

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

|                                             |   |                              |
|---------------------------------------------|---|------------------------------|
| <b>LEE J. ROHN,</b>                         | ) |                              |
|                                             | ) | <b>CASE NO. SX-04-CV-158</b> |
| Plaintiff,                                  | ) |                              |
|                                             | ) |                              |
| vs.                                         | ) | <b>ACTION FOR</b>            |
|                                             | ) | <b>DAMAGES</b>               |
| <b>DAILY NEWS PUBLISHING COMPANY, INC.,</b> | ) |                              |
| <b>JEFFREY PROSSER, INNOVATIVE</b>          | ) |                              |
| <b>COMMUNICATION CORPORATION ("ICC"),</b>   | ) |                              |
| <b>LOWE DAVIS, JASON ROBBINS, LEE</b>       | ) |                              |
| <b>WILLIAMS and EDWIN CROUCH</b>            | ) | <b>JURY TRIAL</b>            |
|                                             | ) | <b>DEMANDED</b>              |
| Defendants.                                 | ) |                              |
| <hr/>                                       |   |                              |

**MEMORANDUM OPINION**

**THIS MATTER** came before the Court on June 29, 2015 for hearing on the Motion to Dismiss for Failure to Prosecute<sup>1</sup> filed by Defendants Daily News Publishing Company, Inc., Jeffrey Prosser, Innovative Communications Corporation, Lowe Davis, Jason Robbins, Lee Williams, and Edwin Crouch (collectively, "Defendants"), and Plaintiff Lee Rohn's Rule 56(d) Motion in Response to Defendants' Motion for Summary Judgment.<sup>2</sup> At the hearing, Semaj I. Johnson, Esq. (K.A. Rames, P.C.) appeared and argued on behalf of Defendants and Rhea Lawrence, Esq. appeared and argued for Plaintiff Lee Rohn.

Defendants' Motion to Dismiss for Failure to Prosecute will be denied. But the Court will impose sanctions barring Rohn from offering any testimony at trial that

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<sup>1</sup> Filed on June 28, 2013.

<sup>2</sup> Filed on August 26, 2013.

Defendants were prevented from eliciting from her during her deposition. Plaintiff's Rule 56(d) Motion will also be denied. However, Rohn will be granted an opportunity to file a substantive response to Defendants' Motion for Summary Judgment.

The background and procedural history are pertinent to both the Defendants' Motion to Dismiss or Failure to Prosecute and Plaintiff's Rule 56(d) Motion. Therefore, the Court will provide the background and history and then consider the motions separately.

## **I. Background and Procedural History**

Lee Rohn is an attorney practicing in the U.S. Virgin Islands. In March 2003, Rohn was arrested after screening officials at the Henry E. Rohlsen airport in St. Croix discovered marijuana in her luggage. On March 29, 2004, approximately one year after Rohn's arrest, Defendant Daily News Publishing Company, Inc., which publishes the Virgin Islands Daily News, printed three newspaper articles regarding Rohn's arrest and Rohn's professional and personal reputation in the community. On March 30, 2004, the day after the articles were published, Rohn filed a one-count complaint for defamation against Daily News Publishing Company, Inc. and Innovative Communications Corporation; Jeffrey Prosser (then owner of both those entities); Lowe Davis, Chief Officer of the Daily News Publishing Company; and Daily News employees Jason Robbins, Lee Williams, and Edwin Crouch.

Defendants' Motion to Dismiss argues that Plaintiff has stymied their efforts to conduct discovery, failed to cooperate in scheduling her own deposition, and conducted no discovery of her own during the discovery period. Rohn's counter argument is that she is awaiting responses to discovery requests she propounded to Defendants in 2005 without which she cannot develop her case. She further contends dismissal is too severe a sanction in light of the history of the case and Defendants' own lack of response to her outstanding discovery requests.

The record shows that Defendants propounded discovery requests in November 2004,<sup>3</sup> and Plaintiff propounded discovery requests on December 21, 2005. After Rohn invoked her Fifth Amendment privilege against self-incrimination and refused to answer certain discovery requests, Defendants moved to stay discovery until Rohn's criminal case was resolved. The Court granted the motion and stayed the case on April 25, 2006.

