

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

MERCHANTS COMMERCIAL BANK,	)	CASE NO. ST-2011-CV-0000653
	)	
Plaintiff,	)	ACTION FOR BREACH OF
vs.	)	CONTRACT (3), DEBT, ENFORCEMENT
	)	OF GUARANTY (2), FORECLOSURE
OCEANSIDE VILLAGE, INC., JUAN CARLOS CACCIAMANI, JUAN FRANCISCO FUENTES, CUBICA GROUP, LLLP, and HEAVY MATERIALS, LLC,	)	OF REAL PROPERTY MORTGAGE,
	)	AND VIOLATIONS OF THE VIRGIN
	)	ISLANDS CRIMINALLY INFLUENCED
	)	AND CORRUPT ORGANIZATIONS
Defendants.	)	ACT (4)
	)	
	)	
OCEANSIDE VILLAGE, INC., JUAN CARLOS CACCIAMANI, JUAN FRANCISCO FUENTES, and CUBICA GROUP, LLLP,	)	BREACH OF LOAN AGREEMENT,
	)	FRAUD AND MISREPRESENTATION,
	)	IMPROPER USE AND MIS-
Counter-Plaintiffs,	)	MANAGEMENT OF LOAN FUNDS,
vs.	)	FRAUDULENT DEMAND FOR
	)	PAYMENT OF LETTER OF CREDIT,
	)	AND BREACH OF DUTY OF GOOD
MERCHANTS COMMERCIAL BANK,	)	FAITH AND FAIR DEALING
	)	
Counter-Defendant.	)	
	)	JURY TRIAL DEMANDED

Cite as: 2019 VI Super 159U

MEMORANDUM OPINION AND ORDER

¶1 Before the Court is Plaintiff's Motion for Reconsideration of [sic] May 9, 2017 Order Granting Defendants' Motion to Compel and Incorporated Memorandum of Law ("Motion"), which was filed on May 24, 2017.¹ Oceanside did not file a response.² MCB moves the Court to "reconsider its Order of May 10 [sic], 2017 granting [Oceanside's] . . . Motion to Compel Plaintiff to Supplement Discovery . . . on grounds of failure to consider arguments presented to the Court and clear error."³

¹ Throughout this Memorandum Opinion and Order, Plaintiff/Counter-Defendant Merchant Commercial Bank will be referred to as "MCB," and Defendants/Counter-Plaintiffs Oceanside Village, Inc., Juan Carlos Cacciamani, Juan Francisco Fuentes, Cubica Group, LLLP, and Heavy Materials, LLC, will collectively be referred to as "Oceanside."

² Oceanside filed a Notice of Non-Response to Plaintiff's Motion for Protective Order on July 6, 2017. Oceanside stated that they will not file a response due to the Court's April 7, 2017 Order directing parties not to "file any more motions in this matter until given permission by the Court."

³ Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 1.

¶2 The Court's conclusion that the parties had met and conferred pursuant to LRCi 37.1 and 37.2⁴ was based on a determination of all issues presented. Thus, MCB failed to demonstrate that the Court failed to consider MCB's argument that Oceanside did not meet the prerequisites of filing a motion to compel. Further, MCB's Motion raised, for the first time, its privilege log arguments, and therefore, failed to demonstrate a substantive basis for reconsideration under the clear error standard. Because MCB did not meet the grounds for reconsideration under Virgin Islands Rules of Civil Procedure 6-4(b)(3) and (b)(4), the Motion will be denied.

I. BACKGROUND⁵

¶3 Oceanside filed their Motion to Compel Plaintiff to Supplement Discovery (herein referred to as "Motion to Compel") on September 20, 2016. On November 2, 2016, MCB filed an opposition asserting that the Motion to Compel was procedurally defective for failing to comply with LRCi 37.1 and LRCi 37.2. By Order dated May 9, 2017, this Court granted Oceanside's Motion to Compel. Due to the parties' contradictory narratives, the Court assessed the credibility of the pleadings, and upon review of the parties' representations, exhibits, and arguments, the Court granted the Motion to Compel.⁶ In reaching its conclusion, the Court began its analysis with the "meet and confer" requirement, finding that the parties had met and conferred pursuant to LRCi 37.1 and 37.2.

¶4 Oceanside argued that MCB failed to provide a privilege log with its objections to the demand for production, and thus, it cannot claim attorney-client privilege.⁷ Because MCB failed to contest in its opposition that it has a right to withhold production of documents pertinent to the Motion to Compel, the Court determined that MCB had waived its attorney-client or work-product privileges.⁸

¶5 MCB moves the Court to reconsider its May 9, 2017 Order, arguing that the Court "failed to address the . . . procedural defect arguments in opposition to [Oceanside's] premature Motion."⁹ MCB further argues that the "Court's failure to address that argument led it to believe that [MCB] willfully ignored [Oceanside's] improper privilege-waiver claim, and thereby waived its properly-asserted work-product and attorney-client privilege."¹⁰ Essentially, MCB's Motion seeks reconsideration of the May 9, 2017 Order, pursuant to Rule 6-4(b)(3) and (b)(4), for failure to consider arguments presented to the Court and clear error.¹¹

⁴ Note that prior to the adoption of the Virgin Islands Rules of Civil Procedure on April 3, 2017, the Superior Court considered the procedural sufficiency of certifications submitted in connection with motions to compel under the requirements set forth in the United States District Court of the Virgin Islands' local rules, namely Rules 37.1 and 37.2.

⁵ The Court will only briefly recount the most salient facts.

⁶ Order, May 9, 2017.

⁷ Mot. to Compel Pl. to Suppl. Disc. 5.

⁸ Order, May 9, 2017.

⁹ Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 12.

¹⁰ *Id.*

¹¹ V.I. R. Crv. P. 6-4(b)(3) and (4). *Id.* at 1.

II. LEGAL STANDARD

¶6 Motions for reconsideration are governed by Rule 6-4. Subsection (a) authorizes parties to file, within fourteen (14) days after the Court enters its ruling, motions requesting the Court to reconsider a ruling which does not amount to a final order or decision.¹² Subsection (b) provides the Court with four grounds that a motion for reconsideration must be based on:

- (1) intervening change in controlling law;
- (2) availability of new evidence;
- (3) the need to correct clear error of law; or
- (4) failure of the court to address an issue specifically raised prior to the court's ruling.

Where ground (4) is relied upon, a party must specifically point out in the motion for reconsideration where in the record of the proceedings the particular issue was actually raised before the court.¹³

¶7 Generally, “a motion for reconsideration is not a second bite of the apple, but 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 [C]ourt's analysis covering issues that should have been raised in the first set of motions.”¹⁴ Further, a motion for reconsideration is “not a vehicle for registering disagreement with the [C]ourt's initial decision, for rearguing matters already addressed by the [C]ourt, or for raising arguments that could have been raised before but were not.”¹⁵ Rather, “when determining whether to grant or deny such a motion, the Court operates with ‘the common understanding that reconsideration is an ‘extraordinary’ remedy not to be sought reflexively or used as substitute for appeal.’”¹⁶ Absent highly unusual circumstances, motions for reconsideration will be denied.¹⁷

III. ANALYSIS

¶8 As a preliminary matter, MCB's timely Motion presents no arguments premised on the first and second grounds delineated in Rule 6-4(b).¹⁸ MCB only moves the Court for reconsideration of its May 9, 2017 Order pursuant to Rule 6-4(b)(3) and (b)(4): (1) the Court's alleged failure to address MCB's “meet and confer” argument underlying the legitimacy of

¹² V.I. R. Civ. P. 6-4(a) (“Except as provided in Rules 59 and 60 relating to final orders or judgments, a party may file a motion asking the court to reconsider its order or decision. . .”). *Smith v. Law Offices of Karin A. Bentz, P.C.*, Super. Ct. Civ. No. ST-17-CV-116, 2018 WL 671389, at *7 (V.I. Super. Ct. Jan. 29, 2018).

¹³ V.I. R. Civ. P. 6-4(b).

¹⁴ *Smith*, 2018 WL 671389 at *8 n.50 (citing to *In re Infant Sherman*, 49 V.I. 452, 457 (V.I. 2008) (affirming a superior court's decision to deny a plaintiff's motion for reconsideration, purportedly based on “manifest injustice” yet substantively based on “new evidence,” therein denying the plaintiff's request to unseal the adoption records regarding her son dating from 1968, because the plaintiff's motion for reconsideration espoused new arguments and used socio-legal evidence she could and should have presented at the time of the original decision).

¹⁵ *Id.*

¹⁶ *Smith*, 2018 WL 671389 at *8 (citing to *In re Infant Sherman*, 49 V.I. at 458).

¹⁷ *In re Infant Sherman*, 49 V.I. at 457 (quoting *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (“[A] motion for reconsideration should not be granted, absent highly unusual circumstances[.]”)

¹⁸ V.I. R. Civ. P. 6-4(a).

Oceanside's Motion to Compel and (2) by failing to address MCB's argument, the Court committed clear error of law by ordering that MCB had waived its attorney-client and work-product privileges for failing to discuss whether the requested documents were protected from discovery.¹⁹

¶9 When analyzing a motion for reconsideration based on "the need to correct clear error of law" or "failure of the court to address an issue specifically raised prior to the [C]ourt's ruling,"²⁰ the Court's determination depends on whether the Court, in its prior decision, "applied an incorrect legal precept or failed to conduct proper legal analysis using the correct legal precept."²¹ Virgin Islands courts have granted motions for reconsideration based on the need "to correct clear error [of law] or manifest injustice or both" especially "when [the initial decision] overlooked dispositive factual or legal matters presented to it."²² When doing so, the Court has required the moving party to provide "the specific legal authority . . . the [c]ourt either failed to apply correctly or failed to apply in totum in its original decision."²³

A. The Court finds that MCB failed to demonstrate that the Court failed to address an issue raised by MCB on the May 9, 2017 Order.

¶10 MCB first moves the Court to reconsider its ruling of LRCi 37.1 and 37.2 "meet and confer" requirements. MCB argues that the Court failed to address its contention that Oceanside's Motion to Compel did not comply with LRCi 37.1 and 37.2. Instead of providing reasons for the

¹⁹ V.I. R. Civ. P. 6-4(b)(3) and (b)(4). Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 12.

²⁰ "Prior to the enactment of the new Rules of Civil Procedure in 2017, no specific Virgin Islands Rule authorized the Court to consider motions for reconsideration. Instead, the Court invoked Virgin Islands Superior Court Rule 7 to evaluate motions for reconsideration under a rule statement provided by Local Rule of Civil Procedure of the District Court of the Virgin Islands (LRCi) 7.3. Case law, over time, developed in response to LRCi 7.3's elements. As a result, when the Rules Advisory Committee wrote the Note to Rule 6-4(b) of the new Virgin Islands Rules of Civil Procedure, quoted above, it incorporated the case law that developed under the old civil procedure rules regime into the present civil procedure rules regime. In fact, the Note to Rule 6-4(b) highlights that the new grounds largely mirror the old grounds used to launch a motion for reconsideration, as the latter were articulated by the Virgin Islands Supreme Court in *Martin v. Martin*, 58 V.I. 620, 629 (V.I. 2013) and *Beachside Assocs. LLC v. Fishman*, 53 V.I. 700, 701 (V.I. 2010). Those grounds were: "(1) an intervening change in controlling law; (2) newly available evidence; or (3) a need to correct clear error of law or prevent manifest injustice." From there, the Note continues: "As an example of the third factor [of the old rule], this Rule lists 'failure of the court to address an issue specifically raised by a party prior to the court's ruling on pending matters.'" It is this verbiage which forms the new Rule 6-4(b)'s fourth basis upon which a motion for reconsideration is grounded. *In re Adoption of the V.I. Rules of Civ. Procedure*, 2017 WL 1293844 at 17, 2017 V.I. Supreme LEXIS at 46 (Note to Rule 6-4(b)). As a result, case law from the old rules regime, which addresses "clear error of law" or "manifest injustice" or "failure of the court to address an issue specifically raised prior to the court's ruling," will be used when considering a motion for reconsideration based upon Rule 6-4(b)(3) and (4), as language in the cases allows." *Smith*, 2018 WL 671389 at *7 n.49.

²¹ *Smith*, 2018 WL 671389 at *9. *Daybreak, Inc. v. Friedberg*, Super. Ct. Civ. No. ST-10-CV-716, 2018 WL 4043530, at *3 (V.I. Super. Ct. Aug. 21, 2018) (unpublished) ("When the basis for a motion for reconsideration is "the need to correct clear error of law," the court may grant such a motion when the prior decision involved the incorrect application of law or incorrect analysis to a proper application of law.").

²² *Id.*

²³ *Id.*

reconsideration, MCB premises much of its argument opposing Oceanside's Motion to Compel.²⁴ MCB avers that Oceanside's Motion to Compel was procedurally deficient because Oceanside failed to demonstrate that: "(1) they made a good faith effort to resolve outstanding discovery disputes, and (2) an irreconcilable discovery dispute remained."²⁵ In fact, MCB further argues that Oceanside provided the Court with a "Joint Stipulation pursuant to LRCi 37.2 that erroneously asserted that the previous meet and confer was unsuccessful."²⁶ Essentially, MCB argues that *its* attached Joint Stipulation, not Oceanside's, accurately reflected the parties' meet and confer efforts.²⁷

¶11 Here, the Court did not overlook dispositive factual or legal matters presented before it.²⁸ The Court evidenced its consideration of MCB's raised issues throughout its analysis.²⁹ The Court commenced its discussion on the premise that the "parties present the Court with contradictory narratives."³⁰ Due to the parties' conflicting recollection of events that transpired at the "meet and confer," the Court first assessed the credibility of the pleadings.³¹ Upon full review, the Court found Oceanside credible and granted their Motion to Compel.³²

¶12 MCB argues that the Court failed to consider its argument that Oceanside misrepresented to the Court the discovery dispute between the parties thereby not satisfying LRCi 37.1 and 37.2. The Court specifically addressed this argument in its May 9, 2017 Order.³³ Motions for reconsideration are not the avenue to rehash nor reargue matters already addressed by the Court.³⁴ The Court determined that the parties' motions failed to understand each other's concerns.³⁵ The dispute, here, is premised on the parties' failure to agree on "whether they have been able to resolve the pertinent discovery disputes extrajudicially."³⁶ It is clear by the contradictory narratives and the parties "talking past each other," that the parties did not agree on the outcomes of the "meet and confer."³⁷ Hence, the dispute.³⁸ Thus, MCB's argument that the Court did not address its proffered argument is meritless. As a result, MCB's Motion fails to provide a basis for reconsideration under Rule 6-4(b)(4).³⁹

²⁴ See Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 5.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* (emphasis added)

²⁸ *Smith*, 2018 WL 671389 at *9. *Daybreak, Inc.*, 2018 WL 4043530, at *3.

²⁹ Order, May 9, 2017.

³⁰ Order 2, May 9, 2017.

³¹ Order 2, May 9, 2017.

³² Order 2, May 9, 2017.

³³ V.I. R. Civ. P. 6-4(b)(4).

³⁴ *In re Infant Sherman*, 49 V.I. at 457; *Virgin Islands v. Clark*, 54 V.I. 154, 157 (V.I. Super. Ct. 2010) ("[M]otions for reconsideration 'are aimed at reconsideration not initial consideration.'").

³⁵ Order 2, May 9, 2017.

³⁶ Order 3, May 9, 2017.

³⁷ Order 3, May 9, 2017.

³⁸ Order 3, May 9, 2017.

³⁹ Order 2, May 9, 2017.

¶13 MCB simply disagrees with the Court's decision.⁴⁰ In clear disregard of the Court's analysis, MCB presumptively wants the Court to believe that *its* version of the events is the accurate version.⁴¹ However, as already articulated by the May 9, 2017 Order, the Court, acting within its discretion, assessed the credibility of each party's filing⁴² and rendered its decision.⁴³ Because it is evident that the Court considered MCB's arguments in its ruling, MCB has not met its burden under Rule 6-4(b)(4). Accordingly, the Court finds that MCB fails to provide the Court with any substantive arguments that permits the Court to reconsider and find the May 9, 2017 Order appropriate for reconsideration.

B. The Court finds that MCB failed to demonstrate that the Court needs to correct clear error requiring reconsideration of the May 9, 2017 Order.

¶14 MCB also argues that the Court committed clear error in stripping MCB of its attorney-client and attorney work-product privileges.⁴⁴ In the May 9, 2017 Order, the Court recognized that, in response to Oceanside's Demand for Production of Documents dated March 17, 2015, MCB objected and asserted that some of the requested documents sought privileged documents. Oceanside argued that the privileges assertion was invalid because MCB failed to provide a privilege log. The Court concluded that MCB waived⁴⁵ its privileges argument, pertinent to the Motion to Compel, because MCB failed to discuss in its opposition to the Motion to Compel any justifiable reasons for withholding any requested documents.⁴⁶

¶15 As mentioned above, motions under Rule 6-4(b)(3) look to the moving party to: "(1) specify the legal precept it should have applied or (2) to show how the correct legal precept was applied incorrectly in its earlier Opinion."⁴⁷ Essentially, MCB must specify the legal authority that prevents the Court from ruling that MCB waived its privileges for failing to discuss whether

⁴⁰ Motions for reconsideration cannot be used as vehicle for registering disagreement with the Court's initial decision. *In re Infant Sherman*, 49 V.I. at 457; *Virgin Islands*, 54 V.I. at 157.

⁴¹ MCB's discussion confusingly states that "nowhere did the Court consider – either to accept or reject – Merchants' argument that [oceanside] did not comply with LRCi 37.1 and 37.2." Yet, the following sentence states that the Court only stated that "[pursuant to LRCi 37.1 and 37.1 [sic] the parties met and conferred." The Court's determination that the parties met and conferred, after considering both MCB's and Oceanside's arguments and exhibits, rejected MCB's arguments.

⁴² Order 2, May 9, 2017 ("Upon review of the parties' representations, exhibits, and arguments, the Court determines it should grant [Oceanside's] Motion.").

⁴³ *Daybreak, Inc.*, 2018 WL 4043530 at *3 ("Nor is a motion for reconsideration the proper mechanism for relief when parties seek to disagree with decisions made by the Court when acting in its discretion.").

⁴⁴ Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 6-12.

⁴⁵ *Benjamin v. AIG Insurance Company of Puerto Rico*, 56 V.I. 558, 566 (V.I. 2012) (waiving Appellant's arguments because "Benjamin never raised these arguments to the Superior Court in her opposition to the motion to dismiss, or in any subsequent filings, and, in fact, raises them for the first time on appeal. Generally, we consider all arguments made for the first time on appeal in civil cases as waived unless the party offering the argument presents exceptional circumstances."); *Smith v. Government of Virgin Islands*, 67 V.I. 797, 801 (V.I. 2017) (In ascertaining whether an argument has been waived, "[o]ur rules only require an issue to be raised in the original appellant . . . brief, with proper citations to authority and argument, to avoid waiver.").

⁴⁶ Order 4, May 9, 2017.

⁴⁷ *Daybreak, Inc.*, 2018 WL 4043530 at *3. *Smith*, 2018 WL 671389 at *10.

that prevents the Court from ruling that MCB waived its privileges for failing to discuss whether any documents are protected from discovery by the attorney-client and work-product privileges.⁴⁸ Alternatively, MCB can also demonstrate how the Court incorrectly made its legal determination.⁴⁹

¶16 Initially, MCB argues that it could not contest Oceanside's privilege log arguments because MCB believed that the Motion to Compel was procedurally defective, and therefore, not proper before the Court.⁵⁰ However, MCB offers no statute, case law, or any other legal authority that prohibits parties from making substantive arguments in addition to procedural arguments in response to a motion.⁵¹ Absent an argument integrated with legal support,⁵² the Court finds that MCB fails to provide the Court with substantive arguments that persuades the Court to find that it committed clear error on the May 9, 2017 Order.

¶17 Without providing legal support, MCB next argues that the Court "cannot conclude that [Oceanside] properly raised the privilege log issue with the Court because [Oceanside] did not identify it either in opposing counsel's Rule 37.2 Declaration or in any supporting documentation attached to the Motion." Again, MCB fails to provide the Court with any statutory or case law that delineates the manner in which an argument is to be presented to the Court other than as a "sub-argument in the body of the Motion."⁵³ Additionally, MCB fails to provide the Court with any statutory or case law that requires a party to raise a privilege log argument in a LRCi 37.2 Declaration or as an attached exhibit to the original motion.⁵⁴

⁴⁸ *Daybreak, Inc.*, 2018 WL 4043530 at *3 ("In other words, as it relates to the present matter, Defendants must specify the legal authority that prevents this Court from ruling upon Plaintiffs' "Motion for Re-Entry to the Land" and the legal authority that prevents this Court from reducing the value of Defendants' Counter-claim, or alternatively demonstrate how the legal authorities relied on were incorrectly applied."); *Smith*, 2018 WL 671389 at *10 ("[Smith must provide] legal authority which would enable the Court to rule for the first time on his personal injury claim in the context of his legal malpractice-related claims or to rule his legal malpractice-related claims ripe.").

⁴⁹ *Id.*

⁵⁰ Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 6.

⁵¹ *Daybreak, Inc.*, 2018 WL 4043530 at *3 (denying Defendants motion for reconsideration because Defendants failed to offer any legal authority to bolster its arguments but rather makes broad references to legal doctrines without support); *Smith*, 2018 WL 671389 at *10 (denying Plaintiff's motion for reconsideration for also failing to supply the Court with any legal support that should apply to his present legal malpractice-related claims in place of the ripeness doctrine case law invoked in the Court's original Opinion).

⁵² V.I. R. Civ. P. 6-1(a)(2) ("All motions must state with particularity the grounds for seeking the order, including a concise statement of reasons and citation of authorities) (emphasis added). *Id.*; *Bertrand v. Mystic Granite & Marble, Inc.*, 63 V.I. 772, 782 (V.I. 2015) ("[S]imply stating a principle of law without any argument or explanation of how it applies to the case at hand is not sufficient to fairly present [an] issue to the Superior Court."); *Yusuf v. Hamed*, 59 V.I. 841, 851 n.5 (V.I. 2013) ("To preserve an objection on appeal, a party must object on the specific grounds raised on appeal, and a general objection or an objection on other grounds will not suffice."); *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) ("The rules that require a litigant to brief and support his arguments, both here and before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument before it is presented to this Court. That requirement permits the Superior Court to develop the record so that, in the event of an appeal, this Court can then make informed rulings.").

⁵³ *Id.*; *Daybreak, Inc.*, 2018 WL 4043530 at *3; *Smith*, 2018 WL 671389 at *10. Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 6.

⁵⁴ *Id.*

¶18 Finally, MCB argues that the parties' on-going extensive discovery and the absence of bad faith should have dissuaded the Court from waiving its privileges.⁵⁵ While MCB cites several legal authorities, MCB's argument is clearly designed to serve as a response to the Motion to Compel. "[M]otions for reconsideration should not be used as a vehicle for rehashing and expanding upon arguments previously presented or merely as an opportunity for getting in one last shot at an issue that has been decided."⁵⁶ Further, parties may not use motions for reconsideration to "raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation."⁵⁷ Rather than articulating how the Court committed a clear error by waiving its privileges for failure to raise an objection to Oceanside's privilege log argument, MCB for the first time discusses, *inter alia*, the lack of legal authority that sets a deadline to provide a privilege log; Oceanside's failure to cite any authority that requires a producing party to provide a partial privilege log before that production is complete to avoid a waiver of the attorney-client and work-product privileges; and that a waiver of the mentioned privileges is a harsh sanction.⁵⁸

¶19 The purpose of reconsiderations is not the "proper forum for raising new legal arguments or theories which could have been addressed initially, and the [C]ourt need not address such arguments."⁵⁹ Without belaboring the point, if MCB wanted the Court to consider all of the arguments mentioned above, MCB must have presented those arguments and evidence with its opposition.⁶⁰ Ultimately, MCB fails to demonstrate how any of the aforementioned arguments amount to clear error.⁶¹ Once more, MCB fails to provide any basis for the Court to reconsider its May 9, 2017 Order under the grounds in Rule 6-4(b)(3).

⁵⁵ Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 7-8.

⁵⁶ *Virgin Islands*, 54 V.I. at 157.

⁵⁷ *In re Infant Sherman*, 49 V.I. at 457 (quoting *Kona Enters., Inc.*, 229 F.3d at 890).

⁵⁸ MCB attempts to utilize *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142 (9th Cir. 2005) to bolster its argument. However, *Burlington* is not analogized to the matter at hand. In *Burlington*, while the Ninth Circuit disagreed with the district court and held that boilerplate objections in response to a request for production of documents are insufficient to assert a privilege, the Ninth Circuit ruled that a waiver of privilege for untimely production of a privilege log should be determined on a case-by-case basis. Unlike *Burlington*, the Court waived MCB's attorney-client and work-product privileges for MCB's failure to discuss whether any documents are protected from discovery by attorney-client or work-product privilege in response to Oceanside's argument that MCB's privileges objections to its requests are waived for not providing a privilege log. *Burlington* rejected the waiver rule that deems a privilege waived if a privilege log is not produced within a 30-day time, not as in here, the Court's waiver of MCB's privileges were in relation to its lack of responding to Oceanside's argument. Therefore, the issue in *Burlington* is dissimilar from this matter. As discussed, the Court's decision is outside the realm of clear error. Pl.'s Mot. for Reconsideration of May 9, 2017 Order Granting Defs.' Mot. to Compel and Inc. Memo. of Law 7-8.

⁵⁹ *In re Infant Sherman*, 49 V.I. at 458 (quoting *Gov't of the V.I. v. Innovative Commc'ns Corp.*, 215 F.Supp.2d 603, 610 (D.V.I. 2002)).

⁶⁰ *Id.* ("[I]f Appellant wanted the trial court to consider her policy arguments, psychologist's affidavit, and the related literature as evidence of the need of the trial court to appoint a guardian ad litem in response to the changing attitudes toward adoption proceedings, she should have presented that argument and evidence with her original petition.")

⁶¹ V.I. R. Civ. P. 6-4(b)(3).

IV. CONCLUSION

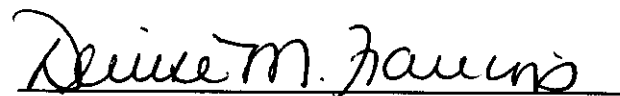
¶20 MCB seeks reconsideration of a May 9, 2017 Order which found that the parties had met and conferred as required by LRCi 37.1 and 37.2. The Court's Order also found that MCB waived its attorney-client and work-product privileges for failing to object and proffering any justification for withholding requested discovery documents. With its Motion, MCB failed to demonstrate a basis for reconsideration due to this Court's alleged failure to address an issue argued or due to the Court's need to correct clear error. Since MCB failed to satisfy the grounds articulated in Rule 6-4(b)(3) and (b)(4), the Court will not vacate its May 9, 2017 Order.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Reconsideration of [sic] May 9, 2017 Order Granting Defendants' Motion to Compel and Incorporated Memorandum of Law, filed on May 24, 2017, is **DENIED**; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Adam N. Marinelli (BoltNagi, PC), Attorney Lee J. Rohn, and Attorney Susan Moorehead.

DATED: 11/22/2019



DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

ATTEST:

Estrella H. George

Clerk of the Court

By:



Lori Boynes-Tyson

Chief Deputy Clerk

11/25/19