

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

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JEFFREY EPSTEIN and L.S.J., LLC., ) CIVIL NO. ST-10-CV-443  
 )  
 ) Plaintiffs, )  
 )  
 v. ) ACTION FOR DAMAGES  
 )  
 FANCELLI PANELING, INC., )  
 )  
 ) Defendant. )

**ORDER**

By Order dated March 7, 2011, the Court directed Fancelli Paneling to File a Motion to File Reply Out of Time on or before March 10, 2011. The body of the Order notes that such a Motion must show "excusable neglect" for Fancelli's failure to timely file the reply. The March 7, 2011 Order was placed in the mailbox for Fancelli's counsel on March 8, 2011. In addition, a copy of the Order was sent by fax to Fancelli's counsel in the morning on March 8, 2011.

Despite the Court's Order, Fancelli did not move to file the Reply out of time. Instead, it filed a "Motion to Extend Time to Respond to File Motion for Leave"<sup>1</sup> on March 10, 2011. From the body of that Motion, it appears that Fancelli was requesting additional time in which to file its Motion to File Reply Out of Time. In support thereof, it states that "Defendant's Counsel had several unanticipated delays this date, all as more fully outlined in the *Motion for Leave to File Out of Time*."

On March 11, 2011, Fancelli filed an "Amended Reply." However, Fancelli did not inform the Court how the Amended Reply purports to amend the March 10, 2011 Reply.

Then, on March 14, 2011, Fancelli filed a "Motion to File Out of Time and For Acceptance *Nunc Pro Tunc* of Defendant's Reply to Opposition." In the body of that Motion, which the Court will construe both as a Motion to File the Reply Out of Time as well as a Motion to File Out of Time the Motion to File Reply Out of Time, Fancelli states, *inter alia*, that in the Superior Court "we tend to operate on time limits from when something is served and opposing counsel would otherwise presume time limits to commence from that act." To the contrary, the Court operates on the time limits provided by the rules, including LRCi 12.1, and expects the parties to do the same. Therefore, replies are due "within fourteen (14) days of the filing of an opposition."<sup>2</sup>

<sup>1</sup> The Court is not sure what the title of the document means, and looks to the body of the Motion for clarification.

<sup>2</sup> LRCi 12.1. The Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of the District Court of the Virgin Islands apply to matters before this Court whenever they are not inconsistent with the Rules of the

On March 15, 2011,<sup>3</sup> Fancelli filed a "Motion for Leave to File an Amended Reply."<sup>4</sup> In that Motion, counsel stated that he became aware that "leave of Court is required for filings subsequent to the reply."<sup>5</sup> Counsel is correct that the local rules require him to move to file a sur-reply. As sanction for the violation of this rule, the Court will consider only the Reply and not the Amended Reply, denying the Motion for Leave to File an Amended Reply. In addition, the Court will not accept the Amended Reply because counsel never informed the Court what the Amended Reply modifies in relation to the original Reply.

Although the Court will deny the Motion for Leave to File an Amended Reply, it will grant the March 14, 2011 Motion to File Reply Out of Time. The Court presumes that counsel is now well aware of the timelines required by the local rules. It finds that counsel's initial mistake in calculating the time for a reply constitutes, in this instance, "excusable neglect." Therefore, the Court will accept the March 10, 2011 Reply to Epstein's Opposition to the Motion to Dismiss.

Accordingly, it is hereby

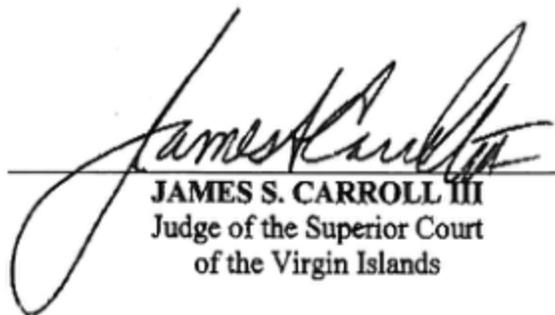
**ORDERED** that Defendant Fancelli Paneling, Inc.'s March 14, 2011 Motion to File Out of Time and For Acceptance *Nunc Pro Tunc* of Defendant's Reply to Opposition is **GRANTED**; and it is further

**ORDERED** that Defendant Fancelli Paneling, Inc.'s March 15, 2011 Motion for Leave to File an Amended Reply is **DENIED**; and it is further

**ORDERED** that Defendant Fancelli Paneling, Inc.'s March 11, 2011 Amended Reply is **REJECTED**; and it is further

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

DATED: May 16, 2011

  
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**JAMES S. CARROLL III**  
Judge of the Superior Court  
of the Virgin Islands

ALBERT VENEZIA H. VELAQUEZ, ESQUIRE  
Clerk of the Court  
BY:   
LORI BOYNES-TYSON  
Court Clerk Supervisor 5/17/11

Superior Court. SUPER. CT. R. 7.

<sup>3</sup> Throughout the Motion, counsel refers to dates in *May*. The Court presumes that this was a typo and that counsel intended to provide the *March* dates instead.

<sup>4</sup> Epstein filed an Opposition to the Motion for Leave to File an Amended Reply Brief on March 29, 2011.

<sup>5</sup> LRCi. 7.1(a).