More than five years later, in October 2011, Rohn moved to lift the stay, and the Court lifted the stay on June 12, 2012. The Court also entered a scheduling order, with dates agreed upon by the parties, setting out several deadlines, including completion of fact discovery by October 31, 2012 and submission of dispositive motions by June 28, 2013. There appears to have been no activity for the next four

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<sup>3</sup> See Defendants' Notice of Service of First Request for Admissions, First Document Request, and First Interrogatories to Plaintiff, filed on November 24, 2004.

months. Then Defendants emailed Rohn on October 1, 2012, within the discovery period, stating

You have not filed Rule 26(a) disclosures in this case, rendering it impossible for me t[o] identify prospective witnesses in this matter. Please identify available dates for your deposition during this month and file your Rule 26 Voluntary disclosures without delay.<sup>4</sup>

Ex. 6 to Reply to Pl.'s Rule 56(d) Motion.<sup>5</sup> Rohn did not reply to the email. On October 15, 2012, Rames caused a subpoena to be served on Rohn and scheduled her deposition for October 30, 2012. Days before the deposition, Rohn informed Defendants she would not attend the deposition because it "was unilaterally noticed and I am unable to attend as I have other court ordered commitments for that date in St. Thomas." Ex. 7 to Reply to Pl.'s Rule 56(d) Mot.

Rames responded by letter on October 30, acknowledging Rohn's October 26 letter but stating "You are still under subpoena. Please have your office contact mine with your available dates." Ex. 8 to Reply to Pl.'s Rule 56(d) Mot. Neither Rohn nor her office responded.

A month and a half later, after the deadline for fact discovery, Rames's office emailed Rohn's office suggesting three possible dates for Rohn's deposition and inquiring whether "[A]ttorney Rohn will be available to have her deposition taken on one or more of these dates, or provide alternative dates that we may agree upon." Ex.

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<sup>4</sup> While the stay was in effect, on October 7, 2009, Rohn filed a Notice of Production "pursuant to Rule 26" listing but it does not appear to have been deemed as her Rule 26(a) disclosure.

<sup>5</sup> The exhibits attached to Defendants' Reply to Opposition to Motion to Dismiss For Lack of Prosecution are not numbered. Therefore, for ease of use the Court references the same exhibits attached to Defendants' Reply to Plaintiff's Rule 56(d) Motion, which are numbered.

9 to Reply to Pl.'s Rule 56(d) Mot. On March 20, 2013, Rames again wrote to Rohn regarding her deposition. Ex. 10 to Reply to Pl.'s Rule 56(d) Mot. He noted that his letters of October 1, 2012 and October 30, 2012 had generated no response from Rohn's office, but that

This office is prepared to work with your staff to determine a mutually acceptable date and time. Please be reminded that you are still under subpoena. Please contact this office within the next five (5) days either for the purpose of scheduling your deposition or for a meet and confer pursuant to LRCi 37.1.

Defendants state that Rohn never responded, and Rohn does not dispute this allegation. Rohn's failure to respond and/or cooperate with Defendants in their attempts to schedule Rohn's deposition delayed her deposition indefinitely. To this date, she has not been deposed. It is clear that Defendants made numerous efforts to schedule Rohn's deposition at a time convenient to her – even after the deadline for fact discovery. Except for Rohn's letter advising Defendants she would not appear at the “unilaterally” scheduled deposition, Rohn never responded to Defendants' requests to schedule her deposition.

Rohn made no attempt to get any fact discovery between the date the stay was lifted and the discovery deadline. She eventually wrote Defendants on July 18, 2013 (after Defendants filed their Motion to Dismiss for Failure to Prosecute and Motion for Summary Judgment) requesting that they answer her December 21, 2005 discovery requests.

Defendants filed the Motion to Dismiss for Failure to Prosecute and a Motion for Summary Judgment on June 28, 2013, the due date for dispositive motions. Those motions are pending before the Court.

## **II. Motion to Dismiss for Failure to Prosecute**

Defendants argue that Rohn has not been responsive to their discovery requests and has not actively participated in this matter. Rohn counters that any delay in this matter is attributable to Defendants.

