

DIVISION OF ST. THOMAS AND ST. JOHN

Defendant.

)
)
)
)
)
)
) **CASE NO. ST-12-CV-394**
)
)
)
)
)
)
)
)
)
)
)

Pending before the Court is Defendant Monica George-Fields' August 10, 2016, request that Plaintiff's Verified Complaint be dismissed with prejudice for failure to prosecute, as well as two motions to intervene filed by interested persons Angel Callwood and Eleanor Sullivan, and George-Field's Motion to Strike Callwood's motion. Because Plaintiff has repeatedly refused to participate in mediation or discovery in violation of numerous Court Orders over a period in excess of two and a half years, Defendant's request will be granted and Plaintiff's Verified Complaint will be dismissed with prejudice. Since dismissal of Plaintiff's claim of adverse possession disposes of any potential interest Callwood had in the Property, the Court will grant George-Field's Motion to Strike and deny Callwood's motion to intervene. Sullivan's motion to intervene will be held in abeyance in order to allow Sullivan to supplement her motion with information regarding her purported ownership interest in the Property.

RELEVANT FACTUAL & PROCEDURAL HISTORY

On July 26, 2012, Plaintiff Leslie A. Meyers filed a *pro se* Complaint seeking quiet title to the property located at Parcel No. 14-A Estate John's Folly, Coral Bay Quarter, St. John, U.S. Virgin Islands ("the Property"), under a claim of adverse possession. Defendants failed to move, answer, or otherwise respond to the Complaint, and the Clerk of Court entered default on February 12, 2013, against the Defendants named in the Complaint. Following a hearing on June 6, 2013, the Court entered a default judgment in favor of Plaintiff and quieted title to the Property in Plaintiff against all Defendants.¹

A. Procedural history involving Plaintiff Leslie A. Meyers and Defendant Monica George-Fields.

On August 6, 2013, Monica George-Fields, an heir of Alfred R. George, Jr., filed a *pro se* Motion to Set Aside Default Judgment, which the Court granted on November 12, 2013,² because George-Fields, Plaintiff's relative and a known resident of New York, was improperly served by publication in the Virgin Islands. George-Fields filed an Answer on December 6, 2013. On January 2, 2014, Plaintiff moved for reconsideration of the Court's November 12, 2013, decision to set aside the default judgment. In addition, Plaintiff filed a "Response to Monica George-Fields" on January 7, 2014, and Plaintiff filed a Motion to Dismiss on April 3, 2014.

On March 6, 2014, the Court issued a Memorandum Opinion and Order denying Plaintiff's January 2, 2014, Motion for Reconsideration, as well as a Scheduling Order. The deadlines

¹ Default Judgment was entered on June 10, 2013.

² The Memorandum Opinion and Order setting aside the default judgment was signed on November 12, 2013, and entered on November 14, 2013. Generally, "the dates of all other orders and opinions issued by the Superior Court in the underlying matter refer to the date of entry on the docket." *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 604, n. 4 (V.I. 2012) (citations omitted); *See* SUPER. CT. R. 49. However, the Court and parties have repeatedly referred to this decision as having been rendered on November 12, 2013. To avoid unnecessary confusion, the Court will, for the sake of clarity, continue to refer to this decision as having been rendered on November 12, 2013.

included, *inter alia*, that the parties were to complete mediation by July 15, 2014, and submit a mediation report by July 25, 2014.³ Plaintiff's January 7, 2014, Response, was denied in a Memorandum Opinion and Order entered on May 21, 2014, while Plaintiff's April 3, 2014, Motion to Dismiss was taken under advisement in order to give George-Fields the opportunity to submit a counterclaim against Plaintiff. In addition, the Court granted George-Fields' May 12, 2014, Motion to Extend Written Discovery Deadline, wherein George-Fields informed the Court that mediation was scheduled for the end of May 2014.⁴ Plaintiff's April 3, 2014, Motion to Dismiss was subsequently denied without prejudice, but Plaintiff was granted leave to file a Motion to Dismiss regarding George-Fields' counterclaims, "should Plaintiff deem it appropriate."⁵

George-Fields retained counsel and on June 16, 2014, her attorney filed a Notice of Appearance, as well as George-Fields' First Amended Answer, in which George-Fields asserts numerous counterclaims, and a copy of George-Fields' First Set of Interrogatories to Plaintiff. When the parties did not file a mediation report in accordance with the Scheduling Order, the Court directed the parties, by Order entered on July 30, 2014, to "cause the mediator to file a mediation report . . . [or] advise the Court in writing of the outcome of the mediation . . . or, if mediation has not been conducted, show cause why the parties should not be held in contempt for their failure to comply with the Order of the Court."⁶ On August 1, 2014, George-Fields filed a response to the Court's July 30, 2014, Order, advising the Court that Plaintiff refused to mediate, participate in

³ March 6, 2014, Order.

⁴ March 21, 2014, Order; Def.'s May 12, 2014, Mot. to Extend Written Discovery Deadline.

⁵ On July 23, 2014, counsel for George-Fields filed a request for clarification of the Court's May 21, 2014, Memorandum Opinion and Order, stating he was unable to locate a Motion to Dismiss dated April 3, 2014, but was able to locate a Motion to Dismiss dated March 25, 2014. *See* Def.'s July 21, 2014, Request for Clarification of May 19, 2014, Order. By Order entered on July 30, 2014, the Court clarified that Plaintiff's Motion to Dismiss was denied without prejudice, but granted Plaintiff leave to file a Motion to Dismiss regarding George-Fields' counterclaims, "should Plaintiff deem it appropriate." *See* July 30, 2014, Order.

⁶ July 30, 2014, Order.

discovery, or comply with any of the Scheduling Order deadlines.⁷ In light of this, George-Fields requested the Court issue a rule to show cause why Plaintiff should not be held in contempt for failing to obey the Court's Scheduling Order and why the action should not be dismissed with prejudice under Fed. R. Civ. P. 41(b).⁸ On August 11, 2014, George-Fields filed a Motion to Compel Responses to Discovery Requests, requesting that the Court enter an Order compelling Plaintiff to "fully, completely answer George's discovery and provide his initial disclosures . . . and award George her reasonable expenses incurred in connection with th[e] motion, . . . failing which, the action should be dismissed."⁹

Noting that Plaintiff failed to participate in mediation, respond to the Court's July 30, 2014, Order, or "communicate in any manner with the Court since his Motion to Dismiss on April 3, 2014[.]" by Order entered on August 13, 2014, the Court directed Plaintiff show cause in writing why Plaintiff should not be held in contempt and why sanctions should not be imposed against him, "failing which sanctions may be imposed summarily."¹⁰ In addition, Plaintiff was directed by Order entered on September 5, 2014, to respond to George-Fields' Motion to Compel by September 22, 2014, to which George-Fields could reply by October 3, 2014. On September 9, 2014, George-Fields filed a Notice, informing the Court that Plaintiff failed to respond to the Court's August 13, 2014, Show Cause Order. George-Fields also filed Notices on April 27, 2015, and July 22, 2015, informing the Court that Plaintiff failed to respond to George Fields' August 11, 2014, Motion to Compel or respond to George-Fields discovery requests in violation of Court's

⁷ Def.'s August 1, 2014, Response to the Court's July 28, 2014, Order Regarding Mediation.

⁸ *Id.*

⁹ Def.'s August 11, 2014, Mot. to Compel Responses to Discovery, p. 5.

¹⁰ August 13, 2014, Order.

September 5, 2014, Order, again requesting the Court to exercise “its contempt powers and dismiss this matter with prejudice.”¹¹

On September 30, 2014, Plaintiff moved to dismiss George-Fields’ counterclaims, arguing the action must be dismissed because the Court lacks personal and subject matter jurisdiction and requesting the Court reinstate the default judgment in favor of Plaintiff.¹² On this same day, Plaintiff also notified the Court that Plaintiff did not comply with the Court’s Orders because Plaintiff “was under medical care which made it impossible” for him to respond, stating that Plaintiff “would never intentionally disobey an Order from this or any Court.”¹³

On February 19, 2015, Plaintiff filed another Motion to Dismiss, yet again asking the Court to vacate its decision to grant George-Fields’ August 6, 2013, Motion to Set Aside Default Judgment, despite the fact that the Court had granted George-Fields’ motion on November 12, 2013, and previously denied Plaintiff’s motion seeking reconsideration of that decision on March 6, 2014 and May 21, 2014.¹⁴ Plaintiff requested this same relief in a third Motion to Dismiss filed on August 3, 2015.

