

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOHN CANEGATA, IN HIS CAPACITY AS
STATE CHAIRMAN OF THE REPUBLICAN
PARTY OF THE UNITED STATES VIRGIN
ISLANDS; AND ROBERT MAX SCHANFARBER,
IN HIS CAPACITY AS SECRETARY OF THE
REPUBLICAN PARTY OF THE UNITED STATES
VIRGIN ISLANDS, BOTH ACTING ON BEHALF
OF THE REPUBLICAN PARTY OF THE UNITED
STATES VIRGIN ISLANDS,**

PLAINTIFFS,

V.

**HERBERT SCHOENBOHM;¹ HOLLAND
REDFIELD; JAMES OLIVER; FRED VIALET,
JR.; LEIGH F. GOLDMAN; AND WARREN B.
COLE,**

DEFENDANTS.

SX-16-CV-324

**ACTION FOR INJUNCTIVE RELIEF
TEMPORARY RESTRAINING
ORDER
PRELIMINARY INJUNCTION
PERMANENT INJUNCTION**

MEMORANDUM OPINION

THIS MATTER is before the Court for a status conference hearing on August 5, 2016 at 9:00 a.m. An order was subsequently entered pursuant to the Court's ruling of the August 5, 2016 hearing and this is the accompanying memorandum opinion.

BACKGROUND

On May 18, 2016, Plaintiffs filed an original complaint against Defendants and a motion for a temporary restraining order requesting the Court to issue a temporary restraining order to enjoin Defendants from using: (1) any symbol, emblem and insignia of the Republican National Committee, namely the Elephant; and (2) the "Republican Party of the U.S. Virgin Islands" name. On May 27,

¹ As previously noted, the Court believes there was a typographical error in the pleadings and, it should read "Herbert Schoenbohm" instead of "Herbert Schoenbaum." Pursuant to Superior Court Rule 8, the Court will amend the caption to correct the error. *See Brooks v. Gov't of the Virgin Islands*, 58 V.I. 417, n. 11 (V.I. 2013) ("Superior Court Rule 8...states the general rule that a court can correct errors or defects in pleadings.").

2016, the Court entered a memorandum opinion and an accompany order granting Plaintiffs' motion for a temporary restraining order and scheduled a hearing on the issuance of a preliminary injunction on June 3, 2016. Thereafter, the Court granted the parties' stipulation to convert the temporary restraining order into a preliminary injunction until August 5, 2016 and scheduled a hearing to take place in this matter on August 5, 2016, at 9:00 a.m.

On August 3, 2016, Defendant Warren B. Cole filed a motion to dismiss (hereinafter, "Motion to Dismiss"). The Motion to Dismiss was joined by Defendant Holland Redfield, Defendant Fred Violet, Jr., and Defendant Leigh F. Goldman.

On August 5, 2016, at 9:00 a.m., this matter came before the Court for a status conference hearing. Attorney Charles E. Lockwood appeared on behalf of Defendant Warren B. Cole. Attorney Michael Joseph appeared on behalf of Defendant Holland Redfield. Defendant Fred Violet, Jr. appeared on behalf of himself and Defendant Leigh F. Goldman. Defendant Herbert Schoenbohm appeared on behalf of himself. Defendant James Oliver did not appear but had filed a notice of unavailability on August 1, 2016, notifying the Court that he is unable to attend the hearing due to medical reasons. Neither Plaintiffs nor their counsel, Attorney Mark Eckard, attended the hearing. At the hearing, the Court found that Plaintiffs failed to prosecute, granted the Motion to Dismiss, and dismissed the case.

On August 8, 2016, Attorney Mark Eckard's office contacted the Court and requested a copy of the order of dismissal per the August 5, 2016 hearing so Attorney Mark Eckard can reference it in the motion for reconsideration he intended to file on behalf of Plaintiffs. Per Attorney Mark Eckard's request, the Court signed and entered the order of dismissal first with the accompanying memorandum opinion to follow. However, despite his request, on August 9, 2016, Attorney Mark Eckard went ahead and filed a motion for reconsideration without waiting for the Court's order of dismissal and its memorandum opinion. To date, no responses have been filed.

The Court hereby issues the accompanying memorandum opinion to its August 10, 2016 order dismissing Plaintiffs' case for failure to prosecute.

STANDARD OF REVIEW

The Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") has clearly stated that "the Superior Court may not dismiss an action for failure to prosecute unless these six [*Poulis*]² factors strongly weigh in favor of dismissal as a sanction." *Halliday v. Footlocker Specialty, Inc.*, 53 V.I. 505, 511(V.I. 2010). The Supreme Court instructed that the Superior Court must conduct an analysis and balance of the following six *Poulis* factors:

(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary cause 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 meritoriousness of the claim or defense; and (6) the effectiveness of sanctions that serve as an alternative to dismissing the case. *Molloy v. Independence Blue Cross*, 56 V.I. 155, *184-85 (V.I. 2012) (citing *Poulis*, 747 F.2d at 868)

The Supreme Court further instructed that, "[a]lthough 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." *Molloy*, 56 V.I. at *186.

DISCUSSION

1. The Extent of the Party's Personal Responsibility

Although Attorney Mark Eckard ultimately bears the blame for getting Plaintiffs' case dismissed as a result of their failure to appear at the August 5, 2016 hearing, Plaintiffs' lack of responsibility is not dispositive because "a client cannot always avoid the consequences of the acts or omissions of its counsel." *Poulis*, 747 F.2d at 868. The Court finds that Plaintiffs should have been aware of the correct time for the August 5, 2016 hearing. Plaintiffs were present at the June 3, 2016 preliminary injunction hearing when the date and time for the August 5, 2016 hearing was set.

² *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

Furthermore, given the very public nature of this matter, the correct information was readily available. In fact, even a non-party—i.e., a newspaper reporter—was able to obtain the correct information and attend the August 5, 2016 hearing on time. Accordingly, this factor weighs in favor of dismissal.

2. The Prejudice to the Adversary

In *Molloy*, the Supreme Court stated that “[p]rejudice to the opposing party is generally demonstrated by either increased expense to the opposing party arising from the extra costs associated with filings responding to dilatory behavior or increased difficulty in the opposing parties’ ability to present or defend their claim(s) due to the improper behavior.” 55 V.I. at *189 (*citing Poulis*, 747 F.2d at 868) Here, five out of six Defendants appeared personally or via their counsels at the August 5, 2016 hearing. It is indisputable that they will incur additional costs and/or attorneys’ fee if they are required to attend another hearing as the result of Plaintiffs’ failure to attend the August 5, 2016 hearing. However, while the Court finds that some prejudice exists, it is not sufficient prejudice to warrant a dismissal. Accordingly, this factor does not weigh in favor of dismissal.

3. A History of Dilatoriness

This matter has only been pending since May 2016. To date, Plaintiffs have never violated a court order related to this matter. Accordingly, this factor does not weigh in favor of dismissal.

4. Offending Party/Attorney’s Conduct Willful or in Bad Faith

In *Molloy*, the Supreme Court stated that “the trial court must point to specific evidence to justify its determination of willfulness or bad faith.” 56 V.I. at *192. Thus, if there is no evidence of willfulness or bad faith on the record, the Court must presume the party/attorney’s conduct was not willful and in bad faith. *Id.* Here, there is no evidence that Plaintiffs and Attorney Mark Eckard’s failure to appear at the August 5, 2016 hearing was an act of willfulness or bad faith. As a matter of

fact, on August 5, 2016, Plaintiffs and Attorney Mark Eckard showed up at Court sometime before 10:00 a.m. and indicated to the Court that they had inadvertently mistaken the hearing to start at 10:00 a.m. This, in and of itself, does not constitute willfulness or bad faith. Accordingly, this factor does not weigh in favor of dismissal.

5. 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.” *Poulis*, 747 F.2d at 869-70. Here, the parties represented to the Court at a prior hearing that they would try to resolve the dispute in this matter in front of the Republican National Committee. (Preliminary Injunction Hr’g Tr., p. 5, June 3, 2016) It is unclear whether this matter is still properly before the Court. At this stage, the meritoriousness of Plaintiffs’ claim is an open question. Accordingly, this factor weighs neutrally.

6. Alternatives to Dismissing the Case

Courts must look to other appropriate methods of sanctioning before dismissal for failure to prosecute because “[d]ismissal must be a sanction of last, not first, resort.” *Poulis*, 747 F.2d at 869. Here, the Court finds the imposition of monetary sanctions awarding Defendants reimbursement of reasonable costs and/or attorneys’ fees incurred for appearing at the August 5, 2016 hearing to be an appropriate sanction alternative to dismissal. Accordingly, this factor does not weigh in favor of dismissal.

Having examined the six *Poulis/Halliday* factors, the Court finds that one factor is neutral, one factor weighs in favor of dismissal, and four factors weigh against dismissal. As such, the extreme sanction of dismissal for failure to prosecute is not proper in this instance. *See Molloy*, 56 V.I. at 186 (“the Superior Court may not dismiss an action for failure to prosecute unless these six

[*Poulis*] factors strongly weigh in favor of dismissal as a sanction.”) Thus, the Court will reverse its decision. As such, Plaintiffs’ motion for reconsideration is rendered moot.

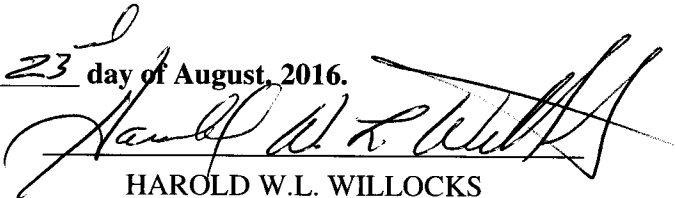
CONCLUSION

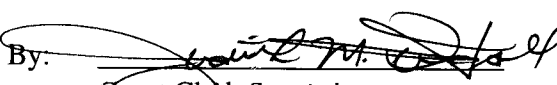
Based on the foregoing, the Court will reverse its decision, vacate the Court’s order of dismissal for failure to prosecute and deny Plaintiffs’ motion for reconsideration as moot. Furthermore, at this juncture, the Court will also vacate its order granting Defendant Warren B. Cole’s Motion to Dismiss and grant the parties leave to respond. Given that this is the accompanying memorandum opinion to the Court’s August 10, 2016 order, the Court will issue a separate order consistent with this memorandum opinion.

DONE and so ORDERED this 23rd **day of August, 2016.**

ATTEST:

Estrella H. George
Acting Clerk of the Court


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: 8/24/16