

DIVISION OF ST. THOMAS AND ST. JOHN

Plaintiff)

ACTION FOR: DAMAGES - CIVIL

VS

CHEYENNE HEAVY EQUIPMENT
RENTAL, LLC
DOUG FRANCIS

**NOTICE OF ENTRY OF
MEMORANDUM OPINION &
ORDER**

Please take notice that on April 21, 2015 a(n) MEMORANDUM OPINION & ORDER dated April 20, 2015 was entered by the Clerk in the above-entitled matter.

Estrella H. George
Acting Clerk of the Court

CAMEIL A. CLARKE
COURT CLERK II

DIVISION OF ST. THOMAS AND ST. JOHN

Plaintiff,

**CHEYENNE HEAVY EQUIPMENT RENTAL, LLC,
and DOUG FRANCIS**

Defendants.

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) **CASE NO. ST-11-CV-416**
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Pending before the Court is Plaintiff's July 8, 2014, Motion for Sanctions for Failure to Provide Rule 26 Information. For the following reasons, Plaintiff's Motion will be held in abeyance.

On July 1, 2011, Plaintiff Nedal Salem filed a Complaint against Defendants Cheyenne Heavy Equipment Rental, LLC (“CHER”) and Doug Francis.¹ To date, the parties have been unsuccessful in mediating the dispute.² On July 8, 2014, Plaintiff filed a motion for sanctions for Defendants’ failure to disclose insurance policies pursuant to Rule 26.³ On December 9, 2014, the Court issued a scheduling order requiring that factual discovery be completed by March 15, 2015, and that mediation be completed by April 10, 2015, with a report to the Court by April 15, 2015.⁴

⁴ Plaintiff filed a supplemental report with a proposed Amended scheduling Order on November 14, 2014. Defendant did not respond.

DISCUSSION

Plaintiff requests sanctions and an order compelling Defendants to disclose the insurance policies for Cheyenne Heavy Equipment and Doug Francis. In the Virgin Islands discovery is governed first, “by the Rules of the Superior Court and, to the extent not inconsistent therewith, by the Rules of the District Court, and the Federal Rules of Civil Procedure.”⁵ Plaintiff claims that Defendants violated Fed. R. Civ. P. 26, by failing to perform their affirmative duty to voluntarily disclose, “any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action.”⁶

Defendants filed their disclosures under Fed. R. Civ. P. 26 on October 4, 2011, stating that they did not have an insurance policies that may provide coverage. Plaintiff claims to have discovered after the June 27, 2014, mediation that Doug Francis had his own insurance policy that has never been produced. Plaintiff also believes that at the time of the accident Cheyenne Heavy Equipment had a Lloyd’s of London policy through Tunick agency. Plaintiff asserts that the policy is still effective because Defendant failed to show a notice of cancellation from the insurance company as required under 22 V.I.C. § 827, to justify failing to produce the policy.⁷

Defendants’ counsel maintains that the initial disclosures complied with Defendants’ obligations under Fed. R. Civ. P. 26 because he was not aware that Doug Francis had a policy and because Cheyenne Heavy Equipment’s policy lapsed from lack of payment. In terms of Doug Francis, Defendants’ counsel indicates that he just learned about the policy after the June mediation

⁵ *Penn v. Whitecap Inv. Corp.*, 2012 V.I. LEXIS 63, 1 (V.I. Super. Ct. Dec. 12, 2012).

⁶ Fed. R. Civ. P. 26 (a)(1)(A)(iv).

⁷ “[W]ritten notice of such cancellation must be actually delivered or mailed by certified mail to the insured or to his representative in charge of the subject of the insurance (i) not less than fifteen days prior to the effective date of cancellation....” 22 V.I.C. § 827.

and has no objection to now producing the policy. Additionally, Defendants argue that Plaintiff's motion must be denied because Plaintiff failed to meet the procedural requirements of LOCAL R. OF CIV. P. 37.1 and 37.2.

It is well established in the Virgin Islands under LOCAL R. OF CIV. P. 37.1 and 37.2, that prior to filing a motion to compel discovery, a moving party must at least,

- (1) arrang[e] or attempt[t] to arrange for a conference of the parties to resolve the dispute;
- (2) confer during the conference in a *good faith effort* to eliminate the necessity for the motion or to eliminate as many of the disputes as possible; and
- (3) [w]here counsel are unable to resolve all of their differences [at the conference], they shall formulate and sign a written stipulation to that effect.⁸

Plaintiff's counsel contends that she specifically asked Defendants' counsel to produce the policies after the mediation. However, a brief conversation, without further documentation of an effort to resolve the dispute, fails to satisfy the good faith meet and confer requirement.⁹ Further, Plaintiff's counsel failed to file a written stipulation indicating the failure to resolve the discovery disagreement prior to filing the motion for sanctions. As a result, Plaintiff fails to meet the procedural requirements under LOCAL R. OF CIV. P. 37.1 and 37.2, and Plaintiff's motion is premature.