Rule 41(b) of the Federal Rules of Civil Procedure<sup>6</sup> permits a defendant to move to dismiss a case when the plaintiff fails to prosecute. Dismissal for failure to prosecute is an “extreme sanction.” *Watts v. Two Plus Two, Inc.*, 54 V.I. 286, 290 (V.I. 2010). The Court may not dismiss a matter for failure to prosecute unless the six factors discussed in *Halliday v. Footlocker Specialty, Inc.*, 53 V.I. 505 (V.I. 2010) “strongly weigh in favor of dismissal as a sanction.” *Id.* The six factors are: (1) the extent of the plaintiff’s personal responsibility; (2) the prejudice to the other parties in the litigation; (3) whether the plaintiff has demonstrated a history of dilatoriness; (4) whether the plaintiff or attorney’s conduct was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of the plaintiff’s claim. *Id.* (citing *Halliday*, 53 V.I. at 513). The Court will now analyze these six factors.

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<sup>6</sup> Federal Rules of Civil Procedure not inconsistent with the Superior Court Rules are applicable to the Superior Court. Super. Ct. R. 7.

## 1. Plaintiff's Personal Responsibility

Rohn's Opposition, personally signed by Rohn, incredibly asserts that she bears no responsibility for any delay in this matter. As proof of her interest in litigating the matter she points to her filing of the Complaint, the letters she sent to Defendants in 2006 to request answers to outstanding discovery requests propounded on December 21, 2005, and her letter of July 18, 2013. However, Rohn offers no proof of her efforts to prosecute the matter between the date the stay was lifted and the filing of Defendants' Motion to Dismiss for Lack of Prosecution.

Rohn, an active attorney in this jurisdiction, is representing herself.<sup>7</sup> Thus, there is no distinction between Rohn's personal responsibility and the responsibility of her counsel. Additionally, because Rohn is an attorney barred in the Virgin Islands, she is held to a higher standard of conduct in comparison to a typical pro se litigant. *Andrews v. Gov't of Virgin Islands*, 25 V.I. 284, 298 (D.V.I. 1990) *aff'd*, 935 F.2d 1280 (3d Cir. 1991) ("Especially compelling is the fact that not only is the *party* himself responsible, but that party—Andrews—is a practicing attorney, of whom a higher standard of conduct is expected.").

Therefore, this factor weighs in favor of dismissal.

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<sup>7</sup> Rhea Lawrence, Esq., an attorney in Rohn's office, appeared on Rohn's behalf at the hearing in June 2015. However, Rohn is counsel of record and for the most part has signed all motions and discovery requests, and Defendants' emails were directed to Rohn personally.

## **2. Prejudice to Other Parties**

Defendants argue that Rohn has frustrated the discovery process and without a timely mutual exchange of information discovery is fractured and their ability to mount a defense is compromised. They further argue Rohn's failure to tend to this matter has increased the financial burden on them and increased the risk that witness's memories will fade. They assert the delay has cost them money through increased attorneys' fees. Specifically, they cite the time and additional research their counsel expended in filing the Motion to Dismiss and the Motion for Summary Judgment.

Defendants also claim "irreparable harm if Rohn were allowed to lay fallow in this litigation until after Court imposed deadlines have passed, then spring into action to extend discovery deadlines and dispositive motions after Defendants have exposed their strategy and dispositive arguments." Defendants' Reply to Opp. to Mot. to Dismiss for Failure to Prosecute at 8.

Rohn counters that Defendants have not suffered any prejudice, and their assertion of prejudice must be proven by objective, sworn evidence at a hearing. She further asserts that Defendants have not explained how her allegedly dilatory behavior has hampered their defense.

Defendants describe "the defense of a lawsuit" in general as "an expensive proposition." This is undoubtedly true. But lack of activity does not generally increase attorneys' fees. The Court does not deem the attorneys' fees incurred in the filing of



the motion for summary judgment as prejudicial or unnecessary, as motions for summary judgment are not filed as a result of lack of cooperation by an opposing party, but where the moving party believes there are no issues of material fact. On the other hand, the additional attorneys' fees occasioned by the filing of the subject motion to dismiss for lack of prosecution are prejudicial, as Defendants would not have grounds to file it had Plaintiff cooperated in discovery. The Court notes Defendants' argument that irreparable harm would follow if Rohn were allowed to extend deadlines for discovery and dispositive motions. The Court concurs that such extensions would be unfair in light of the history of the matter. That issue is more fully addressed in the discussion on Rohn's Rule 56(d) Motion.

