

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

<b>FOREVER FLOWERS GRANDE, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CASE NO. ST-09-CV-339</b>
	)	
<b>v.</b>	)	
	)	
<b>YACHT HAVEN GRANDE, LLC,</b>	)	
<b>ISLAND CAPITAL GROUP, LLC,</b>	)	
<b>ISLAND GLOBAL YACHTING, and</b>	)	
<b>ANDREW FARKAS,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
	)	
<hr/>		
<b>YACHT HAVEN USVI, LLC,</b>	)	
	)	
<b>Third-Party Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>DAVID BILARDI and GERALDINE</b>	)	
<b>QUETEL</b>	)	
	)	
<b>Third-Party Defendants.)</b>	)	
<hr/>		

**MEMORANDUM OPINION**

This matter is before the Court on Defendants Yacht Haven USVI<sup>1</sup>, LLC (“Yacht Haven”), Island Capital Group, LLC, Island Global Yachting, and Andrew Farkas’ Motion to Dismiss the Claims of Forever Flowers Grande, LLC (“FFG”), David Bilardi, and Geraldine Quetel and for Default Judgment Against Them for Failing to Respond to Interrogatories and Requests for Production (“the Motion”) filed on April 27, 2010. On May 21, 2010, Forever Flowers, LLC, David Bilardi, and Geraldine Quetel (collectively,

<sup>1</sup> Incorrectly named as “Yacht Haven Grande, LLC,” in the Complaint. Thus, the Defendant will be referred to by its correct name, Yacht Haven USVI, LLC, throughout this Memorandum Opinion.

the “Forever Parties”) filed a Motion in Opposition to Defendants’ Motion (“the Opposition”), and on May 27, 2010, Defendants filed a Reply to the Forever Parties’ Opposition.

### **FACTS AND PROCEDURAL HISTORY**

On July 17, 2009, Plaintiff FFG filed a Complaint against Yacht Haven, Island Capital Group, LLC, Island Global Yachting, and Andrew Farkas containing claims for breach of contract, fraud, interference with prospective contract, negligence, negligent misrepresentation, negligent or fraudulent misrepresentation, unfair business practice, tortious interference with business relations, promissory estoppel, and civil RICO.

Subsequently, on August 24, 2009, Defendants Yacht Haven USVI, LLC, Island Capital Group, LLC, Island Global Yachting and Andrew Farkas filed an Answer to Complaint, Counterclaim, and Third Party Complaint. Defendants’ Counterclaim asserted breach of contract, debt, breach of contract and debt, fraudulent misrepresentation, negligent misrepresentation, interference with prospective economic advantage, and breach of the duty of good faith and fair dealing. Additionally, Defendant Yacht Haven filed a Third-Party Claim against Third-Party Defendants David Bilardi and Geraldine Quetel alleging fraudulent misrepresentation, negligent misrepresentation, interference with contractual relations, interference with prospective economic advantage, contribution, and breach of the duty of good faith and fair dealing.

On September 17, 2009, FFG filed an Answer to Yacht Haven’s Counterclaims, and in the same document, Third-Party Defendants filed an Answer to Yacht Haven’s Third-Party Complaint. In addition, Third-Party Defendants filed Counterclaims against

Yacht Haven for fraudulent misrepresentation, negligent misrepresentation, unfair business practice, tortious interference with business relations, defamation, fraud, and compensatory damages. On October 13, 2009, Yacht Haven filed an Answer to Third-Party Defendants' Counterclaims.

On January 4, 2010, all parties in this action filed a Proposed Scheduling Order ("the Order"), which was accepted and entered by the Court on January 13, 2010. The Order directed the parties to issue discovery requests by February 26, 2010, and respond thereto by March 26, 2010. On February 11, 2010, Defendants served Interrogatories and Requests for Production of Documents on FFG, Billardi and Quetel. No responses were received. In an April 14, 2010, letter,<sup>2</sup> Defendants informed the Forever Parties that their noncompliance was a waiver to all of their objections to the discovery requests pursuant to Rules 33 and 34 and demanded responses by April 19, 2010, and informed them that their failure to comply would result in Defendants filing a Motion to Compel. However, shortly after Defendants filed their Motion to Dismiss and for Default Judgment, the Forever Parties submitted their Responses to Defendants' Interrogatories and Responses to Defendants' request for Production of Documents.

### **DISCUSSION**

Initially, the Court notes that Defendants did not seek to compel disclosure of responses to their discovery requests, but rather, sought sanctions as a result of the failure of the Forever Parties to make disclosures. But, as this Motion is being considered by the court, the Forever Parties have now provided the required responses, albeit belatedly.

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<sup>2</sup> See Defendants' Motion, Exhibit 2.

Because there has been no complete “failure” to serve responses within the meaning of Rule 37(d) or complete failure to comply with the Court’s Scheduling Order within the meaning of Rule 37(b), the Court determines that the sanctions of dismissal and default judgment are inappropriate.

