

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CALVIN ADONY MARIANO ESPINOZA, et al.,

Plaintiffs,

-v-

EURO DESIGN AND STONE LLC, et al.,

Defendants.

CIVIL ACTION NO.: 20 Civ. 4381 (SLC)

OPINION AND ORDER

SARAH L. CAVE, United States Magistrate Judge.

On September 28, 2022, Plaintiffs' counsel advised the Court that Plaintiffs Jose Galvez, Jose Hernandez, Cristian Mendez, Miguel Gonzalez, and Monica Mejia (collectively, the "Delinquent Plaintiffs"), have failed to communicate with their counsel, or, otherwise, participate in the prosecution of this case. (ECF min. entry Sept. 28, 2022). Accordingly, Plaintiffs' counsel requested leave to file a motion to withdraw as counsel for the Delinquent Plaintiffs. (Id.) The Court granted Plaintiffs' request to file a motion for leave to file a motion to withdraw (the "Motion to Withdraw"), and directed Plaintiffs' counsel to file (i) the Motion to Withdraw by Friday, October 7, 2022, and (ii) proof of service of the Motion to Withdraw on the Delinquent Plaintiffs. (ECF No. 141). On October 5, 2022, Plaintiffs' counsel filed the Motion to Withdraw, supported by a declaration of Plaintiffs' counsel attesting to efforts to communicate with the Delinquent Plaintiffs regarding the proposed settlement of this action, and proof of service of the Motion to Withdraw. (ECF No. 142–44). On October 6, 2022, Plaintiffs' counsel re-filed the Motion to Withdraw to resolve docketing deficiencies. (ECF No. 145). On October 6, 2022, the Court directed the Delinquent Plaintiffs to advise the Court by Friday, October 14, 2022, whether they intended to secure legal representation, or alternatively, litigate the case pro se.

(ECF No. 146 (the “October 14 Order”)). The Court directed Plaintiffs’ counsel to serve the October 14 Order on the Delinquent Plaintiffs by Tuesday, October 11, 2022, and cautioned the Delinquent Plaintiffs that failure to comply with the October 14 Order may result in dismissal of the Delinquent Plaintiffs’ claims for failure to prosecute. (Id.) On October 7, 2022, Plaintiffs’ counsel filed proof of service of the October 14 Order on the Delinquent Plaintiffs. To date, the Delinquent Plaintiffs have not complied with the October 14 Order, or, otherwise, communicated with the Court.

Under Rule 41(b) of the Federal Rules of Civil Procedure, a district court may dismiss an action sua sponte for failure to prosecute after notifying the plaintiff. See Murray v. Smythe, 18 Civ. No. 4705 (KMK), 2020 WL 4482644, at *2 (S.D.N.Y. Aug. 3, 2020) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630 (1962)). The Court must consider the duration of the plaintiff’s failures, whether they have received notice that further delay would result in dismissal, defendants’ prejudice from further delay, the efficacy of lesser sanctions, and the balance between “alleviating court calendar congestion and protecting” the Delinquent Plaintiffs’ right to due process. Id.

The Court concludes that these factors weigh in favor of dismissing the Delinquent Plaintiffs. Plaintiffs’ counsel has attempted to contact the Delinquent Plaintiffs multiple times over three months to execute a settlement agreement, (see ECF No. 129), to no avail. (ECF No. 145-1 ¶¶ 5–91). Additionally, as outlined above, the Delinquent Plaintiffs have failed to respond to any of the Court’s Orders. Accordingly, Plaintiffs’ counsel’s Motion to Withdraw is GRANTED; (ii) the Delinquent Plaintiffs’ claims are DISMISSED without prejudice pursuant to Rule

41(b); and (iii) the Clerk of Court is respectfully directed to terminate Plaintiffs Jose Galvez, Jose Hernandez, Cristian Mendez, Miguel Gonzalez, and Monica Mejia.

By **Wednesday, October 19, 2022**, Plaintiffs' counsel shall file proof of service of **this Opinion and Order** on the Delinquent Plaintiffs.

Dated: New York, New York
October 17, 2022

SO ORDERED.



SARAH L. CAVE
United States Magistrate Judge