The Court denied Plaintiff’s September 30, 2014, and February 19, 2014,¹⁵ Motions to Dismiss in a Memorandum Opinion and Order entered on October 1, 2015, reasoning that “Plaintiff is not permitted to continuously challenge this Court’s ruling that vacated the default

¹¹ Pl.’s April 27, 2015, Notice of Plaintiff Leslie A. Meyers Failure to Comply with the September 3, 2014 Show Cause Order; Pl.’s July 22, 2015, Notice of Plaintiff Leslie A. Meyers Failure to Comply with the September 3, 2014 Show Cause Order.

¹² See Pl.’s September 30, 2014, “Mot. to Dismiss Monica George Fields Claims to Parcel 14A Estate John’s Folly Pursuant to Universal Principle of Law, the Possession of One Tenant in Common is Not Adverse to his Co-Tenants.” On October 9, 2014, George-Fields filed an Opposition to Plaintiff’s Motion to Dismiss, arguing Plaintiff’s motion failed to articulate any legally cognizable basis for dismissing George-Fields’ counterclaims.

¹³ Pl.’s September 30, 2014, Filing.

¹⁴ George-Fields filed a response to Plaintiff’s Motion to Dismiss on February 24, 2015.

¹⁵ In the October 1, 2015, Memorandum Opinion and Order, the Court states that Plaintiff’s Motion to Dismiss was filed on February 3, 2015. However, a close review of the record indicates that Plaintiff’s Motion to Dismiss was actually filed on February 19, 2015.

judgment through subsequently filed motions to dismiss or otherwise.”¹⁶ The Court also advised Plaintiff that he is “obligated to participate in discovery and mediation” and gave “Plaintiff one more opportunity to participate in discovery and mediation, failing which the Court will consider the imposition of sanctions, up to and including dismissal” for failure to prosecute.¹⁷ The parties were directed to engage in mediation by November 13, 2015, and submit a mediation report by December 4, 2015.¹⁸

Instead of participating in mediation, Plaintiff appealed the Court’s October 1, 2015, decision to the Supreme Court of the Virgin Islands, but the Supreme Court dismissed the appeal for want of jurisdiction on November 25, 2015.¹⁹ When the parties did not submit a mediation report by December 4, 2015, by Order entered on December 9, 2015, the Court extended the deadline within which the parties were to submit a mediation report to January 8, 2016, or “show cause why the parties should not be held in contempt and sanctioned for their failure to comply with the orders of the Court.”²⁰ On December 11, 2015, George-Fields filed a Notice of Plaintiff Leslie A. Meyers’ Repeated Refusal to Comply with this Court’s Orders, advising that Plaintiff has refused to participate in discovery or participate in mediation and again requesting the Court “exercise its powers under [Fed. R. Civ. P. 41(b)] and dismiss this matter with prejudice.”

On January 8, 2016, Plaintiff filed “Response to Order and Renewed Request for a Dismissal Order for Lack of Personal and Subject Matter Jurisdiction Over Monica George Fields [sic] Claims,” where Plaintiff challenged the Court’s December 9, 2015, Order directing the parties to engage in mediation and, for the seventh time, challenged the Court’s November 12, 2013,

¹⁶ October 1, 2015, Mem. Op., p. 3.

¹⁷ October 1, 2015, Mem. Op., p. 3; October 1, 2015, Order.

¹⁸ October 1, 2015, Order.

¹⁹ See Order, *Meyers v. George*, S. Ct. Civ. No. 2015-0081 (V.I. November 25, 2015).

²⁰ December 9, 2015, Order.

decision to set aside the default judgment.²¹ George-Fields file a Response to Plaintiff's Motion to Dismiss on January 15, 2016, requesting that Plaintiff be "severely sanctioned for repeatedly filing meritless motions and disobeying direct court orders to participate in discovery and mediation."

In a Memorandum Opinion and Order entered on June 28, 2016, the Court addressed George Fields' December 11, 2015, Notice regarding Plaintiff's refusal to participate in mediation and discovery and Plaintiff's January 8, 2016, motion to dismiss, and imposed monetary sanctions against Plaintiff. The Court declined to dismiss the action for lack of prosecution, reasoning that monetary sanctions against Plaintiff were appropriate since the six factor balancing test under *Halliday v. Footlocker Specialty, Inc.*²² requires the Court to consider the effectiveness of sanctions other than the extreme sanction of last resort of dismissal.²³ Consequently, the Court directed George-Fields to file an itemized statement detailing all of the attorney's fees and costs she has incurred since March 5, 2014,²⁴ the date the Court signed its first Order denying Plaintiff's challenge to the Court's November 12, 2013, decision to set aside the default judgment, and implementing a Scheduling Order.²⁵ The Court also extended to August 5, 2016, the deadline within which the parties were to mediate, directed the parties to submit a mediation report by August 9, 2016, and directed Plaintiff to provide his answers to George-Fields' discovery requests, as delineated in

²¹ Plaintiff argued that mediation cannot be required in this case because there is no dispute between Plaintiff and George-Fields since a default judgment was initially entered in favor of Plaintiff and the Court has not acknowledged the other persons claiming to have an interest in the Property. See Pl.'s January 8, 2016, "Response to Order and Renewed Request for A dismissal Order for Lack of Personal and Subject Matter Jurisdiction Over Monica George Fields [sic] Claims."

²² 53 V.I. 505, 510 (V.I. 2010) (adopting the six factor balancing test in *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984)).

²³ June 28, 2016, Mem. Op. (citing *Dospiva v. Murray*, 2015 V.I. LEXIS 31, *9 (V.I. Super. Ct. Mar. 30, 2015)) (other citations omitted).

²⁴ The Order was entered on March 6, 2014.

²⁵ June 28, 2016, Order.

George-Fields' August 11, 2014, Motion to Compel, "failing which the Court would consider additional sanctions, up to and including dismissal."²⁶

On July 13, 2016, George-Fields submitted an itemization of \$13,141.00 in attorney's fees and \$47.84 in costs incurred since March 5, 2014.²⁷ On July 20, 2016, George-Fields filed a Notice that Plaintiff failed to provide his responses to George-Fields' discovery requests in violation of the Court's June 28, 2016, Order.²⁸ George-Fields also filed a Notice on August 10, 2016, that Meyers has refused to participate in mediation and reiterated her request that the Court "exercise its powers under [Fed. R. Civ. P.] 41(b) and dismiss this matter with prejudice."²⁹

B. Procedural history involving other interested persons.

On September 2, 2014, Angel Callwood, who purportedly has an interest in the Property, filed a *pro se* "Motion for Order Requiring Joinder Pursuant to Rule 19(a) and/or Dismissal Pursuant to Rule 12(b)(7), Title 5, V.I.C. Section 31(1)(A)," wherein Callwood requests that the Court compel George-Fields to add him as a party under Fed. R. Civ. P. 19 or dismiss the action. On September 8, 2014, George-Fields filed a Motion to Strike Pleading of Angel Callwood, arguing Callwood has no title or rights to the Property because the deed conveying the Property to Callwood is void since it was executed by Plaintiff "after the default judgment was entered, which was subsequently vacated . . . before any marshal's or judicial deed was issued."³⁰ Callwood filed an Opposition to George-Fields' Motion to Strike on September 26, 2014, to which George-Fields filed a Reply on October 9, 2014.

²⁶ June 28, 2016, Order.

²⁷ Def.'s July 13, 2016, Response to the Court's June 27, 2016, Sanction Order Against Leslie A. Meyers.

