
MEMORANDUM OPINION

⁶ See V. Compl., Jan. 14, 2011; Barshinger was also reelected as Senator-At-Large for the 30th Legislature.

the Legislature failed to reimburse \$45,701.47 to him for expenditures made to carry out his official duties.⁷

On February 2, 2011, in response to Barshinger's Complaint, the Legislature filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).⁸ On March 15, 2011, Barshinger filed an Opposition to the Legislature's Motion to Dismiss, along with a Motion for Injunctive Relief. The Court held a motions hearing on September 28, 2012, and partly granted the Legislature's Motion to Dismiss. The Court reasoned that Barshinger's claim under 2 V.I.C. § 76(d)⁹ is a non-justiciable political question that the Court will not address.¹⁰ However, the Court found that the second claim under 2 V.I.C. § 76(a) is a valid claim upon which relief can be granted.¹¹ Title 2 V.I.C. § 76(a) states that, "[e]ach member [of the Senate] shall receive a base allotment of 2% of the total budget of the Legislative Branch for the operation of the member's senatorial office." In light of the partial dismissal, the Court granted Barshinger leave to amend his Complaint, and reserved its ruling on Barshinger's Motion for Injunctive Relief. Barshinger did not file an amended Complaint, or take any further action in the case.

On December 11, 2012, the Legislature filed a Motion to Dismiss for Failure to Prosecute under Fed. R. Civ. P. 41(b). The Legislature argued that Barshinger had not prosecuted his claim, complied with Court orders, retained legal representation, or filed an Amended Complaint.¹² Barshinger did not respond to the Legislature's Motion. On February 19, 2013, the Court denied the Legislature's Motion, and found that Barshinger's noncompliance was not so egregious as to warrant a dismissal.¹³

On December 18, 2012, Barshinger filed a Second Motion for Injunctive Relief. Barshinger requests that the Court order the Legislature to transfer his 2% senatorial allotment to

⁷ Barshinger contends that he expended \$19,153.65, during the 26th Legislature; \$11,723.36 during the 28th Legislature; and an aggregate of \$14,824.55 during the 29th Legislature.

⁸ Fed. R. Civ. P. 12(b)(6) ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . . failure to state a claim upon which relief can be granted. . . .").

⁹ ("The member elected to the at-large seat, in addition to his base allotment, and in addition to any other allotment for chairing a senate committee, shall receive an additional allotment not to exceed 5% of the total budget of the Legislative Branch to provide for the staffing of member's offices in both districts. In the event the member elected to the at-large senate seat also becomes designated as the President of the Senate, that member's total allotment shall be no more than 3% of the budget of the Legislature Branch.").

¹⁰ Mem. Op., 3-4, Sept. 28, 2012.

¹¹ Order, 1, Sept. 28, 2012 ("While 2 V.I.C. § 76(a) entitles a senator to receive 2% of the total budget of the Legislative Branch in a given year, 2 V.I.C. § 76(d) operates as a cap for the 5% allotment and suggests that the Legislature has the discretion to determine whether a senator shall receive the full amount of the allotment in a given year. As a result, Barshinger states a claim upon which relief can be granted under 2 V.I.C. § 76(a), but presents a non-justiciable political question under 2 V.I.C. § 76(d).").

¹² Def.'s Mot. to Dismiss, Dec. 11, 2012.

