

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

**KYLE LAMOTTA, LEVRON SARAUW, JR.,
LEON MARTIN, JR. AND CALVERT WHITE,**

Plaintiffs,

vs.

**YOUTH LIFELINE AMERICA, INC., ROLAND
WILLIAMS AND YACHT HAVEN USVI, INC.,**

Defendants.

Case No. ST-12-CV-169

ACTION FOR BREACH
OF CONTRACT, FRAUD
AND DEBT

MEMORANDUM OPINION

THIS MATTER is before the Court on four motions, as follows: 1) Defendant Yacht Haven USVI, Inc.'s Motion for Partial Summary Judgment, (the "Motion for Partial Summary Judgment");¹ 2) Defendant Yacht Haven's Motion to Deem Conceded Allegations in Motion for Partial Summary Judgment (the "Motion to Deem Conceded"), filed April 9, 2015; 3) Plaintiffs' Motion for Leave to Respond Out of Time to Yacht Haven's Request for Admissions (the "Motion for Leave to Respond Out of Time (Admissions)"), filed August 5, 2015; and 4) Plaintiffs' Motion to Respond Out of Time (MPSJ), filed August 17, 2015.

¹ The Motion For Partial Summary Judgment was filed February 3, 2015. On August 17, 2015, Plaintiffs filed a Motion to Respond to Defendant Yacht Haven's Motion for Partial Summary Judgment Out of Time (the "Motion to Respond Out of Time (MPSJ)"). Although titled "Motion To Respond Out of Time," this filing actually includes Plaintiff's opposing arguments to the motion for summary judgment. So, it will be treated as an Opposition. Defendants then filed an Opposition to Plaintiff's Motion To Respond Out of Time, but it included arguments on the motion for summary judgment and otherwise urged that it be granted. So, Defendants' Opposition to Plaintiff's Motion To Respond Out of Time will be treated as a reply.

For the reasons set forth herein, Defendant's Motions will be denied and Plaintiffs' Motions will be granted.

Relevant Background

This matter arises out of an Action for Breach of Contract, Fraud and Debt, brought by Plaintiffs Kyle LaMotta, Levron Sarauw, Jr., Leon Martin, Jr. and Calvert White (collectively, "Plaintiffs") against Defendants Youth Lifeline America, Inc. ("YLA"), Roland Williams ("Williams") and Yacht Haven USVI, Inc., ("Yacht Haven", and together with YLA and Williams, "Defendants").² Per Plaintiffs' complaint, filed March 27, 2012 (the "Complaint"), on or about February 5, 2011 and February 6, 2011, YLA and Williams held a charity flag football tournament on the grounds of Yacht Haven's property known as Yacht Haven Grande (the "Tournament"). Compl. ¶ 7. The top four teams competing were to be awarded prizes at the end of the Tournament, with the first-place team winning tickets to the 2012 Super Bowl. Mot. for Summ. J. Ex. A. Plaintiffs were members of the winning team of the Tournament but allege that they did not receive any of the promised prizes, including the Super Bowl tickets. Plaintiffs further claim that they were "directly informed" by Williams that they would be receiving a pair of sneakers and nothing more. Compl. ¶ 8.³ On

² Yacht Haven is referred to as both a corporation and a limited liability company in various places in the filings. For the purposes of this Memorandum Opinion, the Court will use "Inc." as set forth in the caption of the Plaintiffs' complaint.

³ Per the Complaint, Plaintiffs were told they would receive "a pair of sneakers." Compl. ¶ 8. The record is not clear on whether that meant one pair per contestant or one pair, in total.

April 18, 2012, Yacht Haven filed its answer (the “Answer”), denying all allegations set forth in the Complaint.⁴

One year later, on August 4, 2014, Yacht Haven served Plaintiffs with its First Set of Interrogatories, First Set Requests for Production and First Set of Admissions (the “Requests for Admission”). Plaintiffs did not respond to the Requests for Admissions, and six months later, on February 3, 2015, Yacht Haven filed the instant Motion for Partial Summary Judgment, relying almost entirely on the unanswered requests for admissions, arguing they are conceded. After Plaintiffs had still not responded to the motion for summary judgment Yacht Haven filed its Motion to Deem Conceded. Another four months passed before Plaintiffs filed their Motion for Leave to Respond Out of Time (Admissions), followed in quick succession by their Reply to Defendant Yacht Haven USVI, LLC D/B/A Yacht Haven Grande’s First Set of Requests for Admissions to Plaintiffs (the “Reply to Requests for Admission”), (where Defendants finally answer the outstanding requests for admission) and the Motion to Respond Out of Time (MPSJ), filed August 17, 2015, which the Court is treating as an opposition to the motion for partial summary judgment.

Legal Standard

V.I. R. Civ. P. Rule 56 reads in relevant part, “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

⁴ Upon motion of the Plaintiffs, the Court entered default against Defendants YLA and Williams on July 31, 2013.

“Summary judgment is a drastic remedy [and] should be granted *only when* the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact.” *Alexander v. Alexander*, 65 V.I. 372, 378, 2016 V.I. Supreme LEXIS 35 (emphasis added) (citing *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379-380, 2014 V.I. Supreme LEXIS 51 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194, 2008 V.I. Supreme LEXIS 59)). “Under Rule 56, the Court must ‘grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Gerald v. R.J. Reynolds Tobacco Co.*, 2017 V.I. LEXIS 150, *4 (Super. Ct. Aug. 29, 2017); V.I. R. Civ. P. 56(a). “At the summary judgment stage, the moving party ‘possesses the initial burden of identifying evidence indicating that there is an absence of any issue of material fact.’” *United Corporation v. Hamed*, 64 V.I. 297, 309, 2016 V.I. Supreme LEXIS 1. “The party moving for summary judgment has the burden of demonstrating a clear absence of genuine issues of material fact.” *Brodhurst v. Frazier*, 57 V.I. 365, 380, 2012 V.I. Supreme LEXIS 65 (citing *Monroe v. Beard*, 536 F.3d 198, 206 (3d Cir. 2009)).