²⁸ Def.'s July 20, 2016, Notice of Plaintiff Leslie A. Meyers' Failure to Comply with this Court's June 27th Order.

²⁹ Def.'s August 10, 2016, Notice of Plaintiff Leslie A. Meyers' Refusal to Mediate as Ordered.

³⁰ Def.'s September 8, 2014, Mot. to Strike Pleading of Angel Callwood, p. 1.

On September 30, 2014, the Court received an Affidavit of Louis X. Simeon Jr., an alleged heir of C. Benjamin, in which Simeon asserts that George-Fields' "counterclaim of adverse possession for quiet title" should be dismissed because the Court lacks personal jurisdiction over Simeon and the other heirs to C. Benjamin since Simeon did not receive lawful notice of George-Fields' counterclaim. Simeon also advised that he is not represented by counsel for George-Fields.³¹ On October 24, 2014, the Court received a letter from another alleged heir of C. Benjamin, Malik Muhammad, asserting that the Court does not have jurisdiction over Muhammad or his interest in the Property and advising that he is also not represented by counsel for George-Fields.

On May 11, 2015, and August 3, 2015, Eleanor Sullivan filed *pro se* Motions to Intervene on the grounds that Sullivan "has a strong concrete interest in defending her title of interest" in the Property.

STANDARD

I. Dismissal for Failure to Prosecute.

As applied by the Supreme Court of the Virgin Islands, Fed. R. Civ. P. 41(b)³² provides for the "extreme" sanction of dismissing the case with prejudice for failure to prosecute.³³ Fed. R. Civ. P. 41(b) provides:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the

³¹ September 30, 2014, Aff. of Louis X. Simeon, Jr., ¶ 8.

³² The Supreme Court of the Virgin Islands applies FED. R. CIV. P. 41(b) when considering motions to dismiss for failure to prosecute. See *Halliday* 53 V.I. at 510-511. As a result, FED. R. CIV. P. 41(b) is applicable to these proceedings by way of this precedent of the Supreme Court of the Virgin Islands or alternatively as a last resort through SUPER. CT. R. 7. See *Vanterpool v. Gov't of the Virgin Islands*, 63 V.I. 563, 576 (V.I. 2015) ("[U]ncritical application of the rules of another court to a proceeding in the Superior Court is wholly inconsistent with our admonition that 'the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of the District Court should represent rules of last resort rather than first resort, and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from this Court reveals the absence of any other [applicable] procedure'" (citing *Sweeney v. Ombres*, 60 V.I. 438, 442 (V.I. 2014))).

³³ *Halliday* 53 V.I. at 511 (stating that the dismissal of a case is an "extreme" sanction); See *Molloy v. Independence Blue Cross*, 56 V.I. 155, 191, n. 11 (V.I. 2012).

dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--operates as an adjudication on the merits.

However, the sanction of dismissing the case with prejudice under Fed. R. Civ. P. 41(b) is not available until, after expressly weighing and considering each factor of the “six factor test articulated by the United States Court of Appeals for the Third Circuit in [*Poulis v. State Farm Fire and Cas. Co.*,³⁴] ... the Court determines that the factors strongly weigh in favor of dismissal.”³⁵ The six *Poulis* factors, adopted by the Supreme Court of the Virgin Islands in *Halliday v. Footlocker Specialty, Inc.*, 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.”³⁶

“Although a trial court is not required to find that all the factors weigh in favor of dismissal to warrant dismissal of the claim, the court must explicitly consider all six factors, balance them, and make express findings.”³⁷

II. Motion to Intervene.

The Supreme Court of the Virgin Islands applies Fed. R. Civ. P. 24(a) when determining motions to intervene as of right.³⁸ Fed. R. Civ. P. 24(a) provides:

On timely motion, the court must permit anyone to intervene who:

³⁴ *Poulis*, 747 F.2d at 868.

³⁵ *Halliday*, 53 V.I. at 510-511.

³⁶ *Id.* at 510 (adopting the six factor test in *Poulis*, 747 F.2d at 868); *See also Watts v. Two Plus Two, Inc.*, 54 V.I. 286, 290 (V.I. 2010); *Molloy*, 56 V.I. at 185-186 (citing *Poulis*, 747 F.2d at 868).

³⁷ *Molloy*, 56 V.I. at 186 (citing *Halliday*, 53 V.I. at 511).

³⁸ *See Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 526 (V.I. 2012); *In re Q.G.*, 60 V.I. 654, 660 n.7 (V.I. 2014) (“Federal Rule of Civil Procedure 24(a)(2) applies in the Superior Court pursuant to Superior Court Rule 7 because no Virgin Islands statute or court rule addresses intervention as of right in this instance. SUPER. CT. R. 7”). As a result, FED. R. CIV. P. 24(a) is applicable to these proceedings by way of this precedent of the Supreme Court of the Virgin Islands or alternatively as a last resort through SUPER. CT. R. 7. *See Vanterpool*, 63 V.I. at 576.

...

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

“Accordingly, in ruling on a motion to intervene under Rule 24(a)(2), the Superior Court must determine whether the applicant has established that ‘(1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation.’”³⁹ “The would-be intervenor must meet all four requirements to be eligible for intervention as of right . . . [and] bears the burden of persuading the court that each element is met.”⁴⁰

Where intervention is not of right, the Court “may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.”⁴¹

ANALYSIS

I. Dismissal of Plaintiff’s Verified Complaint for Failure to Prosecute.

For over two years, George-Fields has requested on no less than six occasions that the Court exercise its powers under Fed. R. Civ. P. 41(b) and dismiss Plaintiff’s claims with prejudice for failure to prosecute because Plaintiff refuses to participate in mediation or discovery in direct violation of numerous Orders.⁴²

³⁹ *In re Q.G.*, 60 V.I. at 661 (citing *Anthony*, 56 V.I. at 526).

⁴⁰ *Anthony*, 56 V.I. at 526 (internal and other citations omitted).

⁴¹ FED. R. CIV. P. 24(b); *supra* n. 38.

⁴² George-Fields requested that this action be dismissed for failure to prosecute under Fed. R. Civ. P. 41(b) for the first time on August 1, 2014. *See* Def.’s August 1, 2014, Response to the Court’s July 28, 2014, Order Regarding Mediation.

A. The extent of the party's personal responsibility.

Despite numerous Orders directing the parties to engage in mediation and discovery, the first of which was entered over two and a half years ago on March 6, 2014, Plaintiff has refused to participate in mediation or discovery. Unlike circumstances where counsel is largely responsible for dilatoriness, Plaintiff has elected to represent himself since the commencement of this action, neglecting to heed the Court's urging that he retain local counsel.⁴³ While "it is our policy to give *pro se* litigants greater leeway in dealing with matters of procedure and pleading[,]"⁴⁴ *pro se* litigants are still expected to comply with the rules of civil procedure, and a *pro se* plaintiff's ignorance of the rules does not provide good cause to excuse failure to fulfill their requirements.⁴⁵ Plaintiff's status as a *pro se* litigation does not excuse his failure to comply with the Scheduling Order and numerous Orders, nor is Plaintiff excused from participating in mediation or discovery merely because he is not represented by counsel.⁴⁶ Because the responsibility for failing to prosecute rests entirely with Plaintiff personally, this factor weighs in favor of dismissal.

B. The prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery.

"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)

⁴³ See May 21, 2014, Mem. Op., p. 3 (noting that both Plaintiff and George-Fields continued to pursue this action *pro se*, the parties were encouraged the parties to obtain local counsel).

⁴⁴ *Appleton v. Harrigan*, 61 V.I. 262, 267 (V.I. 2014) (citing *Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (V.I. 2011)).

⁴⁵ *Sykes v. Blockbuster Video*, 205 Fed. Appx. 961, 963 (3d Cir. 2006) (unpublished) (*pro se* plaintiff failed to show good cause for failure to timely serve).