¹³ See Mem. Op., Feb. 19, 2013 ("Assuming *arguendo* [that] The Legislature's allegations against Barshinger are true, Barshinger's alleged conduct indicates that Barshinger may have been dilatory in his obligations before this Court and has not engaged in a good faith effort to comply with this Court's October 1, 2012[] Order. Even assuming that conclusion, however, the Court does not find that Barshinger's alleged failure to abide by only one scheduling order is so egregious that it merits the imposition of the severe sanction of dismissal at this juncture. Consequently, the Court finds it unnecessary to engage in a full *Poulis* factor analysis.").

a third-party financial agent who will “administer the senator’s allotment according to standard accounting principles, [and] compil[e] monthly report[s] of expenditures and receipts[,] which shall be publicly available”¹⁴ Barshinger identified Roy D. Jackson & Associates as having “tentatively agreed to perform [these] service[s] for 2% of the allotment amount, which is \$7,900.”¹⁵ On July 22, 2013, the Court ordered the Legislature to respond to Barshinger’s Motion for Injunctive Relief by July 15, 2013. One month after the deadline, on August 16, 2013, the Legislature filed a Motion for Extension of Deadlines, along with an Opposition to [Barshinger’s] Second Motion for Injunctive Relief.

On January 22, 2014, both parties failed to appear for a scheduled status conference. On January 23, 2014, the Legislature filed a Notice to the Court explaining its absence from the status conference. Barshinger made no communication with the Court regarding his failure to appear for the January 22, 2014 status conference.

On June 16, 2014, the Legislature filed a Second Motion to Dismiss for Failure to Prosecute.¹⁶ Barshinger did not respond to the Legislature’s Motion.

DISCUSSION

I. The Legislature’s Motion for Extension of Deadlines will be denied because the Legislature has not demonstrated excusable neglect that warrants an extension of time.

Pursuant to Superior Court Rule 10(a),

[w]hen an act, is required or allowed to be done at or within a specified time

(a) The court may for cause shown at any time in its discretion:

1. With or without notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order of the court.
2. On motion, permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect.¹⁷

Excusable neglect is determined by all attendant circumstances that demonstrate a genuine need for an extension of time after the initial specified period.¹⁸ However, “a busy schedule of counsel, by itself, does not establish excusable neglect”¹⁹ If the moving party cannot show excusable

¹⁴ Mot. for Inj. Relief, 2, March 15, 2011; Pl.’s Mot. for Inj. Relief, 3, Dec. 18, 2012.

¹⁵ Mot. for Inj. Relief, 2, March 15, 2011.

¹⁶ See Def.’s Second Mot. to Dismiss for Failure to Prosecute, June 16, 2014.

¹⁷ Super. Ct. R. 10(a); *Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 2009 WL 578547, at *6 (V.I. 2009).

¹⁸ *People v. Rivera*, 54 V.I. 116, 2010 WL 4723455, * 4 (V.I. Super. Ct. 2010).

¹⁹ *Id.* (citing *Kansas Packing Co., Inc. v. Lavilla*, 39 V.I. 71, 75-76, 1998 WL 643032, at *3 (Terr. Ct. 1998) (“While the fact that an attorney is busy on other matters may qualify as *cause shown*, it does not fall within the definition of ‘excusable neglect.’”).

neglect to justify an enlargement of time after the expiration period, the Court will not consider the untimely filing.²⁰

Here, the Court will not consider the Legislature's Opposition to Second Motion for Injunctive Relief because the Legislature fails to show excusable neglect as required by Super. Ct. R. 10(a)(2). The Court ordered the Legislature to respond to Barshinger's Second Motion for Injunctive Relief by July 15, 2013.²¹ However, the Legislature did not do so. Instead, on August 16, 2013, one month after the deadline expired, the Legislature filed a Motion for Extension of Deadlines requesting the Court to allow the Legislature to file its Opposition to [Barshinger's] Second Motion for Injunctive Relief.²² Because the request was made after the deadline, the Legislature must demonstrate excusable neglect before the Court will consider the untimely filing.

In an effort to show excusable neglect, the Legislature's counsel identifies several meetings, hearings, and events that prevented counsel from complying with the July 15, 2013 filing deadline.²³ But as stated in *Rivera*, "a busy schedule of counsel, by itself, does not establish excusable neglect"²⁴ Moreover, it is apparent from the counsel's schedule that each listed event occurred on or after the July 15, 2014 deadline.²⁵ Therefore, the identified dates do not sufficiently explain why counsel failed to respond to Barshinger's Motion during the two-week period allowed by the Court. Accordingly, due to the lack of excusable neglect, the Court will not consider the Legislature's Opposition to [Barshinger's] Second Motion for Injunctive Relief.

