IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

GUARDIAN INSURANCE COMPANY,	)	
Plaintiff,	)	**CASE NO. ST-08-CV-494**
v.	)	
HANI KHALIL,	)	
Defendant.	)	

MEMORANDUM OPINION

Defendant Hani Khalil filed a Motion to Set Aside Judgment on November 12, 2013, seeking to set aside two April 03, 2013, Orders[1] of the Hon. James S. Carroll, III, on the grounds of excusable neglect and the Virgin Islands Supreme Court's holding in *Joseph v. Inter-Ocean Insurance*.[2] Plaintiff opposes the motion, arguing that it is "improperly utilize[d]… as a mechanism to challenge the Superior Court's July [26], 2012, order… and the Supreme Court's subsequent dismissal of each of Defendant's appeals arising from that order".[3] The Court finds that the Defendant's motion is both untimely and lacks the necessary basis for relief. Therefore, the Motion to Set Aside Judgment is denied.

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[1] The Orders were signed by the Superior Court Judge on April 02, 2013, but were entered on, and are referred to here for clarity, as the April 03, 2013, Orders.

[2] S. Ct. Civ. No. 2011-0111, 2013 WL 5397407 (V.I. Sept. 25, 2013).

[3] Plaintiff's December 20, 2013, Opposition to Defendant's Motion to Set Aside Judgment, p. 1.

FACTUAL AND PROCEDURAL HISTORY[4]

A. October 21, 2008, Complaint

On March 20, 2002, Defendant Hani Khalil entered into a contract with Plaintiff Guardian Insurance Company, Inc., whereby Plaintiff agreed to provide Defendant with liability insurance on his 1996 Mercedes Benz for the term of 1 year, to expire on March 20, 2003. Per the policy, coverage would only be extended to specifically identified underage[5] drivers and required payment of an extra premium. Khalil did not list Khalid Rahahleh as an underage driver, nor did he pay an additional premium.

On October 24, 2002, Defendant allowed Rahahleh, then aged twenty-two, to operate the insured vehicle on St. Croix. Rahahleh was involved in a motor vehicle accident with Lizette Santos, whose minor son was a passenger in Santos' vehicle at the time of the collision. Santos' was also insured by Guardian. Santos submitted a claim to Guardian against Khalil for damages and bodily injury on November 14, 2002. Khalil and Rahahleh provided statements to Guardian on December 18, 2002, indicating that Khalil gave Rahahleh permission to drive the vehicle that was involved in the October 24, 2002, accident.

On January 29, 2003, and March 27, 2003, Guardian made payments to Santos totaling $7,636.50 for property damage to her vehicle, and in exchange, Santos released Khalil and Guardian from further claims for property damage. Guardian sought reimbursement of the money paid to Santos by letter dated July 18, 2003.

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[4] Undisputed facts were pulled from: Plaintiff's October 27, 2009, Statement of Undisputed Material Facts; Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment, "Facts"; Plaintiff's Statement of Additional Undisputed Material Facts, dated April 16, 2010; Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), "Facts of Defendant Hani Khalil" and "Facts of Guardian Insurance"; and any related exhibits. Defendant's March 08, 2010, Motion for Summary Judgment did not include a separate statement of material facts as required by Local Rule 56.1.

[5] Defined in the policy, and thus used throughout this Opinion, to mean "any person who has not attained the age of Twenty Six (26) years".

On April 01, 2003, Santos filed a civil action on behalf of herself and her son against both Khalil and Rahahleh[6] seeking damages for bodily injury. Plaintiff settled the civil matter on September 29, 2005, for $10,000.00 and obtained a release the same day from Santos on behalf of herself and the minor against further liability of Khalil and Rahahleh. Guardian incurred $15,604.12 in defense fees[7] and sought reimbursement of its defense expenses and settlement award amounts from the Defendant, which Khalil refused to pay.