⁴⁶ *C.f. Appleton*, 61 V.I. at 268 ("the 'greater leeway' granted to *pro se* parties . . . does not excuse [the *pro se* party's] failure to appear or respond to the allegations against him when he was properly served and informed of the consequences of such a failure") (citing *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012)).

due to the improper behavior.”⁴⁷ Thus, “prejudice does not mean ‘irremediable harm,’ but ‘the burden imposed by impeding a party’s ability to prepare effectively a full and complete trial strategy is sufficiently prejudicial.’”⁴⁸ “Examples of prejudice that hamper a party’s ability to defend their claim include ‘the irretrievable loss of evidence, the inevitable dimming of witnesses’ memories, or the excessive or possibly irremediable burdens or costs imposed on the opposing party.’”⁴⁹ A plaintiff’s failure to participate in the discovery process, such as failing to answer interrogatories or file Rule 26 disclosures, “inherently impedes a defendant’s ability to prepare effectively a full and complete trial strategy.”⁵⁰

The March 6, 2014, Scheduling Order directed the parties to exchange their Rule 26 disclosures by March 28, 2014,⁵¹ and the Court extended the deadline within which written discovery was to be completed to “three days prior to the scheduled date of mediation” at the end of May 2014.⁵² However, as George-Fields laments in her August 1, 2014, Response, Plaintiff did “nothing to comply with the scheduling order” in that Plaintiff failed to issue his initial disclosures, respond to George-Fields’ discovery requests, or mediate.⁵³ Despite seven Orders and a myriad of filings by George-Fields’ regarding Plaintiff’s non-compliance, Plaintiff continues to refuse to participate in discovery and mediation. Without even minimal participation by Plaintiff in the discovery process, George-Fields cannot obtain crucial information imperative to developing a

⁴⁷ *Molloy*, 56 V.I. at 189 (citations omitted)

⁴⁸ *Watts*, 54 V.I. at 291 (quoting *Majestic Const., Inc. v. JCB Int’l, Inc.*, 48 V.I. 437, 443 (D.V.I. App. Div. 2006)).

⁴⁹ *Caravelle Land I, LLC v. USVI Mgmt. Corp.*, 2014 V.I. LEXIS 55, *7-8 (V.I. Super. Ct. 2014) (citing *Scarborough v. Eubanks*, 747 F.2d 871, 876 (3d Cir. 1984))

⁵⁰ *Watts*, 54 V.I. at 292 (citing *Carter v. Ryobi Electronics*, 250 F.R.D. 223, 229 (E.D. Pa. 2008)).

⁵¹ See March 6, 2014, Order.

⁵² See March 21, 2014, Order.

⁵³ See Def.’s August 1, 2014, Response to the Court’s July 28, 2014, Order Regarding Mediation.

trial strategy, including, *inter alia*, obtaining the names of persons with discoverable information and Plaintiffs' fact witnesses.⁵⁴

Notably, instead of participating in discovery and mediation as directed by the Court, Plaintiff has elected to repeatedly file motions challenging the Court's decision to set aside the default judgment initially rendered in his favor, despite the Court's refusal to reconsider its ruling in March of 2014. This, coupled with Plaintiff's failure to participate in discovery and mediation, has stalled this litigation at the pleadings stage for over four years and wholly prevented any forward progression toward trial. This not only inherently prejudices George-Fields' ability to prepare an effective trial strategy, but also has actually prejudiced George-Fields. George-Fields has expended valuable time, effort, and resources in seeking to compel Plaintiff's participation in this action and responding to Plaintiff's meritless reiterations of the same motion to dismiss, forcing her to incur \$13,141.00 in attorney's fees in an action that, despite her best efforts, remains in the early stages of litigation. Clearly, Plaintiff's refusal to participate in mediation and discovery in violation of the Court's numerous Orders has prejudiced George-Fields.

The next question, then, is the extent to which Plaintiff's acts and omissions have prejudiced George-Fields so that the Court can "determine how heavily to weigh that factor as part of its balancing test."⁵⁵ The Supreme Court of the Virgin Islands has found this factor weighs "only slightly" in favor of dismissal where the circumstances indicate inherent prejudice to the adverse party, but the adverse party failed to take steps in pursuing its defense and there was an "absence of any evidence in the record indicating that . . . [the adverse party] was actually prejudiced."⁵⁶

⁵⁴ See *Carter*, 250 F.R.D. at 229 (defendants were prejudiced under the second factor of the *Poulis* balancing test due to plaintiff's failure to answer interrogatories and file Rule 26 disclosures, which preventing defendants from knowing, *inter alia*, the individuals with discoverable information and plaintiff's intended fact witnesses).

⁵⁵ *Watts*, 54 V.I. at 292.

⁵⁶ *Id.* at 293.

Here, it is clear that George-Fields has been inherently prejudiced by Plaintiff's refusal to participate in discovery. In addition, George-Fields took extensive measures to compel Plaintiff's participation in this action and, while there is not ample evidence in the record that demonstrates the actual prejudice to George-Fields, there is some, namely, the itemization of the attorney's fees and costs incurred by George-Fields since March of 2014. Considering these circumstances, the Court finds that George-Fields has been sufficiently prejudiced so as to warrant a determination that this factor weighs in favor of dismissal.

C. A history of dilatoriness.

In addressing this factor, the Third Circuit has found counsel for plaintiffs' repeated failure to comply with time limits imposed by the Court demonstrated a pattern of dilatoriness that was "intolerable."⁵⁷ The Third Circuit explained that "[t]ime limits imposed by the rules and the court serve an important purpose for the expeditious processing of litigation . . . [i]f compliance is not feasible, a timely request for an extension should be made to the court."⁵⁸ Both the Third Circuit and the Supreme Court of the Virgin Islands have found no history of dilatoriness in circumstances where the plaintiff failed to comply with only one order of the Court.⁵⁹

Beginning with the March 6, 2014, Scheduling Order, Plaintiff has violated at least seven Orders of this Court, all of which directed Plaintiff to participate in discovery or mediation.⁶⁰ Since July 30, 2014, the Court has threatened to impose sanctions against Plaintiff due to his non-

⁵⁷ *Poulis*, 747 F.2d at 868.

⁵⁸ *Id.*

⁵⁹ *Molloy*, 56 V.I. at 191 (citing *Poulis*, 747 F.2d at 868) (finding a history of dilatory behavior because "[u]nlike the *Donnelly* [v. *Johns-Manville Sales Corp.*, 677 F.2d 339 (3d Cir. 1982)] case, for example, where there was *only one failure to comply in a timely manner*, i.e. in obtaining local counsel, in this case there has been a pattern of dilatoriness."))

⁶⁰ See Orders entered on March 6, 2014, July 30, 2014, August 13, 2014, September 5, 2014, October 1, 2015, December 9, 2015, June 28, 2016.

compliance. On October 1, 2015, the Court gave Plaintiff one last opportunity to participate in mediation and discovery, failing which the Court would “consider the imposition of sanctions, up to and including, dismissal[.]”⁶¹ yet Plaintiff still did not comply, which resulted in the Court imposing monetary sanctions against Plaintiff on June 28, 2016.⁶²

While the Court recognizes that Plaintiff informed the Court on September 30, 2014, that Plaintiff was unable to respond to the Court’s August 13, 2014, Order because he was under medical care,⁶³ this does not excuse Plaintiff’s failure to comply with that or any other Order. As the Court noted in its June 28, 2016, Memorandum Opinion, “Plaintiff failed to indicate how his medical treatment prohibited him from participating in mediation and failed to update the Court on his condition[.]”⁶⁴ nor has Plaintiff ever moved for an extension of time within which to comply with the Court’s Orders. Moreover, Plaintiff has failed to explain how this medical care prevented him from complying with the Court’s Orders or seeking extensions, but not from preparing and filing four iterations of the same motion to dismiss on September 30, 2014, February 19, 2015, August 3, 2015, and January 8, 2016.

The Court also recognizes that on January 8, 2016, Plaintiff objected to the Court’s December 9, 2015, Order, directing the parties to engage in mediation.⁶⁵ Obviously, Plaintiff’s mere disagreement with the Order does not vitiate Plaintiff’s obligation to comply with this or any

⁶¹ See October 1, 2015, Mem. Op., p. 3.