In Defendants’ May 27, 2010, Reply to the Forever Parties’ Opposition, Defendants argue that because Forever Parties failed to comply with the agreed upon discovery date, they are entitled to an award of fees and costs due to Forever Parties’ admitted delinquency pursuant FED. R. CIV. P. 37(a)(5)(A), which provides:

If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees. But the court must not order payment if:

- (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party’s nondisclosure, response, or objection was substantially justified; or
- (iii) other circumstances make an award of expenses unjust.

Defendants’ undersigned counsel certified in its Motion that they attempted in good faith to obtain the Parties’ discovery responses.<sup>3</sup> However, Forever Parties’ Opposition makes the unsworn assertion that Defendants did not confer or attempt to confer with counsel for the Forever Parties. Defendants have attached only a single letter dated April 14, 2010, communicating with counsel for the Forever Parties in support of Defendants’

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<sup>3</sup> See Defendants’ Exhibit 2.

certification. Based upon the record before the Court, the Court is not prepared to conclude that Defendants' certification is conclusive.

This Court can award attorney's fees unless the Forever Parties are able to show that their failure to provide discovery in a timely manner was "substantially justified." Although the Forever Parties provided Defendants with the discovery requests after Defendants filing of their Motion, the Forever Parties have not provided the Court with an explanation justifying their failure to comply with the discovery deadlines. In *Damidaux v. Hess Oil Virgin Islands Corp.*, 18 V.I. 303, 306 (D.V.I. 1981), the court held that even though the defendant had responded to the plaintiff's discovery requests after plaintiff filed his motion for sanctions, the court determined that awarding plaintiff attorney's fees spent in making the motion was warranted, and reasoned that "[t]he purpose of sanctions is not to punish, but to induce a recalcitrant party to complete discovery." See also *Graham v. Mackethan*, Civil Action No. 07-4596, 2008 WL 818678, at \*2 (E.D. Penn. March 24, 2008). However, given that Defendants sole attempt to amicably resolve this dispute appears to be a single letter, a Motion to Compel was not required, this case is still in the discovery stages, and Defendants do not appear to have suffered substantial prejudice as a result of the belated disclosures, the Court finds that an award of expenses would, on this record, be unjust. Thus, Forever Parties' failure to provide a substantial justification for their failure to punctually answer Defendants' discovery requests will not result in Defendants being awarded reasonable costs and attorney's fees.

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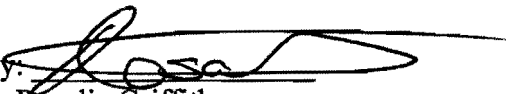
A separate Order shall follow.

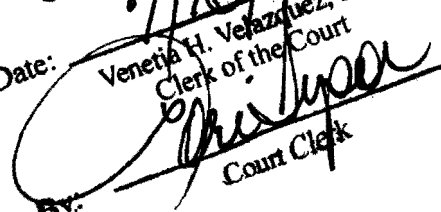
Dated: July 14, 2010



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

Attest:  
Venetia H. Velasquez, Esq.  
Court Clerk Supervisor     /    /    

by:   
Rosalie Griffith  
Court Clerk Supervisor 7/13/10

CERTIFIED A TRUE COPY  
Date: 7/15/10  
Venetia H. Velasquez, Esq.  
Clerk of the Court  
By:   
Court Clerk

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

FOREVER FLOWERS GRANDE, LLC, )

Plaintiff, )

v. )

YACHT HAVEN GRANDE, LLC, )

ISLAND CAPITAL GROUP, LLC, )

ISLAND GLOBAL YACHTING, and )

ANDREW FARKAS, )

Defendants. )

CASE NO. ST-09-CV-339

YACHT HAVEN USVI, LLC, )

Third-Party Plaintiff, )

v. )

DAVID BILARDI and GERALDINE )

QUETEL )

Third-Party Defendants.)

**ORDER**

The Court having rendered a Memorandum Opinion this date, in accordance with that opinion it is

**ORDERED** that Defendants' Motion to Dismiss and for Default Judgment is **DENIED**; and it is


**ORDERED** that Defendants' Motion for Sanctions is **DENIED** with regard to the award of reasonable attorney's fees and costs pursuant to FED. R. CIV. P.

37(a)(5)(A); and it is


Forever Flowers Grande, LLC vs. Yacht Haven USVI, LLC, et al.  
Yacht Haven USVI, LLC vs. David Bilardi and Geraldine Quetel  
Case No. ST-09-CV-339  
Order  
2 of 2

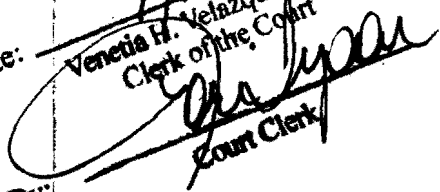
ORDERED that a copies of this Order shall be directed to counsel of record.

Dated: July 12, 2010

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

Attest: \_\_\_\_\_  
Venetia H. Velazquez, Esq.  
Clerk of the Court   /  /  

by:   
Rosalie Griffith  
Court Clerk Supervisor 7 / 13 / 10

CERTIFIED A TRUE COPY  
Date: 7/15/10  
Venetia H. Velazquez, Esq.  
Clerk of the Court  
By:   
Court Clerk