IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ARTHUR PETERSEN, LYNDA REY a/k/a NIKKI BROOKS, GENEVIEVE WHITAKER, WHITNEY FREDERICK, KHYRA THOMAS, SABRINA SERRANO, THOMAS BARNES, WAYNE PARRIS, JULIAN VEIRA, LEROY JOHNSON, DEMARIS CARROLL, JAHNA JOSEPH, RAYMOND MENDERS, DAVID CLARKE, ORVILLE MORRIS, SIMONE JAMES, NAPPEN JARVIS and WINSBERT VICTOR,	)	**CASE NO. 1:24-cv-00014**
Plaintiffs,	)	
v.	)	
3 PROSPERITY, *in rem*, 3-B PROSPERITY, *in rem*, 3-C PROSPERITY, *in rem*, PAUL E. LIPPMAN, CATHERINE LIPPMAN, MATTHEW LIPPMAN, and John Does,	)	
Defendants.	)	

ORDER

THIS MATTER is before the Court on Defendants' motion [ECF 18] for Rule 11 sanctions and their accompanying memorandum in support thereof [ECF 16].[1] Plaintiffs oppose the motion and move to strike [ECF 17], with Defendants having filed a reply [ECF 21]. For the reasons to follow, the motion will be denied**.**

I. RELEVANT FACTS AND PROCEDURAL HISTORY

This matter originated in the Superior Court of the Virgin Islands, Division of St. Croix,[2]

[1] At the direction of the Clerk's Office, Defendants refiled their motion for sanctions on August 26, 2024. *See* [ECF 15] and [ECF 18]; *see also* the August 26, 2024 notice of corrected docket entry. The memorandum [ECF 16] in support of the motion, however, was not refiled. Both the motion [ECF 18] and the memorandum [ECF 16] are referred to collectively herein by the Court as the "motion."

[2] Although the caption of Plaintiffs' amended complaint [ECF 1-1] identifies the matter as being in the Superior Court's Division of St. Thomas and St. John, this appears to be an error. The public docket of the Superior Court—of

with Plaintiffs having filed their lawsuit on June 12, 2024.[3] An amended complaint was filed on June 13, 2024, [ECF 1-1], with Defendants having removed the matter to this Court on July 9, 2024.[4] [ECF 1].

As for the amended complaint, it alleges that Defendants are the property owners of 3, 3-B, and 3-C Prosperity, which abuts a beach that Plaintiffs have enjoyed access to for years. [ECF 1-1] at 3, ¶¶ 2-7. Plaintiffs allege that Defendants violated the Open Shorelines Act by placing large boulders "1-2 feet off the roadway" and in a way that created a new "path" down an "uneven ghut to the beach." *Id.* at 9, ¶ 35. According to Plaintiffs, Defendants interfered with public access by blocking, parking, and changing public beach access and by increasing the difficulty of access to the beach so as to discourage public access. *Id.* ¶ 36. In total, the complaint brings five counts against Defendants: Count I, violation of the Open Shorelines Act under 12 V.I.C § 401; Count II, negligence *per se*; Count III, nuisance; Count IV, trespass; and Count V, intentional infliction of emotional distress. *Id.* at 11-15.

On July 16, 2024, Defendants moved to dismiss the amended complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* [ECF 6] and [ECF 7]. Plaintiffs chose not to respond to the motion, however, but instead on August 8, 2024, filed a notice [ECF 14] of voluntary dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1). In this notice, Plaintiffs provide a gratuitous preview of their future intentions to file eighteen separate lawsuits in Superior Court, with each complaint to limit their respective damages to less than

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which this Court takes judicial notice pursuant to Fed.R.Evid. 201(b)(2)—reflects that the case was assigned a St. Croix case number (SX-2024-CV-00222) and was presided over by a St. Croix Superior Court Judge. Moreover, a notice of deficiencies entered by the Clerk of Court in that matter has a Division of St. Croix caption as well.

[3] As in the preceding footnote, the Court again takes judicial notice of the Superior Court's public docket for case number SX-2024-CV-00222. Specifically, the Court takes judicial notice that the initial complaint, a copy of which is assessable via said public docket, was filed on June 12, 2024.

[4] Although dated June 9, 2024, the notice of removal is misdated as it was filed with the Court on July 9, 2024 and attaches Plaintiffs' June 13, 2024 amended complaint. *See* [ECF 1] and [ECF 1–1].