⁶² See June 28, 2016, Mem. Op. & Order.

⁶³ See Pl.’s September 30, 2014, Filing.

⁶⁴ June 28, 2016, Mem. Op, p. 2.

⁶⁵ Plaintiff argued that the Court cannot order mediation in this case because, *inter alia*, the Court has not acknowledged the other persons claiming to have an interest in the Property. See Pl.’s January 8, 2016, “Response to Order and Renewed Request for A dismissal Order for Lack of Personal and Subject Matter Jurisdiction Over Monica George Fields [sic] Claims.” While the Court rejected the portion of Plaintiff’s motion that challenged the Court’s November 12, 2013, decision to set aside the default judgment, the Court did not address Plaintiff’s argument that the Court could not order mediation because the claims of other interested persons had not been acknowledged by the Court. See June 28, 2016, Mem. Op. & Order.

other order directing the parties to mediate. Furthermore, January 8, 2016, was the first time Plaintiff challenged the Court's Order directing the parties to mediate, despite that Plaintiff had been obligated to comply with the Court's directive to participate in mediation since March 6, 2014.

Due to Plaintiff's refusal to participate in mediation and discovery, as first ordered on March 6, 2014, the delay attributable to Plaintiff's failure to comply with the Court's Orders is over two years and seven months, and there is no foreseeable end in sight. Because there is clearly a history of dilatoriness by Plaintiff, this factor weighs strongly in favor of dismissal.

D. Whether the conduct of the party or the attorney was willful or in bad faith.

In order for this factor to weigh in favor of dismissal, the Court is required to "point to specific evidence to justify its determination of willfulness or bad faith."⁶⁶ "Willfulness involves intentional or self-serving behavior."⁶⁷ "When there is no evidence of willfulness on the record, the Court must presume that [a party's] failure to respond to the prompting order was not willful and that this factor also does not favor dismissal."⁶⁸ However, delay is sufficient for a finding of willfulness or bad faith when there is "evidence on the record that Plaintiff has repeatedly ignored the Court's orders or flouted the Court's authority."⁶⁹

It is abundantly clear from the record that Plaintiff willfully ignored the Court's Orders directing the parties to engage in mediation and discovery. Plaintiff has participated in this action by moving for a reinstatement of the default judgment on seven occasions and, thus, has been

⁶⁶ *Molloy*, 56 V.I. at 192 (citing *Poulis*, 747 F.2d at 868-69).

⁶⁷ *Caravelle*, 2014 V.I. LEXIS 55, at *10 (citation omitted).

⁶⁸ *Id.* (citing *Molloy*, 56 V.I. at 192) (internal quotations omitted).

⁶⁹ *Id.* at *12 ("Absent evidence on the record that Plaintiff has repeatedly ignored the Court's orders or flouted the Court's authority, delay is insufficient for a finding of willfulness or bad faith") (citing *Adams v. Trustees of the N.J. Brewery Employees' Pension Trust Fund*, 29 F.3d 863, 876 (3d Cir. N.J. 1994)).

aware of the status of the action. Additionally, the filings by Plaintiff on September 30, 2014, and January 8, 2016, indicate that Plaintiff knew of the Court's Orders. It is obvious that Plaintiff has intentionally elected not to participate in mediation and discovery despite numerous Court Orders that he do so. Consequently, this factor weighs strongly in favor of dismissal.

E. The meritoriousness of the claim or defense.

"In considering whether a claim or defense appears to be meritorious for this inquiry, we do not purport to use summary judgment standards. A claim, or defense, will be deemed meritorious when the allegations of the pleadings, if established at trial, would support recovery by plaintiff or would constitute a complete defense."⁷⁰ Nevertheless, at early stages of litigation, where "little discovery and no evidence [has been] presented to the Court[.]" it is difficult for courts to conclude "with much certainty whether . . . [Plaintiff's] claims are meritorious."⁷¹

Here, Plaintiff seeks quiet title to the Property under a claim of adverse possession.⁷²

Adverse possession in the Virgin Islands is governed by title 28, section 11 of the Virgin Islands Code, providing that "[t]he uninterrupted, exclusive, actual, physical[,] adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the Government." [At trial, t]he party asserting adverse possession bears the burden of proving all the required elements by clear and convincing evidence.⁷³

In the Verified Complaint, Plaintiff alleges that he has been in possession of the Property since May of 1983. Plaintiff attached a Notice of Claim of Adverse Interest by Possessor as "Exhibit A," which was purportedly filed with Recorder of Deeds on March 15, 1989, in which Plaintiff declared that he been in actual possession of the Property since May of 1983 and that his possession

⁷⁰ *Poulis*, 747 F.2d at 869-870 (citations omitted).

⁷¹ *Caribbean Island Adventures, Inc. v. Marzano*, 2011 V.I. LEXIS 49, *8 (V.I. Super. Ct. 2011).

⁷² See Pl.'s July 26, 2012, Verified Compl.

⁷³ *Mahabir v. Heirs of George*, 63 V.I. 651, 658-59 (V.I. 2015) (citing *Simpson v. Golden Resorts, LLLP*, 56 V.I. 597, 606 (V.I. 2012)).

is, “and has been, adverse to any claim of any other person . . . who may claim an interest in said premises.”⁷⁴ Plaintiff also alleges in the Verified Complaint that “no other persons or parties have claimed or asserted ownership of said property” since the Notice was filed in 1989.⁷⁵

These factual allegations are sufficient to state a claim for adverse possession, which, if proven at trial, may result in a meritorious claim for adverse possession. However, Plaintiff’s refusal to participate in discovery has brought the case to an abrupt halt at the pleadings stage and effectively precluded the action from proceeding to a trial on the merits. Therefore, while Plaintiff may well have a meritorious claim for adverse possession, this factor weighs only slightly against dismissal because Plaintiff’s deliberate non-compliance has prevented him from proving his claim at trial.

F. The effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions.

Since dismissal is a sanction of last resort,⁷⁶ the Court must “consider whether a lesser sanction would better serve the interests of justice.”⁷⁷ “In general, a sanction should be directed toward the particular abuse that has occurred.”⁷⁸ Various sanctions may be imposed against a party or attorney for failure to appear at a pretrial conference or obey a scheduling order or other order.⁷⁹ For example, some circumstances may warrant the Court holding a dilatory party in contempt or imposing monetary sanctions against the dilatory party, rather than dismissing the action.

⁷⁴ Verified Compl. ¶ 2 & Exhibit A, “Notice of Claim of Adverse Interest by Possessor.”

⁷⁵ Verified Compl. ¶ 3.

⁷⁶ *Halliday*, 53 V.I. at 511.

⁷⁷ *Caravelle*, 2014 V.I. LEXIS 55, at *10 (citing *Guyer v. Beard*, 907 F.2d 1424, 1429-30 (3d Cir. 1990)).

⁷⁸ *Andrews v. Gov’t of V.I.*, 132 F.R.D. 405, 413 (D.V.I. 1990).

⁷⁹ See *Molloy*, 56 V.I. at 191, n. 11 (“The failure to follow a Superior Court order can be the grounds for sanctions against the party or its attorney”) (citing 4 V.I.C. §§ 243, 244, 281, 282; SUPER CT. R. 111; FED. R. CIV. P. 11, 41(b)); See also SUPER. CT. R. 38; FED. R. CIV. P. 16(f); FED. R. CIV. P. 37(b)(2)(A)(v).

Here, the Court has already imposed monetary sanctions against Plaintiff to no avail. Despite the imposition of this lesser sanction, Plaintiff still refuses to participate in mediation and discovery in violation of numerous Orders.⁸⁰ In fact, Plaintiff has not communicated with the Court since the filing of his seventh motion to dismiss on January 8, 2016. The Court recognizes that it has not yet specified the exact sum of the monetary sanction against Plaintiff.⁸¹ However, given this pattern of inexcusable and blatant disregard by Plaintiff of the Court's Orders, there is no reason to believe Plaintiff would pay the monetary sanction. Likewise, holding Plaintiff in contempt would also be useless, since "there is [also] no reason to believe [Plaintiffs'] would appear for a show cause hearing."⁸² Moreover, the Court has warned Plaintiff that he risks dismissal of his case by failing to comply with the Court's Orders on numerous occasions, but still Plaintiff refuses to comply.⁸³ Because Plaintiff appears to have no interest in seeing this action to trial, the Court finds that alternative sanctions cannot be effective in this case, and this factor weighs strongly in favor of dismissal.

