IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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SBP INTERNATIONAL PLAZA, LLC AND SBP ROYAL DANE MALL, LLC, **Petitioners,** **v.** **LIEUTENANT GOVERNOR OSBERT E. POTTER, in his official capacity,**[1] **Respondent.**	**Case No. ST-2012-CV-215** **WRIT OF REVIEW**

MEMORANDUM OPINION

Before the Court is Respondent's Motion for Reconsideration, which was filed on April 9, 2013. Petitioners filed a response in opposition on April 29, 2013. Respondent did not file a reply thereto. Respondent requests that this Court reconsider an Order dated March 21, 2013, which Order denied Respondent's Motion to Dismiss. Respondent's Motion for Reconsideration will be denied because reconsideration is not necessary to prevent manifest injustice, and because Respondent is attempting to use its Motion for Reconsideration as a vehicle to reargue points raised in its Motion to Dismiss.

BACKGROUND

On January 24, 2011, Petitioners became the owners of real properties commonly known as International Plaza (Parcel ID 1-05302-4713-00) and Royal Dane Mall (Parcel ID 1-05401-4307-00) (together, the "Properties").[2] The deeds for the Properties were submitted to Cadastral Survey on January 26, 2011, and later to the Recorder of Deeds on January 31, 2011.[3] On April 5, 2011, Petitioners filed an informal review form with the Office of the Tax Assessor, claiming that the assessed value of the Properties was higher than the Properties' current market value.[4] By letter dated June 30, 2011, the Office of the Recorder of Deeds informed Petitioners that the value of the Properties had been understated, and that Petitioners owed additional stamp taxes on the Properties.[5] The Office of the Recorder of Deeds requested that Petitioners "make good on having the responsible parties pay the difference that is outstanding in stamp taxes based on the Tax

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[1] This action was initially instituted against then-Lieutenant Governor Gregory Francis, in his official capacity. Osbert E. Potter is now the Lieutenant Governor of the Territory. Under Federal Rule of Civil Procedure 25(d), which applies to this proceeding as a rule of last resort through the operation of Superior Court Rule 7, a governmental officer's successor is automatically substituted as a party. The Court elects to rely on the framework provided by Federal Rule of Civil Procedure 25 because the Rules of the Superior Court contain no rule addressing the substitution of parties.
[2] Resp.'s Mot. for Reconsideration Ex. 1.
[3] *Id.*
[4] Pet. For Writ of Review Ex. A.
[5] *Id.* Ex. B, at 3–4.

Assessor's values."[6] By letter dated March 19, 2012, the Office of the Lieutenant Governor informed Petitioners that "[a]n outstanding and overdue amount of $415,492.50 [in stamp taxes] is due and payable immediately."[7] Petitioners responded to the March 19, 2012 letter from the Office of the Lieutenant Governor by letter dated April 3, 2012, informing the Office of the Lieutenant Governor that Petitioners were in the process of appealing the tax assessor's value, and requesting that the Office of the Lieutenant Governor rescind its demand for the payment of additional stamp taxes.[8]

Petitioners filed their petition for a writ of review with this Court on April 20, 2012. The writ issued on October 19, 2012.

Respondent then moved to dismiss Petitioners' case. Respondent claimed that the alleged stamp tax assessment was sent on March 19, 2012, but that Petitioners filed their petition for writ of review with this Court on April 20, 2012, 32 days after the alleged assessment was issued.[9] Stating that Title 33, Section 122 of the Virgin Islands Code requires any appeal of a stamp tax liability assessed thereunder to be filed within 30 days of the assessment, Respondent argued that this Court lacked jurisdiction to hear Petitioners' case because Petitioners' appeal of the alleged assessment was untimely filed.[10]

Respondent also argued that 33 V.I.C. § 122 obligated Petitioners to pay any liability assessed under that section before challenging same on appeal.[11] In making this argument, Respondent referenced the June 30, 2011 letter from the Office of the Recorder of Deeds to support the proposition that Respondent had not demanded interest or penalties from Petitioners.[12] Despite referencing the June 30, 2011 letter, Respondent did not argue that the letter constituted a notice of additional stamp tax liability under 33 V.I.C. § 122 for purposes of filing an appeal with the Superior Court.

In response, Petitioners argued that the language of 33 V.I.C. § 122 obligates an aggrieved party to file its appeal within 30 days from the date it receives the notice of the Commissioner's determination.[13] Petitioners argued that they received Respondent's letter on March 21, 2012, and consequently, that their appeal to the Superior Court was timely filed.[14] Petitioners then quoted 33 V.I.C. § 122 in its entirety to demonstrate that, unlike another provision of the Virgin Islands' tax code, 33 V.I.C. § 122 does not contain an explicit requirement that assessed stamp taxes be paid before being disputed on appeal.[15] Petitioners did not address Respondent's reference to the June 30, 2011 letter from the Office of the Recorder of Deeds.

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[6] *Id.* at 3.
[7] *Id.* at 2.
[8] *Id.* Ex. 3.
[9] Resp.'s Mot. to Dismiss 1–2.
[10] *Id.*
[11] *Id.* at 2–3.
[12] *Id.* at 2.
[13] Pets.' Opp. to Mot. to Dismiss 3–4.
[14] *Id.*
[15] *Id.* at 4–6.

By Order dated March 21, 2013, the Court denied Respondent's Motion to Dismiss. In the accompanying Memorandum Opinion, the Court agreed with Petitioners' interpretation of 33 V.I.C. § 122, and held that Petitioners' appeal was timely filed. The Court also agreed that 33 V.I.C. § 122 did not contain express language that required a stamp tax liability assessed thereunder to be paid before an appeal of same could be taken. The Court did not address the impact, if any, of the June 30, 2011 letter. Respondent timely moved for reconsideration of the Court's March 21, 2013 Order.

MOTIONS FOR RECONSIDERATION

Respondent has moved for reconsideration under Local Rule of Civil Procedure 7.3. Under that rule, a motion for reconsideration must be based on an intervening change in the law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice.[16] A motion for reconsideration

> is intended to focus the parties on the original pleadings as the "main event," and to prevent parties from filing a second motion with the hindsight of the court's analysis covering issues that should have been raised in the first set of motions. It is not a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.[17]

ANALYSIS

Respondent argues that reconsideration is necessary "to correct clear error or prevent manifest injustice."[18] In support of this position, Respondent makes three arguments. First, Respondent appears to argue that the Commissioner of Finance made a determination of the value of the Properties on January 31, 2011 when it stamped the special warranty deeds to the Properties. Second, Respondent argues that the Court failed to consider the June 31, 2011 letter from the Recorder of Deeds.[19] Third, Respondent argues that the Court erred by overlooking "the long practice of taxing authorities to require the payment of taxes prior to the filing of appeals."[20] Not one of Respondent's arguments justifies reconsideration of this Court's March 21, 2013 Order.

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[16] LRCi 7.3. Local Rule of Civil Procedure 7.3 applies to this proceeding as a rule of last resort through the operation of Superior Court Rule 7. Because motions for reconsideration are not addressed under the Rules of the Superior Court, this Court elects to rely upon the well-developed principles of Local Rule 7.3.
[17] *Bostic v. AT&T*, 312 F. Supp. 2d 731, 733 (D.V.I. 2004).
[18] Resp.'s Mot. for Recons. 1.
[19] *Id.* at 2–4.
[20] *Id.* at 4.

I. RESPONDENT'S ARGUMENT CONCERNING THE STAMPS ON THE SPECIAL WARRANTY DEEDS DOES NOT JUSTIFY RECONSIDERATION OF THE MARCH 21, 2013 ORDER.

The first question presented by Respondent's Motion for Reconsideration is whether the stamp on each of the special warranty deeds for the Properties supports Respondent's request for reconsideration of the Court's March 21, 2013 Order. The Court concludes they do not.

Respondent appears to argue that the Court overlooked the regulations governing the determination of value for stamp tax purposes, as set forth in 33-7 V.I. CODE R. § 131-1. Under that section, "[w]here the instrument of conveyance is submitted to the Commissioner by hand, and the determination of value is made then and there and the instrument is returned by hand, the date endorsed thereon by the Commissioner shall be deemed to be the date of receipt of notice by the aggrieved person."

This regulation does not support Respondent's argument for reconsideration. Assuming that all of the requirements of the regulation were met—e.g., that the instruments of conveyance were presented by hand—the stamp on the deeds indicates that Petitioners owed $82,500.00 in stamp taxes for each of the Properties. The June 30, 2011 letter from the Office of the Recorder of Deeds indicates that Petitioners had paid that amount with respect to each of the Properties. Therefore, if Respondent claims that the stamps on the specialty warranty deeds for the Properties represent the Commissioner of Finance's determination of Petitioners' stamp tax liability, such liability has been satisfied, and there is no need to reconsider the March 21, 2013 Order.

II. THE COURT'S FAILURE TO ADDRESS THE JUNE 31, 2011 LETTER FROM THE OFFICE OF THE RECORDER OF DEEDS DOES NOT PERPETRATE MANIFEST INJUSTICE THAT NECESSITATES RECONSIDERATION.

The second question presented by Respondent's motion is whether the Office of the Recorder of Deeds has statutory authority to assess stamp tax liability under 33 V.I.C. § 122. The Court concludes that it does not.

Title 33, Section 121 of the Virgin Islands Code imposes a stamp tax on the transfer of title to real property by instrument of conveyance.[21] Under 33 V.I.C. § 122, "[i]n any case where the Commissioner of Finance finds that the value for stamp tax purposes declared by the parties differs from the actual price paid or is substantially inconsistent with current values at the time of the transfer of title[]of similar properties . . . the said Commissioner shall determine such value for stamp tax purposes; and the stamp tax shall be paid on the basis of the same." Before liability may be assessed under 33 V.I.C. § 122, the Commissioner of Finance must find that the "value for stamp tax purposes declared by the parties differs from the actual price paid or is substantially inconsistent with current values . . . of similar properties[.]" Only once the Commissioner of Finance has made such a determination will a party be subject to stamp tax liability on the basis

[21] 33 V.I.C. § 121(a)(1).

thereof.[22] When an aggrieved party receives notice of the Commissioner's determination, he or she may appeal to the Superior Court.[23]

The Court's failure to address the June 31, 2011 letter from the Office of the Recorder of Deeds does not perpetrate manifest injustice that necessitates reconsideration of this Court's March 21, 2013 Order because the June 31, 2011 letter does not constitute the "notice of the Commissioner's determination" contemplated under 33 V.I.C. § 122. The June 31, 2011 letter was issued by the Office of the Recorder of Deeds. In the opening sentence of the letter, the author states that, "[a]fter careful review of the following real estate sales, *I have determined* that the values placed on these properties are understated[.]"[24] The italicized language demonstrates that the June 30, 2011 letter represents a determination by the Office of the Recorder of Deeds, not a determination by the Commissioner of Finance.

The plain text of 33 V.I.C. § 122 illustrates that the Commissioner of Finance determines any stamp tax liability under the provisions of that section—not the Office of the Recorder of Deeds. Historically, it has been the practice of the Commissioner of Finance to assess stamp tax liability under 33 V.I.C. § 122.[25] The legislative history of Title 33, Section 122 also illustrates that the Commissioner of Finance has authority over the assessment of stamp tax liability under 33 V.I.C. § 122. The current version of Title 33, Chapter 7—which includes Section 122—was added to the Virgin Islands Code on March 29, 1968. Section 122 initially referred to the Commissioner of Finance throughout. The 1980 amendments to 33 V.I.C. § 122 changed all references to the "Commissioner of Finance" to the "Director of the Bureau of Internal Revenue."[26] However, the 1982 amendments to 33 V.I.C § 122 reverted, changing all references to the "Director of the Bureau of Internal Revenue" back to the "Commissioner of Finance."[27] Since that time, the Commissioner of Finance has been the named authority in 33 V.I.C. § 122. Therefore, the Department of Finance, through the Commissioner of Finance, administers the provisions of 33 V.I.C. § 122.

The Office of the Recorder of Deeds enjoys no such authority. The duties of the Office of Recorder of Deeds are set forth in 33 V.I.C. § 2362. Nowhere in that section is the Office of the Recorder of Deeds empowered to assess stamp tax liability under 33 V.I.C. § 122.

Additionally, the Officer of the Recorder of Deeds "operates under the supervision of the Lieutenant Governor."[28] In addition to performing "duties as may be assigned to him by the

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[22] *Id.* § 122.
[23] *Id.*
[24] Pet. For Writ of Review Ex. B, at 3 (emphasis added).
[25] *See 35 Acres Assocs. v. Adams*, 962 F. Supp. 687, 689 (D.V.I. 1997) ("The Government later determined the properties to have a value of $ 180,864,729.18, based on the total amount of the Skopbank mortgages which remain on the properties. *The Commissioner of Finance accordingly assessed additional stamp taxes* of $ 3,617,294.58 based on the value of the mortgages.") (emphasis added).
[26] No. 4473, § 3(a)(1), (2), Sess. L. 1980, p. 147.
[27] No. 4755, § 10(c)(1), (2), Sess. L. 1982, p. 173.
[28] OFFICER OF THE LIEUTENANT GOVERNOR UNITED STATES VIRGIN ISLANDS, http://ltg.gov.vi/recorder-of-deeds.html (last visited October 27, 2015). *Accord* 28 V.I.C. § 152(6) (referring to the Office of the Recorder of Deeds as "in the Office of the Lieutenant Governor"); 11A V.I.C. § 9-502(b)(2) (stating that the Office of the Recorder of Deeds is

Governor or prescribed by the Revised Organic Act of the Virgin Islands" and "such duties and functions as the Legislature may from time to time prescribe,"[29] the Lieutenant Governor "shall, through the Lieutenant Governor's Office collect public sewer system user fees and property taxes and shall perform all ancillary duties as provided in . . . title 33 Virgin Islands Code, chapter 89."[30] Title 33, Chapter 89 of the Code pertains to the assessment and collection of real property taxes, not the imposition of stamp tax liability under 33 V.I.C. § 122. Nothing contained under Title 3, Chapter 3—pertaining to the duties of the Lieutenant Governor—or Title 33, Chapter 7—pertaining to stamp taxes—indicates that the Lieutenant Governor may impose stamp tax liability under 33 V.I.C. § 122. Any such contention is undercut by 33 V.I.C. § 131, which section authorizes the Commissioner of Finance—and not the Lieutenant Governor—to "prescribe such rules and regulations, not inconsistent with law, as he deems necessary for the purpose of effectuating the provisions of [Title 33, Chapter 7]."

Therefore, the determination made by the Office of the Recorder of Deeds in its June 31, 2011 letter does constitute the determination contemplated under 33 V.I.C. § 122. Title 33, Section 122 clearly states that the Commissioner of Finance, and not the Office of the Recorder of Deeds, must determine whether the "value for stamp tax purposes declared by the parties differs from the actual price paid or is substantially inconsistent with current values . . . of similar properties[.]" Because the Office of the Recorder of Deeds operates under the Office of the Lieutenant Governor and neither the Office of the Recorder of Deeds nor the Office of the Lieutenant Governor is statutorily empowered to make a determination under 33 V.I.C. § 122, the Court's failure to consider the effect of the June 31, 2011 letter in its March 21, 2013 Order denying Respondent's Motion to Dismiss does not perpetrate manifest injustice that would obligate this Court to reconsider its March 21, 2013 Order.

III. RESPONDENT'S ARGUMENT CONCERNING THE PAYMENT OF STAMP TAXES UNDER PROTEST DOES NOT CONSTITUTE A BASIS FOR RECONSIDERATION.

A motion for reconsideration is not a basis to reargue issues already raised before the Court. In its Motion to Dismiss, Respondent argued that "Section 122 requires that stamp taxes must be paid prior to filing an appeal that challenges the stamp tax determination."[31] The Court rejected this argument in its March 21, 2013 Order. The Court reasoned that "there [is] no express language by the Legislature that the determined stamp tax value must be paid before an appeal may be pursued." In declining to construe appeals taken under 33 V.I.C. § 122 in the same manner as appeals of property tax valuation taken under 33 V.I.C. § 2451, the Court observed that "§ 2451(a)

"within the Office of the Lieutenant Governor"). *See also Guardian Ins. Co. v. Ahmad*, CASE NO. ST-10-CV-238, CASE NO. ST-09-CV-233, 2013 V.I. LEXIS 10, at *5 (V.I. Super. Ct. Mar. 5, 2013) (observing that a party perfected its security interest by filing a financing statement "at the Office of the Lieutenant Governor Recorder of Deeds"); *Beachside Assocs. v. Bayside Resort, Inc.*, Case No. ST-07-CV-0000626, 2011 V.I. LEXIS 68, at *2 (V.I. Super. Ct. Nov. 25, 2011) (observing that the mortgage at issue was " recorded on April 29, 1999, in the Office of the Lieutenant Governor, Recorder of Deeds"); *H.I. Constr., LLC v. Bay Isles Assocs., LLLP*, 53 V.I. 206, 214 (V.I. Super. Ct. 2010) (observing that a construction lien must be filed "in the Office of the Lieutenant Governor, Office of the Recorder of Deeds, within ninety (90) days of the final provision of materials or services by the contractors");

[29] 3 V.I.C. § 31(b).

[30] *Id.* § 31(c).

[31] Resp.'s Mot. to Dismiss 2.

provides direction as to appealing property taxes and is not a closely related statute to § 122[.]" The Court's reasoning makes sense, as stamp taxes and property taxes are addressed under separate subtitles of Title 33. If the procedure for appealing stamp tax liability was intended to mirror the procedure for appealing property tax liability, the Legislature could have stated as such.

Here, Respondent argues that the Court's decision "overlooks the long practice of taxing authorities to require the payment of taxes prior to the filing of appeals."[32] Respondent then proceeds to elucidate for the Court the "practical effect" of the Court's ruling by explaining that such a ruling "would create extreme hardship on the government,"[33] "would [have a] negative impact on title,"[34] and would "only encourage other property owners to do the same."[35] By propounding such arguments, Respondent does nothing more than invite the Court to reconsider the same argument that it had made—or was capable of making—in its original Motion to Dismiss. Therefore, Respondent's premises does not justify reconsideration of this Court's March 21, 2013 Order.

CONCLUSION

Reconsideration of this Court's March 21, 2013 Order is not necessary to prevent manifest injustice. If the stamp on the special warranty deeds to the Properties indicates the Commissioner of Finance's determination of stamp tax liability, such liability has already been satisfied. Further, the Office of the Recorder of Deeds does not have the authority under 33 V.I.C. § 122 to determine value for stamp tax purposes. Accordingly, the Court's failure to consider the June 31, 2011 letter from the Office of the Recorder of Deeds in the Court's March 21, 2013 Order does not perpetuate manifest injustice. Finally, Respondent has already raised arguments concerning the payment of stamp taxes under protest in its Motion to Dismiss. Because the Court addressed those arguments in its March 21, 2013 Order, the Court need not reconsider the same arguments here. Therefore, Respondent's Motion for Reconsideration will be denied. An appropriate order shall follow.

Dated: November 6, 2015

Denise M. Francois
DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Estrella H. George
Acting Clerk of the Court

By: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor 11/9/2015

CERTIFIED A TRUE COPY
DATE 11/9/15
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY Kaysa Rogers-Huggins
COURT CLERK

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[32] Resp.'s Mot. for Recons. 4.
[33] *Id.*
[34] *Id.* at 5.
[35] *Id.*