

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

VICTOR RIVERA, MILAGROS
ROSAS and ROSA RAMOS,

Plaintiffs,

CONSOLIDATED
Case No.: 16-CA-004946
Lead Consolidated Case

vs.

SECURITY FIRST INSURANCE
COMPANY,

Defendant.

_____ /

VICTOR RIVERA, MILAGROS
ROSAS and ROSA RAMOS,

Plaintiffs,

CONSOLIDATED
Case No.: 16-CA-004950

vs.

SECURITY FIRST INSURANCE
COMPANY,

Defendant.

_____ /

**ORDER GRANTING IN PART, DEFENDANT'S MOTION FOR SANCTIONS
FOR CONTINUED PATTERN OF DELAY AND
FOR PLAINTIFFS' FAILURE TO APPEAR AT DEPOSITION**

THIS CAUSE came before the Court on August 3, 2017 upon Defendant's Motion for Sanctions for Continued Pattern of Delay and for Plaintiffs' Failure to Appear at Deposition (the "Motion"). The Court, having reviewed the Motion, having considered the arguments of counsel, and being fully otherwise advised in the premises, hereby makes the following findings of fact and law:

1. Defendant, Security First Insurance Company ("Security First"), issued a

homeowners policy to Plaintiff, Victor Rivera, insuring the home at 3609 East Paris Street, Tampa, Florida 33610.

2. The home reportedly sustained two water losses allegedly occurring on August 14, 2015 and August 28, 2015.

3. The water losses reportedly occurred in the kitchen and bathroom.

4. Plaintiffs served two lawsuits on Security First on June 14, 2016.

5. The actions were later consolidated into this case.

6. On July 5, 2016, Security First, through counsel, requested dates for the depositions of Plaintiffs, VICTOR RIVERA, MILAGROS ROSAS, and ROSA RAMOS (“Plaintiffs”) by July 13, 2016.

7. On July 12, 2016, the Parties mutually agreed to conduct Plaintiffs’ depositions on November 16, 2016.

8. On July 18, 2016, Notices of Taking Depositions Duces Tecum of Plaintiffs were filed with this Court, setting their depositions on November 16, 2016.

9. The Notices were filed for approximately 119 days.

10. Then, on November 14, 2016, two days before the mutually scheduled depositions, Plaintiffs (through counsel) requested that the depositions be rescheduled.

11. The basis for the request was “TWO Court Ordered mediation[s] scheduled for that day” and not having anyone available ”to cover this depo.”

12. Security First, through counsel, asked for supporting documentation of the two mediations, and suggested that Plaintiffs’ counsel provide copies of a notice of mediation or court order.

13. Instead of providing documentation of the mediation, Plaintiffs’ counsel

offered to start the depositions later in the day.

14. That was not feasible, based on the number of depositions scheduled and the anticipated time needed for each deposition.

15. At the August 3, 2017 hearing, the Court asked about the documentation of the court-ordered mediation:

THE COURT: Yeah. You haven't -- that's why I want -- I want to go by -- back over these one at a time. What were -- do you know what the court-ordered mediations were on that date?

MR. DRAKE: I -- I wasn't at the firm, and there was no notation that I was able to see in preparation for this hearing related to what those specific mediations were. . . . so, I personally -- no, I don't have any knowledge, Your Honor.

16. Although Plaintiffs' depositions had been noticed for over 100 days, Security First agreed to reschedule the depositions to a different date.

17. On November 14, 2016, the Parties mutually agreed **for a second time** to conduct Plaintiffs' depositions on January 13, 2017.

18. On November 15, 2016, Notices of Taking Deposition Duces Tecum of Plaintiffs were filed with this Court, setting their depositions on January 13, 2017.

19. The Notices were filed for approximately 57 days.

20. Then, on January 11, 2017 at 12:27 p.m., two days before Plaintiffs' depositions, Plaintiffs' counsel confirmed the January 13, 2017 depositions.

21. Hours later, on January 11, 2017 at 4:28 p.m., Plaintiffs (through counsel) requested that the depositions be rescheduled.

22. The basis for the request was an emergency and issues with travel arrangements. The email represented:

Unfortunately we will not be able to proceed with the depositions for Friday, January 13, 2017 and will need to be rescheduled. We called our clients to confirm they will be attending, however, they stated they were unable to attend due to their daughter Milagros having to fly to New York in an emergency. Victor and Rosa are an elderly couple that do not drive. If we can please reschedule this deposition it would be greatly appreciated.

I do apologize for the inconvenience.

23. Security First, through counsel, asked for supporting documentation of the emergency on January 12, 2017.

24. To avoid any additional delays, Security First agreed to reschedule Plaintiffs' depositions although it had not received documentation of the emergency.