$75,000, so that "future removal will not be an issue." [ECF 14]. Plaintiffs' further elaborated in a footnote, providing as follows:

> Plaintiffs will stipulate in their new individual Superior Court Complaints that each individual Plaintiff "will not seek, will not accept, and waives damages in excess of $75,000"; exclusive of fees and costs, from any one defendant. Further, each individual Plaintiff will stipulates [sic] that he or she only seeks several liability of Defendants, and he or she waives his or her right to hold Defendants jointly liable. See 5 V.I.C. § 1451(d). That is, Plaintiff will only seek to collect damages from a defendant in "proportion of the verdict as the trier of fact has apportioned against such defendant[,]" making his rights congruent with the rule regarding contribution amongst defendants.

Id.

On August 22, 2024—just two weeks after the notice of dismissal was filed—Defendants filed the present motion. [ECF 15] and [ECF 16].[5] Attached as an exhibit to the motion is an August 21, 2024 email that counsel for Defendants forwarded to counsel for Plaintiffs. [ECF 16–1] at 2–3. In said email, Defendants—through their counsel—placed Plaintiffs on notice that they would seek Rule 11 sanctions against Plaintiffs unless Plaintiffs by no later than noon on Thursday (i.e., the following day) amended their notice of dismissal to one with prejudice. *Id*. In pertinent part, the email states as follows:

> That leaves us with a Removal to federal court, no response to our Motion to Dismiss, a Rule 41(a) Motion voluntarily dismissing the case and your extraordinary statement to the District Court that you intend to manipulate the Amount in Controversy to support the filing of eighteen separate Complaints in the Superior Court.
>
> In response to any such filings, the Lippmans will move to consolidate the cases and to again remove them to federal court. However, the Lippmans will not allow the cases to be heard by the Superior Court as matters of first impression. Instead, the Lippmans will supplement the record by filing a Motion for Sanctions against you in federal court under FRCP Rule 11 based upon the foregoing facts, most particularly on the basis that Plaintiffs violated criminal

[5] As noted in footnote 1, Defendants were directed by the Clerk's Office to refile their motion, which they did on August 26, 2024. *See* [ECF 15] and [ECF 18]; *see also* the August 26, 2024 notice of corrected docket entry.

> law by engaging in unlawful self-help, thereby mooting their "claim" before you filed their Complaint.
>
> This matter can, instead, end here. Amend the Notice under FRCP Rule 41(a) to a dismissal with prejudice before noon on Thursday. In that way, we can close the books on this matter without further ado and put this unfortunate dispute firmly and permanently to bed.

Id.

II. LEGAL STANDARD

A. Rule 41(a)(1) Dismissal

Pursuant to Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed.R.Civ.P 41(a)(1)(A)(i). With respect to such a notice, three key aspects control. *In re Bath & Kitchen Fixtures Antitrust Litig.*, 535 F.3d 161, 165 (3d Cir. 2008).

> First, a filing under the Rule is a notice, not a motion. Its effect is automatic: the defendant does not file a response, and no order of the district court is needed to end the action. Second, the notice results in a dismissal without prejudice (unless it states otherwise), as long as the plaintiff has never dismissed an action based on or including the same claim in a prior case. Third, the defendant has only two options for cutting off the plaintiff's right to end the case by notice: serving on the plaintiff an answer or a motion for summary judgment.

Id. (citations omitted).

Indeed, the rule "affixes a bright-line test to limit the right of dismissal to the early stages of litigation." *Manze v. State Farm Ins. Co.*, 817 F.2d 1062, 1065 (3d Cir. 1987). This, in turn, "simplifies the court's task by telling it whether a suit has reached the point of no return. If the defendant has served either an answer or a summary judgment motion it has; if the defendant has served neither, it has not." *In re Bath & Kitchen*, 535 F.3d at 165 (quoting *Winterland Concessions Co. v. Smith*, 706 F.2d 793, 795 (7th Cir.1983)). Moreover, unlike an answer or summary judgment

motion, a motion to dismiss "does not cut off" a Rule 41(a)(1) dismissal.[6] *Turner v. New Jersey*, 2021 WL 926597, at *4 (D.N.J. Mar. 11, 2021) (citing *In re Bath & Kitchen*, 535 F.3d at 166). "Up to the 'point of no return,' dismissal is automatic and immediate—the right of a plaintiff is 'unfettered.'" *In re Bath & Kitchen*, 535 F.3d at 165 (citing *Carter v. United States,* 547 F.2d 258, 259 (5th Cir.1977)). As such, notice that is proper and timely under the rule precludes the district court from further consideration of the case. *Id*. at 166 ("A proper notice deprives the district court of jurisdiction to decide the merits of the case.") (citations omitted).

B. Rule 11

Under Federal Rule of Civil Procedure 11(c)(1), the court may sanction any attorney, law firm, or party for filing improper documents, making frivolous arguments, or making allegations that lack evidentiary support. Fed.R.Civ P. 11(c)(1); *see LabMD, Inc. v. Tiversa Holding Corp.*, 2016 WL 3002433, at *3 (W.D. Pa. May 23, 2016). Should a party seek sanctions under the rule, it must do so in a motion made separately from any other motion and describe the specific conduct that allegedly violates Rule 11(b). Fed.R.Civ P. 11(c)(2). While the motion must be served under Rule 5, it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21-days after service or within another time the court sets. *Id*. Thus, before considering the merits of a Rule 11 motion, the court must ensure that the movant complied with the "safe harbor" provision of the rule. *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 99 (3d Cir. 2008). Indeed, failure to provide the nonmovant with the 21-day grace period is a death knell to the motion, as "[t]he purpose of the safe harbor is to give parties the opportunity to correct their errors, with the practical effect being that 'a party cannot delay serving its Rule 11 motion [ ] until conclusion of the case.'" *Id.* Should the 21-day

[6] "Because a motion to dismiss under Fed.R.Civ.P. 12(b)(6) is neither an answer nor a motion for summary judgment, its filing generally does not cut off a plaintiff's right to dismiss by notice. *Manze*, 817 F.2d at 1066. Only when a motion filed under Fed.R.Civ.P. 12(b)(6) is converted by the district court into a motion for summary judgment does it bar voluntary dismissal." *Id*.; *See In re Bath & Kitchen Fixtures*, 535 F.3d at 166.

period not be provided, the motion must be denied. *Id*.

As for sanctions under the rule, they are to be imposed "only in the 'exceptional circumstances' ... where a claim or motion is patently unmeritorious or frivolous." *Doering v. Union County Bd. of Chosen Freeloaders*, 857 F.2d 191, 194 (3d Cir. 1988) (internal citations omitted). Such sanctions are intended to discourage pleadings which are "frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad faith." *Id*. (quoting *Zaldivar v. City of Los Angeles,* 780 F.2d 823, 831 (9th Cir.1986)).

III. DISCUSSION

Defendants move for Rule 11 sanctions on the grounds that Plaintiffs' counsel "filed his complaint in Superior Court containing mooted claims that lack actionable damages, thereby wasting Defendants' resources and this Court's time." [ECF 16] at 4. In particular, Defendants assert that—from the outset—Plaintiffs' complaint failed to allege a violation of the Open Shorelines Act, with Plaintiffs having mooted their claims by removing the stones at issue prior to the filing of the complaint. *Id*. at 1, 4–5.[7] Defendants further contend Plaintiffs' counsel violated Rule 11 by filing the August 8, 2024 voluntary notice of dismissal instead of opposing Defendants' motion [ECF 6] to dismiss, "which confirmed [counsel's] practice of gamesmanship in this case …" *Id.* at 5.[8]

Plaintiffs respond that this Court no longer has jurisdiction to consider the motion given their Rule 41(a)(1)(A)(i) voluntary dismissal, as said dismissal preceded the motion. [ECF 17] at 3–5. Notwithstanding this jurisdictional roadblock, Plaintiffs further maintain Defendants' motion

[7] [ECF 16] at 5: "Five days ***before*** filing their Complaint, Plaintiffs and others entered upon Defendants' property, uninvited, and moved said stones away in a community demonstration that was video recorded and posted on social media. *See* Dkt. No. 7."

[8] Defendants particularly take issue with Plaintiffs' failure to oppose Defendants' Motion to Dismiss or to amend the original complaint. In doing so, Defendants assert that Plaintiffs' counsel seeks to "waste more judicial time and resources" by refiling the "defective Complaint eighteen times" in the Superior Court of the Virgin Islands. [ECF 16] at 5.

still fails due to Defendants having not adhered to Rule 11's procedural "safe harbor" provision, as Defendants only provided Plaintiffs with less than a day's notice before filing the instant motion with the Court. *Id.* at 7–8.[9] Lastly, Plaintiffs contend any Rule 11 motion for sanctions is moot given that the notice of dismissal already withdrew the pleadings at issue. *Id.* at 5–7.[10]

A. Jurisdiction

Plaintiffs assert that the Rule 41(a)(1) dismissal terminates the Court's jurisdiction, thereby precluding a review of the motion for sanctions. [ECF 17] at 3-5. Defendants, in turn, respond that the dismissal does not deprive the Court of jurisdiction to resolve "collateral issues," such as the motion for sanctions. [ECF 21] at 2. In support of its contention, Defendants point to *Cooter & Gell v. Hartmarx Corp.*, where the U.S. Supreme Court provided:

> Rule 41(a)(1) does not codify any policy that the plaintiff's right to one free dismissal also secures the right to file baseless papers. The filing of complaints, papers, or other motions without taking the necessary care in their preparation is a separate abuse of the judicial system, subject to separate sanction. As noted above, a voluntary dismissal does not eliminate the Rule 11 violation.

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 397–98 (1990). The facts in that case—as well as the facts in the other cases relied upon by Defendants—are distinguishable from the facts present in the instant matter. For instance, in *Hartmarx Corp.*, the Rule 11 motion had been filed *prior to* the notice of dismissal. *Id.* at 389. Likewise, in *Aardvark Child Care & Learning Ctr., Inc. v. Twp. of Concord*, the matter was remanded to the district court to resolve a Rule 11 motion that had been pending *prior to* the filing of the Rule 41(a)(1) voluntary dismissal. *Aardvark Child Care & Learning Ctr., Inc. v. Twp. of Concord*, 288 F. App'x 16, 18–19 (3d Cir. 2008).

In the case at hand, Defendants have neither filed an answer to the complaint nor a motion

[9] [ECF 17] at 7: "Here, Attorney Rames never served a copy of his sanction motion on undersigned counsel. Further, instead of providing 21 days, Attorney Rames provided 3 hours of notice before filing a motion for sanctions."

[10] *Id.*: "In sum, Rule 11's only remedy is the correction or withdrawal of a pleading. That happened already on August 8, 2024; so it's moot."

for summary judgment. Nor did they file their motion for sanctions prior to the notice of voluntary dismissal. Thus, as of the August 8, 2024 filing of Plaintiffs' Rule 41(a)(1) notice of dismissal, this case ceased to be before the Court as a matter of law. As a consequence, this Court lacks jurisdiction to rule on Defendants' present motion. As discussed *supra*, "[the notice] itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play." *In re Bath & Kitchen Fixtures*, 535 F.3d at 165–66 (citing *Am. Cyanamid Co. v. McGhee*, 317 F.2d 295, 297 (5th Cir. 1963)). Accordingly, Defendants' motion is denied due to this Court's lack of jurisdiction.

B. Rule 11 Safe Harbor Requirement

Even assuming, *arguendo*, that the Court had retained jurisdiction to consider the merits of the Rule 11 motion, the motion would still necessarily fail as a matter of law given Defendants' failure to comply with the safe harbor provision of the rule. *See* Fed. R. Civ. P. 11(c)(2). In this instance, Defendants provided Plaintiffs with less than one day's notice before submitting their motion for sanctions. *See* [ECF 16-1]. "Under amended Rule 11 . . . a party cannot file a motion for sanctions or submit such a motion to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or corrected within twenty-one days after service of the motion on the offending party." *In re Schaefer*, 542 F.3d at 99 (citing Fed. R. Civ. P. 11(c)(2)). "If the twenty-one day period is not provided, the motion *must be* denied." *Id*. (emphasis added). Defendants' rationale for not abiding by this mandatory safe harbor provision is unavailing,[11] with

[11] Defendants argue in their reply that the notice of dismissal itself is considered an "abusive pleading" and a 21-day safe harbor period would be "futile" because "upon filing the Notice of Withdrawal, Attorney Pate could neither withdraw nor amend his Notice, even if provided 21 days to do so." [ECF 21] at 7. However, the "safe harbor" provision is not a discretionary step that may be ignored by the Court—or the parties—merely because a Rule 41(a)(1) notice of dismissal has been filed. The safe harbor period is a mandatory procedural requirement for filing a Rule 11 sanctions motion. *See Blumberg v. Gates*, 152 F. App'x 652, 653 (9th Cir. 2005) ("Federal Rule of Civil Procedure 11 provides a "safe harbor" period of 21 days, during which the movant *must allow* the opposing party to retract the offending pleading before filing the motion with the court.") (emphasis added). To bypass the safe harbor provision would undermine the purpose of the rule which is ". . . .to give parties the opportunity to correct their errors." *In re Schaefer*, 542 F.3d at 99.

this procedural failure warranting denial of the motion in its own right irrespective of the Court's lack of jurisdiction.

IV. CONCLUSION

Based on the preceding analysis, Defendants' motion fails as the Court lacks jurisdiction to entertain said motion. Moreover, even were the Court able to exercise jurisdiction, the motion would nonetheless be denied due to Defendants' failure to provide the 21-day safe harbor notice as require by Rule 11(c)(2). Given this lack of jurisdiction (as well as the procedural deficiency), the Court need not address the merits of Defendants' motion, nor need it address the remaining arguments of the parties.

The premise considered, it is hereby

ORDERED that Defendant's motion [ECF 18] for sanctions is **DENIED**; and it is further

ORDERED that Plaintiffs' motion [ECF 17] to strike is **MOOT**.

ENTER:

Dated: September 27, 2025

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE