

GERALD H. HILLS and MARTHA L. HILLS,
Plaintiffs,
v.
WHITECAP INVESTMENT CORP. d/b/a
PARADISE LUMBER, PUTNAM LUMBER and
EXPORT COMPANY, PUTNAM FAMILY
PROPERTIES INC. AND GREAT SOUTHERN
WOOD PRESERVING, INCORPORATED
Defendants.

Pending before the Court is Plaintiffs' February 19, 2016, Motion for Brief Extension of Time to Finalize Responses to Defendants Putnam's Motions for Summary Judgment.¹

Pursuant to the Court's March 11, 2015, scheduling Order, Plaintiffs' responses to the motions for summary judgment were due by December 14, 2015. On January 8, 2016, Plaintiffs filed a motion for extension of time until January 31, 2016, to respond, after which, on February 1, 2016, Plaintiffs filed a second motion for extension of time until February 19, 2016. On February 8, 2016, this Court reluctantly granted Plaintiffs an extension of time until February 19, 2016, warning Plaintiffs that future deadlines would be strictly enforced.

¹ Putnam Defendants responded on February 25, 2016.

oppositions to Defendants Putnam Family Properties, Inc., and Putnam Lumber & Export Company's Motions for Summary Judgment.² Instead, Plaintiffs filed the instant motion requesting additional days to revise their response for Defendants Putnam Family and Putnam Lumber's Motion for Summary Judgment, and another week to respond to Defendant Putnam Lumber's Motion for Summary Judgment. Plaintiffs' stated they would file their responses on or before February 26, 2016.

STANDARD

Pursuant to Superior Court Rule 10(a)(2), when an act is required to be done within a specified time, the court has discretion to the enlarge the time for filing.³

ANALYSIS

When a party files a timely motion for enlargement of time, the Court ordinarily grants the motion in its discretion. Here, although the Court is not required to make a finding regarding excusable neglect since the motion was filed before the expiration of the period, this is Plaintiffs' third motion for enlargement of time to respond to the same motions for summary judgment. Notably, the two previous motions were both filed after the expiration of the applicable periods.⁴ Without a response from Plaintiffs, Defendants initially asked the Court to enter summary judgment in favor of the Putnam Defendants. However, shortly after Defendants filed their opposition to Plaintiffs' motion for enlargement of time, on February 26, 2016, Plaintiffs filed

² Defendants Putnam Family and Putnam Lumber claim they did not receive a copy of the motion until February 24, 2016.

³ Super. Ct. R. 10(a) ("The court for cause shown may at any time in its discretion... order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order of the court.").

⁴ In Plaintiffs' January 8, 2016, Motion for Extension of Time, Plaintiffs' counsel argued that she mistakenly failed to timely file the motion for an extension of time.

their response to the motion for summary judgment and Defendants replied on April 1, 2016. As a result, Plaintiffs motion for extension of time is now moot⁵ and the Court does not find it appropriate to strike Plaintiffs' Opposition.

Nonetheless, Defendants assert they continue to be prejudiced by Plaintiffs blatant disregard for Court ordered deadlines, and the Court agrees. Aside from violating the March 11, 2015, scheduling Order, Plaintiffs missed two of their own suggested deadlines, January 31, 2016, and February 19, 2016. Further, in the February 8, 2016, Opinion the Court found Plaintiffs' previous arguments for extension of time unconvincing and explicitly warned Plaintiffs that any future failure to meet deadlines would result in sanctions.

"[T]he Superior Court has both statutory and inherent power to compel obedience to its orders by way of contempt."⁶ The Court may sanction a party pursuant to its incidental powers as codified in 4 V.I.C. § 243 to "compel obedience to its judgments, orders, and process...in all actions, or proceedings pending therein."⁷ In its discretion, the court may impose a wide range of sanctions limited by the Supreme Court's exclusive jurisdiction to disbar an attorney. Recently, the Supreme Court reiterated the standards for contempt sanctions.

A contempt sanction may be either civil or criminal in nature. A civil contempt sanction is "intended to enforce the rights of private parties [and] to compel obedience to orders and decrees," whereas the purpose of a criminal contempt sanction is "the vindication of the dignity and authority of the court."⁸ "A party may be held in civil contempt for failure to comply with a court order if (1) the order the contemnor failed to comply with is clear and

⁵ A motion becomes moot when something occurs after a motion is filed that resolves the issues raised in that motion. *Der Weer v. Hess Oil Virgin Islands Corp.*, 60 V.I. 91, 99 (V.I. Super. Ct. 2014) (citations omitted).

⁶ *In re M.R. & W.V.*, 2016 V.I. Supreme LEXIS 3, at *12-13 (V.I. Feb. 1, 2016) (citing *In re Meade*, S. Ct. Civ. No. 2015-0035, ___ V.I. ___, 2015 V.I. Supreme LEXIS 31, at *4 (V.I. Oct. 20, 2015) (quoting *In re Rogers*, 56 V.I. 325, 334 (V.I. 2012) (citing 4 V.I.C. §§ 243(4), 281); *In re Kendall*, 55 V.I. 888, 897 (V.I. 2011)).