25. In fact, no documentation of the emergency was ever provided.

26. The only documentation provided by Plaintiffs' counsel was regarding Plaintiff, Milagros Rosa's residency in New York. Plaintiffs' counsel provided the documentation on February 7, 2017.

27. There was not an emergency; Milagros Rosa just lives in New York.

28. On January 12, 2017, the Parties mutually agreed **for a third time** to conduct Plaintiffs' deposition on March 14, 2017.

29. On January 18, 2017, Notices of Taking Deposition Duces Tecum of Plaintiffs were filed with this Court, setting their depositions on March 14, 2017.

30. The Notices were filed for approximately 54 days.

31. Then, on March 13, 2017, one day before the mutually scheduled depositions, Plaintiffs (through counsel) requested that the depositions be rescheduled to March 20, 2017.

32. The basis for the request was coordinating with Plaintiff, Milagros Rosas.

The email, sent March 13, 2017 at 9:26 a.m. from Edwin Grajales (legal assistant) represented:

We have been trying to coordinate this deposition with client's daughter Milagros Rosa which as you know resides in NY. In an effort to try and complete this deposition with all parties requested by your office, is there a possibility of moving this deposition to 3/20/17? Please advise if your office is agreeable to this.

33. Plaintiffs' counsel also requested that the depositions be rescheduled.

The email, sent March 13, 2017 at 4:24 p.m. from Jonathan Drake, Esq. represented:

We would still like to reschedule the depositions scheduled for tomorrow. Part of the issue is physically getting our elderly clients (85 and 92 I believe) and their daughter from New York to the deposition location tomorrow. The other problem is that I am supposed to be at an EUO with Amanda Griffin from your firm ... My calendar is still a work in progress and some of my conflicts are being identified late, my apologies.

I would appreciate you agreeing to reschedule. I see that we have not been given any dates for the reschedule of the Corporate Representative depo. We agreed to reschedule that depo in combination with this one as the Corp Rep depo was previously scheduled 2/23/17. Since we have not yet set the Corp Rep depo we could still reset both and have the Plaintiff occur first. If we can't agree to reschedule I will be filing an MPO as I can't be in 2 places at once.

34. On the same date, Plaintiffs filed a Motion for Protective Order, representing to the Court that, "Attorney Jonathan Drake has a scheduling conflict and cannot attend the deposition as he will be attending an Examination Under Oath with a different attorney from the same firm, Butler Weihmuller Katz Craig LLP, in Land O Lakes, Florida."

35. Plaintiffs made no effort to set the Motion for Protective Order for a hearing.

36. On March 14, 2017, all three Plaintiffs failed to appear at the properly

noticed and coordinated depositions. Security First obtained Certificates of Non-Appearance.

37. Thereafter, Plaintiffs made no effort to reschedule or re-coordinate Plaintiffs' depositions.

38. On April 11, 2017, Security First, through counsel, offered five potential deposition dates in May and June.

39. After not hearing from Plaintiffs, on April 17, 2017, Security First, through counsel, followed up on the proposed dates for Plaintiffs' depositions.

40. On April 20, 2017, the Parties mutually agreed **for a fourth time** to conduct Plaintiffs' depositions on August 8, 2017.

41. On July 19, 2017, Security First served a Motion for Sanctions for Continued Pattern of Delay and for Plaintiff's Failure to Appear at Deposition (the "Motion").

42. Security First not only requested sanctions, including dismissal and monetary sanctions, but also requested "any further relief this Court deems appropriate." Plaintiff did not file any reply to the Motion.

43. On August 3, 2017, the Court heard the Motion.

44. In *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993), the Florida Supreme Court articulated factors to assist trial courts in determining whether dismissal with prejudice is warranted. The Court opined:

This Court is vitally concerned with the swift administration of justice at both the trial and appellate levels. In the interest of an efficient judicial system and in the interest of clients, it is essential that attorneys adhere to filing deadlines and other procedural requirements. However, a fine, public reprimand, or contempt order may often be the appropriate sanction to impose on an attorney in those situations where the attorney, and not the

client, is responsible for the error. To assist the trial court in determining whether dismissal with prejudice is warranted, we have adopted the following set of factors set forth in large part by Judge Altenbernd: 1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration. Upon consideration of these factors, if a sanction less severe than dismissal with prejudice appears to be a viable alternative, the trial court should employ such an alternative.

Kozel, 629 So. 2d at 818 (Fla. 1993) (Footnote omitted).

45. Plaintiffs' lawyers' actions in this litigation have been deliberate and contumacious and designed to prevent the orderly movement of this litigation.

46. The most basic discovery, Plaintiffs' depositions were deliberately delayed, and Plaintiffs failed to provide any credible or reasonable justification for the delays.

47. At some point mere foot dragging becomes conduct which evinces deliberate callousness and willful disregard of the Court's authority. *Turner v. Marks*, 612 So. 2d 610 (Fla. 4th DCA 1992).

