

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

LATASHA GRIFFITH, a minor, by her mother)	)	
and next of friend MARGARET)	)	
RICHARDSON, and MARGARET)	)	Case No.: ST-06-CV-352
RICHARDSON on her own behalf,)	)	
	)	
Plaintiffs,)	)	
	)	Action for Damages
vs.)	)	
	)	
WRONDEL AULT and SHERWIN-)	)	
WILLIAMS COMPANY,)	)	Jury Trial Demanded
	)	
Defendants.)	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants' Motion for Additional Stay Pursuant to 50 U.S.C. § 3092(d), filed on November 28, 2016 (the "Motion for Additional Stay").¹ Plaintiffs' Response in Opposition to Defendants' Motion for Additional Stay Pursuant to 50 U.S.C. § 3092(d) was filed on December 6, 2016. For the reasons set forth herein, Defendants' Motion for Additional Stay will be denied.

Background

The Complaint alleges that on or about February 23, 2006, Plaintiff Margaret Richardson ("Richardson") was driving her vehicle in a westerly direction on a public roadway in an area known as Frenchman's Bay in St. Thomas, U.S. Virgin Islands.²

¹ The Court notes that 50 U.S.C. § 3092(d) does not exist. It appears that Defendants intended to cite 50 U.S.C. § 3932 (d) "Additional Stay" and this Memorandum Opinion was drafted accordingly.

² The original Complaint was filed on July 12, 2006, and an Amended Complaint was filed on July 26, 2006 to correct a scrivener's error. Plaintiffs filed the Second Amended Complaint on October 13, 2010.

At the same time, Defendant Wronde Ault (“Ault”)³ was driving a vehicle registered to Defendant Sherwin-Williams (“Sherwin-Williams” and together with Ault, “Defendants”) in an easterly direction on the same public roadway. Richardson alleges that Ault negligently crossed over into Richardson’s lane of traffic and collided with Richardson’s vehicle. As a result of the accident, Richardson and her then minor daughter, Plaintiff Latasha Griffith (“Griffith” and together with Richardson, “Plaintiffs”), claim to have sustained various physical injuries, damage to Richardson’s vehicle, expenses and pecuniary losses.⁴ Plaintiffs are seeking compensatory and punitive damages, costs, and other relief from Defendants. On August 23, 2006, Sherwin-Williams filed its Answer and filed a counterclaim alleging that Richardson had been driving in the wrong lane at too high a speed and asking for damages in the amount necessary to repair the Sherwin-Williams vehicle.⁵ On August 17, 2010, Defendants filed a Motion for Stay of Proceedings, noting that Ault had been serving as an active member of the U.S. Navy since February 25, 2008 and cited the Soldiers’ and Sailors’ Civil Relief Act (50 U.S.C. § 3901 *et seq.*) (the “SCRA”) as reason for why such a stay should be granted.⁶ On December 9, 2010, Plaintiffs filed a Motion to Compel Discovery from Defendants.

³ Plaintiffs initially identified the defendant driver as Alut Wronde. But after clarification from defendant that his true name is Wronde Ault, the caption was corrected.

⁴ Second Am. Compl. 1-11 (Oct. 13, 2010).

⁵ Answer of Def. Sherwin-Williams Co. to Pl.s’ Am. Compl., and Countercl. 3-4 (Aug. 23, 2006).

⁶ The record is not clear, but it appears that the matter was stayed by oral order of the Court during a Status Conference on December 13, 2011..

A year later, on December 13, 2011, the court held a status conference at which time the Court inquired as to case law that would address lifting the stay for the completion of discovery and trial. The Court ordered Defendants' counsel to produce verification from the Navy that Ault remained on active duty. On July 8, 2014, having received no verification from Defendants, this Court issued an Order giving Ault thirty (30) days to provide the Court with written verification from the U.S. Armed Forces showing that he was still on active duty.⁷ Again, Defendants did not respond and therefore, on September 4, 2014 the Court issued an Order lifting the December 3, 2011 stay. On September 16, 2014, Defendants filed a Motion to Vacate Order and Stay Proceedings⁸, including as an exhibit a status report from the Department of Defense stating that Ault remained on active duty.⁹ As a result of the new evidence of Ault's duty status, the Court, by Order dated September 18, 2014, vacated the earlier Order lifting the stay and re-instated the stay. On June 15, 2016, Plaintiffs filed a Motion to Lift Stay (the "Motion to Lift Stay").¹⁰ Once again, Defendants did

⁷ Order (July 8, 2014).