G. Dismissal for failure to prosecute is warranted.

In analyzing the six *Halliday* factors to determine whether the extreme sanction of dismissal for failure to prosecute is warranted, the Court finds that five factors weigh in favor of dismissal, three of which strongly favor dismissal, and only one factor weighs slightly against

⁸⁰ See Def.'s July 20, 2016, Notice of Plaintiff Leslie A. Meyers' Failure to Comply with this Court's June 27th Order; Def.'s August 10, 2016, Notice of Plaintiff Leslie A. Meyers' Refusal to Mediate as Ordered.

⁸¹ While the Court imposed monetary sanctions against Plaintiff by Memorandum Opinion and Order entered on June 28, 2016, the Court has not yet directed Plaintiff to pay an exact sum to George-Fields, as it was first necessary for the Court to obtain an itemization of attorney's fees and costs from George-Fields in order to calculate the appropriate amount of monetary sanctions. See June 28, 2016, Mem. Op. & Order. George Fields submitted the requested itemization on July 13, 2016, but the Court has not yet determined the exact amount of monetary sanctions owed by Plaintiff. See Def.'s July 13, 2016, Response to the Court's June 27, 2016, Sanction Order Against Leslie A. Meyers.

⁸² *Caribbean*, 2011 V.I. LEXIS 49, at *7-8.

⁸³ See October 1, 2015, Order; June 28, 2016, Mem. Op. & Order.

dismissal. In balancing these factors, the Court concludes that dismissal is warranted as a sanction of last resort. Consequently, the Court will dismiss the Verified Complaint with prejudice.

II. Claims of Other Interested Persons.

The dismissal of Plaintiff's Verified Complaint does not dispose of George-Fields' counterclaims against Plaintiff. Furthermore, it appears the motions of two interested persons remain pending, namely Angel Callwood's September 2, 2014, *pro se* "Motion for Order Requiring Joinder Pursuant to Rule 19(a) and/or Dismissal Pursuant to Rule 12(b)(7), Title 5, V.I.C. Section 31(1)(A)," which is fully briefed, and Eleanor Sullivan's May 11, 2015, and August 3, 2015, Motions to Intervene. The other interested persons that have contacted the Court regarding this action, Louis X. Simeon Jr. and Malik Muhammad, have asserted that the Court lacks jurisdiction over them, but do not seek to intervene in this action.

Callwood contends that George-Fields was required to join him as a party because Callwood has an interest in the Property since it "was deeded to him" after the Court entered default judgment in favor of Plaintiff.⁸⁴ George-Fields has moved to strike Callwood's motion, arguing "Callwood has no standing to become a party to this action since he has no title and merely claims a right via a void deed conveyed to him by Meyers . . . [since Meyers conveyed the deed] after the default judgment was entered, but before any marshal's or judicial deed was issued[,] and the Court has since set aside the default judgment."⁸⁵ Essentially, Callwood seeks to intervene in this action and, though Callwood does not explicitly state this, the Court will construe it as a motion to intervene since Callwood is representing himself and is therefore entitled to "greater

⁸⁴ See generally Callwood's September 2, 2014, "Motion for Order Requiring Joinder Pursuant to Rule 19(a) and/or Dismissal Pursuant to Rule 12(b)(7), Title 5, V.I.C. Section 31(1)(A)" & p. 3.

⁸⁵ Def.'s September 8, 2014, Mot. to Strike Pleading of Angel Callwood, p. 1.

leeway in dealing with matters of procedure and pleading.”⁸⁶ Notwithstanding, the Court agrees with George-Fields and will deny Callwood’s motion because Callwood is not entitled to intervene as of right.

The Court set aside the default judgment, which recognized that Plaintiff “acquired title . . . [to the Property] in fee simple absolute by adverse possession[.]”⁸⁷ because George-Fields was not properly served with the Complaint. “[A] default judgment entered when a complaint has not been properly served is void and must be set aside No amount of time can render a void judgment valid.”⁸⁸ Since the default judgment is void, it has no force.⁸⁹ As a result, Plaintiff’s ownership rights by adverse possession had not yet been determined and Plaintiff’s conveyance of the Property to Callwood is void because Plaintiff lacked the requisite ownership interest to transfer title to Callwood.⁹⁰ Therefore, Callwood does not have an interest in the Property.

While Callwood arguably had an interest in this litigation while Plaintiff’s claim of adverse possession was pending, the dismissal of Plaintiff’s Verified Complaint with prejudice disposes of Plaintiff’s claim of adverse possession and, therefore, any potential interest of Callwood in this litigation since Callwood’s interest hinges on a finding that Plaintiff was owner of the Property by adverse possession. Because the dismissal of Plaintiff’s Verified Complaint forecloses a potential ruling in favor of Plaintiff on his claim of adverse possession, Callwood does not have “a sufficient interest in the litigation” and his interest will not “be affected or impaired, as a practical matter by

⁸⁶ *Appleton*, 61 V.I. at 267 (citing *Joseph*, 54 V.I. at 650).

⁸⁷ June 10, 2013, Default Judgment and Order, p. 2.

⁸⁸ *Ernest v. Morris*, 64 V.I. 627, 638-639 (V.I. 2016) (internal and other citations omitted).

⁸⁹ *See id.*

⁹⁰ *See King v. Appleton*, 61 V.I. 339, 347 (V.I. 2014) (explaining the requirements of a valid conveyance of real property).

the disposition of the action[.]”⁹¹ Since these requirements are not met, Callwood is not eligible for intervention as of right under Fed. R. Civ. P. 24(a).⁹² Similarly, since Callwood has no interest in the Property, Callwood is also not entitled to permissive intervention under Fed. R. Civ. P. 24(b).

Because Callwood is not a party to this action and is not permitted to intervene, Callwood is not authorized to move for relief under Fed. R. Civ. P. 12(b)(7) and 19(a), and the Court need not address Callwood’s arguments arising thereunder. For these reasons, the Court will grant George-Fields’ Motion to Strike and deny Callwood’s *pro se* “Motion for Order Requiring Joinder Pursuant to Rule 19(a) and/or Dismissal Pursuant to Rule 12(b)(7), Title 5, V.I.C. Section 31(1)(A).”

With respect to Sullivan’s Motions to Intervene, the Court requires additional information before it can render a decision. Sullivan contends that she “has a strong concrete interest in defending her title of interest in” the Property.⁹³ However, Sullivan fails to make any factual allegations or submit any evidence demonstrating that she has an ownership interest in the Property, nor has Sullivan provided any justification for her delay in filing the motion to intervene.⁹⁴ Without this information, the Court cannot conduct a meaningful analysis of the four requirements for intervention as of right, nor can the Court adequately address whether Sullivan “has a claim or defense that shares with the main action a common question of law or fact” so as to warrant permissive intervention.⁹⁵ Any purported ownership interest of Sullivan, or any other

⁹¹ *Anthony*, 56 V.I. at 526 (citations omitted).

⁹² *See id.* (citations omitted).

⁹³ Sullivan’s May 11, 2015, Mot. to Intervene.

⁹⁴ *See Anthony*, 56 V.I. at 529 (“[A] court is free to consider any justification for the delay offered by the movant, so long as it explains the ‘lapse in time’ before filing a motion to intervene”) (citations omitted).

⁹⁵ FED. R. CIV. P. 24(b).

person for that matter, in the Property remains relevant since George-Fields' asserts a counterclaim that "[a]s the heir . . . [she] is entitled to have the title to the Property quieted with her...."⁹⁶ While the Court could deny Sullivan's motions outright as fatally deficient, the Court is hesitant to do so because the Court generally may not affect the property rights of a third individual who is not a party to the underlying action⁹⁷ without taking the necessary steps to consider each party's equitable interest, particularly where property is held in joint tenancy.⁹⁸ Consequently, the Court will hold Sullivan's Motions to Intervene in abeyance in order to give Sullivan an opportunity to supplement her motion.