48. Plaintiffs' lawyers have willfully disregarded the Florida Rules of Civil Procedure and the Rules of Professional Conduct and have engaged in bad faith litigation conduct.

49. The actions of Plaintiffs' lawyers have caused substantial problems of judicial administration in not only this case, but this Circuit Court.

50. The FAQ's on Plaintiffs' lawyers' website, under "Why should I hire you?" states:

Strems Law is a firm with the experience, resources and proven results you can trust. We leverage 128 years of combined experience and a team of deeply-committed attorneys who prioritize your best interests. Strems is fierce in the courtroom and caring with our clients. We will be there for you, every STEP of the way! Schedule your free consultation and we will gladly further discuss with you.

www.stremslaw.com/faqs (accessed 8/9/2017) (underlined emphasis added).

51. The delays and violations of Court Orders by The Strems Law Firm, P.A. are not isolated. The Strems Law Firm, P.A. has evidenced a pattern of litigation delays and frequently violates Court Orders.

52. This Court previously sanctioned Plaintiffs' counsel and/or Plaintiffs in this case for failing to comply with a Court Order. See *Order Granting Defendant's Motion for Sanctions for Failure to Comply with Court Order*, signed 12/8/2016.

53. The Strems Law Firm, P.A.'s attorneys have been sanctioned numerous times throughout Florida, in different Circuits and by different Judges, for failing to comply with Court Orders.

54. In fact, the ultimate **sanction of dismissal** has been imposed on Plaintiffs' lawyers on **at least six occasions**. See *Orders of Dismissal, attached as Court's Composite Exhibit 1*.

55. The attached Orders of Dismissal include:

- i. "Order Granting Defendant's Motion to Strike Pleadings" (entering dismissal with prejudice) in *Enel Jean Laurent v. Federated National Insurance Company*, consolidated case number 14-CA-003019, in the Circuit Court of the twentieth Judicial Circuit in and for Lee County, Florida (May 2, 2016; Judge Elizabeth V. Krier).
- ii. "Final Order Granting Defendant's Second Motion to Dismiss for Fraud upon the Court and Defendant's Second Motion for Sanctions" in *Carlos Rodriguez and Carmen Rodriguez v. Geovera Specialty Insurance Company*, case number CACE-14-000565, in the Circuit Court of the Seventeenth Judicial Circuit in and for

Broward County, Florida (January 5, 2017; Judge Carlos A. Rodriguez).

- iii. “Final Order of Dismissal with Prejudice for Fraud on the Court and Supplemental Motion to Dismiss for Fraud Upon the Court and for Civil Sanctions” in *Ivy Robinson and Glasford Robinson v. Safepoint Insurance Company*, case number 2015-0199287 CA 01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (April 11, 2017; Judge Jorge E. Cueto).
- iv. “Order Dismissing Plaintiff’s Complaint With Prejudice and Finding Entitlement to Fees and Costs” (dismissing plaintiff’s Complaint for “continued and willful violations of [court orders]”) in *Javier Santos v. Florida Family Insurance Company*, case number 2015-CA-2791, in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida (April 17, 2017; Judge Kevin B. Weiss).
- v. “Order of Dismissal with Prejudice” in *Iran Rodriguez v. Avatar Property and Casualty Insurance Company*, case number 16-CA-000575, Division C, in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (July 14, 2017; Judge Elizabeth G. Rice).
- vi. “Order Striking Pleadings and Dismissing Complaint [with Prejudice],” in *Anthony Reese and Sarilia Reese v. Citizens Property Insurance Corporation*, case number 2017-001281-CA-01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (July 28, 2017; Judge Thomas J. Rebull).

56. Accordingly, the Motion is **GRANTED, IN PART**.

57. The Court awards Defendant, Security First Insurance Company **\$37,000.00**. Such amount is imposed as a monetary sanction to be paid by Scot Strems, Esq. from his personal account.

58. If Scot Strems, Esq. fails to pay Security First within **30** days of this Order, he is ordered to pay an additional **\$** per day until payment in full is made. THIS MATTER WILL BE BROUGHT BACK TO COURT FOR FURTHER SANCTIONS.

59. Based on the above, as well as the pattern of conduct evidenced by The Strems Law Firm, P.A., this Court is hereby referring The Strems Law Firm, P.A. to the Florida Bar for disciplinary measures and/or for an investigation into the actions and

conduct of The Strems Law Firm, P.A.

60. The Court further advises The Strems Law Firm, P.A. that if another lawsuit is filed before it, Scot Strems, Esq. shall be required to appear before the Court at any hearings, and may not send any other attorney from The Strems Law Firm, P.A. to appear on his behalf.

DONE and ORDERED in Chambers at Tampa, Hillsborough County, Florida, on

_____.

Electronically Conformed 8/16/2017

Rex M. Barbas
Circuit Judge

Electronically conformed copies to:

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