II. Barshinger's Second Motion for Injunctive Relief will be denied because Barshinger fails to meet the four-prong injunctive relief test.

Under Fed. R. Civ. P. 65(a), a preliminary injunction is appropriate only where there is a threat of irreparable harm that renders legal remedies inadequate.²⁶ It is an "extraordinary and drastic remedy" that is never awarded as a right.²⁷ For preliminary injunction to be granted, the moving party must show:

- (1) a reasonable probability of success on the merits;

²⁰ *Rivera*, 2010 WL 4723455, at *4 (holding that the court will consider the People's opposition to defendant's motion to dismiss following an adequate showing of excusable neglect).

²¹ See Order, 1, July 22, 2013; Although the July 22, 2013 Order does not indicate that the Order is retroactive, it is clear that the July 15, 2013 deadline, which is included in the Order, was communicated to the Legislature's counsel during the July 1, 2013 status conference.

²² See Mot. for Extension of Deadlines, 1, Aug. 15, 2013.

²³ See *id.* at 1-2 (" . . . [O]n July 15, 2013, undersigned counsel had to attend a calendar call On July 16, 2013, the undersigned was in meetings For the remainder of the week, undersigned addressed deadlines so she could leave the islands on Friday, July 19, 2013 Undersigned returned to St. Croix in the afternoon of July 13, 2013 On August 1, 2013, undersigned attended a Governance Committee meeting On August 2, 2013, undersigned traveled to St. Thomas On Monday, August 5, 2013, undersigned attended a preliminary hearing On August 8, 2013, undersigned spent the majority of the day before [the court] for an adjudicatory hearing.").

²⁴ *Id.* (citing *Lavilla*, 1998 WL 643032, at *3).

²⁵ *Id.*

²⁶ *Anderson v. Davilla*, 125 F.3d 148, 163 (3d Cir. 1997).

²⁷ *Yusuf v. Hamed*, 59 V.I. 841, 2013 WL 5429498, at *6 (VI. 2013) (adopting the preliminary injunction standard).

- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the preliminary relief will be in the public interest.²⁸

If these elements are met, “[t]he Court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained”²⁹

Here, Barshinger has not established that injunctive relief is the appropriate remedy because he fails to meet the four-part injunctive relief test.

1. Reasonable Probability of Success on the Merits

First, the evidence that is before the Court is not sufficient for the Court to determine whether Barshinger has a reasonable probability of success on the merits. Barshinger contends that the Legislature violated 2 V.I.C. § 76(a) by failing to reimburse him for expenditures that were made to carry out his official duties. In response, the Legislature argues that Barshinger has not accounted for all expenses, and that several expenses are non-reimbursable based on internal policies. The Legislature also argues that many of the receipts that Barshinger has submitted to support his claim are incomplete and do not clearly reflect the purpose for each expense. In asserting these arguments, neither party has provided the Court with a full copy of all receipts and ledgers to be considered.³⁰ Therefore, the Court cannot state with certainty whether there is a reasonable probability of success on the merits.

2. Irreparable Harm to the Movant

Second, Barshinger has not shown that he is suffering, or will suffer irreparable harm if the Court does not grant a preliminary injunction. “Irreparable harm” means “certain and imminent harm from which a monetary award does not adequately compensate.”³¹ Barshinger argues that without a transfer of the 2% allotment to a third-party agent, he suffers “irrevocable damage” because he is unable to carry out his duties as Senator At-Large,³² and he is unlikely to be reelected as Senator for the 30th Legislature.³³ But neither of these concerns constitute irreparable harm. As the parties represented during the hearing, the internal rules of the Legislature require senators to obtain approval from the Senate President prior to using their respective 2% allotments. If preapproval is not obtained, the Legislature’s Business & Financial Management office determines

²⁸ *Id.*

²⁹ Fed. R. Civ. P. 65(c).

