No._____

In the United States Supreme Court

SAE HAN SHEET CO., LTD.,

Petitioner,

v.

EASTMAN PERFORMANCE FILMS, LLC,

Respondent.

On Petition For A Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. The district court below dismissed Petitioner's complaint with prejudice based upon a false representation made by Respondent and without providing Petitioner a specific warning required by case law going back to the early 1990s, when the Court last reviewed the sanction of dismissal with prejudice. The court of appeals glossed over the Draconian dismissal in a summary, unpublished affirmance. Respondent and its counsel were effectively rewarded for their false representation instead of being themselves sanctioned.

The question before the Court is whether lower courts must refrain from using the sanction of dismissal unless egregious conduct justifying dismissal is committed in the face of direct, specific warnings in advance because dismissals impair with the right of access to the Courts and due process of law.

LIST OF PARTIES

The parties below were Petitioner Sae Han Sheet Co., Ltd., of South Korea, as plaintiff, and Respondent Eastman Performance Films, LLC, as defendant.

CORPORATE DISCLOSURE

Petitioner/Plaintiff Sat Han Sheet Company, Ltd., is not a publicly-traded company situated in the United States, although it is authorized to do business in the State of New York, as it is a closely-held entity organized under the laws of the Republic of Korea.

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PETITION FOR A WRIT OF CERTIORARI

Honorable Chief Justice Roberts and Associate Justices of the Supreme Court of the United States:

Petitioner Sae Han Sheet Co., Ltd., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered November 24, 2020, which erroneously affirmed the lower courts' judgment, and thereby committed palpable injustice.

This case warrants review because the sparse line of authority addressing "dismissals of actions as a sanction" appears to have been most recently reviewed in 1991, and the abusive dismissal below provides a sound basis to review the law so as to provide further guidance to the lower courts and to curb poor decisions that amount to "judicial tyranny." *See infra* at 17.

The United States District Court for the Western District of Virginia, where this case filed, dismissed a properly-venued, valid, contract action while it was being contested and was undergoing pre-trial discovery and conferences before the assigned magistrate judge. The district judge who dismissed the action "with prejudice" as a purported "sanction" for Petitioner-plaintiff's alleged "violation" of a Court Order, failed to comply with law that was settled decades ago; failed to provide a specific warning and pre-deprivation process; and failed to consider Respondent and its counsel's misconduct.

The Court of Appeals for the Fourth Circuit apparently applied a "discretionary dismissal" standard, and thereby committed a manifest error of law, despite the fact that the essential factual record, pertaining to Respondent and its counsel's materially false statement, was uncontested.

The dismissal order of the district court was borne of impatience, failure of due process, and Respondent's false representation to the district court which the Respondent's counsel, who was under a duty of candor, failed to cure below despite repeated opportunities and counsel's affirmative duty to do so.

The dismissal was granted specifically in response to Respondent's request that the district court deem Petitioner's *alleged "delay" of one week*, in responding to Respondent's Rule 12(b)(6) motion to dismiss. *See* Docket Entry 50, *infra* Point I. When Respondent made that request, Respondent knew full well that Petitioner was not late and that Petitioner was actually *early* by a full week. However, the district court failed to consider or apply the calendar properly; heeded Respondent's counsel blindly; and simply adopted Respondent's argument, *see* District Court's Decision and Order, App-1 to App-, even though that argument was predicated upon counsel's false statement to the district court.

Respondent's counsel, McGuire Woods LLP, is generally an esteemed law firm which boasts among its recent clientele a then-sitting President of the United States, as well a then-sitting Vice-President of the United States, and a long list of Fortune 500 entities.

When Respondent's counsel presented a Rule 12(b)(6) motion to dismiss the complaint, below, the district court appears to have assumed that every statement contained in Respondent's written brief would, of course, be true. Yet, the pivotal fact stated by McGuire Woods was wrong, and Petitioner explained the correct set of facts. The correct set of facts were disregarded by the district court even on a motion for reconsideration, *see* A104-108; and totally disregarded by the Fourth Circuit as though to hold one's palms to the eyes to avoid the reality that would be faced if

the eyes were open. *See* App-10. Importantly, Respondent and its counsel failed to admit their wrongness and failed to cure their misrepresentation, and thereby committed a dual lack of candor to the tribunals.

Respondent was alleged to be a legal person separate and distinct to various forerunner entities that created a complex web of potential defendants in the underlying distributorship contract dispute involving the sale of Suntek brand car window tints in South Korea.

On April 29, 2019, Petitioner's First Amended Complaint was filed with the district court's leave to amend. A56.

On May 13, 2019, defendants named in the original complaint, Eastman Chemical and Commonwealth Laminating, filed their motion to dismiss the first amended complaint under Rule 12(b)(6). ECF42, A80. On May 13, 2019, these defendants also filed a motion to extend their time to respond to the complaint, and that motion was granted on May 16, 2019. A76, A89.

On May 31, 2019, ECF47, newly-served defendants whose identities had been represented to be successor-entities of Commonwealth Laminating, filed their own motion to dismiss for failure to state a claim under Rule 12(b)(6) by joining in the May 13, 2019, motion of the earlier-filed defendants. A93.

Respondent's motion to dismiss, by its joinder, was not filed until May 31, 2019, By Local Rule, Petitioner's opposition to the new Rule 12(b)(6) motion was due 14 days after Respondent's motion-joinder, or June 14, 2019.

On June 3, 2019, Petitioner's opposing memorandum was filed. ECF48. Thus, Petitioner's filing was 8 days earlier than required by law.

Despite this fact, in its June 10, 2019, Reply, Respondent falsely told the district court, ECF50, as its first argument: "A. The Court Should Consider Eastman and Commonwealth's Motion Well Taken Because Plaintiff Failed to File a Timely Response." Since Respondent, being situated in the Western District of Virginia, and its counsel being engaged in routine practice before the Western District of Virginia, they knew full well an opposition is due 14 days after any motion is filed, and the 14 day deadline is routinely extended by a simple paragraph motion filed within the initial 14 day period.

On September 24, 2019, the district court adopted McGuire & Woods' false representation contained in Respondent's first argument that Petitioner had "failed to file a timely response." Since no papers are permitted after reply papers are filed, and the reply papers were filed by Respondent as the party seeking relief, Petition was relegated to wait the motion sequence out.

