

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

VIRGIN ISLANDS VOLUNTEER ADVOCATES)
FOR CHILDREN, INC.; GAIL SHEARER, Esq. as)
Guardian ad Litem for JANE DOE No. 1; ADAM)
HOOVER, Esq. as Guardian ad Litem for JOHN)
DOE No. 1; CHARLES LOCKWOOD, Esq. as)
Guardian ad Litem for JANE DOE No. 2, JANE)
DOE No. 3, and JANE DOE No. 4; OFFICE of the)
TERRITORIAL PUBLIC DEFENDER,)

Plaintiffs,)

v.)

VIRGIN ISLANDS BEHAVIORAL SERVICES;)
FELICIA BLYDEN, in her Official Capacity as the)
VIRGIN ISLANDS COMMISSIONER of HUMAN)
SERVICES, JULIO RHYMER, in his Official)
Capacity as the DIRECTOR of the VIRGIN)
ISLANDS OFFICE of MANAGEMENT and)
BUDGET; and GOVERNOR KENNETH MAPP,)

Defendants.)

CASE NO. SX-18-CV-216

**ACTION FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY
INJUNCTION and DECLARATORY
RELIEF**

MEMORANDUM OPINION and ORDER

Before the Court is Defendant Government of the Virgin Islands (GVI)'s¹ Emergency Motion to Vacate Stipulation for Entry of Judgement (Motion to Vacate), filed June 28, 2018, and Defendant Virgin Islands Behavioral Services' (VIBS) opposition thereto, filed July 20, 2018.² GVI requests pursuant to V.I. R. Civ. P. 60(b) that the Stipulation for Entry of Judgment (Stipulated Judgment), entered June 25, 2018, "be vacated because of an error in a material contract term, and further, that the Judgment is void as it is not vetted or contracted by the Virgin Islands Department of Property and Procurement." Motion, at 1. For the reasons below, GVI's Motion to Vacate will be denied.

¹ The Government of the Virgin Islands is not a named party to this action. However, the individual Defendants are all sued in their official capacities, and the parties have referred to them collectively as the Government of the Virgin Islands, which reference is adopted herein.

² Plaintiffs filed their Motion for Emergency Hearing on August 3, 2018, granted by Order entered August 10, 2018. Defendant VIBS filed its Joinder in Plaintiffs' Motion for Emergency Hearing (Motion for Contempt) on August 7, 2018, further requesting that "GVI be held in civil contempt of court" and that "the Court impose coercive measures which will force the GVI and its officials to honor the mandates of the Stipulated Judgment and recognize the authority of the Judicial Branch." Motion for Contempt, at 5. Because the Motion to Vacate was pending at the time VIBS complains of GVI's noncompliance with the Stipulated Judgment, and because the Court is satisfied that GVI "recognizes the authority of the Judicial Branch," VIBS' Motion for Contempt will be denied without prejudice.

GVI's Motion to Vacate first alleges an "error in a material contract term," a mistake that entitles GVI to relief from the Stipulated Judgment under V.I. R. Civ. P. 60(b)(1). The Stipulated Judgment "shows that GVI will pay \$4,683,573.32... the actual amount is \$4,606,986.24," and as a result of this discrepancy, "the Court should vacate the judgment." Motion to Vacate, at 3. VIBS conceded that GVI's calculation represented the correct amount due; and GVI tendered and VIBS accepted that lesser sum "as full payment of the Government of the Virgin Islands' financial obligation to VIBS set forth in paragraph no. 1 of the Stipulation for Entry of Judgment." Notice of Partial Satisfaction of Judgment, filed July 5, 2018, at 1-2. As the discrepancy as to the financial obligation of GVI to VIBS for past services has been resolved by the agreement of the parties and the full satisfaction of the amount due, there is no dispute between the parties to be litigated as to this issue. While it is understood "that the mootness doctrine in the Virgin Islands is a non-jurisdictional claims-processing rule that has been incorporated into Virgin Islands law only as a matter of judicial policy,"³ it is also true that by this policy "some aspects of Article III's requirement that a court only rule on actual cases and controversies have been incorporated into Virgin Islands jurisprudence."⁴ Here, in light of the accord and satisfaction between the parties as to the issue of payment for past services, there is no controversy between the parties to be adjudicated, and GVI's Rule 60(b)(1) argument is rejected as moot.

GVI further seeks relief from the Stipulated Judgment on the basis that the judgment is void under V.I. R. Civ. P. 60(b)(4). For a judgment to be vacated under Rule 60(b)(4), a movant must show either that the Court lacked jurisdiction or that it acted in a manner inconsistent with due process of law. *Smith v. Gov't of the Virgin Islands*, 67 V.I. 797, 803 n.5 (V.I. 2017). GVI does not contest jurisdiction but appears to argue that the Court acted in a manner inconsistent with due process of law, asserting that only the Commissioner of Property and Procurement has the "authority to negotiate all open market purchases, including those for professional services." Motion to Vacate, at 3-4 (quoting *Smith v. Dep't of Educ.*, 942 F.2d 199, 201-02 (3d Cir. 1991); see also 31 V.I.C. §232(1) ("The Commissioner of Property and Procurement shall purchase or contract for all... contractual services... required by any and all departments... and other agencies of the Government of the Virgin Islands").

