SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ARTHUR PAUL, **Plaintiff,** **v.** **RARITAN SUPPLY COMPANY, Individually and as Successor in Interests to BRIDGE SUPPLY COMPANY; CERTAINTEED PRODUCTS CORPORATION; MADSEN & HOWELL, INC.; UNION PUMP COMPANY; and GAF CORPORATION, Individually and as Successor in Interests to RUBEROID,** **Defendants.**	)	**CASE NO. SX-97-CV-329** **ACTION FOR DAMAGES** **JURY TRIAL DEMANDED**

Appearances:

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For Plaintiffs

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For Shell Oil Company

MEMORANDUM OPINION

MOLLOY, Robert A., Judge.

BEFORE THE COURT is a stipulation for dismissal with prejudice filed by Plaintiff Arthur Paul and a non-party, Shell Oil Company. For the reasons stated below, the stipulation will be dismissed and stricken.

BACKGROUND

The Court previously explained some of the history of this case in an opinion issued under the caption *In re: Cases Removed to the District Court of the Virgin Islands. See generally In re: Cases Removed to the Dist. Ct. of the V.I.*, SX-98-CV-109, *et seq.*, 2016 V.I. LEXIS 154 (Super. Ct. Sept. 21, 2016). Additional background need not be reiterated here, except to explain that on May 29, 1997, "Arthur Paul and four other people . . . joined together as plaintiffs" and "filed a group complaint" for "damages, allegedly from exposure to asbestos during their employment at the oil refinery on St. Croix operated at that time by Hess Oil Virgin Islands Corporation." *Id.* at *5-6. A few months later, Paul's other co-plaintiffs were dropped from this case and their claims severed. *See generally id.* at *7-13. Each refiled an individual complaint. All four cases were eventually removed to the District Court. This case was not.

In an October 7, 2016 Order, this Court further summarized the background of this individual case, explaining that

> Paul and the other plaintiffs filed proof of service as to all of the defendants except Certainteed Products Corporation. Certainteed later appeared, however, and along with GAF Corporation (both through the same attorney) stipulated with the plaintiffs to extend their time to file answers. The Honorable Alphonso G. Andrews, Jr., to whom this case was assigned, approved the stipulation. However, none of the defendants (again, according to the case file) ever filed an answer in this case. After only Paul remained in this action, he stipulated with Raritan to dismiss his claims and Judge Andrews later approved their stipulation. Then, Paul stipulated with Union Pump to dismiss his claims. However, the Honorable Maria M. Cabret approved this stipulation, either because this case was being coordinated [or was consolidated] for a time under the *In re Kelvin Manbodh Asbestos Litigation* [*Series*] master case or because the parties and the court believed it was. . . .
>
> Although Raritan and Union Pump are out, Certainteed, Madsen & Howell, and GAF Corporation are still in. They never answered Paul's complaint, however. But, Paul also never moved for entry of default. And, even though proof of service on Certainteed was not filed, Certainteed appeared and submitted itself to the Territorial Court's (now Superior Court's) jurisdiction. The question now is what next. That, is for Paul to decide.

(Order 1-2, entered Oct. 7, 2016 (internal citations omitted).) The Court further explained that it would "ratify and approve the order approving Paul's stipulated dismissal with Union Pump," "[t]o avoid any concern. *Id.* at 2. The Court gave Paul and Raritan Supply Company seven days to jointly state whether their stipulated dismissal, filed November 10, 1999 and approved by order entered February 23, 2000, was intended to dismiss Paul's claims against Raritan in its individual and its successor capacities. Paul was given a further fourteen days to "move for entry of default, move to voluntarily dismiss, or take other appropriate action regarding the claims remaining against . . . Certainteed Products Corporation, Madsen & Howell, Inc., and GAF Corporation." *Id.* at 3.

Paul and Raritan Supply Company did not file the joint response as ordered. But Paul did respond individually. On November 29, 2016, he "respectfully request[ed] the court to dismiss plaintiff's claims against the named defendants above in SX-97-CV-329 for the reason the parties have settled the underlying claims." (Pl.'s Mot. to Dismiss Defs.' Certainteed Products Corp., Madsen & Howell, Inc., and GAF Corporation 1, filed Nov. 29, 2016.) No one responded, whether in joinder or in opposition. By order dated and entered December 20, 2016, the Court granted Paul's motion, dismissed his claims against the remaining three defendants, and ordered this case closed.