³⁰ See V. Compl., Ex. 11, 12, Jan. 14, 2011; Although Barshinger has provided some receipts and ledgers as exhibits to his Complaint, at the hearing, the parties represented that there are several additional records that have not been submitted.

³¹ *Yusuf v. Hamed*, 59 V.I. 841, 2013 WL 5429498, at *6 (VI. 2013).

³² Second Mot. for Inj. Relief, at 1.

³³ *Id.*; Since the filing of Barshinger’s Second Motion for Injunctive Relief, he was re-elected as Senator for the 30th Legislature.

the reasonableness of the expenditures included in the senator's reimbursement request.³⁴ As shown through various letters that were sent between Barshinger, the Senate President, and the Director of Business & Financial Management, Barshinger was aware of these policies and made use of his allotment in accordance with these rules.³⁵ In fact, Barshinger admitted that he has received a portion of the allotment during each of his terms, although it was not the full amount. Yet, he maintains that he is entitled to the full 2% allotment for all expenditures.

But the internal policies show that, contrary to Barshinger's argument, he is not allowed to freely use the allotment without the necessary approval from the Senate President or the Business & Financial Management office. Moreover, the Court finds that the Legislature's internal process did not deprive Barshinger of his ability to carry out his senatorial duties. The expenses that were approved by the Senate President were funded by the allotment, while those that were not approved are currently at issue in this case, and can be remedied through monetary reimbursement – not injunctive relief. Further, Barshinger's assertion that he would suffer harm due to the possibility that he would not be reelected as Senator was speculative at the time raised, and is now moot given that Barshinger was actually reelected as Senator-At-Large for the 30th Legislature. Therefore, Barshinger fails to show irreparable harm.

3. Greater Harm to the Nonmoving Party

Third, an injunction that requires the Legislature to transfer Barshinger's allotment to a third-party agent would cause greater harm to the Legislature. Such an order would force the Legislature to expend additional resources to compensate a third-party agent for the services rendered. Barshinger states that Roy D. Jackson & Associates has tentatively agreed to serve as the third-party agent, but that the services will cost the Legislature approximately \$7,900.³⁶ This is an expense that the Legislature obviously has not intended to incur based on the fact that the Legislature currently manages the distribution of allotments internally. Moreover, courts may not interfere with the Legislature's internal affairs,³⁷ such as the disbursement of allotted funds. This includes the Legislature's choice of or compliance with internal rules or procedures.³⁸ Therefore, because the Legislature would be subjected to greater harm, this element weighs against injunctive relief.

4. Effect on the Public Interest

Fourth, the granting of injunctive relief in this instance would have a negative effect on the public interest. Barshinger argues that injunctive relief is necessary because the people of the Virgin Islands are negatively affected when he is unable to properly carry out his duties as Senator-At-Large. Yet, the allotments are disbursed according to the procedures that have been established by the Legislature to ensure the proper use of public funds. An order directing the transfer of the allotment to a third-party agent greatly diminishes the Legislature's ability to serve as a fiduciary

³⁴ See V. Compl., Ex. 7, Jan. 14, 2011.

³⁵ See V. Compl., Ex. 1, 3, 5, 10, 13, 14, 17, 18, 19, Jan. 14, 2011.

³⁶ Mot. for Inj. Relief, 2, March 15, 2011.

³⁷ See *Richards v. Jones*, 47 V.I. 197, 2005 WL 3178065, at *2 (VI. Super. Ct. 2005).

³⁸ *Id.*

over public funds reserved for the Legislative members. Transferring the claimed funds to a third-party agent, whose accountability is in question, would have a negative impact on the public interest.