Plaintiff filed this action for damages, breach, indemnity and declaratory judgment on October 21, 2008. On December 15, 2008, Defendant filed an answer and counterclaim, alleging breach of contract, breach of fiduciary duty, bad faith, civil conspiracy, emotional distress and damages. Plaintiff moved for summary judgment on Defendant's Counterclaims on October 27, 2009. Defendant filed an opposition on February 09, 2009, and on March 08, 2010, Khalil filed a motion for summary judgment on the Complaint. On March 19, 2010, Guardian filed its own motion for summary judgment on the Complaint.

On July 26, 2012, the Superior Court denied Plaintiff's motions for summary judgment with respect to its claim for breach of contract; granted summary judgment on Plaintiff's claims for indemnification and declaratory judgment; and denied Defendant's motion for summary judgment on the Complaint as moot.

By April 03, 2013, Order, the Court granted to Plaintiff an award of prejudgment interest and attorneys' fees and amended the summary judgment award.

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[6] *Sobers v. Khalil*, ST-03-CV-376.
[7] $8,104.12, legal fees; $7,500.00, guardian *ad litem* fees.

B. Defendant's August 09, 2012, Appeal and December 19, 2012, Petition for Writ of Certiorari

Defendant/Appellant Hani Khalil filed an appeal with the Supreme Court of the Virgin Islands on August 09, 2012, seeking review of the Superior Court Orders dated July 26, 2012. On October 10, 2012, Plaintiff/Appellee Guardian Insurance filed a Motion to Dismiss, asserting that Defendant failed to comply with the Supreme Court's August 24, 2012, Order to file Defendant's brief and joint appendix on or before October 03, 2012. The Supreme Court granted the Motion to Dismiss on October 11, 2012.

Defendant filed a Motion for Reconsideration of the Order of Dismissal on October 24, 2012, on the grounds that Defendant's original counsel had been in the process of seeking appellate counsel and original counsel's employee had overlooked the scheduling order. In denying Defendant's motion on October 29, 2012, the Supreme Court held that Defendant's asserted basis for reconsideration did not constitute the good cause necessary to set aside the October 11, 2012, dismissal and that the Order constituted the Mandate of the Court.

On or about December 19, 2012, Defendant filed a Petition for Writ of Certiorari in the United States Court of Appeals for the Third Circuit, presenting the question of "[w]hether the Supreme Court abused its discretion by dismissing Petitioner's appeal for lack of prosecution simply because Petitioner had failed to file his initial brief by the due date." Defendant filed a Motion to Stay Mandate pending the writ of certiorari on December 28, 2012, and the Supreme Court denied the motion to stay as moot on January 02, 2013, ruling that the mandate was issued on November 13, 2012, and, even if Defendant's motion was construed as a request for recall of the mandate, "it is not clear to [the Supreme Court] how a stay of mandate would provide any practical relief to the Appellant, given that the underlying Superior Court order granted summary judgment to the Appellee".

Defendant's petition for certiorari was denied by the Third Circuit on March 14, 2013, because "[p]rodecural rulings do not generally qualify for a grant of certiorari," and "the Supreme Court of the Virgin Islands' actions... have not so far departed for the accepted and usual course of judicial proceedings" to call for review.

C. Defendant's November 28, 2012, Appeal

Defendant filed a second appeal with the Supreme Court on November 28, 2012, seeking review of the Superior Court's order dated September 10, 2012, which granted Plaintiff/Appellee Guardian Insurance's motion for attorney's fees and costs.

On December 12, 2012, the Supreme Court issued an order requiring the Defendant to file a brief addressing the issue of whether the second appeal should be dismissed as untimely. On the same day, Plaintiff filed a Motion to Dismiss Appeal arguing that the Notice of Appeal was filed more than 30 days after the September 10, 2012, Superior Court Order. Defendant responded to the Order to Show Cause on December 27, 2012, stating that he "filed his notice of appeal on the same day that he received a copy of the lower court's decision."

The Supreme Court dismissed the second appeal on January 02, 2013; found that Defendant "cited no legal authority... for the proposition that this Court can simply ignore the timeliness requirement;" and declined to "convert the untimely notice of appeal to a writ of mandamus... since Appellant cannot claim the lack of other means of relief".