In 30 years of litigation practice in state and federal courts, Petitioner's counsel has never witnessed any case in which a week's alleged "delay" was the basis of a Draconian dismissal granted by any court, let alone sustained by any reviewing court, but that is what the district court granted, by blindly adopting the factual representation made, flagrantly falsely, by the McGuire Woods lawyers who represented the well-heeled Respondent global conglomerate with endless resources to fight any dispute on its merits. But the "week's delay" perceived by the district court was itself incorrect.

In its judgment filed November 17, 2020, *see* App-10, the Fourth Circuit elected to raise its "palms" to cover its eyes and effectively insulated the Respondent, Respondent's counsel and failed to take any action for counsel's lack of candor to the tribunal, and granted summary affirmance that

eliminated a case from its docket but caused a palpable injustice to Petitioner. In its order filed December 15, 2020, the Fourth Circuit denied rehearing and rehearing en banc. *See* App-13 to App-15.

Because this Court is the Court of last resort, Petitioner has no choice but to seek this Court's sense of fair play and substantial justice, and seek certiorari to remedy a egregious, tyrannical decision of the district court that disregarded settled law; that insulated counsel's breach of the duty of candor to the tribunals; and that failed to apply substantial justice, with utter impunity and impatience. As will be discussed below, the Court's last decision on the subject-matter of sanction of dismissal appears to have been rendered in 1991 and warrants revisiting now.

OPINIONS BELOW

The decision and order of the United States District Court for the Western District of Virginia, filed September 24, 2019, is at App-1 to App-6. The decision and order of the district court, denying reconsideration, filed October 10, 2019 is at App-7 to App-9.

The judgment of United States Court of Appeals for the Fourth Circuit, filed November 17, 2020, is at App-10 to App-12. The judgment of the Court of Appeals, denying rehearing and rehearing en banc, filed December 15, 2020 is at App-13 to App-15.

STATEMENT OF JURISDICTION

The judgment of United States Court of Appeals for the Fourth Circuit and order denying rehearing and rehearing *en banc*, having failed to render substantial justice, the Supreme Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule

10(a) of the Supreme Court Rules in that the lower courts have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power to prevent judicial tyranny.

RELEVANT CONSTITUTIONAL PROVISION

U.S. Const. Amend V:

> *No person shall be* held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be *deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation. [Emphasis added.]

U.S. Const. Amend XIV:

> . . . nor shall any State deprive any person of life, liberty, or property without due process of law; . . . .

RELEVANT RULES

Federal Civil Rule 12(b)(6) states:

> Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing
>
> (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
>
> * * *
>
> (6) failure to state a claim upon which relief can be granted; and

ABA RPC 3.3 "Candor Toward the Tribunal" states:[1]

> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> * * *

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1 Similarly, Virginia State Rule of Processional Code 3.3 ("Candor Toward The Tribunal") states in relevant part: "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; (3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or (4) offer evidence that the lawyer knows to be false. *If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures*." [Emphasis added.]

> (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

ABA RPC 3.4 "Fairness to Opposing Party & Counsel" states:

> A lawyer shall not:
>
> * * *
>
> (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

STATEMENT OF THE CASE

This case has been defended by several lawyers of the McGuire & Woods firm on behalf of the Respondent. Thus, the problem presented with counsel's violation of the duty of candor under RPC 3.3 and RPC 3.4, relevant portions of which are quoted above, was not the work product of a lone, young associate but has been condoned and participated by multiple lawyers of that firm including Matthew Devane Fender, Andrew F. Gann, Jr., Robert W. Loftin, and Phillip Thomas DiStanislao, III.

Given that RPC 3.3 contains an affirmative duty to "correct a false statement of material fact or law previously made to the tribunal by the lawyer," Respondent and counsel's failure to do so, coupled with their use of the "open palms" to cover their eyes to dodge reality is deeply troubling.

Petitioner is a small "mom and pop" business operated by two officers, whose principal Inkwon Kim, full of life, in his

mid-50s, committed suicide a day before flying to the United States to attend deposition. Given the timing of the suicide, this case clearly fueled a significant amount of stress from the endless litigation involving repeated motions to dismiss for failure to state a claim, gamesmanship in pre-trial discovery, and the nightmare of his business being wiped out after he had worked to establish a successful car-window tinting business from nothing several years before Respondent acquired the seller, Commonwealth Laminating Company. Gone were the days of cordial and mutually-beneficial business relationship with Commonwealth, and here to stay was a new era of Respondent denying responsibility for defective films that its own officers had admitted were defective.

Petitioner's business dealings with Commonwealth Laminating began in 2008 and lasted several years as it effectively concluded in 2016 because Respondent, who acquired Commonwealth at some point before 2016 had changed one of three essential ingredients that caused the tint-film to spoil, either while the supplies were held as stock in Petitioner's supply warehouse or after the film had been applied to the vehicles of end-user consumers.

The defects were so widespread that they affected virtually all of the inventory held at Petitioner's warehouse, and was confirmed by Respondent during one of its inspection visits of the warehouse. As stated in the first amended complaint filed below (FAC), on November 16, 2016, following Respondent's visit to plaintiff's plant visit, in an email from Tim Gerasimov to Ashley Reynolds and Jerry Robertson, all three being officers or agents of defendants, defendants admitted that at least 202 rolls of different types of tinting film were confirmed defective and required "reimbursement" totaling $248,408 for interim reimbursement:

> Hello Everyone, Please find attached the inspection results for the rolls that we confirmed for reimbursement. There are total of 202 rolls of different type in this list.
>
> Ashley , Could you please add a column with price per film type and totals for the reimbursement and send it to Wing for approval.
>
> Thank you!
> Tim G
> (Email with Excel attachment; Exhibit 1).

FAC ¶ 32, A66.

Instead of unconditionally accepting return of its own defective products and quickly ensuring the continued supply line, Respondent interposed certain conditions to the processing of its own defective goods. Respondent created an impasse, and no return was processed or approved by Respondent before or after suit was filed by Petitioner.

The pertinent facts are set forth in the First Amended Complaint, A56, as well as the original Complaint, A11.