Considering the prejudice occasioned by the additional attorneys' fees incurred for the filing of the Motion to Dismiss for Failure to Prosecute, the Court finds that some prejudice exists, but less than would favor dismissal. Therefore, this factor does not weigh in favor of dismissal.

### **3. History of Dilatoriness**

This matter has been pending for over eleven years. Six of those years are attributable to the stay imposed at Defendants' request. Accordingly, the six year period of dormancy caused by the stay does not weigh against Rohn.

Rohn asserts she filed the Complaint on March 30, 2004. She states that she served written discovery requests "[s]hortly after litigation commenced," but these

discovery requests were actually sent on December 21, 2005 – approximately one year and nine months after she filed the Complaint. Defendants assert that they served some discovery requests on Rohn in December 2005 through April 2006, but Rohn failed to provide meaningful responses by invoking her Fifth Amendment privilege, while at the same time seeking meaningful discovery responses from Defendants. Defendants' Reply to Opp. to Mot. to Dismiss for Failure to Prosecute at 4.

Rohn argues that she too was awaiting responses to her discovery requests, and she attaches copies of her 2006 letters to Rames. Defendants countered that she never filed a motion to compel their responses and as the Plaintiff, Rohn bears the burden of prosecution. Defendants further contend they have been the only active party in the litigation after the stay was lifted.

When these arguments were again raised during the June 29, 2015 Hearing, Rohn asserted she would cure any perceived deficiency on her part by immediately filing a motion to compel Defendants to respond to her outstanding discovery requests. But despite the passage of more than three months since the Hearing, Rohn has not filed a motion to compel Defendant's responses.

Rohn's repeated lack of cooperation in Defendants' efforts to schedule her deposition weighs in favor of dismissal.

#### **4. Willful or Bad Faith Conduct**

Defendants argue Rohn has been uncooperative in responding to discovery requests. Specifically, they allege that Rohn refused to exchange discovery prior to a Fed. R. Civ. P. 26(f) conference, but then did not respond to Defendants' requests to schedule a Rule 26(f) conference nor to requests to depose her.

It is true that Rule 26(d)(1) of the Federal Rules of Civil Procedure prohibits a party from seeking discovery from any source before the parties confer pursuant to Rule 26(f). However, Rule 26(f) charges attorneys of record and unrepresented parties with joint responsibility "for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting" the plan to the court. Rohn's refusal to respond to Defendants' requests to schedule a Rule 26(f) conference and their repeated requests to schedule her deposition was willful. Rohn has never offered any reason for not cooperating with Defendants' repeated requests for her availability to be deposed.<sup>8</sup>

This factor weighs in favor of dismissal.

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<sup>8</sup> Rohn did initially say she had another commitment on the selected date, but ignored all other requests for her availability.

## 5. Effectiveness of Sanctions Other than Dismissal

Defendants did not seek any sanctions against Rohn prior to filing the pending motion to dismiss.<sup>9</sup> Defendants never filed a motion to compel her to appear to be deposed, nor filed a motion to compel Rohn to answer their discovery requests, as permitted by Rule 37 of Federal Rules of Civil Procedure. Nor have Defendants suggested any lesser, alternative sanctions instead of outright dismissal. Dismissal is an appropriate sanction only when “other lesser sanctions have proven futile.” *Brunn v. Daimlerchrysler Corp.*, No. 2001-0125, 2007 WL 6027820, at \*4 (D.V.I. Nov. 26, 2007) (slip copy).

Had Rohn complied with the subpoena and appeared on the subpoena date or any other agreed date, she would have been subject to one day of deposition for no more than 7 hours. Fed. R. Civ. P. 30(d)(1). Had Defendants had the opportunity to depose Plaintiff they would have had the right to examine her on every allegation in the Complaint and her basis therefor. However, Rohn effectively blocked Defendants from deposing her. Therefore, barring Rohn from offering any testimony at trial that Defendants were prevented from eliciting from her during her deposition is a less punitive sanction than dismissal.