Therefore, based on the aforementioned reasons, Barshinger has not satisfied the four-prong injunctive relief test, and his Second Motion for Injunctive Relief will be denied.

III. The Legislature's Second Motion to Dismiss for Failure to Prosecute will be denied because the *Poulis* factors strongly weigh against the dismissal of Barshinger's claims.

Pursuant to Fed. R. Civ. P. 41(b), "[i]f the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, dismissal under this subsection . . . operates as an adjudication on the merits."³⁹ A trial court has the inherent discretion to dismiss a case for lack of prosecution to prevent delays and avoid congestion in the courts.⁴⁰ However, "before ordering such an extreme sanction,"⁴¹ the court must balance the six factors established in *Poulis v. State Farm Fire and Cas. Co.*,⁴² as adopted by the Supreme Court of the Virgin Islands in *Halliday v. Footlocker Specialty, Inc.*⁴³ The *Poulis* factors are:

- 1) the extent of the party's personal responsibility;
- 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;
- 3) a history of dilatoriness;
- 4) whether the conduct of the party or the attorney was willful or in bad faith;
- 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and
- 6) the meritoriousness of the claim or defense.⁴⁴

Only after the *Poulis* factors are considered, and found to "strongly weigh in favor of dismissal," is this sanction appropriate for failure to prosecute.⁴⁵

Here, upon weighing the *Poulis* factors, the Court finds that the factors do not strongly weigh in favor of imposing the "extreme sanction" of dismissing Barshinger's claim.

³⁹ Fed. R. Civ. P. 41(b).

⁴⁰ *V.I. Power & Water Auth. v. V.I. Tel. Corp.*, 18 V.I. 451, 1981 WL 704992, at *1 (D.V.I. 1981).

⁴¹ *Halliday*, 2010 WL 1576436, at *3.

⁴² 747 F.2d 863, 868 (3d Cir. 1984).

⁴³ 53 V.I. 505, 510-13, 2010 WL 1576436, at *3 (VI. 2010).

⁴⁴ *Molloy v. Independence Blue Cross*, 56 V.I. 155, 2012 WL 78942, at *15; *Watts v. Two Plus Two, Inc.*, 54 V.I. 286, 294, 2010 WL 4962902, at *7 (VI. 2010) (citing *Halliday*, 2010 WL 1576436, at *3).

⁴⁵ *Halliday*, 2010 WL 1576436, at *3.

A. Barshinger's Personal Responsibility for the Failure to Prosecute

First, the Legislature must show that Barshinger is personally responsible for the failure to prosecute. In this case, Barshinger is a *pro se* litigant who, despite the suggestion of this Court, has been unable to obtain legal counsel. However, as a litigant, Barshinger remains obligated to adhere to the rules of this Court, and the rules regulating the timely prosecution of any matter.⁴⁶ At the hearing, when questioned by the Court in regard to his failure to appear for several status conferences, respond to an Order to Show Cause, and respond to the Legislature's discovery request, Barshinger represented that he had not received notice from the Court or the Legislature.⁴⁷ This, however, is not a legitimate excuse because Barshinger has the responsibility to provide his most recent contact information to the Court and opposing counsel. It is worth mentioning that upon reviewing the contact information that Barshinger provided to the Court following the hearing, it is apparent that the previous notices were not sent to Barshinger's most recent mailing address. However, it is still Barshinger's responsibility to ensure that such information is properly conveyed to the Court and the Legislature. Therefore, this element weighs in favor of dismissal.

B. Prejudice Caused to the Legislature

Second, the Legislature has not shown evidence of prejudice caused by Barshinger's one year of inactivity. "Prejudice 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 improper behavior."⁴⁸ The Legislature contends that Barshinger's "failure to comply with the Court's orders prejudices Defendant as the parties are unable to resolve the current matter and Defendant is unable to defend this matter because it is not moving forward."⁴⁹ While it is true that Barshinger must comply with the Court's orders, and must respond to the Legislature's request for discovery, the Court does not find that prejudice was caused to the Legislature. There is no evidence that the Legislature has incurred any additional expenses over the one-year period, nor is there any evidence that the Legislature is prevented from defending the claim. At the hearing, both parties represented that extensive documents have been exchanged, and that although they have not come to an amicable resolution, the parties are fully aware of the remaining issues that could potentially resolve the matter. This does not show that prejudice was caused to the Legislature and, therefore, this factor weighs against dismissal.