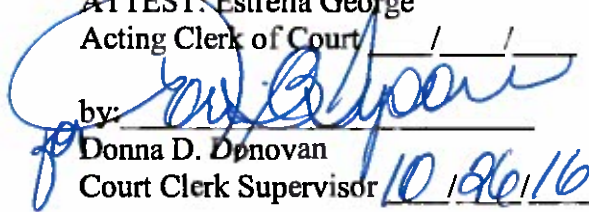
CONCLUSION

In light of the foregoing, the Court will dismiss Plaintiff's Verified Complaint with prejudice for failure to prosecute. Callwood's motion to intervene will be denied and George-Fields' Motion to Strike granted, but Sullivan's motion to intervene will be held in abeyance.

An Order consistent with this Memorandum Opinion shall follow.

Dated: October 24, 2016

ATTEST: Estrella George
Acting Clerk of Court

by: 

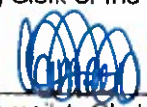
Donna D. Donovan
Court Clerk Supervisor 10/26/16


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

⁹⁶ Def.'s First Am. Answer ¶ 12.

⁹⁷ See *Harvey v. Christopher*, 55 V.I. 565, 574 n.6 (V.I. 2011).

⁹⁸ See *Armstrong v. Armstrong*, 266 F. Supp. 2d 385, 394 (D.V.I. 2003).

CERTIFIED A TRUE COPY
DATE: Oct. 26, 2016
ESTRELLA H. GEORGE
Acting Clerk of the Court
By: 
Cameil A. Clarke
Court Clerk II

DIVISION OF ST. THOMAS AND ST. JOHN

Defendant.

)
)
)
)
)
)
) **CASE NO. ST-12-CV-394**
)
)
)
)
)
)
)
)
)
)
)

The Court having issued a Memorandum Opinion on this date, it is

ORDERED that Defendant Monica George-Fields' request that Plaintiff's Verified Complaint be dismissed for failure to prosecute is **GRANTED**; and it is

ORDERED that Plaintiff's *pro se* Verified Complaint is **DISMISSED WITH PREJUDICE**; and it is

ORDERED that Defendant Monica George-Fields’ Motion to Strike Pleading of Angel Callwood is **GRANTED** and Angel Callwood’s *pro se* “Motion for Order Requiring Joinder Pursuant to Rule 19(a) and/or Dismissal Pursuant to Rule 12(b)(7), Title 5, V.I.C. Section 31(1)(A)” is **DENIED**; and it is

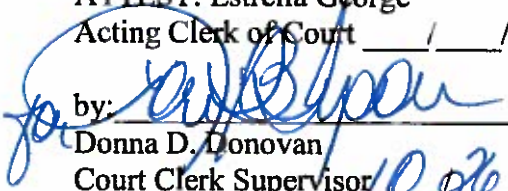
ORDERED Eleanor Sullivan's *pro se* Motion to Intervene shall be **HELD IN ABEYANCE**; and it is

ORDERED that by **November 29, 2016**, Eleanor Sullivan may supplement her Motion to Intervene, as described in the Memorandum Opinion, failing which the Court will decide the motion in the absence of additional information; Defendant Monica George-Fields may file an Opposition thereto by **December 13, 2016**; and Sullivan may reply by **December 23, 2016**; and it is

ORDERED that copies of this Order and accompanying Memorandum Opinion shall be directed to Plaintiff Leslie A. Meyers, *pro so*, Angel Callwood, *pro se*, Eleanor Sullivan, *pro se*, by certified mail, return receipt requested, and to counsel for Defendant Monica George-Fields and the IT Division of the Superior Court of the Virgin Islands.

Dated: October 24, 2016

ATTEST: Estrella George
Acting Clerk of Court

by: 

Donna D. Donovan

Court Clerk Supervisor 10/26/16


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

CERTIFIED A TRUE COPY
DATE: Oct. 26, 2016
ESTRELLA H. GEORGE
Acting Clerk of the Court
By: 
Cameil A. Clarke
Court Clerk II

LESLIE A. MEYERS,

Plaintiff,

vs.

**ALFRED R. GEORGE, JR. and ALL PERSONS
CLAIMING AN INTEREST IN PARCEL
NO. 14-A ESTATE JOHN'S FOLLY, ST. JOHN,
VIRGIN ISLANDS, INCLUDING BUT NOT
LIMITED TO ALL HEIRS OF C. BENJAMIN,**

Defendant.

Pending before the Court is the Court's June 28, 2016, imposition of monetary sanctions against Plaintiff and the itemization of attorney's fees and costs submitted by Defendant Monica George-Fields on July 13, 2016. For the following reasons, the Court will impose monetary sanctions against Plaintiff in the amount of \$8,599.50.

Beginning with the March 6, 2014, Scheduling Order, Plaintiff has violated at least seven Orders of this Court, all of which directed Plaintiff to participate in discovery or mediation.¹ Additionally, Plaintiff has filed seven iterations of the same motion to dismiss, challenging the Court's November 12, 2013, decision to set aside the default judgment, despite the Court having rejected Plaintiff's argument on numerous occasions, beginning with the Order signed on March

¹ See Orders entered on March 6, 2014, July 30, 2014, August 13, 2014, September 5, 2014, October 1, 2015, December 9, 2015, June 28, 2016.

6, 2014.² Since July 30, 2014, the Court threatened to impose sanctions against Plaintiff due to his non-compliance. On October 1, 2015, the Court gave Plaintiff one last opportunity to participate in mediation and discovery, failing which the Court would “consider the imposition of sanctions, up to and including, dismissal[,]”³ yet Plaintiff still did not comply, which resulted in the Court imposing monetary sanctions against Plaintiff on June 28, 2016.⁴

In imposing monetary sanctions against Plaintiff in the June 28, 2016, Memorandum Opinion and Order, the Court addressed George Fields’ December 11, 2015, Notice regarding Plaintiff’s refusal to participate in mediation and discovery and Plaintiff’s January 8, 2016, motion to dismiss. The Court declined to dismiss the action for lack of prosecution at that time, reasoning that monetary sanctions against Plaintiff were appropriate since the six factor balancing test under *Halliday v. Footlocker Specialty, Inc.*⁵ requires the Court to consider the effectiveness of sanctions other than the extreme sanction of last resort of dismissal.⁶ Consequently, the Court directed George-Fields to file an itemized statement detailing all of the attorney’s fees and costs she has incurred since March 5, 2014,⁷ the date the Court signed its first Order denying Plaintiff’s challenge to the Court’s November 12, 2013, decision to set aside the default judgment, and implementing a Scheduling Order.⁸ On July 13, 2016, George-Fields submitted an itemization of \$13,141.00 in attorney’s fees and \$47.84 in costs incurred since March 5, 2014.⁹

² See March 6, 2014, Mem Op. & Order; May 21, 2014, Mem. Op. & Order; October 1, 2015, Mem. Op. & Order; June 28, 2016, Mem. Op. & Order.

³ See October 1, 2015, Mem. Op., p. 3.

⁴ See June 28, 2016, Mem. Op. & Order.

⁵ 53 V.I. 505, 510 (V.I. 2010) (adopting the six factor balancing test in *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984)).

⁶ June 28, 2016, Mem. Op. (citing *Dospiva v. Murray*, 2015 V.I. LEXIS 31, *9 (V.I. Super. Ct. Mar. 30, 2015)) (other citations omitted).

⁷ The Order was entered on March 6, 2014.

⁸ June 28, 2016, Order.

⁹ Def.’s July 13, 2016, Response to the Court’s June 27, 2016, Sanction Order Against Leslie A. Meyers.

The Court has since dismissed Plaintiff's Verified Complaint with prejudice for lack of prosecution, but has yet to determine the amount of monetary sanctions initially imposed against Plaintiff.

