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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

)

Plaintiff

)

v.

)

STANDARD INSURANCE COMPANY,
UNNAMED DEFENDANT #2, BEN
WACKER

)

Defendant

)

Case No (LT)
3:24-cv-000189

PLAINTIFF'S MOTION FOR RELIEF FROM RULING

Plaintiff, ELIAS MAKERE, on this 15th day of April 2024, respectfully asks this Court to relieve Plaintiff from the order that it entered on April 12, 2024. Pursuant to Rule 60(a) Fed. R. Civ. P., the order was improvident.

Key Points:

- A.) Points time has/had not expired
- B.) Grounds error; unconstitutional

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Background: Court claimed that Plaintiff's time [to respond] had expired
Problem: Plaintiff's time had not expired, yet Court ruled against him
Request: Court vacates its ruling

Rule 5(b)(2) Fed. R. Civ. P. | Serving and Filing Pleadings and...

"A paper is served under this rule by:

*(A) handing it...; (B) leaving it...; (C) mailing it...; (D) leaving it...;
(E) sending it... (F) delivering it... ."*

Rule 12(a)(1) Fed. R. Civ. P. | Time to Serve a Responsive Pleading

"Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows..."

Local Rule 3.01(c) USFLMD | Motions and Other Legal...

"...a party may respond to a motion to dismiss... within twenty-one days after service of the motion."

Precedence

- 6:22-cv-02075-RBD-LHP - USFLMD (3/22/24)
- 2:23-cv-00475-SPC-KCD - USFLMD (7/26/23)
- 5:23-cv-00059-GAP-PRL - USFLMD (5/15/23)
- 8:21-cv-01558-KKM-AAS - USFLMD (12/27/22)
- 6:21-cv-01839-ACC-DAB - USFLMD (11/17/22)
- 5:21-cv-00343-BJD-PRL - USFLMD (4/20/22)
- 8:20-cr-00138-CEH-JSS - USFLMD (11/22/21)
- 3:14-cr-00075-BJD-PDB - USFLMD (6/17/21)
- 8:18-cv-01389-AAS - USFLMD (6/1/21)
- 6:19-cv-00637-CEM-LRH - USFLMD (4/2/20)

USFLMD has recently granted similar requests

Abbreviations:

- {#NN} - Docket Entry NN (from this Case)
- USFLMD - US District Court, Florida, Middle District

MOTION

I. Relevant History

1. On January 17, 2024, Plaintiff initiated this lawsuit. He did so, notably, without an attorney (ie, *pro se*). Moreover, he commenced this action in state court (Florida; Duval County; 2024-CA-000628).

a) Duval County's court system, importantly, allows **all** litigants (ie, including *pro se* litigants) to file their documents electronically.

2. Roughly one month later (circa February 16, 2024), Defendants-X (ie, Standard Insurance Company; and Mr. Ben Wacker) appeared via counsel. Who thereby removed this action into this Court.

a) This Court, however, does **not** allow **all** litigants to file their documents electronically. Instead, it prohibits *pro se* litigants from doing so.

3. At all times material hereto, Plaintiff – as a *pro se* litigant – has not enjoyed the privilege of electronic filing. A privilege, of course, that Defendants-X have always enjoyed. A privilege, crucially, that has affected this proceeding.

4. On March 28, 2024, Defendants-X informed Plaintiff that this Court had set a deadline (of Monday, April 1, 2024) for completing the case management report. Defendants-X received that Court directive via electronic means. Plaintiff, on the other hand, has never received it.

5. On that same day, Defendants-X informed Plaintiff that they had previously filed a *Motion to Dismiss* (“That Motion”) {#11}. This, too, was news to Plaintiff (whom never received a copy of the motion).

a) Apparently, March 1, 2024 marked the date that Defendants-X filed That Motion.

i. Defendants-X, however, did not send Plaintiff a copy.

ii. This Court – given its *pro se* discrimination (regarding electronic filing) – also did not send Plaintiff a copy.

b) A few minutes later – on March 28, 2024 – Defendants-X [first/finally] sent Plaintiff a copy of That Motion.

6. Soon thereafter – on Wednesday, April 10, 2024 – the two parties held their case management conference. Whereby the litigants discussed – among other things – Plaintiff’s plans to respond to That Motion.

a) Notably, Plaintiff informed Defendants-X that he would file his response “*within two weeks*”.

7. On Friday, April 12, 2024, though, this Court entered an order (hereinafter “That Order”) that granted That Motion. Thereby stating that Plaintiff’s time to respond had expired:

“Plaintiff, who is pro se, did not file a response to [That Motion] and the time to do so has expired.”

– USFLMD | *Makere v Standard, et al* | 3:24-cv-00189 | {#23} at 1

This Court used that expiration timeline as the basis for granting That Motion:

“Thus, [That Motion] will be granted as unopposed and the Complaint will be dismissed [without prejudice].”

– USFLMD | *Makere v Standard, et al* | 3:24-cv-00189 | {#23} at 1

II. Analysis

8. March 28, 2024 marked the *date-of-service* for That Motion. March 28th, of course, was the date that Plaintiff first received it (via email – from Defendants-X). Rule 5(b)(2)(E) Fed. R. Civ. P. states that electronic transmission satisfies the *date-of-service* criteria (highlights added):

“A paper is served under this rule by... (E) sending it to a registered user by filing it with the court’s electronic-filing system or sending it by other electronic means that the person consented to in writing — in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served;”

– Rule 5(b)(2)(E) Fed. R. Civ. P.