⁴⁶ LRCi 82.1; ("Individuals representing themselves [before the Superior Court] are responsible for performing all duties imposed upon counsel by [the Local Rules of Civil Procedure] and all other applicable federal rules of procedure.").

⁴⁷ See Order, Nov. 14, 2013; see also Order, Oct. 1, 2012.

⁴⁸ *Molloy*, 2012 WL 78942, at *17 (citing *Poulis*, 747 F.2d at 868; *Remy v. Ford Motor Co.*, 48 V.I. 141, 2006 WL 3937343, at *6 (VI. Super. Ct. 2006)).

⁴⁹ Second Mot. to Dismiss for Failure to Prosecute, 4, June 16, 2014.

C. Demonstrated History of Dilatoriness

Third, the Legislature has not shown that Barshinger has a demonstrated history of dilatoriness. In evaluating this factor, the Court is required to make its determination “in light of [Barshinger’s] behavior over the life of the case.”⁵⁰ The Legislature argues that Barshinger has been dilatory in responding to the Court’s Order to Show Cause, responding to discovery requests, and appearing for status conferences.⁵¹ Although the Legislature has accurately stated several instances of Barshinger’s inaction, the Court concludes that his failure to act was due to a lack of notice, as explained above. Moreover, upon considering Barshinger’s behavior throughout the life of the case, he has actively prosecuted the matter by filing several motions and oppositions, as well as appearing for hearings when provided with proper notice. Further, at the hearing, Barshinger represented that he is willing to mediate and continue discussions with the Legislature to settle the matter. Therefore, although there is some evidence of dilatoriness, the Court does not find that it strongly warrants dismissal of the action.

D. Whether the Conduct was Willful or in Bad Faith

Fourth, the Legislature has not proven that Barshinger’s conduct was willful or in bad faith. In determining this factor, the Court “must point to specific evidence to justify its determination of willfulness or bad faith.”⁵² The Legislature argues that Barshinger has willfully failed to comply with court orders, but the Legislature has not identified any evidence supporting this contention. As stated above, Barshinger represented that he did not receive notice, and was unaware of certain deadlines and hearings. Without a showing of bad faith or willful conduct, the Court will not conclude that Barshinger has acted in such a manner. Therefore, this factor does not strongly favor dismissal.

E. The Effectiveness of Alternative Sanctions

Fifth, dismissal is not the most appropriate sanction at this time. As stated in *Poulis*, one alternative sanction is the imposition of the “excess costs directly upon the attorney, with an order that such costs are not to be passed on to the client, directly or indirectly”⁵³ Here, since Barshinger is a *pro se* litigant, any imposition of a monetary penalty would be suffered directly by Barshinger. In light of the fact that Barshinger’s claim is based on the reimbursement of funds, it is more fitting that the penalty is directly related to the desired recovery. Additionally, there is no evidence proving that dismissal is the best and preferable sanction at this time. Therefore, this factor weighs against dismissal.

⁵⁰ *Molloy*, 2012 WL 78942, at *18 (citing *Adams v. Trustees of N.J. Brewery Emps.’ Pension Trust*, 29 F.3d 863, 875 (3d Cir.1994)).

⁵¹ *Id.*, at 3-5.

⁵² *Molloy*, 2012 WL 78942, at *19 (citing *Poulis*, 747 F.2d at 868–69).

⁵³ 747 F.2d at 869.

