

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

LESLIE A. MEYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ALFRED R. GEORGE, JR., and ALL PERSONS	)	CASE NO. ST-12-CV-394
CLAIMING AN INTEREST IN PARCEL NO. 14-A	)	
ESTATE JOHN'S FOLLY, ST. JOHN, VIRGIN	)	
ISLANDS, INCLUDING BUT NOT LIMITED TO	)	
ALL HEIRS OF C. BENJAMIN	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is *pro se* Plaintiff Leslie A. Meyers's January 2, 2014, Motion¹ requesting the Court's to reconsider its November 12, 2013, Memorandum Opinion and Order. For the following reasons, Plaintiff's Motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

On July 26, 2012, *pro se* Plaintiff filed a Complaint seeking to quiet title to the property located at Parcel No. 14-A Estate John's Folly, Coral Bay Quarter, St. John, U.S. Virgin Islands under a claim of adverse possession. The Defendants having failed to move, answer, or otherwise respond to the Complaint, the Clerk of the Court entered default on February 12, 2013, against Alfred George, Jr., and all persons claiming an interest in Parcel No. 14-A Estate John's Folly, Coral Bay Quarter, including but not limited to all heirs of C. Benjamin. Following a default judgment hearing held on June 6, 2013, the Court entered a default judgment in favor of the Plaintiff and quieted title to the

¹ Defendant Monica George-Fields has not replied to Plaintiff's Motion.

property in Plaintiff against all Defendants. However, Defendant Monica George-Fields filed a Motion to Set Aside Default Judgment on August 6, 2013, which the Court granted on November 12, 2013.

STANDARD

Plaintiff does not propose any standard under which the Motion should be considered. However, considering *pro se* pleadings should be liberally construed,² the “function [and purpose] of the motion” dictates which rule should apply,³ and Plaintiff is requesting the Court to vacate its November 12, 2013, Order, the Court will consider Plaintiff’s Motion as a motion for reconsideration.

The November 12, 2013, Order vacated the Court’s June 6, 2013, entry of default judgment in favor of Plaintiff, and is an interlocutory order. As a result, the Court applies Loc. R. Civ. P. 7.3, made applicable by Super. Ct. R. 7, that provides:

A party may file a motion asking the Court to reconsider its order or decision. 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. A motion to reconsider shall be 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.

“A motion for reconsideration is not to be used as a means to argue matters already argued and disposed of, nor is it an opportunity to request that the Court simply rethink a decision it has already made.”⁴

² See *Boyd-Richards v. de Jongh*, 2012 WL 13682 (D.V.I. Jan. 4, 2012).

³ *Lucan Corp., Inc. v. Robert L. Merwin & Co., Inc.*, 2008 WL 901492, *2 (V.I. 2008).

⁴ *Valerino v. Holder*, 2011 WL 3918085, *1 (D.V.I. Sept. 6, 2011)(internal citations and quotations omitted).

ANALYSIS

The Court shall deny Plaintiff's Motion for Reconsideration on several grounds. First, Plaintiff did not file his Motion for Reconsideration until January 2, 2014, well after the expiration of the (14) day period and has further failed to show good cause for his failure to timely file.⁵ Despite Plaintiff's *pro se* status, Plaintiff is bound by the rules and procedures that govern the practice before this Court.

Second, even assuming *arguendo* that Plaintiff timely filed, Plaintiff does not articulate any adequate basis for relief under Loc. R. Civ. P. 7.3. For instance, Plaintiff appears to argue that Defendant Monica George-Fields lacks standing, but Plaintiff concedes that Defendant Monica George-Fields is a lawful heir of Alfred George, Jr., now deceased, who claimed an interest in Parcel No. 14-A Estate John's Folly. The Court previously found in its November 12, 2013, Memorandum Opinion that Defendant Monica George-Fields has standing based on these facts, and Plaintiff has provided no new facts or other "newly discovered evidence" to refute this finding.⁶ Insofar as Plaintiff appears to argue that the statutory period for adverse possession ran while Alfred George, Jr., was still alive, Plaintiff appears to be asserting a defense, rather than challenging Defendant Monica George-Fields' standing. At this stage of litigation, a defense that goes to the factual merits of Plaintiff's adverse possession claim is not properly before the Court.

⁵ While the Memorandum Opinion and Order were signed on November 12, 2013, the Order was entered on November 14, 2013.

⁶ *Natural Res. Def. Council, Inc. v. Jamison*, 787 F. Supp. 231, 236 (D.D.C. 1990) ("[When determining standing] the focus is [usually] on plaintiff, not on the claim, and rarely on the defendant—in the latter instance, inquiry implicates questions related to whether the defendant has a sufficient interest to present a justiciable controversy with the plaintiff.").

Plaintiff also argues that Defendant Monica George-Fields did not timely file her Motion to Set Aside Default Judgment. However, Fed. R. Civ. P. 60 clearly provides that “[a] motion under Rule 60(b) must be made within a reasonable time” While the Court entered default on February 12, 2013, it did not enter default judgment until after the June 6, 2013, hearing. Plaintiff filed her Motion to Set Aside Default Judgment on August 6, 2013, a mere two (2) months after the entry of default judgment, a “reasonable time” under the circumstances of the case. Additionally, Plaintiff did not timely challenge the procedural timing of Defendant’s Motion to Set Aside Default Judgment because he did not raise it in his Response.

Plaintiff further argues that “the doctrine of claim preclusion bars Monica George-Fields’ Motion to Vacate Default Judgment.” The doctrine of *res judicata*, the overarching doctrine encompassing claim preclusion, applies when “an ‘adjudication upon the merits’ acts as a bar to a subsequent action between the parties on the same claim.”⁷ Here, Plaintiff has asserted no facts that demonstrate that this matter was adjudicated on the merits prior to the June 6, 2013, hearing.

Otherwise, Plaintiff’s Motion largely attempts to challenge many of Defendant Monica George-Fields’ factual assertions in support of her Motion to Set Aside Default Judgment. However, none of Plaintiff’s factual assertions constitute “newly discovered evidence” pursuant to Loc. R. Civ. P. 7.3 because they were either (1) previously

⁷ *George v. Martin*, 2001 WL 1568480 (Terr. V.I. Oct. 29, 2001).

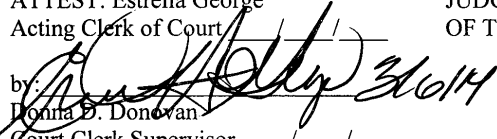
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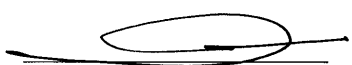
considered by this Court when deciding Defendant's Motion to Set Aside Default Judgment or (2) "could have been raised before but were not."⁸

For the foregoing reasons, Plaintiff's January 2, 2014, Motion is denied. An Order consistent with this Memorandum Opinion shall issue.

Dated: March 5, 2014

ATTEST: Estrella George
Acting Clerk of Court

by:  3/6/14
Donna D. Donovan
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

⁸ *Bostic v. AT&T of the Virgin Islands*, 312 F. Supp. 2d 731, 733 (D.V.I. 2004)(noting that a motion for reconsideration is not a substitute for an appeal).