D. Defendant's April 11, 2013, Appeal

On April 11, 2013, Defendant filed a third appeal with the Supreme Court, seeking review of the Superior Court's April 03, 2013, Orders, and Defendant amended the appeal on May 07, 2013. On July 05, 2013, Defendant filed an amended brief asking whether the Superior Court erred in granting Plaintiff's Motion for Summary Judgment: (1) without "properly" considering Defendant's Motion for Summary Judgment; (2) "in light of the clear, unambiguous language of the insurance policy"; and (3) by failing to act in accordance with sound public policy by misapplying Title 20 V.I.C. § 703.

On October 07, 2013, the Supreme Court affirmed the Superior Court's April 03, 2013, Orders on the grounds that "Khalil has used this appeal solely as a mechanism to appeal the Superior Court's July 30, 2012, Opinion granting Guardian's motion for summary judgment".

E. Defendant's November 12, 2013, Motion to Set Aside Judgment

Defendant filed a Motion to Set Aside Judgment with this Court on November 12, 2013, alleging that the April 03, 2013, Orders should be vacated on the grounds of excusable neglect and in light of *Joseph*. Plaintiff responded on December 20, 2013, arguing that Defendant's latest motion is just another attempt to challenge the July 26, 2012, Order that granted in part and denied in part the Plaintiff's Motion for Summary Judgment on Defendant's Counterclaims.

STANDARD OF REVIEW – MOTION TO SET ASIDE JUDGMENT PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 60(b)

Under Rule 60(b) of the Federal Rules of Civil Procedure, on motion the Court may relieve a party from a final judgment for:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

"The general purpose of Rule 60(b) is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done."[8] However, the motion must be made within a reasonable time, and "for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding."[9] Because Rule 60 "provides for extraordinary relief," it "may only be invoked upon a showing of exceptional circumstances."[10]

CAMIRA JOSEPH v. INTER-OCEAN INSURANCE AGENCY, INC.

On September 25, 2013, the Supreme Court of the Virgin Islands held in *Joseph v. Inter-Ocean Insurance* that the Virgin Islands Compulsory Liability Insurance Act, codified in 20 V.I.C. § 701 et seq., supersedes and invalidates insurance endorsements excluding underage drivers from coverage under the automobile policy. The Supreme Court stated that the 2002

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[8] *Chavayez v. Buhler*, S. Ct. Civ. No. 2007–060, 2009 WL 1810914, at *9 (V.I. June 25, 2009) (quoting *Coltec Indus. v. Hobgood*, 280 F.3d 262, 271 (3d Cir.2002).
[9] FED. R. CIV. P. 60(c)(1).
[10] *Chavayez*, 2009 WL 1810914, at *6 (quoting *John E. Smith's Sons Co. v. Lattimer Foundry & Mach. Co.*, 239 F.2d 815, 817 (3d Cir.1956)).

policy at issue "must… be reformed to provide the mandatory minimum coverage set forth in section 703 for the person named in the policy, as well as any other person using the vehicle with the express or implied permission of the named insured."[11] Because the endorsement was invalid, the insurance company "had no right to seek reimbursement or indemnification from [the insured] under a breach of contract claim."[12] Additionally, because "subrogation is an equitable right" which arises "with respect to the rights of an insured against third persons against whom the insurer owes no duty," "an insurer cannot recover by means of subrogation against its own insured".[13]

DISCUSSION

Defendant seeks to set aside the Court's July 26, 2012, Order, granting Plaintiff's motions for summary judgment in part, and the Court's April 03, 2013, Order, amending the summary judgment award amount granted to Plaintiff Guardian Insurance Company, Inc.,[14] and granting Plaintiff attorney's costs and fees.[15] Defendant seeks to set aside the Orders on the grounds of excusable neglect and subject to the Virgin Islands Supreme Court's holding in *Joseph v. Inter-Ocean Insurance*. Plaintiff objects, claiming that "the motion is… another attempt to revisit the merits of this Court's order of July 30, 2012, and the subsequent dismissals of Defendant's various related appeals[;]… this Court was divested of jurisdiction to grant the Motion… when Defendant filed his Notice of Appeal with the Supreme Court[;]… Defendant