³ *Mapp v. Fawkes*, 61 V.I. 521, 530 (V.I. 2014), citations omitted.

⁴ *Vasquez v. Vasquez*, 54 V.I. 485, 489 n.1 (V.I. 2010), citations omitted.

This argument, too, is without merit. Notably, “the Government is not a person for purposes of due process.” *People v. Miller*, 53 V.I. 162, 172-73 (V.I. Super. Ct. 2010); *see also State of Pa. v. Riley*, 84 F.2d 125, 130 n.2 (3d Cir. 1996) (“A State, however, is not entitled to due process protection.”), *cert. denied*, 519 U.S. 913 (1996). Thus, the argument that the Court “acted in a manner inconsistent with due process of law” has no application to GVI.

Further, the Stipulated Judgment is not a government procurement contract over which the Commissioner of Property and Procurement has statutory authority. Rather, as VIBS correctly notes, “the Stipulated Judgment is a judicially approved settlement agreement reached to resolve active litigation.” Response, at 10. In this litigation context, it is the statutory duty of the Attorney General to represent the interests of GVI, its executive departments and officers. *See* 3 V.I.C. § 114(a)(1). The Assistant Attorney General who appeared in this action and agreed and entered into the Stipulated Judgment affirmatively represented therein, consistent with statutory authority, that he acted “with the intent and authority to bind [his] clients to the terms of such judgment.” Stipulated Judgment, at 1. That averment recognizes that the appearing Assistant Attorney General “was statutorily empowered to appear in this case on behalf of the Government.” *Gov’t of the V.I. v. 0.459 Acres of Land*, 40 V.I. 85, 92 (Terr. Ct. 1999). “Inherent in the authorization to represent the Government and its departments and agencies before Virgin Island Courts, is the authority to settle cases by arbitration, by mediation, or by settlement. Assistant Attorneys General are the duly authorized representatives and agents of the Government in pending cases in which they appear.” *Id.* As then-Judge Swan found in the cited condemnation action, GVI’s claim that the Assistant Attorney General appearing and representing the interests of GVI and its officers lacked the authority to agree to and to enter into the Stipulated Judgment on behalf of GVI is not only unsupported, but “is unabashedly suspect.” *Id.*

Finally, GVI’s Motion to Vacate asserts that the Stipulated Judgment is subject to vacatur “in the interest of justice.” Motion to Vacate, at 3. No such standard is set forth in Rule 60(b), and GVI’s position is unsupported within its Motion to Vacate and under Virgin Islands law. To the extent that GVI seeks relief under the catch-all provision of V.I. R. Civ. P. 60(b)(6), the Motion to Vacate fails in this regard also. “Relief under Rule 60(b)(6)’s ‘any other reason that justifies relief’ clause is granted only ‘under extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur.’” *Judi’s of St. Croix Car Rental v. Weston*, 49 V.I. 396, 405 (V.I. 2008) (quoting *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 140-41 (3d Cir. 1993)). GVI has

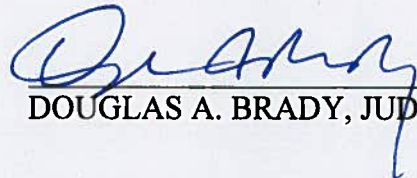
neither pled the existence of such “extraordinary circumstances,” nor presented any factual basis upon which a finding could be made that “without such relief, an extreme and unexpected hardship would occur.” GVI asserts, without support,⁵ that provisions of the Stipulated Judgment “provide for an unfunded liability on an already financially strapped government without proper authorization... to ensure that the funds are available for payment to execute on the Stipulated Judgment.” Motion to Vacate, at 4. Such unsupported assertions are insufficient to provide a basis for relief under Rule 60(b)(6).

Accordingly, on the basis of the foregoing, it is hereby

ORDERED that the Government of the Virgin Islands’ Emergency Motion to Vacate Stipulation for Entry of Judgment is DENIED. It is further

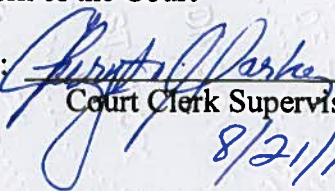
ORDERED that Virgin Islands Behavioral Services’ prayer within its Joinder in Plaintiffs’ Motion for Emergency Hearing, seeking that Defendant Government of the Virgin Islands be held in civil contempt is DENIED.

DATED: August 21, 2018.


DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GEORGE
Clerk of the Court

By: 

Court Clerk Supervisor
8/21/18

⁵ “When allegations of fact not appearing of record are relied upon in support of a party’s motion, response, or reply... all then-available affidavits and other documents supporting the party’s position shall be filed simultaneously with the motion, response, or reply.” V.I. R. Civ. P. 6-1(d)(1). “[U]nsworn representations of an attorney are not evidence.” *Henry v. Dennery*, 55 V.I. 986, 994 (V.I. 2011).