

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

IN RE:

**ATTORNEY GENERAL SUBPOENA RE:
TERMINIX INTERNATIONAL USVI,
LLC**

SX-16-MC-059

MEMORANDUM OPINION

THIS MATTER comes before the Court on Terminix International USVI, LLC's (hereinafter, "Terminix") motion for reconsideration of the Court's August 23, 2016 memorandum opinion and order pursuant to Local Rule of Civil Procedure 7.4,¹ filed on August 30, 2016 (hereinafter, "Motion"). On September 2, 2016, the U.S. Virgin Islands Department of Justice (hereinafter, "Department of Justice") filed an opposition (hereinafter, "Opposition"). On September 7, 2016, Terminix filed a reply (hereinafter, "Reply").

BACKGROUND²

Terminix is a pest control company organized under the laws of the U.S. Virgin Islands with its principal place of business located in St. Croix, U.S. Virgin Islands. *In re AG Subpoena re Terminix Int'l USVI, LLC*, SX-16-MC-059, 2016 V.I. LEXIS 116, 1 (Super. Ct. August 23, 2016) (unpublished). Terminix began operating in the U.S. Virgin Islands on April 1, 2012. *Id.* On April 28, 2016, the U.S. Virgin Islands Attorney General's Office (hereinafter, "Attorney General") issued a subpoena duces tecum to Terminix (hereinafter, "Original Subpoena"). *Id.* The Original Subpoena, issued pursuant to Title 14,

¹ The Court believes this was an inadvertent clerical error and instead, it should read "Local Rule of Civil Procedure 7.3."

² This memorandum opinion recites the factual background only to the extent necessary to explain the present issues and the bases of the Court's decision.

Section 612(a) of the Virgin Islands Code, included a list of instructions, special instructions, definitions and documents and information to be provided. *Id.* After being served with the Original Subpoena, Terminix responded with its objections and refused to provide any documents to the Attorney General. *Id.*, 2016 V.I. LEXIS 116 at 1-2. In response, the Department of Justice filed a petition for enforcement. *Id.*, 2016 V.I. LEXIS 116 at 2. On July 16, 2016, the Court entered a memorandum opinion and order denying the Department of Justice's petition for enforcement. *Id.*

On July 19, 2016, the Attorney General issued another subpoena duces tecum to Terminix (hereinafter, "Revised Subpoena"). *Id.* The Revised Subpoena similarly included a list of instructions, special instructions, definitions and documents and information to be provided. *Id.* The Revised Subpoena stated that Terminix is "suspected to have engaged in, or be engaging in, conduct constituting a civil violation of the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 605, in connection with [Terminix's] conduct to mislead and deceive consumers by misrepresenting and concealing material facts about the dangers and illegality of applying methyl bromide, a restricted-use pesticide, in residential and other unauthorized units in the United States Virgin Islands in violation of Title 14, chapter 41, Virgin Islands Code, relating to fraud and false statements." *Id.*

In response to being served with the Revised Subpoena, on August 9, 2016, Terminix responded with its objections (hereinafter, "Objections") and filed a petition to quash subpoena or, in the alternative, to adjudicate Terminix's Objections (hereinafter, "Petition"). *Id.*, 2016 V.I. LEXIS 116 at 3. In its Objections, Terminix raised a plethora of general objections and specific objections objecting to the Revised Subpoena's instructions, definitions, and documents and information to be provided. *Id.*, 2016 V.I. LEXIS 116 at 7. In light of its Objections and Petition before the Court, Terminix did not provide any documents to the Attorney General. *Id.* On August 12, 2016, the Department of Justice filed an

opposition to Terminix's Petition (hereinafter, "August 12, 2016 Opposition"). *Id.*, 2016 V.I. LEXIS 116 at 1. On August 23, 2016, the Court entered a memorandum opinion (hereinafter, "August 23, 2016 Memorandum Opinion") and an accompanying order denying Terminix's Petition as to Terminix's request to quash the Revised Subpoena and reserved ruling as to Terminix's request to adjudicate its Objections pending the result of the parties' meet and confer. *Id.*, 2016 V.I. LEXIS 116 at 9-10. The Court stated in its August 23, 2016 Memorandum Opinion that it believed that many of the issues raised in Terminix's Objections could be eliminated if the parties made sufficient efforts to confer in good faith. *Id.*, 2016 V.I. LEXIS 116 at 9. Thus, the Court ordered the parties to meet and confer in a good faith effort to resolve as many of the discovery disputes as possible. (Order, dated August 23, 2016) The Court also further ordered the parties to file, upon meeting and conferring, a joint notice advising the Court of the remaining unresolved discovery disputes and that the joint notice should list each issue separately and state each party's position with any applicable legal authority. (*Id.*)

On August 30, 2016, Terminix filed this instant Motion requesting the Court to reconsider its August 23, 2016 Memorandum Opinion and the accompanying order pursuant to Local Rule of Civil Procedure 7.3 for clear error.

