

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: AT CHRISTIANSTED

DIGBY STRIDIRON,

Plaintiff,

vs.

I. C., INC., d/b/a ISLAND CARS
OF ST. CROIX,

Defendant.

CIVIL NO. 162/1980

ACTION FOR: RESCISSION
OF SALES CONTRACT

EDWARD J. OCEAN, ESQUIRE
26 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-7903
(Attorney for Plaintiff)

DOUGLAS A. BRADY, ESQUIRE
6 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-2156
(Attorney for Defendant)

PETERSEN, Judge

MEMORANDUM OPINION
January 31, 1983

This action came before this Court by complaint filed on February 12, 1980. Judgment was entered on September 25, 1981, in favor of Plaintiff and against Defendant, for \$12,913.50. On October 15, 1981, the Defendant filed a notice of appeal in the District Court. This appeal was dismissed for lack of prosecution on November 5, 1982. The reason for said dismissal was that "[n]o transcript [was] filed . . . as required by Federal Rule App.P. 11

STRIDIRON vs. I.C. INC. d/b/a ISLAND CARS OF SAINT CROIX
CIVIL NO. 162/1980
ACTION FOR: RESCISSION OF SALES CONTRACT
Page 2

(1981), . . . Notice having been given to the Appellant advising that, if transcript is not filed the matter will be dismissed for lack of prosecution" The Plaintiff thereafter, on November 23, 1982, sought a Writ of Execution against the Defendant to satisfy the judgment entered by this Court. This was followed by a Motion to Stay Writ of Execution which the Defendant filed on December 16, 1982. The basis for this Motion is that the Defendant had moved in the District Court for reconsideration of the dismissal of the appeal. The Defendant seeks a stay of execution in this Court until the District Court has ruled on the Motion for Reconsideration. The Plaintiff opposes the Motion to stay execution.

The power to issue a Stay of Execution in this Jurisdiction is governed by Rule 62 F.R.C.P., Title 5 V.I.C. App. 1 Rule 62. See 4 V.I.C. Section 83 (Cum. Supp. 1981). Whether to grant or deny a motion for a stay of execution is left to the conscience and sound discretion of the Court.

[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

STRIDIRON vs. I.C. INC. d/b/a ISLAND CARS OF SAINT CROIX
CIVIL NO. 162/1980
ACTION FOR: RESCISSION OF SALES CONTRACT
Page 3

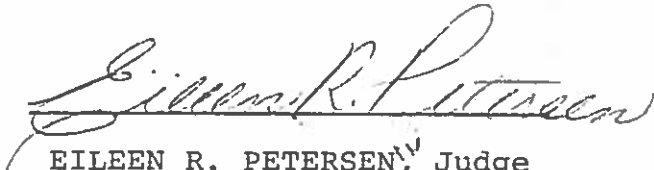
Bechtel Corp. v. Local 215, Laborers' Int'l Union, 544 F.2d 1207, 1215 (3d Cir. 1976) (quoting Landis v. North American Co., 299 U.S. 248, 254-55, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936) (Cardozo, J.)). See also 30 Am Jur. 2d Executions, Sections 693 & 698. The competing interests to be weighed in order to maintain an even balance include the harm which may result from the granting of a stay, the hardship which the movant may suffer if denied a stay, and the orderly course of justice. Robbins Flooring, Inc. v. Federal Floors, Inc., 445 F. Supp. 4 (E.D.PA. 1977) (Citing CMAX, Inc. v. Hall, 300 F.2d 265 (9th Cir. 1962)). In addition, "The power to stay execution should be exercised with caution and never unless the case is plain and the equity of the party seeking it free from doubt or difficulty." Robbins Flooring, supra, at 13. See also 30 Am. Jur. 2d Executions, Section 693.

The application of these principles to the present circumstances compels this Court to deny the Motion to Stay Execution. In the Defendant's Motion to the District Court to reconsider dismissal of the appeal, it explains that the reason no transcript was filed is the trial court reporter had not complied with repeated requests to furnish one. However, it appears from the record that, after the initial request for a transcript, the Defendant waited five months before inquiring as to the status of the transcript. The Defendant

STRIDIRON vs. I.C. INC. d/b/a ISLAND CARS OF SAINT CROIX
CIVIL NO. 162/1980
ACTION FOR: RESCISSION OF SALES CONTRACT
Page 4

did not follow up on this inquiry for another four months. Rules 10, 11 and 12, Fed.R.App.P., govern the ordering, preparation and filing of the record on appeal. Certain time constraints for transmission of the record are provided in these rules. Defendant is presently well beyond these limitations of time, and has actually waited until after its appeal was dismissed for failure to file a transcript before it has asked the District Court to compel production of the transcript. As stated previously, the equity of the party seeking a stay of execution must be free from doubt, and competing interests, including potential prejudice to the party opposing the stay, must be weighed before the court can exercise its discretion and grant a stay. The Defendant's present situation is as a result of its own delays, and the Plaintiff will not be made to suffer a stay of execution as a consequence.

For the foregoing reasons, Defendant's Motion to Stay Writ of Execution is DENIED.


EILEEN R. PETERSEN, Judge