[11] 2013 WL 5397407, at * 3.
[12] *Id.*, at * 4.
[13] *Id.* (citation omitted).
[14] Defendant states that he seeks to "set aside the Order *granting* Plaintiff's Summary Judgment that was entered on the 3rd day of April 2013" (emphasis added). However, on July 26, 2012, Plaintiff's October 27, 2009, Motion for Summary Judgment on the Counterclaims was granted and Plaintiff's March 09, 2010, Motion for Summary Judgment on the Complaint was denied in part and grated in part. The April 03, 2013, Court Orders merely amended – not granted – the award amount under the Plaintiff's Motions for Summary Judgment.
[15] Defendant does not move to set aside the Court's award of prejudgment interest.

has not asserted any facts demonstrating excusable neglect[;]... and [he] failed to file the Motion... within a reasonable time."[16]

A. THE COURT LACKS THE POWER TO REVISIT PLAINTIFF'S SUMMARY JUDGMENT ON THE GROUNDS OF MISTAKE, INADVERTENCE OR EXCUSABLE NEGLECT BECAUSE DEFENDANT'S MOTION IS UNTIMELY.

Defendant states that he "asks this... Court to set aside the Order granting Plaintiff's Summary Judgment that was entered on the 3rd of April 2013".[17] However, the April 03, 2013, Orders did not grant summary judgment but adjusted the awarded amount of attorney's fees and costs; amended the summary judgment award amount; and awarded prejudgment interest. Partial summary judgment was granted to the Plaintiff by Court Order dated July 26, 2012, not April 3, 2013. At no time does Defendant actually challenge the Court's amendment of its July 26, 2012, Order or the award of attorney's fees and costs.[18] Instead, he states that "[i]n this case the Summary Judgment ... was timely appealed"[19] and that "Defendant has a substantial judgment against him base[d] on the granting of Summary Judgment".[20] Therefore, the Court finds that the Defendant is actually challenging the July 26, 2012, Order that granted summary judgment on Plaintiff's claims for indemnification and declaratory judgment and denied Defendant's motion for summary judgment on the Complaint as moot.

Defendant states that the judgment should be set aside because of his "excusable neglect"[21] and challenges the Court's July 26, 2012, Order, sixteen (16) months after it was entered. "Motions filed under Civil Procedure Rule 60(b)(1) are subject to a one year filing

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[16] Plaintiff's December 20, 2013, Opposition to Defendant's Motion to Set Aside Judgment, p. 11.
[17] Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 1.
[18] Nor does he even discuss the April 03, 2013, Orders in the "Discussion" portion of his motion.
[19] Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 10.
[20] *Id.*, p. 11.
[21] *Id.*

period" and "[t]his one year period is an 'outer limit' after which a court loses the power to entertain the motion."[22] Because Defendant seeks redress on the grounds of excusable neglect or mistake of law under Fed. R. Civ. P. 60(b)(1), the motion is untimely since it was filed four (4) months past the one (1) year deadline established by Rule 60(c)(1).[23] Therefore, the Court lacks the power to review the Order on the grounds of excusable neglect or mistake of law.

B. EVEN IF DEFENDANT'S MOTION WAS TIMELY UNDER FED. R. CIV. P. 60(b)(1) AND 60(c)(1), THE COURT DOES NOT FIND EXCUSABLE NEGLECT.

Counsel for the Defendant states that despite being told by an unnamed appeal specialist one (1) year prior to the appeal that she was conflicted out of this matter, he forwarded the appeal to the specialist "with instruction to do a timely brief".[24] Counsel admits to then "not review[ing] the matter any further because the undersigned was confident that the appeal would be timely… done."[25] When considering whether neglect is reasonable, the Court reviews the excuse for the delay, including whether it was within the reasonable control of the movant.[26] Delegating work to a conflicted specialist and then failing to follow up with its progress – or lack thereof – does not constitute good faith neglect justifying relief under Rule 60(b). An attorney is responsible for work delegated to another attorney[27] and ensuring that Court deadlines are timely

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[22] *In re USN Commc'ns, Inc.*, 288 B.R. 391, 396 (Bankr. D. Del. 2003) (citing *Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation*, 605 F.2d 648, 656 (2d Cir.1979); *Defeo v. Allstate Ins. Co.*, No. 95–244, 1998 WL 328195, at *5, 1998 U.S. Dist. LEXIS 9060, at *17–18 (E.D. Pa. June 19, 1998)).
[23] [F]or reasons (1), (2), and (3) [a motion to set aside judgment must be filed] no more than a year after the entry of the judgment or order or the date of the proceeding. Fed. R. Civ. P. 60(c)(1).
[24] Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 10.
[25] *Id.*, p. 11.
[26] *Brown v. People*, 49 V.I. 378, at *3 (V.I. 2008) (citing *Pioneer Inv. Serv. Co. v. Brunswick Assoc.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed.2d 74 (1993)).
[27] VIRGIN ISLANDS RULES OF PROFESSION CONDUCT RULES 211.5.1(c)(2) ("A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer… has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action") and 211.1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client").

met. Additionally, the excusable neglect to be considered is the Defendant's behavior towards this Court – not any dilatoriness or failures in the Supreme Court, over which this Court has no jurisdiction. As a result, the Court finds that counsel's neglect is neither excusable nor properly reviewable by this Court.

C. THE COURT DOES NOT FIND MISTAKE OF LAW IN ITS GRANT OF SUMMARY JUDGMENT.

Defendant alleges that the Court committed "the original error… [by its] failure and misapplication and misinterpretation and application of Title 20 V.I.C. § 703."[28] Rule 60(b)(1) provides for the reconsideration of judgments only where: (1) a party has made an excusable litigation mistake or an attorney in the litigation has acted without authority from a party, or (2) where the judge has made a substantive mistake of law or fact in the final judgment or order."[29] The Court has already found that Defendant's litigation mistake was not excusable.

A substantive mistake of law involves "a mistake of a [substantive] principle of law".[30] As the Defendant points out, the Superior Court applied the Virgin Islands Compulsory Insurance Act to this matter as it had in "numerous similar claims" by insurance companies.[31] The Superior Court's July 26, 2012, ruling held that Section 703 of Title 20 imposes a duty upon an insurance company to "insure the owner of the policy and any other person, authorized by the owner, using the owner's vehicle against liability for damages,"[32] but because "[t]he policy states that if an insured allows an underage person to operate the vehicle, such action is done at the risk

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[28] Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 11.
[29] *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 577 (10th Cir. 1996), cited by *U.S. v. Cherys*, D.C. Cr. No. 1998-001-02, 2013 WL 638934, at *4 (D.V.I. Feb. 20, 2013).
[30] *Girard Trust Co. V. Harrington*, 23 Pa. Super. 615, 620 (1903).
[31] Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 12.
[32] *Guardian v. Khalil*, ST-08-CV-494, 2012 WL 3114601, at *5.

of no coverage for any resulting accident."[33] In summary, this Court held that Guardian was entitled to indemnification from Khalil for the money it expended as a result of Rahahleh's accident. On September 25, 2013, fourteen (14) months after the Superior Court granted Plaintiff's motion for summary judgment, the Supreme Court held that the Virgin Islands Compulsory Liability Insurance Act supersedes any "endorsement excluding anyone under the age of twenty-five who drives or operates [a] vehicle," and an insurance company "ha[s] no right to seek reimbursement or indemnification… under a breach of contract theory."[34]

This Court "possesses … concurrent authority with [the Virgin Islands Supreme Court] to shape Virgin Islands common law,"[35] and "may… determine … [the] common law to the extent it is not bound by precedent".[36] On July 26, 2012, the Superior Court was not bound by any precedent addressing indemnification of payments made by automobile insurance companies because of underage driver endorsements "The canon of construction [is] that statutes should be interpreted consistently with the common law,"[37] and "[this Court] interpret[s] the statute with the presumption that [our Legislature] intended to retain the substance of the common law."[38] At the time, the Superior Court interpreted the statute to impose a duty to insure but, under common law contract and restitution principals,[39] found that the statute did not exclude the right to

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[33] *Id.*, at *4.
[34] *Joseph*, 59 V.I. 820, at *4.
[35] *Connor*, S.Ct. Civ. No. 2013-0095, 2014 WL 702639, at *3 (V.I. Feb. 24, 2014) (citation omitted).
[36] *Connor*, at n. 1 (citation omitted).
[37] *Samantar v. Yousuf*, 560 U.S. 305, 320 (2010) (citations omitted).
[38] *Yousef*, 560 U.S. at n. 13 (citing *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952) ("Statutes which invade the common law ... are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident")).
[39] For example, *New Falls Corp. v. Lerner*, 579 F.Supp.2d 282, 292 (D.Conn.2008) ("Parties choose to contract away rights that would otherwise be afforded to them in consideration for other benefits all the time"); *In re Smith*, 99 B.R. 724, 730 (Bankr. W.D. Va. 1989) ("The Smiths have cited this Court to no case which stands for the proposition that parties cannot contract away rights which they might otherwise be entitled to receive under common law"); *Farrell Const. Co. v. Jefferson Parish*, 693 F. Supp. 490, 493 (E.D. La. 1988) ("A party to a contract can, where it is not expressly prohibited, renounce what the law has established in his favor").

indemnity when parties have agreed to specific restraints upon coverage. Thus, the Court's July 26, 2012, Order was not a "mistake of law" pursuant to Rule 60(b)(1) because it did not constitute a "mistake about the legal effect of a known fact or situation."[40]

Additionally, even if the Court found a mistake of law by this Court at the time summary judgment was granted, "legal error can usually be corrected on appeal." Thus, "that factor without more does not justify the granting of relief under Rule 60(b)(6)"[41] either.

D. Intervening Change of Law, Without more, Does Not Warrant Revisiting Summary Judgment Over a Year Later.

Rule 60(b)(6) of the Federal Rules of Civil Procedure is the "residual catchall"[42] of Rule 60 and states that, "[o]n motion and just terms," the Court "may relieve a party… from a final judgment… for… any other reason that justifies relief"[43] "aside from the more specific circumstances described in Rules 60(b)(1)-(5)."[44] Applications of Rule 60(b)(6) is discretionary,[45] and "[t]he movant must show extraordinary and special circumstances justifying relief"[46] under this rule. Rule 60(b)(6) relief is neither a substitute for an appeal[47] nor a replacement for an untimely 60(b)(1)-(3) motion.[48]

Although the Supreme Court recognized that our July 26, 2012, holding "may require reexamination in light of [the Supreme Court's] decision in *Joseph*,"[49] the Supreme Court neither

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[40] MISTAKE OF LAW, BLACK'S LAW DICTIONARY (9th ed. 2009).
[41] *Ruiz v. Jung*, S.Ct. Civ. No. 2008-035, 2009 WL 3568182, at *5 (V.I. Oct. 19, 2009) (quoting *Pridgen v. Shannon*, 380 F.3d 721, 728 (3d Cir.2004)) (further citation omitted).
[42] *Virgin Islands Bldg. Specialties, Inc. v. Buccaneer Mall Associates, Inc.*, 197 F.R.D. 256, 259 (D.V.I. 2000).
[43] FED. R. CIV. P. 60(b)(6).
[44] *Budget Blinds, Inc. v. White*, 536 F.3d 244, 251 (3d. Cir. 2008).
[45] FED. R. CIV. P. 60(b) ("[T]h court *may* relieve a party… from a final judgment," emphasis added).
[46] *Lucan Corp., Inc. v. Robert L. Merwin & Co., Inc.*, S.Ct. Civ. No. 2007-15, 2008 WL 901492, at *2 (V.I. Jan. 7, 2008) (citing *Page v. Schweiker*, 786 F.2d 150, 158 (3d Cir.1986)).
[47] *Lucan*, 2008 WL 901492, at *2 (citing *Martinez–McBean v. Gov't of the V.I.*, 562 F.2d 908, 911 (3d Cir.1977)).
[48] *Stradley v. Cortez*, 518 F.2d 488, 494 (3d. Cir. 1975).
[49] *Khalil v. Guardian Insurance Company*, S.Ct. Civ. No. 2013-0030, 2013 WL 5513874, at n. 2 (V.I. Oct. 7, 2013) (citing *Joseph*).

remanded the case to this Court for further proceedings nor overturned the Superior Court's final judgment. Therefore, the Court's consideration of the motion to set aside remains discretionary.

Defendant argues that this matter should be reopened because "the Supreme Court of the Virgin Islands has… in effect overturned [this Court's] holding".[50] The Court granted summary judgment in this matter on July 26, 2012, and *Joseph* was issued on September 25, 2013. Motions to set aside judgment under Fed. R. Civ. P. 60(b)(6) must be made within a reasonable period of time. "[T]he proper course when analyzing a Rule 60(b)(6) motion predicated on an intervening change in the law is to evaluate the circumstances surrounding the specific motion before the court,"[51] but "changes in case law that occur after a final judgment has been entered are generally not the type of 'extraordinary circumstances' which warrant 60(b)(6) reconsideration."[52] The Court finds that an intervening change in law made fourteen (14) months after summary judgment, without more, does not establish exceptional circumstances that would justify relief.

E. The Superior Court lacks jurisdiction to review Orders issued by the Supreme Court.

The Defendant also seems to be seeking redress from the Supreme Court's October 11, 2012, order that dismissed Defendant's appeal for failure to prosecute. He argues that "Appellant's failure to timely file the brief and the dismissal by the Supreme Court… is

50 Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 12.
51 *Phelps v. Alameida*, 569 F.3d 1120, 1133 (9th Cir. 2009).
52 *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 2d 216, 231 (D.D.C. 2011).

equivalent to entry of default"[53] and that "the reason for the dismissal of the appeal by the Supreme Court is… the excusable neglect of his counsel."[54]

Pursuant to 4 V.I.C. § 76, the Superior Court has original jurisdiction "in all civil actions regardless of the amount in controversy; to supervise and administer estates and fiduciary relations; to appoint and supervise guardians and trustees; to hear and determine juvenile, divorce, annulment and separation proceedings; to grant adoptions and changes of name; to establish paternity; to legitimize children and to make orders and decrees pertaining to the support of relations" and, "[s]ubject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by… the Revised Organic Act[,]… the Superior Court shall have original jurisdiction in all criminal actions." Section 32 of Title 4 of the Virgin Islands Code grants the Virgin Islands Supreme Court "jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." Defendant fails to cite – and the Court is unable to locate – any authority granting the Superior Court the power to review orders issued by the Supreme Court. In short, the Superior Court lacks the authority to review the Supreme Court's October 11, 2012, dismissal on any grounds.

[53] Defendant's November 12, 2013, Motion to Set Aside Judgment Pursuant to Federal Rules of Civil Procedure 60(b), p. 11.
[54] *Id.*, p. 12.

CONCLUSION

The Court finds that the Defendant's motion is both untimely and lacks the necessary grounds for relief. Therefore, the motion to set aside judgment is denied. An appropriate Order is issued simultaneously herewith.

Dated: July 30, 2014

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

Attest: Estrella H. George
Acting Clerk of the Court ___/___/___
by: ____________
Lori Boynes-Tyson
Court Clerk Supervisor 8/5/14