

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

GEORGE E. HENDRICKSON,

Plaintiff,

vs.

**LEONA I. HENDRICKSON a/k/a
LEONE ISIDRA JOSEPH,**

Defendant.

FAMILY NO. ST-14-DI-067

ACTION FOR DIVORCE

MEMORANDUM OPINION

This matter is before the Court on the Plaintiff's Motion for Reconsideration, filed on December 17, 2015. In his motion, the Plaintiff requests that this Court reconsider its disposition of Taxi Medallion No. 0487 (Taxi Medallion) and its award of attorney's fees to the Defendant in the December 10, 2015 Memorandum Opinion and Order ("Memorandum Opinion"). On December 14, 2015, Defendant filed an Attorney's Fee Affirmation pursuant to the "Memorandum Opinion." On December 27, 2015, Defendant filed an opposition to Plaintiff's motion for reconsideration and on January 11, 2016, Plaintiff filed a reply. This matter came on for a hearing on the Motion for Reconsideration on March 2, 2016, during which the Court afforded counsel time for oral argument.¹

As discussed below, Plaintiff's Motion for Reconsideration will be **granted in part**. A show cause hearing will be set for the Plaintiff to show why he should not be held in contempt of court for filing an untimely fourth motion for extension of time. However, the disposition of the Taxi Medallion will not change because reconsideration is not necessary to prevent manifest injustice, and because Plaintiff is attempting to use his Motion for Reconsideration as a means to argue facts that were not substantiated in his response to Defendant's motion for partial summary judgment.

¹ On March 2, 2016, this Court ordered Plaintiff to deposit Taxi Medallion No. 0487 with the Family Division of the Superior Court by no later than March 3, 2016 pending the disposition of this matter. Upon Plaintiff's refusal, the matter came on for a show cause hearing and Plaintiff was found in contempt of court. Plaintiff was then remanded to the Bureau of Corrections until he complied. Plaintiff was subsequently released from the Bureau of Corrections, but he has not turned over the Taxi Medallion.

ANALYSIS

The Supreme Court of the Virgin Islands has cautioned this Court that the Federal Rules of Civil Procedure and Local Rules of Civil Procedure are rules of last resort, and should only be relied upon in the absence of a Superior Court Rule governing the subject matter at issue.² Since there is no Superior Court Rule governing motions practice, generally, Superior Court Rule 7 permits this Court to invoke Federal Rule of Civil Procedure 7, and by extension, Local Rule of Civil Procedure 7.3. Pursuant to Rule 7 of the Federal Rules of Civil Procedure, a request for a court order must be made by motion.³ Pursuant to LRCi 7.3, “[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.”

I. TAXI MEDALLION

Plaintiff asks the Court to reconsider its disposition of Taxi Medallion No. 0487, based on clear error and manifest injustice. Plaintiff argues that the Court does not have jurisdiction over the Taxi Medallion and therefore is not able to declare that Defendant is the rightful owner.

Plaintiff first points to the fact that in the “Memorandum Opinion”, the Court cited an outdated section of the Virgin Islands Code, Title 16 V.I.C. § 109(4), as the source of its jurisdiction. It is true that the Court made a typographical error and should have cited Section 109(a)(4), but this error does not affect the analysis. Pursuant to Section 109(a)(4), “[w]hen a marriage is declared void or dissolved the court may, without regard to any determination that the breakdown of the marriage was the fault of one party or the other, further decree: for the delivery to the wife of her personal property in the possession or control of the husband at the

² *Vanterpool v. Gov’t of the V.I.*, 2015 V.I. LEXIS 23, *16 (2015); see *Sweeney v. Ombres*, 60 V.I. 438, 442 (2014).

³ Fed. R. Civ. P. 7(b)(1).

time of giving the judgment.”⁴ The plain language of the statute provides this Court with jurisdiction over Defendant’s personal property that is currently in the possession or control of her husband.

In the “Memorandum Opinion,” this Court found that Defendant purchased the Taxi Medallion before the parties were married, that the ownership has not transferred to Plaintiff and that she is not in possession of the Taxi Medallion. In the Decree of Divorce, this Court correctly Ordered Plaintiff to immediately return Taxi Medallion No. 0487 to the Defendant.

Plaintiff next argues that the case law analyzing Title 16 V.I.C. § 109(a)(4), prohibits the outcome reached by the Court.⁵ The Court disagrees. Plaintiff cites the clause in *Garcia* that says, “the Family Division of the Superior Court has subject matter jurisdiction over the marital homestead and personal property of the couple, but not over any other real property.”⁶ The Plaintiff focuses on the words “property of the couple” to argue that this Court does not have jurisdiction over the wife’s separate property. However, this assertion is in clear conflict with Section 109(a)(4), which provides this Court with jurisdiction to deliver to the wife her personal property in the possession or control of the husband at the time of the divorce. Clearly the intent of the Supreme Court was not to contradict the statute. The distinction the Supreme Court made in *Garcia* was to clarify that the Superior Court did not have jurisdiction over real property in the Virgin Islands that was not the marital homestead.⁷ Similarly in *Dyndul*, the Third Circuit grappled with the lack of statutory authority of the Superior Court to “distribute real property other than the homestead.”⁸ This Court is not persuaded that the case law prohibits it from returning the wife’s separate personal property to her as provided by Section 109(a)(4).

⁴ This authority must necessarily be interpreted to infer that the Court may also order the delivery to the husband of those items of his personal property which are in the possession or control of the wife, thereby avoiding the constitutional issue of equal protection ...” *Morris v. Morris*, 20 V.I. 249 (Terr. Ct. 1984).

⁵ Plaintiff’s Motion for Reconsideration at 2.

⁶ *Garcia v. Garcia*, 59 V.I. 758, 761 (V.I. 2013).

⁷ On December 19, 2014, the Legislature enacted Act No. 7702 amending Title 16 V.I.C. § 109. The legislation added Subsection (7) to provide “for the award to the parties [in a divorce] of all marital property, in accordance with principles of equitable distribution.” Title 16 V.I.C. § 109 (7).

⁸ *Dyndul v. Dyndul*, 541 F.2d 132, 133 (3rd Cir. 1976).

Plaintiff also argues that “[a]t the very least, the Court should have declined to exercise jurisdiction over distribution of Taxi Medallion 0487, in favor of allowing the parties to seek equitable relief in the Civil Division.”⁹ The Plaintiff offers *Dyndul* as persuasive authority, which in dicta finds that “where one spouse has a particular equitable interest in property, e.g., where property was purchased by one spouse in the name of the other or where one spouse has made a material contribution to the other’s acquisition of property, a separate equity action **may** be maintained to realize that interest.”¹⁰ *Dyndul* does not control this case because it is persuasive authority. Also, in *Dyndul*, the Court uses the sentence above in context to explain that its “ruling does not leave the courts and parties without means to effect a distribution of property.”¹¹ This Court has a means to effect a distribution of the Taxi Medallion through Section 109(a)(4).

This Court has already taken into consideration all of the pleadings in this case and effected an equitable distribution of the Taxi Medallion after a complete analysis of the Defendant’s motion for summary judgment and the Plaintiff’s response thereto. It appears that Plaintiff may be dissatisfied with the Court’s decision, but that does not mean that he gets a second bite of the apple. 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.¹²

The Plaintiff is not entitled to use his motion for reconsideration as a channel to force Defendant to reargue matters already addressed by this Court.

Plaintiff argues that this “Court completely ignores the genuine issue of material fact concerning why the title [of the Taxi Medallion] may appear in Joseph’s name, and the genuine issue of material fact

⁹ Plaintiff’s Motion for Reconsideration at 4.