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<sup>9</sup> Prior to the case being stayed, the parties had discovery disputes, and Defendants filed a Motion to Dismiss for Lack of Prosecution on April 19, 2005. That motion was either denied or withdrawn; the Record of Proceedings for a Status Conference on June 22, 2005 indicates that the Motion for Failure to Prosecute was denied, but the Record of Proceedings for a March 28, 2006 Conference indicates that the Motion to Dismiss was before the Court and Defendants voluntarily withdrew it.

The availability of this alternative sanction weighs against dismissal as a sanction.

## **6. Meritoriousness of Claims**

Rohn alleges that Defendants purposefully made false and defamatory statements and failed to report relevant statements and information that would have portrayed Rohn in a more positive light and would have provided, in Rohn's opinion, a more complete story. A claim or defense is meritorious "when the allegations of the pleadings, if established at trial, would support recovery by plaintiff or would constitute a complete defense." *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 869-70 (3d Cir. 1984).

A defamation claim consists of four elements:

- (a) a false and defamatory statement concerning another;
- (b) an unprivileged publication to a third party;
- (c) fault amounting at least to negligence on the part of the publisher;
- and
- (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Restatement (Second) of Torts § 558 (1977); *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 585-86 (V.I. 2012) (where the Virgin Islands Supreme Court adopted the basic elements for a claim of defamation as set forth in the Second Restatement of Torts). In addition, if Rohn is a public figure or limited public figure, she must also

prove “actual malice” instead of mere negligence on the part of the publisher. *Joseph*, 57 V.I. at 586-87.

Rohn alleges Defendants knowingly published false and defamatory statements about her. Therefore, her Complaint, on the date of filing, met the threshold test. However, Defendants claim that Rohn’s case no longer has factual or legal merit, that Rohn’s guilty plea to the criminal charge is an admission that the facts reported in the *Daily News* were true, thereby gutting her claim of defamation. Rohn argues her case has merit because the defamation is not limited to her attempting to transport marijuana on a commercial airplane, but includes erroneous claims of past arrests, use of Plaintiff’s mug shot for the sole purpose of casting her in a negative light and a history of animosity between her and Defendant Prosser, including threats of defamation made against Plaintiff. Plaintiff claims she intends to show actual malice “through deposition testimony” that the articles were published with the specific purpose to defame Rohn and tarnish her reputation as retribution for her public stance against Defendant Prosser’s attempt to influence the politics in the territory for his personal gain.

The question then becomes, does Rohn’s case still have merit if she is barred from offering any testimony at trial that Defendants were prevented from eliciting from her during her deposition. Defendants claim “Rohn’s averments are all disposed of by undisputed truth, her plea statement and the fair report privilege” and the

remaining allegations cannot sustain a cause of action for defamation because they only allege that Defendants *failed to report* certain facts.

Defendants make a good argument and the Court queries whether Rohn's case still has merit in light of the rulings contained herein. However the Court is not completely persuaded that Rohn's case has no merit, despite the rulings contained herein. Therefore, this factor weighs against dismissal.

### **Conclusion**

The factors weighing in favor of dismissal are Rohn's personal responsibility, dilatoriness, and willful conduct. The factors weighing against dismissal are the availability of an alternative sanction, the less than overwhelming prejudice to Defendants, and the possible merit of Rohn's claims. The analysis of these factors do not weigh strongly in favor of dismissal. *See Molloy v. Independence Blue Cross*, 56 V.I. 155, 186 (V.I. 2012) (explaining that dismissal is not appropriate "unless the[ ] six factors *strongly* weigh in favor of dismissal" and describing dismissal as an "extreme' sanction"). In addition, the preference for deciding cases on their merits weighs against dismissal. *See Joseph v. Bureau of Corrections*, 54 V.I. at 650. Therefore, Defendants' Motion to Dismiss for Failure to Prosecute will be denied.

### III. Rule 56(d) Motion

Defendants filed a motion for summary judgment. In response, Rohn seeks more time pursuant to Fed. R. Civ. P. 56(d) to conduct discovery so that she may respond to Defendants' arguments.