After this case was closed, but without moving to reopen it, Paul filed a stipulation for dismissal with Shell Oil Company ("Shell") on February 17, 2017. Although the February 17, 2017 Stipulation bears the number of this case, the caption lists this case name as *Arthur Paul v. Hess Oil Virgin Islands Corporation; The Litwin Corporation, Litwin Panamerican Corporation, et al.*" (Pl.'s Stip. of Dismissal with Prejudice as to Shell Oil Co. 1, filed Feb. 17, 2017 (italics added) ("Pl.'s Stip.").) Within the body of the stipulation, Paul and Shell state that

> [o]n March 4, 2016, Plaintiff and Shell previously filed a stipulation for dismissal for this case. The stipulation for dismissal filed on March 4, 2016, included 160 total

> plaintiffs (including this plaintiff), and was filed in . . . *Manbodh* . . . . At the [s]tatus [c]onference held on December 16, 2015, the Court directed that Plaintiff and Shell file dismissal papers in each individual cause number. Accordingly, Plaintiff and Shell have prepared this stipulation of dismissal to be filed in this individual cause number.

(Pl.'s Stip. of Dismissal with Prej. as to Shell Oil Co. 1, filed Feb. 17, 2017.) Counsel for Paul and counsel for Shell signed the stipulation. They further included a line for the judge's signature, but listed the wrong judge's name. None of the other parties responded.

DISCUSSION

"Ordinarily, stipulations between the parties to a lawsuit are ineffective until and unless they receive the court's approval. . . . Rule 41(a)(1), however, establishes that certain stipulations for voluntary dismissal become binding on the parties immediately without court approval." *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 609 (V.I. 2012); *accord* V.I. R. Civ. P. 41(a). For a stipulation to become binding without court approval, the stipulation has to be signed by "all parties who have appeared. By its own terms, this requires the signature of *every* defendant who has appeared in a multi-defendant litigation, as well as any third party defendants and intervenors." *Id.* at 613 (quotation marks and citations omitted). The February 17, 2017 Stipulation was only signed by Paul and Shell. It must be approved by the Court to become binding. Having reviewed the stipulation, it cannot be approved. Instead, it must be dismissed and stricken from the record.

A stipulation for dismissal that requires court approval is a motion because "[a]ny application—whether orally or in writing—made to a court or judge for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant in a pending case is a motion." *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 128-29 (Super. Ct. 2016) (quotation marks, citations, and brackets omitted). "In general, every motion filed remains pending until 'ruled upon, dismissed, or withdrawn.'" *Der Weer v. Hess Oil V.I. Corp.*, 60 V.I. 91, 98 (Super. Ct. 2014) (quoting 56 Am. Jur. 2d

Motions, Rules, and Orders § 31 (2010)). The February 17, 2017 Stipulation is still pending because Paul and Shell have not withdrawn it. In fact, they have filed it twice, though initially in another case. (*See* Pl.'s Stip. 1 ("On March 4, 2016, Plaintiff and Shell previously filed a stipulation for dismissal for this case. The stipulation . . . was filed in . . . *Manbodh*.").) Therefore, the stipulation must either be ruled on or dismissed. It cannot be ruled on, however, because to rule on a motion means to grant or deny the relief requested, whether in whole or in part. Here, the Court cannot approve or reject the February 17, 2017 Stipulation. Two reasons support this conclusion.