¹⁰ *Dyndul v. Dyndul*, 541 F.2d 132, 135 (3rd Cir. 1976) (emphasis added).

¹¹ *Dyndul v. Dyndul*, 541 F.2d 132, 134 (3rd Cir. 1976)

¹² *SBP Int’l Plaza, LLC v. Potter*, 2015 LEXIS 134, 5 (V.I. Super. Ct. Nov. 6, 2015) (citing *Bostic v. AT&T*, 45 V.I. 553, 557 (D.V.I. 2004)).

concerning why Hendrickson is the true owner of Taxi Medallion 0487.”¹³ Plaintiff also argues that this Court “ignores the disputed material facts concerning Hendrickson being the beneficial owner of the Taxi Medallion” and “erroneously concludes that title is dispositive of ownership.”¹⁴ In its “Memorandum Opinion,” this Court did a complete analysis and gave the appropriate weight to all of the facts and issues raised in the record. Plaintiff did not provide sufficient evidence to explain why he was the true owner, or beneficial owner, of the Taxi Medallion. As stated in the “Memorandum Opinion,”

The Complaint includes a general assertion that the taxi medallion is “personal property owned by parties in the Virgin Islands that the parties may divide.” In his response to the motion for partial summary judgment, Mr. Hendrickson argues that he paid for the taxi medallion and made all of the registration payments. Mr. Hendrickson also argues that he is the beneficial owner of the taxi medallion because he has consistently used it for his livelihood ever since it was acquired over thirty-five (35) years ago.

Based on the evidence provided by both parties, the Court concluded that after viewing the facts in the light most favorable to Plaintiff, there is no genuine issue of material fact of whether the Taxi Medallion is solely owned by Defendant because it is undisputed that the title of the Taxi Medallion is in Defendant’s name only, it was acquired in her name only before the parties married and it has remained in her name only.

Plaintiff argues that the Court erroneously concludes that title is dispositive of ownership. Plaintiff cites *Morris*, where the Court awarded each spouse a fifty percent (50%) interest in the marital homestead, despite the fact that it was initially purchased in the name of the defendant only.¹⁵ In *Morris*, both parties testified that they “considered the land to be jointly owned despite the fact that it was initially purchased in the name of the defendant only.”¹⁶ This Court also notes that in *Morris*, the Court awarded the defendant a dressing table, a sitting chair, a safari bus and two taxi medallions, which were owned solely by him as personal property.¹⁷ In this case, the Court took into consideration all of the evidence provided by the parties

¹³ Plaintiff’s Motion for Reconsideration at 4.

¹⁴ Plaintiff’s Motion for Reconsideration at 8.

¹⁵ *Morris v. Morris*, 20 V.I. 249, 252 (Terr. Ct. 1984).

¹⁶ *Morris v. Morris*, 20 V.I. 249, 252 (Terr. Ct. 1984).

¹⁷ See *Morris v. Morris*, 20 V.I. 249, 254 (Terr. Ct. 1984).

before concluding that there was no genuine issue as to any material fact that the Taxi Medallion is Defendant's separate personal property that she obtained prior to the marriage.

II. ATTORNEYS FEES AND COSTS

Plaintiff requests for the Court to reconsider its order for Plaintiff to pay reasonable attorney's fees and costs incurred by Defendant for filing her motion to deem conceded and response to Plaintiff's fourth motion for extension of time. Plaintiff argues that reconsideration is needed because the order to pay attorney's fees constitutes clear error and manifest injustice. Plaintiff makes two arguments: (1) the imposition of sanctions violates the Due Process Clause; and (2) "the Court does not specify any Rule or provision of the Virgin Islands Code or even if it is operating pursuant to its inherent powers to sanction Hendrickson."¹⁸

A. THE IMPOSITION OF SANCTIONS REQUIRES A DUE PROCESS HEARING.

There is no question that Plaintiff's untimely motion constituted grounds for monetary sanctions. Pursuant to LRCi 7.1(a), "[o]nly a motion, a response in opposition, and a reply may be served on counsel and filed with the Court; further response or reply may be made only by leave of Court obtained before filing," and the Court may sanction counsel for violation of this limitation. "This Court has previously warned litigants that they must strictly adhere to the rules that govern the practice and procedure before this Court. This Court will not tolerate...flagrant disregard of the rules, and a continued failure to abide by the rules may be a basis for sanctions."¹⁹ The Court frowns on successive filings for motions for summary judgments "because parties are expected to succinctly address their arguments in three pleadings – a motion, a response and a reply – or less."²⁰ "[O]ur rules allow a motion, a response in opposition and a reply, period."²¹

Plaintiff argues that he is entitled to notice and a hearing and that "without knowing the legal basis upon which the Court has imposed sanctions against Hendrickson, Hendrickson cannot adequately mount his

¹⁸ Plaintiff's Motion for Reconsideration at 7.

¹⁹ *Nature Conservancy, Inc. v. Louisenhoj Holdings, LLC*, 2014 V.I. LEXIS 42, *13. (internal quotations omitted).

²⁰ *Nature Conservancy, Inc. v. Louisenhoj Holdings, LLC*, 2014 V.I. LEXIS 42, *13-14.

²¹ *Nature Conservancy, Inc. v. Louisenhoj Holdings, LLC*, 2014 V.I. LEXIS 42, *16.

defense.”²² Despite the ability of the Court to sanction Plaintiff through compensatory fines, due process is required. “Due process disfavors mandatory sanctions and instead requires notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions.”²³ “The Third Circuit has stated that application of Rule 7.1(a) sanctions involves the “exercise of discretion.”²⁴ “The imposition of monetary sanctions by a court implicates fundamental notions of due process.”²⁵ “Although the precise contours of the process that is due varies given the particular context, the fundamental requirements of due process – notice and an opportunity to respond – must be afforded before any sanction is imposed.”²⁶

In this case, Plaintiff made four consecutive requests of the Court for an enlargement of time in which to file his opposition to Defendant’s motion for partial summary judgment. Plaintiff’s fourth request to enlarge the time was filed over two (2) months after the deadline had expired and the Court had not previously granted or ordered the period of time for Plaintiff to respond to be enlarged.²⁷ In the “Memorandum Opinion,” this Court explained the steps that it took to determine which sanction, if any, would be the most appropriate.

This Court analyzed Rule 10(a)(2) of the Rules of the Superior Court, which provides the Court to permit an act to be done after the expiration of the specified period of time if the failure to act was the result of excusable neglect and found that Plaintiff had not met the standard for excusable neglect. Due to the dispositive nature of the Defendant’s motion for partial summary judgment, if this Court denied Plaintiff’s fourth motion for an enlargement of time and disregarded his untimely response to Defendant’s motion for

²² Plaintiff’s Motion for Reconsideration at 7.

²³ *Nature Conservancy, Inc., LLC*, 2014 V.I. LEXIS 42 at *3 n.1. (citing *In re Tutu Wells contamination Litigation*, 37 V.I. 398, 418 (3rd Cir. 1997) (internal quotations omitted)).

²⁴ *Nature Conservancy, Inc. v. Louisenhoj Holdings, LLC*, 2014 V.I. LEXIS 42, *3 n.1. (V.I. Super. Ct. July 8, 2014) (citing *Greene v. Virgin Islands Water & Power Auth.*, 557 Fed. Appx. 189, 200 (3rd Cir. 2014) (on appeal from D.V.I.). “The Virgin Islands Supreme Court has yet to issue a binding authority regarding the application of LRCi 7.1(a) by the Superior Court and the Superior Court is bound, absent a contrary instruction from the Virgin Islands Supreme Court, to continue to apply the Third Circuit’s interpretation of local law.” *Nature Conservancy, Inc., LLC*, 2014 V.I. LEXIS 42 at *3 n.1. (citing *Garcia v. Garcia*, 59 V.I. 758, 773 (V.I. 2013)) (internal quotations omitted).

²⁵ *In re Tutu Wells Contamination Litig.*, 37 V.I. 398, 418 (3rd Cir. 1997).

²⁶ *In re Tutu Wells Contamination Litig.*, 37 V.I. 398, 418 (3rd Cir. 1997); see *Nature Conservancy, Inc. v. Louisenhoj Holdings, LLC*, 2014 V.I. LEXIS 42, *3 n.1.

²⁷ “Memorandum Opinion” at 4.

partial summary judgment as a sanction for Plaintiff's tardiness, the result would have amounted to a partial default judgment in favor of Defendant based solely upon her "uncontested" motion. The Court then completed a *Poullis* factor analysis to determine the validity of a dismissal as a sanction, and found that in the interest of fairness this Court would consider Plaintiff's late response.²⁸ This Court found that granting Plaintiff's fourth motion for an extension of time and instead ordering that Plaintiff pay reasonable attorney's fees and costs would be the least severe action adequate to address the untimely motion.

At that point, Plaintiff correctly argues that before awarding the Defendant attorney's fees to compensate for the Plaintiff's untimely motion, that this Court should have provided him with notice and an opportunity to be heard.²⁹ Therefore, even though the Court had the ability to not consider the Plaintiff's response, which would have resulted in an involuntary dismissal of this action, due process still required the Court to afford the Plaintiff with notice and an opportunity to be heard before imposing nominal sanctions to compensate the Defendant for her attorney's fees and costs necessary to respond to the Plaintiff's tardy filing.

B. THE COURT HAS POWER TO SANCTION THE PLAINTIFF.

"It is clear that the Superior Court has both statutory and inherent power to compel obedience to its orders by way of contempt."³⁰ "Sanctions against an attorney could include, but are not limited to: criminal and/or civil contempt; summary contempt sanctions; and the striking of pleadings."³¹ "If the Court finds that it is appropriate to sanction counsel, it is entitled to rely on its inherent authority to fashion an appropriate sanction and impose the least severe action adequate to address the violation."³² Trial courts "must take the least severe action to address a discovery violation."³³ "A fine, a period of incarceration, or some combination

²⁸ See *Construction Technicians v. Zurich American Insurance Co.*, 61 V.I. 153, 160(2014)

²⁹ See Motion for Reconsideration at 7.

³⁰ *In re Rogers*, 56 V.I. 325, 334 (V.I. 2012).

³¹ *Nature Conservatory, Inc., LLC*, 2014 V.I. LEXIS 42 at *1.

³² *Nature Conservatory, Inc., LLC*, 2014 V.I. LEXIS 42 at 8 (internal citations omitted).

³³ *People of the Virgin Islands v. Rodriguez*, 2010 V.I. Supreme LEXIS 15, *16 (V.I. 2010).

of both, represent permissible sanctions for civil contempt..."³⁴ "Criminal sanctions include a fine or incarceration."³⁵

While the Court did not expressly state in the "Memorandum Opinion" what power it utilized to sanction the Plaintiff, the Court had the statutory and inherent authority to impose sanctions for a LRCi 7.1(a) violation as discussed above. Moreover, the Court finds payment of defendant's reasonable attorney's fees to be a fairly minimal sanction, especially considering that the alternative resolution of the late filing would have resulted in dismissal of the action.

An Order of even date follows consistent with this Memorandum Opinion.

DATED: August 30, 2016


DEBRA S. WATLINGTON
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA GEORGE

Acting Clerk of the Court

By:


BRENDA MONSANTO

Court Clerk Supervisor, 8/31/16

³⁴ *Walters v. Walters*, 56 V.I. 471, 479 (V.I. 2012).

³⁵ *Nature Conservatory, Inc., LLC*, 2014 V.I. LEXIS 42 at *6 n.4.