Nos. 09-1335 and 09-2324

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Suhail Nazim Abdullah AL SHIMARI,
Taha Yaseen Arraq RASHID,
Sa'ad Hamza Hantoosh AL-ZUBA'E, and
Salah Hasan Nusaif Jasim AL-EJAILI,
Plaintiffs-Appellees,

v.

CACI INTERNATIONAL INC and
CACI PREMIER TECHNOLOGY, INC.,
Defendants-Appellants.

Appeal From The United States District Court
For The Eastern District of Virginia, Alexandria Division
The Hon. Gerald Bruce Lee

APPELLANTS' CACI INTERNATIONAL INC AND CACI PREMIER TECHNOLOGY, INC.'S MOTION TO DISMISS APPELLEES' CROSS-APPEAL

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I. INTRODUCTION

Defendants-Appellants CACI Premier Technology, Inc. ("CACI PT") and CACI International Inc (collectively, "CACI") filed their notice of appeal on March 23, 2009. Plaintiffs-Appellees ("Plaintiffs") did not file a notice of cross-appeal until November 30, 2009, more than seven months after it was due. *See* Fed. R. App. P. 4(a)(3). This Court has, under similar circumstances, dismissed a putative appellant's notice of a cross-appeal for failure to comply with filing deadlines. *See Evans v. River Riders, Inc.*, 1996 WL 36898, at *1 (4th Cir. 1996); *Martinez v. Roig*, 1995 WL 626512, at *1 (4th Cir. 1995). There is no reason for a different result here. Therefore, pursuant to these authorities, and Federal Rule of Appellate Procedure 4(a)(3), the Court should dismiss Plaintiffs' untimely cross-appeal.

II. ANALYSIS

Plaintiffs are four Iraqis who were captured by the United States military in September or November, 2003, and detained at Abu Ghraib prison in Iraq, where military personnel and employees of CACI PT were performing interrogation services for the United States military. Am. Compl. ¶¶ 1, 10, 11, 26, 45, 54, 64. Although none of the Plaintiffs identifies any contact whatsoever with an employee of CACI PT, Plaintiffs allege that they suffered abuse at Abu Ghraib prison "by groups of persons conspiring together to torture detainees kept at the Abu Ghraib

hard site." *Id.* ¶ 64. Plaintiffs assert that CACI is liable for their injuries based on their allegation that "CACI conveyed its intent to join the conspiracy, and ratified its employees' participation in the conspiracy, by making a series of verbal statements and by engaging in a series of criminal acts of torture alongside and in conjunction with several co-conspirators." *Id.* ¶ 72. Plaintiffs' Amended Complaint sought this redress under a number of common-law torts, and invoked the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, as one of the jurisdictional bases for their claims.

CACI moved to dismiss Plaintiffs' Amended Complaint. Among the defenses asserted in CACI's motion to dismiss were two immunity defenses: (1) that CACI was entitled to derivative absolute official immunity under the reasoning of this Court's decision in *Mangold v. Analytic Services, Inc.*, 77 F.3d 1442 (4th Cir. 1996); and (2) that CACI is absolutely immune from civil suit based on the longstanding law of military occupation as recognized by the United States Supreme Court, and as recognized in Coalition Provisional Authority Order No. 17. CACI also argued that Plaintiffs' state tort claims were preempted, that the political question doctrine barred Plaintiffs' claims, and that Plaintiffs failed to state a plausible basis for relief. CACI also asserted that ATS failed to provide a jurisdictional basis for Plaintiffs' claims because, among other reasons, the statute did not extend to claims arising out of the United States' prosecution of war.

On March 19, 2009, the district court entered a Memorandum Order in which the district court denied CACI's *Mangold*-based derivative absolute immunity argument. Mem. Or. at 26-40. The district court did not address CACI's argument that it was absolutely immune from suit based on the law of military occupation. The court also denied CACI's motion to dismiss on preemption and political question grounds, and on Plaintiffs' failure to plead a plausible entitlement to relief. The court ruled that Plaintiffs' claims were not cognizable under ATS, but only as state-law tort claims.

On March 23, 2009, CACI timely noticed an appeal from the Memorandum Order, pursuant to the collateral order doctrine. One month later, on April 28, 2009, Plaintiffs filed a motion to dismiss CACI's appeal in this Court, principally arguing that the district court's claimed need for discovery deprived this Court of appellate jurisdiction. CACI opposed Plaintiffs' motion, arguing that its appeal was clearly permitted under the collateral order doctrine. On November 16, 2009, this Court issued an order deferred ruling on Plaintiffs' motion to dismiss CACI's notice of appeal pending assignment to a panel for review on the merits, and set a briefing schedule. *See* Orders of 11/16/2009.

On November 30, 2009, nearly eight months after the district court entered the Memorandum Order, Plaintiffs filed a notice of cross-appeal, seeking review of the district court's rejection of ATS as a jurisdictional basis for Plaintiffs' claims

dismissal of Plaintiffs' claims purportedly brought under the Alien Tort Statute, 28 U.S.C. § 1350. Plaintiffs' notice of cross-appeal, however, is late by more than seven months.

Under Federal Rule of Appellate Procedure 4(a)(3), Plaintiffs had to file their notice of appeal within thirty days from the date the district court entered the Memorandum Order, or within 14 days from the date CACI filed its notice of appeal, whichever period ends later. The district court entered its Memorandum Order on March 19, 2009 and CACI filed its notice of appeal four days later on March 23, 2009. Therefore, Plaintiffs' notice of appeal was due on or before April 18, 2009, or 30 days after the district court entered its Memorandum Order.

In light of Plaintiffs' total failure to comply with the deadlines imposed by Fed. R. App. P. 4(a)(3), the Court should dismiss Plaintiffs' notice of appeal as untimely. *See Evans v. River Riders, Inc.*, 1996 WL 36898, at *1 (4th Cir. 1996) (dismissing a notice of a cross-appeal where the appellants failed to request an extension of time and the notice was filed after Rule 4(a)(3)'s deadlines); *Martinez v. Roig*, 1995 WL 626512, at *1 (4th Cir. 1995) (same).

III. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' cross-appeal.

Respectfully submitted,

/s/ John F. O'Connor

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CERTIFICATE OF SERVICE

I certify that on this 7th day of December, 2009, a true copy of the foregoing was served through the Court's electronic case filing system, on the following counsel of record:

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