First, "motions, notices, and other papers cannot be filed in closed cases unless a motion to reopen is filed and granted first." *Antoine v. Hess Oil V.I. Corp.*, SX-05-CV-508, 2017 V.I. LEXIS 44, *14 (Super. Ct. Mar. 10, 2017) (citations omitted). The December 20, 2016 Order dismissed Paul's remaining claims and closed this case. Paul did not move to reopen—or, more specifically, move for relief from judgment—before he filed the February 17, 2017 Stipulation. Instead, he filed the stipulation as if his case were still pending. It is not. Second, even if Paul had filed a motion to reopen before or with the February 17, 2017 Stipulation, the Court would still be unable to approve the stipulation "because courts only have power, or jurisdiction, over the parties to a case." *Id.* at *12 (footnote omitted). Neither Paul nor his former co-plaintiffs named Shell as a defendant. Since Shell is not a party to this case, Paul has no claims against Shell to dismiss. Therefore, the Court cannot grant or deny relief here. Consequently, the stipulation must be dismissed. It also must be stricken because Shell is not a party to this case and "[o]nly the parties to a case may file documents and make requests of the court in that case." *In re: Alumina Dust Claims*, SX-09-MC-031, 2017 V.I. LEXIS 2, *27 (Super. Ct. Jan. 10, 2017) (citations omitted). While the plaintiff is always a party to his own case, the plaintiff cannot unilaterally confer party-status on nonparties without filing an appropriate motion and obtaining court approval first. Since "the object of an order striking pleadings or papers from the files is simply to disencumber the files and the records of the court of papers that are . . . improperly placed on file," *Der Weer*, 64 V.I. at 127 (citations omitted), the Court will exercise its inherent "control of its files and its records" and strike the February 17, 2017 Stipulation. *Id* (citation omitted).

Nonetheless, it appears that counsel might have filed the February 17, 2017 Stipulation in error. As Paul and Shell explained, Shell is a party to the individual cases still being managed under *Manbodh*. Counsel must have assumed *Paul* was among the individual cases under *Manbodh*. It is not. In fact, *Paul* never was part of the *Manbodh* litigation. While the mistake is understandable, given the number of individual cases grouped under *Manbodh* and the complexity of the litigation, it underscores a much larger concern: the assumption that the Superior Court will "continue to shepherd the parties or their counsel along the way." *In re: Red Dust Claims*, SX-15-CV-620, 2017 V.I. LEXIS 98, *34 (Super. Ct. July 7, 2017). This, we cannot do. That is, the parties and their counsel cannot continue to pepper the courts with papers that list the wrong case numbers, name the wrong parties, or request relief the parties did not plead and expect the judges, clerks, and court staff to sort it out for them. *Cf. Antoine*, 2017 V.I. LEXIS 44 at *6-7 (discussing filings errors and documents mistakenly filed in similar, but unrelated cases); *Edwards v. Hess Oil V.I. Corp.*, SX-15-CV-382, 2017 V.I. LEXIS 94, *11-12 (Super. Ct. June 28, 2017) (chastising counsel for filing documents in multiple cases without providing sufficient copies for other case files). By their own admission, counsel state that they have now filed the same invalid stipulation twice, in two different cases. Again, the Court acknowledges that it may have been in error. However, correcting errors takes time, time not spent on other cases, cases members of the bar are very cognizant of. *Cf. Fahie v. People*, 858 F.3d 162, ___ n.6 (3d Cir. 2017) (noting that the Virgin Islands Bar Association estimates "currently 6,000 pending cases [in the Superior Court of the Virgin Islands], each taking on average 10 years for adjudication.").

CONCLUSION

For the reasons stated above, the Court must dismiss the stipulation Paul and Shell filed to dismiss Paul's claims against Shell with prejudice. A stipulation for dismissal signed by fewer than all of the parties who have appeared requires court approval to take effect. When court approval is required, a stipulation is akin to a motion and remains pending until ruled on, withdrawn, or dismissed. Because only Paul and Shell signed their February 17, 2017 Stipulation, the Court must approve it for it to take effect. Further, because Paul and Shell have not withdrawn their stipulation, it remains pending and must be ruled on or dismissed. However, the Court cannot rule on—meaning grant or deny, approve or reject—the stipulation because Paul did not name Shell as a defendant in this case and, therefore, the Court has no jurisdiction over Shell. Since Paul has no claims against Shell to dismiss, the Court must dismiss the February 17, 2017 Stipulation. The Court will also strike the stipulation because Shell is not a party to this case and had no right to file papers in it. An appropriate order follows.

DONE AND SO ORDERED.

Date: July 13, 2017

ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By:
Court Clerk Supervisor
Dated: 7/13/17