Plaintiff's Establishment of the Suntek Business in South Korea

In December 2014, defendant Eastman Chemical became the successor-in-interest of a certain written supply chain agreement previously made in March 2008, which was then converted into a verbal supply agreement for an indefinite duration, as of approximately December 13, 2013, between plaintiff and defendant Commonwealth Laminating. FAC ¶ 9; A58.

Since 2008 plaintiff has been purchasing and re-selling, as a national distributor in South Korea, certain "Suntek" brand of "glass tinting film" commonly applied to automobiles and office windows to serve as (1) sun shader; (2) UV blocker; (3) heat and glare reducer; (4) privacy enhancer; and other such benefits. Since the time of plaintiff's business dealings with Commonwealth, the Suntek film was held out as a superior auto tint to consumers. A59.

In 2008, Commonwealth Laminating requested plaintiff serve as its "exclusive distributor" in South Korea when Suntek had little or no market share in South Korea due to a general lack of competitiveness. By December 2013, as plaintiff cultivated a strong, increasingly competitive market for Suntek products in South Korea, between 2008 and 2013, Commonwealth cited plaintiff's "inability to meet" sales minimums as a basis for terminating the 2008 Exclusive Agreement and unilaterally converted it to a non-exclusive, verbal agreement, by an email dated December 13, 2013:

Due to SaeHan Sheet's consistent inability to meet the purchase requirements, we must terminate the agreement. You will be able to continue to purchase SunTek products from CLC in 2014, however, you will not be the exclusive distributor of SunTek products in 2014. Going forward into 2014, you may say that you are an authorized SunTek distributor, but not the exclusive SunTek distributor.

FAC ¶ 11, A59-60.

As of December 13, 2013, plaintiff continued to purchase Suntek products through the end of 2016 and would have continued with this business other than due to defendant's acts and omissions. FAC ¶ 12, A60.

During the course of its nine (9) year plus sale of the Suntek

product line, plaintiff made every business effort to expand the Suntek market not only for its own business gain but also in the hopes of building a stronger contractual relationship with Commonwealth and, subsequent to the December 2014 merger and acquisition by Eastman Chemical, with the latter. FAC ¶ 13, A60.

Defendant Strategic Change of Ingredients

In corporate parlance, the term "cost cutting measure" is the same as the expression, "increased profitability." Contemporaneous to its acquisition of the Suntek product line and the business of Commonwealth Laminating, defendants Eastman Chemical undertook a post-merger "profitability review" of the Suntek product line. Upon information and belief, defendant Eastman Chemical came to a decision, within its upper management, that "cost cutting measures" based upon the elimination of ingredients. FAC ¶ 14, A60.

As previously manufactured by Commonwealth, the Suntek tinting film involved three (3) principal ingredients in the manufacturing process and one of these was quietly decided to be removed. FAC ¶ 15, A60.

To Saehan and presumably all of their customers, defendants represented that the product line that existed as Suntek tinting film, as manufactured by Commonwealth, was being continued to be manufactured in the "same manner," after the merger. Before and after the 2014 merger of Commonwealth and Eastman, agents of Commonwealth including Jerry Robertson visited and otherwise communicated with plaintiff and represented that the same product line would be continued to be manufactured using the same materials and processes as Commonwealth had established. On December 10, 2015, Jerry Robertson came to Seoul, and we met at the Marriott Hotel in Seoul and had one

such discussion. He assured plaintiff at that time that nothing would be changed and the same product would be continued indefinitely and, if any change were to be forthcoming, Sae Han would be the first to know. FAC ¶ 16, A60.

In fact, from approximately latter 2015 or early 2016, defendants began to manufacture the Suntek tinting film without a key ingredient and sold it throughout the world as the "same product" as had previously been sold despite the fact it was not the same product. FAC ¶ 17, A61.

Upon information and belief, defendants' internal research did not support a long term reliability and usefulness of the film product with the omitted ingredient. Despite this fact, and despite defendants' probable knowledge that the omission of the ingredient would not be beneficial to the film product line, defendants were motivated to follow a cost-reduction and/or other "corporate efficiency" strategy in the manufacturing process. FAC ¶ 18, A61.

After defendants' deliberate decision to omit a key ingredient, all products of Suntek tinting film were no longer the same as when Commonwealth Laminating was manufacturing the Suntek line. Defendants continued to deceive plaintiff into believing that the product line had not changed at all. Plaintiff procured approximately $400,000 in 2015 and approximately $300,000 worth of products for the nine months of 2016 through September 30, 2016. FAC ¶ 19, A61.

As a small business whose principal product line was the Suntek tinting film, being sold at wholesale to principally five retailer-customers, consistency and reliability of the product line were not only essential but life and death. FAC ¶ 20, A61-62.

Defendants' defective product line is visible with small mold-like craters that are visible throughout a sheet of tinting film much like the following example. Like mold, because it grows and creates an unpleasant visual appearance, rather than a clean, sleek sheet of film coating properly expected by end-user consumers, it is unsuitable for sale and unsuitable for even for promotional giveaways. FAC ¶ 21, A62.

Defendants' Deceptive Business Practices

In early October 2016, plaintiff complained of defect claims resulting in return of defective products from retailer-customers and claims from end-user consumers against the retailers. In an email dated October 10, 2016, plaintiff told the urgency of the situation to defendants:

> Dear Ashley
>
> Almost all of the SunTek films that were imported during 2016 are being returned by our distributors due to defects in the film.
>
> We have examined all the defective films and each of the production LOT.
>
> Please check the attached file to see the TOTAL LIST OF DEFECTIVE PRODUCTS involved.
>
> We will send the defective film samples immediately for your verification.
>
> The real urgency at the present time is that we do not have any inventory of NORMAL FILMS to sell or to exchange.

> Therefore we must urge your company to immediately replace some of the defective films listed below as soon as possible.
>
> [list of films omitted]
>
> Please send VIA AIR in order to save time and to reduce further loss to our business.

FAC ¶ 22, A63.

Defendants claimed not to know what was going on but knew or should have known exactly what was going on: their product line was suffering from a manufacturing defect. They requested explanation of what "defect" meant and plaintiff provided repeated examples and explanations to no avail. FAC ¶ 23, A63.

Defendants had sold and delivered significant volumes of defective tinting film products to customers in approximately 2015 and 2016. Sae Han and other customers sold them to countless end-user consumers and thereby placed themselves in jeopardy of consumer liability lawsuits and claims. Defendants knew that plaintiff was selling nothing but Suntek products and that a disruption of the supply would be a life or death event, as was discussed numerous times. FAC ¶ 24, A63-64.

According to defendants' officers, in August 2016, their customer located in Germany filed a product defect claim based upon manufacturing defects which occurred after defendants removed a key ingredient from their ingredients. This story was admitted to plaintiff during the November 16, 2016, visit to plaintiff in South Korea by defendants' officers/agents Jerry Robertson and Tim Gerasimov, not in the context of disclosure but in the context of emphasizing that "the problem has been fixed." FAC ¶ 25, A64.

Internally, defendants adopted a policy of "don't tell" other customers that their Germany customer had presented defect claims, and to disregard any more customer complaints. Thus, even on November 16, 2016, when defendants briefly mentioned that a Germany customer had returned products with a defect claim, they did not disclose the reasons behind the defect, and generally avoided the topic. FAC ¶ 26, A64.

Knowing that defendants were exposed to liability, defendants then deployed a two-part strategy. First, they would deny that there was anything wrong with their products despite the defects and despite their knowledge to the contrary. Second, defendants offered returns if Saehan and presumably other customers signed off on general releases as a condition of defendants' acceptance of defective goods so as to sandbag and prevent plaintiff from filing any lost of profit claim stemming from the defects. FAC ¶ 27, A64.

During October, November, and December 2016, defendants' officers and managers were engaged in an aggressive attempt to contain adverse news stemming from their knowing or reckless injection of defective products into the stream of United States commerce and global commerce. As they realized that the problem was spreading and could spread even further beyond their control, in Asia and Europe, they repeatedly urged plaintiff to sign a General Release as a condition of receiving merchantable products in exchange for a finite defects claim. They failed to take direct responsibility for their actions and failed to replace the goods with non-defective goods in a timely fashion, without conditions. FAC ¶ 28, A64.

By November 2016, defendants' failure to process the defects claim became life or death for plaintiff as plaintiff's handful of retailer-customers told plaintiff that any further defects would make it impossible to sustain the business

relationship with plaintiff and those customers had already begun developing new, third-party supply lines with reliable, defect-free lines of products, believed to be non-Suntek lines, for possible change of product sourcing. FAC ¶ 29, A65.

On November 12, 2016, defendants' officer Ashley Reynolds sent plaintiff and email in which the defendants admitted that their products were defective:

> Please see the attached sheet containing all rolls that we shipped to you this year and the batch numbers.
>
> • All rolls with purple are from the recent claim and are already approved for credit.
>
> • All rolls in dark green and labeled 100% SAFE are A grade and can be sold without any issues. These rolls are free from defect.
>
> • The rolls highlighted in Red are defective and we will include these rolls in your credit. No need to be inspected. If you have shipped this material to a customer already and it has not been installed, you may want to contact them and replace this material. (Please note that once the film is installed on glass, the defect will not form)
>
> • All rolls in yellow and light green will need to be inspected by Jerry and Tim during their visit next week. These are listed below. Can you please pull 1 roll from these and have these ready to be inspected upon Jerry's arrival to save time and avoid any delays:

FAC ¶ 30, A65.

On November 16, 2016, defendants' agents/officers Jerry Robertson and Tim Gerasimov personally visited plaintiff's plant to review and discuss the defects problem. Plaintiff told Jerry Robertson in no uncertain terms that continued defects claims would result in plaintiff's buyers abandoning the business relationship and thereby destroying plaintiff's business. Plaintiff explained that in Korean culture, the spreading of honorable or dishonorable business practice, through word of mouth or through social media, routinely result in the destruction of corporate lives and emphasized that plaintiff was in peril of such adverse view among its handful of retailer-customers. FAC ¶ 31, A65.

On November 16, 2016, following the plaintiff's plant visit, in an email from Tim Gerasimov to Ashley Reynolds and Jerry Robertson, all three being officers or agents of defendants, defendants admitted that at least 202 rolls of different types of tinting film were confirmed defective and required "reimbursement" totaling $248,408 for interim reimbursement. FAC ¶ 32, A66.

Before he left plaintiff's plant, Jerry Robertson repeatedly assured plaintiff in sum and substance that defendants "had already identified and fixed the problem back in August" and that "absolutely nothing shipped by you after mid August 2016 is defective; guaranteed." Plaintiff relied upon that assurance and representation and in turn told its five major purchasers that Suntek had guaranteed that there would be no returns from its product line, after the mid-August 2016 manufacturing time-line. FAC ¶ 33, A66.

On November 21, 2016, at 9:25AM, defendants' officer Jerry Robertson wrote plaintiff an email requesting "your current SunTek inventory by product and VLT, and by batch number.

(This can include any rolls returned to you for the defect)." Although this was couched as an innocuous "inventory check" request, in fact it was an attempt to assess defendants' exposure for returns based on goods on hand and goods that have been returned at Saehan. FAC ¶ 34, A66.

On November 22, 2016, plaintiff responded:

> Dear Jerry
>
> As you may well know our inventory at the present time is a mix of returns and past inventory and needs to be verified on paper as well as what's in stock. In addition, with returns coming in almost daily our inventory is bound to change as time passes. I do not see the point of reporting our current inventory situation which will continue to change until all the defective films are recalled and completely quarantined . Would you please let me know the reason for your request?

FAC ¶ 35, A67.

Defendants failed to respond to plaintiffs' foregoing email but plaintiff then provided then-current status of inventory. Despite these facts, defendants still failed to refill the defective goods with non-defective goods and failed to reimburse plaintiff's purchases and financial losses and abject failed and refused to prevent plaintiff's losses. Plaintiff's initial financial losses were at least $248,408 in defective goods "confirmed" by defendants. FAC ¶ 36, A67.

The Forced Closure of Plaintiff's Business

Despite the interim-confirmation of approximately $250,000

in defective goods, which plaintiff had previously paid for, defendants failed to reimburse plaintiff's loss or replace the defective products. FAC ¶ 37, A67.

The five purchasers that comprised the majority of plaintiff's retailer-customers were known to defendants. By early 2017, with no solution from defendants, and thus no solution from plaintiff, and with defects-claims mounting more and more, all five customers of plaintiff ceased doing business with plaintiff citing the lack of adequate assurance and citing unreliable product quality. FAC ¶ 38. A67.

Due to defendants' failure to immediately cure and remedy the defect, by shipping defect-free products and reimbursing for plaintiff's then-losses, or reimbursing plaintiff's purchase-money after its officers "confirmed" on repeated emails that at least $248,408 was due and owing to plaintiff, so that plaintiff could provide adequate assurance of continued or at least future reliability, or cover its business operations through a third-party supplier, plaintiff lost its business with no opportunity for plaintiff to recover, and no ability to transition to other, new customers. FAC ¶ 39, A68.

While we maintain that the initial Rule 12(b)(6) dismissal order was itself wrong, we maintain that the first amended complaint, as framed above, amply provided the notice of claims required by Rule 8 of the Federal Civil Rules.

Regrettably, the courts below never reached that question directly because the district court opted to rely upon the false representation of Respondent and its counsel, and granted dismissal as a "sanction" against Petitioner predicated on the factually wrong premise that Petitioner was all of one week late in filing its opposition to Respondent's renewed motion to dismiss under Rule 12(b)(6), when in fact Petitioner was actually *8 days early*.

REASONS FOR GRANTING A WRIT

Petitioner has found no case decided by any court, reported or unreported, where an alleged "seven day late" papers were the basis of an action or complaint being dismissed with prejudice. Such wielding of baseless power in the administration of justice amounts to "judicial tyranny." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 69 S. Ct. 497, 93 L.Ed. 599 (1949) ("Obedience must of course be secured for the command of a court. . . . But courts should be explicit and precise in their commands and should only then be strict in exacting compliance. To be both strict and indefinite is a kind of judicial tyranny.").

This case involves the district court's use of its inherent power to dismiss the case with prejudice when the facts simply do not justify any sanction, let alone the ultimate sanction of dismissal. While the Court has issued a handful of decisions between 1812 and 1991, the Court has yet to define the permissible "outer limits" of such power that is routinely wielded by courts. *See United States v. Hudson*, 11 U.S. 32, 7 Cranch 32, 34, 3 L. Ed. 259 (1812); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 88 L. Ed. 1250, 64 S. Ct. 997 (1944); *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 69 S. Ct. 497, 93 L.Ed. 599 (1949); *Societe Internationale v. Rogers*, 357 U.S. 197, 78 S. Ct. 1087 (1958); *Link v. Wabash R. Co.*, 370 U. S. 626, 630-631, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *Boddie v. Connecticut,* 401 U.S. 371, 380, 91 S. Ct. 780, 787 (1971); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 49 L. Ed. 2d 747, 96 S. Ct. 2778 (1976); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 65 L. Ed. 2d 488, 100 S. Ct. 2455 (1980); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405,110 S. Ct. 2447, 110 L.Ed.2d 359 (1990); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L.Ed.2d 27 (1991)

In 1990, the Court decided *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 405,110 S. Ct. 2447, 110 L.Ed.2d 359 (1990), for the proposition that "[a]n appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's decision in a Rule 11 determination. A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." In 1991, the Court decided *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L.Ed.2d 27 (1991) for the proposition that the courts have inherent power to sanction a party for unethical conduct such as committing fraud upon the courts or continuously taking action to delay proceedings, repeatedly violating court orders, and asserting meritless motions or pleadings and delaying actions, where the courts have provided warnings to the party and counsel that their actions were sanctionable.

Within the range of these two cases, the principles that emanate are (1) that any potential sanction must be warned; (2) must be sufficiently egregious; and (3) the factual record must be adequately and correctly developed, i.e., showing that the facts actually warranted the sanction imposed.

In our case, the ultimate sanction of dismissal was applied by a district court with utter impatience to reality. The lower courts have all disregarded the reality that Respondent and its counsel provided the lower courts with demonstrably false facts and failed to come clean *despite their continuing ethical duty to do so and, in violation of their ethical duty*, they have prolonged their ethical violation of candor to the courts.[2]

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2 While an ethical violation may be the subject of a licensing board's investigation at some point, because the case law, as discussed principally in *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 405,110 S. Ct. 2447, 110 L.Ed.2d 359 (1990) and *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct.

I

BECAUSE THE DISTRICT COURT'S DRACONIAN DISMISSAL WAS PREDICATED ON RESPONDENT AND COUNSEL'S LACK OF CANDOR AND WAS NOT SUPPORTED BY INDEPENDENT, RELIABLE FACTS, THE ORDERS BELOW SHOULD BE REVERSED AS A MATTER OF LAW

It is settled that the Due Process Clauses protect civil litigants who seek recourse in the courts, both as plaintiffs and as defendants. In *Societe Internationale v. Rogers*, 357 U.S. 197, 78 S. Ct. 1087 (1958), for example -- where a plaintiff's claim had been dismissed for failure to comply with a trial court's order -- the Court read the "property" component of the Fifth Amendment's Due Process Clause to impose "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." *Id*., at 209. Similarly, the Fourteenth Amendment's Due Process Clause applies to the States from denying potential litigants use of established adjudicatory procedures, when such court action would be "the equivalent of denying them an opportunity to be heard upon their claimed [rights]." *Boddie v. Connecticut,* 401 U.S. 371, 380, 91 S. Ct. 780, 787 (1971).

The power to punish a recalcitrant party for misconduct during litigation must be tempered to the facts of the case, and cannot be excessive. The Court has held that "a district court possesses inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts

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2123, 115 L.Ed.2d 27 (1991) requires consideration of the *conduct of counsel*, the inquiry should also be made by the courts and not merely deferred to a regulatory review removed from the context of the litigation.

to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Link v. Wabash R. Co.*, 370 U. S. 626, 630-631, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *see United States v. Hudson*, 11 U.S. 32, 7 Cranch 32, 34, 3 L. Ed. 259 (1812); *see also Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 88 L. Ed. 1250, 64 S. Ct. 997 (1944) (holding that the inherent power is necessary to enforce laws against recalcitrant "marauders"); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 49 L. Ed. 2d 747, 96 S. Ct. 2778 (1976) (holding that dismissals with prejudice or defaults are drastic sanctions and are "extreme"); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 65 L. Ed. 2d 488, 100 S. Ct. 2455 (1980) (the extreme sanction of dismissal is warranted in some cases); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405,110 S. Ct. 2447, 110 L.Ed.2d 359 (1990) (in some cases, dismissal is proper); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L.Ed.2d 27 (1991) (holding that a party's unethical conduct or repeated violations of court orders or assertion of meritless motions or pleadings, when coupled with warnings to the party and counsel that their actions were sanctionable, would justify dismissal).

Thus, the as the case law is perceived today, something more than a calendaring mistake, *something that is evil or intentional misconduct,* must be implicated before a dismissal can be sustained. Fraud upon the courts is one valid ground. "Fraud on the court occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." *Aoude v. Mobil Oil Corporation*, 892 F.2d 1115, 1118 (1st Cir. 1989).

By that definition of "fraud upon the courts," the only party

that committed such transgression are the Respondent and counsel, and yet the lower courts simply "rubber stamped" the bald their statements and have refused to address the realty.

Petitioner has never violated any order specific below and was certainly never specifically warned that dismissal might be granted for any specific reason.

Procedurally, the case was still in its pre-answer stage, where the multiple defendants, who had been joined in the original complaint, had moved to dismiss the complaint for alleged failure to state claims under Federal Civil Rule 12(b)(6).

On April 11, 2019, the original complaint was dismissed with leave to amend. *See* Docket Report 34, A44.

On April 29, 2019, Petitioner's First Amended Complaint was filed. A56. Petitioner alleged contracts and other grounds for claims.

On May 13, 2019, defendants named in the original complaint, Eastman Chemical and Commonwealth Laminating, filed their motion to dismiss the first amended complaint under Rule 12(b)(6). ECF42. On May 13, 2019, these defendants also filed a motion to extend their time to respond to the complaint, and that motion was granted on May 16, 2019. ECF43, ECF44.

On May 31, 2019, ECF45, newly-served defendants whose identities had been represented to be successor-entities of Commonwealth Laminating, filed their own motion to dismiss for failure to state a claim under Rule 12(b)(6) by joining in the May 13, 2019, motion of the earlier-filed defendants. A90.

As these defendants' motion was not filed until May 31,

2019, Petitioner's opposition due date was 14 days after Eastman Performance Films' motion to dismiss was filed, June 14, 2019.

On June 6, 2019, Petitioner's opposing memorandum was filed. A96. This filing was 8 days earlier than the due date.

In its June 10, 2019, Reply, Eastman Performance Films falsely and inaccurately told the District Court, ECF50, as its first argument: "A. The Court Should Consider Eastman and Commonwealth's Motion Well Taken Because Plaintiff Failed to File a Timely Response." This was false and inaccurate as to Eastman Performance Films since that defendant filed a motion only on May 31, 2019, against plaintiff's response of June 6, 2019. Respondent and its counsel have never advised any of the tribunals below of the falsity in violation of their affirmative duty to do so.

Between June 6, 2019, and September 24, 2019, the District Court provided the parties with no hint that the court perceived there was any procedural deficiency; no order to show cause was issued to such effect; and no informal notice was issued to the parties.

On September 6, 2019, stating that the sole defendant would be Eastman Performance Films, LLC, the Respondent in this petition. *See* Docket Entry 68. The stipulated change of defendants' roster was academic since the First Amended Complaint alleged the real party in interest.

On September 24, 2019, after Respondent's second motion to dismiss under Rule 12(b)(6) having been fully briefed as of June 6, 2019, the District Court dismissed the First Amended Complaint by adopting Respondent's Reply argument, Point I, for being allegedly "late by a week" when, in fact, Petitioner was early by 8 days. *See* ECF74, A97 & ECF75, A100

(9-24-19).

On October 7, 2019, Petitioner moved for reconsideration to obtain relief from the district court's oppression. Petitioner's detailed explanation showed that, in fact, Respondent Eastman Performance Films had provided the District Court with false information, and its counsel were under an affirmative duty to clear their misrepresentation but failed to do so. *See* A102-A108. Counsel still failed to come clean.

It is settled law that an involuntary dismissal should not be applied because of a mere days' delay (even if there was actual delay) because such remedy is too excessive and draconian. Within the Fourth Circuit, the courts are bound by *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 461 (4th Cir. 1993), which stands for the proposition that before a court applies its inherent power to dismiss a case, the court must consider the following factors: (1) the degree of the wrongdoer's culpability; (2) the extent of the client's blameworthiness if the wrongful conduct is committed by its attorney, recognizing that we seldom dismiss claims against blameless clients; (3) the prejudice to the judicial process and the administration of justice; (4) the prejudice to the victim; (5) the availability of other sanctions to rectify the wrong by punishing culpable persons, compensating harmed persons, and deterring similar conduct in the future; and (6) the public interest.

In our case, none of these factors were considered, and none applied ultimately because the motion to dismiss by the only defendant that matters in the case, Respondent Eastman Performance Films, whose motion was filed May 31, 2019, was responded by Petitioner within 6 days.

The Court's holding in *Chambers v. NASCO* cautioned "the inherent power" as the inherent power "must be exercised

with restraint and discretion" which is defined as "bad faith, vexatiously, wantonly, or for oppressive reason." *Id*. at 44-46 (*quoting Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59, 95 S. Ct. 1612, 44 L. Ed. 2d 141 (1975)).

In line with *Chambers*, the Fourth Circuit has held that, using a court's inherent power, a court may issue orders, punish for contempt, vacate judgments obtained by fraud, conduct investigations as necessary to exercise the power, bar persons from the courtroom, assess attorney's fees, and dismiss actions. However, since orders dismissing actions are the most severe, such orders must be entered with the greatest caution. *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 462 (4th Cir. 1993).

By affirming the district court's unsupportable dismissal, the Fourth Circuit violated its own binding case law, and violated a century of case law from this Court, however sparse, and brushed this case aside. While the case involves a sum money some legal practitioners and courts may deem relatively small, the damages claimed in the case amount to "life or death" for Sae Han Sheet Company.

Here, the District Court resorted to the ultimate measure, against Petitioner, when it was the reality was that the *Respondent and its counsel* who made a factual misrepresentation and persisted in their lack of candor to the courts, and no facts justified the Draconian dismissal and no case law justified any dismissal without a specific advance warning.

Neither the district court nor the court of appeals even bothered to provide a pre-termination hearing, and did not even allow Petitioner's motion for reconsideration to play out, and instead summarily denied reconsideration only 3 days after Petitioner filed it, *see* Docket Report 81, A109, App-7 to

App-9, without issuing an order to show cause why Respondent and its counsel would be deemed to have committed breach of the duty of candor to the courts and themselves sanctioned for wasting the district court's time (and even disqualified as counsel of record).

The district court's dismissal-sanction finds no support in any case law anywhere in the country and amounts to pure judicial tyranny. The Fourth Circuit's unpublished, one-paragraph affirmance that validated the "judicial tyranny" below should be reversed as a matter of law.

Because it has been 30-plus years since the Court's most recent guidance on this issue was provided in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L.Ed.2d 27 (1991), apparently with no subsequent direct guidance, the Court should grant *certiorari*, reverse the lower courts' indefensible judgments, and provide further guidance on this important issue, as well as taking action against counsel.

CONCLUSION

For the foregoing reasons, Petitioner Sae Han Sheet Company respectfully requests that this Court grant *certiorari*; reverse the judgments of the lower courts; and remand to a new district judge for completion of the case because the judge below is clearly prejudiced against Sae Han, an entity from outside the district, from outside the country, and who expects a fair and neutral court.

Dated: March 1, 2021

Respectfully submitted,

Michael S. Kimm
Counsel for Petitioner

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA DANVILLE DIVISION

SAE HAN SHEET CO.; LTD.,
Plaintiff,

v.

COMMONWEALTH LAMINATING AND COATING, INC., et al.,
Defendants.

Case No. 4:18cv00074

MEMORANDUM OPINION By: Hon. Jackson L. Kiser
Senior United States District Judge

This matter is before the Court on Defendant Eastman Performance Films' Motion to Dismiss.[1] [ECF No. 42.] The motion was submitted on brief without oral argument. I have reviewed the pleadings, arguments, and relevant law. For the reasons stated herein, I will grant the Motion to Dismiss and dismiss this case.

Plaintiff Sae Han Sheet Co., Ltd. ("Plaintiff') is a South Korean company engaged in international trade. Defendant Eastman Performance Films ("Eastman") is the ultimate successor to Commonwealth Laminating and Coating, a Virginia company which may have manufactured some or all the goods at issue in this case. The relevant factual

1 Although Eastman Performance Films was not technically a party to the cited motion to dismiss, it joined in that motion in its entirety. (See Mot. to Dismiss pg. 2, May 31, 2019 [ECF No. 45].) By agreement between the parties, the dismissed parties' Motion to Dismiss remained pending for Eastman Performance Films. (See Order3, Sept. 10,2019 [ECF No. 71].)

allegations are relatively unchanged from my prior opinion. (See Mem. Op. pgs. 1-3, Apr. 11,2019 [ECF No. 34].)

As relevant to the present motion, the Local Rules of this court provide for fourteen days for a response to any motion. *See* Local Civ. R. 14(c)(1). Moreover, the Pretrial Order issued in this case states:

> Briefs in opposition must be filed within 14 days of the date of the service of the movant's brief (or within 14 days of this Order is a motion and brief have been served prior to this Order). EXCEPT FOR GOOD CAUSE SHOWN, IF BRIEFS IN OPPOSITION TO THE MOTIONS ARE NOT FILED, IT WILL BE DEEMED THAT THE MOTION IS WELL TAKEN.

(Order4, Jan. 4, 2019 [ECF No. 24].) The quoted language from the Pretrial Order was also directly referenced in my prior opinion on a motion to dismiss. (Mem. Op. pg. 3 n.3, Apr. 11, 2019 [ECF No. 34].)

The present Motion to Dismiss[2] was filed on May 13, 2019 [ECF No. 42]; Plaintiff did not file a response in opposition until June 3 [ECF No. 48]. Plaintiffs response, therefore, was filed twenty-one days after the initial motion and in plain violation of the Local Rules and Pretrial Order. At no point did Plaintiff seek leave to file a late response and, to date, it has failed to offer any justification whatsoever for its late

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2 Although Eastman was not a party to that Motion, it filed its own Motion to Dismiss on May 31. [ECF No. 45.] By agreement of the parties, however, Eastman's Motion to Dismiss was supplanted by the previously filed Motion to Dismiss. Accordingly, and with the consent of Plaintiff, the earlier Motion to Dismiss is the operative one at this point.

response.

A district court has the authority to dismiss an action if a party violates the court's orders or local rules. See, e.g., C.H. v. Asheville City Bd. ofEduc., No. 1:12-CV-000377, 2014 WL 1092290, at *1 (W.D.N.C. May 18, 2014). Ordinarily, I would not grant a motion to dismiss merely because a party responded seven days past the time set forth in the Local Rules and the Pretrial Order. In the present case, however, Plaintiff was served with the Pretrial Order and expressly warned in a prior opinion that late filings were not permitted without the express approval of the court. In contravention of that warning, Plaintiff again filed a late response to a Motion to Dismiss. When confronted with Defendant's response in which the timeliness issue was raised [see ECF No. 50], Plaintiff failed to seek leave of the court to accept its late response and failed to offer any justification for its improper filing.

"When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after time has expired if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(l)(B). More than three months after the fact, Plaintiff has failed to file a motion asking the court to extend the time in which it was permitted to file its response, and it has failed to offer any justification to show that its neglect was excusable. Considering the totality of the circumstances and Plaintiff's failure to seek leave for its actions or offer any justification whatsoever, Defendant's Motion to Dismiss will be deemed well-taken, the Motion will be granted, and Plaintiff's complaint will be dismissed.

The clerk is directed to forward a copy of this Order to all counsel of record.

ENTERED this 24th day of September, 2019.

/s/ Jackson L. Kaiser
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA DANVILLE DIVISION

SAE HAN SHEET CO., LTD.,

Plaintiff,

v.

COMMONWEALTH LAMINATING AND COATING, INC., et al.,

Defendants.

Case No. 4:18cv00074

ORDER

By: Hon. Jackson L. Kiser
Senior United States District Judge

This matter is before the Court on Defendant Eastman Performance Films' Motion to Dismiss. [ECF No. 42.] The motion was submitted on brief without oral argument. I have reviewed the pleadings, arguments, and relevant law. For the reasons stated the accompanying Memorandum Opinion, the Motion is hereby GRANTED and the Amended Complaint is DISMISSED. The clerk is directed to close this case.

The clerk is directed to forward a copy of this Order to all counsel of record. ENTERED this 24th day of September, 2019.

/s/ Jackson L. Kaiser
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA DANVILLE DIVISION

OCT 10 2019

SAE HAN SHEET CO., LTD.,
Plaintiff,

v.

EASTMAN PERFORMANCE FILMS, LLC,
Defendant.

Case No. 4:18cv00074

ORDER

By: Hon. Jackson L. Kiser
Senior United States District Judge

This matter is before the Court on Plaintiff's Sae Han Sheet Co.'s Motion for Reconsideration [ECF No. 79]. While the court accepts Plaintiff's apology for its dilatory filings, its motion does nothing to address the months-long delay in presenting the court with a rationale for its neglect.[1] Plaintiff was alerted on two prior occasions to the rules regarding the time limits for filing responses (see Local Civ. R. 11(c)(1); Pretrial Order 4, Jan. 4, 2019 [ECF No. 24]), and expressly warned of the same in a written opinion (Mem. Op. pg. 3 n.3, Apr. 11, 2019 [ECF No. 34]). Plaintiff's neglect and/or dilatory tactics are simply unacceptable and violate the court's local rules and orders entered in this case.

Plaintiff also points to the fact that two competing motions

1 The issue of the timeliness of Plaintiff's response was first raised in a reply brief filed on June 10, 2019 [ECF No. 50]; Plaintiff presented its excuse, for the very first time, on October 7 [ECF No. 79].

to dismiss were filed, and contends its error in replying in a timely fashion was due to having two motions with different response deadlines. After the issue of Plaintiff's timely response was pointed out, however, Plaintiff expressly agreed that the earlier-filed motion-the one to which it had failed to reply in a timely manner and which said fault had already been raised in a brief with the court-would be the operative one on which the court would rule. (See Stipulation of Dismissal, Sept. 6, 2019[ECF No. 68].) Even if there was confusion over when to reply, after Plaintiff's error was pointed out it agreed that the motion to which it had not replied in a timely manner would be operative, and it offered no justification for its delayed response.

Under Fed. R. Civ. P. 60(b)(1), a party may seek relief from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect." I find that Plaintiff's has not shown any of these grounds for relief. The court's rules and orders are clear, and Plaintiff ignored them at its own peril. Finding no "other reason that justifies relief," Fed. R. Civ. P. 60(b)(6), Plaintiff's Motion for Reconsideration is hereby **DENIED.**

The clerk is directed to forward a copy of this Order to all counsel of record.

ENTERED this 10th day of October, 2019.

/s/ Jackson L. Kiser
SENIOR UNITED STATES DISTRICT JUDGE

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-2080

SAE HAN SHEET CO., LTD.,
Plaintiff - Appellant,
v.
EASTMAN PERFORMANCE FILMS, LLC,
Defendant - Appellee,
and

COMMONWEALTH LAMINATING AND COATING, INC.; EASTMAN CHEMICAL CORP.; JOHN DOES 1 THROUGH 20; ABC COMPANIES 1 THROUGH 20; CPFILMS INC., a Delaware Corporation; SUNTEK HOLDING COMPANY, a Delaware corporation; 2010 ACQUISITION CORP., a Delaware corporation,
Defendants.

No. 19-2125

SAE HAN SHEET CO., LTD.,
Plaintiff - Appellant,

v.

EASTMAN PERFORMANCE FILMS, LLC,
Defendant - Appellee,

and

COMMONWEALTH LAMINATING AND COATING, INC.; EASTMAN CHEMICAL CORP.; JOHN DOES 1 THROUGH

20; ABC COMPANIES 1 THROUGH 20; CPFILMS INC., a Delaware Corporation; SUNTEK HOLDING COMPANY, a Delaware corporation; 2010 ACQUISITION CORP., a Delaware corporation,

Defendants.

Appeals from the United States District Court for the Western District of Virginia, at Danville. Jackson L. Kiser, Senior District Judge. (4:18-cv-00074-JLK-RSB)

Submitted: October 26, 2020
Decided: November 17, 2020

Before AGEE and RICHARDSON, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Michael S. Kimm, KIMM LAW FIRM, Englewood Cliffs, New Jersey, for Appellant. Robert W. Loftin, Matthew D. Fender, Andrew F. Gann, Jr., MCGUIRE WOODS LLP, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sae Han Sheet Co., Ltd. appeals the district court's orders dismissing Sae Han's complaints and denying Sae Han's motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Sae Han Sheet Co., Ltd. v. Eastman Performance Films, LLC*, No. 4:18-cv-00074-JLK-RSB (W.D. Va. Sept. 24, 2019; Oct. 10, 2019). We dispense with oral argument because the facts and

legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: December 15, 2020

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-2080 (L)
(4:18-cv-00074-JLK-RSB)

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SAE HAN SHEET CO., LTD.
Plaintiff - Appellant v.

EASTMAN PERFORMANCE FILMS, LLC

Defendant - Appellee

and

COMMONWEALTH LAMINATING AND COATING, INC.; EASTMAN CHEMICAL CORP.; JOHN DOES 1 THROUGH 20; ABC COMPANIES 1 THROUGH 20; CPFILMS INC., a Delaware Corporation; SUNTEK HOLDING COMPANY, a Delaware corporation; 2010 ACQUISITION CORP., a Delaware corporation
Defendants

No. 19-2125
(4:18-cv-00074-JLK-RSB)

–

SAE HAN SHEET CO., LTD.
Plaintiff - Appellant

v.

EASTMAN PERFORMANCE FILMS, LLC

Defendant - Appellee

and

COMMONWEALTH LAMINATING AND COATING, INC.; EASTMAN CHEMICAL CORP.; JOHN DOES 1 THROUGH 20; ABC COMPANIES 1 THROUGH 20; CPFILMS INC., a Delaware Corporation; SUNTEK HOLDING COMPANY, a Delaware corporation; 2010 ACQUISITION CORP., a Delaware corporation

Defendants

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Richardson, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk