

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

PHILLIP BRYSON, CECILIA BRYSON,	)	
individually, and CECILIA BRYSON,	)	
on behalf of RAY BRYSON and MOLLY	)	
BRYSON, Minors,	)	CIVIL NO. 1656/1981
	)	
Plaintiffs,	)	ACTION FOR DAMAGES
	)	
vs.	)	
	)	
LITWIN PAN AMERICAN, INC.,	)	
	)	
Defendant.	)	

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Pan American, Inc.)

FINCH, Judge

MEMORANDUM OPINION
(August 7, 1985)

This matter came before the Court on Plaintiff Phillip Bryson's Motion to Vacate the Judgment entered by this Court on September 2, 1983. Specifically, plaintiff alleges that the Territorial Court lacked jurisdiction at the time the

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judgment was entered because the aggregate amount of damages prayed for exceeded the jurisdictional limit of the Court.

Plaintiff filed an action for damages for \$190,000 against Litwin Pan American, Inc. for injuries sustained as a result of an accident which occurred while he was working at Hess Oil Corporation. Plaintiff's wife filed a motion to intervene as plaintiff on behalf of herself and her minor children. The motion was granted and a complaint was filed for damages in the amount of \$100,000 for loss of consortium. The two causes of action were joined for trial. Subsequently, the Court granted Summary Judgment for the defendant, dismissing the complaints of the plaintiffs. Plaintiff's appeal to the District Court was dismissed as untimely. On appeal to the Third Circuit, plaintiff moved to vacate the judgment pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure on jurisdictional grounds. The Third Circuit has remanded the case back to this Court for determination of the 60(b)(4) motion. For the reasons stated below, this Court denies Plaintiff's Motion to Vacate the Judgment.

The question presented is whether the Territorial Court lacks jurisdiction as result of the joinder of two causes of action based on the same operative facts, where the aggregate amount of damages prayed for exceed the \$200,000 jurisdiction limit of this Court.

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A cause of action for loss of consortium is one legally cognizable in the Virgin Islands. It is a derivative action and accrues only to the extent that the spouse has a cause of action against the same defendant. Benjamin v. Cleburne Truck Body Sales, Inc., 13 V.I. 545 (D.C.V.I. 1976), aff'd 13 V.I. 689 (1977). Recovery is limited to damages for loss of the intangible elements of the marital relationship such as love, society, companionship and sexual relations. The interests protected in the cause of action for loss of consortium must be personal to the wife to avoid double recovery for the injuries sustained by the husband. Id. at 551 n.12. The two causes of action are separate and distinct from another, although one derives from the other.

The jurisdictional issue presented before this Court was addressed by the Municipal Court in Berstein v. The Buccaneer, Inc. 6 V.I. 533 (Mun. Ct. 1967). The Court held that where there are separate or several causes of action, each claiming an amount within the jurisdiction of the Court, the two actions may be joined in one suit, even though the aggregate amount of the claims exceeds the jurisdictional limit of the Court. In Berstein the plaintiffs filed one suit for damages, which they sustained when they both fell from a retaining wall on defendant's premises. The suit consisted of two counts, one for the husband claiming damages in the amount of \$10,000,

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and one for the wife claiming damages in the amount of \$5,000. The Court found the two claims to be separate, even though they were based on the same operative facts, and denied the motion to dismiss. The jurisdictional limit of the Municipal Court at the time was \$10,000.

Plaintiff is arguing that the two claims in this case are not separate and distinct, but rather that the claims "constitute a common claim or are otherwise intrinsically connected." The basis for such argument appears to be the fact that the wife's claim for loss of consortium is derivative from the husband's claim for personal injuries. Although the wife's claim is derivative, it is considered a separate tort, and therefore, gives rise to a separate cause of action:

The invasion of the deprived spouse's [one bringing the action for loss of consortium] interest is a separate tort against that spouse, although it is conditioned upon factors that also constitute a tort against the impaired spouse.

Restatement (Second) of Torts § 693 comment g (1977). The Restatement require that the claim for loss of consortium be joined with the action for personal injuries in order to avoid double recovery and inconsistent verdicts by the jury.

In Langsan v. Minitz, 346 F.Supp. 1340, aff'd 481 F.2d 1399 (3rd.Cir. 1972) the District Court of Pennsylvania

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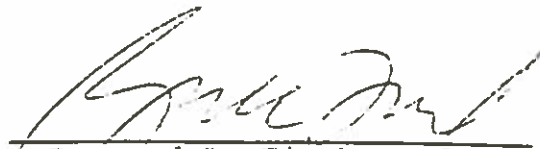
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O R D E R

For the reasons stated in the accompanying memorandum opinion, it is hereby

ORDERED that plaintiff's Motion to Vacate shall be and the same is hereby DENIED.

DATED: August 7, 1985.



Raymond L. Finch, Judge