

SUMMARY

North Silver Lake, LLC (“Defendant”) moves the Court for an order dismissing John Jonason’s (“Plaintiff”) Complaint for failure to prosecute, pursuant to Superior Court Civil Rule 41. Plaintiff did not attend a deposition after receiving a mailed notice, in spite of his not providing any notice regarding his inability to attend the deposition. In addition, Defendant’s counsel has not received any communications from Plaintiff since an Order permitting Plaintiff’s counsel at the time to withdraw in March, 2014. Without the ability to take Plaintiff’s deposition or to know the substance of the testimony to be provided by any experts, Defendant is prejudiced by its inability to defend this case adequately. Additionally, Plaintiff’s inactivity has exceeded the six month guideline pursuant to Del. Super. Ct. Civ. R. 41(e). Defendant’s Motion to Dismiss is, therefore, **GRANTED**.

FACTS AND PROCEDURE

This action arises from injuries sustained by Plaintiff when he slipped and fell on a wet floor at Defendant’s premises on August 15, 2011. Defendant was the owner, operator, tenant and manager of the premises known as the Red Roof Inn, located in Dover, Delaware. Allegedly, the wet floor was caused by a leaking toilet in the bathroom of Plaintiff’s hotel guest room.

On August 9, 2013, Plaintiff filed his Complaint against Defendant, alleging that Defendant’s negligence in failing to warn or keep the premises in a safe condition caused Plaintiff to sustain injuries. On February 28, 2014, Plaintiff’s counsel filed a Motion to Withdraw, which was granted on March 20, 2014. On

April 24, 2014, Defendant filed a notice seeking to take Plaintiff's deposition on May 13, 2014 at Defendant's counsel's office. Plaintiff was mailed a notice of the deposition at his last known address, which was provided by his former counsel's office. Plaintiff did not attend the deposition, and did not provide any notice regarding his inability to attend. Defendant's counsel has not received any communications from Plaintiff since the Order granting Plaintiff's former counsel Motion to Withdraw on March 20, 2014.

The Trial Scheduling Order in this matter was issued on October 24, 2013. It provided that Plaintiff's expert discovery cut-off deadline would be April 10, 2014. Plaintiff has not identified any experts to date, and has not indicated whether he will proceed *Pro Se* or obtain new counsel. On June 20, 2014, Defendant filed the instant Motion to Dismiss. Plaintiff has not filed a Response. Plaintiff's Deadline for filing a Response passed on July 10, 2014.

DISCUSSION

In the Motion to Dismiss, Defendant argues that, without the ability to take Plaintiff's deposition or know the substance of the testimony to be provided by any experts, Defendant is prejudiced by its inability to defend this case adequately. The Court has an inherent power to dismiss an action for failure to prosecute in order to "manage its own affairs and to achieve the orderly expeditious disposition of its own business."¹ The Court must also be mindful that defendants should not "have lawsuits hanging over their heads for unnecessarily

¹ *Duncan v. Slattery*, 782 A.2d 263, Del. 2001.

Jonason v. North Silver Lake, LLC
C.A. No.: K13C-08-009 (RBY)
September 23, 2014

long periods of time.”²

Further, “a party must actively pursue a claim from its onset through its conclusion.” *Id.* Del. Super. Ct. Civ. R. 41(b) does not specifically state an amount of time that must elapse before dismissal of a complaint for failure to prosecute. However, the rule indicates that consideration should be given to the time limitations within Del. Super. Ct. Civ. R. 41(e).³

As of this time, Plaintiff’s inactivity has exceeded the six month guideline under Del. Super. Ct. Civ. R. 41(e). Therefore, Defendant’s Motion is well taken.

CONCLUSION

For the foregoing reasons, Defendant’s Motion to Dismiss is **GRANTED**.
IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Ms. Cole, Esq.
John Jonason (*via U.S. Mail*)
Opinion Distribution
File

² *Breeding v. Hillandale Farms of Del. Inc.*, 2011 WL 378847 (Del. Super. Jan. 28, 2011). *Park Centre Condominium Council v. Epps*, 723 A.2d 1195, 1199 (Del. Super. Ct. 1998).

³ Super. Ct. Civ. R. 41(e).