⁸ Full caption of the motion is "Mot. to Vacate Order and Stay Proceedings and Correct Caption."

⁹ On September 19, 2014, Defendants further filed a Supplement to Mot. to Vacate Order and Stay Proceedings and Correct Caption, providing therein a Certification from the Navy stating that Ault was on active duty as of September 8, 2014.

¹⁰ Plaintiffs also filed a motion to deem conceded the motion to lift the stay.

not respond, and on September 8, 2016, the Court granted the Motion To Lift Stay.¹¹

Defendants now seek an additional stay.¹²

Legal Standard

The United States Code mandates a limited stay of lawsuits involving active duty military service personnel under certain circumstances, when the service member has notice of the lawsuit. The pertinent sections are as follows:

(b) Stay of proceedings.

(1) Authority for stay. At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) Conditions for stay. An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

¹¹ In granting the Motion To Lift Stay, the Court noted that Ault had never advised the Court when he would be available for deposition, but instead had received indefinite repeated stays.

¹² Plaintiffs filed an Informational Motion on October 14, 2016 (the "Informational Motion"), asking that the Court approve a proposed Stipulated Scheduling Agreement. In their Response, Defendants state they had not received copies of the Motion to Lift Stay, the Motion to Deem Motion Conceded or the Court's Order, regarding same.

(d) Additional stay.

(1) Application. A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) Appointment of counsel when additional stay refused. If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

50 U.S.C. § 3932.

Discussion

I. Defendants are Not Entitled to Additional Stay Under 50 U.S.C. § 3932(d).

This case was filed more than 10 years ago. There is no indication that Defendant Ault was on active duty at the time of the car accident giving rise hereto. Indeed, he was then an employee of Defendant Sherwin-Williams. Plaintiffs filed this case in 2006 and effected personal service upon Defendant Ault. But it is also clear that Ault joined the U.S. military not long after and has likely been on continuous active military duty since February 25, 2008. This matter has been essentially automatically stayed for at least half of the intervening nine years, if not more.

Section 3932 (b) makes clear that an application for a stay must include 1) how Defendant Ault's military duty requirements will materially affect his ability to appear, 2) a date when he will be available to appear, and 3) a letter or other communication from [Ault]'s commanding officer stating that his current military duty prevents his appearance and that military leave is not authorized at the time of the letter. 50 U.S.C. § 3932(b). Furthermore, any extension for a stay must include the same information. 50 U.S.C. § 3932(d).

Defendant Ault has never submitted any statement attesting to how his military duty materially affects his ability to appear. He has never provided the Court with a date when he will be available to appear. And Ault has never supplied the Court with any statement from his commanding officer stating that his current duty prevents his appearance. Indeed, the only document on file that shows an effort to satisfy the requirements is a form letter attached to the Defendant's Supplement To Motion To Vacate Order And Stay Proceedings and Correct Caption, filed September 19, 2014. That form letter from the Department of the Navy, apparently directed to Ault's counsel, states in pertinent part:

Dear Requestor:

In response to your letter regarding MA2 Wronde Ault, one or more of the following apply:

Your letter has been forwarded to the Commanding Officer of the service member. Navy Locator Service cannot verify delivery of correspondence. When received, it is solely up to the Service Member or Command Representative to reply.

The date of the letter is unclear, but it was filed with the Court on September 19, 2014. Therefore, it was written before then. Defendants filed another identical form letter dated November 25, 2016.¹³ Nothing within either form letter suggests that Ault's military duty materially affects his ability to appear, nor is there any statement regarding when he can appear. Furthermore, the mere contents of the letters indicate the Department of the Navy is assuming no responsibility for Ault's possible response to his lawyer's letter. The Court finds that the Navy would have asserted Ault's inability to leave his post if that were the case. Therefore, Ault has not met his burden of proof to secure a further stay.

