

NOT FOR PUBLICATION

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

Atanya Springette, Terrance)
Clestine, Ruth Simon, as)
Adminstratrix of the Estate of) Civ. No. 2001-131
Tisha Simon, and Wilma Philips,)
Administratrix of the Estate of)
Monica Martin,)
)
Plaintiffs,)
)
v.)
)
Better Roads Asphalt Company, Inc.,)
Deleuw Cather and Company, XYZ)
Corporation, Inc., Susan Roe, ABC)
Corporation, Inc., and John Doe,)
)
Defendants.

ATTORNEYS:

Robert L. King
Francis E. Jackson
St. Thomas, U.S.V.I.
For plaintiffs

Wilfredo A. Geigel
St. Croix, U.S.V.I.
For defendant Better Roads Asphalt Company

MEMORANDUM

Moore, J.

Plaintiffs' move for reconsideration of my September 29,
2003 order granting summary judgment for defendant Better Roads

Asphalt Company, Inc. ["Better Roads"]. I will deny the plaintiffs' motion because it lacks substantive merit and was untimely filed.

I. FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs in this matter have filed suit against Better Roads and several other corporations and individuals whom they allege were involved in the negligent and willful construction of an unreasonably dangerous light post on Veterans Drive in St. Thomas. The light post at issue allegedly contributed to the deaths of Tisha Simon and Monica Martin and to injuries sustained by Atanya Springette and Terrance Celestine as passengers in a car that veered off Veterans Drive and slammed into the light post on August 7, 1999.

On April 4, 2003, defendant Better Roads filed a notice of motion for summary judgment with this Court. In its subsequently filed petition for its motion for summary judgment to be deemed admitted, Better Roads alleges that on May 7, 2003, the plaintiffs requested an extension until June 15, 2003 to respond to the motion for summary judgment. Better Roads apparently agreed to the extension and further represented that in mid-July, after it had not received plaintiffs' response by the agreed-upon June 15th date, it telephoned the plaintiffs' attorneys and

requested a response. On July 31, 2003, Better Roads filed a second notice of a motion for summary judgment concurrently with its motion for summary judgment. Then, on August 13, 2003, the plaintiffs stipulated to an extension to allow the plaintiffs until September 4, 2003 to respond to Better Roads's motion for summary judgment. After the plaintiffs did not respond by this second date, on September 15, 2003 Better Roads filed the aforementioned petition requesting that its motion for summary judgment be deemed admitted. On September 29, 2003, I granted Better Roads's motion for summary judgment on the merits. On October 1, 2003, the plaintiffs belatedly filed their opposition to the motion. On October 17, 2003 -- well beyond the ten day time limit set forth in Rule 7.4 of the Local Rules of Civil Procedure¹ -- the plaintiffs filed this motion for reconsideration.

II. ANALYSIS

In their untimely motion for reconsideration and untimely

¹ Local Rule 7.4 states as follows:

A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on: (1) intervening changes in controlling law; (2) availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice.

opposition, plaintiffs argue that they cannot respond to the motion for summary judgment until Better Roads provides its initial disclosures.² The plaintiffs' attorney has submitted an affidavit in support of this contention to the effect that materials within the exclusive control and custody of Better Roads are essential to their response. The attorney's affidavit, however, does not specify what materials or types of materials are needed or why they are so essential.

Rule 56(f) allows a court to deny a motion for summary judgment or order a continuance pending discovery if "it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition. . . ." A party seeking additional time under Rule 56(f) must set forth at least some specific details describing what information it needs before it can respond to the summary judgment motion and why that information is so necessary to its response. *See Abramovitz v. Finizio*, 20 V.I. 539, 541 (D.C.V.I. 1984). The Third Circuit Court of Appeals similarly requires specificity in an affidavit stating what information was necessary to respond to the

² The plaintiffs filed their complaint on July 25, 2001, and Better Roads answered the plaintiffs' complaint on October 3, 2001. The plaintiffs did not serve their initial disclosures on Better Roads until February 10, 2003. To date, Better Roads has not provided plaintiffs with initial disclosures.

defendant's motion for summary judgment, and because it was filed without an affidavit. *See Hancock Industries v. Schaeffer*, 811 F.2d 225, 229-30 (3d Cir. 1987) (holding that continuance of motion for summary judgment will normally be granted if non-moving party files affidavits "setting forth specific reasons why the moving party's affidavits in support of a motion for summary judgment cannot be responded to, and the facts are in the possession of the moving party") (emphasis added).

I find the plaintiffs' Rule 56(f) argument contained within its motion for reconsideration to be inadequate because it did not set forth in any specific detail the information they needed from the defendant and because it was untimely asserted in both the plaintiffs' tardy opposition to summary judgment and in their tardy motion for reconsideration.

Because the other arguments in the plaintiffs' motion for reconsideration lack merit, and because the arguments set fort in the defendant's motion for summary judgment remain valid, I will deny the plaintiffs' motion for reconsideration. An appropriate order follows.

ENTERED this 21st day of December, 2003.

For the Court

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_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk

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