2012) (citation omitted) (concluding that the Superior Court "correctly determined that there was no prejudice to the opposing part[ies]" where the opposing parties "failed to explain how the alleged dilatory behavior of the [plaintiffs] in any way hampered their ability to defend against the [plaintiffs'] claims."); *see also Watts v. Two Plus Two, Inc.*, 54 V.I. 286, 291-93 (V.I. 2010) (observing that "prejudice does not mean 'irremediable harm,'" but instead refers to "the burden imposed by impeding a party's ability to prepare effectively a full and complete trial strategy," and concluding that while "delay could cause memories to fade and perceptions of events to be altered," actual prejudice does not arise where the party claiming prejudice fails to establish that "witnesses ha[ve] actually become unavailable or ha[ve] forgotten about the incident" as a result of the delay (internal quotations omitted)).

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ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Reisha Corneiro
Deputy Clerk

Dated: March 30, 2023