"While it is true that [the Soldiers' and Sailors' Civil Relief Act] should receive a liberal construction with the object to properly protect soldiers and sailors who are engaged in the military and naval services of the United States, it may not be invoked for the purpose of delaying or defeating an orderly and expeditious trial of valid suits."

Ridley v. Young, 64 Cal. App. 2d 503, 515, 149 P.2d 76, 82, 1944 Cal. App. LEXIS 1088, *20-21 (Cal. App. 1944) (superseded by statute as stated in *American Broadcasting Cos. v. Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617). "If the trial of the case against [the co-defendant] prejudices the rights of its former employee while in the military service of the United States, defendant's application should certainly [be] granted. Unless such prejudice appears, however, the defendant should not be permitted to acquire vicarious shelter under

¹³ The November 25, 2016 form letter was attached to Defendant's Notice of Filing Exhibit in Support of Defendants' Reply to Plaintiffs' Opposition to Motion For Additional Stay, filed March 22, 2017.

[the SCRA] . . .”¹⁴ “[The SCRA] . . . does not provide an automatic stay in every case. Where the proceedings can proceed without prejudicing the civil rights of the serviceman, and where the conduct of his defense is not materially affected by reason of his military service, the Act need not be used for delay.”¹⁵ “There is nothing in [the SCRA] which contemplates conferring upon a soldier or sailor any privilege not enjoyed by a civilian. It is merely intended to secure him in his legal rights until he may return and defend himself.”¹⁶ “The SCRA, however, distinguishes between the relatively automatic 90-day stay and “additional” stays. The SCRA expressly provides that the court may ‘refuse[] to grant an additional stay.’”¹⁷ “[T]he granting of a motion for an additional stay under the SCRA is discretionary.”¹⁸

Title 50 U.S.C. § 3932(d) explicitly states that petitioners applying for additional stay must provide all the same information needed for an initial stay. “The same information required under subsection (b)(2) shall be included in an application under this subsection.”¹⁹ Defendants have provided none of this required information.

¹⁴ *Hrabak v. Hummel*, 55 F. Supp. 775, 777, 1943 U.S. Dist. LEXIS 1703, *2-3 (D. Pa. Sept. 30, 1943).

¹⁵ *Keefe v. Spangenberg*, 533 F. Supp. 49, 50, 1981 U.S. Dist. LEXIS 17480, *2 (W.D. Okla. Oct. 20, 1981) (“By continuing the trial of this case . . . this defendant will have ample time to arrange for a leave or furlough to attend the trial in person or to be deposed by video tape deposition or otherwise.”) *See also In re Diaz*, 82 B.R. 162, 165, 1988 Bankr. LEXIS 148, *8, 17 Bankr. Ct. Dec. 48 (Bankr. M.D. Ga. Feb. 5, 1988) (noting that the court would not indefinitely postpone trial and giving defendant six months in which to arrange leave so as to be present for the trial or to provide a deposition.)

¹⁶ *Holtzman's Furniture Store v. Schrapf*, 39 So. 2d 450, 453, 1949 La. App. LEXIS 457, *6 (La.App., Orleans 1949).

¹⁷ *George P. v. Superior Court*, 127 Cal. App. 4th 216, 224, 24 Cal. Rptr. 3d 919, 924, 2005 Cal. App. LEXIS 305, *12, 2005 Cal. Daily Op. Service 1773, 2005 Daily Journal DAR 2360 (Cal. App. 2d Dist. Feb. 28, 2005) (citing 50 U.S. § 3932).

¹⁸ *Id.* at 223.

¹⁹ 50 U.S.C. § 3932(d)(1).