Rule 56(d) of the Federal Rules of Civil Procedure permits a party confronted with a motion for summary judgment to move for an extension of time to conduct discovery upon a showing, through affidavit or declaration, that for specified reasons it cannot present facts essential to justify its opposition. The party's filing must specify "what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained." *Rivera-Mercado v. General Motors Corp.*, 51 V.I. 307, 313 (V.I. 2009) (citing former Rule 56(f), which later became Rule 56(d)); *see also Baumann v. Virgin Islands Water & Power Auth.*, No. 2013-002, 2014 WL 4496639, at \*1 (D.V.I. Sept. 12, 2014) (slip op.) (reciting same standard pursuant Rule 56(d) as amended in 2010) (citing *Pennsylvania, Dep't of Pub. Welfare v. Sebelius*, 674 F.3d 139, 157 (3d Cir. 2012)). Generalized statements will not satisfy this standard. *Id.* "[R]ather, the affidavit must indicate the material facts the non-movant hopes to uncover with more discovery." *Id.*

Rohn states that she intends to show actual malice and, through the deposition testimony of Defendants, that Defendants published the articles with the specific purpose to defame her and to tarnish her reputation as retribution for Rohn's public stance against Defendant Jeffrey Prosser's attempt to influence politics in the



Territory for personal gain. She does not further specify what she hopes the depositions would reveal, or which particular facts might defeat summary judgment.

Actual malice and a specific intent to defame are legal concepts, not facts. Rule 56(d) requires Rohn to identify, “with specificity,” *facts* essential to justify opposition to Defendants’ Motion for Summary Judgment. *Baumann*, 2014 WL 4496639, at \*1; *Jerome v. Water Sports Adventure Rentals & Equip., Inc.*, No. 2009-092, 2013 WL 692471, at \*2 n.4 (D.V.I. Feb. 26, 2013) (slip op.). It is therefore questionable whether Rohn’s description of the information she seeks is sufficiently specific. In any case, Rohn does not explain how the information she would obtain through deposing Defendants would defeat summary judgment.

Returning to the required showing for Rule 56(d) relief, a motion made pursuant to that rule must explain why the particular information sought has not yet been obtained. *Baumann*, 2014 WL 4496639, at \*1. Between the filing of this action in March 2004 and the date the case was stayed in April 2006, Rohn made some effort to procure discovery. She served interrogatories and requests for production of documents on Defendants on December 21, 2005. She wrote counsel for Defendants twice – on April 3, 2006 and April 21, 2006 – asking Defendants to respond to her discovery requests.

The case was stayed on April 25, 2006. The stay was lifted on June 12, 2012. On that same date, the Court entered a scheduling order setting October 31, 2012 as the deadline for fact discovery. Rohn does not assert that she attempted to obtain

discovery during the four-plus months between the lifting of the stay and the October 31, 2012 fact discovery deadline. Since the stay was lifted, she wrote Defendants once – on July 18, 2013, over eight months after the fact discovery deadline and shortly after Defendants had filed their Motion to Dismiss – requesting discovery responses. Thus, while Rohn made one attempt to get discovery from Defendants after the stay was lifted, she does not explain her failure to request that discovery before the October 31, 2012 fact discovery deadline.

“[S]cheduling orders are at the heart of case management. If they can be disregarded without a specific showing of good cause,<sup>10</sup> their utility will be severely impaired.” *Gautier-James v. Hovensa, LLC*, No. 2006-106, 2012 U.S. Dist. LEXIS 68409, at \*5 (D.V.I. May 16, 2012) (quoting *Darrah v. Virgin Islands ex rel. Juan F. Luis Hosp.*, 2011 U.S. Dist. LEXIS 143541, at \*10 (D.V.I. Dec. 13, 2011)), where Rohn was plaintiff’s counsel in *Gautier-James v. Hovensa, LLC*. In *Darrah v. Gov’t of the Virgin Islands*, the District Court denied a motion to extend all deadlines established in the fifth scheduling order. No. 2009-068, 2011 U.S. Dist. LEXIS 143541, at \*1-2 (D.V.I. Dec. 13, 2011). In evaluating plaintiff’s argument, the District Court stated:

A duly entered scheduling order is a binding order of the Court. Litigants and their counsel are not at liberty to ignore court orders at their discretion and, if they choose to do so, they act at their own peril.