9. According to Local Rule 3.01(c) USFLMD, Plaintiff had/has twenty-one (21) days to respond to That Motion (highlights added):

“...a party may respond to a motion to dismiss... within twenty-one days after service of the motion.”

– Local Rule 3.01(c) USFLMD

10. April 19, 2024 marks the end of that twenty-one day response window.

a) This date equals the *date of service* plus *twenty-two (22) days*.

b) This calculation satisfies the formula set by Rule 6 Fed. R. Civ. P.:

*“When the period is stated in days or a longer unit of time:
(A) exclude the day of the event that triggers the period;
(B) count every day...; and
(C) include the last day of the period...”*

– Rule 6(a)(1) Fed. R. Civ. P.

11. April 19, 2024, of course, is a future date.

12. Therefore, That Order was wrong for holding that Plaintiff’s time [for responding] had expired. Plaintiff’s time had/has not expired. In fact, he still has four days left.

13. Plus, Plaintiff does [indeed] oppose That Motion (§6 *supra*).

14. Moreover, this Court’s discrimination towards *pro se* litigants (via its eFiling prohibition), is unconstitutional. Reason: its prohibition targets black litigants – via its disparate impact (and disparate enforcement).

a) Statistics show that 84% of Florida’s *pro se* civil rights litigants are black.^{1/} This value is dramatically high, because government census shows that only 17% of Floridians are black.

b) As such, this Court’s discrimination violates the equal protection clause of the US Constitution (14th Amendment).

15. Thus – in addition to being improvident – That Order is/was unconstitutional. Thankfully, though, this Court has the power to vacate it.

III. Standard for Review

16. Rule 60 Fed. R. Civ. P. gives this Court the power to correct a past order:

“The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice.”

– Rule 60(a) Fed. R. Civ. P.

17. The appellate courts have reiterated this power (highlights added):

“A district court has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment, whether they be oral, e.g., United States v. Green, 414 F.2d 1174, 1175 (D.C. Cir. 1969) (trial judge had authority to withdraw oral decision granting defendant’s motion to dismiss indictment), or written, e.g., United States v. Jerry, 487 F.2d 600, 604-05 (3d Cir. 1973) district court had authority to rescind written order improvidently permitting defendant to withdraw guilty plea); cf. United States v. Benz, 282 US 304, 306-07, 51 S.Ct. 113, 114, 75 L.Ed. 354 (1931) (stating general rule that judgments, decrees, and orders in civil or criminal cases may be modified by court within the term in which they were entered), and there is no provision in the rules or any statute that is inconsistent with this power.”

– United States v. LoRusso, 695 F.2d 45 (2d Cir. 1982)

18. The appellate courts have also taken it a step further. By establishing that improvidence amounts to an abuse of discretion (highlights added):

“Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them. See In re San Juan Dupont Plaza Hotel Fire Litigation, 859 F.2d 1007, 1019 (1st Cir. 1988); United States v. Hastings, 847 F.2d 920, 924 (1st Cir.), cert. denied, --- U.S. ----, 109 S. Ct. 308, 102 L. Ed. 2d 327 (1988); see generally Anderson v. Cryovac, Inc., 862 F.2d

910, 915 (1st Cir. 1988) (equating abuse of discretion with court's commission of "a meaningful error in judgment")”

– Independent Oil v Procter & Gamble, 864 F.2d 927 (1st Cir. 1988)

19. Of course – and importantly – the appellate courts have established that such an abuse is cause for reversal/correction (highlights added):

“We find, however, that the court below did not give appropriate consideration to appellants' posttrial motion to set aside the judgment pursuant to Rule 60(b)(3). Thus, we remand to the district court for rehearing on that motion...”

– Anderson v Cryovac, 862 F.2d 910 (1st Cir. 1988)

20. This last appellate ruling brings this review full circle. As it establishes that this Court has the “inherent power” to correct its improvident orders (under Rule 60 Fed. R. Civ. P.).

IV. Application

21. In the instant matter, this Court is well-positioned to correct That Order, because:

- a) it was/is improvident (§8-15, *supra*); and
- b) it is correctable (under Rule 60 Fed. R. Civ. P.) (§16-20, *supra*).

V. Nature of Relief Sought

22. Therefore, Plaintiff seeks the following relief:

- a) a full striking/vacating of That Order; and/or
- b) a certificate of appealability.

CONFERRAL

Today – Monday, April 15, 2024 – Defendants-X told Plaintiff (via email) that they have not yet formed a position on this motion. Their counsel advised that they would need to discuss it with them; and that they would file a response within the time allotted by the rules.

Nevertheless, Plaintiff believes the foregoing presents a compelling (ie, *clear error*) and important (ie, *equal protection*) reason for obtaining the requested relief.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to enter an *Order Vacating the Order that was Entered on April 12, 2024*.

Dated this 15th day of April 2024.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Century Schoolbook 13-point Font (contents); thus complying with the font requirements of Local Rule 1.08.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April 2024, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. A notice – via CM/ECF – will be sent to the attached service list.

/s/ Elias Makere (4/15/24)

Endnotes:

1/ Source

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Video	https://youtu.be/e3mgBP HesXg

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