Instead, Defendants merely submitted evidence that a letter of inquiry was sent to and received by the Department of the Navy's locator service. Even if Defendants were able to provide a certificate showing that Ault is still on active duty with the Navy, mere evidence of active service does not necessarily suffice to merit an additional stay.²⁰ Since August 2010, Defendants have insisted that this case must be stayed for the duration of Ault's active service in the United States Navy.²¹ The Court granted Defendants the mandatory 90-day stay, pursuant to 50 U.S.C. § 3932(b)(1). However, "[w]hen litigant has been granted one stay because of his military service, he is not entitled to further stays as matter of right; this is left to discretion of trial court."²²

From the record, it appears that Ault has not communicated with his counsel since before 2008. There is no evidence to suggest that Ault has shown any apparent interest in these proceedings. The Court understands that Defendants' counsel has attempted to locate Ault but has been unsuccessful.²³ Still, this matter cannot be postponed indefinitely. To do so would unfairly prejudice Plaintiffs, who filed the original complaint more than ten years ago. Ault has a duty to respond to his lawyer's

²⁰ See *Ridley v. Young*, 64 Cal. App. 2d 503, 514, 149 P.2d 76, 82, 1944 Cal. App. LEXIS 1088, *19-20 (Cal. App. 1944) (the court denied additional stay, noting that "[n]o showing whatever was made to indicate that [defendant] could not obtain a leave of absence to attend the trial, or that his defense would be materially affected by his absence. Nothing but a certificate showing he was engaged in the military service was offered in evidence.")

²¹ Mot. for Stay of Proceedings (Aug. 13, 2010); Mot. to Vacate order and Stay Proceedings and Correct Caption (Sep. 16, 2014); Mot. for Additional Stay (Nov. 28, 2016).

²² *Crowder v Capitol Greyhound Lines* (1947, Mun Ct App Dist Col) 51 A2d 372, affd (1948, App DC) 83 US App DC 303, 169 F2d 674.

²³ Mot. for Additional Stay, 4 (Nov. 22, 2016).

inquiry and failing to respond is at his own risk. There is no reason that this matter should not go forward. Therefore, the Motion for Additional Stay will be denied. The Court will give Defendants two months to locate Ault and determine his ability to arrange for furlough and provide Plaintiffs with a date when he can appear for deposition or to respond to any discovery requests so that the parties may develop a scheduling plan.

Conclusion

Requests for additional stay under 50 U.S.C. § 3932(d) are at the discretion of the court. This Court finds that the requirements for granting such an additional stay per 50 U.S.C. § 3932(b)(2) have not been met. Accordingly, Defendants' Motion for Additional Stay is denied. The Court will give Ault two months to notify Plaintiffs of his availability to appear for a deposition and to respond to any discovery requests so that the parties may develop a scheduling plan.

An Order consistent with this Memorandum Opinion will be entered.

DATED: August 16, 2017

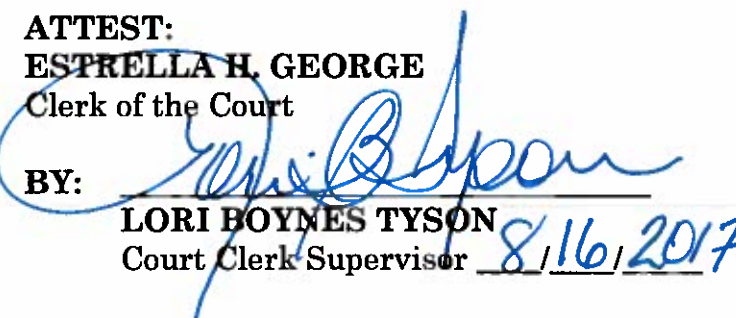


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Court Clerk Supervisor 8/16/2017

CERTIFIED TRUE COPY

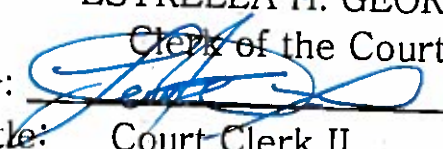
Date:

8/16/17

ESTRELLA H. GEORGE

Clerk of the Court

By:



Title: Court Clerk II