Discussion

In its Motion for Partial Summary Judgment, Yacht Haven asserts that there are no genuine issues of material fact and asks that the Court dismiss all of Plaintiffs’ claims.

Plaintiffs allege that, as a sponsor of the event, Yacht Haven had an affirmative duty to ensure that the Tournament occurring on its premises was "legitimate and reputable." Compl. ¶ 5. In its Answer, Yacht Haven asserts (among other things) that (i) Yacht Haven owes no legal duty as alleged by Plaintiffs and (ii) Plaintiffs' alleged damages were the result of actions or omissions of third parties over whom Yacht Haven had no dominion, control or legal responsibility. Answer ¶¶ 2, 5. However, Yacht Haven's motion for summary judgment offers no independent evidence to support these assertions or to show that there is an absence of any issue of material facts. The exhibits attached to Yacht Haven's Motion are not identified nor are they offered under any affidavit. These unsupported and unidentified exhibits are not admissible in court and are thus not reliable to meet the standard necessary for a motion for summary judgment. Rule 56 (c)(2) V.I.R. Civ. P. Instead, Yacht Haven relies upon its contention that by not responding to the Requests for Admission, Plaintiffs have admitted the facts and allegations contained therein. This is not sufficient to carry the initial burden of production. "Summary judgment 'cannot be entered unless the movant has established [both] its right[] to a judgment with such clarity as to leave no room for controversy and [that] the other party is not entitled to recover under any discernible circumstances.'" *Edwards v. Marriott Hotel Mgmt. Co. (V.I.), Inc.*, 2015 V.I. LEXIS 13, *27 (Super. Ct. Jan. 29, 2015) (quoting *Etienne v. United Corp.*, 44 V.I. 113, 114 (Terr. Ct. Oct. 15, 2001)). While the Court notes that Plaintiffs repeatedly failed to timely respond to the requests for admissions and failed to meet other deadlines, they did eventually file responses to the requests

for admissions. “[I]n considering whether there are any disputed issues of material fact[,] ... [t]he court must credit all reasonable inferences from the evidence on record in favor of the nonmoving party.” *R.J. Reynolds*, 2017 V.I. LEXIS 150, *5, (quoting *Walters v. Walters*, 60 V.I. 768, 794, 2014 V.I. Supreme LEXIS 29). Furthermore, in the Virgin Islands, “[c]ourts generally disfavor judgments by default, preferring to decide cases on their merits.” *Caribbean Cooling Company, Inc. v. Lorenzo*, 2016 V.I. LEXIS 13, *2 (Super. Ct. Feb. 4, 2016) (citing *Deal Furniture & Appliance Inc. v. Four Winds Plaza P'ship*, 961 F. Supp. 117, 36 V.I. 151, 153 (D.V.I. 1997)). While this is a motion for summary judgment, not default judgment, the Defendant’s only avenue to summary judgment is through the then unanswered requests for admission. Granting Defendant summary judgment would be comparable to a default judgment as Plaintiffs’ claims would not be decided on the merits but on the Plaintiffs’ failure to timely respond. If other portions of the record supported Defendant’s motion and the unanswered requests for admissions were simply one cog in the wheel, the Court would be less inclined to grant the relief Plaintiffs are being afforded here. However, in this instance the unanswered requests for admissions are the entire wheel, the entire basis of the Defendant’s motion. But for the unanswered requests for admissions Defendant would have no basis for summary judgment. Therefore, the Court finds that granting Plaintiffs relief so that their responses to the requests for admissions may be considered furthers the goals of decisions on the merits.

As Yacht Haven has not shown a clear absence of material facts in the exhibits and must rely upon the unanswered requests for admission the Court will use its

discretion to grant the Plaintiffs' Motion for Leave to Respond Out of Time (Admissions) and allow them to be considered and made part of the record.⁵ As a result, it would be improper to dismiss Plaintiffs' claims at this time as there are material facts at issue. Yacht Haven's Motion to Deem Conceded will also be denied.

Conclusion

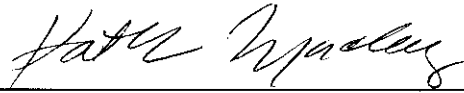
The Plaintiffs' responses to the requests for admissions will be allowed. Once those become of record, Defendant Yacht Haven has not shown an absence of material fact. Therefore, the motion for summary judgment and the motion to deem the motion for summary judgment conceded will be denied. Plaintiffs' Motion for Leave to Respond Out of Time (Admissions)" and Plaintiffs' Motion to Respond Out of Time will be granted.

Defendant had requested oral arguments if the Court was not inclined to grant summary judgment. However, given the analysis that follows the Court has determined that oral arguments are not necessary.

⁵ If other portions of the record supported Defendant's motion and the unanswered requests for admissions were simply one cog in the wheel, the Court would be less inclined to grant Plaintiffs the relief it is being afforded here. However, in this instance the unanswered requests for admissions are the entire wheel, the entire basis of the motion. But for the unanswered requests for admissions Defendant would have no basis for summary judgment. Therefore, the Court finds that granting Plaintiffs relief so that their responses to the requests for admissions may be considered furthers the goals of decisions on the merits.

An Order consistent with this Memorandum Opinion will be entered.

DATED: May 7, 2018



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON

Chief Deputy Clerk 5/7/2018