STANDARD OF REVIEW

Local Rule of Civil Procedure 7.3³ (hereinafter, "Local Rule 7.3") provides that "[a] party may file a motion asking the Court to reconsider its order or decision... based on (1) intervening change in

³ Although Terminix argued that this instant Motion is filed pursuant to Local Rule of Civil Procedure 7.3 (hereinafter, "Local Rule 7.3"), Terminix failed to provide any explanation why the rule of another court should apply to a proceeding in the Superior Court. In *Vanterpool v. Government of the Virgin Islands*, 63 V.I. 563, 576 (V.I. 2015), the Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") cautioned that "the Local Rules of the District Court should represent rules of last resort rather than first resort and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from [the Supreme] Court reveals the absence of any other [applicable] procedure."

Local Rule 7.3 provides that "[a] party may file a motion asking the Court to reconsider its order or decision... within fourteen (14) days after the entry of the order... unless the time is extended by the Court." At first glance, it appears that the appropriate standard that should govern the Superior Court's consideration of a motion for reconsideration is Superior Court

controlling law; (2) availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice.” Typically, under Local Rule 7.3, motions for reconsideration must be filed within fourteen days of the entry of the order or decision from which the party seeks relief. LRCi 7.3 (“Such motion shall be filed within fourteen (14) days after the entry of the order or decision unless the time is extended by the Court. Extensions will only be granted for good cause shown.”)

The Supreme Court of the Virgin Islands (hereinafter, “Supreme Court”) made it clear in *In re Infant Sherman*, 49 V.I. at 457, that a motion for reconsideration “is not a second bite of the apple but 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.” The Supreme Court also stated that a motion for reconsideration “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. *Id.*, 49 V.I. at 457-58; *Worldwide Flight Services*, 51 V.I. at 110 (citation omitted).

Rule 50, which provides in relevant part: “For good cause show, the court, upon application and notice to the adverse party, may set aside... judgment after trial or hearing. Rules 59 to 61, inclusive, of the Federal Rules of Civil Procedure shall govern such application.” However, in this instance, this is not a judgment after trial or hearing; the Court issued its memorandum opinion and order upon review of the parties’ briefs. Moreover, this is not an order that constitutes a final judgment. Thus, Superior Court Rule 50 is inapplicable to Terminix’s Motion. Furthermore, although the Supreme Court has previously adjudicated appeals related to Local Rule 7.3 (formerly Local Rule 7.4), the Supreme Court has yet to decisively recognize the applicability of Local Rule 7.3 in this jurisdiction post-*Vanterpool*. See e.g., *Brunn v. Dowdye*, 59 V.I. 899 (V.I. 2013) (“the Government’s motion—which sought reconsideration of a non-final judgment—could only have arisen under Local Rule of Civil Procedure 7.3”); *Worldwide Flight Services v. Gov’t of the Virgin Islands*, 51 V.I. 105 (V.I. 2009); *In re Infant Sherman*, 49 V.I. 452 (V.I. 2008). Thus, there are currently no applicable Virgin Islands statutes, Superior Court rules, or Supreme Court precedents post-*Vanterpool* that are directly on point.

Judges and attorneys in the Superior Court have relied on the provisions of Local Rule 7.3 (formerly Local Rule 7.4) in the past when dealing with motions for reconsideration of orders or decisions that do not constitute final judgments. See e.g., *Shillingford v. Virgin Islands Port Authority*, SX-97-CV-652, 2006 V.I. LEXIS 41 (Super. Ct. Sept. 8, 2006); *Cyprian v. Butcher*, SX-08-CV-515, 2010 V.I. LEXIS 30 (Super. Ct. May 17, 2010); *Bertrand v. Cordiner Enters., Inc.*, ST-08-CV-457, 2011 V.I. LEXIS 64 (Super. Ct. June 24, 2011). The Court believes it is good practice to continue applying Local Rule 7.3 to maintain consistency and avoid confusions in the Superior Court with regard to motions for reconsideration for non-final judgments. Furthermore, given that there are precedents from the Supreme Court regarding Local Rule 7.3, the Court will use the standard of review set forth in said precedents. Thus, applying Local Rule 7.3 here is not a “mechanistic and uncritical reliance” of the Local Rules of Civil Procedure.

DISCUSSION⁴

Terminix argued that it filed this instant Motion in order to have the Court “correct a clear error.” (Motion, p. 1) According to Terminix, the Court failed to address the reasonable suspicion requirement under the Criminally Influenced and Corrupt Organizations Act of the Virgin Islands (hereinafter, “CICO”) despite the fact that “[Terminix] explicitly denied that [the Department of Justice] could satisfy the ‘reasonable suspicion’ requirement of 14 V.I.C. § 162(a) and...asserted that [the Department of Justice] lacked authority to issue the Revised Subpoena.” (Id., at p. 2) Thus, Terminix requested the Court to “reconsider its August 23, 2016 Memorandum Opinion and Order and quash the [R]evised Subpoena, or in the alternative, that it adjudicate [Terminix’s] Objections thereto.” (Id., at p. 6)

In its Opposition, the Department of Justice argued that Terminix improperly raised a new argument in its Motion that could have been addressed in its initial Petition. (Opp., p. 1) More specifically, the Department of Justice pointed out that in Terminix’s Petition, Terminix only “argued that the [R]evised [S]ubpoena should be quashed because it failed to overcome the jurisdictional and notice defects under CICO.” (Id., at p. 1) Thus, the Department of Justice concluded that, “[n]ow, Terminix argues for the first time that the Attorney General fails to meet the ‘mandatory prerequisite’ of having a ‘reasonable suspicion’ of the commission of criminal activity under CICO,” which is not permitted in a motion for reconsideration. (Id., at p. 1-2) The Department of Justice also argued that “[e]ven if Terminix could argue for the first time on a motion for reconsideration that the Attorney General has no ‘reasonable suspicion’ that Terminix engaged in violations of CICO, this argument is without merit.” (Id., at p. 2) Accordingly, the Department of Justice requested the Court to deny Terminix’s Motion.

⁴ It is not in dispute that Terminix’s Motion was timely filed under Local Rule 7.3.

In its Reply, Terminix claimed that the Department of Justice “erroneously claim[ed] that [Terminix] failed to raise CICO’s ‘reasonably suspected’ requirement in its [Petition].” (Reply, p. 1) Terminix pointed out that this issue was raised in its Objections and claimed that its Petition incorporated, “at Paragraph 9, all of [Terminix’s Objections] (which were attached to the Petition).” (Id., at p. 1-2) Thus, Terminix concluded that the issue regarding the reasonable suspicion requirement under CICO was explicitly raised in its Petition. (Id., at p. 2)

1. Whether there is Clear Error⁵

Terminix’s Petition itself was short—only two pages,⁶ which included 11 numbered paragraphs with an additional paragraph for prayer for relief. A copy of the Revised Subpoena was attached as exhibit 1 to the Petition and a copy of the Objections was attached as exhibit 2 to the Petition. In its Petition, Terminix claimed that the Revised Subpoena “is nothing more than a very slightly edited version of the Subpoena originally issued to [Terminix] on April 28, 2016, with superficial edits that do not overcome the [R]evised Subpoena’s CICO jurisdictional and notice defects.” (Petition ¶ 5) Terminix did not make any arguments in its Petition as to the Attorney General’s alleged failure to comply with the reasonable suspicion requirement under CICO. In fact, Terminix acknowledged in its Motion⁷ and its Reply⁸ that it

⁵ Given that Terminix only argued that “reconsideration is necessary to correct a clear error,” the Court will not address the other bases for reconsideration under Local Rule 7.3.

⁶ The Petition had a third page that contained only the certificate of service and nothing else.

⁷ Terminix’s Motion provided in relevant part:

In its Objections to the Revised Subpoena, [Terminix] explicitly denied that [the Department of Justice] could satisfy the “reasonable suspicion” requirement of 14 V.I.C. § 612(a) and thereby asserted that Respondent lacked authority to issue the Revised Subpoena. *See* Petition to Quash, Exh. 2, Terminix International USVI Limited Liability Corporation’s Objections to Subpoena *Duces Tecum* Issued on July 19, 2016, General Objections ¶ 2. (Motion, p. 2)

⁸ Terminix’s Reply provided in relevant part:

Yet the Petition incorporates, at Paragraph 9, all of Petitioner’s Objections to the Revised Subpoena (which were attached to the Petition). In the section titled General Objections, at Paragraph 2, [Terminix] stated: “[Terminix] objects to the subpoena *duces tecum* as it violates 14 V.I.C. § 612(a) which only permits the Attorney General to issue a CICO subpoena where a ‘person is reasonably suspected to have engaged in, or to be engaging in, or about

had raised this issue—namely, the Attorney General’s alleged failure to comply with the reasonable suspicion requirement under CICO—in its Objections, which Terminix claimed to have been incorporated into its Petition via Paragraph 9. Terminix never claimed that the Petition itself addressed this issue.

First and foremost, the Court does not find Paragraph 9 of the Petition to explicitly incorporate Terminix’s Objections. Paragraph 9 of Terminix’s Petition merely stated: “Petitioner files herewith its Objections to the [R]evised Subpoena, attached hereto as Exhibit 2.” There is no language incorporating the Objections. Second, even assuming *arguendo* that the Petition incorporated the Objections, the Court finds that this issue regarding the Attorney General’s alleged failure to comply with the reasonable suspicion requirement under CICO was not properly raised in Terminix’s Petition. Paragraph 2 under the “General Objections” section of Terminix’s Objections (hereinafter, “Paragraph 2”) is simply an objection. Paragraph 2 stated: “[Terminix] objects to the subpoena *duces tecum* as it violates 14 V.I.C. § 612(a) which only permits the Attorney General to issue a CICO subpoena where a ‘person is reasonably suspected to have engaged in, or to be engaging in, or about to engage in’ criminal conduct as defined under CICO. [Terminix] has not engaged in any such conduct.” Aside from Terminix’s self-serving, conclusory sentences in Paragraph 2, Terminix failed to present any arguments or citations to any legal authority to support its assertion that the Revised Subpoena should be quashed for the Attorney General’s failure to comply with the reasonable suspicion requirement under CICO. In *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, n. 13 (V.I. 2016), the Supreme Court clearly stated that “Members of the Virgin Islands Bar... must be cognizant of their responsibility to serve as advocates for their clients, which includes making all necessary legal arguments...” Moreover, albeit it is in the context of an appeal,

to engage in’ criminal conduct as defined under CICO.” (Emphasis added). Thus, [the Department of Justice’s] failure to comply with § 612(a) was explicitly raised in the Petition...” (Reply, p. 1-2)

the Supreme Court has long established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule. *See Bernhardt v. Bernhardt*, 51 V.I. 341, 345-46 (V.I. 2009); *see also, Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 238-239 (V.I. 2013) (an appellant's brief is required to "contain the contentions of the appellant with respect to each of the issues presented, and the reasons therefor, *with citations to the authorities, statutes, and parts of the record relied on.*") (emphasis in original); *Yusuf v. Hamed*, 59 V.I. 841, 851 n. 5 (V.I. 2013) ("To preserve an objection on appeal, a party must object on the specific grounds raised on appeal, and a general objection or an objection on other grounds will not suffice.") (internal quotations and citations omitted).

Here, Terminix's conclusory sentences without the support of any legal authority was a deficient argument in its Petition not properly before the Court. Terminix noted that it had "intended to address this issue in greater detail in a reply to [the Department of Justice's August 12, 2016 Opposition], but the Court's Memorandum Opinion and Order was issued before the deadline for filing a reply ran." (Motion, p. 3) However, since this issue was not properly raised in Terminix's Petition, the Court would not have permitted Terminix to argue it in its reply because it would be unfair for the Department of Justice to be ambushed by Terminix's unbriefed and unsupported claim without the opportunity to respond.⁹ If Terminix wished to argue that the Attorney General failed to comply with the reasonable suspicion requirement under CICO, Terminix should have presented its arguments and citations to legal authority in its initial Petition, instead of raising it for the first time in its motion for reconsideration. As noted above, a motion for reconsideration is not for raising arguments that could have been raised before

⁹ When an argument is raised for the first time in a reply brief, that argument is deemed waived because the opposing party will be deprived of the opportunity to respond. *Christopher v. People*, 57 V.I. 500, 513 n.7 (V.I. 2012) ("Any argument that is raised for the first time in a reply brief is considered waived, because the [opposing party] will not have a chance to respond."); *see also Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 567-68 (V.I. 2012).

but were not.¹⁰ See, *In re Infant Sherman*, 49 V.I. at 457-58; *Worldwide Flight Services*, 51 V.I. at 110 (citation omitted). Accordingly, the Court finds that there is no clear error that needs to be corrected.

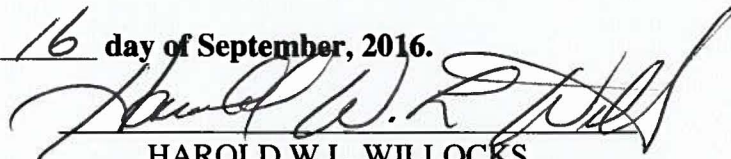
CONCLUSION

Based on the foregoing, the Court will deny Terminix's motion for reconsideration. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 16 **day of September, 2016.**

ATTEST:

Estrella H. George
Acting Clerk of the Court



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

By:



Court Clerk Supervisor

Dated:

9/20/16

¹⁰ The Court will decline to address the issue regarding the reasonable suspicion requirement under CICO since it is improperly raised for the first time in Terminix's motion for reconsideration.