
No. 22-622

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JONATHAN ROBERTS and CHARLES VAVRUSKA,
Plaintiffs-Appellants,

v.

MARY T. BASSETT, in her official capacity as Commissioner for New York
State Department of Health, NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York
Honorable Nicholas G. Garaufis, District Judge

**APPELLANTS' RESPONSE IN OPPOSITION
TO CITY'S EXTENSION REQUEST [ECF NO. 39]**

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Motions for an extension of time are “disfavored and subject to a showing of extraordinary circumstances.” *In re Immigration Petitions for Review*, 702 F.3d 160, 162 (2d Cir. 2012). Local Rule 27.1(f)(1) counsels that only events like “serious personal illness” or “death in counsel’s immediate family” justify an extension, and this Court has held that “the press of other business” does not qualify as an extraordinary circumstance. *RLI Ins. Co. v. JDJ Marine, Inc.*, 716 F.3d 41, 44 (2d Cir. 2013). Moreover, counsel must move for an extension “as soon as practicable after the extraordinary circumstance arises.” LR 27.1(f)(3). Thus, this Court has denied requests for extension where it was filed three days before the due date and “relied upon grounds—trials and mediation—known for some time.” *RLI Ins. Co.*, 716 F.3d at 44.

The New York City Department of Health’s (hereinafter “the City”) request for a two-week extension should be denied. *First*, the rationale that the City offers as the basis for its extension request is simply insufficient to justify an extension under LR 27.1(f)(1). That rule specifies that this Court “will not grant” an extension motion “[a]bsent an extraordinary circumstance, such as serious personal illness or death in counsel’s immediate family.” Yet the City avers that its extension request

is needed only because its lead counsel has “not been able to complete the brief” and “had a prescheduled vacation in late May.” *See* ECF No. 39, ¶ 6.¹

Second, the City did not move for an extension “as soon as practicable after the extraordinary circumstance arises.” LR 27.1(f)(3). There is no extraordinary circumstance for an extension in the first place. But even if there were, the City has not explained why it chose not to move for an extension or to confer with Plaintiffs’ counsel on the same until June 8, 2022—only eight days before its brief is due to this Court. This Court notified the parties of their briefing deadlines on April 7, ECF No. 21, and Plaintiffs filed their opening brief on May 12. ECF No. 26. The City’s eleventh-hour extension request should be denied.

Third, the City’s requested extension would prejudice Plaintiffs, who have worked diligently to comply with this Court’s briefing schedule. To comply with this Court’s rules and briefing schedule, Plaintiffs’ counsel worked, in part, during his honeymoon and requested an extension for another brief due in the United States Court of Appeals for the Fifth Circuit. *See* Mot. for Extension, *Ostrewich v. Scott et al.*, 21-20577 (5th Cir. Apr. 18, 2022) ¶¶ 2–3. If “extraordinary circumstance” encompassed competing deadlines or a prescheduled vacation, Plaintiffs would have sought an extension in this case too. It does not, and the City Defendant has provided

¹ Even if those circumstances were “extraordinary,” the City has not explained why it could not simply join the State Defendant’s brief, which would reduce the City’s workload without requiring a departure from this Court’s rules.

no basis for departing from this Court's briefing schedule. Its motion [ECF No. 39] should be denied.

Dated: June 13, 2022.

Respectfully submitted,

/s/ Wencong Fa

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CERTIFICATE OF COMPLIANCE

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Dated: June 13, 2022.

/s/ Wencong Fa
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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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