Nevertheless, the Court reminds the parties that attorneys in the Virgin Islands are governed by the Virgin Islands Rules of Professional Conduct and are considered to be on notice at all time to abide by the procedural rules. Pursuant to 4 V.I.C § 243,¹⁰ a Court may impose sanctions against a party or an attorney for failure to follow the Court's orders, so long as the party

⁸ *Demming v. V.I. Water & Power Auth. & Regatta Point Watergate Villas Condo. Assoc.*, 2013 V.I. LEXIS 3, 1 (V.I. Super. Ct. Jan. 20, 2013)

⁹ *See id.*

¹⁰ 4 V.I.C. § 243 provides that "[e]very court shall have power . . . [t]o compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in all actions or proceedings pending therein. . ."

has had notice and a reasonable opportunity to be heard.¹¹ Defendants and Defendants' counsel have previously been sanctioned in this case for failing to abide by the deadlines and Orders of the Court. The Court warned Defendants in its April 4, 2013, Opinion:

[I]f Defendants and Defendants' counsel continue to ignore the Court's Orders, the Court may consider more serious sanctions under Super. Ct. R. 40(e)(2) and Fed. R. Civ. P. 37 including striking of the pleadings and/or additional monetary fines. Further, under 4 V.I.C. § 244 and 14 V.I.C. §§ 581, 582 the Court may consider holding the Defendants and counsel in contempt of court.

Despite this warning and the imposition of monetary sanctions, Defendants continue to miss Court ordered deadlines. In the Court's December 9, 2014, Order, the Court warned the parties that a failure to comply with the deadlines may result in sanctions. The parties were ordered to complete factual discovery by March 15, 2015, and it is unclear to the Court whether Defendants ever disclosed the insurance policies. Additionally, the parties were ordered to file an updated mediation report by April 15, 2015, which has not appeared in the Court's file to date.

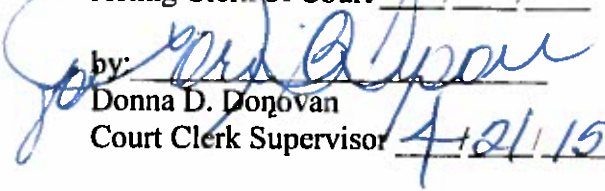
¹¹ See *Molloy v. Independence Blue Cross*, 2012 WL 78942, FN11 (V.I. Jan. 9, 2012); *Saldana v. Kmart*, 43 V.I. 361, 371 (3d Cir. 2001) (citing *Martin v. Brown*, 63 F.3d 1252, 1262 (3d Cir. 1995)).

CONCLUSION

For the foregoing reasons, the Court will hold in abeyance its decision regarding whether to impose sanctions on the parties, and the parties will be ordered to file an updated discovery and mediation report. Plaintiff's Motion for Sanctions for Failure to Provide Rule 26 Information, will be held in abeyance despite Plaintiff's failure to follow the procedural requirements of LOCAL R. OF CIV. P. 37.1 and 37.2. An Order consistent with this Memorandum Opinion shall follow.

Dated: April 20, 2015

ATTEST: Estrella H. 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

4/21/15

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

NEDAL SALEM

Plaintiff,

vs.

**CHEYENNE HEAVY EQUIPMENT RENTAL, LLC,
and DOUG FRANCIS**

Defendants.

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) **CASE NO. ST-11-CV-416**
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ORDER

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

ORDERED that Plaintiff's July 8, 2014, Motion for Sanctions for Failure to Provide Rule 26 Information is **HELD IN ABEYANCE**; and it is

ORDERED that Defendants will disclose any insurance policy that may provide coverage regarding Plaintiff's claims by May 4, 2015; and it is

ORDERED that by May 11, 2015, the parties will inform the Court of any outstanding factual discovery, with an explanation for the failure to complete the discovery by the Court ordered deadline of March 15, 2015, at which point the Court will determine whether sanctions are appropriate; and it is

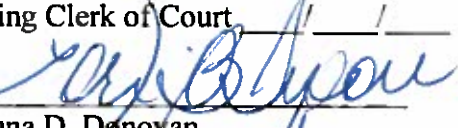
ORDERED that by May 11, 2015, the parties will cause the mediator to file a final mediation report and provide an explanation for their failure to provide the mediation report by April 15, 2015, at which point the Court will determine whether sanctions are appropriate; and it is

ORDERED that each party shall bear their own costs for this motion; and it is

ORDERED that copies of this Order and accompanying Memorandum Opinion shall be directed to counsel of record and to the IT Department of the Virgin Islands Superior Court.

Dated: April 20, 2015

ATTEST: Estrella H. George
Acting Clerk of Court

by: 

Donna D. Donovan
Court Clerk Supervisor 4/21/15


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