

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

DIANE PROSPER,

Plaintiff,

v.

**GOVERNMENT OF THE VIRGIN
ISLANDS,**

Defendant.

1:17-cv-00020-GWC

**TO: Martial A. Webster, Esq.
Shari N. D'Andrade, Esq., AAG
Venetia H. Velázquez, Esq., AAG**

ORDER

THIS MATTER is before the Court upon the U.S. Court of Appeals for the Third Circuit's Order "remanding this matter to the District Court for the limited purpose of determining whether good cause excuses [sic] for the Appellant's untimely filing of the notice of appeal[.]" ECF No. 210.

On October 21, 2021, this Court found good cause existed to excuse the untimeliness of the Appellant's motion for reconsideration under Rule 7.3 of the Local Rules of Civil Procedure of the District of the Virgin Islands. Court's Order Granting Motion for Extension to File Motion for Reconsideration at ECF No. 207. This Court's Order did not specifically state that good cause permitted the Appellant's untimely notice of appeal under Rule 4(a)(5)(A)(ii) of the Federal Rules of Appellate Procedure. *Id.* Thus, the subject matter jurisdiction of the U.S. Court of Appeals for the Third Circuit is in question. U.S. Court of Appeals for the Third Circuit's Order at ECF No. 210.

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I. BACKGROUND

This matter originally came before the Court upon Plaintiff's Motion for Extension to File Motion for Reconsideration or Appeal and Notice to Court (ECF No. 206). Plaintiff seeks leave to file a motion for reconsideration or appeal out of time because Plaintiff's counsel never received any email notification(s) from the District Court of the Memorandum Opinion and Order on May 21, 2021 (ECF No. 202). Mot. at 1. Plaintiff's counsel conferred with the clerk's office at the District Court who checked the docket and stated that the undersigned's office was not served with ECF No. 202. *Id.* at 2.

II. APPLICABLE LEGAL PRINCIPLES

Lack of notice of the entry of an order or judgment does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a). Fed. R. Civ. P. 77(d)(2).

The district court may extend the time to file a notice of appeal if, regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A)(ii). To establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party's diligence. *Serieux v. Olavache*, 2021 U.S. Dist. LEXIS 4444 at *4 (D.V.I. 2021) (internal quotations omitted). It is not enough for counsel to claim that they are too busy to meet the deadline rather, unforeseen, or

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uncontrollable events lie at the heart of the “good cause” requirement for additional time. *Id.* at *5 (internal quotations omitted) (citing *Bishop v. Corsentino*, 371 F.3d 1203, 1207 (10th Cir. 2004) (explaining that good cause for an extension of time to appeal under Fed. R. App. P. 4(a)(5) “is usually occasioned by something that is not within the control of the movant”))).

III. APPLICATION

The Court notes that Notice of Electronic Filing confirms that notice was not electronically mailed to Plaintiff’s counsel. Thus, the Court will exercise its discretion to grant an extension of time. Having reviewed the motion and the electronic docket, the Court finds that Plaintiff has established good cause for an extension of time to file an appeal.¹

IV. CONCLUSION

WHEREFORE, it is now hereby **ORDERED**:

1. Plaintiff’s Motion for Extension to File Motion for Reconsideration or Appeal and Notice to Court (ECF No. 206) is **GRANTED**.
2. Plaintiff may file a notice of appeal **on or before November 4, 2021**.²
3. This order is effective *nunc pro tunc* to October 21, 2021.

¹ This Court’s Order, entered October 21, 2021, found good cause for an extension of time to file a motion for reconsideration (ECF No. 207) and imprecisely went without mention of Plaintiff’s alternative relief requested—an appeal. Plaintiff went on to file an appeal rather than a motion for reconsideration. The instant Order supplements and does not supplant the Court’s Order entered October 21, 2021.

² The Court notes that Plaintiff has already filed a timely notice of appeal (ECF No. 208).

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ENTER:

Dated: April 21, 2022

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE