

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

RHONA FORBES,	)	
	)	
Plaintiff/Petitioner,	)	
On Review	)	
	)	
vs.	)	CASE NO. ST-14-SM-238
	)	
THEODORE TUNICK INS. CO., AND	)	
UNDERWRITERS AT LLOYD'S,	)	
	)	
Defendants/Respondents	)	
On Review.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Respondents' motion to dismiss Petitioner Rhona Forbes' petition for review. For the following reasons, the Court will deny Respondents' motion and will grant Petitioner a twenty (20) day extension to pay for the transcript of the proceedings below, failing which this matter will be dismissed with prejudice for failure to prosecute.

FACTUAL AND PROCEDURAL HISTORY

On April 30, 2014, Petitioner filed a small claims complaint against Respondents in the Magistrate Division of the Superior Court. The Magistrate held a hearing on October 21, 2014, made an oral ruling that Petitioner failed to prove her case by a preponderance of the evidence, and dismissed the complaint with prejudice.¹ The Clerk of Court entered the Magistrate's written Order on October 29, 2014, and Petitioner was personally served with a copy of the Order on November 5, 2014. Petitioner filed a petition for review on

¹ See the Record of Proceeding dated October 21, 2014, that was generated by the Clerk's Office.

November 14, 2014, and Respondent filed a motion to dismiss on December 12, 2014, contending that the petition was untimely filed under Superior Court Rule 322.1(b)(2).

STANDARD

The Appellate Division of the Superior Court “has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrate[] exercising [his or her] original jurisdiction as provided for at 4 V.I.C. § 123.”² The Superior Court reviews a Magistrate’s factual determinations for “clear error” and legal findings are “afforded plenary review.”³

ANALYSIS

Superior Court Rule 322.1(b)(2) establishes that “[p]etitions for review ... must be filed with the Clerk of Court within ten (10) days after entry of the order sought to be reviewed ... [and the] time for filing a petition for review may not be extended. A petitioner who fails to seek review within the time provided by these rules waives the right to file an objection to the magistrate order.”⁴ The Superior Court Rules also provide that “[w]hen a period of time prescribed or allowed by these rules is less than eleven days, intermediate Saturdays, Sundays and holidays shall be excluded from the computation.”⁵ In addition, “the day of the act, event or default” shall not be included in the time period.⁶

The Supreme Court of the Virgin Islands has determined “that time limits set exclusively by court rules are mere claims-processing rules which do not affect a court’s

² *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

³ Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black’s Law Dictionary, Eighth Edition.

⁴ Superior Court Rule 322.1(b)(2).

⁵ Superior Court Rule 9.

⁶ *Id.*

subject-matter jurisdiction even if they may result in dismissal if violated.”⁷ “A claims processing rule is a procedural requirement that ... is subject to waiver [and] can ... be forfeited if the party asserting the rule waits too long to raise the point.”⁸ In addition, a claims processing rule “may be equitably tolled or judicially modified.”⁹

The Court finds that the appeal period began on October 30, 2014; November 1, 2014,¹⁰ November 2, 2014,¹¹ November 4, 2014,¹² November 8, 2014,¹³ November 9, 2014,¹⁴ and November 11, 2014,¹⁵ should be excluded from the computation; and the appeal period ran through November 14, 2014. As a result, Petitioner timely filed her petition within ten days of the entry of the Magistrate’s Order, and Respondents’ motion to dismiss will be denied.

Notwithstanding, the Court notes that while Petitioner filed a transcript request on November 14, 2014, she never arranged to pay for the transcript despite being instructed by the Clerk of Court in the briefing letter that “financial arrangements or payment for [the] transcript [of the proceedings below] must also be made within ten days of filing [the]

⁷ *Bryan v. Gov’t of the Virgin Islands*, 56 V.I. 451, 455-456, 2012 V.I. Supreme LEXIS 22, *7, 2012 WL 882532 (VI. 2012). See also *Vazquez v. Vazquez*, 54 V.I. 485, 489-90 (V.I. 2010).

⁸ *Bryan*, 56 V.I. 455-456.

⁹ *Public Empl. Rel. Bd. v. United Indus. Workers-Seafarers Int’l Union*, 56 V.I. 429, 434, 2012 V.I. Supreme LEXIS 19, *8 (VI. 2012).

¹⁰ November 1, 2014, fell on a Saturday and was also D. Hamilton Jackson Day, a legal holiday. See 1 V.I.C. § 171.

¹¹ November 2, 2014, fell on a Sunday.

¹² November 4, 2014, was Election Day in the Virgin Islands, a legal holiday. See 18 V.I.C. § 3(a) (establishing that “[t]he day on which general elections are held shall be a legal holiday in the Virgin Islands”).

¹³ November 8, 2014, fell on a Saturday.

¹⁴ November 9, 2014, fell on a Sunday.

¹⁵ November 11, 2014, was Veterans Day, a legal holiday. See 1 V.I.C. § 171.

petition for review ... unless [Petitioner] obtain[ed] a waiver of that requirement from the judge assigned to consider the review.”

The Court will issue Petitioner a final warning instructing her that, if she does not pay for the transcript within twenty days of the issuance of the Order accompanying this Opinion, her petition will be dismissed with prejudice for failure to prosecute.

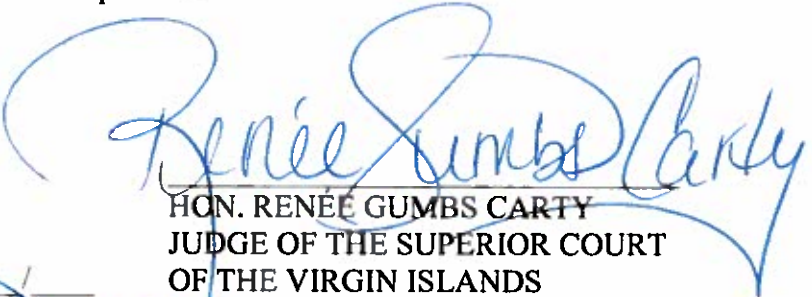
An Order consistent with this Opinion shall follow.

Dated: September 7, 2016

ATTEST: Estrella H. George
Acting Clerk of Court

by: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor

9/7/2016


HON. RENÉE GUMBS CARTY
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS