IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: AT KINGSHILL

RUDOLPH ANDREWS,	)	
	)	
Plaintiff,	)	CIVIL NO: 197/1986
	)	
v.	)	
	)	
PUERTO RICAN-AMERICAN INSURANCE COMPANY,	)	ACTION FOR BREACH OF CONTRACT
	)	
Defendant.	)	

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PETERSEN, Judge

AMENDED MEMORANDUM OPINION
(August 21, 1987)

Defendant requests a new trial, or an amendment of judgment, to demonstrate that plaintiff has failed to establish his claim. For the reasons stated below, the motion for a new trial is denied.

FACTS

On May 27, 1987, the Territorial Court awarded a judgment in the amount of Ten Thousand Two Hundred Eighty

($10,280.00) Dollars to plaintiff Rudolph Andrews against Puerto Rican American Insurance Company in a breach of contract case involving an insurance claim. Unsatisfied with this result, defendant requests a new trial.

DISCUSSION

The motion before us presents two distinct issues: 1) Whether conflicting testimony is sufficient grounds to grant a new trial and 2) Whether defendant's motion which fell short of the Federal Rules of Civil Procedure 59(b) ten-day requirement, can be cured through the application of Federal Rules of Civil Procedure 6(e) or, in the alternative, through the "unique and special circumstances" standard.

Concerning procedural requirements, Federal Rules of Civil Procedure 59(b) allows parties to move to seek a new trial or amend a judgment if the motion is served within 10 days on the opposing party after the entry of judgment. Entry of judgment is here defined as the time that the court's clerk enters the court's signed judgment. Sawyer v. Atlantic Discount Corp., 442 F.2d 349 (4th Cir. 1971), Wright and Miller Federal Rules and Procedure Civil § 2812. The actual computation of the ten-day period excludes intermediate Saturdays, Sundays and holidays. Federal Rules of Civil Procedure 58. In this case, the judgment was entered on May 28, 1987. Ten days from this date, excluding intermediate Saturdays, Sundays and holidays, would fall on June 12, 1987. Plaintiff's attorney stated that he received the motion on June 12, 1987. In response, defendant's counsel contends that Federal Rules of Civil Procedure 6(b), which allows for an additional three days when service is made by mail, extends the period to June 14, 1987. Defendant's counsel has misread Federal Rules of Civil Procedure 6(e), which only applies where "a party has the right to do some act... within a prescribed period after the service of a notice... is served upon him by mail." If Federal Rules of Civil Procedure 59(b) concerned itself with the date the moving party received notice of the entry of judgment, then Federal Rules of Civil Procedure 6(e) would apply and thus effectively extend the ten-day period by three days. However, this is not the case. Federal Rules of Civil Procedure 59(b) specifically notes that the entry of judgment is the starting point of the ten-day period. Furthermore, Federal Rules of Civil Procedure 6(b) strictly stipulates that Federal Rules of Civil Procedure 59(b) can not be enlarged "except to the extent and under the conditions stated therein."

Nevertheless, where a party's reasonable reliance on the erroneous action of a district court caused the part to file an untimely notice, courts have enlarged the time period for filing an appeal motion for a new trial. <u>Insurance Co. of North</u>

America v. Bay, 784 F.2d 869 (8th Cir. 1986), Wright and Miller Federal Practice and Procedure Civil Section 2812. Such unique circumstances occurred in the following cases, Harris Truck Line, Inc. v. Cherry Meat Packers, Inc., 371 U.S. 215 (1962) [District Court erroneously granted a motion for an additional 14 days for filing an appeal where such was permitted only upon a showing of excusable neglect]; Thompson v. INS, 375 U.S. 384 (1969)[District Court held motion for a new trial submitted 12 days after entry of judgment was timely and the party consequently filed an untimely notice of appeal]; Eady v. Foerder, 381 F.2d 980 (7th Cir. 1967) [District Court erroneously extended the time for a motion under Federal Rules of Civil Procedure 59 to 30 days].

No such circumstances are present here. The court has not misled the moving party concerning the substance, form or service of its Federal Rules of Civil Procedure 59 motion for a new trial. As the defendant's attorney failed to serve the motion within the required ten-day period and no unique circumstances prompted this delay, the motion must be denied on this procedural basis.

Assuming, arguendo, that the procedural requirements were met, Rule 59(a) of the Federal Rules of Civil Procedures states that a new trial may be granted in a non-jury action for any of the reasons for which rehearings are typically granted.

Such general grounds for a new trial are that the verdict is against the weight of the evidence, that the damages are excessive or that for other reasons the trial was not fair, and that the motion may also raise questions of law arising out of substantial errors in the admission or rejection of evidence or the giving or refusal of instruction. Wright and Miller Federal Practice and Procedures Civil § 2805 (1977). In the instant case the defendant requests a new trial on the grounds that "the court made some findings of facts which were not supported by the evidence and others that were clearly erroneous." His review of the facts finds that the contractor's testimony so fundamentally contradict the testimony of the other witnesses that it ought to be disregarded and the damages reduced accordingly. Yet, conflict in testimony alone does not justify the trial court following the extraordinary course of setting aside the verdict, Buda v. Royal Netherlands SS Co., 280 F. Supp. 180. (D.N.Y. 1967) Several cases underline this principle.

In Livergood v. SJ Groves and Sons Company, 361 F.2d 269, (3rd Cir. 1966), an automobile collision case, the defendant contended that the evidence so preponderated in his favor, or at least so clearly showed the negligence of the third party defendant, that it was obvious that physical facts and actual testimony concerning the accident was completely disregarded by the jury. The court acknowledged that there was conflicting testimony in the case but noted that the outcome of the case, as in most jury cases, depended on which side the jury would believe. Stating that the defendant had not shown special or unusual circumstances beyond the conflicting testimony which clearly indicated an abuse of discretion in the trial court failing to apply correctly the proper standards, the court affirmed the district court's judgment and order. Likewise Miles v. Ryan, 338 F. Supp. 1065 (1975), another automobile collision case, was decided on similar grounds. Again, noting that there was conflicting testimony between the decedent's passenger and a truck driver, the court stated that evidence in conflict is not a good reason to interfere with the jury's verdict, for the credibility of witnesses is peculiarly for the jury and it would be an invasion of the jury's province to grant a new trial under these circumstances. Finding that the matter was capably handled by counsel and that the jury's verdict was based on legally sufficient evidence, the district court denied the motion. Finally, Barrett v. Robinson, 65 F.R.D. 652 (1973) contained an action for damages by a hotel guest for injuries sustained during his stay. In addressing defendant's claim that all of plaintiff's witnesses were "interested" in the case, the Pennsylvanian District Court found that they were all competent to testify and the extent of their interest would only serve to qualify their credibility. The Court in denying the defendant's motion noted, "As it was the jury's main function to determine the credibility of the witnesses appearing before it and the plaintiff's testimony and that of his witnesses was deemed credible, and that the plaintiff presented a convincing case."

All of the aforementioned cases state that a new trial will not be granted on grounds that conflicting evidence existed at trial. Federal Rules of Civil Procedure 59 gives the trial judge power to prevent only what she considers to be a miscarriage of justice. Hence, regardless of the grounds upon which it is based, a motion for a new trial must involve a manifest error of law or mistake of fact which should only be set aside for substantial reasons. Wright and Miller Federal Practice and Procedure Civil § 2804 (1977). Pioneer Paper Stock Co. v. Miller Transp. Co., 109 F. Supp. 502, (D.N.J. 1953), Defendant's motion does not present any such mistake of fact or error of law made by court. Instead, defendant merely condemns the contractor's testimony, attempting in the process to substitute this court's assessment of the conflicting testimony with that of his own. Approval of defendant's reconstruction of the evidence would only serve to usurp the court's role in the fact-finding process. As evidence sharply in conflict is not a ground for a new trial, the motion must be denied on this substantive basis.

CONCLUSION

Defendant's motion for a new trial fails on both substantive and procedural grounds. Conflicting evidence alone does not invalidate a verdict. Manifest error of law or mistake of fact must exist. Defendant's attorney also does not set forth any "unique circumstances" that precipitated the delay of its motion. Accordingly, the motion for a new trial must be denied.

EILEEN R. PETERSEN
Judge