STANDARD

It is axiomatic that the Court has the inherent power to impose sanctions its incidental powers as codified in 4 V.I.C. § 243.¹⁰ Additionally, the Court may impose monetary sanctions under Fed. R. Civ. P. 37 for violations of Court orders regarding discovery.¹¹ Fed. R. Civ. P. 37(b) provides "[i]f a party fails to obey an order to provide or permit discovery . . . the Court must order the disobedient party . . . to pay the reasonable expenses including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust."¹²

Any fees and costs collected by Virgin Islands attorneys must be reasonable.¹³ Under Rule 211.1.5 of the Virgin Islands Rules of Professional Conduct, "[t]he factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature

¹⁰ See *Withey v. Bermudez*, 2014 V.I. LEXIS 108, *9-10 (V.I. Super. Ct. Dec. 16, 2014) ("[R]ules and statutes do not displace Court's inherent powers to impose sanctions. Rather, court's [sic] may fill in the gaps of sanctions law with their own inherent powers where there is a finding of bad faith . . . and where 'neither the statutes nor the rules are up to task'" (citing *United States v. Hudson & Goodwin*, 11 U.S. 32, 33 (U.S. 1812); *Chambers v. Nasco, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27, (U.S. 1991)); See also *V.I. Taxi Ass'n v. V.I. Port Auth.*, 2015 V.I. LEXIS 67 (V.I. Super. Ct. June 15, 2015).

¹¹ FED. R. CIV. P. 37 is made applicable through SUPER. CT. R. 39. SUPER. CT. R. 39(a) ("Depositions and discovery shall be had in the Superior Court of the Virgin Islands, pursuant to the provisions of Rules 36 to 37, inclusive of the Federal Rules of Civil Procedure").

¹² FED. R. CIV. P. 37(b)(2)(A), (C).

¹³ See V.I.S.C.T.R. 211.1.5(a) (prohibiting lawyers from collecting "an unreasonable fee or an unreasonable amount for expense").

and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.”¹⁴

“[A]ttorney's fees awards should represent ‘a fair and *reasonable* portion of ... [the] attorney’s fees incurred in the prosecution or defense of the action, and not [necessarily] the whole amount charged by the attorney.’”¹⁵ In any event, the Court should provide an “explanation of why its costs [and attorney’s fees] award was reasonable.”¹⁶

In so doing, the Court notes that much of Virgin Islands jurisprudence regarding the reasonableness of an award of attorney’s fees and costs pertains to awards to prevailing parties under 5 V.I.C. § 541. Though Court is awarding attorney’s fees and costs as a monetary sanction against Plaintiff, as opposed to as a prevailing party, the Court looks to this jurisprudence for guidance, as it is reflective of the process employed by the Court in assessing the reasonableness of attorney’s fees and costs.¹⁷

ANALYSIS

George-Fields has requested \$47.84 in costs, which according to the billing ledger submitted by George-Fields, represents “mailing charges.” Without further detail or description, these “mailing charges” constitute general overhead costs associated with normal operation of a law office, for which attorneys are generally not reimbursed.¹⁸ As a result, the Court declines to

¹⁴ *Id.*; See *Rainey v. Hermon*, 55 V.I. 875, 884-85 (V.I. 2011) (applying ABA MODEL R. PROF. COND. 1.5(a) when reviewing the attorney’s fees for reasonableness). V.I.S.C.T.R. 211.1.5 is modeled after ABA MODEL R. PROF. COND. 1.5(a).

¹⁵ *Kaloo v. Estate of Small*, 62 V.I. 571, 584 n.11 (V.I. 2015) (citing *Estien v. Christian*, 507 F.2d 61, 63, 11 V.I. 464 (3d Cir. 1975)) (internal quotation marks omitted).

¹⁶ *Id.* (citations omitted); *Mahabir v. Heirs of George*, 63 V.I. 651, 668-669 (V.I. 2015).

¹⁷ See *Guardian Ins. Co. v. Estate of Knight-David*, 2015 V.I. LEXIS 124, *21-22 (V.I. Super. Ct. Sept. 30, 2015) (applying Virgin Islands jurisprudence calculating the “lodestar” amount for determining the reasonableness of the fees and costs when determining the amount of attorney’s fees and costs to be awarded in connection with the granting of a motion to compel discovery).

¹⁸ *C.f. Pedro v. Huggins*, 2010 V.I. LEXIS 18, *11-12, 53 V.I. 98, 105-106 (V.I. Super. Ct. 2010) (citation omitted)(“Local courts consistently held that expenditures for messenger services, photocopying, phone calls and

award George-Fields the \$47.84 in requested costs because they constitute general overhead costs.¹⁹

As to the \$13,141.00 requested by George-Fields in attorney's fees, the Court will award \$8,599.50. Duplicative, disproportionate or superfluous charges or services are not reasonable.²⁰ In addition, reduction is appropriate when reimbursement is sought for the performance of administrative or clerical tasks, as courts are often "unwilling to authorize compensation at the high rates associated with an attorney's professional services when a lawyer spends time on tasks that are easily delegable to non-professional assistance."²¹ Lastly, reduction may also be necessary after considering "the novelty and difficulty of the issues involved ... [and] the level of skill needed to properly conduct the case[.]"²²

Applying the foregoing precepts, the Court will reduce the amount requested for e-mail correspondence that is redundant or involves administrative tasks, such as scheduling mediation.²³ The Court will also reduce the amount requested for reviewing certain motions and orders or drafting e-mail correspondence, where the time spent is disproportionate to the complexity of the legal issues involved therein.²⁴ After making these reductions, the Court finds \$8,599.50 represents a fair and reasonable portion of the attorney's fees incurred by George-Fields from March 5, 2014,

other normal office overhead expenses are not awardable pursuant to 541") (citations omitted) and *In re Jade Mgmt. Servs.*, 386 F. App'x 145, 151 (3d Cir. 2010) (on appeal from D.V.I.) (citations omitted).

¹⁹ See *Guardian*, 2015 V.I. LEXIS 124, *26-27 (citations omitted).

²⁰ See *Chapa v. Sepe*, 2013 V.I. LEXIS 72, *2 (V.I. Super. Ct. June 3, 2013) ("Duplicative, excessive, or redundant fees are not considered reasonable") (citations omitted); *Wenner v. Government of the V.I.*, 29 V.I. 158, 166 (D.V.I. 1993).

²¹ See *Berne Corp. v. Gov't of the V.I.*, 2010 U.S. Dist. LEXIS 105265, *15-18 (D.V.I. Sept. 30, 2010) (citing *Halderman v. Pennhurst State Sch. & Hosp.*, 49 F.3d 939, 942 (3d Cir. 1983)).

²² *Judi's of St. Croix Car Rental v. Weston*, 2008 V.I. Supreme LEXIS 21, at *3 (V.I. May 19, 2008) (unpublished) (citations omitted).

²³ See billing entries for 9/5/14, 9/18/14, 10/5/15, 10/12/15, 10/29/15. Def.'s July 13, 2016, Response to the Court's June 27, 2016, Sanction Order Against Leslie A. Meyers, Exhibit A.

²⁴ See billing entries for 8/15/14, 9/5/14, 9/29/14, 8/5/15, 10/1/15, 11/2/15, 11/4/15, 11/30/15, 3/11/16. Def.'s July 13, 2016, Response to the Court's June 27, 2016, Sanction Order Against Leslie A. Meyers, Exhibit A.

to July 13, 2016, the date George-Fields filed the aforementioned itemization of fees and costs in response to the Court's June 28, 2016, imposition of monetary sanctions against Plaintiff. Accordingly, the Court will impose monetary sanctions against Plaintiff in the amount of \$8,599.50.

An Order consistent with this Memorandum Opinion shall follow.

Dated: October 25, 2016

ATTEST: Estrella George
Acting Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


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

CERTIFIED A TRUE COPY

DATE: Oct. 26, 2016

ESTRELLA H. GEORGE
Acting Clerk of the Court

By:


Camell A. Clarke
Court Clerk II