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<sup>10</sup> Good cause, as that term is used in Rule 16(b)(4) of the Federal Rules of Civil Procedure, “is shown when the reason for delay is outside of the moving party’s control.” *Rivera-Mercado v. General Motors Corp.*, 51 V.I. 307, 315 n.10 (V.I. 2009) (quoting *Waggoner v. Ohio Cent. R.R., Inc.*, 242 F.R.D. 413, 415 (S.D. Ohio 2007)).

No. 2009-068, 2011 U.S. Dist. LEXIS 143541, at \*12-14 (D.V.I. Dec. 13, 2011) (citations omitted). Rohn also served as plaintiff's counsel in that case.

Let it be clear that Rohn is hardly the only litigant who has failed to meet deadlines set in a scheduling order. However, Rohn did not file a motion to extend the discovery deadline while the discovery period was open, nor in the following months. Only after Defendants filed a Motion for Summary Judgment did Rohn move for additional time by filing a Rule 56(d) motion.

Delay of summary judgment for additional discovery is not available to "litigants who act lackadaisically . . . but . . . requires due diligence both in pursuing discovery *before* the summary judgment initiative surfaces and in pursuing an extension of time thereafter. In other words, [the rule] is designed to minister to the vigilant, not to those who slumber upon perceptible rights. *Resolution Trust Corp. v. North Bridge Assocs.*, 22 F.3d 1198, 1203 (1st Cir. 1994). Rohn has shown no vigilance in pursuing discovery (after the stay was lifted) except for her opposition to Defendants' motion for summary judgment.

Where a party demonstrates a lack of diligence and effort, deadlines will not be extended.<sup>11</sup> Rohn has never moved for an extension of the discovery deadline in this matter. Additionally, Rohn's lack of cooperation in Defendants' efforts to depose her, described above in the analysis of Defendants' Motion to Dismiss for Lack of

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<sup>11</sup> The Superior Court may extend deadlines "if application therefor is made before the expiration of the period originally prescribed" or on motion "after the expiration of the specified period if the failure to act was the result of excusable neglect." Super. Ct. R. 10.

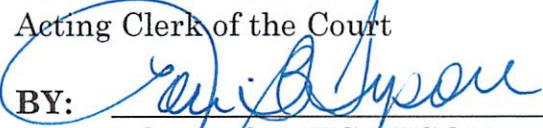
Prosecution, weighs against her. Rohn's Rule 56(d) motion does not demonstrate good cause to extend discovery.

Because Rohn does not identify any specific facts that would preclude summary judgment, and she does not explain why she did not depose Defendants within the discovery deadline, her Rule 56(d) Motion will be denied. However, Rohn will be given an opportunity to file a substantive response to Defendants' Motion for Summary Judgment.

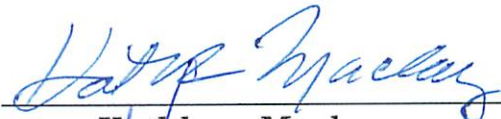
The Court will enter an Order consistent with this Opinion.

DATED: October 21, 2015

ATTEST:  
**ESTRELLA H. GEORGE**  
Acting Clerk of the Court

BY: 

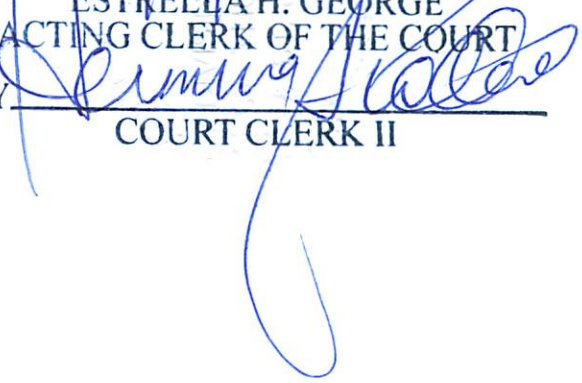
**LORI BOYNES-TYSON**  
Court Clerk Supervisor 10/21/15



**Kathleen Mackay**  
Judge of the Superior Court  
of the Virgin Islands

DATE 10/21/2015

**ESTRELLA H. GEORGE**  
ACTING CLERK OF THE COURT

BY: 

COURT CLERK II