F. Meritoriousness of the Claim or Defense

Finally, the meritoriousness of the claim must be determined. “A claim . . . will be deemed meritorious where the allegations of the pleadings, if established at trial, would support recovery by plaintiff”⁵⁴ The Legislature argues that Barshinger’s claims are meritless because the Court has already dismissed one of Barshinger’s claims, and Barshinger has not participated in discovery or identified evidence that could be used to support his remaining claim.⁵⁵ As the Court previously held, Barshinger has a valid claim under 2 V.I.C. § 76(a). The only remaining question is whether Barshinger will be able to sufficiently establish that the Legislature has violated section 76(a) by failing to reimburse him for expenditures made using his personal funds. As explained above, there is insufficient evidence for the Court to definitively declare the meritoriousness of Barshinger’s claim. But if he is able to establish at trial that the Legislature has in fact violated section 76(a) by failing to reimburse him, he would be entitled to recovery. Therefore, this factor also weighs against dismissal.

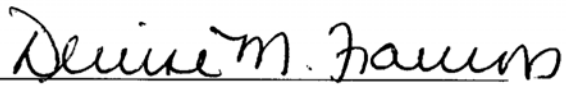
Upon considering and weighing the *Poulis* factors, dismissal of Barshinger’s claim is not the appropriate course of action. Therefore, the Legislature’s Second Motion to Dismiss for Failure to Prosecute will be denied.

CONCLUSION

Upon considering the parties representations, the Legislature’s Motion for Extension of Deadlines will be denied because the Legislature fails to show excusable neglect, Barshinger’s Second Motion for Injunctive Relief will be denied because Barshinger fails to show that injunctive relief is the appropriate remedy, and the Legislature’s Second Motion to Dismiss for Failure to Prosecute will be denied because the *Poulis* factors do not weigh in favor of dismissing Barshinger’s claim.

An Order consistent with this Opinion Memorandum will follow.

DATED: November 10, 2014


DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


LORI BOYNES-TYSON
Court Clerk Supervisor 11/10/14

⁵⁴ See *Molloy*, 2012 WL 78942, at *16 (citing *Poulis*, 747 F.2d at 869-70).

⁵⁵ Second Mot. to Dismiss for Failure to Prosecute, 5, June 16, 2014.

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

CRAIG W. BARSHINGER,

Plaintiff,

v.

LEGISLATURE OF THE VIRGIN ISLANDS
OF THE UNITED STATES OF AMERICA
THRU ITS OFFICERS AND/OR MEMBERS,

Defendant.

) CASE NO.: ST-11-CV-0000024
)
) CLAIM FOR REIMBURSEMENT
) OF EXPENSES UNDER STATUTE;
) BREACH OF STATUTE;
) BREACH OF THE COVENANTS OF
) GOOD FAITH AND FAIR
) DEALING; UNJUST ENRICHMENT

ORDER

AND NOW, it is hereby

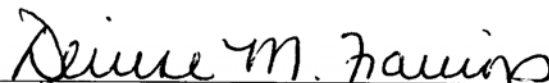
ORDERED that Plaintiff's Second Motion for Injunctive Relief is **DENIED**; and it is further

ORDERED that Defendant's Motion for Extension of Deadlines is **DENIED**; and it is further

ORDERED that Defendant's Motion to Dismiss for Failure to Prosecute is **DENIED**; and it is further

ORDERED that copies of this Order and the accompanying Memorandum Opinion are directed to Senator Craig W. Barshinger, Kye Walker, Esquire, of the Walker Legal Group, the IT Division and the Law Librarian.

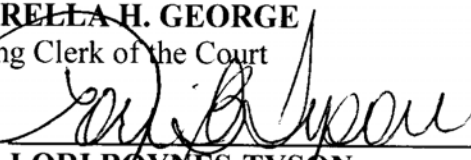
DATED: November 10, 2014


DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


LORI BOYNES-TYSON
Court Clerk Supervisor

11/10/2014