⁷ 4 V.I.C. § 243; see *V.I. Taxi Ass'n v. V.I. Port Auth.*, 2015 V.I. LEXIS 67 (V.I. Super. Ct. June 15, 2015).

⁸ *M.R. & W.V.*, 2016 V.I. Supreme LEXIS 3, at *12-13 (citing *Meade*, 2015 V.I. Supreme LEXIS 31, at *4) (citing *In re Najawicz*, 52 V.I. 311, 328 (V.I. 2009) (quoting *U.S. Steel Corp. v. Fraternal Ass'n of Steel Haulers*, 601 F.2d 1269, 1273 (3d Cir. 1979)).

unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.”⁹ However, to be held in criminal contempt for violating a court order, it must be established, beyond a reasonable doubt, that the contemnor willfully disobeyed the order.¹⁰

On February 26, 2016, Plaintiffs filed a forty-six (46) page opposition, incorporating and adopting the sixty-five (65) page Statement of Facts filed on February 19, 2016, ultimately receiving an additional ninety-five days to prepare their response. Given Plaintiffs repeated failures to meet Court ordered deadlines, the Court will consider civil sanctions. To award civil sanctions the Court need not determine if Plaintiffs actions were willful because “[u]nlike criminal contempt, which seeks to punish a party, the purpose of civil contempt is ‘to coerce someone to do something or to compensate a party.’”¹¹ Instead, the Court must decide if Plaintiffs failed to comply with the Court’s Order, if the noncompliance was clear and convincing, and if Plaintiffs have been futile in their attempt to diligently comply.¹²

Here, Plaintiffs failed to comply with the Court’s March 11, 2015, scheduling Order, and the Court’s February 8, 2016, Order. Plaintiffs’ noncompliance is clear in that they did not meet the February 19, 2016, ordered deadline for filing their responses. Based on Plaintiffs previous representations to the Court, there is no evidence to suggest that Plaintiffs made any kind of good-faith effort to fully meet the February 19, 2016, deadline, especially since this was a deadline selected by Plaintiffs. In the Court’s February 8, 2016, Memorandum Opinion, the Court was

⁹ *Id.* (citing *Meade*, 2015 V.I. Supreme LEXIS 31, at *4) (citing *In re McIntosh*, S. Ct. Civ. Nos. 2012-0013, 0025, 2013 V.I. Supreme LEXIS 11, at *11 (V.I. Mar. 14, 2013) (unpublished) (quoting *In re Burke*, 50 V.I. 346, 352 (V.I. 2008)).

¹⁰ *Id.* (citing *Kendall*, 55 V.I. at 914 (citing *United States v. Providence Journal Co.*, 485 U.S. 693, 701-02, 108 S. Ct. 1502, 99 L. Ed. 2d 785 (1988)); see also 14 V.I.C. § 581(3) (the court may hold an individual in criminal contempt for “disobedience or resistance to its lawful writ, process, order, rule, decree, or command.”).

¹¹ *In re McIntosh*, Nos. 2012-0013, 2012-0025, 2013 V.I. Supreme LEXIS 11, at *11 (V.I. Mar. 14, 2013) (quoting *In re Rogers*, 56 V.I. 325, 335 (V.I. 2012)).

¹² See cases cited *supra* note 9.

“somewhat mystified that Plaintiffs represent[ed] they were prepared to file their response by January 31, 2016, but waited until February 1, 2016, to file a second motion for extension of time...” indicating that the final draft still needed to be reviewed by the lead attorney. Considering the Court struggled to find excusable neglect and found the additional delays to be a reflection of poor organization and case management, the Court finds Plaintiffs did not diligently attempt to comply with the Court’s February 19, 2016, deadline.

As a result, the Court will consider sanctions on Plaintiffs, in the amount of the attorney fees and costs accrued by the Putnam Defendants for their Opposition to Plaintiffs’ February 19, 2016, Motion for Enlargement of Time. Aside from curing the prejudice to Defendants, the Court hopes these lesser sanctions of monetary fines, rather than the striking of pleadings or criminal contempt, might gain the compliance of Plaintiffs’ counsel regarding future deadlines and orders of the Court.

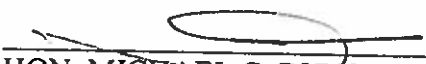
CONCLUSION

For the forgoing reasons, Plaintiffs’ February 19, 2016, Motion for Brief Extension of Time to Finalize Responses to Defendants Putnam’s Motions for Summary Judgment Motion to Dismiss of Defendant is denied as moot and a determination of monetary sanctions will be held in abeyance. An Order consistent with this Memorandum Opinion shall issue.

Dated: May 6, 2016

ATTEST: Estrella George
Acting Clerk of Court ____/____/____

by:_____
Lori Boynes-Tyson
Court Clerk Supervisor ____/____/____



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS