

NOT FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

CLARK HUNT,

Plaintiff,

SX-15-CV-585

V.

**ACTION FOR SPECIFIC
PERFORMANCE, BREACH
OF CONTRACT, INTERPLEADER
AND BREACH OF GOOD FAITH AND
FAIR DEALING**

**BRADLEY DOWNS, THERESA DOWNS,
COLDWELL BANKER ST. CROIX REALTY,**

Defendants.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants Bradley Downs' and Teresa Downs' (hereinafter "Downs") motion for reconsideration and/or motion for relief from final order (hereinafter "Motion") filed March 29, 2016. Plaintiff Clark Hunt (hereinafter "Hunt") file an opposition on April 22, 2016. The Downs filed a reply on May 6, 2016. For the following reasons, the Court will grant the Downs' Motion.

BACKGROUND¹

On December 3, 2015, Hunt filed a Verified Complaint.² The Downs filed their Answer and Counterclaim together with a Notice of Filing in Other Division (hereinafter, "Notice") in the Division of St. Thomas and St. John on February 8, 2016. On March 9, 2016, the Downs filed a

¹ Some facts were recited in this Court's Notice of Request for Remand entered August 31, 2016.

² The case was assigned to the Honorable Judge Douglas A. Brady (hereinafter, "Hon. Judge Brady") on December 3, 2015. The Hon. Judge Brady recused from the matter on December 8, 2015.

Motion for Entry of Default and Motion to Deem Counterclaim Admitted and a Notice in the Division of St. Thomas and St. John. On the same day, Hunt filed a Motion to Dismiss Without Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1). in the Division of St. Croix. As a result of clerical error and inadvertence, this Court was not aware that the Downs had filed their substantive motions and responses. When ruling on Hunt's Motion to Dismiss, the only documents in the file at that time were Hunt's Verified Complaint and Hunt's Motion to Dismiss Without Prejudice. Because this Court was unaware that the Downs had filed responsive pleadings and substantive motions, on March 14, 2016, Hunt's Motion to Dismiss was granted and the case was closed. On March 29, 2016, the Downs filed a Motion for Reconsideration and/or Motion for Relief from Judgment. The Downs filed a Notice of Appeal to the Supreme Court of the Virgin Islands (hereinafter "Supreme Court") on August 23, 2016. On August 31, 2016, this Court requested that the matter be remanded for further action as permitted by Supreme Court Rule 5. The Supreme Court granted the request for remand on September 1, 2016. The question presented is whether to vacate the dismissal.

STANDARDS OF REVIEW

I. Motion for Reconsideration

The Supreme Court explained that "a trial judge has the discretion to reconsider an issue and should exercise that discretion whenever it appears that a previous ruling, even if unambiguous, might lead to an unjust result."³ Local Rule of Civil Procedure 7.3⁴ prescribes that

³ See *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 621-22 (2012) (citation omitted).

⁴ A thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from the Supreme Court of the Virgin Islands reveals that no other procedure governs motions for reconsideration besides the Local Rule of Civil Procedure 7.3 which is applicable to the Superior Court through Superior Court Rule 7. See *Vanterpool v. Gov't of the V.I.*, 2015 V.I. Supreme LEXIS 23, *30 (VI. 2015) (citing *Sweeney v. Ombres*, 60 V.I. 438, 442 (VI. 2014)). LRCi 7.3.

a motion for reconsideration may be filed based on: “1. intervening change in controlling law; 2. availability of new evidence; or 3. the need to correct clear error or prevent manifest injustice.”

See LRCi 7.3. In the case at bar, the Downs move for reconsideration and relief from the March 14, 2016 Order to correct clear error or prevent manifest injustice.⁵ Pursuant to Superior Court Rule 137, “clerical mistakes in judgment, orders or other parts of the record, and errors in the record arising from oversight or omission may be corrected by the court at any time after such notice, if any, as the court orders.”⁶

II. Motion for Relief from Final Order

Federal Rule of Civil Procedure 60 applicable through Superior Court Rule 50 governs relief from final judgments or orders. Rule 60(a) prescribes that after an appeal has been docketed in the appellate court and while it is pending, a mistake in an order arising from oversight or omission may only be corrected with leave of the appellate court.⁷ The court may relieve a party from an order because of a mistake, inadvertence, or any other reason that justifies relief.⁸ Although the Downs filed an appeal after their motion for reconsideration, the Supreme Court granted this Court leave to rule on the Downs’ motion for reconsideration.

DISCUSSION

The Downs argue that the March 14, 2016 Order should be vacated because they filed their Answer and Counterclaim before Hunt moved to dismiss, and because the Downs' motion for entry of default & motion to deem counterclaim admitted was pending at the time of this dismissal. Motion at 4. The Downs further argue that dismissal is improper and violated their

⁵ Motion at 3.

⁶ SUP. CT. R. 137.

⁷ *See* Fed. R. Civ. P. 60(a).

⁸ *See* Fed. R. Civ. P. 60(b)(1) and (6).

substantive rights because they did not have an opportunity to respond to Hunt's dispositive motion. Motion at 5-6.

In opposition, Hunt asserts that the Court's dismissal of the matter under Rule 41(a)(1)(A)(i) was not clearly erroneous because the voluntary dismissal was filed before the Downs served their Answer and Counterclaims. Opposition at 1-2. Hunt also asserts that the Downs' Answer and Counterclaim were untimely and were not served on Hunt's attorney. Opposition at 2. Furthermore, Hunt argues that no manifest injustice will result from the court's dismissal of the matter because the Downs have other means of maintaining their claims. Opposition at 3-4.

Federal Rule of Civil Procedure 41(a)(1) prescribes that as a matter of right, a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment or a stipulation of dismissal signed by all parties who have appeared.⁹ A voluntary dismissal under Rule 41(a)(1)(A)(i) immediately terminates the action upon filing the appropriate notice with the Clerk of the Superior Court, and neither the judge nor the plaintiff has the ability to undo the dismissal.¹⁰ The plaintiff need not even serve or otherwise notify the defendant of the filing of the notice of dismissal in order to make it effective and the court need not take any action for dismissal to be effective.¹¹ Although Hunt filed a motion to dismiss instead of a notice of dismissal, this label has no effect on the right to dismiss as a matter of right under Fed. R. Civ. P. 41(a)(1)(A)(i).¹² "The only function that a court might perform under Fed. R. Civ. P. 41(a)(1)(A)(i) is to determine

⁹ See *Island Tile & Marble, LLC*, 57 V.I. at 610-11; Fed. R. Civ. P. 41(a)(1)(i) and (ii).

¹⁰ See *id.*

¹¹ *Id.* at 610.

¹² *Id.*

whether an answer or motion for summary judgment has in fact been filed prior to the filing of a notice of dismissal.”¹³

Here, dismissal under Fed. R. Civ. P. 41(a)(1)(A)(i) was improper because the Downs filed their Answer and Counterclaim before Hunt moved for voluntary dismissal. The record reflects that the Downs filed their Answer and Counterclaim on February 8, 2016—almost a month before Hunt moved for voluntary dismissal. When ruling on Hunt’s motion to dismiss, as a result of clerical error and inadvertence, the Court was not aware that the Downs had filed their Answer and Counterclaim before Hunt’s motion to dismiss. Because the Downs filed their Answer and Counterclaim before Hunt moved for voluntary dismissal, Hunt did not have an unfettered right to dismissal under Rule 41(a)(1)(A)(i). Ergo, voluntary dismissal of the case was improper. The March 14, 2016 Order was entered erroneously and will be vacated.

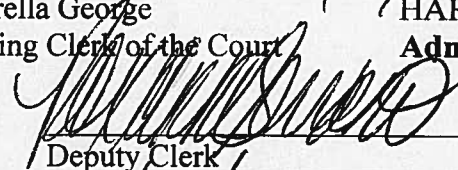
CONCLUSION

Based on the foregoing analysis, the Downs’ Motion will be granted. Dismissal of the case pursuant to Rule 41(a)(1)(A)(i) was erroneous. The March 14, 2016 Order shall be vacated and the case shall be reopened. The Court will enter an Order consistent with this Memorandum Opinion.

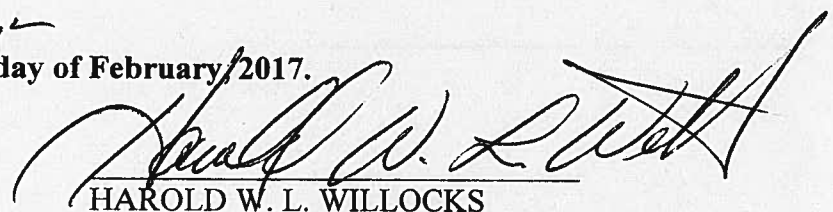
DATED this 14th day of February, 2017.

ATTEST:

Estrella George
Acting Clerk of the Court

By: 

Deputy Clerk


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

Dated: 2/14/17

¹³ *Id.*